

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

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

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

JOHN MARIO MASSARO,

Respondent.

NO. C-09-436-10-FO01

FINAL ORDER

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 December 9, 2009, the Director, through Consumer Services Division Director Deborah Bortner, entered a Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry, Impose Fine, Order Restitution, and Collect Investigation Fee (Statement of Charges). A copy of the Statement of Charges is attached and incorporated into this order by this reference.

On December 10, 2009, the Department served the Statement of Charges, cover letter dated December 10, 2009, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Application for Adjudicative Hearing on Respondent by sending packages containing these documents to 4509 Interlake Ave N #203, Seattle, Washington 98103 via First-Class mail and Federal Express overnight delivery. On December 11, 2009, the documents sent via Federal Express overnight delivery were delivered. The documents sent via First-Class mail were not returned to the Department by the United States Postal Service.

1 On January 19, 2010, the Department again served the Statement of Charges, cover letter dated
2 January 19, 2010, Notice of Opportunity to Defend and Opportunity for Hearing, and blank
3 Application for Adjudicative Hearing on Respondent by sending packages containing these documents
4 to 931B N 35th St, Seattle, Washington 98103 via First-Class mail and Federal Express overnight
5 delivery. On January 21, 2010, the documents sent via Federal Express overnight delivery were
6 delivered. The documents sent via First-Class mail were not returned to the Department by the United
7 States Postal Service.

8
9 Respondent did not request an adjudicative hearing within twenty calendar days after the
10 Department served him with the Notice of Opportunity to Defend and Opportunity for Hearing, as
11 provided for in WAC 208-08-050(2).

12 B. Record Presented. The record presented to the Director's designee for her review and
13 for entry of a final decision included the Statement of Charges, cover letter dated December 10, 2009,
14 cover letter dated January 19, 2010, Notice of Opportunity to Defend and Opportunity for Hearing, and
15 blank Application for Adjudicative Hearing, with documentation of service.

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

18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //

1 II. FINAL ORDER

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

4 A. IT IS HEREBY ORDERED, That:

- 5 1. Respondent John Mario Massaro is prohibited from participation in the conduct of the
6 affairs of any mortgage broker subject to licensure by the Director, in any manner, for
7 a period of five years.
- 8 2. Respondent John Mario Massaro pay a fine of \$3,000.
- 9 3. Respondent John Mario Massaro pay restitution of \$5,800 to borrower GDB for the
10 amount received as compensation for originating a residential mortgage loan while
11 unlicensed.
- 11 4. Respondent John Mario Massaro pay an investigation fee of \$480.

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

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

22 C. Stay of Order. The Director's designee has determined not to consider a Petition
23 to Stay the effectiveness of this order. Any such requests should be made in connection with a Petition
24 for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.
25

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


4 E. Non-compliance with Order. If you do not comply with the terms of this order, the
5 Department may seek its enforcement by the Office of Attorney General to include the collection of the
6 fines, fees, and restitution imposed herein.

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

10
11 DATED this 3rd day of March, 2010.



12 STATE OF WASHINGTON
13 DEPARTMENT OF FINANCIAL INSTITUTIONS

14 
15 _____
16 DEBORAH BORTNER
17 DIRECTOR
18 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
Mortgage Broker Practices Act of Washington by:

JOHN MARIO MASSARO,

Respondent.

NO. C-09-436-09-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO PROHIBIT FROM INDUSTRY,
IMPOSE FINE, ORDER RESTITUTION,
AND COLLECT INVESTIGATION FEE

9
10
11
12
13
14

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act)¹. After having conducted an investigation pursuant to RCW 19.146.235, 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 Respondent John Mario Massaro (Respondent) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a loan originator on February 29, 2008. Respondent's loan originator license expired on December 31, 2008. On or about March 27, 2009, Respondent submitted a new application to the Department through the Nationwide Mortgage Licensing System and Registry for a loan originator license (new application) to be associated with Northwest Mortgage Advisors, Inc. (Northwest)². The "Employment History" section of Respondent's new application indicated he had been employed with Northwest since January 2009. The Department deemed Respondent's new application "abandoned" in or around August 2009, after Respondent did not provide the Department with a "Declaration of Activity" form (stating under oath whether or not Respondent had conducted any business requiring a license

¹ RCW 19.146 (2006)

² Northwest is a mortgage broker licensed by the Department.

1 from the Department during the period he did not hold a license from the Department), despite repeated
2 requests from the Department's Licensing Unit.

3 **1.2 Unlicensed Loan Originator Activity.** In or around February 2009 and March 2009, Respondent
4 assisted at least one borrower in obtaining a residential mortgage loan under Northwest's mortgage broker
5 license on property located in the State of Washington. Northwest collected over \$7,800 in mortgage broker
6 fees at the closing of this transaction and paid Respondent over \$5,800 of these fees for originating this loan.

7 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
8 Respondent continues to date.

9 II. GROUNDS FOR ENTRY OF ORDER

10 **2.1 Definition of Mortgage Broker.** Pursuant to RCW 19.146.010(12), "Mortgage Broker" means any
11 person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential
12 mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds
13 himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or
14 applying to obtain a residential mortgage loan.

15 **2.2 Definition of Loan Originator.** Pursuant to RCW 19.146.010(10), "Loan Originator" means a natural
16 person who (a) takes a residential mortgage loan application for a mortgage broker, or (b) offers or negotiates
17 terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect
18 compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able
19 to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or
20 clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks"
21 means the receipt, collection, and distribution of information common for the processing of a loan in the
22 mortgage industry and communication with a borrower to obtain information necessary for the processing of a
23 loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing
24 administrative or clerical tasks.

25

1 **2.3 Definition of Borrower.** Pursuant to RCW 19.146.010(3), "Borrower" means any person who consults
2 with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on
3 obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or
4 herself, regardless of whether the person actually obtains such a loan.

5 **2.4 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent is in
6 apparent violation of RCW 19.146.0201:

- 7 • (1) for directly or indirectly employing a scheme, device or artifice to defraud or mislead borrowers or
8 lenders or any person;
- 9 • (2) for engaging in an unfair or deceptive practice toward any person;
- 10 • (3) for obtaining property by fraud or misrepresentation;

11 **2.5 Requirement to Obtain and Maintain Loan Originator License.** Based on the Factual Allegations
12 set forth in Section I above, Respondent is in apparent violation of RCW 19.146.200(1) and WAC 208-660-
13 155(1) for engaging in the business of a loan originator without first obtaining and maintaining a loan originator
14 license under the Act.

15 III. AUTHORITY TO IMPOSE SANCTIONS

16 **3.1 Authority to Impose Fine.** Pursuant to RCW 19.146.220(3)(a), the Director may impose fines on an
17 employee, loan originator, independent contractor, or agent of the licensee, or other person subject to the Act
18 for any violation of RCW 19.146.0201(1) through (9), or RCW 19.146.200.

19 **3.2 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2)(e), the Director may order restitution
20 against licensees or any other persons subject to the Act for any violation of the Act.

21 **3.3 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(5)(a), the Director may issue
22 orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed
23 mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker
24 or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9), or RCW
25 19.146.200.

1 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2) and WAC 208-660-550(4)(a),
2 the Department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation of the
3 books and records of a licensee or other person subject to the Act.

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

5 Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth
6 in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis
7 for the entry of an Order under RCW 19.146.220, RCW 19.146.221 and RCW 19.146.223. Therefore, it is the
8 Director's intention to ORDER that:

- 9 **4.1** Respondent John Mario Massaro be prohibited from participation in the conduct of the affairs of any
10 mortgage broker subject to licensure by the Director, in any manner, for a period of five years.
11 **4.2** Respondent John Mario Massaro pay a fine. As of the date of this Statement of Charges, the fine totals
12 \$3,000.
13 **4.3** Respondent John Mario Massaro pay restitution to the borrower in an amount to be determined at hearing.
14 **4.4** Respondent John Mario Massaro pay an investigation fee. As of the date of this Statement of Charges, the
15 investigation fee totals \$288.

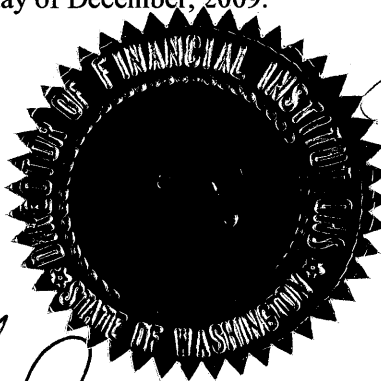
14 //
15 //
16 //
17 //
18 //
19 //
20 //
21 //
22 //
23 //
24 //
25 //

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 and Notice of Intention to Enter an Order to Prohibit from Industry, Impose Fine, Order Restitution, and Collect Investigation Fee (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondent 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 9th day of December, 2009.



Deborah Bortner

DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

Mark T. Olson

MARK T. OLSON
Financial Examiner

Approved by:

James R. Brusselback

JAMES R. BRUSSELBACK
Enforcement Chief