



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:

ANDREW ANGELO DeLORENZO,

Respondent.

OAH Docket No. 2007-DFI-0067

No. C-07-447-08-FO01

FINAL DECISION & ORDER
CONFIRMING GRANT OF SUMMARY
JUDGMENT BY ADMINISTRATIVE
LAW JUDGE

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 Corrected Proposed Findings of Fact, Conclusions of Law, and Initial Order on Motion for Summary Judgment (hereinafter, collectively, "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 November 1, 2007, under the authority of the Mortgage Broker Practices Act, Ch. 19.146 RCW (hereinafter, "MBPA").

The Respondent, Andrew Angelo DeLorenzo (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 Leslie Wagner (hereinafter, "Administrative Law Judge") to hear the case. The Division made a Motion for Summary Judgment (hereinafter, "Summary Judgment Motion"), by and through its counsel, Assistant Attorney General, Charles Clark (hereinafter, "Division Counsel"). Respondent filed a Response (hereinafter, "Summary Judgment Response"). Then, on March 20, 2008, the Administrative Law Judge issued an

1 Initial Order granting the Summary Judgment Order, which was followed by a corrected Initial
2 Order on April 1, 2008. The Initial Order contains Proposed Findings of Fact (hereinafter,
3 “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 On or about July 16, 2008, the Division presented this matter to the Director for entry of
7 a final decision and order. However, the proposed final decision and order were in the nature
8 of a *default or uncontested* final order – i.e., in a form and style that is properly reserved for
9 those cases which are either (1) uncontested from inception or (2) come before the Director as a
10 result of an applicant’s default.

11 This case *was* contested by Respondent. Respondent *did* respond to the Summary
12 Judgment Motion. Respondent *did not* default. Respondent simply did not file a petition for
13 review of the Initial Order. Division’s proposed final decision and order are inappropriate in
14 form and substance, because they do not convey to the parties or to a superior court (in the
15 event of judicial review) the Director’s required deliberation, even in circumstances such as
16 these, of the sufficiency and propriety of the Administrative Law Judge’s grant of summary
17 judgment.

18 Accordingly, the Director subsequently ordered, received and has now considered the
19 entire OAH Record. This Final Decision and Order are based upon a consideration of the
20 entire OAH Record, including, without limitation, the following:

- 21 1. Online License application dated August 21, 2007 (hereinafter, “Application”);
- 22 2. Statement of Charges;
- 23 3. Application for Adjudicative Hearing;
- 24 4. Summary Judgment Motion;
- 25 5. Declaration of Will Halstead (hereinafter, “Halstead Declaration”);
- 26 6. Declarative Statement of Respondent in Opposition to Motion for Summary
27 Judgment (hereinafter, “Summary Judgment Response”);
- 28 7. Division’s Reply (hereinafter, “Division’s Reply”); and
- 29 8. Initial Order (including the corrected version which is herein relied upon).

30 This record is hereinafter referred to collectively as “Record on Review.”
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2 **1.0 Summary of the Case**

3 This case concerns whether Respondent is automatically disqualified from obtaining a
4 Loan Originator License (hereinafter, "License") and prohibited from participation in the
5 affairs of a mortgage broker until August 1, 2017, by reason of: (1) Having been convicted of a
6 felony within 7 years of the date of Application; (2) having been convicted of a gross
7 misdemeanor within 7 years of the date of Application; and (3) having failed to disclose these
8 two criminal convictions in his online Application. A prospective licensee is automatically
9 disqualified from obtaining a License if convicted of any type of felony or a gross
10 misdemeanor involving dishonesty or financial misconduct within 7 years of the date of
11 application for a loan originator license.¹ In addition, the MBPA also authorizes the Division
12 to seek a License ban of additional years (in this case until August 1, 2017) for either making
13 false statements or willfully omitting information in a License application.
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15 Respondent's criminal convictions each appear to be while he was a juvenile subject to
16 the jurisdiction of the juvenile division of the superior court. Respondent's Summary
17 Judgment Response was limited to his contention that he did not know that he had to disclose
18 juvenile convictions and that he has, since his majority, maintained an honorable life-style.
19 The question is whether such a defense raises any triable issue of fact from which the
20 Administrative Law Judge should have concluded that summary judgment was in appropriate.
21 In addition, the Director has discretion to consider whether the length of the License ban sought
22 by the Division and contained in the Initial Order is excessive under the circumstances.
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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") :
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34 ¹ RCW 19.146.310(1) (d).

1 2.1.1 The Necessity of FOF and COL. FOF and COL were required, as a
2 matter of law, to be contained in the Initial Order, even upon a motion for summary judgment.²
3 The Administrative Law Judge appropriately made FOF and COL. But this still leaves open
4 whether summary judgment was appropriate.

5 2.1.2 Standards for Granting Summary Judgment. The Department has
6 adopted the Model Rules of Procedure, Chapter 10-08 WAC, except to the extent of any
7 conflict with the Department's Rules of Procedure.³ WAC 10-08-135 sets forth the standards
8 to be followed by the Department and the Administrative Law Judge, as its agent, when
9 considering the Summary Judgment Motion and the Summary Judgment Response, and
10 declares that "[a] motion for summary judgment may be granted and an order issued [only] if
11 the written record shows that there is no genuine issue as to any material fact and that the
12 moving party is entitled to judgment as a matter of law." In evaluating the application of this
13 standard, the Director may rely on applicable law from sources other than WAC 10-08-135
14 itself and must be respectful of the constitutional rights of respondents.⁴ To that end, the
15 Director is required to weigh on review all pleadings, evidence and argument in a light most
16 favorable to the non-moving party.⁵ If there is any inference of a triable issue of fact, then
17 summary judgment is inappropriate.⁶ Litigants are entitled to a dispositive hearing on all issues
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24 ² In a judicial court, findings of fact and conclusions of law are not contained in a summary judgment order where there is no material issue of
25 fact from which to demonstrate a judge's deliberation in making "findings." The APA, at RCW 34.05.461(3), declares that all "[i]nitial and
26 final orders shall include a statement of findings and conclusions . . ." This is reiterated in WAC 110-08-210, which declares that "[e]very
27 decision and order, whether initial or final, shall . . . [c]ontain appropriate numbered findings of fact meeting the requirements in RCW
28 34.05.461 . . . [and] . . . [c]ontain appropriate numbered conclusions of law . . ." WAC 10-08-135 provides for summary judgment but
merely states that "[a] motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine
issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Therefore, without reference to their content,
the issuance of FOF and COL by the Administrative Law Judge was appropriate. The Administrative Law Judge would have violated the APA
if he had not issued FOF and COL.

29 ³ 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
30 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
model rules it means the department of financial institutions."

31 ⁴ 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
32 modify additional requirements imposed by statute, including the Administrative Procedure Act."

33 ⁵ *Reid v. Pierce County*, 136 Wn.2d 195, 201, 961 P.2d 333 (1998).

34 ⁶ *Davis v. W. One Auto. Group*, 140 Wn. App. 449, 456 (2007).

1 of fact and law.⁷ These principles apply equally to the Administrative Law Judge and to the
2 Director evaluating the Initial Order.⁸

3 2.2 Proper Consideration by Director Absent Petition for Review. Respondent did
4 not file a petition for review contesting the Initial Order. However, even when a party has *not*
5 filed a petition for review, the Director still has the authority and duty, prior to entering a Final
6 Decision and Order, to consider whether any part of the Initial Order is *not* supported by the
7 record⁹ and whether confirmation of the Initial Order, without modification, would be an error
8 of law. Indeed, with regard to the COL as contained in the Initial Order, the Director is
9 obliged, in the manner of a reviewing court, to consider the statutes and implementing
10 regulations of the Division under the error of law standard, which permits the Director to
11 substitute his judgment for that of the Division's Statement of Charges and the Administrative
12 Law Judge's Initial Order.¹⁰

14 2.3 Consideration of Length of License Ban. It is apparent from the Initial Order
15 that the Administrative Law Judge considered the question of whether Respondent negligently
16 made a false statement or knowingly and willfully made an omission of material fact in his
17 application.¹¹ The grant of summary judgment reflects that the Administrative Law Judge
18 perceived there to be no material issue of fact concerning this question. However, particularly
19 in consideration of the length of License ban, the Director is presented with two issues:

21 2.3.1 Appropriateness of Summary Judgment as to Issue of "Negligent" False
22 Statement or "Knowing and Willful" Omission. Of paramount concern for the Director is
23 whether the Respondent's Summary Judgment Response presented any triable issue of fact.

24 2.3.2 Appropriateness of License Ban Length. Apart from consideration of
25 whether summary judgment was appropriate, the Director also has discretion to modify the
26 length of the License ban. As Division Counsel has correctly observed in the Division's Reply
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28 ⁷ *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
29 (2000).

30 ⁸ *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

31 ⁹ 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);
32 see also *Towle v. Department of Fish and Wildlife*, 94 Wn.App. 196, 971 P.2d 591 (1999).

33 ¹⁰ 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
34 in Nationscapital at p. 737.

¹¹ See Initial Order, FOF 7 at p. 3; COL 7 at pp. 7-8 [referencing RCW 19.146.0201(8)].

1 to the Summary Judgment Response, the Administrative Law Judge did not have such
2 discretion and was obliged, upon determining that summary judgment was appropriate, to
3 impose the License ban sought in the Statement of Charges, provided that it was consistent
4 with statutory authority. But since the Director does not have such limited authority, the
5 Director may consider whether there are mitigating factors which, on the face of Respondent's
6 Summary Judgment Response, warrant a more lenient License ban. The Director's
7 consideration may include, however, due regard for the public policy to be maintained in the
8 statutory authority that the Division has to impose a License ban until August 1, 2017.

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10 3.0 Director's Consideration of FOF and COL. After due consideration of the entire record
11 on review and in a light most favorable to Respondent, the Director is of the decided view that
12 the Initial Order is appropriate in its entirety. The Director does not arrive at this conclusion
13 lightly.

14 Respondent makes certain assertions in his Summary Judgment Response, the veracity of
15 which have not been refuted. However, notwithstanding Respondent's veracity in his
16 Summary Judgment Response, it is clear that Respondent lied on his License application.

17 Respondent had no right or privilege to rely on his supervisor's apparent statement to
18 Respondent that he "did not need to disclose this information in the application due to it being
19 a juvenile adjudication."¹² The requirements of the License application are clear to any
20 applicant on their face, and they are supported by the governing statute and rule of the
21 Division. Moreover, in the event of any uncertainty between what he was told by a non-lawyer
22 supervisor (Anthony Colagrossi) and the clear instructions and questions contained in the
23 application, Respondent could have easily contacted the Licensing Section of the Division and
24 resolved this question with an *authoritative* answer.

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26 Secondly, the apparent statement by First Rate Financial's compliance trainer that "if
27 there was an issue with the licensing, I would be able to explain the situation at hearing,"¹³ is
28 not helpful to Respondent either. Rather, this latter statement tends to establish the proposition
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32 ¹² This hearsay statement, contained in the Summary Judgment Response, is admissible for the Director's consideration because it was not
33 offered for the truth of the matter asserted but to establish Respondent's state of mind in hearing it.

34 ¹³ This hearsay statement is also admissible for the reason set forth in Footnote 12.

1 that the compliance trainer would have correctly told Respondent that any inculpatory answers
2 *made* on the applications could be explained at hearing.

3 Indeed, nothing in the Summary Judgment Response establishes a material issue of fact
4 as to Respondent's state of mind when lying on his License application. The instructions and
5 the questions on the application were clear. Regardless of anything Respondent may have been
6 told, Respondent's untruthfulness was willful and knowing as a matter of law.¹⁴

7 This brings the Director to the question of whether, independent of the violation of RCW
8 19.146.0201(8), there are any mitigating factors concerning Respondent that would weigh in
9 favor of a more lenient License ban. Unfortunately, Respondent's recent, apparent law-abiding
10 lifestyle and commendable effort to become a business professional (including matriculating at
11 a university) do not overcome a strong public policy for telling the truth on license
12 applications. By the implicit tenor of the Summary Judgment Response, Respondent would
13 have the Director believe that upon reaching majority, the juvenile convictions of Respondent
14 and others similarly situated ought to be ignored for civil and administrative purposes and,
15 therefore, effort to conceal those convictions should likewise be accorded leniency. The
16 Director is of the view that rewarding this kind of conduct is contrary to public policy.
17 Honesty and truthfulness are and should continue to be foundational standards for obtaining
18 and maintaining a professional license. For the Director to extend leniency in the length of the
19 License ban in this case would send the wrong message to Respondent and other prospective
20 licensees similarly situated. The License ban until August 1, 2017 is permissible under the
21 statute, and the Director further finds that it is appropriate in this case.

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24 4.0 Findings of Fact. Now, therefore, the Director re-affirms FOF 1 through FOF 7,
25 inclusive, at pages 1-3 of the Initial Order.

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29 ¹⁴ See RCW 19.146.0201(8). Respondent is ashamed of his past and would like to overcome it. The Director finds his efforts to do that
30 commendable. But Respondent cannot overcome his past by ignoring it. Respondent's own statements, combined with lying on the
31 application itself, merely tend to show an active effort on Respondent's part to conceal his past and to look for ways to do so, including
32 consulting anyone (however unqualified) who will validate his desire to do so. This is not the way that Respondent should approach a
33 professional career, which the Director believes is still capable of promise. A License is not a right. It is a privilege conferred upon an
34 individual. It is portable and not unique to a single employer-employee relationship. If granted, it is a conditional grant of property which
must be guarded with care by the licensee. Ownership of such a License by Respondent would require that he take full responsibility for
keeping and maintaining it. Yet Respondent has demonstrated in the application and the Summary Judgment Response none of the qualities
that would suggest that he yet possesses the maturity, judgment or character to appreciate his own need for personal responsibility – including
the requisite honesty required for a License. Respondent had the personal responsibility to tell the truth or, in the case of subjective
uncertainty, resolve any questions prior to uttering what he knew was a lie. Had Respondent done so, he would not have lied on his
application. Moreover, it is likely that the outcome of this case would have been considerably different.

1 5.0 Conclusions of Law. Now, therefore, the Director re-affirms COL 1 through COL 14,
2 at pages 3-8 of the Initial Order.

3 6.0 Final Order. Having made Findings of Fact and Conclusions of Law as set forth above,
4 IT IS HEREBY ORDERED AS FOLLOWS:

5 6.1 Denial of License. The application of Respondent, ANDREW ANGELO
6 DeLORENZO, for a Loan Originator License is denied.

7 6.2 Prohibition. Respondent ANDREW ANGELO DeLORENZO is prohibited
8 from participating in the conduct of the affairs of any mortgage broker subject to licensure by the
9 Director, in any manner, through August 1, 2017.

10 6.3 Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to
11 file a Petition for Reconsideration stating the specific grounds upon which relief is requested.
12 The Petition must be filed in the Office of the Director of the Department of Financial
13 Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail
14 at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this
15 Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness
16 of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in
17 this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days
18 from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the
19 parties with a written notice specifying the date by which it will act on a petition.
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21 6.4 Stay of Order. The Director has determined not to consider a Petition to
22 Stay the effectiveness of this order. Any such requests should be made in connection with a
23 Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

24 6.5 Judicial Review. Respondent has the right to petition the superior court for
25 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the
26 requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.
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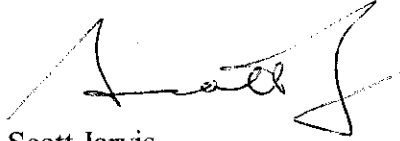
28 6.6 Service. For purposes of filing a Petition for Reconsideration or a Petition
29 for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of
30 service attached hereto.

31 6.7 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative
32 Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective
33 immediately upon deposit in the United States Mail.
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1 Dated at Tumwater, Washington, on this 16th day of December, 2008.

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3 WASHINGTON STATE DEPARTMENT
4 OF FINANCIAL INSTITUTIONS

5
6 By:




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8 Scott Jarvis
9 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 GRANT OF
4 SUMMARY JUDGMENT BY ADMINISTRATIVE LAW JUDGE must be filed with the
5 Director within ten (10) days of service of the FINAL DECISION & ORDER CONFIRMING
6 GRANT OF SUMMARY JUDGMENT BY ADMINISTRATIVE LAW JUDGE. It should be
7 noted that Petitions for Reconsideration do not stay the effectiveness of the FINAL DECISION
8 & ORDER CONFIRMING GRANT OF SUMMARY JUDGMENT BY ADMINISTRATIVE
9 LAW JUDGE. Judicial Review of the FINAL DECISION & ORDER CONFIRMING
10 GRANT OF SUMMARY JUDGMENT BY ADMINISTRATIVE LAW JUDGE is available to
11 a party according to provisions set out in the Washington Administrative Procedure Act, RCW
12 34.05.570.

13 This is to certify that the FINAL DECISION AND ORDER has been served upon the
14 following parties on December 17, 2008, by depositing a copy of
15 same in the United States mail, postage prepaid.

16 WASHINGTON STATE DEPARTMENT
17 OF FINANCIAL INSTITUTIONS

18 By: 
19 Susan Putzier
20 Executive Assistant to the Director

21 **Mailed to the following:**

22 Andrew Angelo DeLorenzo
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