

TERMS COMPLETE

CONSENT ORDER SUMMARY - Case Number: C-09-440

Name(s) Danielle D. Gerbaud

Order Number C-09-440-10-CO01

Effective Date January 26, 2010

License Number U/L

License Effect N/A

Not Apply until January 26, 2015

Prohibition/Ban until January 26, 2015

| Investigation Costs | | | | |
|---------------------|------|-----|----------|--------------|
| | \$96 | Due | Paid YES | Date 1/26/10 |

| Assessment(s) | | | | |
|---------------|----|-----|----------|------|
| | \$ | Due | Paid Y N | Date |

| Monetary Penalty | | | | |
|------------------|----|-----|----------|------|
| | \$ | Due | Paid Y N | Date |

Other
Respondent cooperation clauses regarding American Lending Corporation
(see C-09-437)

Special Instructions

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

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

NO. C-09-440-10-CO01

DANIELLE D. GERBAUD, Unlicensed Loan
Originator,
Respondent.

CONSENT ORDER

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Danielle D. Gerbaud (hereinafter Respondent), 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 19.146 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 Respondent have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-09-440-09-SC01 (Statement of Charges), entered November 24, 2009, (copy attached hereto). Pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act and RCW 34.05.060 of the Administrative Procedure Act, Respondent hereby agrees to the Department's entry of this Consent Order and further agrees 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 to fully resolve the Statement of Charges.

Based upon the foregoing:

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

CONSENT ORDER
C-09-440-10-CO01
Danielle D. Gerbaud

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

1 **B. Waiver of Hearing.** It is AGREED that Respondent has been informed of the right to a hearing
2 before an administrative law judge, and hereby waives her right to a hearing and any and all administrative and
3 judicial review of the issues raised in this matter, or of the resolution reached herein. Accordingly, Respondent,
4 by her signature below, withdraws her appeal to the Office of Administrative Hearings.

5 **C. Admissions of Facts.** It is AGREED that Respondent admits to the following:

6 1. Respondent has never applied for a loan originator license with the Department.

7 2. In or around May 2007, Respondent worked for American Lending Corporation, d/b/a American
8 Lending Corporation of Nevada (American Lending), a mortgage broker licensed by the Department at that time.

9 3. In or around May 2007, Respondent assisted at least one borrower in obtaining a residential
10 mortgage loan on property located in the State of Washington by taking a residential mortgage loan application
11 from this borrower and ordering a consumer credit report for this borrower. Without contradicting this admission,
12 Respondent contends that she was acting at the direction of American Lending and Ron Lane Jensen, American
13 Lending's owner and designated broker, and that she did not know such activity required a loan originator license
14 from the Department.

15 **D. Conclusions of Law.** It is AGREED that, based on the Admissions of Facts in paragraph C of this
16 Consent Order, Respondent violated RCW 19.146.200(1) by engaging in the business of a loan originator without
17 first obtaining and maintaining a loan originator license from the Department.

18 **E. Application for License.** It is AGREED that Respondent shall not apply to the Department for any
19 license under any name for a period of five years from the date of entry of this Consent Order. It is further
20 AGREED that nothing in this Consent Order shall be construed as relieving Respondent from her obligation to
21 comply with the licensing requirements of any laws administered by the Department, including but not limited to
22 the Mortgage Broker Practices Act (RCW 19.146), the Consumer Loan Act (RCW 31.04), the Escrow Agent
23 Registration Act (RCW 18.44), the Uniform Money Services Act (RCW 19.230), and the Check Cashers and
24 Sellers Act (RCW 31.45), and the rules adopted thereunder. It is further AGREED that, should Respondent apply

1 to the Department for any license under any name at any time later than five years from the date of entry of this
2 Consent Order, Respondent shall be required to meet any and all application requirements in effect at that time.

3 **F. Rights of Non-Parties.** It is AGREED that the Department does not represent or have the consent of
4 any person or entity not a party to this Consent Order to take any action concerning their personal legal rights. It
5 is further AGREED that for any person or entity not a party to this Consent Order, this Consent Order does not
6 limit or create any private rights or remedies against Respondent, limit or create liability of Respondent, or limit or
7 create defenses of Respondent to any claims.

8 **G. Investigation Fee.** It is AGREED that Respondent shall pay to the Department an investigation fee
9 of \$96, in the form of a money order made payable to the "Washington State Treasurer," upon entry of this
10 Consent Order.

11 **H. Change of Address.** It is AGREED that for the duration of the period this Consent Order is in effect,
12 unless otherwise agreed to in writing by the Department and Respondent, Respondent shall provide the
13 Department with a mailing address and telephone number at which Respondent can be contacted and Respondent
14 shall notify the Department in writing of any changes to her mailing address or telephone number within fifteen
15 calendar days of any such change.

16 **I. Complete Cooperation with the Department (Statements).** It is AGREED that Respondent shall
17 provide the Department truthful and complete sworn statements outlining her activities with respect to American
18 Lending and any and all persons involved or in any way associated with American Lending, including but not
19 limited to owners, employees, independent contractors, agents, businesses and persons with whom American
20 Lending dealt, communicated, or otherwise related. The "sworn statements" may take the form of affidavits,
21 declarations, or deposition testimony, at the Department's discretion. A failure to cooperate fully, truthfully and
22 completely is a breach of this Consent Order.

23 **J. Complete Cooperation with the Department.** In addition to providing sworn statements as
24 described in paragraph I, it is AGREED that Respondent shall cooperate fully, truthfully and completely with the

1 Department and provide any and all information known to her relating in any manner to American Lending and
2 any and all persons involved or in any way associated with American Lending, including but not limited to
3 owners, employees, independent contractors, agents, businesses and persons with whom American Lending dealt,
4 communicated, or otherwise related. It is further AGREED that Respondent shall provide any and all documents,
5 writings or materials, or objects or things of any kind in her possession or under her care, custody, or control that
6 she is authorized to possess, obtain, or distribute relating directly or indirectly to all areas of inquiry and
7 investigation. It is further AGREED that Respondent shall testify fully, truthfully and completely at any and all
8 proceedings related to any Department investigation or enforcement action or both related to American Lending
9 and any Respondents named therein. A failure to cooperate fully, truthfully and completely is a breach of this
10 Consent Order.

11 **K. Non-Compliance with Order.** It is AGREED that Respondent understands that failure to abide
12 by the terms and conditions of this Consent Order may result in further legal action by the Director. In the
13 event of such legal action, Respondent may be responsible to reimburse the Director for the cost incurred in
14 pursuing such action, including but not limited to, attorney fees.

15 **L. Voluntarily Entered.** It is AGREED that the undersigned Respondent has voluntarily entered into
16 this Consent Order, which is effective when signed by the Director's designee.

17 **M. Completely Read, Understood, and Agreed.** It is AGREED that Respondent has read this Consent
18 Order in its entirety and fully understands and agrees to all of the same.

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RESPONDENT:

[Redacted]

Danielle D. Gerbaud

1/15/2010

Date

DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS 26th DAY OF January, 2010.

[Redacted Signature]

DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by: [Redacted]

MARK T. OLSON
Financial Legal Examiner



Approved by: [Redacted]

JAMES R. BRUSSELBACK
Enforcement Chief

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**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:

DANIELLE D. GERBAUD, Unlicensed Loan
Originator,

Respondent.

NO. C-09-440-09-SC01

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

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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:

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I. FACTUAL ALLEGATIONS

1.1 Respondent Danielle D. Gerbaud (Respondent) worked for American Lending Corporation, d/b/a American Lending Corporation of Nevada (American)² as a loan originator at all times relevant to this Statement of Charges. Respondent has never applied for a loan originator license with the Department.

1.2 Unlicensed Loan Originator Activity. Respondent assisted at least one borrower in obtaining a residential mortgage loan on property located in the State of Washington (the transaction) in or around May 2007. American collected over \$7,600 in mortgage broker fees at the closing of this transaction and paid Respondent over \$1,900 of these fees for originating this loan.

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¹ RCW 19.146 (2006)

² American held a mortgage broker license from the Department from December 2004 until surrender in August 2009. The Department has issued Statement of Charges C-09-437-09-SC01 against American that includes an allegation of allowing Respondent to originate a loan for American without holding a loan originator license.

1 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
2 Respondent continues to date.

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

4 **2.1 Definition of Mortgage Broker.** Pursuant to RCW 19.146.010(12), "Mortgage Broker" means any
5 person who for compensation or gain, or in the expectation of compensation or gain (a) makes a residential
6 mortgage loan or assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds
7 himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or
8 applying to obtain a residential mortgage loan.

9 **2.2 Definition of Loan Originator.** Pursuant to RCW 19.146.010(10), "Loan Originator" means a natural
10 person who (a) takes a residential mortgage loan application for a mortgage broker, or (b) offers or negotiates
11 terms of a mortgage loan, for direct or indirect compensation or gain, or in the expectation of direct or indirect
12 compensation or gain. "Loan originator" also includes a person who holds themselves out to the public as able
13 to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or
14 clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks"
15 means the receipt, collection, and distribution of information common for the processing of a loan in the
16 mortgage industry and communication with a borrower to obtain information necessary for the processing of a
17 loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing
18 administrative or clerical tasks.

19 **2.3 Definition of Borrower.** Pursuant to RCW 19.146.010(3), "Borrower" means any person who consults
20 with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on
21 obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or
22 herself, regardless of whether the person actually obtains such a loan.

1 **2.4 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent is in
2 apparent violation of RCW 19.146.0201:

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

7 **2.5 Requirement to Obtain and Maintain Loan Originator License.** Based on the Factual Allegations
8 set forth in Section I above, Respondent is in apparent violation of RCW 19.146.200(1) and WAC 208-660-
9 155(1) for engaging in the business of a loan originator without first obtaining and maintaining a loan originator
10 license under the Act.

11 III. AUTHORITY TO IMPOSE SANCTIONS

12 **3.1 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(5)(a), the Director may issue
13 orders removing from office or prohibiting from participation in the conduct of the affairs of a licensed
14 mortgage broker, or both, any officer, principal, employee, or loan originator of any licensed mortgage broker
15 or any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9), or RCW
16 19.146.200.

17 **3.2 Authority to Impose Fine.** Pursuant to RCW 19.146.220(3)(a), the Director may impose fines on an
18 employee, loan originator, independent contractor, or agent of the licensee, or other person subject to the Act
19 for any violation of RCW 19.146.0201(1) through (9), or RCW 19.146.200.

20 **3.3 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2)(e), the Director may order restitution
21 against licensees or any other persons subject to the Act for any violation of the Act.

22 **3.4 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2) and WAC 208-660-550(4)(a),
23 the Department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation of the
24 books and records of a licensee or other person subject to the Act.

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

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

- 6 4.1 Respondent Danielle D. Gerbaud be prohibited from participation in the conduct of the affairs of any
7 mortgage broker subject to licensure by the Director, in any manner, for a period of five years.
8 4.2 Respondent Danielle D. Gerbaud pay a fine. As of the date of this Statement of Charges, the fine totals
9 \$2,000.
10 4.3 Respondent Danielle D. Gerbaud pay restitution to the borrower for any violation of the Act by
11 Respondent, in an amount to be determined at hearing.
12 4.4 Respondent Danielle D. Gerbaud pay an investigation fee. As of the date of this Statement of Charges, the
13 investigation fee totals \$96.

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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 24th day of November, 2009.

[Redacted Signature]

DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

[Redacted Signature]

MARK T. OLSON
Financial Examiner



Approved by:

[Redacted Signature]

JAMES R. BRUSSELBACK
Enforcement Chief