

ORDER SUMMARY – Case Number: C-20-2924

Name(s): Universal Mortgage & Finance Inc.

Order Number: C-20-2924-21-FO01

Effective Date: 11/9/2022

License Number: 118030

Or NMLS Identifier [U/L]

License Effect:

Not Apply Until:

Not Eligible Until:

Prohibition/Ban Until: 11/9/2027

Investigation Costs	\$4,500.00	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$31,500.00	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Assessment(s)	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Financial Literacy and Education	\$	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Cost of Prosecution	\$44,413.84	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
	No. of Victims:			

Comments:



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF:

UNIVERSAL MORTGAGE & FINANCE,
INC., NMLS #118030

Respondent.

Final Order No. C-20-2924-21-FO01

DFI No. C-20-2924-21-SC01

OAH No. 05-2021-DFI-00130

FINAL DECISION AND ORDER

THIS MATTER comes now before CHARLES E. CLARK, Director ("Director") of the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS ("Department"), on Petitions for Review of Initial Order issued by Administrative Law Judge Travis Dupree ("ALJ Dupree"), dated April 15, 2022, against Respondents, UNIVERSAL MORTGAGE & FINANCE, INC., NMLS #118030. The Department filed a Petition for Review of the Initial Order on May 3, 2022 ("DFI Petition"). Respondents also filed a Petition for Review of the Initial Order dated May 5, 2022 ("Respondent's Petition").

1.0 PROCEDURAL HISTORY

On January 29, 2021, the Department's Division of Consumer Services issued a Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Prohibit from Industry, Impose Fine, Collect Investigation Fee, and Recover Costs and Expenses ("Statement of Charges") to Respondents. On February 17, 2021, attorney for Respondents, Christopher T. Staiti, Esq., of Staiti Law Firm, Inc., made a Request for Administrative Hearing, and the Statement of Charges was referred to the Office of Administrative Hearings ("OAH") for adjudication.

The Initial Order was issued and served by mail on Friday, April 15, 2022. In the Initial Order, ALJ Dupree affirmed that Respondents: violated RCW 31.04.027(1)(b), RCW 31.04.135, and RCW 31.04.165; should pay an investigative fee of \$4,500; should maintain records in compliance with the Act; pay the Department for costs and expenses for prosecuting the violation of the Act; and, should pay a fine of \$31,500.¹

On May 3, 2022, the Department filed a Petition for Review. On May 5, 2022, Respondents also filed a Petition for Review. On May 13, 2022, the Department filed its Response to the Respondent's Petition.

2.0 RECORD ON REVIEW

The record on review ("Record on Review") before the Director includes the entire OAH Record in the above-captioned matter consisting of, without limitation, the Statement of Charges, the Respondent's Application for Adjudicative Hearing, the Department's Partial Motion for Summary Judgment and supporting exhibits, the Respondent's Response in Opposition to the Motion for Partial Summary Judgment, the Department's Reply in support of the Motion for Partial Summary Judgment, Order on Partial Summary Judgment, the Department's Post-Hearing Motion on Costs and Expenses and supporting exhibits, Respondent's Opposition to the Department's Motion for Costs and Expenses and supporting exhibits, the Department's Reply in support of the Post-Hearing Motion for costs and expenses, the Initial Order together with the Department and the Respondent's Petitions for Review, and the Department's Reply to the Respondent's Petition for Review.

3.0 FINDINGS OF FACT

¹ Initial Order, Initial Order Nos. 6.1-6.4, at Pages 11-12.

The Director having considered the Record on Review, together with the Respondent's Petition for Review and the Department's Response to the Petition, hereby affirms Findings of Fact 4.1 - 4.32, inclusive, at pages 3-5 of the Initial Order, subject to the considerations set forth in Section 5.0, below.

4.0 CONCLUSIONS OF LAW

The Director having considered the Record on Review, including the Petition for Review and the Reply to Petition, and applying the Findings of Fact contained in Section 3.0 above, hereby affirms the Conclusions of Law 5.2-5.28, inclusive, at pages 7-11 of the Initial Order, subject to the considerations set forth in the Section 5.0, below. Specifically, Conclusion of Law 5.1 is amended to state: "I have jurisdiction over the persons and the subject matter under Chapter 31.04 RCW, Chapter 34.05 RCW, Chapter 208-08 and Chapter 10-08 WAC."

5.0 DIRECTOR'S CONSIDERATIONS ON REVIEW

5.1 Standard of Review

Under WAC 10-08-211(3), a Petition for Review of an Initial Order must specify portions of the Initial Order where exception is taken and shall refer to the evidence in the record that supports the petition.

5.2 Analysis

5.2.1 Department's Petition

The Department requests that two paragraphs that are in conflict with a third paragraph in relation to fees be resolved in the Initial Order. Order Summary Paragraph 2.4 and Order Paragraph 6.1.4 state that fees are to be determined at a hearing or by declaration. Conclusion of Law ("COL") 5.23 states, "The total costs in the amount of \$44,413.84 enumerated in the findings

of fact above are reasonable, and the Department is entitled to recover the same.” The discrepancy between Order Summary Paragraph 2.4, Order Paragraph 6.1.4, and COL 5.23 is likely due to an error by ALJ Dupree; however, based on the pleadings, costs and expenses were litigated earlier during the hearing process, and the exact amount of \$44,413.84 was at issue.² Given the Director’s broad authority, Order Summary Paragraph 2.4 and Order Paragraph 6.1.4 will be amended in this Final Order in Section 6.0, below; however, COL 5.23 will remain unchanged and is incorporated into this Final Order.

In the Department’s Reply to Respondent’s Petition for Review, the Department made two additional requests.³ First, that the Order on Partial Summary Judgment be incorporated into the Final Decision and Order and that Initial Order regarding costs, fees, and fines be affirmed. These requests are addressed throughout this Final Decision and Order, with Section 6.0 containing the contents of the Final Order.

5.2.2 Respondent’s Petition

5.2.2.1 Findings of Fact (“FOF”)

The Respondents contend that several “findings for fact were a simple recitation of the procedural history of the case rather than findings of the trier of fact.”⁴ Specifically FOF 4.20 and 4.32 are at issue.⁵

FOF 4.20 states:

² OAH File: Department’s Post-Hearing Motion for Costs and Expenses and Declarations of Jong M. Lee & Drew Stillman with Exhibits 1-4 (dated 1/5/2022); Respondent’s Opposition to Department’s Motion for Costs and Expenses and Exhibits A-C (dated 2/4/2022); and, Department’s Reply in Support of Post-Hearing Motion for Costs and Expenses (dated 2/14/2022).

³ Department’s Reply to Respondent’s Petition for Review, Pages 7-10.

⁴ Respondent’s Petition for Review of Initial Order, at Page 1.

⁵ Respondent’s Petition for Review of Initial Order, Pages 1-2.

During the investigation, Mr. Stillman determined that Universal Mortgage and Finance Inc. violated the Consumer Loan Act by using unfair, misleading, or false advertisements in mailers and phone calls which targeted veterans.

FOF 4.32 states:

The Department utilized a fine matrix as a guideline and tool to assess a fine of \$100 max per day. First, from August 30, 2018, to May 13, 2019, there were six counts of Respondent using unlicensed loan officers for a fine of \$13,500. Next from August 30, 2018, to May 13, 2019, there were six counts of Respondent aiding and abetting for a fine of \$13,500. Finally, from January 1, 2018, to January 1, 2019, there were two counts of Respondents false, misleading, and deceptive from advertisements and representatives for \$4,500. The total fine with mitigating factors was \$31,500. *Stillman Testimony and Department's Exhibit 4.*

The applicable statute, RCW 34.05.431(3), states in relevant part:

Initial and final orders shall include a statement of findings and conclusions, and the reasons and basis therefor, on all the material issues of fact, law, or discretion presented on the record, including the remedy or sanction and, if applicable, the action taken on a petition for a stay of effectiveness. Any findings based substantially on credibility of evidence or demeanor of witnesses shall be so identified. Findings set forth in language that is essentially a repetition or paraphrase of the relevant provision of law shall be accompanied by a concise and explicit statement of the underlying evidence of record to support the findings.

The Director agrees with the Department's briefing that the RCW 34.05.431(3) does not require findings and conclusions to contain extensive analysis and that "[a]dequacy, not eloquence, is the test." *US West Communications, Inc. v. Washington Utilities and Transp. Com'n*, 86 Wn. App. 719, 731, 937 P. 2d 1326 (1997).⁶ Here, FOF 4.20 and 4.32 set forth factual statements indicating the Department's analysis and determinations are adequate for the purposes they serve. Furthermore, the Director agrees with the Department's briefing that FOF 4.20 and 4.32 provide factual statements that support legal conclusions set forth in COL 5.11-5.16.

⁶ Department's Reply to Respondent's Petition for Review, at Page 3.

Moreover, the absence of a FOF in favor of the party with the burden of proof as to a disputed issue in an agency proceeding is equivalent to a finding against a party on that issue. *Yakima Policy Patrolmen's Ass'n v. City of Yakima*, 153 Wn. App. 541, 562, 222 P.3d 1217 (2009).⁷ The Department offered substantial evidence related to the violations and the Respondent failed to establish facts to the contrary. Here, the absence of FOFs in favor of the Respondent with respect to the FOF describing Mr. Stillman's determinations of the violations of the Consumer Loan Act, as well as the FOF describing the fine matrix and the fine determinations made, are essentially the equivalent of findings against the Respondent.

Last, under RCW 34.05.464(4), the Director, as the reviewing officer, should give due regard to the presiding officer's opportunity to observe the witnesses. Here, the Director must defer to the credibility afforded during the hearing process itself. Therefore, FOF 4.20 and 4.32 are appropriate and shall remain unchanged in this Final Order. See also, Section 5.2.2.2.3, "Sanctions, Costs, Fees, and Fines," below.

5.2.2.2 Conclusions of Law

5.2.2.2.1 Definition of Licensee

The Respondent specifically requests review of the Jurisdiction COL 5.1 in the Initial Order, "I have jurisdiction over the persons and the subject matter under Chapter 21.20 RCW, Chapter 34.05 RCW, Chapter 208-08 and Chapter 10-08 WAC." The Respondent's argument is that because it allowed its license to lapse by not renewing it on January 1, 2021, the Respondent is no longer subject to the Department's authority. Under RCW 31.04.015(13), "Licensee" is defined:

⁷ Department's Reply to Respondent's Petition for Review, Pages 3-4.

"Licensee" means a person to whom one or more licenses have been issued. "Licensee" also means any person, whether located within or outside of this state, who fails to obtain a license required by this chapter.

Here, the Department issued a license to the Respondent on August 25, 2015.⁸ Alleged violations of the Consumer Loan Act took place between August 2018 and May 2019.⁹ The Department filed a Statement of Charges on January 29, 2021.¹⁰

Based on a plain reading of the statute, even though the Respondent did not renew its license in January 2021,¹¹ the company was previously licensed and therefore subject to the Consumer Loan Act ("Licensee" means a person... to whom one or more licenses have been issued"¹²). Regardless, the stated violations took place in August 2018 and May 2019, during which, the Respondent was licensed by the Department. Because the Respondent meets the definition of "Licensee," the jurisdictional question is answered in the affirmative that the Department and OAH have jurisdiction in this matter under Chapter 34.05 RCW, Chapter 208-08 and Chapter 10-08 WAC by operation of law.

It should be noted here that in this case, the Department does not have jurisdiction under Chapter 21.20 RCW (Securities Act of Washington) as stated in the Partial Order for Summary Judgment and the Initial Order, but the Department does have jurisdiction under Chapter 31.04 (Consumer Loan Act). Based on the Director's broad authority, the error will be corrected in the Final Decision and Order in Section 6.0, below. Further, Respondents did not bring up this error on appeal and was identified as part of the reviewing the Record on Review.

⁸ Initial Order, FOF Nos. 4.7, at Page 3.

⁹ Initial Order, FOF Nos. 4.8-4.15, Pages 3-5.

¹⁰ OAH File: Statement of Charges (dated 1/29/2021).

¹¹ "Universal's license in the state of Washington expired on January 1, 2021 by Universal's voluntary election ..." Respondent's Petition for Review of Initial Order, at Page 3.

¹² RCW 31.04.015(13) (emphasis added).

5.2.2.2.2 Advertising

The Respondent specifically requests review of COL 5.12, 5.15, and makes passing reference to COL 5.13 in relation to advertisements and violations of the Consumer Loan Act.¹³

COL 5.12 states:

The Respondent argues that the letters were not deceptive because there was a disclaimer at the bottom of the letter, identifying the Respondent's company. This argument is unpersuasive as the document as a whole is styled like an official government document.

COL 5.15 states:

Notwithstanding the Respondent representative's statements regarding skipping a payment that were found to be not misleading, the Department established that the Respondent's the [sic] cover letters sent with the advertisements were false, misleading, or deceptive in violation [sic] RCW 31.04.027(1)(b), RCW 31.04.135 and RCW 31.04.165.

COL 5.13 states:

The Respondent argues in the alternative that if there was a violation of the RCW, it was the third-party company that was responsible since they sent the letters. This argument has no merit. The third-party company acted as an affiliate agent on behalf of the Respondent. Therefore the Respondent is vicariously liable for the third-party mailers in violation [sic] RCW 31.04.027(1)(b), RCW 31.04.135 and 31.04.165.

Although the Consumer Protection Act, Chapter 19 RCW, is not specifically at issue in this case, reviewing the standard for unfair and deceptive practices is instructive. Even a truthful statement can be deceptive if it creates a misleading net impression.¹⁴ Specifically, the Respondent argues that the letters are not deceptive or misleading because the letters disclose that they are not from the Veteran's Administration ("VA") itself or any other governmental entities.¹⁵ Second, the

¹³ Respondent's Petition for Review of Initial Order, Pages 4-6.

¹⁴ *Smith v. Stockdale*, 166 Wn.App. 557, 271 P.3d 917 (2012).

¹⁵ Respondent's Petition for Review of Initial Order, Pages 4-6.

Respondent argues that no such “cover letters” exist, and therefore cannot be referenced to any evidence in the record.

A review of the Record on Review reveals two separate letters.¹⁶ The first letter appears to be styled as a cover letter and references the VA and is likely what is referred to in COL 5.15.¹⁷ The second letter objectively has markings and the appearance of a governmental communication.¹⁸ It should also be noted that in an evidentiary hearing, much discussion revolved around whether options for consumers to “skip a pay” are in the actual letter; however, during that hearing it was clarified that the “skip a pay” option would be provided to a consumer if they called the company in response to the letters.¹⁹ This fact pattern is also supported by FOF 4.15. The Director adopts the Department’s legal argumentation in its briefing that “an advertisement may still be deceptive despite attempts to disclaim deceptive statements or presentations.”²⁰ Therefore COL 5.12, 5.15, and 5.13 remain unchanged in the Final Order.

5.2.2.2.3 Sanctions, Costs, Fees, and Fines

First, the Respondent specifically requests review of COL 5.22, 5.23, 5.24, 5.26, 5.27, and 5.28.

COL 5.22 states:

I previously ruled that DFI may recover from Respondent fines, for violation of RCW 31.04.027(1)(b), RCW 31.04.035, RCW 31.04.175(1), and WAC 208-620-570(8). Additionally, the Respondent violated RCW 31.04.027(1)(b), RCW 31.04.135 and RCW 31.04.165.

¹⁶ OAH File: Department’s Witness and Exhibit List and Exhibits 1-11, Exhibit 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Evidentiary Hearing, December 8, 2021.

²⁰ Department’s Reply to Respondent’s Petition for Review, Page 4-7 (*citing to State v. Mandatory Poster Agency, Inc.*, 199 Wn. App 506, 523, 398 P.3d 1271 (2017)).

As stated in Section 5.2.2.1 and Section 5.2.2.2.1, above, there are adequate bases for fines in relation to the violations of law set forth in this case; therefore, COL 5.22 is affirmed.

COL 5.23 states:

The total costs in the amount of \$44,413.84 enumerated in the findings of fact above are reasonable, and the Department is entitled to recover the same.

Here, the Respondent states that the Court did not justify why the fines were reasonable. A review of the Record, specifically the Department's Post-Hearing Motion of Costs and Expenses, reveals a full justification of all fees, totaling \$44,413.84.²¹ Based on that document, the breakdown is as follows:

DFI Staff time (165.21 hours) @ \$69.01 per hour	\$11,401
AGO attorney fees (discounted)	\$23,904
OAH hearing cost	\$9,090
Misc. costs	\$18.84
Total	\$44,413.84

It should be specifically noted that the total AGO fees in this matter were significantly discounted, and are therefore deemed reasonable. Attorney Jong Lee spent 150 hours on the case at a rate of \$377 per hour, equaling \$56,550.²² Paralegal Becky Charles spent 67 hours on the case at a rate of \$136 per hour, equaling \$9,112.²³ The total attorney fees could have been listed at \$65,662 (representing \$56,550 + \$9,112); however, the amount requested was much lower at \$23,904.²⁴ Based on a review of the record, COL 5.23 is affirmed.

COL 5.24 states:

²¹ Department's Post-Hearing Motion for Costs and Expenses, at Page 2 (incorporating by reference, Declaration of Jong M. Lee in Support of Department's Recover of Fees and Costs and Declaration of Drew Stillman in Support of Department's Recovery of Costs and Expenses).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

Regarding the fines of up to \$100.00 per day, per violation, Respondent violated multiple provisions of the Act. Accordingly, the Respondent is liable for a fine in the amount of \$31,500 pursuant to RCW 31.04.093(4).

The Respondent asserts that six violations of law in relation to "aiding and abetting," resulting in the \$31,500 fine, were not properly identified.²⁵ Furthermore, it is the Respondent's contention that Drew Stillman's testimony only outlined one instance of aiding and abetting, which does not support the six counts over the course of 277 days [note: the Fine Matrix technically states 257 days].

Reviewing the original Statement of Charges,²⁶ the original charges were in the following categories: "Unlicensed Loan Originators," "Aiding and Abetting Unlicensed Practice," and "False, Misleading, or Deceptive Advertisements and Representations."

The fine matrix appears appropriate and fully justified. The first charge was that there were at least six unlicensed mortgage originators, thus invoking six violations of RCW 31.04.027, RCW 31.04.035, and RCW 31.04.165.²⁷ Line one of the fine matrix shows that the calculation is using the 30 day cap (not the 277 days Respondents allege); 30 days x \$75 (not \$100 that could have been charged) = \$2,250; \$2,250 x 6 violations = \$13,500.

The second charge was that the company aided and abetted the unlicensed practice of six unlicensed mortgage originators, thus invoking six violations of RCW 31.04.027, RCW 31.04.165, and RCW 31.04.175.²⁸ The Department plead that at least six individuals were not licensed with the Department from August 2018 to May 2019.²⁹ It should be noted that Fine Matrix technically

²⁵ Respondent's Petition for Review of Initial Order, Pages 8-9.

²⁶ Department's Partial Motion for Summary Judgment and Declaration of Drew Stillman in Support of the Department's Motion for Partial Summary Judgement, Exhibit 9, Pages 2-5

²⁷ *Id.*

²⁸ *Id.*

²⁹ Initial Order, FOF Nos. 4.8-4.15, Pages 3-5; Statement of Charges.

states “31.04.027, .035, .175” (emphasis added). We find that the correct citation should have been .165, and not .035, and attribute the error to a scrivener’s error given the totality of the circumstances. The second calculation is capped at 30 days (not the 277 days Respondents allege); $30 \text{ days} \times \$75 = \$2,250$; $\$2,250 \times 6 \text{ violations} = \$13,500$. Further, Respondents did not bring up this error on appeal and was identified as part of the reviewing the Record on Review.

The third charge was that advertising was misleading and deceptive, thus invoking violations of RCW 31.04.027, RCW 31.04.035, RCW 31.04.135, and RCW 31.04.165. The two apparent violations can be attributed to the two letters at issue.³⁰ The third calculation is capped at 30 days (not the 277 days Respondents allege). $30 \text{ days} \times \$75 = 2,250$. $2,250 \times 2 \text{ violations} = \$4,500$.

The fine matrix revealing fines of \$13,500, \$13,500, and \$4,500, totaling \$31,500 are adequately supported based on the charges levied against the company. Further, Findings of Fact 4.32 as discussed in Section 5.2.2.1, essentially states the same, which has been properly supported. Thus, COL 5.24 is affirmed.

COL 5.26 states:

Respondent renews its argument that the Director's authority is not applicable here because they are not a licensee since it did not renew its license. As previously ruled in the Summary Judgment Order, this argument is unpersuasive because pursuant to RCW 31.04.015(13), a licensee includes any person, whether located with or outside of this state, who fails to obtain a license required by this chapter. Respondent further argues DFI could place conditions on them for future license applications. This argument is unpersuasive as I do not have the authority to reduce the sanctions ordered by the Director.

³⁰ Initial Order, FOF Nos. 4.8-4.15, Pages 3-5; Statement of Charges.

Analysis of this COL is covered under Section 5.2.2.2.1, "Definition of Licensee," above. Such analysis does not need to be discussed at length here, other than, the Respondent is technically a Licensee under the Act. Therefore COL 5.26 shall stand in the Final Order.

COL 5.27 states:

Respondent further argues that DFI should not be permitted to submit documentation on its costs for the hearing. However, the Respondent's argument is unpersuasive as the undersigned found good cause to leave the record open as DFI's costs had not been fully determined until the conclusion of the evidentiary hearing. Furthermore, the Respondent has not cited and the undersigned is unaware of any authority that bars DFI from submitting costs for the hearing.

Given that there is no legal basis to deny further documentation on costs, and given that this was an area of contention, COL 5.27 is reasonable and shall stand in the Final Order.

COL 5.28 states:

Respondent finally argues that the \$31,500 in fines should be reduced because the Department did not follow the fine matrix. However, this argument is unpersuasive since the fine matrix is a guideline for the Department and the undersigned administrative law judge does not have authority to reduce the fine.

Fines and fees are analyzed extensively, above. It bears repeating that \$31,500 is a reduced fine using a 30 day cap in the matrix (versus 277 days as stated by Respondent), and is therefore considered reasonable. COL 5.28 shall stand in the Final Order.

5.2.2.2.4 Credibility Determination

Respondent requests review of the Order on Partial Summary Judgment.³¹ Specifically, the Respondent claims that "the Court made a credibility determination which it is not permitted to do on a Motion for Summary Judgment."³² After reviewing the record, particularly the hearing on the Motion for Summary Judgment, there is no evidence of a credibility determination being

³¹ Respondent's Petition for Review of Initial Order, at Page 7.

³² *Id.*

made, or not made by ALJ Dupree.³³ There were disagreements on interpretations of the law regarding the definition of “licensee” as well as other legal argumentation. The only specific fact inquiry during that hearing was whether the letters at issue were in fact misleading; however, the Respondent specifically asked that the ALJ Dupree make a determination on the letters as part of his forthcoming Order on the Motion for Summary Judgment.³⁴ All other relevant facts were not disputed. Therefore, this potential assignment of error is denied.

5.2.2.2.5 Objections Held Under Advisement

Respondents contend that ALJ Dupree did not properly address objections that took place during an evidentiary hearing on December 8, 2022, and claim that two objections were held under advisement.³⁵

According to the Respondent, ALJ Dupree held an objection under advisement as to purported communication between Attorney Jong Lee and Mr. Jones.³⁶ In reviewing the evidentiary hearing audio, Respondent did lodge an objection to email communications between Attorney Jong Lee and Mr. Jones, who was identified as a witness.³⁷ At that time, the Respondent asked that Mr. Jones’s testimony be stricken from the record. Based on a review of the record, it appears that ALJ Dupree would take the request under advisement; however, it does not appear to be addressed again. The Department’s reasoning is adopted that failing to address the objection is a harmless error, and if it is not a harmless error, “a trial judge is presumed to be able to disregard inadmissible evidence, thus avoiding any prejudice to the defendant.”³⁸ Based the record taking

³³ Summary Judgment Motion Hearing, October 1, 2021.

³⁴ Summary Judgment Motion Hearing, October 1, 2021, at 00:28:50.

³⁵ Respondent’s Petition for Review of Initial Order, at Page 11.

³⁶ *Id.*

³⁷ Evidentiary Hearing, December 8, 2021, at 02:02:14.

³⁸ Department’s Reply to Respondent’s Petition for Review, at Page 10 (*citing to State v. Melton*, 63 Wn. App 63, 68, 817 P.2d 413 (1991)).

place after the evidentiary hearing, references to Mr. Jones's testimony do not appear in the Record on Review and it can be presumed that it was not used in ALJ Dupree's Initial Order. Thus, it appears to be a harmless error by ALJ Dupree for purposes of creating a factual record to be reviewed.

According to the Respondent, ALJ Dupree held a second objection under advisement as to whether the Department could submit a post hearing brief on fees.³⁹ In actuality, during the evidentiary hearing, ALJ Dupree overruled the objection stating that he had good cause for needing additional briefing on the subject of fees.⁴⁰ Therefore, an error assigned to this objection has no merit.

6.0 FINAL DECISION AND ORDER

For all of the reasons set forth above, IT IS HEREBY ORDERED THAT:

6.1 The Order on Partial Motion for Summary Judgment filed by the Department is AFFIRMED, and incorporates the following amendment:

6.1.1 COL 5.1 is amended to state: "I have jurisdiction over the persons and the subject matter under Chapter 31.04 RCW, Chapter 34.05 RCW, Chapter 208-08 and Chapter 10-08 WAC."

6.2 The Order Summary Paragraph in the Initial Order is AFFIRMED, and incorporates the following amendment:

6.2.1 Order Summary Paragraph 2.4 is amended to state: "Yes, Appellant/Respondent, Universal Mortgage & Finance, Inc., should pay the Department's costs and expenses for prosecuting violation of the Act in the amount of \$44,413.84."

³⁹ Respondent's Petition for Review of Initial Order, at Page 12.

⁴⁰ Evidentiary Hearing, December 8, 2021, at 04:23:00.

6.3 The Findings of Fact set forth in Section 3.0 above and in the Initial Order are AFFIRMED.

6.4 The Conclusions of Law set forth in Section 4.0 above and in the Initial Order are AFFIRMED and incorporates the following amendment:

6.4.1 COL 5.1 is amended to state: "I have jurisdiction over the persons and the subject matter under Chapter 31.04 RCW, Chapter 34.05 RCW, Chapter 208-08 and Chapter 10-08 WAC."

6.5 Section 6 of the Initial Order is AFFIRMED, and incorporates the following amendments:

6.5.1 Initial Order Paragraph 6.1.4 is amended to state: "Yes, Appellant/Respondent, Universal Mortgage & Finance, Inc., should pay the Department's costs and expenses for prosecuting violation of the Act in the amount of \$44,413.84."

6.6 Respondent, UNIVERSAL MORTGAGE & FINANCE, INC., shall pay an investigative fee of \$4,500.00.

6.7 Respondent, UNIVERSAL MORTGAGE & FINANCE, INC., shall pay the Department's costs and expenses for prosecuting violations of the Act in the amount of \$44,413.84.

6.8 Respondent, UNIVERSAL MORTGAGE & FINANCE, INC., shall pay a fine in the amount of \$31,500.

6.9 Respondent, UNIVERSAL MORTGAGE & FINANCE, INC., shall maintain records in compliance with the Consumer Loan Act and provide the Department with the location of the books, records, and other information relating to the Respondent's consumer loan business, and the name, address, and telephone number of the individual responsible for maintenance of such records in compliance with the Consumer Loan Act.

6.10 Respondent, UNIVERSAL MORTGAGE & FINANCE, INC., shall cease and desist from conducting business that is injurious to the public or violates any provision of the Consumer Loan Act.

6.11 Respondent, UNIVERSAL MORTGAGE & FINANCE, INC., is prohibited from participation in the conduct of the affairs of any consumer loan company subject to licensure by the Director, in any manner, for a period of five years.

6.12 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 this 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.

6.13 Stay of Order. The Director 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.

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

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

6.16 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective immediately upon deposit in the United States Mail.

Dated at Tumwater, Washington, on November 9th, 2022.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By: 

Charles E. Clark, Director

CERTIFICATE OF MAILING

This is to certify that the above FINAL DECISION AND ORDER has been served upon the following parties on November 9, 2022, by depositing a copy of same in the United States mail, postage prepaid.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By: 

Susan Putzier
Executive Assistant

Mailed to the following:

Universal Mortgage and Finance, Inc.
Attn: Gregory Gearing
3158 Braverton St Suite 204
Edgewater, MD 21037
Respondents

Christopher T. Staiti, Esq.
Staiti Law Firm, Inc.
1111 Benfield Blvd. Suite 112
Millerville, Maryland 21108
Respondent's Representative

Stephen Manning, AAG
Office of the Attorney General
MS: 40100, PO Box 40100
Olympia, WA 98504
Department's Representative

Drew Stillman
Financial Legal Examiner
Department of Financial Institutions
MS: 41200; PO Box 41200
Olympia, WA 98504
Department

The Honorable Travis Dupree
Office of Administrative Hearings
949 Market Street, Suite 500
Tacoma, WA 98402
Administrative Law Judge

**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:

UNIVERSAL MORTGAGE & FINANCE, INC.,
NMLS #118030,

Respondent.

No. C-20-2924-21-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO ENTER AN
ORDER TO CEASE AND DESIST,
PROHIBIT FROM INDUSTRY, IMPOSE
FINE, COLLECT INVESTIGATION FEE,
and RECOVER COSTS AND EXPENSES

INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, 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 Lucinda Fazio, institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondent. Universal Mortgage & Finance, Inc. (Respondent) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a consumer loan company on or about August 25, 2015.

1.2 Unlicensed Loan Originators. At least 6 individuals working on behalf of Respondent engaged in the business of a mortgage loan originator with respect to prospective borrowers and properties located in the state of Washington. The individuals were not licensed with the Department at the time of the activity. The conduct occurred between at least August 2018 and May 2019.

1.3 Aiding and Abetting Unlicensed Practice. Between at least August 2018 and May 2019, Respondent aided and abetted unlicensed practice in violation of the Act.

1.4 False, Misleading, or Deceptive Advertisements and Representations. Between at least January 2018 and January 2019, Respondent mailed Washington residents at least 2 advertisements that made representations that were false, misleading, or deceptive. Between at least August 2018 and May 2019, Respondent's representatives also told prospective borrowers that they could skip mortgage payments after refinancing.

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

II. GROUNDS FOR ENTRY OF ORDER

2.1 Responsibility for Conduct of Employees. Pursuant to 31.04.027(1)(b), RCW 31.04.165, and WAC 208-620-372, a consumer loan company is responsible for any conduct violating the Act or related rules by any person employed, or engaged as an independent contractor, to work in the business covered by the consumer loan company's license.

2.2 Unlicensed Loan Originators. Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 31.04.027(1)(b), RCW 31.04.035, and RCW 31.04.165 for engaging in the business of a consumer loan company using individuals not licensed with the Department to assist borrower in applying for a residential mortgage loan.

2.3 Aiding and Abetting Unlicensed Practice. Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 31.04.027(1)(b), RCW 31.04.165, RCW 31.04.175(1), and WAC 208-620-570(8) for aiding or abetting an unlicensed person to practice in violation of the Act.

2.4 False, Misleading, or Deceptive Advertisements and Representations. Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW

31.04.027(1)(b), RCW 31.04.135 and RCW 31.04.165, for advertising or permitting to be advertised, in any manner whatsoever, any statement or representation with regard to rates, terms, or conditions for the lending of money that is false, misleading, or deceptive.

III. AUTHORITY TO IMPOSE SANCTIONS

3.1 Authority to Issue an Order to Cease and Desist. Pursuant to RCW 31.04.093(5)(a), the Director may issue orders directing a licensee, its employee, loan originator, or other person subject to the Act to cease and desist from conducting business in a manner that is injurious to the public or violates any provision of the Act.

3.2 Authority to Prohibit from the Industry. Pursuant to RCW 31.04.093(6), the Director may issue an order prohibiting from participation in the affairs of any licensee, any officer, principal, employee, mortgage loan originator, or any other person subject to the Act for a violation of RCW 31.04.027, RCW 31.04.102, RCW 31.04.155, or RCW 31.04.221.

3.3 Authority to Impose Fine. Pursuant to RCW 31.04.093(4), the Director may impose fines of up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or any other person subject to the Act for any violation of the Act.

3.4 Authority to Charge Investigation Fee. Pursuant to RCW 31.04.145(3) and WAC 208-620-610(7), every licensee examined or investigated by the Director or the Director's designee shall pay for the cost of the investigation, calculated at the rate of \$69.01 per staff hour devoted to the investigation.

3.5 Authority to Recover Costs and Expenses. Pursuant to RCW 31.04.205(2), the Director may recover the state's costs and expenses for prosecuting violations of the Act.

IV. NOTICE OF INTENT TO ENTER ORDER

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

Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, RCW 34.04.202, and RCW 31.04.205. Therefore, it is the Director's intent to ORDER that:

- 4.1** Respondent Universal Mortgage & Finance, Inc. cease and desist from conducting business in a manner that is injurious to the public or violates any provision of the Act.
- 4.2** Respondent Universal Mortgage & Finance, Inc. be prohibited from participation in the conduct of the affairs of any consumer loan company subject to licensure by the Director, in any manner, for a period of 5 years.
- 4.3** Respondent Universal Mortgage & Finance, Inc. pay a fine. As of the date of this Statement of Charges, the fine totals \$31,500.
- 4.4** Respondent Universal Mortgage & Finance, Inc. pay an investigation fee. As of the date of this Statement of Charges, the investigation fee totals \$4,500.
- 4.5** Respondent Universal Mortgage & Finance, Inc. maintain records in compliance with the Act and provide the Department with the location of the books, records and other information relating to Respondent Universal Mortgage & Finance, Inc.'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.
- 4.6** Respondent Universal Mortgage & Finance, Inc. pay the Department's costs and expenses for prosecuting violations of the Act in an amount to be determined at hearing or by declaration with supporting documentation in event of default by Respondent.

//

//

//

//

//

//

//

//

//

//

1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist, Revoke
3 License, Prohibit from Industry, Impose Fine, Collect Investigation Fee, and Recover Costs and
4 Expenses (Statement of Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW
5 31.04.165, RCW 31.04.202, and RCW 31.04.205, and is subject to the provisions of chapter 34.05
6 RCW (The Administrative Procedure Act). Respondent may make a written request for a hearing as
7 set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING
8 accompanying this Statement of Charges.

9
10 Dated this 29th day of January, 2021.

11
12 /s/
13 LUCINDA FAZIO, Director
14 Division of Consumer Services
15 Department of Financial Institutions

16 Presented by:

17 /s/
18 DREW STILLMAN
19 Financial Legal Examiner

20 Approved by:

21 /s/
22 STEVEN C. SHERMAN
23 Enforcement Chief