

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

No. 09F-BD016-BNK

3 **SOUTHERN HERITAGE FINANCIAL, LLC**
4 **DBA SU HOGAR FINANCIERO AND TOMMY**
5 **STAPLETON, PRESIDENT**

6 460 W. Johnson Drive
7 Gilbert, AZ 85233

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

8 Respondents.

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

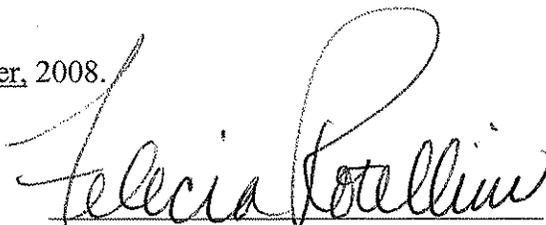
13 ORDER

14 IT IS ORDERED that Respondents' Mortgage Broker License Number MB 0908544 is
15 revoked effective as of the date of this Order.

16 NOTICE

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

21 DATED this 19th day of November, 2008.

22 

23 Felecia Rotellini
24 Superintendent of Financial Institutions

25 ...

26 ...

1 ORIGINAL filed this 19th day of
Nov, 2008 in the office of:

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

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

10 Lewis D. Kowal, Administrative Law Judge
11 Office of Administrative Hearings
12 1400 West Washington, Suite 101
13 Phoenix, AZ 85007

14 Kelly LaPrade, Assistant Attorney General
15 Office of the Attorney General
16 1275 West Washington
17 Phoenix, AZ 85007

18 Robert D. Charlton, Assistant Superintendent
19 Richard Fergus, Licensing Division Manager
20 Arizona Department of Financial Institutions
21 2910 N. 44th Street, Suite 310
22 Phoenix, AZ 85018

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

25 Southern Heritage Financial, LLC
26 dba Su Hogar Financiero
27 Tommy Stapleton, Statutory Agent
28 460 W. Johnson Drive
Gilbert, AZ 85283

Southern Heritage Financial, LLC
Dba Su Hogar Financiero
Tommy Stapleton, President
180 Interstate North Parkway, Suite 205
Atlanta, GA 30339

25 BY: June Beckwith
26
27
28

1 above-mentioned bond. The Department also informed Southern Heritage of the
2 statutory obligation of a mortgage broker licensee to maintain a bond and the need to
3 replace the canceled bond or the mortgage broker license would be placed on
4 suspension. The letter was directed to the attention of Anthony Green, the Responsible
5 Individual listed with the Department for Southern Heritage.

6 5. On March 21, 2008, the Department received the envelope containing the
7 above-mentioned letter back from the U.S. Postal Service with the notation "Return to
8 Sender; Not Deliverable; Unclaimed." Exhibit C.

9 6. Richard Fergus ("Mr. Fergus"), who is in charge of supervising the Financial
10 Services Division of the Department, testified that the Department did not receive any
11 response to the above-mentioned notification letter.

12 7. On September 10, 2008, the Superintendent of the Department issued an Order
13 of Summary Suspension and Notice of Hearing to Revoke ("Order") immediately
14 suspending Southern Heritage's mortgage broker's license based on Southern
15 Heritage's failure to maintain the required surety bond. The Order was sent to Southern
16 Heritage by certified mail, return receipt requested. The envelope containing the Order
17 was returned to the Department by the U.S. Postal Service on September 22, 2008,
18 with the notation "Return to Sender; Not Deliverable as Addressed; Unable to Forward."
19 Exhibit D.

20 8. Mr. Fergus testified that the Department hired a private process server to serve
21 the Order upon Southern Heritage. The Department presented an Affidavit of Non-
22 Service of the Order at the address of record the Department had for Southern
23 Heritage. According the Affidavit, the suite where Southern Heritage's business office
24 was located appeared to be vacant. See Exhibit E. Consequently, the Order was
25 unable to be served.

26 9. Mr. Fergus testified that the Department's records reflect that Southern
27 Heritage's canceled bond has not been replaced. Mr. Fergus also testified that
28 Southern Heritage failed to contact the Department regarding the cancellation of its
29 surety bond.
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CONCLUSIONS OF LAW

1. The Superintendent of the Department is vested with the authority to regulate persons engaged in the mortgage broker business and has the duty to enforce statutes and rules relating to mortgage brokers. See A.R.S. § 6-901 *et seq.*

2. The Department bears the burden to prove by a preponderance of the evidence that Southern Heritage has violated State laws pertaining to mortgage brokers. See A.A.C. R2-19-119. A preponderance of the evidence is “such proof as convinces the trier of fact that the contention is more probably true than not.” Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

3. Credible evidence established that Southern Heritage failed to maintain a surety bond in the amount of \$15,000.00 as required by A.R.S. § 6-903(G).

4. By failing to maintain the required surety bond, Southern Heritage failed to conduct its mortgage broker business in accordance with the law and violated the provisions of Title 6, Chapter 9 and rules relating thereto, which constitute grounds for revocation of the license pursuant to A.R.S. § 6-905(A)(3).

5. Pursuant to A.R.S. § 41-1092.11, the Superintendent has the authority to suspend Southern Heritage’s mortgage broker’s license if emergency action is required to protect the health, safety and welfare of the public.

6. Based on the above, grounds existed for the issuance of the Order of Summary Suspension of Southern Heritage’s mortgage broker’s license.

7. Based on the above, grounds exist for the revocation of Southern Heritage’s mortgage broker’s license pursuant to A.R.S. § 6-905.

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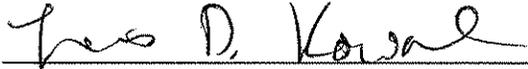
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2 **ORDER**

3 Southern Heritage's mortgage broker's license summary suspension is upheld
4 and on the effective date of the Order entered in this matter, the license shall be
5 revoked.

6 Done this day, November 10, 2008.

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9 _____
10 Lewis D. Kowal
11 Administrative Law Judge

12 Original transmitted by mail this
13 12 day of November, 2008, to:

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

20
21
22 By  _____