

1
2
3
4
5
6
7
8

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Consumer Loan Act of Washington by:

NO. C-08-247-10-FO01

BAY CAPITAL CORP.,

FINAL ORDER

Respondent.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I. DIRECTOR'S CONSIDERATION

A. Default. This matter has come before the Director of the Department of Financial Institutions of the State of Washington (Director), through his designee, Consumer Services Division Director Deborah Bortner, pursuant to RCW 34.05.440(1). On August 6, 2009, the Director, through Consumer Services Division Director Deborah Bortner, entered a Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose Fine, Collect Annual Assessments and Late Penalties, and Collect Investigation Fee (Statement of Charges). A copy of the Statement of Charges is attached and incorporated into this order by this reference. The Statement of Charges was accompanied by a cover letter dated August 6, 2009, a Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for Adjudicative Hearing for Bay Capital Mortgage Corp. The Department served the Statement of Charges, cover letter dated August 6, 2009, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for Adjudicative Hearing on Bay Capital Mortgage Corp by First-Class mail and Federal Express overnight delivery at the following addresses: 3231 South Country Club Way, Tempe, Arizona 85282 (3231 South Country Club); and, at the Registered Agent address C/O National Registered Agent Inc, at 100 Canal Pointe Blvd, Suite 212, Princeton, New Jersey 08540 (100 Canal Pointe). On August 17, 2009, the documents sent via Federal Express overnight delivery to the 3231 South Country Club address were returned to the Department as undeliverable. On August 24, 2009, the documents sent via First-Class mail to the 83231 South Country Club address were returned to the Department by the United States Postal Service as "undeliverable." On August 7, 2009, the documents served

1 by Federal Express overnight delivery to the Registered Agent at the 100 Canal Pointe address were signed for
2 by R. Raysor. The documents served by First-Class mail to the Registered Agent at the 100 Canal Pointe address
3 were not returned to the Department by the United States Postal Service.

4 On February 19, 2010, the Director, through Consumer Services Division Director Deborah Bortner,
5 entered an Amended Statement of Charges (amending the Respondent's name to read "Bay Capital Corp."),
6 and Notice of Intention to Enter an Order to Revoke License, Impose Fine, Collect Annual Assessments and
7 Late Penalties, and Collect Investigation Fee (Amended Statement of Charges, C-08-247-10-SC02). A copy of
8 the Amended Statement of Charges is attached and incorporated into this order by this reference. The Amended
9 Statement of Charges was accompanied by a cover letter dated February 19, 2010, a Notice of Opportunity to
10 Defend and Opportunity for Hearing, and a blank Application for Adjudicative Hearing for Bay Capital Corp.
11 The Department served the Amended Statement of Charges, cover letter dated February 19, 2010, Notice of
12 Opportunity to Defend and Opportunity for Hearing, and blank Application for Adjudicative Hearing for Bay
13 Capital Corp on Respondent by First-Class mail and Federal Express overnight delivery at the following
14 addresses: 3231 South Country Club Way, Tempe, Arizona 85282 (3231 South Country Club); and, at the
15 Registered Agent address C/O National Registered Agent Inc, at 100 Canal Pointe Blvd, Suite 212, Princeton,
16 New Jersey 08540 (100 Canal Pointe); and, at 9238 East Palm Tree Drive, Scottsdale, Arizona, 85255-5544
17 (9238 East Palm Tree Drive). On February 22, 2010, the documents sent via Federal Express overnight delivery
18 to the 100 Canal Pointe address were signed for by N. Geremia. On March 1, 2010, the documents sent via
19 Federal Express overnight delivery to the 9238 East Palm Tree Drive address were returned to the Department as
20 "undeliverable". The documents served by First-Class mail to the Registered Agent at the 100 Canal Pointe
21 address were not returned to the Department by the United States Postal Service.

22 Respondent did not request an adjudicative hearing within twenty calendar days after the Department
23 served it with the Notice of Opportunity to Defend and Opportunity for Hearing, as provided for in WAC 208-
24 08-050(2).

1 B. Record Presented. The record presented to the Director's designee for her review and for
2 entry of a final decision included the following:

- 3 1. Statement of Charges, cover letter dated August 6, 2009, Notice of Opportunity to Defend
4 and Opportunity for Hearing, and blank Application for Adjudicative Hearing for Bay Capital
5 Mortgage Corp with documentation of service; and
- 6 2. Amended Statement of Charges, cover letter dated February 19, 2010, Notice of Opportunity
7 to Defend and Opportunity for Hearing, and blank Application for Adjudicative Hearing for
8 Bay Capital Corp with documentation of service

9 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.440(1), the Director's designee
10 hereby adopts the Amended Statement of Charges, which is attached hereto.

11 II. FINAL ORDER

12 Based upon the foregoing, and the Director's designee having considered the record and being
13 otherwise fully advised, NOW, THEREFORE:

14 A. IT IS HEREBY ORDERED, That:

- 15 1. Respondent Bay Capital Corp.'s license to conduct the business of a Consumer Loan
16 Company is revoked;
- 17 2. Respondent Bay Capital Corp. pay a fine, totaling \$6,500;
- 18 3. Respondent Bay Capital Corp. pay the annual assessment fee due for the years-ended
19 December 31, 2006; December 31, 2007; and, December 31, 2008, respectively; as calculated
20 in accordance with the instructions for the annual assessment worksheets for the same year,
21 or calculated pursuant to statute;
- 22 4. Respondent Bay Capital Corp. pay a late penalty calculated at \$50 per day for each report for
23 each day of delay in filing; for the years-ended December 31, 2006; December 31, 2007; and,
24 December 31, 2008, respectively;
- 25 5. Respondent Bay Capital Corp. pay an investigation fee, which as of the date of the Statement
of Charges totaled \$4,703.03, calculated at \$69.01 per hour for the sixty-eight and fifteen-
tenths staff hours devoted to the investigation; and
6. Respondent Bay Capital Corp. maintain records in compliance with the Act and provide the
Department with the location of the books, records and other information relating to
Respondent Bay Capital Corp.'s consumer loan business, and the name, address and
telephone number of the individual responsible for maintenance of such records in
compliance with the Act.

1 B. Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to file a Petition
2 for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed in the
3 Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater,
4 Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of
5 service of the Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness of
6 this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter.

7 A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the
8 petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written notice
9 specifying the date by which it will act on a petition.

10 C. Stay of Order. The Director's designee has determined not to consider a Petition to Stay
11 the effectiveness of this order. Any such requests should be made in connection with a Petition for Judicial
12 Review made under chapter 34.05 RCW and RCW 34.05.550.

13 D. Judicial Review. Respondent has the right to petition the superior court for judicial review
14 of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition for
15 Judicial Review, see RCW 34.05.510 and sections following.

16 E. Non-compliance with Order. If Respondent does not comply with the terms of this order, the
17 Department may seek its enforcement by the Office of Attorney General to include the collection of fines, fees,
18 and late penalties imposed herein.

19 F. Service. For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review,
20 service is effective upon deposit of this order in the U.S. mail, declaration of service attached hereto.

21 DATED this 27th day of April, 2010.



22 STATE OF WASHINGTON
23 DEPARTMENT OF FINANCIAL INSTITUTIONS

24 Deborah Bortner
25 DEBORAH BORTNER
DIRECTOR
DIVISION OF CONSUMER SERVICES

1
2
3
4
5
6
7
8

**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

BAY CAPITAL CORP.,

Respondent.

NO. C-08-247-10-SC02

AMENDED STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO REVOKE LICENSE, COLLECT
ANNUAL ASSESSMENTS AND LATE PENALTIES,
IMPOSE FINE, AND COLLECT INVESTIGATION
COSTS.

9
10
11
12
13
14
15
16
17
18
19

INTRODUCTION

Pursuant to RCW 31.04.093, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, issued a Statement of Charges, No. C-08-247-09-SC01. Thereafter, the Director's designee determined to amend the Statement of Charges, No. C-08-247-09-SC01. Now, then, the Director, through his designee, Division of Consumer Services Director Deborah Bortner issues this Amended Statement of Charges, Number C-08-247-10-SC02. Amendments include changes to the caption above and changes to paragraphs, 4.1, 4.2, 4.3, 4.4, 4.5, and 4.6.

20
21
22
23
24
25

I. FACTUAL ALLEGATIONS

1.1 Respondent Bay Capital Corp. (Respondent Bay Capital) was licensed by the Department of Financial Institutions of the State of Washington (Department) to engage in the business of a consumer lender on January 20, 2005, and continues to be licensed to date. Respondent Bay Capital is licensed to engage in the business of a consumer loan company at the following location: 10811 Red Run Boulevard, Suite 200, Owings Mills, Maryland 21117.

1 **1.2 Failure to Maintain Bond.** On November 21, 2006, the Department received notice from the Hartford
2 Fire Insurance Company that Respondent Bay Capital's surety bond would be cancelled, effective January 10,
3 2007. To date, Respondent Bay Capital has failed to notify the Department of the cancellation of the surety
4 bond, and has failed to provide the required surety bond or an approved alternative.

5 **1.3 Failure to Respond to Directives.** On November 21, 2006; January 24, 2007; April 2, 2007;
6 September 11, 2007; October 2, 2007; and, October 29, 2007, the Department served directives on Respondent
7 Bay Capital by FedEx and by First-Class Mail. These directives were not returned by the United States Postal
8 Service. These directives variously required Respondent Bay Capital to provide a surety bond or acceptable
9 alternative, provide the 2006 and 2007 Consolidated Annual Reports, pay Annual Assessment Fees and Late
10 Penalties for 2005 and 2006 assessment reports, and provide office closure documents, including the 2007
11 Consolidated Annual Report. To date, the Department has not received a response to these directives.

12 **1.4 Failure to Notify Department of Significant Developments.**

13 A. As stated in paragraph 1.2, to date, Respondent Bay Capital has not notified the Department of
14 the cancellation of Respondent Bay Capital's surety bond.

15 B. As stated in paragraph 1.3, to date, Respondent Bay Capital has not notified the Department of
16 its decision to cease operations in Washington State.

17 C. To date, Respondent Bay Capital has not notified the Department of a change in location of
18 Respondent Bay Capital's principal place of business. The Department learned in February of 2007 that
19 Respondent Bay Capital's address had changed from the licensed location to an unknown location.

20 **1.5 Failure to File Annual Assessment Reports and Pay Assessment Fees.** An assessment fee for each
21 license is due to the Department no later than the 1st day of March of the following year. To date, the
22 Department has not received the annual assessment reports or assessment fees related to the 2006, 2007, or
23 2008 reporting periods.

24 **1.6 Failure to Pay Annual Assessment Late Penalty.** An annual assessment fee for each license is due to
25 the Department no later than the 1st day of March of the following year. To date, the Department has not

1 received the following annual assessment late penalties due from Respondent Bay Capital. Payment of the
2 annual assessment for the year ended December 31, 2005, was due to the Department no later than the 1st day
3 of March, 2006. Respondent Bay Capital paid this annual assessment on March 2, 2006, and was assessed a
4 late penalty that Respondent Bay Capital failed to pay. As a result of Respondent Bay Capital's failure to file
5 the 2006, 2007, and 2008 annual assessment reports and pay assessment fees, late penalties continue to accrue.

6 **1.7 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
7 Respondent Bay Capital continues to date.

8 **II. GROUNDS FOR ENTRY OF ORDER**

9 **2.1 Requirement to Maintain Surety Bond.** Based on the Factual Allegations set forth in Section I
10 above, Respondent Bay Capital is in apparent violation of RCW 31.04.045(3) and WAC 208-620-320 for
11 failing to file and maintain a surety bond or approved alternative with the Department.

12 **2.2 Requirement to Respond to Directive.** Based on the Factual Allegations set forth in Section I above,
13 Respondent Bay Capital is in apparent violation of RCW 31.04.145 for failure to comply with a directive issued
14 by the Department.

15 **2.3 Requirement to Notify Department of Significant Developments.** Based on the factual allegations
16 set forth in Section I above, Respondent Bay Capital is in apparent violation of WAC 208-620-490(2) for
17 failure to notify the director in writing within ten days after an occurrence of a change in mailing address,
18 telephone number, fax number, or e-mail address; cancellation or expiration of its Washington state master
19 business license; change in its standing with the state of Washington secretary of state, including the resignation
20 or change of the registered agent; failure to maintain the appropriate unimpaired capital under WAC 208-620-
21 340 or receipt of notification of cancellation of the licensee's surety bond. Respondent Bay Capital is in
22 apparent violation of WAC 208-620-460, WAC 208-620-475, and WAC 208-620-480 for failure to file office
23 closure documents, including failure to file final consolidated annual report and pay the annual assessment fee
24 required, within thirty days of ceasing Washington State operations.

25

1 **2.4 Requirement to Pay Annual Assessment.** Based on the Factual Allegations set forth in Section I
2 above, Respondent Bay Capital is in apparent violation of RCW 31.04.085, WAC 208-620-430(1) and WAC
3 208-620-440 for failing to pay to the Director an annual assessment late penalty.

4 **III. AUTHORITY TO IMPOSE SANCTIONS**

5 **3.1 Authority to Revoke License.** Pursuant to RCW 31.04.093(3), the Director may revoke a license if a
6 licensee fails to pay any fee due the state of Washington, or fails to comply with any specific order or demand
7 of the Director lawfully made and directed to the licensee in accordance with the Act, or violates any provision
8 of the Act or any rule adopted under the Act either knowingly or without exercise of due care.

9 **3.2 Authority to Collect Annual Assessments and Late Penalties.** Pursuant to RCW 31.04.085 and WAC
10 208 620-430(1) each licensee must pay to the Director an annual assessment as determined in rule by the Director
11 by March 1st of the following year. Pursuant to WAC 208-620-430(2) a licensee that fails to submit the required
12 annual report and worksheet by the March 1st due date is subject to a penalty of fifty dollars per report for each day
13 of delay.

14 **3.3 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of up to one
15 hundred dollars per day on a licensee, its employee or loan originator, or other person subject to the Act for any
16 violations of the Act, or failure to comply with any order or subpoena issued by the director under this chapter.

17 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-590(1), upon
18 completion of any investigation of the books and records of a licensee or other person subject to the Act, the
19 Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of the
20 investigation. The investigation charge will be calculated at the rate of sixty nine dollars and one cent (\$69.01) per
21 hour that each staff person devoted to the investigation.

22 **IV. NOTICE OF INTENTION TO ENTER ORDER**

23 Respondent Bay Capital's violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,
24 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions,
25

1 constitute a basis for the entry of an Order under RCW 31.04.093. Therefore, it is the Director's intention to

2 ORDER that:

3 **4.1** Respondent Bay Capital Corp's license to conduct the business of a Consumer Loan Company be
4 revoked;

5 **4.2** Respondent Bay Capital Corp pay the Annual Assessment Fees due for the years-ended December 31,
6 2006; December 31, 2007; and December 31, 2008, respectively, as calculated in accordance with the
7 instructions for the annual assessment worksheets for the same years, or calculated pursuant to statute;

8 **4.3** Respondent Bay Capital Corp pay a late penalty calculated at \$50 per day for each report for each day of
9 delay in filing; for the years-ended December 31, 2005; December 31, 2006; December 31, 2007; and,
10 December 31, 2008, respectively;

11 **4.4** Respondent Bay Capital Corp pay a fine, which as of the date of these charges totals \$6,500;

12 **4.5** Respondent Bay Capital Corp pay an investigation fee, which as of the date of these charges totals
13 \$4,703.03, calculated at \$69.01 per hour for the sixty-eight and fifteen-tenths (68.15) staff hours devoted to
14 the investigation; and

15 **4.6** Respondent Bay Capital Corp maintain records in compliance with the Act and provide the Department
16 with the location of the books, records and other information relating to Respondent Bay Capital's
17 consumer loan business, and the name, address and telephone number of the individual responsible for
18 maintenance of such records in compliance with the Act.

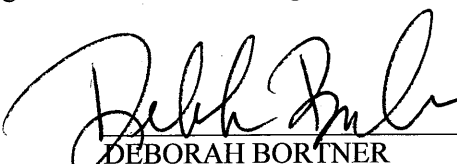
19 //
20 //
21 //
22 //
23 //
24 //
25 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

V. AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of RCW 31.04.093, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent Bay Capital may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

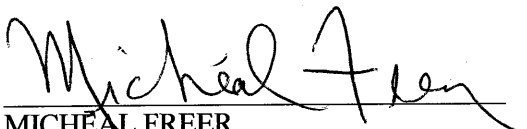
Dated this 19th day of February, 2010.



DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

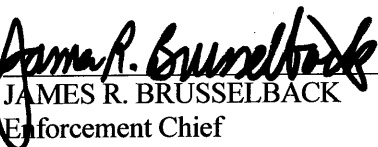


Presented by:



MICHEAL FREER
Financial Examiner

Approved by:



JAMES R. BRUSSELBACK
Enforcement Chief