

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2
3 In the Matter of the Mortgage Broker License
Application of:

No. 06F-BD039-BNK

4 **COBBLESTONE FUNDING CORPORATION**
5 6050 N. Oracle Road, Suite A
Tucson, Arizona 85704
6 Petitioner.

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

7
8 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the record
9 in this matter, including the Administrative Law Judge Decision attached and incorporated herein by
10 this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of Law and Order.

11 ORDER

12 IT IS ORDERED that the denial of the application for the mortgage broker license of Petitioner
13 is affirmed.

14 NOTICE

15 The parties are advised that, pursuant to A.R.S. § 41-1092.09, this Order shall be final unless
16 Petitioner submit a written motion for rehearing no later than thirty (30) days after service of this
17 decision. The motion for rehearing or review must specify the particular grounds upon which it is
18 based as set forth in A.A.C. R20-4-1219. A copy shall be served upon all other parties to the hearing,
19 including the Attorney General, if the Attorney General is not the party filing the claim of error. In the
20 alternative, the parties may seek judicial review of this decision pursuant to A.R.S. § 41-1092.08(H).

21 DATED this 24th day of July, 2006.

22
23 Felecia Rotellini
24 Felecia A. Rotellini
25 Superintendent of Financial Institutions
26
27
28

1 ORIGINAL filed this 24th day of
2 July, 2006, in the office of:

3 Felecia A. Rotellini
4 Superintendent of Financial Institutions
5 Arizona Department of Financial Institutions
6 ATTN: June Beckwith
7 2910 North 44th Street, Suite 310
8 Phoenix, Arizona 85018

9 COPY of the foregoing mailed/hand delivered
10 This same date to:

11 Daniel G. Martin, Administrative Law Judge
12 Office of Administrative Hearings
13 1400 West Washington, Suite 101
14 Phoenix, AZ 85007

15 Craig A. Raby, Assistant Attorney General
16 Office of the Attorney General
17 1275 West Washington
18 Phoenix, AZ 85007

19 Richard Fergus, Manager
20 Arizona Department of Financial Institutions
21 2910 N. 44th Street, Suite 310
22 Phoenix, AZ 85018

23 Robert Billar, Esq.
24 Leyh, Billar & Associates, P.L.L.C.
25 101 N. first Ave., Suite 2480
26 Phoenix, AZ 85003

27 Nancy Mulhall, Statutory Agent
28 For Cobblestone Funding Corporation
8428 N. Sand Dune Place
Tucson, AZ 85743

AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

Nancy Mulhall, President
Cobblestone Funding Corporation
6050 N. Oracle Road, Suite A
Tucson, AZ 85704

BY: Paula Carter

RECEIVED

JUL 10 2006

DEPT. OF FINANCIAL INSTITUTIONS

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Mortgage Broker License Application of:

No. 06F-BD039-BNK

COBBLESTONE FUNDING CORPORATION
6050 N. Oracle Road, Suite A
Tucson, AZ 85704

**ADMINISTRATIVE
LAW JUDGE DECISION**

Petitioner.

HEARING: June 9, 2006. The record closed on June 22, 2006.

APPEARANCES: Robert Billar, Esq. represented Petitioner Cobblestone Funding Corporation and Nancy Mulhall, Cobblestone's principal. Assistant Attorney General Craig Raby represented the Arizona Department of Financial Institutions.

ADMINISTRATIVE LAW JUDGE: Daniel G. Martin

Cobblestone Funding Corporation and Nancy Mulhall appealed the Arizona Department of Financial Institutions' decision to deny Cobblestone's application for a mortgage broker license. Based on the evidence of record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law and Order:

FINDINGS OF FACT

1. On December 27, 2005, the Arizona Department of Financial Institutions (the "Department") received an application for a mortgage broker license from Petitioner Cobblestone Funding Corporation ("Cobblestone"). See Exhibit 1.

2. Nancy Mulhall is Cobblestone's sole owner and president. See Exhibit 1.

3. In conjunction with Cobblestone's application, Ms. Mulhall completed and submitted to the Department a personal history statement. See Exhibit 3. In that personal history statement, Ms. Mulhall made the following disclosure:

In December of 1990, I worked as a teller for Bank of America in Sierra Vista, Arizona. At that time, and being influenced by a third party, I made the unfortunate mistake of withdrawing approximately \$1800.00 from a random account and shortly thereafter, after I had quit the job, I was charged with a misdemeanor offense and was put on probation for about 1 year. I also had to pay full restitution.

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 This happened so long ago that I do not recall what the formal
2 charge was for. I have regretted every day since that I let myself
3 become involved in what was the biggest mistake of my life.

4 *See id.* (Section I).

5 4. After completing its review of Cobblestone's application, including Ms.
6 Mulhall's criminal conviction, the Department concluded that Cobblestone did not meet
7 the qualifications for licensure as a mortgage broker. Specifically, the Department
8 concluded that Ms. Mulhall had been convicted of a crime of breach of trust or
9 dishonesty in violation of A.R.S. § 6-905(A)(5), and that Ms. Mulhall had not shown that
10 she was a person of honesty, truthfulness and good character, in violation of A.R.S. §
11 6-905(A)(2). The Department so notified Cobblestone and Ms. Mulhall by letter dated
12 January 18, 2006. See Exhibit 5.

13 5. By letter dated February 14, 2006, Ms. Mulhall appealed the Department's
14 decision to deny Cobblestone's application. See Exhibit 6. This matter was thereafter
15 referred for hearing to the Office of Administrative Hearings, an independent state
16 agency.

17 6. The Administrative Law Judge convened the hearing on June 9, 2006.
18 The record closed on June 22, 2006 following the completion of post-hearing briefing.

19 7. The record evidence demonstrated that on August 31, 1992, a criminal
20 complaint was issued in the United States District Court in Tucson, Arizona charging
21 Ms. Mulhall (then Nancy Hussey) with two counts of embezzlement. See Exhibit 4.

22 8. On October 1, 1992, Ms. Mulhall pleaded guilty to one count of
23 embezzlement, a misdemeanor, in violation of 18 U.S.C. § 656. See Exhibit 4. United
24 States Magistrate Judge Nancy Fiora entered Ms. Mulhall's conviction and sentenced
25 her to 24 months of supervised probation. As a condition of probation, Judge Fiora
26 ordered Ms. Mulhall to pay restitution in the amount of \$1,800.00. See *id.*

27 9. Ms. Mulhall paid the required restitution in full. By Order dated June 7,
28 1994, Ms. Mulhall was discharged from probation. See Exhibit 4. Since that time, Ms.
29 Mulhall has not had any other arrests or convictions.

30 10. At the time of her conviction, Ms. Mulhall was 22 years old.

1 11. Subsequent to her conviction, Ms. Mulhall enrolled in Pima Community
2 College. In 1994, Ms. Mulhall transferred to the University of Arizona, where she
3 earned a bachelor's degree in business administration.

4 12. In 1997, following her graduation from the University of Arizona, Ms.
5 Mulhall took a job as a loan officer at Household Finance in Tucson. In 1998, Ms.
6 Mulhall took a job as a loan processor at Corewest Banc. In 1999, Ms. Mulhall became
7 a branch manager for Allied Home Mortgage ("Allied"), and she continues to hold that
8 position.

9 13. Ms. Mulhall's responsibilities at Allied include mortgage loan origination
10 and supervision of two loan officers. According to Ms. Mulhall, her branch recently
11 received an award from Allied for excellence in quality control.

12 14. In November 2005, Ms. Mulhall incorporated Cobblestone in order to
13 pursue an independent career in the mortgage broker industry. Cobblestone remains
14 inactive pending a final determination on its mortgage broker application.

15 15. At hearing, Ms. Mulhall asserted that she disclosed her prior conviction to
16 each of her employers. However, Ms. Mulhall's testimony in this regard was somewhat
17 ambivalent. For example, Ms. Mulhall testified, with regard to Household Finance:

18 Q. Did that application ask about prior convictions?

19 A. Yes.

20 Q. Did you disclose this?

21 A. Yes.

22 Q. So to your knowledge, was Household Finance aware of
23 your prior record?

24 A. To the best of my knowledge, yes.

25 Q. In other words, you made full disclosure to them?

26 A. Yes.

27 Reporter's Transcript of Proceedings ("R.T."), at 21.

28 16. With regard to Corewest Banc, Ms. Mulhall testified:

29 Q. Did the application ask about any prior criminal offenses?

30 A. Yes, I believe it did.

1 Q. But you made full disclosure?

2 A. Yes.

3 Q. So as far as you know, Core West knew about your history
4 with Bank of America?

5 A. As far as I know, yes.

6 R.T., at 22.

7 17. With regard to Allied, Ms. Mulhall testified:

8 Q. When you started working for Allied, did you have to fill out
9 an application?

10 A. Yes.

11 Q. Again, was there any question about prior convictions?

12 A. I believe there was.

13 Q. Did you disclose it?

14 A. Yes.

15 Q. So as far as you know, Allied knows about it?

16 A. As far as I know, yes.

17 Q. And as far as you know, they know about the incident with
18 the Bank of America in Sierra Vista?

19 A. As far as I know, they did a background check, yes.

20 R.T., at 23-24.

21 18. On cross-examination, Ms. Mulhall acknowledged that she did not give
22 "full detail" to her employers and that she was "very brief". Ms. Mulhall explained: "I did
23 realize they were going to do background checks, so I figured that they would then see
24 the full details." R.T., at 27.

25 19. In her disclosure to the Department, Ms. Mulhall stated that her bank
26 embezzlement had been influenced by a "third party". At no point during the hearing
27 did Ms. Mulhall explain the nature of that influence.
28
29
30

1 20. Ms. Mulhall did not present any witnesses at hearing to testify to her
2 honesty, truthfulness or good character. Ms. Mulhall did not present any evidence in
3 any form from any of her employers.¹

4 21. Richard Fergus testified on the Department's behalf. Mr. Fergus is a
5 division manager for the Department, and is responsible for overseeing licensing and
6 consumer affairs.

7 22. Mr. Fergus testified to the following with regard to the Department's denial
8 of Cobblestone's application:

9 Q. Can you tell us basically why you made the decision to deny
10 the license?

11 A. The decision was made to deny the license due to the
12 circumstances involved in the initial incident. The fact that Ms.
13 Mulhall had actually taken money out of another person's account
14 without authority was a serious offense. In dealing with our license
15 types, where they have the ability to handle third-party money [as is
16 the case with mortgage brokers], it is a concern for the Department.
17 And therefore, based on that information alone, the decision was
18 made to deny the license.

19 Q. For lack of a better way to describe it, is the cardinal sin of
20 the Department embezzlement or stealing other people's money?

21 A. Yes, stealing or taking other people's money is a serious
22 concern for the Department.

23 Q. Wouldn't it be absolutely the number one concern?

24 A. Yes, it is.

25 R.T., at 41-42.

26
27
28
29 ¹ At hearing, Ms. Mulhall's counsel chided the Department for not having contacted any of Ms.
30 Mulhall's employers prior to issuing the denial of Cobblestone's application. However, the Department
was under no obligation to do so. To the contrary, the burden to present employment information lay with
Ms. Mulhall.

1 5. Ms. Mulhall's conviction, and the conduct underlying that conviction, cast
2 significant doubt on Ms. Mulhall's honesty, truthfulness and good character. At a
3 minimum, Ms. Mulhall's conviction creates a rebuttable presumption of bad character
4 upon which a denial of licensure reasonably may be based.

5 6. Notwithstanding the Department's assertion of A.R.S. § 6-905(A)(2) as a
6 basis for denial, and the fact that it is Cobblestone that bears the burden of persuasion
7 in this matter, Ms. Mulhall failed to present any substantial evidence of honesty,
8 truthfulness or good character. The sum of Ms. Mulhall's hearing evidence is that since
9 her conviction, she has obtained a business administration degree, has worked within
10 the mortgage lending business without blemish, and has not been the subject of any
11 other arrests or convictions. While Ms. Mulhall's educational and work
12 accomplishments are laudable, such accomplishments are not, in and of themselves,
13 persuasive evidence of honesty, truthfulness and good character.

14 7. Ms. Mulhall failed to present any substantive character evidence, such as
15 testimony (or even testimonials) from persons familiar with her personal qualities.² The
16 Administrative Law Judge is further concerned with Ms. Mulhall's failure to have
17 explained in more detail the nature of her actions (including the asserted influence by a
18 third party and whether such influence might repeat itself), and her admission that she
19 did not give "full detail" to her employers regarding her conviction and that she was
20 "very brief". As to this second point, the Administrative Law Judge finds that Ms.
21 Mulhall's apparent reliance on the fact that her employers would conduct a background
22 check is no substitute for full disclosure.

23 8. In view of the foregoing, the Administrative Law Judge concludes that
24 grounds exist for the Department to have denied Cobblestone's application under
25 A.R.S. § 6-905(A)(2), and that Ms. Mulhall failed to present sufficiently substantial
26 evidence at hearing to refute or rebut that conclusion.³

27
28 ² Ms. Mulhall attached several reference letters to her closing brief; however, such letters were
29 withdrawn and not considered further by the Administrative Law Judge because Ms. Mulhall had not
30 offered them into evidence at hearing.

³ Given the Administrative Law Judge's conclusions herein, the Administrative Law Judge does not
address further the Department's apparent bright-line rule regarding the effect of an embezzlement

