



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF INVESTIGATING
The Loan Originator License Application
under the Mortgage Broker Practices Act of
Washington by:

MERRIE MARGARET KROLL,

Respondent.

OAH Docket No. 2007-DFI-0034

No. C-07-159-07-FO01

FINAL DECISION & ORDER
CONFIRMING ORDER ON MOTION FOR
SUMMARY JUDGMENT

THIS MATTER has come before the Director ("hereinafter, "Director") of the Department of Financial Institutions (hereinafter, "Department") in the above-enumerated administrative action pursuant to Order on Motion for Summary Judgment (hereinafter, "Initial Order") based upon a Statement of Charges and Notice of Intention to Enter an Order to Deny License Application and Prohibit from Industry (hereinafter, "Statement of Charges") issued by the Division of Consumer Services (hereinafter, "Division") on or about June 8, 2007, under the authority of the Mortgage Broker Practices Act, Ch. 19.146 RCW (hereinafter, "MBPA").

The Respondent, MERRIE MARGARET KROLL (hereinafter, "Respondent") timely requested an Administrative Hearing to contest the Statement of Charges, and this matter was assigned to the Office of Administrative Hearings (hereinafter, "OAH"), which designated Administrative Law Judge Rynold C. Fleck (hereinafter, "Administrative Law Judge") to hear the case. The Division filed a Motion for Summary Judgment (hereinafter, "Summary Judgment Motion"), by and through its counsel, Assistant Attorney General, Charles Clark (hereinafter, "Division Counsel"), on or about October 9, 2007. Despite clear notice to Respondent pursuant to an Order on Prehearing Conference dated August 30, 2007 (hereinafter, "Prehearing Order"), Respondent failed to provide any response by October 26, 2007, the date set for filing of all responses to motions for summary judgment as specified in

1 the Prehearing Order. Then, on November 20, 2007, the Administrative Law Judge issued
2 Initial Order granting summary judgment. The Initial Order contained Findings of Fact
3 (hereinafter, "FOF") and Conclusions of Law (hereinafter, "COL").

4 More than twenty (20) days has elapsed since the entry and service of the Initial Order.
5 Respondent has not filed any petition for review of the Initial Order.

6 The Director subsequently received and has now considered the entire OAH Record.
7 This Final Decision and Order are based upon a consideration of the entire OAH Record,
8 including, without limitation, the following:
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- 10 1. License application dated December 30, 2006 (hereinafter, "Application");
- 11 2. Statement of Charges;
- 12 3. Application for Adjudicative Hearing;
- 13 4. Summary Judgment Motion of Division Counsel;
- 14 5. Declaration of William J. Halstead (hereinafter, "Halstead Declaration"); and
- 15 6. The Initial Order.

16 This record is hereinafter referred to collectively as "Record on Review."

17 1.0 Summary of the Case

18 This case concerns whether Respondent is automatically disqualified from obtaining a
19 Loan Originator License (hereinafter, "License") by reason of having been convicted of a
20 felony within 7 years of the date of Application. A prospective licensee is automatically
21 disqualified from obtaining a License if convicted of any type of felony or a gross
22 misdemeanor involving dishonesty or financial misconduct within 7 years of the date of
23 application for a loan originator license.¹

24 2.0 Preliminary Considerations

25 2.1 Standards for Summary Judgment in Administrative Actions. The Director
26 takes note preliminarily of the following standards which are to be applied to motions for
27 summary judgment in an administrative action under the Administrative Procedures Act,
28 Chapter 34.05 RCW (hereinafter, "APA") :

29 2.1.1 Standards for Granting Summary Judgment. The Department has
30 adopted the Model Rules of Procedure, Chapter 10-08 WAC, except to the extent of any
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34 ¹ RCW 19.146.310(1) (d and (2) and WAC 208-660-350(2)(c).

1 conflict with the Department's Rules of Procedure.² WAC 10-08-135 sets forth the standards
2 to be followed by the Department and the Administrative Law Judge, as its agent, when
3 considering the Summary Judgment Motion and the Summary Judgment Response, and
4 declares that "[a] motion for summary judgment may be granted and an order issued [only] if
5 the written record shows that there is no genuine issue as to any material fact and that the
6 moving party is entitled to judgment as a matter of law." In evaluating the application of this
7 standard, the Director may rely on applicable law from sources other than WAC 10-08-135
8 itself and must be respectful of the constitutional rights of respondents.³ To that end, the
9 Director is required to weigh on review all pleadings, evidence and argument in a light most
10 favorable to the non-moving party.⁴ If there is any inference of a triable issue of fact, then
11 summary judgment is inappropriate.⁵ Litigants are entitled to a dispositive hearing on all issues
12 of fact and law.⁶ These principles apply equally to the Administrative Law Judge and to the
13 Director evaluating the Initial Order.⁷

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15 2.2 Proper Consideration by Director Absent Petition for Review. Respondent did
16 not file a petition for review contesting the Initial Order. However, even when a party has not
17 filed a petition for review, the Director still has the authority and duty, prior to entering a Final
18 Decision and Order, to consider whether any part of the Initial Order is not supported by the
19 record⁸ and whether confirmation of the Initial Order, without modification, would be an error
20 of law. Indeed, with regard to the COL as contained in the Initial Order, the Director is
21 obliged, in the manner of a reviewing court, to consider the statutes and implementing
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25 ² WAC 208-08-020(1) declares: "The department adopts the model rules of procedure as set forth in WAC 10-08-035 through 10-08-230. If
26 there is a conflict between the model rules and this chapter, the rules in this chapter shall govern. Wherever the term 'agency' appears in the
27 model rules it means the department of financial institutions."

28 ³ WAC 10-08-220 declares: "Nothing in chapter 10-08 WAC is intended to diminish the constitutional rights of any person or to limit or
29 modify additional requirements imposed by statute, including the Administrative Procedure Act."

30 ⁴ Reid v. Pierce County, 136 Wn.2d 195, 201, 961 P.2d 333 (1998).

31 ⁵ Davis v. W. One Auto. Group, 140 Wn. App. 449, 456 (2007).

32 ⁶ Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300-01, 45 P.3d 1068 (2002), citing Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124
33 (2000).

34 ⁷ Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

⁸ See RCW 34.05.464(4); see also Northwest Steelhead v. Washington State Department of Fisheries, 78 Wn. App. 778, 896 P.2d 1292 (1995);
see also Towle v. Department of Fish and Wildlife, 94 Wn.App. 196, 971 P.2d 591 (1999).

1 regulations of the Division under the error of law standard, which permits the Director to
2 substitute his judgment for that of the Statement of Charges and the Administrative Law
3 Judge's Initial Order.⁹

4 3.0 Director's Consideration of FOF and COL. After due consideration of the entire record
5 on review and in a light most favorable to Respondent, the Director is of the decided view that
6 the Initial Order is appropriate in its entirety. Respondent did not deny she was convicted of a
7 felony within 7 years of Application, and the Halstead Declaration establishes that fact to a
8 legal certainty.

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10 4.0 Findings of Fact. Now, therefore, the Director re-affirms FOF 1 through FOF 4,
11 inclusive, at pages 1-2 of the Initial Order.

12 5.0 Conclusions of Law. Now, therefore, the Director re-affirms: COL 1 through COL 5,
13 inclusive, at page 2 of the Initial Order.

14 6.0 Final Order. Having made Findings of Fact and Conclusions of Law as set forth above,
15 IT IS HEREBY ORDERED AS FOLLOWS:

16 6.1 Denial of License. The application of Respondent, MERRIE MARGARET
17 KROLL, for a Loan Originator License is DENIED.

18 6.2 Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to
19 file a Petition for Reconsideration stating the specific grounds upon which relief is requested.
20 The Petition must be filed in the Office of the Director of the Department of Financial
21 Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail
22 at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this
23 Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness
24 of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in
25 this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days
26 from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the
27 parties with a written notice specifying the date by which it will act on a petition.
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34 ⁹ See *Aponte v. Dep't of Soc. & Health Servs.*, 92 Wn. App. 604, 616-17, 965 P.2d 626 (1998), review denied, 137 Wn.2d 1028 (1999); cited in Nationscapital at p. 737.

1 6.3 Stay of Order. The Director has determined not to consider a Petition to
2 Stay the effectiveness of this order. Any such requests should be made in connection with a
3 Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

4 6.4 Judicial Review. Respondent has the right to petition the superior court for
5 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the
6 requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

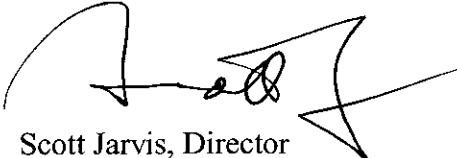
7 6.5 Service. For purposes of filing a Petition for Reconsideration or a Petition
8 for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of
9 service attached hereto.

10 6.6 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative
11 Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective
12 immediately upon deposit in the United States Mail.

13 Dated at Tumwater, Washington, on this 19th day of December, 2008.

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16 WASHINGTON STATE DEPARTMENT
17 OF FINANCIAL INSTITUTIONS

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19 By:

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21 Scott Jarvis, Director

1 **NOTICE TO THE PARTIES**

2 In accordance with RCW 34.05.470 and WAC 10-08-215, any Petition for
3 Reconsideration of the FINAL DECISION & ORDER CONFIRMING ORDER ON MOTION
4 FOR SUMMARY JUDGMENT must be filed with the Director within ten (10) days of service
5 of such FINAL DECISION & ORDER. It should be noted that Petitions for Reconsideration do
6 not stay the effectiveness of the FINAL DECISION & ORDER. Judicial Review of the FINAL
7 DECISION & ORDER is available to a party according to provisions set out in the Washington
8 Administrative Procedure Act, RCW 34.05.570.

9 This is to certify that the FINAL DECISION AND ORDER has been served upon the
10 following parties on December 19, 2008, by depositing a copy of
11 same in the United States mail, postage prepaid.

12 WASHINGTON STATE DEPARTMENT
13 OF FINANCIAL INSTITUTIONS

14 By: 

15 Susan Putzier

16 Executive Assistant to the Director

17 **Mailed to the following:**

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