



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:

DANIEL DWIGHT DYER,

Respondent.

OAH Docket No. 2008-DFI-0010

No. C-07-496-07-FO01

FINAL DECISION & ORDER
CONFIRMING GRANT OF
DEPARTMENT'S MOTION FOR
SUMMARY JUDGMENT AND DENYING
RESPONDENT'S CROSS-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 Initial Order Granting Department's Motion for Summary Judgment and Denying Respondent's Cross-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 December 5, 2007, under the authority of the Mortgage Broker Practices Act, Ch. 19.146 RCW (hereinafter, "MBPA").

The Respondent, DANIEL DWIGHT DYER (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 Mary Ellen Goodwin (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, by and through his attorney of record, G. Perrin

RE: Daniel Dwight Dyer, OAH Docket No. 2008-DFI-0010, DFI No. C-07-496-07-FO01

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1 Walker (hereinafter, "Respondent's Counsel"), filed a Response (hereinafter, respectively,
2 "Cross-Motion" and "Opposition"). Division Counsel responded with the Department's
3 Response to Respondent's Cross-Motion for Summary Judgment (hereinafter, "Response to
4 Cross-Motion"). Respondent then further responded to the Division with Respondent Dyer's
5 Reply to the Department's Response to Dyer's Cross-Motion for Summary Judgment
6 (hereinafter, "Respondent's Reply"). Then, after consideration of the Summary Judgment
7 Motion, Cross-Motion and Opposition, Response to Cross-Motion and Respondent's Reply, on
8 June 23, 2008, the Administrative Law Judge issued an Initial Order containing findings of fact
9 and conclusions of law.

11 More than twenty (20) days has elapsed since the entry and service of the Initial Order.
12 Neither party has filed any petition for review of the Initial Order.

13 On or about July 18, 2008, the Division presented this matter to the Director for entry of
14 a final decision and order. However, the proposed final decision and order were in a form and
15 style that is properly reserved for those cases which are either (1) uncontested from inception
16 or (2) come before the Director as a result of an applicant's default.

17 This case *was* contested by Respondent. Respondent *did* respond to the Summary
18 Judgment Motion and, indeed, brought his own Cross-Motion. Respondent *did not* default.
19 Respondent simply did not file a petition for review of the Initial Order. Division's proposed
20 final decision and order are inappropriate in form and substance, because they do not convey to
21 the parties or to a superior court (in the event of judicial review) the Director's required
22 deliberation, even in circumstances such as these, of the sufficiency and propriety of the
23 Administrative Law Judge's grant of summary judgment.

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

- 28 1. Online License application dated December 19, 2006 (hereinafter, "Application");
- 29 2. Statement of Charges;
- 30 3. Application for Adjudicative Hearing;
- 31 4. Summary Judgment Motion;
- 32 5. Memorandum in Support of Summary Judgment Motion (hereinafter, "Division's
33 Memorandum");
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- 1 6. Declaration of Steven C. Sherman in Support of Summary Judgment Motion
- 2 (hereinafter, "Sherman Declaration");
- 3 7. Respondent's Cross-Motion and Opposition;
- 4 8. Declaration of Respondent Dyer in Opposition to the Department's Motion for
- 5 Summary Judgment and in Support of Dyer's Motion for Summary Judgment
- 6 Reversing the Department's Denial of His Loan Originator's License (hereinafter,
- 7 "Respondent's Declaration");
- 8 9. Respondent's Reply; and
- 9 10. Initial Order.

11 1.0 Summary of the Case

12 This case concerns whether it was permissible for the Department to deny Respondent a
13 Loan Originator License (hereinafter, "License") by reason of Respondent having entered into
14 a Consent Order¹ (hereinafter, "Consent Order") with the Department's Division of Securities
15 (hereinafter, "Division of Securities") on May 24, 2004, in which respondent agreed to
16 permanent revocation of his securities salesperson's license and agreed not to make application
17 for nor be granted a broker-dealer, investment advisor, securities salesperson, or investment
18 advisor representative license in Washington State. A prospective licensee is automatically
19 disqualified from obtaining a License if he or she has had a license issued under this chapter or
20 any similar state statute suspended or revoked within five years of the filing of the application
21 in question.²

23 2.0 Preliminary Considerations

24 2.1 Standards for Summary Judgment in Administrative Actions. The Director
25 takes note preliminarily of the following standards which are to be applied to motions for
26 summary judgment in an administrative action under the Administrative Procedures Act,
27 Chapter 34.05 RCW (hereinafter, "APA") :

28 2.1.1 Standards for Granting Summary Judgment. The Department has
29 adopted the Model Rules of Procedure, Chapter 10-08 WAC, except to the extent of any
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33 ¹ Washington State Department of Financial Institutions, Securities Division, No. S-03-009-04001.

34 ² RCW 19.146.310(1) (c) and WAC 208-660-350(2)(b).

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

16 2.1.2 Proper Consideration by Director Absent Petition for Review.

17 Respondent did not file a petition for review contesting the Initial Order. However, even when
18 a party has not filed a petition for review, the Director still has the authority and duty, prior to
19 entering a Final Decision and Order, to consider whether any part of the Initial Order is not
20 supported by the record⁹ and whether confirmation of the Initial Order, without modification,
21 would be an error of law. Indeed, with regard to conclusions of law as contained in the Initial
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25 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
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 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
29 modify additional requirements imposed by statute, including the Administrative Procedure Act."

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

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

32 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
33 (2000).

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

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

1 Order, the Director is obliged, in the manner of a reviewing court, to consider the statutes and
2 implementing regulations of the Division under the error of law standard, which permits the
3 Director to substitute his judgment for that of the Division's Statement of Charges and the
4 Administrative Law Judge's Initial Order.¹⁰

5 2.1.3 No Authority to Address Constitutional Questions. Even though the
6 Director must be respectful of the constitutional rights of the Respondent (e.g., due process),¹¹
7 the Director, like the Administrative Law Judge, has no authority to address constitutional
8 questions. The Director concurs with the Administrative Law Judge, as the latter articulated in
9 the Initial Order, that administrative law judges lack authority to invalidate legislation and
10 agency regulations. For the same reason, the Director lacks authority to officially consider the
11 constitutionality of laws enacted by the Legislature with the express requirement that they be
12 administered by the Department. Accordingly, the Director must decline to consider assertions
13 of unconstitutionality raised by Respondent in his Cross-Motion. See Bare v. Gorton, 84
14 Wn.2d 380, 383 (1974), citing United States v. Kissinger, 250 F.2d 940 (3d Cir. 1958); *cert.*
15 *denied*, 356 U.S. 958 (1958). 3 K. Davis, Administrative Law Treatise, § 20.04, at p. 74 (1958);
16 see also Johnson v. Robison, 415 U.S. 361, 368 (1974), quoting Oestereich v. Selective Serv.
17 System Local Bd. No. 11, 393 U.S. 233, 242 (1968); accord, Califano v. Sanders, 430 U.S. 99,
18 109 (1977).

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21 3.0 Appropriateness of Summary Judgment. The Director concurs with the Administrative
22 Law Judge that there was no genuine issue of material fact in this case on account of
23 Respondent having entered into a Consent Order with the Division of Securities on May 24,
24 2004, which was within 5 years of the date of his License application. This automatically
25 disqualifies Respondent from obtaining a License as a matter of law, pursuant to RCW
26 19.146.310(1) (c) and WAC 208-660-350(2)(b).

27 4.0 Final Order. The Director, therefore, (1) reaffirms all of the findings of fact and
28 conclusions of law contained in the Initial Order, (2) confirms the grant of summary judgment
29 in favor of the Division and (3) denies Respondent's Cross-Motion for summary judgment.

30 IT IS HEREBY ORDERED AS FOLLOWS:
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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 Footnote 4 at p. 4 above.

1 4.1 Denial of License. The application of Respondent, DANIEL DWIGHT DYER,
2 for a Loan Originator License is denied.

3 4.2 Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to
4 file a Petition for Reconsideration stating the specific grounds upon which relief is requested.
5 The Petition must be filed in the Office of the Director of the Department of Financial
6 Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail
7 at P.O. Box 41200, Olympia, Washington 98504-1200, within ten (10) days of service of this
8 Final Order upon Respondent. The Petition for Reconsideration shall not stay the effectiveness
9 of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in
10 this matter. A timely Petition for Reconsideration is deemed denied if, within twenty (20) days
11 from the date the petition is filed, the agency does not (a) dispose of the petition or (b) serve the
12 parties with a written notice specifying the date by which it will act on a petition.

13 4.3 Stay of Order. The Director has determined not to consider a Petition to
14 Stay the effectiveness of this order. Any such requests should be made in connection with a
15 Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

16 4.4 Judicial Review. Respondent has the right to petition the superior court for
17 judicial review of this agency action under the provisions of chapter 34.05 RCW. For the
18 requirements for filing a Petition for Judicial Review, see RCW 34.05.510 and sections following.

19 4.5 Service. For purposes of filing a Petition for Reconsideration or a Petition
20 for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of
21 service attached hereto.

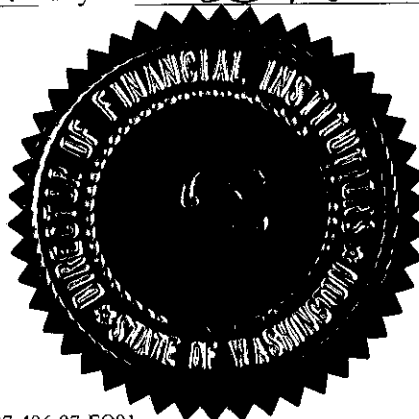
22 4.6 Effectiveness and Enforcement of Final Order. Pursuant to the Administrative
23 Procedures Act, at RCW 34.05.473, this Final Decision and Order shall be effective
24 immediately upon deposit in the United States Mail.

25 Dated at Tumwater, Washington, on this 17th day of December, 2008.

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29 WASHINGTON STATE DEPARTMENT
30 OF FINANCIAL INSTITUTIONS

31 By:

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33 Scott Jarvis
34 Director



RE: Daniel Dwight Dyer, OAH Docket No. 2008-DFI-0010, DFI No. C-07-496-07-FO01

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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 DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT AND DENYING
5 RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT must be filed with the
6 Director within ten (10) days of service of the FINAL DECISION & ORDER CONFIRMING
7 GRANT OF DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT AND DENYING
8 RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT. It should be noted that
9 Petitions for Reconsideration do not stay the effectiveness of the FINAL DECISION &
10 ORDER CONFIRMING GRANT OF DEPARTMENT'S MOTION FOR SUMMARY
11 JUDGMENT AND DENYING RESPONDENT'S CROSS-MOTION FOR SUMMARY
12 JUDGMENT. Judicial Review of the FINAL DECISION & ORDER CONFIRMING GRANT
13 OF DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT AND DENYING
14 RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT is available to a party
15 according to provisions set out in the Washington Administrative Procedure Act, RCW
16 34.05.570.

17 This is to certify that the FINAL DECISION & ORDER CONFIRMING GRANT OF
18 DEPARTMENT'S MOTION FOR SUMMARY JUDGMENT AND DENYING
19 RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT has been served upon
20 the following parties on December 17, 2008, by depositing a copy of
21 same in the United States mail, postage prepaid.

22 WASHINGTON STATE DEPARTMENT
23 OF FINANCIAL INSTITUTIONS

24 By: 

25 Susan Putzier

26 Executive Assistant to the Director

27 **Mailed to the following:**

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32 RE: Daniel Dwight Dyer, OAH Docket No. 2008-DFI-0010, DFI No. C-07-496-07-FO01