

1 STATE OF WASHINGTON
2 DEPARTMENT OF FINANCIAL INSTITUTIONS
3 DIVISION OF CONSUMER SERVICES

4 IN THE MATTER OF DETERMINING:
5 Whether there has been a violation of the
6 Mortgage Broker Practices Act of Washington by:
7
8 DUNN RUSSELL AND ASSOCIATES INC,
9
10 Respondent.

No.: C-10-186-11-FO01

FINAL ORDER

11 I. DIRECTOR'S CONSIDERATION

12 A. Default. This matter has come before the Director of the Department of Financial
13 Institutions of the State of Washington (Director), through his designee, Consumer Services Division
14 Director Deborah Bortner (Director's designee), pursuant to RCW 34.05.440(1). On April 13, 2011,
15 the Director, through the Director's designee, issued a Statement of Charges and Notice of Intention
16 to Enter an Order to Cease and Desist, Prohibit From Industry, Impose Fine, Order Restitution, and
17 Collect Investigation Fee (Statement of Charges) against Dunn Russell and Associates Inc
18 (Respondent). A copy of the Statement of Charges is attached and incorporated into this order by this
19 reference. The Statement of Charges was accompanied by a cover letter dated April 27, 2011, a
20 Notice of Opportunity to Defend and Opportunity for Hearing, and a blank Application for
21 Adjudicative Hearing for Respondent (collectively, accompanying documents).

22 On April 14, 2011, the Department served Respondent with the Statement of Charges and
23 accompanying documents, sent by United States Postal Service First-Class mail (First-Class mail)
24 and Federal Express overnight delivery. On April 22, 2011, the documents sent via Federal Express
overnight delivery were returned to the Department as undeliverable. On April 26, 2011, the
documents sent via First-Class mail were returned to the Department by the United States Postal
Service as undeliverable.

1 On April 27, 2011, after locating a different address for Respondent, the Department served
2 Respondent with the Statement of Charges and accompanying documents, sent by United States
3 Postal Service First-Class mail and Federal Express overnight delivery. On April 29, 2011¹, the
4 documents sent via Federal Express overnight delivery were delivered. The documents sent via First-
5 Class mail were not returned to the Department by the United States Postal Service.

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

9 B. Record Presented. The record presented to the Director's designee for her review and
10 for entry of a final decision included the following: Statement of Charges, cover letter, Notice of
11 Opportunity to Defend and Opportunity for Hearing, and blank Application for Adjudicative Hearing
12 for Respondent, with documentation of service.

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

15 II. FINAL ORDER

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

18 A. IT IS HEREBY ORDERED, That:

- 19 1. Respondent Dunn Russell and Associates Inc cease and desist engaging in the
20 business of a mortgage broker or loan originator in regards to residents of the state
21 of Washington or properties located in the state of Washington.

22 ¹ Additionally, on April 13, 2011, the Department served Respondent's legal representative by First-Class mail and
23 Federal Express overnight delivery. On April 14, 2011, the documents sent via Federal Express overnight delivery were
24 delivered. The documents sent via First-Class mail were not returned to the Department by the United States Postal
Service.

2. Respondent Dunn Russell and Associates Inc and its officers and principals are prohibited from participation in the conduct of the affairs of any mortgage broker subject to licensure by the Director, in any manner, for a period of five (5) years.
3. Respondent Dunn Russell and Associates pay a fine of \$12,000.
4. Respondent Dunn Russell and Associates Inc pay restitution to, at least, the consumers identified in the attached restitution schedule (herein incorporated by reference) in the amount of \$11,980.
5. Respondent Dunn Russell and Associates Inc pay an investigation fee of \$1,056.
6. Respondent Dunn Russell and Associates Inc, its officers, employees, and agents maintain records in compliance with the Act and provide the Director with the location of the books, records and other information relating to Respondent Dunn Russell and Associates Inc's mortgage broker business, and the name, address and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

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

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

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

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
3 filing 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 the Attorney General to include the collection
6 of the fines, restitution, and investigation fees imposed herein. The Department also may assign the
7 amounts owed to a collection agency for collection.

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

11 DATED this 14th day of July, 2011



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14 STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

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16 DEBORAH BORTNER
17 Director
Division of Consumer Services

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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:

DUNN RUSSELL AND ASSOCIATES INC,

Respondent.

No. C-10-186-11-SC01

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

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). After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as of 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:

I. FACTUAL ALLEGATIONS

1.1 Respondent. Dunn Russell and Associates (Respondent Dunn Russell) is known to have conducted business at 211 North Victory Blvd, Burbank, California. Respondent has never been licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker or loan originator.

1.2 Unlicensed Activity. Between at least May 2009 through March 2010, Respondent held itself out as able to assist at least four consumers in applying to obtain loan modifications on property located in the State of Washington. The consumers involved in the loan modifications paid fees to Respondent totaling at least \$11,980.

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

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

4 **2.1 Definition of Mortgage Broker.** Pursuant to RCW 19.146.010(14), "Mortgage Broker"
5 means any person who for compensation or gain, or in the expectation of compensation or gain (a)
6 assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or
7 herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage
8 loan.

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

20 **2.3 Requirement to Obtain and Maintain License.** Based on the Factual Allegations set forth
21 in Section I above, Respondent is in apparent violation of RCW 19.146.0201(1), (2) and (3), and
22 RCW 19.146.200 for engaging in the business of a mortgage broker without first obtaining and
23 maintaining a license under the Act. Individuals negotiating residential mortgage loan terms act as

1 mortgage brokers or loan originators and must be licensed under the Act unless specifically exempt
2 from the Act.

3 **2.4 Prohibited Acts.** Based on the Factual Allegations set forth in Section I above, Respondent
4 is in apparent violation of RCW 19.146.0201(1), (2), and (3), for directly or indirectly employing a
5 scheme, device or artifice to defraud or mislead borrowers or lenders or any person, engaging in an
6 unfair or deceptive practice toward any person, obtaining property by fraud or misrepresentation,

7 **2.5 Requirement to Maintain Accurate and Current Books and Records.** Pursuant to RCW
8 19.146.060 and WAC 208-660-450(4), Respondent is required to keep all books and records in a
9 location that is on file with and readily available to the Department until at least twenty-five months
10 have elapsed following the effective period to which the books and records relate.

11 III. AUTHORITY TO IMPOSE SANCTIONS

12 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 19.146.220(4), the
13 Director may issue orders directing a licensee, its employee or loan originator, independent
14 contractor, agent, or other person subject to the Act to cease and desist from conducting business.

15 **3.2 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(5)(a) and (d), the
16 Director may issue orders removing from office or prohibiting from participation in the conduct of
17 the affairs of a licensed mortgage broker, or both, any officer, principal, employee, or loan originator
18 of any licensed mortgage broker or any person subject to licensing under the Act for any violation of
19 RCW 19.146.0201(1) through (9) or RCW 19.146.200, or failure to comply with a directive or order
20 of the Director.

21 **3.3 Authority to Impose Fine.** Pursuant to RCW 19.146.220(2) and WAC 208-660-530, the
22 Director may impose fines on a licensee, employee or loan originator of the licensee, or other person
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1 subject to the Act for any violations of the Act or any violations of RCW 19.146.0201(1) through (9),
2 or RCW 19.146.200, or failure to comply with a directive or order of the Director.

3 **3.4 Authority to Order Restitution.** Pursuant to RCW 19.146.220(2), the Director may issue
4 orders directing a licensee or other person subject to the Act to pay restitution.

5 **3.5 Authority to Collect Investigation Fee.** Pursuant to RCW 19.146.228(2), WAC 208-660-
6 550(4) and WAC 208-660-520(9), upon completion of any investigation of the books and records of
7 a licensee or other person subject to the Act, the Department will furnish to the licensee or other
8 person subject to the Act a billing to cover the cost of the investigation. The investigation charge will
9 be calculated at the rate of forty-eight dollars (\$48) per hour that each staff person devoted to the
10 investigation.

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

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

16 **4.1** Respondent Dunn Russell and Associates Inc cease and desist engaging in the business of a
17 mortgage broker or loan originator in regards to residents of the state of Washington or properties
located in the state of Washington;

18 **4.2** Respondent Dunn Russell and Associates Inc and its officers and principals be prohibited
19 from participation in the conduct of the affairs of any mortgage broker subject to licensure by the
Director, in any manner, for a period of five (5) years;

20 **4.3** Respondent Dunn Russell and Associates Inc pay a fine, which as of the date of this
21 Statement of Charges totals \$12,000;

22 **4.4** Respondent Dunn Russell and Associates Inc pay restitution totaling at least \$11,980 to the
23 consumers identified in paragraph 1.2 above;

1 **4.5** Respondent Dunn Russell and Associates Inc pay an investigation fee, which as of the date of
2 this Statement of Charges totals \$1,056, calculated at \$48 per hour for twenty-two (22) staff hours
3 devoted to the investigation;

4 **4.6** Respondent Dunn Russell and Associates Inc maintain records in compliance with the Act
5 and provide the Department with the location of the books, records and other information relating to
6 Respondent Dunn Russell and Associates Inc's mortgage broker business, and the name, address and
7 telephone number of the individual responsible for maintenance of such records in compliance with
8 the Act.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges is entered pursuant to the provisions of RCW 19.146.220, RCW
3 221, RCW 19.146.223, and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW
4 (The Administrative Procedure Act). Respondent may make a written request for a hearing as set
5 forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING
6 accompanying this Statement of Charges.

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8 Dated this 13th day of April, 2011



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DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

17 Presented by:

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MARNIE SHEERAN
Financial Legal Examiner

22 Approved by:

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JAMES R. BRUSSELBACK
Enforcement Chief