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

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

DANA CAPITAL GROUP, INC., and
DANA H. SMITH, President and Owner,

Respondents.

NO. C-05-188-07-SC03

AMENDED STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO REVOKE LICENSE,
IMPOSE FINE, ORDER RESTITUTION, PROHIBIT
FROM INDUSTRY, AND COLLECT
EXAMINATION AND INVESTIGATION FEES
(AMENDED)

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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 Deborah Bortner, institutes this proceeding and finds as follows:

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I. FACTUAL ALLEGATIONS

1.1 Respondents:

A. Dana Capital Group, Inc., (Dana Capital) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on November 12, 1999, and has continued to be licensed to date. Dana Capital is licensed to conduct business as a Consumer Loan Company at the following two (2) locations:

Main Office: 8001 Irvine Drive, Suite 1200, Irvine, CA 92618

Branch Office: 8044 Camino Montego, Carlsbad, CA 92009

Dana Capital is not licensed to use any name other than "Dana Capital Group, Inc."

B. Dana H. Smith (Respondent Smith) is known to be the President and owner of Dana Capital.

1 **1.2 Report of Examination:** From September 30, 2005, through October 26, 2005, the Department
2 conducted an examination of the books and records of Dana Capital for the period of November 22, 1999,
3 through September 30, 2005.

4 A. The Department incurred fees and expenses in the amount of \$21,370.93 related to this
5 examination, consisting of \$17,321.51 for examiner related services and \$4,049.42 for travel expenses.

6 B. The Department reviewed forty two (42) loan files as part of its examination. The Department
7 determined that in fifteen (15) of these loans Dana Capital had failed to provide a Good Faith Estimate
8 of costs (GFE) and Truth-in-Lending disclosures (TIL) within three business days of receiving the
9 borrower's application. The Department determined that in nine (9) of these loans Dana Capital failed
10 to maintain sufficient records to establish it had timely provided mandatory initial disclosures for
11 Adjustable Rate Mortgages (ARM). The Department determined that in twelve (12) of these loans
Dana Capital charged an underwriting fee when no underwriting services were performed.

12 **1.3 Unlicensed Loan Activity:** During the 2005 examination, the Department identified forty two (42)
13 unlicensed companies which had originated loans for property located in Washington on behalf of Dana
14 Capital. The Department sent subpoenas to each of these companies and obtained evidence that beginning in at
15 least May 2002, Dana Capital entered into contractual arrangements with at least sixteen (16) individuals and
16 companies to conduct residential mortgage business in the name of Dana Capital from locations that were not
17 licensed by the Department. These arrangements were predominately in the form of a "Salesperson's
18 Employment Contract" or a "Broker Services Agreement." Some of these agreements included provisions
19 through which Dana Capital represented that it had or would obtain the necessary licensure for the contracting
20 individuals and companies to operate lawfully under Dana Capital. Dana Capital, however, did not apply for
21 any Washington branch licenses. Between May 1, 2002, and May 1, 2007, these sixteen companies originated
at least 183 residential mortgage loans in Washington on behalf of Dana Capital.

22 **1.4 Consumer Complaints:** Between August 1, 2004, and May 1, 2007, the Department received several
23 consumer complaints by Washington residents against Dana Capital, which included the following:

1 **A. 16091-** Between November 2003 and January 2004, borrowers J.B. and M.B. contacted Dana
2 Capital seeking to refinance a mortgage on their primary residence located in Washington. Dana
3 Capital eventually obtained a loan for the borrowers through Encore Credit Corp. On March 9, 2005,
4 the Department sent Dana Capital a Directive requiring it to provide copies of the borrower's original
5 application form, all mandatory disclosures, the final HUD 1 or HUD 1A, the note, the appraisal order,
6 the first page of the credit report, the activity log, and any other documentation or explanation that
7 would assist in assessing the borrower's complaint. A copy of the complaint was provided, and Dana
8 Capital's response was due on or before March 24, 2005. Dana Capital, however, failed to respond. As
9 a result, the Department was compelled to issue a subpoena for the above stated documents on April 5,
10 2005. The Department received Dana Capital's response to the subpoena on April 8, 2005. Dana
11 Capital's response consisted of a cover letter containing a brief response to the complaint, a payoff
12 document from Ameriquest, a Final HUD 1, and a letter Respondent had written to Encore Lending
13 dated December 11, 2003, which had been part of the original loan process. None of the other required
14 documents were provided.

15 The Final HUD 1 shows that Dana Capital did not actually make the loan in question, but
16 instead brokered it to Encore Credit Corp. This, however, did not relieve Dana Capital from the
17 requirement to provide several mandatory disclosures, including a GFE and TIL, within three business
18 days of taking the borrower's application. Because Dana Capital failed to provide copies of these
19 documents in response to the Department's Directive, the Department finds that Dana Capital did not
20 provide these disclosures in a timely manner.

21 **B. 18564-** On September 27, 2005, the Sharp Real Estate Appraisal Corporation (Sharp) reported to
22 the Department that it had completed two (2) appraisals for Dana Capital related to the refinancing of
23 two primary residences in Washington. Sharp provided two documents entitled "Request for
24 Appraisal" it had received from Dana Capital. The first Request, dated May 30, 2002, indicated it had
25 been submitted by:

1 Dana Capital Group
2 24602 Raymond Way #9
3 Lake Forest, CA 92630

4 The second Request, dated November 24, 2004, indicated it had been submitted by:

5 Dana Capital
6 745 E. Maryland Ave.
7 Phoenix, AZ 85014

8 At the time these Requests were submitted by Dana Capital to Sharp, Dana Capital was not licensed to
9 do business in Washington from either of those locations.

10 C. 21448- On December 12, 2006, the Balderas Appraising Services (Balderas) reported to the
11 Department that it had completed six (6) appraisals for Dana Capital related to the refinancing of six
12 primary residences in Washington. Balderas provided six documents entitled "Appraisal Order" it had
13 received from Dana Capital. Each request was dated between September 1 and October 15, 2005, and
14 indicated it had been submitted by:

15 Dana Capital Group, Inc.
16 2525 E. Colorado
17 Pasadena, CA 91107

18 At the time these Requests were submitted by Dana Capital to Balderas, Dana Capital was not licensed
19 to do business in Washington from that location.

20 D. 21677, 21696- On January 22 and 24, 2007, respectively, two Washington consumers notified the
21 Department they had received an advertisement in the mail indicating it came from Dana Capital. Upon
22 review, the Department determined that the advertisements were identical, except for specific
23 information relevant to the recipient. On February 5, 2007, the Department requested an explanation for
24 the advertisements from Dana Capital. Dana Capital promptly responded that the advertisements had
25 been distributed by one of its "employees" at Global Equity Finance, Inc., located at 575 Anton Blvd.,
3rd Floor, Costa Mesa, California 92626. At the time the Washington consumers received the
advertisements, Dana Capital was not licensed to do business in Washington from that address and was
not licensed to do business in Washington under the name of Global Equity Finance, Inc.

1 Additionally, each advertisement stated an annual percentage rate (APR) in a smaller type size
2 than other rates and terms stated in the advertisement. Each advertisement also stated a monthly
3 payment, but failed to state the terms of repayment.

4 **1.5 2006 Annual Assessment Late Fee:** Dana Capital's Consolidated Annual Report and Annual
5 Assessment fee for 2006 was due on or before March 1, 2007, but was not received at the Department by that
6 date. On March 9, 2007, the Department received the Report via overnight mail. The Report was accompanied
7 by a cover letter dated March 8, 2007, and a check for the annual assessment dated March 8, 2007. As a result
8 of the late filing, the Department imposed a late fee of \$800, calculated at \$100 per day for eight (8) days. On
9 April 2, 2007, the Department notified Dana Capital of the imposition of the late fee and requested payment.
10 Dana Capital has not paid the late fee.

11 **1.6 2007 Consolidated Annual Report and Annual Assessment:** On June 11, 2007, the Department
12 received a letter from Respondent Smith (dated May 30, 2007) notifying the Department that Dana Capital was
13 no longer an operating corporation and was surrendering its consumer loan license. Respondents' original
14 license for its main office was enclosed with the letter, but Respondents' license for its branch located in
15 Carlsbad, CA, was not surrendered. Respondent Smith also notified the Department that all licensing issues
16 should be referred to Respondents' attorney. On June 14, 2007, the Department sent a letter to Respondents via
17 Respondents' attorney, notifying Respondents that in order to process Respondents' closure, Respondents
18 needed to surrender the original branch license, submit a closure form, submit a Consolidate Annual Report for
19 the period January 1 through May 30, 2007, pay the appropriate 2007 annual assessment, and pay an \$800 late
20 fee from Respondents' 2006 annual assessment. On August 7, 2007, the Department received a letter from
21 Respondent Smith (dated July 3, 2007) accompanied by a check for the 2007 annual assessment. The letter
22 stated that the 2007 Consolidated Annual Report and the closure forms for the main office and the branch office
23 were also enclosed, but these documents were not in the envelope with the letter.

24 **1.7 On-Going Investigation:** The Department's investigation into the alleged violations of the Act by
25 Respondents continues to date.

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

3 **2.1 Advertising:** Based on the Factual Allegations set forth in Section I above, Respondents are in
4 apparent violation of RCW 31.04.027(10) and RCW 31.04.135 for advertising a rate of interest without
5 conspicuously disclosing the annual percentage rate implied by that rate of interest and for failing to comply
6 with 12 C.F.R. §226.24(c) (2 counts).

7 **2.2 Disclosures:** Based on the Factual Allegations set forth in Section I above, Respondents are in
8 apparent violation of RCW 31.04.027(6) and RCW 31.04.102(2) and (3) for failure to provide GFE and TIL
9 disclosures within three business days of receiving a loan application (17 counts).

10 **2.3 Record Keeping:** Based on the Factual Allegations set forth in Section I above, Respondents are in
11 apparent violation of RCW 31.04.155 for failing to maintain sufficient records to enable the Director to
12 determine whether the licensee is complying with the Consumer Loan Act (10 counts).

13 **2.4 Unearned Fees:** Based on the Factual Allegations set forth in Section I above, Respondents are in
14 apparent violation of RCW 31.04.027(1), (2), and (3) and RCW 31.04.105(2) for charging applicants for
15 underwriting fees when no underwriting services were performed (12 counts).

16 **2.5 Unlicensed Activity:** Based on the Factual Allegations set forth in Section I above, Respondents are in
17 apparent violation of RCW 31.04.075 for doing business from more than one location without obtaining
18 additional licenses for those locations (19 counts).

19 **2.6 Unlicensed DBAs:** Based on the Factual Allegations set forth in Section I above, Respondents are in
20 apparent violation of WAC 208-620-420 for transacting business under a name other than that on Respondents'
21 license (16 counts).

22 **2.7 Failure to Comply with Director's Authority:** Based on the Factual Allegations set forth in Section I
23 above, Respondents are in apparent violation of RCW 31.04.145 for failure to comply with the Director's
24 investigatory authority by failure to fully and completely comply with the Department's Directives.

1 **2.8 Failure to Pay Late Fee:** Based on the Factual Allegations set forth in Section I above, Respondents
2 are in apparent violation of WAC 208-620-430(2) for failing to pay the late fee imposed for the late filing of
3 Respondents' Consolidated Annual Report and Annual Assessment fee for 2006.

4 **2.9 Failure to file 2007 Consolidated Annual Report and Pay Annual Assessment.** Based upon the
5 Factual Allegations set forth in Section I above, Respondents are in apparent violation of WAC 208-620-460 for
6 failure to file a Consolidated Annual Report and pay the associated Annual Assessment within 30 days of
7 closure.

8 **III. AUTHORITY TO IMPOSE SANCTIONS**

9 **3.1 Authority to Revoke License:** Pursuant to RCW 31.04.093(3)(a) and (b), the Director may revoke a
10 license if a licensee fails to pay any fee due the state of Washington, or fails to comply with any specific order
11 or demand of the Director lawfully made and directed to the licensee in accordance with the Act, or violates any
12 provision of the Act or any rule adopted under the Act either knowingly or without exercise of due care.

13 **3.2 Authority to Impose Fine:** Pursuant to RCW 31.04.093(4), the Director may impose fines of up to one
14 hundred dollars per day upon the licensee, its employee, or any other person subject to the Act for any violation
15 of the Act or failure to comply with any order or subpoena issued by the Director under the Act.

16 **3.3 Authority to Issue Orders to Pay Restitution:** Pursuant to RCW 31.04.093(5), the Director may issue
17 an order directing a licensee, its employee, or any other person subject to the Act to make restitution to a borrower
18 or other person who is damaged as a result of a violation of the Act.

19 **3.4 Authority to Prohibit from the Industry:** Pursuant to RCW 31.04.093(6)(d) and (e), the Director
20 may issue an order prohibiting from participation in the affairs of any licensee, any officer, principal, employee,
21 or any other person subject to the Act for failure to comply with any order or subpoena issued under the Act or
22 for a violation of RCW 31.04.027.

23 **3.5 Authority to Charge Examination Fee and Investigation Fee:** Pursuant to RCW 31.04.145(3) and
24 WAC 208-620-590, every licensee examined or investigated by the Director or the Director's designee shall
25 pay for the cost of the examination or investigation, calculated at the rate of sixty-nine dollars and one cent

1 (\$69.01) per staff hour devoted to the examination or investigation, and shall pay travel costs if the licensee
2 maintains its records outside the state.

3 **3.6 Accounting Requirements:** Pursuant to RCW 31.04.155, a licensee shall maintain accurate and
4 current books and records and shall make such books and records readily available to the Director until at least
5 twenty-five months have elapsed following the effective period to which the books and records relate.

6 IV. NOTICE OF INTENTION TO ENTER ORDER

7 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as set forth in
8 the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions constitute a basis for
9 the entry of an Order under RCW 31.04.093, RCW 31.04.165, and RCW 31.04.205. Therefore, it is the Director's
intention to ORDER that:

- 10 4.1 Respondent Dana Capital Group, Inc.'s licenses to conduct the business of a Consumer Loan
11 Company be revoked;
- 12 4.2 Respondents Dana Capital Group, Inc., and Dana H. Smith jointly and severally pay a fine of \$500,000
for the violations set forth above,
- 13 4.3 Respondents Dana Capital Group, Inc., and Dana H. Smith jointly and severally pay restitution to the
14 borrowers injured by Respondents' violation of the Act in the aggregate amount of \$15,780.75 as set
forth in Appendix A and incorporated herein by reference;
- 15 4.4 Respondent Dana H. Smith be prohibited from participation in the conduct of the affairs of any
licensed consumer loan company, in any manner, for a period of five (5) years;
- 16 4.5 Respondents Dana Capital Group, Inc., and Dana H. Smith jointly and severally pay an investigation
17 fee in the amount of \$13,802 calculated at \$69.01 per hour for two hundred (200) staff hours devoted
to the investigation;
- 18 4.6 Respondents Dana Capital Group, Inc., and Dana H. Smith jointly and severally pay the costs of
19 examination in the amount of \$21,370.93, consisting of an examination fee of \$17,321.51, calculated at
\$69.01 per hour for two hundred fifty one (251) staff hours devoted to the examination, and \$4,049.42
for travel expenses;
- 20 4.7 Respondents Dana Capital Group, Inc., and Dana H. Smith jointly and severally pay \$800 for the late
21 fee imposed for the late filing of Respondents' Consolidated Annual Report and Annual Assessment
fee for 2006; and
- 22 4.8 Respondent Dana Capital Group, Inc., and Dana H. Smith maintain records in compliance with the Act
23 and provide the Director with the location of the books, records, and other information relating to
Respondent Dana Capital Group, Inc.'s consumer loan company business, and the name, address, and

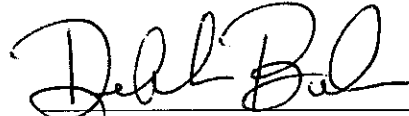
1 telephone number of the individual responsible for maintenance of such records in compliance with the
2 Act.

3 **V. AUTHORITY AND PROCEDURE**

4 This Statement of Charges and Notice of Intention to Enter an Order to Revoke License, Impose Fine,
5 Order Restitution, Prohibit from Industry, and Collect Examination and Investigation Fees (Statement of
6 Charges) is entered pursuant to the provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202 and RCW
7 31.04.205, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act).

8 Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO
9 DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

10 Dated this 13th day of August, 2007.

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12 DEBORAH BORTNER
13 Director
14 Division of Consumer Services
15 Department of Financial Institutions

16 Presented by:

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18 Steven C. Sherman
19 Financial Legal Examiner

20 Approved by:

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22 James R. Brusselback
23 Program Manager and Enforcement Chief



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RESTITUTION SCHEDULE

Borrower Name	Reference Number	Amount Due
J.B. and M.B.	BW 020402016	\$3,425.75
M.S.C.	11225441	\$1,345.00
Z.H.	BW 228214	\$ 300.00
S.K.R.	05030807	\$ 995.00
M.G.	1002266577	\$ 995.00
M.K.	11176428	\$1,345.00
L.G.	100098901	\$ 995.00
J.H.	11256314	\$ 995.00
E.C.	1002631450	\$1,890.00
J.F.	921000240857	\$ 995.00
J.M.	11092636	\$ 995.00
T.K.	1001425586	\$1,515.00
TOTAL		\$15,780.75