ORDER SUMMARY – Case Number: C-12-1028

Name: Lisa K. Roach d/b/a Financial Loan Center

Order Number: C-12-1028-14-FO01

Effective Date: December 1, 2014

License Number: Unlicensed
Or **NMLS Identifier**

License Effect: N/A

Not Apply Until: December 1, 2019

Not Eligible Until: December 1, 2019

Prohibition/Ban Until: December 1, 2019

Investigation Costs	$595.20	Due	Paid ☐ Y ☒ N	Date
Fine	$3,000	Due	Paid ☐ Y ☒ N	Date
Assessment(s)	$	Due	Paid ☐ Y ☐ N	Date
Restitution	$1,295	Due	Paid ☐ Y ☒ N	Date
Judgment	$	Due	Paid ☐ Y ☐ N	Date
Satisfaction of Judgment Filed?		☐ Y ☐ N		
No. of Victims:		1		

Comments: Cease and Desist engaging in the business of a mortgage broker or loan originator

State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF DETERMINING Whether there has been a violation of the Washington Mortgage Broker Practices Act by: LISA K. ROACH d/b/a FINANCIAL LOAN CENTER, Respondent.	OAH No.: 2013-DFI-0039 DFI No.: C-12-1028-14-FO01 FINAL DECISION & ORDER MODIFYING INITIAL ORDER BUT AFFIRMING SUMMARY JUDGMENT

THIS MATTER has come before the Director ("Director") of the Washington State Department of Financial Institutions ("Department"), pursuant to the Washington Administrative Procedures Act, at RCW 34.05.464, for entry of the Director's Final Decision & Order.

1.0 PROCEDURAL HISTORY & RECORD

On March 28, 2013, the Director, through his designee, the Director of the Division of Consumer Services, Deborah Bortner, issued a Statement of Charges and Notice of Intention to Enter an Order to Cease and Desist Business, Prohibit from Industry, Order Restitution, Impose Fine, and Collect Investigation Fee, No. C-12-1028-13-SC01 ("Statement of Charges"), against Lisa K. Roach d/b/a Financial Loan Center ("Respondent"). On March 28, 2013, the Division of Consumer Services ("Division") served Respondent with the Statement of Charges and accompanying documents, sent by First-Class mail and Federal Express overnight delivery. The Statement of Charges was accompanied by a cover letter dated March 28, 2013, a Notice of Opportunity to Defend and Opportunity for Hearing, and a blank Application for Adjudicative Hearing for Respondent. On April 16, 2013, Respondent filed an Application for Adjudicative

Hearing. On June 24, 2013, the Department made a request to the Office of Administrative Hearings ("OAH") to assign an Administrative Law Judge ("ALJ") to schedule and conduct a hearing on the Statement of Charges.

On July 9, 2013, ALJ Mark Kim ("ALJ Kim") issued a Notice of Conference scheduling a prehearing conference on Wednesday, August 7, 2013, at 3:00 p.m.

On August 7, 2013, Respondent and a representative for the Division attended a telephonic prehearing conference.

On November 1, 2013, the Division filed a Motion for Summary Judgment. On February 13, 2014, Respondent filed a letter response, which was unsigned and unsworn ("Respondent's February 13th Response"). On March 5, 2014, the Division filed its reply ("Division's Reply"). On March 12, 2014, Respondent filed a signed letter under declaration of penalty of perjury and in affidavit form ("Respondent's March 12th Response").

On March 13, 2014, Respondent and a representative for the Division appeared at a motion hearing. Following argument at the motion hearing, the Division was directed to provide supplemental documentation. On March 20, 2014, the Division submitted its supplemental declaration with attachments ("Division's Supplemental Declaration"). On March 25, 2014, Respondent filed a response under declaration of penalty of perjury and in affidavit form ("Respondent's March 25th Response"). On March 31, 2014, Respondent filed additional documentation ("Respondent's March 31st Filing").

On May 21, 2014, ALJ Kim issued an Order Re: Summary Judgment ("Summary Judgment Order"). On May 21, 2014, ALJ Kim mailed the Summary Judgment Order to Respondent. This Summary Judgment Order made Findings of Fact and Conclusions of Law, granted the Division's Motion for Summary Judgment, and affirmed the Division's Statement of Charges.

Pursuant to RCW 34.05.464 and WAC 10-08-211, Respondent had twenty (20) days from the date of service of the Summary Judgment Order to file a Petition for Review of the Order. Respondent did not file a Petition for Review during the statutory period.

The record presented to the Director for his review and for entry of a Final Decision & Order includes the entire Record on Review from OAH, including the following:

A. Statement of Charges, cover letter dated March 28, 2013, and Notice of Opportunity to Defend and Opportunity for Hearing, with documentation of service;

B. Application for Adjudicative Hearing for Lisa K. Roach d/b/a Financial Loan Center;

C. Request to OAH for Assignment of Administrative Law Judge;

D. Notice of Conference dated July 9, 2013, with documentation of service;

E. Notice of Hearing and Scheduling Order dated August 8, 2013, with documentation of service;

F. The Motion for Summary Judgment;

G. Motion Briefing Schedule and Notice of Motion Hearing, dated February 3, 2014;

H. The Respondent's February 13th Response;

I. The Division's Reply;

J. The Respondent's March 12th Response;

K. The Division's Supplemental Declaration;

L. Respondent's March 25th Response

M. The Respondent's March 31st Filing; and

N. The Summary Judgment Order.

2.0 DIRECTOR'S CONSIDERATIONS

The Director reviews the record in each matter calling for entry of a final decision and order, even in the absence of a petition for review. This is done in cases of initial orders by default to make sure (1) that the statement of charges by a Division raises a claim upon which relief may be granted

and (2) that the initial order sought to be affirmed contains no errors of law. In contested matters from which no petition for review has been made, the Director likewise does not simply "rubber-stamp" the initial order of an administrative law judge. Rather, the Director endeavors to assure that the initial findings of fact conform to the permissible evidence and that the initial conclusions of law contain no error.

On very rare occasion, the Director discovers material errors in initial orders absent any petition for review by one or both parties. In such occasions, it is incumbent upon the Director to correct those errors, whether they result in a different outcome for the parties or not.

This matter squarely presents one of those rare occasions.

2.1 Strict Reliance on CR 56 Was Non-Reversible Error. The Director concurs in the result of the Summary Judgment Order and in the salient portion of its reasoning: There is no genuine issue of material fact requiring an evidentiary hearing (trial), and the Division is entitled to summary judgment as a matter of law. However, the Director is of the view that ALJ Kim committed error (albeit, *not* reversible error) in his strict reliance on the procedural application of Superior Court Rule 56 ("CR 56"). In the absence of either the Model Rules of Procedures (Chapter 10-08 WAC) or the Department's Rules of Administrative Procedure (Chapter 208-08 WAC) incorporating by reference all or a portion of CR 56, it was error for ALJ Kim to rely upon and actually cite any portion of CR 56 in his Findings of Fact in the Summary Judgment Order.[1]

One of the issues for ALJ Kim on summary judgment was the admissibility (if at all) of *unsigned and unsworn statements* by Respondent. In any adjudicative proceeding brought by a Washington State agency, the rule as to what is admissible before an administrative law judge is

[1] However, the Director is of the view that it is not error for either ALJ Kim or the Director to cite general principles derived from case law as to the substantive standards for ruling on a summary judgment motion.

more liberal than a hearing or trial in a judicial court.[2] However, the Washington Administrative Procedures Act states that all testimony of parties and witnesses, including written statements, must be by oath or affirmation.[3] The requirements for oath or affirmation, including incident to a written statement, are prescribed under Washington State law and are applicable to administrative proceedings.[4] One acceptable form of written oath or affirmation under Washington State law is prescribed in the Washington Notary Act.[5] To the extent that an affidavit is a sworn written statement before a notary public, it fulfills the oath or affirmation requirement for all testimony in adjudicative proceedings under the Washington Administrative Procedures Act. In lieu of oath or affirmation, the *judicial courts* of Washington State recognize that an unsworn statement (declaration), if properly made under penalty of perjury, is an acceptable substitute to an affidavit.[6] In turn, the Office of Administrative Hearings ("OAH"), of which ALJ Kim is an assigned administrative law judge, was empowered to adopt rules to further implement the Washington Administrative Procedures Act and instruct OAH administrative law judges on the conduct of hearings, including the admissibility of written statements intended as witness testimony.[7] The OAH administrative rule authorizing summary judgment motions is silent on the subject of the form of and

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[2] RCW 34.05.452(1) declares: "***Evidence, including hearsay evidence, is admissible if in the judgment of the presiding officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs.*** The presiding officer shall exclude evidence that is excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this state. The presiding officer may exclude evidence that is irrelevant, immaterial, or unduly repetitious." [Emphasis added.]

[3] RCW 34.05.452(3) declares: "All testimony of parties and witnesses ***shall*** be made under oath or affirmation." See *Western Washington Operating Engineers Apprenticeship Committee v. Washington State Apprenticeship And Training Council*, 144 Wash.App. 145, 161, 190 P.3d 506, 514 (Div. 2 – 2008); see also WAC 10-08-160.

[4] See RCW 5.28.050 and 5.28.060.

[5] Washington Notary Act, chapter 42.44 RCW, including, especially RCW 42.44.090(2) and RCW 42.44.130.

[6] Washington Courts General Rule 13 (GR 13) declares:

> a) *Unsworn Statement Permitted.* Except as provided in section (b), whenever a matter is required or permitted to be supported or proved by affidavit, the matter may be supported or proved by an unsworn written statement, declaration, verification, or certificate executed in accordance with RCW 9A.72.085. The certification or declaration may be in substantially the following form:
> I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:
> (Date and Place) (Signature)

[7] RCW 34.12.080.

time, place, and manner of submitting written statements of parties and/or other witnesses in lieu of sworn oral testimony subject to cross-examination.[8] Moreover, while the Department is empowered to promulgate its own special rules with respect to summary judgment,[9] it has not done so. Accordingly, in the absence of any administrative rules or guidance, OAH administrative law judges have been urged by some parties and been inclined to look to Washington Superior Court Rule 56 (CR 56) for procedural guidance in the conduct of summary judgment proceedings. While this may seem fair and practical, it is not permissible to rely upon and cite CR 56 in conclusions of law in the absence of the Washington Administrative Procedures Act and the Model Rules stating that one can do so.

As it so happens, ALJ Kim did not have to rely upon the language of CR 56 in order to render inadmissible *unsigned* and unsworn statements of Respondent. Governing law and rule, as set forth above, would have sufficed.

However, our discussion above does beg the question of whether unsworn declarations made under penalty of perjury in lieu of affidavit, which conform to the standards that the *judicial* courts permit under GR 13,[10] are an acceptable form of written evidence incident to a summary judgment motion in an adjudicatory proceeding before this Department. While the Washington Administrative Procedures Act states that all testimony is to be by oath or affirmation,[11] the Director is of the view that in the absence of statutory or regulatory guidance as to the conduct of summary judgment proceedings,[12] some latitude is permissible in the acceptance of declarations under penalty of perjury

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[8] WAC 10-08-135.

[9] RCW 34.05.250.

[10] See again, *Footnote 6*.

[11] See again, *Footnote 3*.

[12] WAC 10-08-135.

in lieu of sworn affidavits. The Director reaches this conclusion based on a statutory construction of the *entire* Washington Administrative Procedures Act as one expression of the Legislature, which is often referred to as the "Whole Act Rule."[13]

Although this matter ultimately turns on evidence presented in the form of two *sworn affidavits*, the Director takes this opportunity to declare that, for purposes of this matter and all other adjudicatory proceedings under authority of the Department, the legislative intent of RCW 34.05.452(3) relates to oral testimony subject to oral cross-examination at a hearing and not to the admissibility of declarations in lieu of affidavits incident to summary judgment motions. Further, the Director declares that pursuant to RCW 34.05.452(1), the Director has the authority to find that "[e]vidence . . . is admissible if in the judgment of the [Director] it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs." Accordingly, the Director also declares that for purposes of this matter and all other summary judgment motions before the Department, declarations in lieu of affidavits are permissible evidence if they are consistent with the standards set forth in GR 13 applicable to Washington judicial courts.[14]

2.2 <u>ALJ Kim Committed Error by Citing a "Preponderance of the Evidence" and "Weight of the Evidence" Approach</u>. In Conclusion of Law 9 ("COL 9") of the Summary Judgment Order,[15] ALJ Kim applies a "preponderance of the evidence" standard in assessing the evidence presented and argued by the Division. Then again, in Conclusion of Law 11 ("COL 11") of the Summary

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[13] *Washington State Republican Party v. Washington State Pub. Disclosure Comm'n*, 141 Wash. 2d 245, 280-281, 4 P. 3d 808, 827-828(2000); *Davis v. Dep't of Licensing*, 137 Wash.2d 957, 970-971, 977 P.2d 554, 559-560 (1999); *City of Seattle v. State*, 136 Wash.2d 693, 698, 965 P.2d 619, 621 (1998); *State v. Talley*, 122 Wash.2d 192 213, 858 P.2d 217, 228-229 (1993).

[14] See again, *Footnote 5*. Based upon the discussion above in *Subsection 2.1*, the Director also concludes that citation of CR 56 was non-reversible error requiring that this Final Decision & Order modify the Initial Order's Conclusions of Law.

[15] "In this matter, the Department met its initial burden, ***on a preponderance of the evidence standard***, that there is no genuine issue of material fact. That the Respondent was not licensed by the Department to conduct business as a mortgage broker or loan originator in the State of Washington. That Lisa Roach conducted business under Financial Loan Center. And that Financial Loan Center offered to provide loan modification services for a Washington resident." [Emphasis added.] Summary Judgment Order, COL 9, p. 6.

Judgment Order,[16] ALJ Kim states that he has "weighed the evidence" and been led to the conclusion that there is a "preponderance of the evidence" that there is no genuine issue of material fact.

This was error by ALJ Kim. In relation to a summary judgment motion, ALJ Kim was not permitted to *weigh* the merits of evidence as such in ruling on a motion for summary judgment, nor was he entitled to resolve any existing factual issues.[17] By declaring that he has been "weighing the conforming evidence" by a "preponderance of the evidence," ALJ Kim implied that the permissible evidence is subject to at least an inference of a question of fact. Moreover, ALJ Kim committed error by in effect applying a *trial standard of proof* in his choice of language in his Conclusions of Law rather than the standards applicable to summary judgment.

The Director is capable, however, of correcting this error in his capacity of being the only person with authority to issue a final order. In this capacity, the Director may elect to consider the Motion for Summary Judgment *de novo*,[18] construing all facts and reasonable inferences from those facts in the light most favorable to the nonmoving party.[19] In considering the summary judgment motion *de novo*, the Director is obliged to consider all permissible evidence and all reasonable inferences therefrom most favorable to Respondent.[20] Having done so, the Director has nonetheless determined that reasonable persons could reach only one conclusion.[21]

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[16] "***Weighing the conforming evidence presented for this motion, the preponderance of the evidence leads the undersigned to conclude that there is no genuine issue of material fact*** and that the Department is entitled to a judgment as a matter of law. Specifically, the evidence shows that the Respondent, Lisa Roach conducted business as Financial Loan Center and offered to provide residential loan modification services to at least one Washington resident, without being licensed by the Department as a mortgage broker or a loan originator in violation of RCW 19.146.200(1) and WAC 208-660-155." [Emphasis added.] Summary Judgment Order, COL 11, p. 7.

[17] Fleming v. Smith, 64 Wash.2d 181, 390 P.2d 990 (1964).

[18] Usually a *de novo* consideration of a motion for summary judgment would occur incident to an actual petition for review. But in the interest of full and fair decision-making, the Director hereby exercises his plenary authority to make a *de novo* consideration of the Motion for Summary Judgment.

[19] Blue Diamond Group, Inc. v. KB Seattle 1, Inc., 163 Wash.App. 449, 266 P.3d 881 (Div. 1 - 2011), published at 162 Wash.App. 1060.

[20] Reed v. Streib, 65 Wash.2d 700, 399 P.2d 338 (1965).

[21] Wood v. City of Seattle, 57 Wash.2d 469, 358 P.2d 140 (1960).

2.3. The Respondent Presented No Genuine Issue of Material Fact. The Director has determined, based upon the correct standard for summary judgment, that there is no genuine issue of material fact and that the Division is entitled to summary judgment as a matter of law but subject to the modifications made in this Final Decision & Order. In a light most favorable to the Respondent, none of the Respondent's submittals, reviewed by the Director independently or collectively, presents a genuine issue of material fact.

2.3.1 Respondent's February 13th Response. The Division was correct to argue and ALJ Kim was correct to decide that Respondent's February 13th Response could be ignored as impermissible evidence on a summary judgment motion. It is unsigned and there is no declaration under penalty of perjury. However, the Director has greater latitude in deciding whether the actions of the Department are fair and just. Therefore, the Director has taken a more liberal view toward the presence of Respondent's February 13th Response and, by way of dictum, has evaluated it to determine whether standing alone, or in combination with other evidence presented by Respondent, it raises a genuine issue of material fact. Respondent's February 13th Response declares in part:

> ". . . [Financial Loan Center was not a Mortgage Company and the company did not proffer and/or perform any type of Mortgage Services. I would like [sic] affirm that I have never had nor do I have experience – knowledge – tools or funds to operate a Mortgage Company. Please take heed that my entire employment history can show and prove that I have never been a Real Estate Agent – Loan Originator – Loan Agent – Loan Broker (ever)."

The remainder of the Respondent's February 13th Response is largely a discussion of how dissatisfied customers should resolve differences with vendors before making complaints to government and how Carmen Loreto-Hays' decision to contact the Division rather than resolve her differences with Financial Loan Center should somehow absolve Respondent from any sanction by

the Department.[22] Notice that in the language of Respondent's February 13th Response, the Respondent never specifically denies offering to perform mortgage loan modification services or accepting money from Carmen Loreto-Hays for doing so. Rather, she "dances" around the subject by simply stating that she has never been a "Real Estate Agent," "Loan Originator ," "Loan Agent," or "Loan Broker." This simply begs the question, since the activity complained of by the Division requires a *license* in Washington State to be a loan broker, originator, or agent, and in California (where Respondent has resided) a "real estate agent" license has been historically required to conduct the affairs of a loan broker, originator or agent.

There is only one statement in Respondent's February 13th Response that is worthy of consideration as to whether, if competent evidence, it would give rise to an inference of a question of fact: ". . . [T]he company ***did not proffer*** and/or perform any type of Mortgage Services." [Emphasis added.] However, in this regard, the Director is of the view that, if competent evidence, this statement is insufficient in three respects. First, Respondent never specifically denies that she personally did not "proffer" (i.e., offer) "any type of Mortgage Services." She merely makes reference to the "company." Secondly, this is merely a general denial in the fashion of a pleading (like an answer to a complaint in a judicial proceeding) that is insufficient as a matter of law to give rise to a question of fact. And third, nowhere in Respondent's February 13th Response does Respondent deny accepting money advanced by Carmen Loreto-Hays for mortgage loan modification services.

Therefore, having made the above liberal inquiry in the interest of justice and fairness, the Director may nevertheless ignore Respondent's February 13th Response (as did ALJ Kim correctly) in his review of whether Respondent has competently presented a question of material fact.

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[22] Persons aggrieved by a violation of the Washington Mortgage Broker Practices Act are under no obligation as a matter of law to negotiate a resolution of such violation with licensees (or persons subject to license) 0prior to making a complaint to the Division.

2.3.2 Respondent's March 12th Response. Respondent's March 12th Response is a sworn affidavit and is permissible competent evidence. While this document appears to have been excluded from consideration on the grounds of untimeliness (proper responses were due by February 14, 2014),[23] the Director has elected in the interest of fairness[24] to deem it admissible in his *de novo* review of the Summary Judgment Motion.

While Respondent's March 12th Response declares that "Financial Loan Center was not operating as a Mortgage Company nor did Financial Loan Center provide ANY Mortgage assistance to anyone ever," this is essentially a general denial in the same manner as an answer to a complaint filed in a judicial court. The Respondent never denies in this document that she, either in her own name or as Financial Loan Center, may have *offered* to *perform mortgage loan modification services* or that a Washington resident may have *relied* upon such an offer and *paid a fee* for such services. Indeed, like Respondent's February 13th Response, the entire rhetorical focus of Respondent's March 12th Response appears to be that she never received a complaint directly from any consumer/client. This also is not a specific denial of offering to perform mortgage loan modification services or a denial of being paid in reliance upon such an offer.

2.3.3 Respondent's March 25th Response. Respondent's March 25th Response is a *timely* sworn affidavit and is therefore permissible evidence in a summary judgment proceeding as a matter of law. However, the Director can find nothing in Respondent's March 25th Response which raises a material question of fact barring summary judgment. Respondent devotes most of this document to relating where she has resided. She also states that she "never conduct business at nor was Financial Loan Center ever located at 1432 Edinger Ave., 140 Tustin, CA. 92780." However,

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[23] See Motion Briefing Schedule and Notice of Motion Hearing, dated February 3, 2014.

[24] Upon review, the Director deems it inappropriate in this particular case not admit an otherwise competent sworn affidavit (March 12th Response) that was submitted in good faith, albeit, not in conformity with ALJ Kim's February 3rd Motion Briefing Schedule, while admitting the *later* March 25th Response as *supplemental* documentation.

Respondent does not deny that Financial Loan Center conducted business at 3990 Westerly Place, Suite 220, Newport Beach, CA 92660. Accordingly, the Director has determined there is no genuine issue of material fact presented by Respondent's March 25th Response.

2.3.4 Respondent's March 31st Filing. Respondent's March 31st Filing is late, is unsigned, and is not made as a declaration under penalty of perjury. However, in the same manner as Respondent's February 13th Response, the Director, by way of dictum and in the interest of justice and fairness, has also made a review of Respondent's March 31st Filing. If it were competent evidence, Respondent's March 31st Filing would also be insufficient to raise a genuine issue of material fact barring summary judgment. Respondent never denied her affiliation with Financial Loan Center. Although Respondent's March 31st Filing was (untimely) offered for the proposition that Respondent only resided at the "2428 Naples" address since 2000, her residency is not the real issue. Respondent does not deny that Financial Loan Center conducted business at 3990 Westerly Place, Newport Beach, CA 92660. Accordingly, the Director (like ALJ Kim) finds no reason to formally admit Respondent's March 31st Filing because its admissibility (though not required) would do nothing to advance Respondent's defense.

WHEREFORE, having articulated the Director's Considerations on review, the Director makes the following Findings of Fact and Conclusions of Law.

3.0 FINDINGS OF FACT

Based upon the Procedural History & Record (*Section 1.0* above) and the Director's Considerations (*Section 2.0*), and after making a de novo review of the complete record, the Director makes the following Findings of Fact:

3.1 On March 28, 2013, the Division issued the Statement of Charges against the Respondent, Lisa K. Roach d/b/a Financial Loan Center.

3.2 On April 16, 2013, the Respondent filed her Application for Adjudicative Hearing with the Division.

3.3 The Statement of Charges alleged that the Respondent provided or offered to provide residential mortgage loan modification services to at least one Washington consumer without being licensed to do so by the Division.

3.4 The Statement of Charges sought to issue an order to the Respondent to:

3.4.1 Cease and desist from conducting business;

3.4.2 Prohibit the Respondent from participation in the conduct of the affairs of a licensed mortgage broker;

3.4.3 Pay restitution;

3.4.4 Impose a fine; and

3.4.5 Pay an investigation fee.

3.5 On February 1, 2011, Carmen Loreto-Hays, a Washington State resident, filed a consumer complaint. In her complaint, Ms. Loreto-Hays alleged that Financial Loan Center and specifically, "Lisa Kara," were hired by her on June 2, 2010, to provide mortgage loan modification services. She alleged that Financial Loan Center did not perform the services expected.

3.6 Ms. Loreto-Hays' documentation in support of her Complaint provided the following relevant information regarding Financial Loan Center:

3.6.1 Telephone numbers; (949) 250-0494; (949) 887-9693; (949) 887-9603; (949) 887-9391; and (951) 588-3795; and

3.6.2 Address: 3990 Westerly Place, Suite 220, Newport Beach, CA 92660.

3.7 In his declaration, the Division's Financial Legal Examiner, Robert Jones, provided that the Orange County, California Clerk-Recorder's office names Lisa Roach as the owner of Financial Loan Center. No address was provided in the Clerk-Recorder's report.

3.8 The Web site of LexisNexis Accurint Reporting System for Government provides that "Lisa Kari Roach," "Lisa K Roach," and "Lisa Roach" had a relevant address of "2428 Naples, Newport Beach, CA 92660-3261, from February 1996 through May 2011. The Accurint Comprehensive Business Report provides that "Financial Loan Center" has or had the following addresses, telephone numbers, and contacts:

> 1432 Edinger Ave, Ste 140, Tustin, CA 92780-6293
> 3990 Westerly Pl, Newport Beach, CA 92660
> 3990 Westerly Pl 220, Newport Beach, CA 92660
> (949) 250-0494
> (949) 887-9391
> Lisa Roach, business contact

3.9 The Comprehensive Business Report provides a disclaimer that the information provided has errors and that "[d]ata is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified . . . ."

3.10 The Respondent's February 13th Response to the Summary Judgment Motion contains no signature as such but appears to have been sent electronically to OAH by FAX transmission from (949) 255-5091. It does contain the typewritten salutation "Regards, Lisa Roach." Respondent's February 13th Response does not contain a declaration under penalty of perjury that the statements made therein are true and correct. It contains no statement that is even a defective but good faith attempt to make such a declaration.

3.11 There is no indication that Respondent served the Division's counsel, Assistant Attorney General Mandy Weeks, with Respondent's February 13th Response. However, ALJ Kim forwarded it by email to Ms. Weeks.

3.12 The Respondent's March 12th Response is a sworn affidavit. While the Respondent's March 12th Response declares that "Financial Loan Center was not operating as a Mortgage

Company nor did Financial Loan Center provide ANY Mortgage assistance to anyone ever," the Respondent never denies in this document that she, either in her own name or as Financial Loan Center, may have *offered* to *perform mortgage loan modification services* or that a Washington resident may have *relied* upon such an offer and *paid a fee* for such services. Indeed, the entire rhetorical focus of Respondent's March 12th Response appears to be that she never received a complaint directly from any consumer/client. This also is not a specific denial of offering to perform mortgage loan modification services or a denial of being paid in reliance upon such an offer.

3.13 Respondent's March 12th Response asserts that Respondent has only lived at "2428 Naples Newport Beach, CA, 92660" since March 2000. Also she declares that she or Financial Loan Center was never located at "1432 Edinger Ave., 140 Tustin, CA, 92780."

3.14 Respondent's March 12th Response declares that "Financial Loan Center was not operating as a Mortgage Company nor did Financial Loan Center provide ANY Mortgage assistance to anyone ever." However, Respondent never specifically denies in this document that she, either in her own name or as Financial Loan Center, may have *offered* to *perform mortgage loan modification services* or that a Washington resident may have *relied* upon such an offer and *paid a fee* for such services. Indeed, the entire rhetorical focus of Respondent's March 12th Response appears to be that she never received a complaint directly from any consumer/client. This also is not a specific denial of offering to perform mortgage loan modification services or a denial of being paid in reliance upon such an offer.

3.15 Respondent's March 25th Response spends most of its words relating where Respondent has resided. Respondent also states that she "never conducted business at nor was Financial Loan Center ever located at 1432 Edinger Ave., 140 Tustin, CA. 92780." However, Respondent does not deny that Financial Loan Center conducted business at the "Westerly Place" address in Newport Beach, California.

4.0 CONCLUSIONS OF LAW

Based upon the Findings of Fact as set forth above in *Section 3.0* above and subject to the Director's Considerations as set forth above in *Subsections 2.1, 2.2 and 2.3, inclusive*, the Director makes the following Conclusions of Law:

4.1 In reviewing the Summary Judgment Motion *de novo*, the Director construes all facts and reasonable inferences from those facts in the light most favorable to the nonmoving party.[25]

4.2 The Department, and ALJ Kim, as appointed agent by and through OAH for the Department, have jurisdiction to hear and decide on the Summary Judgment Motion.[26]

4.3 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.[27]

4.4 The purpose of summary judgment is to determine if a factual issue is present that needs to be tried.[28] The summary judgment procedure exists to eliminate trials when only questions of law remain to be determined.[29] Thus, summary judgment will be appropriate when the controversy only involves the meaning of statutes and governing rules and neither party has truly contested the facts.[30]

4.5 The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact.[31] A "genuine issue" for purposes of summary judgment is one upon which

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[15] *Blue Diamond Group, supra*.

[26] WAC 10-08-200(5) and 10-08-135.

[27] WAC 10-08-135.

[28] *Brown v. Spokane Cy. Fire Prot. Dist. No. 1*, 100 Wn.2d 188, 203, 688 P.2d 571 (1983).

[29] *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 12, 721 P.2d 1 (1986).

[30] *Rainier National Bank v. Security State Bank*, 59 Wn. App. 161, 164, 796 P.2d 443 (1990), review denied, 117 Wn.2d 1004 (1991).

[31] *Ingersoll v. DeBartolo, Inc.*, 123 Wn.2d 649, 654, 869 P.2d 1014 (1994).

reasonable persons could differ.[32] A "material" fact for purposes of summary judgment is one that will affect the outcome under the governing law.[33]

4.6 The burden shifts to the non-moving party to set forth specific facts that demonstrate the existence of a genuine issue of material fact once the moving party has met its initial burden of establishing the absence of genuine issues of material fact and its right to judgment as a matter of law.[34] The non-moving party may not rely on speculation or argumentative assertions that unresolved factual issues exist to defeat a motion for summary judgment.[35] The non-moving party bears the burden to set forth specific facts that demonstrate that a genuine issue exists for trial.[36] Facts and the reasonable inferences therefrom are considered in favor of the non-moving party, and summary judgment should be granted in favor of the moving party only if reasonable minds could reach but one conclusion from all the evidence.[37]

4.7 The Department, either by and through ALJ Kim or on review by the Director, may not consider inadmissible evidence when ruling on a motion for summary judgment.[38] The Respondent filed multiple letters in opposition to the Department's motion. The Respondent was provided ample time and specific instructions as to submitting appropriate pleadings. However, only two – Respondent's March 12th Response and Respondent's March 25th Response – conformed to the requirements for Washington State administrative proceedings set forth in the Director's Considerations in *Subsection 2.1* above (which is incorporated here by this reference).

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[32] *Herron v. Tribune Pub'g Co.*, 108 Wn.2d 162, 170, 736 P.2d 249 (1987).

[33] *Ruff v. County of King*, 125 Wn.2d 697, 703, 887 P .2d 886 (1995).

[34] *Baldwin v. Sisters of Providence*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989); *Iwai v. State*, 129 Wn.2d 84, 95-96, 915 P.2d 1089 (1996).

[35] *Dombrosky v. Farmer's Inc., Co.*, 84 Wn. App. 245, 928 P .2d 1127 (1996), review denied, 131 Wn,2d 1018 (1997).

[36] *Baldwin, supra*, 112 Wn.2d at 132.

[37] *Havens v. C&D Plastics, Inc.*, 124 Wn.2d 158, 177, 876 P.2d 435 (1994).

[38] *Cano-Garcia v. King County*, 168 Wash.App. 223, 277 P.3d 34 (2012), review denied 175 Wash.2d 1010, 287 P.3d 594.

4.8 In this matter, the Division met its initial burden that there is no genuine issue of material fact on the following propositions:

4.8.1 Respondent was not licensed by the Department to conduct business as a mortgage broker or loan originator in the State of Washington;

4.8.2 Lisa Roach conducted business under the name Financial Loan Center; and

4.8.3 Financial Loan Center offered to provide *loan modification services* for a Washington resident.

4.9 Upon the Division having met this initial burden, Respondent then had the burden to show that there is a genuine issue of material fact. The Respondent cannot rely on mere allegations or general denials. Indeed, it is well-settled that conclusory statements or bare allegations of fact without any showing of permissible, conforming evidence is insufficient to raise a genuine issue of fact for purposes of a motion for summary judgment.[39]

4.10 Here, the Respondent does not deny her affiliation with Financial Loan Center. Although she asserts she only resided at the "2428 Naples" address, she does not deny whether Financial Loan Center conducted business at the "Westerly Place" address in Newport Beach, California.

4.11 ALJ Kim committed error as set forth in *Subsection 2.2* above (which is incorporated here by this reference) and which the Director has corrected by application of the correct standard set forth in *Subsection 2.2*. The Director concludes that there is no genuine issue of material fact and that the Department is entitled to summary judgment as a matter of law. Specifically, the uncontroverted evidence shows that the Respondent, Lisa Roach, conducted business as Financial

[39] *In re Washington Builders Ben. Trust*, 173 Wash.App. 34, 293 P.3d 1206 (2013), review denied 177 Wash.2d 1018, 304 P.3d 114; *Hymas v. UAP Distribution, Inc.*,167 Wash.App. 136, 272 P.3d 889 (2012), review denied 175 Wash.2d 1006, 284 P.3d 742; *Curran v. Marysville*, 53 Wash.App. 358, 766 P.2d 1141 (1989), review den 112 Wash.2d 1020; *McGough v. Edmonds*, 1 Wash.App. 164, 460 P.2d 302; *Plaisted v. Tangen*, 72 Wash.2d 259, 432 P.2d 647 (1967); *Meissner v. Simpson Timber Co.*, 69 Wash.2d 949, 421 P.2d 674 (1966); *Reed v. Streib*, 65 Wash.2d 700, 399 P.2d 338 (1965); *Almy v. Kvamme*, 63 Wash.2d 326, 387 P.2d 372 (1963).

Loan Center and offered to provide residential loan modification services to at least one Washington resident, without being licensed by the Department as a mortgage broker or a loan originator. Such conduct was in violation of RCW 19.146.200(1) and WAC 208-660-155.

4.12 Accordingly, the Division's Statement of Charges and the ALJ's Summary Judgment Order should be affirmed, subject to the modifications set forth herein.

5.0 FINAL ORDER

Based upon the Findings of Fact (*Section 3.0* above) and Conclusions of Law (*Section 4.0* above), and the Director having considered the record and being otherwise fully advised, NOW, THEREFORE, IT IS HEREBY ORDERED that:

5.1 Respondent, LISA K. ROACH d/b/a FINANCIAL LOAN CENTER, cease and desist engaging in the business of a mortgage broker or loan originator subject to the jurisdiction of the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS.

5.2 Respondent, LISA K. ROACH d/b/a FINANCIAL LOAN CENTER, is prohibited from participation, in any manner, in the conduct of the affairs of any mortgage broker subject to licensure by the Director of the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS for a period of five years.

5.3 Respondent, LISA K. ROACH d/b/a FINANCIAL LOAN CENTER, shall pay One Thousand Two Hundred Ninety Five Dollars ($1,295) in restitution to borrower C.L. as identified in the Statement of Charges;

5.4 Respondent, LISA K. ROACH d/b/a FINANCIAL LOAN CENTER, shall pay to the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS, within thirty (30) days of receipt of this order, a fine of Three Thousand Dollars ($3,000);

5.5 Respondent, LISA K. ROACH d/b/a FINANCIAL LOAN CENTER, shall pay to the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS, within thirty (30) days of receipt of this order, an investigation fee of Five Hundred Ninety Five Dollars and Twenty Cents ($595.20); and

5.6 Respondent, LISA K. ROACH d/b/a FINANCIAL LOAN CENTER, maintain records in compliance with the Washington Mortgage Broker Practices Act, (Chapter 19.146 RCW), and provide the WASHINGTON STATE DEPARTMENT OF FINANCIAL INSTITUTIONS with the location of the books, records and other information relating to Respondent's provision of residential mortgage loan modification services in Washington State, and the name, address and telephone number of the individual responsible for maintenance of such records in compliance with the Washington Mortgage Broker Practices Act.

6.0 RECONSIDERATION. Pursuant to RCW 34.05.470, Respondent has 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 service of the Final Order upon Respondent. 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.

7.0 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.

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

9.0 NON-COMPLIANCE WITH ORDER. If you do not comply with the terms of this order, including payment of any amounts owed within thirty (30) days of receipt of this order, the Department may seek its enforcement by the Office of the Attorney General to include the collection of the fines, fees, and restitution imposed herein. The Department also may assign the amounts owed to a collection agency for collection.

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10.0 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 1st day of December, 2014.

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

[redacted]

SCOTT JARVIS
Director

MAILED

MAY 21 2014

Office of Administrative Hearings
Spokane

BEFORE THE STATE OF WASHINGTON OFFICE OF ADMINISTRATIVE HEARINGS FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS

In The Matter Of: LISA K. ROACH dba FINANCIAL LOAN CENTER, **Respondent.**	**OAH Docket No.:** 2013-DFI-0039 **Agency No.:** C-12-1028-13-SC-01 **ORDER** **RE: SUMMARY JUDGMENT**

INTRODUCTION

On November 1, 2013, the Department of Financial Institutions (Department or DFI), by and through its representative, Jeffrey Rupert, Assistant Attorney General, filed its Motion for Summary Judgment.[1] On February 13, 2014, the Respondent, Lisa Roach, filed a letter response unsigned and unsworn. On March 6, 2014, the Department filed its reply. On March 12, 2014, the Respondent filed a signed letter.

On March 13, 2014, a motion hearing was conducted by the undersigned. Mandy Weeks, Assistant Attorney General, appeared for the Department. The Respondent, Lisa Roach, appeared and represented herself. Both parties provided argument. At the conclusion of the motion hearing, the Department was instructed to submit supplemental documentation. The Respondent was allowed time to submit a

[1] Assistant Attorney General Mandy weeks substituted for Jeffrey Rupert on February 28, 2014. Thereafter, Assistant Attorney General Ian McDonald substituted for Mandy Weeks on April 9, 2014.

response to the Department's supplemental documentation.

On March 20, 2014, the Department submitted its supplemental declaration of Robert Jones with attachments. On March 25, 2014, the Respondent filed her response. Then, on March 31, 2014, the Respondent filed additional documentation.

AFTER REVIEW OF THE CASE FILE, PLEADINGS, AND HEARING ARGUMENT OF THE PARTIES, THE UNDERSIGNED TRIBUNAL MAKES THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER:

FINDINGS OF FACT

1. On March 28, 2013, the Department issued its Statement of Charges No. C-12-1028-13-SC01 against the Respondent, Lisa K. Roach dba Financial Loan Center.

2. On April 16, 2013, the Respondent filed her Application for Adjudicative Hearing with the Department.

3. The Statement of Charges alleged that the Respondent provided or offered to provide residential mortgage loan modification services to at least one Washington consumer without being licensed to do so by the Department.

4. The Statement of Charges sought to issue an order to the Respondent to cease and desist from conducting business; prohibiting the Respondent from participation in the conduct of the affairs of a licensed mortgage broker; to pay restitution; to impose a fine; and to pay investigation fee.

5. On February 01, 2011, Carmen Loreto-Hays, a Washington State resident, filed a consumer complaint. In her complaint, Ms. Loreto-Hays alleged that Financial Loan Center and specifically, "Lisa Kara", were hired by her on June 2, 2010 to provide mortgage loan modification services. She alleged that Financial Loan Center did not perform the services expected.

6. Ms. Loreto-Hays' documentation in support of her Complaint provided the following relevant information regarding Financial Loan Center:

> Telephone numbers: (949) 250-0494; (949) 887-9693; (949) 887-9603; (949) 887-9391; and (951) 588-3795
>
> Address: 3990 Westerly Place, Suite 220, Newport Beach, CA 92660

7. The Department's Financial Legal Examiner, Robert Jones, provides that Orange County, California Clerk-Recorder's office names Lisa Roach as the owner of Financial Loan Center. No address was provided in the Clerk-Recorder's report.

8. The LexisNexis Accurint Reporting System for Government website provides that "Lisa Kari Roach", "Lisa K Roach", and "Lisa Roach" has an relevant address of "2428 Naples, Newport Beach, CA 92660-3261, from February 1996 through May 2011. The Accurint Comprehensive Business Report provides that "Financial Loan Center" has or had the following addresses, telephone numbers, and contacts:

> 1432 Edinger Ave, Ste 140, Tustin, CA 92780-6293
> 3990 Westerly Pl, Newport Beach, CA 92660
> 3990 Westerly Pl 220, Newport Beach, CA 92660
> (949) 250-0494
> (949) 887-9391
> Lisa Roach, business contact

9. The Comprehensive Business Report provides a disclaimer that the information provided have errors and that "[d]ata is sometimes entered poorly, processed incorrectly and is generally not free from defect. This system should not be relied upon as definitively accurate. Before relying on any data this system supplies, it should be independently verified..."

10. The Respondent, in her only sworn conforming declaration, asserts that she has only lived at "2428 Naples Newport Beach, CA, 92660" since March 2000. Also she

declares that she or Financial Loan Center was never located at "1432 Edinger Ave., 140 Tustin, CA, 92780"

11. Although in her unsworn nonconforming letter the Respondent denies engaging in loan modification services, her sworn declaration does not deny such conduct. Nor does her sworn declaration deny conducting business on the Westerly Place address.

CONCLUSIONS OF LAW

1. The undersigned Tribunal has jurisdiction to hear and decide on the motion for summary judgment pursuant to Washington Administrative Code (WAC) 10-08-200(5), 10-08-135, and chapter 34.05 Revised Code of Washington (RCW).

2. "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." WAC 10-08-135.

3. The purpose of summary judgment is to determine if a factual issue is present that needs to be tried. *Brown v. Spokane Cy. Fire Prot. Dist. No. 1*, 100 Wn.2d 188, 203, 688 P.2d 571 (1983). The summary judgment procedure exists to eliminate trials when only questions of law remain to be determined. *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 12, 721 P.2d 1 (1986). Thus, summary judgment will be appropriate when the controversy only involves the meaning of statutes and neither party contests the facts. *Rainier National Bank v. Security State Bank*, 59 Wn. App. 161, 164, 796 P.2d 443 (1990), review denied, 117 Wn.2d 1004 (1991).

4. The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Ingersoll v. DeBartolo, Inc.*, 123 Wn.2d 649, 654, 869 P.2d 1014 (1994); accord *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548,

91 L. Ed. 2d 265 (1986) (Fed. R. Civ. P. 56). A "genuine issue" under CR 56(c) is one on which reasonable persons could differ. *Herron v. Tribune Pub'g Co.*, 108 Wn.2d 162, 170, 736 P.2d 249 (1987). A "material" fact under CR 56(c) is one that will affect the outcome under the governing law. *Ruff v. Cy. of King*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995).

5. The burden shifts to the non-moving party to set forth specific facts that demonstrate the existence of a genuine issue of material fact once the moving party has met its initial burden of establishing the absence of genuine issues of material fact and its right to judgment as a matter of law. *Baldwin v. Sisters of Providence*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989); *Iwai v. State*, 129 Wn.2d 84, 95-96, 915 P.2d 1089 (1996). The non-moving party may not rely on speculation or argumentative assertions that unresolved factual issues exist to defeat a motion for summary judgment. *Dombrosky v. Farmer's Inc., Co.*, 84 Wn. App. 245, 928 P.2d 1127 (1996), review denied, 131 Wn,2d 1018 (1997). The non-moving party bears the burden to set forth specific facts that demonstrate that a genuine issue exists for trial. *Baldwin*, 112 Wn.2d at 132.

6. "Facts and the reasonable inferences therefrom are considered in favor of the nonmoving party, and summary judgment should be granted in favor of the moving party only if reasonable minds could reach but one conclusion from all the evidence." *Havens v. C&D Plastics, Inc.*, 124 Wn.2d 158, 177, 876 P.2d 435 (1994).

7. Superior Court Civil Rule (CR) 56 provides in pertinent part:

> e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show

> affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.
>
> (f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

8. The Respondent filed multiple letters in opposition to the Department's motion. The Respondent was provided ample time to submit appropriate pleadings. However, only one conformed to the requirements of CR 56.

9. In this matter, the Department met its initial burden, on a preponderance of the evidence standard, that there is no genuine issue of material fact. That the Respondent was not licensed by the Department to conduct business as a mortgage broker or loan originator in the State of Washington. That Lisa Roach conducted business under Financial Loan Center. And that Financial Loan Center offered to provide loan modification services for a Washington resident.

10. The burden shifts to the Respondent to show that there is a genuine issue of material fact. The Respondent cannot rely on mere allegations or denials. Here, the Respondent does not deny her affiliation with Financial Loan Center. Although she asserts she only resided at the "2428 Naples" address, she does not deny whether

Financial Loan Center conducted business at the "Westerly Place" address.

11. Weighing the conforming evidence presented for this motion, the preponderance of the evidence leads the undersigned to conclude that there is no genuine issue of material fact and that the Department is entitled to a judgment as a matter of law. Specifically, the evidence shows that the Respondent, Lisa Roach conducted business as Financial Loan Center and offered to provide residential loan modification services to at least one Washington resident, without being licensed by the Department as a mortgage broker or a loan originator in violation of RCW 19.146.200(1) and WAC 208-660-155.

12. Accordingly, the Department motion for summary judgment should be granted. Further, the Department's Statement of Charges No. C-12-1028-13-SC01 and its actions should be affirmed.

ORDER

NOW, THEREFORE, IT IS ORDERED:

1. The Department's Motion for Summary Judgment is hereby granted.

2. The Department's Statement of Charges No. C-12-1028-13-SC01 and its actions are affirmed.

DATED this 21st day of May, 2014, at Spokane Valley, Washington.

Mark H. Kim
Administrative Law Judge

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: LISA K. ROACH D/B/A FINANCIAL LOAN CENTER; Respondent.	No. C-12-1028-13-SC01 STATEMENT OF CHARGES and NOTICE OF INTENT TO ENTER AN ORDER TO CEASE AND DESIST BUSINESS, PROHIBIT FROM INDUSTRY, ORDER RESTITUTION, 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). After having conducted an investigation pursuant to RCW 19.146.235, 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:

I. FACTUAL ALLEGATIONS

1.1 Respondent~~s~~. Lisa K. Roach d/b/a Financial Loan Center (Respondent Roach) has never been licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a mortgage broker or loan originator.

1.2 Unlicensed Activity. Between at least June 2, 2010 and the date of this Statement of Charges, Respondent was offering residential mortgage loan modification services to Washington consumers on property located in Washington State. Respondent entered into a contractual relationship with at least one Washington consumer to provide those services and collected an advance fee for the provision of those services. The Department has received at least one complaint from a Washington consumer alleging Respondent provided or offered to provide residential mortgage loan modification services

while not licensed by the Department to provide those services. Consumer C.L. paid Respondent $1,295.00 to provide residential mortgage loan modification services.

1.3 Misrepresentations and Omissions. Respondent represented that she was licensed to provide the residential mortgage loan modification services or omitted disclosing that she was not licensed to provide those services.

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

II. GROUNDS FOR ENTRY OF ORDER

2.1 Mortgage Broker Defined. Pursuant to RCW 19.146.010(14) and WAC 208-660-006, "Mortgage Broker" means any person who, for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to make a residential mortgage loan or assist a person in obtaining or applying to obtain a residential mortgage loan. Pursuant to WAC 208-660-006, a person "'assists a person in obtaining or applying to obtain a residential mortgage loan' by, among other things, counseling on loan terms (rates, fees, other costs), [and] preparing loan packages...."

2.2 Loan Originator Defined. Pursuant to RCW 19.146.010(11), "loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain: takes a residential mortgage loan application for a mortgage broker; offers or negotiates terms of a mortgage loan; or holds themselves out to the public as able to perform any of these activities.

2.3 Prohibited Acts. Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.0201(2) & (3) for engaging in an unfair or deceptive practice toward any person and obtaining property by fraud or misrepresentation.

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Division of Consumer Services
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

2.4 Requirement to Obtain and Maintain Mortgage Broker License. Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.200(1) for engaging in the business of a mortgage broker for Washington residents or property without first obtaining a license to do so.

2.5 Requirement to Obtain and Maintain Loan Originator License. Based on the Factual Allegations set forth in Section I above, Respondent is in apparent violation of RCW 19.146.200(1) for engaging in the business of a loan originator without first obtaining and maintaining a license.

2.6 Requirement to Maintain Accurate and Current Books and Records. Pursuant to RCW 19.146.060 and WAC 208-660-450, Respondent is required to keep all books and records in a location that is on file with and readily available to the Department until at least twenty-five months have elapsed following the effective period to which the books and records relate.

III. AUTHORITY TO IMPOSE SANCTIONS

3.1 Authority to Issue an Order to Cease and Desist. Pursuant to RCW 19.146.220(4), the Director may issue orders directing any person subject to the Act to cease and desist from conducting business.

3.2 Authority to Prohibit from Industry. Pursuant to RCW 19.146.220(5), the Director may issue orders prohibiting from participation in the conduct of the affairs of a licensed mortgage broker any person subject to licensing under the Act for any violation of RCW 19.146.0201(1) through (9) or (13), or RCW 19.146.200.

3.3 Authority to Order Restitution. Pursuant to RCW 19.146.220(2), the Director may order restitution against any person subject to the Act for any violation of the Act.

3.4 Authority to Impose Fine. Pursuant to RCW 19.146.220(2), the Director may impose fines against any person subject to the Act for any violation of the Act.

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Olympia, WA 98504-1200
(360) 902-8703

3.5 Authority to Collect Investigation Fee. Pursuant to RCW 19.146.228(2), and WAC 208-660-550(4)(a), the Department will charge forty-eight dollars per hour for an examiner's time devoted to an investigation of any person subject to the Act.

IV. NOTICE OF INTENT TO ENTER ORDER

Respondent's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as set forth above 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 intent to ORDER that:

4.1 Respondent cease and desist engaging in the business of a mortgage broker or loan originator.

4.2 Respondent be prohibited from participation, in any manner, in the conduct of the affairs of any mortgage broker subject to licensure by the Director for a period of five years.

4.3 Respondent pay restitution to the one consumer identified by the Department in paragraph 1.2 in the amount set forth therein, and that Respondents jointly and severally pay restitution to each Washington consumer with whom they entered into a contract for residential mortgage loan modification services related to real property or consumers located in the state of Washington equal to the amount collected from that Washington consumer for those services in an amount to be determined at hearing.

4.4 Respondent pay a fine, which as of the date of this Statement of Charges totals $3,000.

4.5 Respondent pay an investigation fee, which as of the date of this Statement of Charges totals $595.20.

4.6 Respondent maintain records in compliance with the Act and provide the Department with the location of the books, records and other information relating to Respondent's provision of residential mortgage loan modification services in Washington, and the name, address and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

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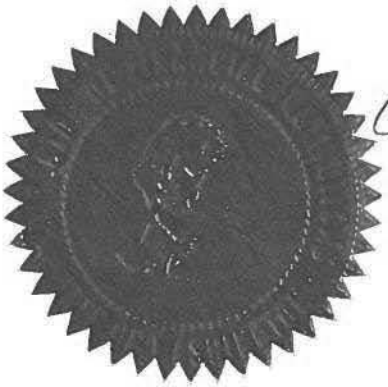
Division of Consumer Services
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

V. AUTHORITY AND PROCEDURE

This Statement of Charges is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221, RCW 19.146.223, and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

Dated this 28th day of March, 2013.



[redacted]

DEBORAH BORTNER
Director, Division of Consumer Services
Department of Financial Institutions

Presented by:

[redacted]

ROBERT E. JONES
Financial Legal Examiner

Approved by:

[redacted]

CHARLES E. CLARK
Enforcement Chief

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

RESTITUTION

Borrower	Amount
C.L.	$1,295.00
	TOTAL $1,295.00

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
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