

Terms Completed

ORDER SUMMARY – Case Number: C-09-290

Name(s): America Home Mortgage Corp Inc
Arturo Hidalgo

Order Number: C-09-290-12-FO01

Effective Date: April 19, 2012

License Number: DFI – 18946, NMLS – 141281
Hidalgo: DFI – 21913, NMLS – 143476

Or NMLS Identifier [U/L] (Revoked, suspended, stayed, application denied or withdrawn)
 If applicable, you must specifically note the ending dates of terms.

License Effect: n/a

Not Apply Until: n/a

Not Eligible Until: n/a

Prohibition/Ban Until: n/a

Investigation Costs	\$96	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$150	Due	Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Assessment(s)	n/a	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Restitution	n/a	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Judgment	n/a	Due	Paid <input type="checkbox"/> Y <input type="checkbox"/> N	Date
Satisfaction of Judgment Filed?		<input type="checkbox"/> Y <input type="checkbox"/> N		
No. of Victims:				

Comments: _____



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

BRIEF ADJUDICATIVE PROCEEDING

IN THE MATTER OF INVESTIGATING
Whether there has been a violation of the
Washington Mortgage Broker Practices Act (Ch.
19.146 RCW) by:

AMERICA HOME MORTGAGE CORP INC.;
ARTURO HIDALGO, Owner & Designated
Broker,

Respondents.

No. C-09-290-12-FO01

FINAL DECISION AND ORDER

THIS MATTER having come before Scott Jarvis, Director (“Director”) of the Department of Financial Institutions (“Department”), on Petition for Review of the Initial Decision and Order (“Initial Order”) in the above-referenced Brief Adjudicative Proceeding (“BAP”) for the Division of Consumer Services (“Division”), in relation to a Statement of Charges and Notice of Intention to Enter an Order to Impose Fine and Collect Investigation Fee (“Statement of Charges”) under the Washington Mortgage Broker Practices Act, Chapter 19.146 RCW (“Act”), against AMERICA HOME MORTGAGE CORP INC. and ARTURO HIDALGO, Respondents (“Respondents”); and Respondents having filed on March 11, 2010, a Petition for Review (“Petition for Review”), and the Division having filed a Reply Memorandum as of March 24, 2010 (“Reply Memorandum”); and there appearing to the Director from the record that there is good and sufficient cause, as a matter of the Director’s discretion, for entry of a final decision and order substantially modifying the Initial Order and imposing a minimum penalty to Respondents;

NOW, THEREFORE, THE DIRECTOR HEREBY MAKES FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL DECISION AND ORDER, AS FOLLOWS:

1. FINDINGS OF FACT. The Director does not disturb and affirms and incorporates herein by this reference the Findings of Fact of the Corrected Initial Order dated February 19, 2010.

2. CONCLUSIONS OF LAW. The Director does not disturb and affirms and incorporates herein by this reference the Conclusions of Law of the Corrected Initial Order dated February 19, 2010.
3. DIRECTOR'S DISCRETION & ADDITIONAL CONSIDERATIONS. However, notwithstanding the Findings of Fact and Conclusions of Law set forth above, the Director has the discretion and broad administrative authority to administer the Act in a manner that is reasonable and fair under each case, which includes on occasion taking into consideration what appears to be exigent circumstances involving a particular licensee and where there has been no showing, either in the Petition for Review or the Division's Reply Memorandum, of an actual harm to the public presented by the alleged violation. Moreover, in the interest of preserving the "brief nature" of these Brief Adjudicative Proceedings, the Director has the discretion by way of issuing a final decision and order to take into consideration the content of the Petition for Review, even though such content makes arguments that the Director has typically reserved in other cases for a Petition for Reconsideration. Therefore, the Director makes extraordinary findings (notwithstanding the Findings of Fact and Conclusions of Law set forth above) as follows:
 - a. It is implicit in the language of the Brief Adjudication Procedures set forth in WAC 208-660-009 that, in the interest of brevity, the initial hearing officer has the authority to request and consider documentation from the parties that has not been subjected to the formal rules of evidence required in regular adjudicative hearings or in a court of law. As such, the Director in such cases, acting upon a petition for review or reconsideration of an initial order of a hearing officer, may also consider documentation that would not otherwise meet the formal rules of evidence. Moreover, the Director has the discretion to make a presumption of good faith of both parties in the veracity of their submissions, even though this presumption may be overcome if the Director perceives internal inconsistencies and extrinsic facts to the contrary.
 - b. It appears to the Director that notwithstanding the Findings of Fact and Conclusions of Law set forth above, the Respondents have presented in their Petition for Review a

- rare instance for the granting of leniency in this type of case, owing to personal financial hardship. Respondent Arturo Hidalgo has indicated that when the national mortgage crisis spread to Washington State in 2008, Mr. Hidalgo and his wife laid off every employee of America Home Mortgage Corporation Inc. By 2009, Mr. Hidalgo and his wife had a child, could not keep up with their regular bills because of the downturn in the economy, and even had trouble paying some extraordinary medical bills involving their child. As of 2010, when the Petition for Review was filed, the mortgage industry had come to a “complete standstill,” in the words of Mr. Hidalgo; and the Director takes general notice of this fact. To add to these problems, the Director accepts Mr. Hidalgo’s statement in his Petition for Review that their now tiny, “mom-and-pop” mortgage brokerage was the family’s only source of livelihood.
- c. The Petition for Review appears to the Director to present a good faith argument that America Home Mortgage Corporation Inc. was a small “mom-and-pop” operation which fell victim to the financial crisis and that, faced with overwhelming burdens, could neither focus on technical filing requirements in a timely manner, much less afford to pay a fine for late filing of a Mortgage Broker Annual Report (“MBAR”) in the amount of \$1,500.00.
 - d. The Director notes, however, that unlike many licensees who simply ignored filing an MBAR until a Statements of Charges was filed against them, Mr. Hidalgo, faced with the distraction of his financial hardship, was respectful enough of the Department to at least file the MBAR prior to being charged with a violation.
 - e. The Director is moved by Mr. Hidalgo’s frank admission of hardship and inability to pay a fine of \$1,500, and notes for the record that the frankness of the Petition for Review is unprecedented among any other case of this type which has previously come before the Director in a Brief Adjudicative Proceeding since the Division began charging licensees for late filing and failure to file MBARs.
 - f. The Director is of the view that the fine of \$1,500.00 sought to be imposed by the Corrected Initial Order is excessive under the circumstances and that a fine of only \$150.00 is more appropriate under the peculiar circumstances presented by the

Petition for Review, and then only because it appears of record that Mr. Hidalgo continues to act as a mortgage loan officer. In this regard, the Director cannot disregard the late filing for two consecutive years.* But a fine of \$1,500.00 in this peculiar case does not support the Department's general policy of deterrence in regard to the imposition of fines. Moreover, Mr. Hidalgo is not requesting the imposition of no fine but rather a reduced fine to reflect his financial hardship. Therefore, the imposition of a fine of \$150.00 is undertaken only in consideration of Mr. Hidalgo's ongoing participation in the industry as a mortgage loan officer and the need of the Department to uphold a general policy of respect for and compliance with filing requirements by all its licensees.

g. Finally, the Director declares that this Final Decision and Order is unique to Respondents and the facts of their case, is of no precedent in any other case, and bears no reflection on the enforcement policies of the Division, which appears to have been unaware of Respondents' hardship until the Petition for Review was made.

4. FINAL DECISION AND ORDER. Based upon the foregoing, the Director makes the following Final Decision and Order:

a. Respondents, AMERICA HOME MORTGAGE CORP INC., and ARTURO HIDALGO, shall, jointly and severally, pay to Washington State Department of Financial Institutions a fine of One Hundred Fifty Dollars (\$150.00) as and for untimely filing of the 2008 Mortgage Broker Annual Report; and

b. Respondents, AMERICA HOME MORTGAGE CORP INC., and ARTURO HIDALGO, shall, in addition, jointly and severally, pay to Washington State Department of Financial Institutions an investigative fee of Ninety-Six Dollars (\$96.00).

5. RECONSIDERATION. Pursuant to RCW 34.05.470, Respondents have 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

* The Division has only brought charges in these types of cases against licensees who either failed to file or filed late two consecutive years.

service of the Final Order upon Respondents. 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. 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.
7. JUDICIAL REVIEW. Respondents have the right to petition the superior court for judicial review of this agency action under the provisions of chapter 34.05 RCW. [For the information regarding the requirements for filing a Petition for Judicial Review, see the Notice to Parties following the Director's signature below.]
8. NON-COMPLIANCE WITH ORDER. If you do not comply with the terms of this order, the Department may seek its enforcement by the Office of Attorney General to include the collection of the fines, fees and restitution imposed herein.
9. 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.

Dated this 19th day of April, 2012, at Tumwater, Washington.


SCOTT JARVIS, Director



State of Washington

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

BRIEF ADJUDICATIVE PROCEEDING

IN THE MATTER OF INVESTIGATING
Whether has been a violation of the Washington
Mortgage Broker Practices Act (Ch. 19.146 RCW)
by:

AMERICA HOME MORTGAGE CORP INC.,

Respondent.

DCS – BAP – C-09-290-09-IO

CORRECTED INITIAL DECISION AND ORDER

THIS CORRECTED INITIAL DECISION AND ORDER SUPERSEDES AND REPLACES THE INITIAL DECISION AND ORDER ENTERED ON FEBRUARY 16, 2010, IN THE ABOVE-ENUMERATED CAUSE. THE SUPERSEDED INITIAL DECISION AND ORDER MISSPELLED THE NAME OF THE RESPONDENT.

THIS MATTER having come before Joseph M. Vincent, General Counsel for the Department of Financial Institutions (“Department”), sitting in his capacity as Presiding Officer (“Presiding Officer”) for Brief Adjudicative Proceedings (“BAP”) for the Division of Consumer Services (“Division”), in relation to a State of Charges and Notice of Intention to Enter an Order to Impose Fine and Collect Investigation Fee (“Statement of Charges”) under the Washington Mortgage Broker Practices Act, Chapter 19.146 RCW (“Act”), against AMERICA HOME MORTGAGE CORP INC., the Respondent (“Respondent”);

NOW THEREFORE, the Presiding Officer issues the following Findings of Fact, Conclusions of Law, and Initial Decision and Order:

1.0 RECORD

The Presiding Officer has considered the following material documents, which comprise the relevant record in this matter (“Record”):

1.1 Statement of Charges, dated September 9, 2009;

- 1.2 Request for Brief Adjudicative Proceeding, received by the Division on September 16, 2009, in which the authorized representative of Respondent, Art Hidalgo (“Representative”) declined a qualified interpreter;
- 1.3 Letter from James Brusselback, Enforcement Chief of the Division, dated September 17, 2009;
- 1.4 Notice of Assignment and Time to File Additional Materials, from the Presiding Officer, dated October 15, 2009;
- 1.5 Correspondence from Representative dated October 19, 2009; and
- 1.6 Letter to William Halstead, Financial Legal Examiner in the Division, dated December 15, 2008.

2.0 FINDINGS OF FACT

Based upon the Record, the following facts are undisputed as between the Division and the Respondent:

- 2.1 Art Hidalgo is the authorized representative of Respondent.
- 2.2 Respondent was required to file a Mortgage Broker Annual Report (“MBAR”) of mortgage activity with the Division on or before March 31st of every year following any year in which it held a mortgage broker license.
- 2.3 The 2008 MBAR was due to the Division by March 31, 2009, but the Division did not receive it timely.
- 2.4 The letter to William Halstead dated December 15, 2008, was not the same as the 2008 MBAR.
- 2.5 The Department did not issue its Statement of Charges until September 9, 2009.
- 2.6 The Representative’s correspondence does not deny that the 2008 MBAR, as such, was filed untimely.
- 2.7 The Representative, as principal for Respondent, was on notice of the importance and legal requirement of timely filing of an MBAR on or before March 31st of each year for as long as Respondent remains a licensee.

- 2.8 The MBAR is a tool for measuring the activity of Mortgage Broker Licensees so that the Division may allocate its scarce resources in determining such matters as which Mortgage Broker Licensees ought to be examined. It is not an “annual report” in the manner, for example, of renewing one’s corporation license with the Secretary of State. Because of the MBAR’s purpose, it is essential that it be filed – and filed timely. Every licensee is on notice of this distinction by statute and by rule.
- 2.9 Respondent did not treat the official MBAR filing requirement adequately.
- 2.10 Two staff hours were devoted to this investigation.

3.0 CONCLUSIONS OF LAW

Based upon the Findings of Fact above, the Presiding Officer must conclude, as follows:

- 3.1 The letter to William Halstead did not take the place of the 2008 MBAR requirement.
- In its failure to timely file the 2008 MBAR, Respondent violated RCW 19.146.290(1) and WAC 208-660-400(1), (2), (3) and (4).
- 3.2 Pursuant to RCW 19.146.220(2)(e), the Department may impose fines on a Mortgage Broker Licensee for any violation of the Act.
- 3.3 A fine of \$1,500.00 is permitted under the Act.
- 3.4 Pursuant to RCW 19.146.228(2), WAC 208-660-520 and WAC 208-660-550(4), upon completion of any investigation of the books and records of a licensee, the Department will furnish to the licensee a billing to cover the cost of investigation.
- 3.5 The investigative charge will be calculated at the rate of \$48 per hour for each staff person of the Department devoted to the investigation.

4.0 INITIAL DECISION AND ORDER

Based upon the Findings of Fact and Conclusions of Law set forth above, IT IS HEREBY ORDERED THAT:

- 4.1 Respondent, AMERICA HOME MORTGAGE CORP INC., pay a fine of One Thousand Five Hundred Dollars (\$1,500.00); and
- 4.2 Respondent, AMERICA HOME MORTGAGE CORP INC., pay an investigative fee of Ninety-Six Dollars (\$96.00).

Dated and mailed on February 19, 2010, at Tumwater, Washington.



Joseph M. Vincent, Presiding Officer
Brief Adjudicative Proceedings
Division of Consumer Services
WASHINGTON STATE DEPARTMENT OF
FINANCIAL INSTITUTIONS
P.O. Box 41200
Olympia, Washington 98504-1200
Phone: (360) 902-0516
E-Fax: (360) 704-7036

FURTHER APPEAL RIGHTS

Under the Washington Administrative Procedures Act, Chapter 34.05 RCW, and WAC 10-08-211, any party to an adjudicative proceeding may file a *Petition for Review* of this Initial Decision and Order. Any *Petition for Review* shall be filed with the Director of the Department of Financial Institutions within twenty (20) days of service of the Initial Decision and Order. **The deadline to file a Petition for Review is March 11, 2009.**

Address for filing the Petition for Review:

Scott Jarvis, Director
Washington State Department of Financial Institutions
P.O. Box 41200
Olympia, Washington 98504-1200

A copy of any such *Petition for Review* must also be served upon the Division of Consumer Services, Washington State Department of Financial Institutions, P.O. Box 41200, Olympia, Washington 98504-1200, at the time the *Petition for Review* is filed with the Director.

A *Petition for Review* shall specify the portions of the *Initial Decision and Order* to which exception is taken and shall refer to the evidence of record which is relied upon to support the *Petition for Review*. Any party may file a reply to a *Petition for Review*. Replies must be filed with the Director within ten (10) days of the date of the service of the *Petition for Review*, and copies of the reply must be served upon all other parties or their representatives at the time the reply is filed with the Director.

At the time for filing a *Petition for Review* has elapsed, the Director of the Washington State Department of Financial Institutions will issue a *Final Decision and Order* in this matter. In accordance with RCW 34.05.470 and WAC 10-08-215, any *Petition for Reconsideration* of such *Final Decision and Order* must be filed with the Director within ten (10) days of the service of the *Final Decision and Order*. **NOTE: *Petitions for Reconsideration* do not stay the effectiveness of the *Final Decision and Order*.**

Judicial Review of the *Final Decision and Order* is available to a party according to the provisions set out in the Washington Administrative Procedures Act, at RCW 34.05.570.

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

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

AMERICA HOME MORTGAGE CORP INC,

Respondent.

NO. C-09-290-09-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO IMPOSE FINE AND COLLECT
INVESTIGATION FEE

INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act). After having conducted an investigation pursuant to RCW 19.146.235, and based upon the facts available as 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:

I. FACTUAL ALLEGATIONS

1.1 Respondent America Home Mortgage Corp Inc (Respondent) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker at all times relevant to the conduct alleged.

1.2 Failure to Timely File Mortgage Broker Annual Report. By March 31, 2009, Respondent was required to file an annual report of mortgage broker activity to include the total number of closed loans originated and the total volume of closed loans originated. Respondent filed the 2008 mortgage broker annual report after April 30, 2009. Respondent also did not timely file the 2007 mortgage broker annual report.

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

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II. GROUNDS FOR ENTRY OF ORDER

2.1 Requirement to Timely File Mortgage Broker Annual Report. Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.290(1) and WAC 208-660-400(1), (2), (3), and (4) for failing to timely file the mortgage broker annual report.

III. AUTHORITY TO IMPOSE SANCTIONS

3.1 Authority to Impose Fine. Pursuant to RCW 19.146.220(2)(e) the Director may impose fines on a licensee or other person subject to the Act for any violations of the Act.

3.2 Authority to Collect Investigation Fee. Pursuant to RCW 19.146.228(2), WAC 208-660-520, and WAC 208-660-550(4), upon completion of any investigation of the books and records of a licensee or other person subject to the Act, the Department will furnish to the licensee or other person subject to the Act a billing to cover the cost of the investigation. The investigation charge will be calculated at the rate of \$48 per hour that each staff person devoted to the investigation.

IV. NOTICE OF INTENTION TO ENTER ORDER

Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 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 19.146.220, RCW 19.146.221 and RCW 19.146.223. Therefore, it is the Director's intention to ORDER that:

4.1 Respondent America Home Mortgage Corp Inc pay a fine of \$1,500; and

4.2 Respondent America Home Mortgage Corp Inc pay an investigation fee, which as of the date of these charges is \$96 calculated at \$48 per hour for two staff hours devoted to the investigation.

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1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intention to Enter an Order to Impose Fine and Collect
3 Investigation Fee (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220,
4 RCW 19.146.221, RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05
5 RCW (The Administrative Procedure Act). Respondent may make a written request for a Brief Adjudicative
6 Proceeding as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR BRIEF
7 ADJUDICATIVE PROCEEDING accompanying this Statement of Charges.

8 Dated this 9th day of September, 2009.

9
10 [Redacted Signature]

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

13 Presented by:

14 [Redacted Signature]

15 FATIMA BATIE
16 Financial Legal Examiner Supervisor

17 Approved by:

18 [Redacted Signature]

19 JAMES R. BRUSSELBACK
20 Enforcement Chief

