

TERMS COMPLETE

CONSENT ORDER SUMMARY - Case Number: C-08-312

Name(s) ACC Funding LLC
 Steven C. Koffler
 Wayde Nichols

Order Number C-08-312-10-CO01

Effective Date February 12, 2010

License Number DFI: CL-44300

License Effect License surrendered in lieu of revocation

Not Apply until February 12, 2015

Prohibition/Ban until February 12, 2015

Investigation Costs	\$2,070	Due: January 29, 2010	Paid Y	Date: 2/4/2010
----------------------------	---------	-----------------------	--------	----------------

Assessment(s)	\$	Due:	Paid	Date
----------------------	----	------	------	------

Monetary Penalty	\$	Due:	Paid	Date
-------------------------	----	------	------	------

Other

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:

NO. C-08-312-10-CO01

ACC FUNDING LLC., and, STEVEN C.
KOFFLER, President/Owner, and, WAYDE
NICHOLS, Vice President/Owner,

CONSENT ORDER

Respondents.

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and ACC Funding LLC (hereinafter Respondent ACC Funding), Steven C, Koffler (hereinafter Respondent Koffler), and Wayde Nichols (hereinafter Respondent Nichols), and finding that the issues raised in the above-captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 31.04 of Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

AGREEMENT AND ORDER

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-08-312-09-SC01 (Statement of Charges), entered November 24, 2009, (copy attached hereto). Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondents hereby agree to the Department's entry of this Consent Order and further agree that the issues raised in the above-captioned matter may be economically and efficiently settled by entry of this Consent Order. The parties intend this Consent Order

1 to fully resolve the Statement of Charges. Respondents are agreeing not to contest the Statement of Charges in
2 consideration of the terms of this Consent Order.

3 Based upon the foregoing:

4 A. **Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of the
5 activities discussed herein.

6 B. **Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a hearing
7 before an administrative law judge, and that they hereby waive their right to a hearing and any and all
8 administrative and judicial review of the issues raised in this matter, or of the resolution reached herein.
9 Accordingly, by signing below, the Respondents withdraw the appeal in the above-captioned matter.

10 C. **License Surrender.** It is AGREED that Respondent ACC Funding's Consumer Loan License is
11 surrendered.

12 D. **2008 Annual Assessment Filing.** It is AGREED that Respondents have completed the 2008
13 Consumer Loan Annual Assessment and have paid all associated assessment fees.

14 E. **Agreement Not to Apply (Respondents ACC Funding, Koffler, and Nichols).** It is AGREED that
15 Respondents will not apply for a mortgage broker or consumer loan license issued by the Department pursuant to
16 the Act for a period of 5 years from the entry of this Consent Order. It is further AGREED that should
17 Respondents apply for a license with the Department after the 5-year period, Respondents will be required to
18 comply with all licensing requirements in effect at the time of application. It is also AGREED that after the 5-year
19 period, nothing in this agreement will be considered by the Department in the assessment of any future
20 applications by the Respondents for a loan originator license in the state of Washington in the event Respondents
21 wish to pursue such application.

22 F. **Investigation Fee.** It is AGREED that Respondents shall pay to the Department an investigation
23 fee of \$2,070, in the form of a cashier's check made payable to the "Washington State Treasurer," upon entry
24 of this Consent Order.

1 **G. Authority to Execute Order.** It is AGREED that the undersigned Respondents have represented
2 and warranted that they have the full power and right to execute this Consent Order on behalf of the parties
3 represented.

4 **H. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to abide
5 by the terms and conditions of this Consent Order may result in further legal action by the Director. In the
6 event of such legal action, Respondents may be responsible to reimburse the Director for the cost incurred in
7 pursuing such action, including but not limited to, attorney fees.

8 **I. Voluntarily Entered.** It is AGREED that the undersigned Respondents have voluntarily entered into
9 this Consent Order, which is effective when signed by the Director's designee.

10 **J. Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read this
11 Consent Order in its entirety and fully understand and agree to all of the same.

12 RESPONDENTS:

13 ACC Funding LLC

14 By:

15 
16 _____
17 Steven C. Koffler
18 President and 50% Owner, and Individually

19 1/29/10
20 Date

21 
22 _____
23 Wayde Nichols
24 Vice President and 50% Owner, and Individually

25 1/29/2010
Date

DO NOT WRITE BELOW THIS LINE

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

THIS ORDER ENTERED THIS 17th DAY OF January, 2010.



DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:



MICHAEL FREER
Financial Examiner

Approved by:



JAMES R. BRUSSELBACK
Enforcement Chief

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:

NO. C-08-312-09-SC01

ACC FUNDING LLC., and, STEVEN C.
KOFFLER, President/Owner, and, WAYDE
NICHOLS, Vice President/Owner,

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

Respondents.

9
10
11
12
13
14

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, institutes this proceeding and finds as follows:

15
16
17
18
19
20
21
22
23
24
25

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. ACC Funding LLC. (Respondent ACC Funding) was licensed by the Department of Financial Institutions of the State of Washington (Department) to engage in the business of a consumer loan company on or about June 19, 2007. Respondent ACC Funding continues to be licensed to date. Respondent ACC Funding is licensed to engage in the business of a consumer loan company at the following main office location: 988 Escondido Avenue, Suite B, Vista, California 92083-5246.

B. Steven C. Koffler. (Respondent Koffler) is President and fifty percent (50%) Owner of Respondent ACC Funding.

C. Wayde Nichols. (Respondent Nichols) is Vice President and fifty percent (50%) Owner of Respondent ACC Funding.

1 **1.2 Failure to Maintain Bond.** On or about June 24, 2008, the Department received notice from the
2 Hartford Fire Insurance Company that Respondent ACC Funding's surety bond would be cancelled, effective
3 on or about August 11, 2008. To date, Respondent ACC Funding and Respondents Koffler and Nichols have
4 not notified the Department of the cancellation of the surety bond and have not provided the required surety
5 bond or an approved alternative.

6 **1.3 Failure to Respond to Directives.** On or about March 15, 2008; May 23, 2008; July 28, 2008, and
7 January 28, 2009, the Department served Directives on Respondent ACC Funding and Respondents Koffler and
8 Nichols by FedEx and by First-Class and Certified Mail. These Directives were not returned by FedEx or the
9 United States Postal Service. The Directive sent by Certified Mail was signed for by Jessica Cowen on or about
10 May 23, 2008, at the mailing address of record. The Directive sent by FedEx was signed for by J. Cowan, on or
11 about July 28, 2008, at the mailing address of record. These Directives variously required Respondent ACC
12 Funding and Respondents Koffler and Nichols to provide a surety bond or acceptable alternative, provide the
13 2007 and 2008 consolidated and annual assessment reports, pay 2007 and 2008 annual assessment fees, pay
14 2007 and 2008 late penalties, and provide office closure documents. On or around March 17, 2008, the
15 Department received the 2007 annual assessment reports and the 2007 annual assessment fees check for \$5.86,
16 along with \$1,000 of the late penalty assessed for late filing of the 2007 assessment reports and fees. To date,
17 the Department has not received any other responses to these Directives and has not received office closure
18 documents.

19 **1.4 Failure to Notify Department of Significant Developments.**

20 As stated in paragraph 1.2, to date, Respondent ACC Funding and Respondents Koffler and Nichols
21 have not notified the Department of the cancellation of Respondent ACC Funding's surety bond.

22 **1.5 Failure to File Consolidated and Annual Assessment Reports and Pay Assessment Fee.** A
23 consolidated annual report and an annual assessment report (annual reports), as well as, an annual assessment
24 fee for each licensee is due to the Department no later than the 1st day of March of the following year. To date,
25

1 the Department has not received the annual reports or annual assessment fee related to the 2008 reporting
2 period.

3 **1.6 Failure to Pay Annual Assessment Late Penalty.** An annual assessment fee for each licensee is due
4 to the Department no later than the 1st day of March of the following year. Payment of the annual assessment
5 fee for the year ended December 31, 2007, was due to the Department no later than the 1st day of March 2008.
6 Respondent ACC Funding and Respondents Koffler and Nichols filed the 2007 annual reports and paid the
7 2007 annual assessment fee on or about March 17, 2008. As a result, a late penalty was assessed for the late
8 filing of the 2007 annual reports and 2007 annual assessment fee. To date, the Department has not received the
9 remainder of the 2007 late penalty due from Respondent ACC Funding and Respondents Koffler and Nichols.
10 Additionally, payment of the annual assessment fee for the year ended December 31, 2008, was due to the
11 Department no later than the 1st day of March 2009. To date, the Department has not received the 2008 annual
12 assessment reports and 2008 annual assessment fee due from Respondent ACC Funding and Respondents
13 Koffler and Nichols. As a result, the late penalty continues to accrue for the 2008 annual reports and 2008
14 annual assessment fee.

15 **1.7 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
16 Respondent ACC Funding and Respondents Koffler and Nichols continues to date.

17 II. GROUNDS FOR ENTRY OF ORDER

18 **2.1 Requirement to Maintain Surety Bond.** Based on the Factual Allegations set forth in Section I
19 above, Respondent ACC Funding and Respondents Koffler and Nichols are in apparent violation of RCW
20 31.04.045(3) and WAC 208-620-320 and WAC 208-620-340 for not filing and not maintaining a surety bond or
21 approved alternative with the Department.

22 **2.2 Requirement to Respond to Directive.** Based on the Factual Allegations set forth in Section I above,
23 Respondent ACC Funding and Respondents Koffler and Nichols are in apparent violation of RCW 31.04.145
24 for not complying with a Directive issued by the Department.

25

1 **2.3 Requirement to Notify Department of Significant Developments.** Based on the factual allegations
2 set forth in Section I above, Respondent ACC Funding and Respondents Koffler and Nichols are in apparent
3 violation of WAC 208-620-490(1) and (2) for not notifying the Director in writing within ten days after an
4 occurrence of a change in mailing address, telephone number, fax number, or e-mail address; or receipt of
5 notification of cancellation of the licensee's surety bond.

6 **2.4 Requirement to Pay Annual Assessment and Assessed Late Penalty.** Based on the Factual
7 Allegations set forth in Section I above, Respondent ACC Funding and Respondents Koffler and Nichols are in
8 apparent violation of RCW 31.04.085, WAC 208-620-430(1)(2) and (3) and WAC 208-620-440 for not paying
9 to the Director an annual assessment fee, and annual assessment late penalty.

10 III. AUTHORITY TO IMPOSE SANCTIONS

11 **3.1 Authority to Revoke License.** Pursuant to RCW 31.04.093(3), the Director may revoke a license if a
12 licensee fails to pay any fee due the state of Washington, or fails to comply with any specific order or demand
13 of the Director lawfully made and directed to the licensee in accordance with the Act, or violates any provision
14 of the Act or any rule adopted under the Act either knowingly or without exercise of due care.

15 **3.2 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of up to one
16 hundred dollars per day on a licensee, its employee or loan originator, or other person subject to the Act for any
17 violations of the Act, or failure to comply with any order or subpoena issued by the Director under this chapter.

18 **3.3 Authority to Collect Annual Assessments and Late Penalties.** Pursuant to RCW 31.04.085 and WAC
19 208 620-430(1) each licensee must pay to the Director an annual assessment as determined in rule by the Director
20 by March 1st of the following year. Pursuant to WAC 208-620-430(2) a licensee that fails to submit the required
21 annual report and worksheet by the March 1st due date is subject to a penalty of fifty dollars per report for each day
22 of delay.

23 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-590(1), upon
24 completion of any investigation of the books and records of a licensee or other person subject to the Act, the
25 Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of the

1 investigation. The investigation charge will be calculated at the rate of sixty-nine dollars and one cent (\$69.01) per
2 hour that each staff person devoted to the investigation.

3 IV. NOTICE OF INTENTION TO ENTER ORDER

4 Respondent ACC Funding and Respondents Koffler and Nichols's violations of the provisions of chapter
5 31.04 RCW and chapter 208-620 WAC, as set forth in the above Factual Allegations, Grounds for Entry of Order,
6 and Authority to Impose Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093. Therefore, it
7 is the Director's intention to ORDER that:

- 8 **4.1** Respondent ACC Funding LLC.,'s license to conduct the business of a Consumer Loan Company be
9 revoked;
- 10 **4.2** Respondent ACC Funding LLC., and Respondent Steven C. Koffler, and Respondent Wayde Nichols
11 jointly and severally pay a fine, which as of the date of these charges totals \$20,000;
- 12 **4.3** Respondent ACC Funding LLC., and Respondent Steven C. Koffler, and Respondent Wayde Nichols
13 jointly and severally pay the annual assessment fee due for the year-ended December 31, 2008, as
14 calculated in accordance with the instructions for the annual assessment worksheets for the same year, or
15 calculated pursuant to statute;
- 16 **4.4** Respondent ACC Funding LLC., and Respondent Steven C. Koffler, and Respondent Wayde Nichols
17 jointly and severally pay a late penalty calculated at \$50 per day for each report for each day of delay in
18 filing; for the years-ended December 31, 2007, and December 31, 2008, respectively;
- 19 **4.5** Respondent ACC Funding LLC., and Respondent Steven C. Koffler, and Respondent Wayde Nichols
20 jointly and severally pay an investigation fee, which as of the date of these charges totals \$2,070.00,
21 calculated at \$69.01 per hour for the twelve and one-tenth (12.10) staff hours devoted to the investigation;
22 and
- 23 **4.6** Respondent ACC Funding LLC., and Respondent Steven C. Koffler, and Respondent Wayde Nichols
24 jointly and severally maintain records in compliance with the Act and provide the Department with the
25 location of the books, records and other information relating to Respondent ACC Funding LLC.,'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.

21 V. AUTHORITY AND PROCEDURE

22 This Statement of Charges is entered pursuant to the provisions of RCW 31.04.093, and is subject to the
23 provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent ACC Funding and
24 Respondents Koffler and Nichols may make a written request for a hearing as set forth in the NOTICE OF
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

OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

Dated this 24th day of November, 2009.

[Redacted Signature]

DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions



Presented by:

[Redacted Signature]

MICHEAL FREER
Financial Examiner

Approved by:

[Redacted Signature]

JAMES R. BRUSSELBACK
Enforcement Chief