

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Removal and the Prohibition of:

No. 08F-BD059-BNK

3 **RICK T. MCCULLOUGH**
4 3925 East Patrick Lane
5 Phoenix, AZ 85050

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

6 Petitioner.

7 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the
8 record in this matter, including the transcripts of the June 23, 2008 administrative hearing, and the,
9 Administrative Law Judge Decision attached and incorporated herein by this reference, adopts the
10 Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommended Order and
11 modifies in part the Conclusions of Law Paragraph 1 by replacing "Chapter 7" with "Chapter 9, Article
12 1" and replacing the word "escrow agent(s)" with the word "mortgage broker(s)".

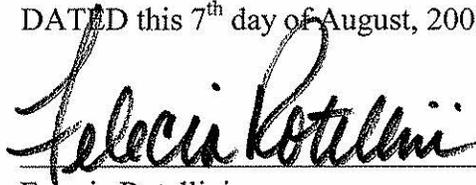
13 ORDER

14 **IT IS ORDERED that Petitioner is removed and prohibited from further participation in**
15 **any manner as a director, officer, employee, agent or other person in the conduct of the affairs of**
16 **any financial institution or enterprise in the State of Arizona pursuant to A.R.S. §6-161.**

17 NOTICE

18 The parties are advised that this Order becomes effective immediately and the provisions of this
19 Order shall remain effective and enforceable except to the extent that, and until such time as, any
20 provision of this Order shall have been modified, terminated, suspended, or set aside by the
21 Superintendent or a court of competent jurisdiction.

22
23 DATED this 7th day of August, 2008.

24 

25 Felecia Rotellini
26 Superintendent of Financial Institutions
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28

1 ORIGINAL filed this 7th day of
2 August, 2008, in the office of:

3 Felecia 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 Kay A. Abramsohn, Administrative Law Judge
12 Office of Administrative Hearings
13 1400 West Washington, Suite 101
14 Phoenix, AZ 85007

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

19 Robert D. Charlton, Assistant Superintendent
20 J.P. Ciudad, Senior Examiner
21 Arizona Department of Financial Institutions
22 2910 N. 44th Street, Suite 310
23 Phoenix, AZ 85018

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

26 Rick T. McCullough
27 3925 East Patrick Lane
28 Phoenix, AZ 85050

BY: June Beckwith

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**STATE OF ARIZONA
IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

In The Matter Of the Removal and
Prohibition of:

No. 08F-BD059-BNK

RICK T. MCCULLOUGH
3925 East Patrick Lane
Phoenix, AZ 85050

**ADMINISTRATIVE
LAW JUDGE DECISION**

Respondent.

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HEARING: Convened and concluded on June 23, 2008.

APPEARANCES: Assistant Attorney General Craig Raby appeared on behalf of the Arizona Department of Financial Institutions. Respondent Rick T. McCullough did not appear at the hearing.

ADMINISTRATIVE LAW JUDGE: Kay A. Abramsohn

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Based on review of the hearing record, the Administrative law Judge makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Under Arizona Department of Financial Institutions ("Department") Consent Order No. 06F-BD006-BNK dated September 15, 2005, Respondent Rick T. McCullough ("Respondent") made certain agreements regarding his operations as a mortgage broker authorized to transact business in Arizona. See Exhibit 26.

2. On or about June 8, 2007, the Department received a complaint against Respondent from the Area Agency on Aging, Region One, regarding Respondent's mortgage business practices.¹

3. The Department instituted an investigation of the complaint and subpoenaed and analyzed mortgage broker files, escrow files and mortgage banker files from Respondent. The Department also reviewed other documents from the Arizona Corporation Commission and bank documents obtained through subpoena.

¹ The hearing record does not reflect a copy of the original complaint or notes regarding the taking of a verbal complaint.

1 6. The Lender for the transaction was Argent Mortgage Company, L.L.C.
2 ("Argent"). Argent issued its underwriting condition requiring a letter of explanation
3 ("LOE") stating the purpose for the equity cash out.

4 7. The October 19, 2005 LOE contained in the "Resler" mortgage lender file
5 stated that the equity cash out will be used for home improvements. See Exhibit 4.
6 With this document, Respondent deliberately failed to disclose to Argent that he
7 intended to receive, and deposit into his own account, the cash out proceeds from this
8 transaction.

9 8. Prior to generating the LOE, Respondent and Ms. Resler had executed an
10 agreement for Respondent to receive the equity proceeds from the cash out refinance
11 transactions. On October 14, 2005, Respondent and Ms. Resler executed a document
12 entitled "Fixed Rate Note" evidencing Respondent's intention to receive the proceeds
13 from the transaction. See Exhibit 5. Pursuant to Provision No. 4 of this document,
14 Respondent disclosed to Ms. Resler that the monies in loan from her to him would be
15 used to secure real estate investment property loans.

16 9. Prior to generating the LOE, Respondent also created a letter dated
17 October 17, 2005 to Ms. Resler thanking her for her \$45,000.00 investment in the
18 "McCullough Insured Investments" projects. This letter indicated that Ms. Resler had
19 "secured" a monthly return payment of \$625.00 that would be automatically wired into
20 her bank account on the 1st of the month for 72 months. See Exhibit 6.

21 10. On October 18, 2005, Respondent opened a 1st National Bank of Arizona
22 bank account under the name "McCullough Insured Investments" with a one hundred
23 dollar (\$100.00) deposit. See Exhibit 22.

24 11. On October 19, 2005, the Resler transaction closed, and Premier Title
25 Group issued a cash out proceeds check to Ms. Resler in the amount of forty-nine
26 thousand, seven hundred and sixty-six dollars and eighty-five cents (\$49,766.85). See
27 Exhibit 34.

28 12. On October 21, 2005, Ms. Resler executed an authorization, prepared by
29 Respondent, for Respondent to deposit the cash out proceeds into the McCullough
30 Insured Investments account, and that the money will be used for real estate
investment. See Exhibit 8. The document further indicated that a monthly

1 disbursement would be deposited into her personal checking account on the 1st
2 business day of each month for the term of a (nonspecificed) Note until the Note expired.

3 13. On October 24, 2005, Respondent deposited the proceeds from the
4 Resler transaction into the McCullough Insured Investments account. See Exhibits 21,
5 23, 33 and 34.

6 14. On November 17, 2005, Respondent issued a check in the amount of
7 forty-two thousand, eight hundred sixty dollars (\$42,860.00) from the McCullough
8 Insured Investments account to Diamond Source, a jewelry store. See Exhibit 24. As
9 of that date the major deposits in the account had been his initial deposit of \$100.00
10 and the proceeds from the Resler transaction (and the Apodaca transaction, below);
11 there was an additional unidentified \$6,906.00 deposit into the account. See Exhibits
12 22 and 23. Respondent used the monies from the Resler transaction to purchase
13 jewelry and not to secure real estate investment property loans, as he and Ms. Resler
14 had agreed in the Fixed Rate Note, Exhibit 5.

15 15. The Truth-in-Lending Disclosure Statement prepared by Respondent and
16 signed by Ms. Resler contained a miscalculated Annual Percentage Rate ("APR")
17 and/or contained blank spaces. See Exhibit 9.

18 16. The Mortgage Loan Origination Agreement, including the Servicing
19 Transfer Disclosure statement, signed by Ms. Resler failed to contain requisite
20 information pursuant to RESPA Section 3500.21. See Exhibit 10.

21 17. Respondent charged excessive origination fees (\$8,321.50) to Ms. Resler.
22 See Line 801, Exhibit 7.

23 18. According to the executed "Fixed Rate Note" (Exhibit 5), Respondent was
24 to pay Ms. Resler a monthly return of \$625.00 that would be automatically wired into
25 her bank account on the 1st of the month for 72 months. Ms. Resler recalled receiving
26 six payments before Respondent stopped making payments on the note.

27 19. In August 2006, Respondent originated and closed another equity cash
28 out refinance transaction with Ms. Resler in which he again collected the equity
29 proceeds [Thirty thousand, two hundred and eighty-seven dollars and six cents
30 (\$30,287.06)] and deposited the monies into his McCullough Insured Investments
account. See Exhibits 11 and 27.

1 investment. See Exhibit 17. The document further indicated that a monthly
2 disbursement would be deposited into her personal checking account on the 1st
3 business day of each month for the term of a (nonspecified) Note until the Note expired.

4 28. On October 24, 2005, Respondent deposited the proceeds from the
5 Apodaca transaction into the McCullough Insured Investments account. See Exhibits
6 21, 23, 33, and 35.

7 29. On November 17, 2005, Respondent issued his check in the amount of
8 forty-two thousand, eight hundred sixty dollars (\$42,860.00) from the McCullough
9 Insured Investments account to Diamond Source, a jewelry store. See Exhibit 24. As
10 of that date the major deposits in the account had been his initial deposit of \$100.00
11 and the proceeds from the Apodaca transaction (and the Resler transaction, above);
12 there was an additional unidentified \$6,906.00 deposit into the account. See Exhibits
13 22 and 23. Respondent used the monies from the Apodaca transaction to purchase
14 jewelry and not to secure real estate investment property loans, as he and Ms. Apodaca
15 had agreed in the Fixed Rate Note, Exhibit 14.

16 30. The Truth-in-Lending Disclosure Statement prepared by Respondent and
17 signed by Ms. Apodaca contained a miscalculated Annual Percentage Rate ("APR")
18 and/or contained blank spaces. See Exhibit 18.

19 31. The Mortgage Loan Origination Agreement, including the Servicing
20 Transfer Disclosure statement, signed by Ms. Apodaca failed to contain requisite
21 information pursuant to RESPA Section 3500.21. See Exhibit 19.

22 32. Respondent charged excessive origination fees (\$8,100.00) to Ms.
23 Apodaca, in the nature of 5% rather than a typical 2%. See Line 801, Exhibit 16.

24 33. According to the executed "Fixed Rate Note," (Exhibit 5), Respondent was
25 to pay Ms. Apodaca a monthly return of \$500.00 that would be automatically wired into
26 her bank account on the 1st of the month for 72 months. Ms. Apodaca recalled
27 receiving no automatic payments from Respondent, but also recalled that Respondent
28 once deposited a check in her account that bounced and then brought her \$500.00 in
29 cash one time only.

30 34. In August 2006, Respondent originated and closed another equity cash
out refinance transaction with Ms. Apodaca in which he again collected the equity

1 proceeds [Twenty-one thousand four hundred and twenty-five dollars and fifty-two cents
2 (\$21,425.52)] and deposited the monies into his McCullough Insured Investments
3 account. See Exhibit 20 and 27.

4 35. Respondent charged excessive origination, broker and processing fees
5 (\$1,736.00; \$5208.00; and \$985.00) to Ms. Apodaca in the nature of 7-8% rather than a
6 typical 2%. See Lines 801, 808 and 809, Exhibit 20.

7 * * *

8 36. The Arizona Corporation Commission issued a Notice of Pending
9 Administrative Dissolution to Respondent, effective April 6, 2007, due to Respondent's
10 failure to file the requisite Annual Report for CactusCash, Inc. See Exhibit 25.

11 37. Respondent failed to respond to the Arizona Corporation Commission
12 regarding that Notice of Pending Administrative Dissolution. As a result of these
13 inactions, Respondent failed to maintain good standing as is required under A.R.S. § 6-
14 903(B) and as had been required in Consent Order No. 06F-BD006-BNK. Additionally,
15 Respondent failed to report to the Department the Notice of Pending Administrative
16 Dissolution, in violation of Consent Order No. 06F-BD006-BNK.

17 38. As a result of departmental review of the Report (Exhibit 2), the
18 Department determined to remove and prohibit Respondent from participation in the
19 conduct of a financial institution or enterprise. On April 24, 2008, the Department
20 issued its Notice of Hearing and Intent to Remove and Prohibit From Further
21 Participation in Any Manner in the Conduct of the Affairs of a Financial Institution or
22 Enterprise ("Notice"). The April 24, 2008 Notice set the allegations and issues set forth
23 therein for an Administrative Hearing to be conducted at the Office of Administrative
24 Hearings, an independent state agency, beginning on June 23, 2008.

25 39. Pursuant to A.A.C. R20-4-1209, Respondent was required to file a written
26 answer to the Notice to the Department. Respondent failed to do so.

27 40. At the time of the scheduled hearing, Respondent failed to arrive and did
28 not appear for the duration of the hearing that was conducted.³ No person appeared on
29 his behalf.

30 ³ Respondent filed a last-minute request to the Tribunal for a continuance; the Tribunal noted this as
denied in its system. No written Order was issued.

- c. A.R.S. § 6-903(B) by failing to maintain good standing with the A.C.C.;
- d. A.R.S. § 6-906(D) by failing to comply with requirements under RESPA and CCPA;
- e. A.R.S. § 6-906(C) by failing to issue and/or maintain a statutorily correct written document agreement;
- f. A.R.S. § 6-905(A)(3) by violating Consent Order No. 06F-BD006-BNK; and
- g. A.R.S. § 6-909(N) by engaging in illegal or improper business practices.

4. The Administrative Law Judge concludes that the weight of the evidence of record established that Respondent's actions and failures, as set forth above, constitute acts, omissions, and practices which demonstrate personal dishonesty and unfitness to continue in office or to participate in the conduct of the affairs of any financial institution or enterprise in Arizona within the meaning of A.R.S. § 6-161(A)(1) and (A)(2).

5. The Administrative Law Judge further concludes that such conduct constitutes grounds for removal and the prohibition of Respondent from participating in any manner in the conduct of the affairs of any financial institution or enterprise in Arizona within the meaning of A.R.S. § 6-161(A)(1) and (A)(2).

6. Likewise, Respondent's violation of the above-mentioned statutes constitute grounds for the removal and prohibition of Respondent from participating in any manner in the conduct of the affairs of any financial institution or enterprise pursuant to A.R.S. § 6-161(A)(6). There is a risk that Respondent could be employed by companies licensed by the Department, which would negatively impact the licensed industry and the public. The exposure to such harm and Respondent's personal dishonesty requires the Department to ensure that Respondent is not able to be employed within the licensed industry.

ORDER

On the effective date of the Order entered in this matter, Respondent shall be removed and prohibited from further participation in any manner as a director, officer,

1 employee, agent or other person in the conduct of the affairs of any financial institution
2 or enterprise pursuant to A.R.S. § 6-161.

3 Done this day, July 11, 2008.

4 Office of Administrative Hearings

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7 Kay A. Abramsohn
8 Administrative Law Judge

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12 Original transmitted by mail this 14 day of July, 2008, to:

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14 Arizona Department of Financial Institutions
15 Felecia Rotellini, Superintendent
16 ATTN: Susan L. Longo
17 2910 North 44th Street, Suite 310
18 Phoenix, AZ 85018

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20 By Chris Fierstein
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