

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Loan Originator
3 Activity of:

No. 14F-BD085-SBD

4 **JAMES GAPPA**
5 28258 North Tatum Blvd., Suite B1-235
6 Cave Creek, Arizona 85331

**ORDER TO CEASE AND DESIST;
7 NOTICE OF OPPORTUNITY FOR
8 HEARING; CONSENT TO ENTRY OF
9 ORDER**

10 Respondent.

11 The Superintendent of Financial Institutions for the State of Arizona (“Superintendent”)
12 makes the following Findings of Fact and Conclusions of Law and enters the following Order
13 pursuant to Arizona Revised Statutes (“A.R.S.”) § 6-137(A). Pursuant to Titles 6 and 41 of the
14 Arizona Revised Statutes and Title 20, Chapter 4 of the Arizona Administrative Code (“A.A.C.”),
15 Respondent is hereby notified that he is entitled to request a hearing to contest the allegations set
16 forth in this Order. The Request for Hearing shall be filed with the Arizona Department of Financial
17 Institutions (“Department”) pursuant to A.R.S. § 6-137(D) within **thirty (30) days** of service of this
18 Order and shall identify with specificity the action or order being appealed in accordance with
19 A.R.S. § 41-1092.03(B).

20 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or
21 her own behalf or by counsel. If Respondent is represented by counsel, the information required by
22 A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a Request
23 for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for hearing in
24 accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request reasonable**
25 **accommodations such as interpreters, alternative formats, or assistance with physical**
26 **accessibility.** Requests for special accommodations must be made as early as possible to allow time
to arrange the accommodations. If accommodations are required, call the Office of Administrative
Hearings at (602) 542-9826. Respondent has the right to request an Informal Settlement Conference,
pursuant to A.R.S. § 41-1092.06, by filing a written request no later than **twenty (20) days** before
the scheduled hearing. The conference will be held within **fifteen (15) days** after receipt of your
request. If an Informal Settlement Conference is requested, a person with the authority to act on

1 behalf of the Department will be present (“Department Representative”). Please note that in
2 requesting an Informal Settlement Conference, Respondent waives any right to object to the
3 participation of the Department Representative in the final administrative decision of this matter, if it
4 is not settled. In addition, any written or oral statement made by Respondent at such informal
5 settlement conference, including written documentation created or expressed solely for purposes of
6 settlement negotiations, are inadmissible in any subsequent administrative hearing. (See A.R.S. §
7 41-1092.06 for rules regarding informal settlement conferences.) Conversely, any written or oral
8 statement made by Respondent outside an Informal Settlement Conference is not barred from being
9 admitted by the Department in any subsequent hearing.

10 If Respondent does not request a hearing, this Order shall become final. If Respondent
11 requests a hearing, the purpose of the hearing shall be to determine if grounds exist for: (1) the
12 issuance of an order pursuant to A.R.S. § 6-137 directing Respondent to cease and desist from the
13 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time
14 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,
15 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-
16 132; and (3) an order or any other remedy necessary or proper for the enforcement of statutes and
17 rules regulating loan originators pursuant to A.R.S. § 6-991 *et seq.*

18 **FINDINGS OF FACT**

19 1. On or about December 4, 2012, the Department initiated examination of Amerifirst
20 Financial, Inc. (“Amerifirst”), an Arizona corporation, authorized to transact business in Arizona as
21 a mortgage banker, license number BK-013635

22 2. In the course of the examination, it was revealed that Respondent James Gappa (“Mr.
23 Gappa” or “Respondent”) assisted Amerifirst’s employee, Joey Fontenot (“Mr. Fontenot”), who is a
24 licensed loan originator, in performance of his services by taking residential mortgage loan
25 applications and/or offering or negotiating terms of a residential mortgage loan. Specifically:

26 a. Beginning in mid-2012, Mr. Fontenot provided Mr. Gappa with a list of potential

1 borrowers. Using his skills as a telemarketer, Mr. Gappa contacted potential
2 borrowers. Mr. Gappa gathered information from these borrowers by finding out
3 their credit scores, whether they had a history of bankruptcy, foreclosure or short
4 sale, whether they were looking to buy a house, whether they wanted to speak to a
5 loan originator, and whether they could benefit from the services of Mr. Fontenot.
6 Mr. Gappa sought to “pre-qualify borrowers to speak” with Mr. Fontenot.

7 b. In his communications with potential borrowers, Mr. Gappa represented himself
8 as an employee of Amerifirst, although he has never been employed by
9 Amerifirst. Specifically:

10 i. Mr. Gappa obtained the domain address of “amerifirstaz.com” and created an
11 email account for himself using this domain “for the purposes of creative
12 marketing in a capacity of adding validity to [his] contacting the potential new
13 business electronically only.”

14 ii. Mr. Gappa used Mr. Fontenot’s email address for the purposes of
15 communicating with potential borrowers.

16 iii. Mr. Gappa’s signed his email directed at potential borrowers as “Loan
17 Coordinator [of] Amerifirst Financial, Inc.,” “Director/New Client Services
18 [at] Amerifirst Financial, Inc.,” or “Client Services Director [of] Amerifirst
19 Financial, Inc.”

20 iv. Mr. Gappa also stated to potential borrowers that he “work[s] at Amerifirst
21 Financial, Inc.”

22 c. Mr. Gappa admits to being paid by Mr. Fontenot for his services, although no
23 records exist documenting the payments because Mr. Gappa was paid in cash.
24 Mr. Gappa and Mr. Fontenot estimate that Mr. Gappa may have received \$300 to
25 \$400 on three to four occasions.

26 d. After his initial contact with borrowers, Mr. Gappa reached out to borrowers

1 checking if they “received excellent mortgage assistance.” For example, in an
2 email dated August 8, 2012, Mr. Gappa stated: “It has been a couple weeks since I
3 received your application. I have tried reaching you by phone a number of times,
4 but I have not been successful. I do not want you to think that I have forgotten
5 about your interest in securing a home loan, so I am also trying to reach you by
6 email. . . . I am committed to helping you find a loan that fits your needs.”

7 e. Mr. Gappa also represented to borrowers that he can help them find “exactly what
8 [they] are looking for,” that he “won’t give [them] the hard sell,” and that he
9 “work[s] harder than most other mortgage professionals.” Mr. Gappa’s
10 statements to borrowers included the following: “we will work with you directly
11 to have your credit in a position to finance you.”¹ Mr. Gappa also advised
12 borrowers on the documents that they were required (or not) to submit to
13 Amerifirst for Amerifirst to make a decision on a loan application, and in some
14 instances, Mr. Gappa advised borrowers on the FHA loan limits and/or other
15 available loan terms and steps to take to finalize the loan application/approval.

16 3. Mr. Gappa is not and was not, at any time material herein, authorized to act as a loan
17 originator in Arizona. Mr. Gappa was not exempt from licensure as a loan originator pursuant to
18 A.R.S. § 6-991.01.

19 4. A natural person is a “loan originator” if that person “for compensation or gain or in
20 the expectation of compensation or gain does any of the following: (i) Takes a residential mortgage
21 loan application. (ii) Offers or negotiates terms of a residential mortgage loan. (iii) On behalf of a
22 borrower, negotiates with a lender or noteholder to obtain a temporary or permanent modification in
23

24 ¹ Mr. Gappa was advising borrowers with a poor credit score to open a “secured credit card” at
25 www.appliedbank.com by creating an account online with a \$300 deposit in order to “reestablish [their] credit
26 profile as soon as possible.” Mr. Gappa represented to borrowers that this business “report[ed] to the major
credit agencies immediately” and opening an account there would result in the borrower’s getting his or her
score up and getting approved for a home loan.

1 an existing residential mortgage loan agreement.” A.R.S. § 6-991(12).²

2 5. These Findings of Fact shall also serve as Conclusions of Law.

3 **CONCLUSIONS OF LAW**

4 1. Pursuant to A.R.S. § 6-991 *et seq.*, the Superintendent has the authority and duty to
5 regulate all persons engaged in the activities of a loan originator and with the enforcement of
6 statutes, rules and regulations relating to loan originators.

7 2. Respondent James Gappa had engaged and/or is engaging in unlicensed activity as a
8 loan originator in the state of Arizona.

9 3. By the conduct set forth in the Findings of Fact, Mr. Gappa has violated A.R.S. 6-
10 991.03, by acting as a loan originator in Arizona without having first applied for and obtained a loan
11 originator license.

12 4. The violations set forth above constitute grounds for: (1) the issuance of an order
13 pursuant to A.R.S. § 6-137 directing Mr. Gappa to cease and desist from the violative conduct and to
14 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
15 Superintendent to correct the conditions resulting from the unlawful acts, practices, and transactions;
16 (2) the imposition of a monetary civil penalty pursuant to A.R.S. § 6-132; and (3) an order or any
17 other remedy necessary or proper for the enforcement of statutes and rules regulating loan
18 originators pursuant to A.R.S. § 6-991 *et seq.*

19 **ORDER**

20 1. Respondent James Gappa shall immediately stop the violations set forth in the
21 Findings of Fact and Conclusions of Law.

22
23 ² A.A.C. Rule 20-4-102 defines the terms “[d]irectly or indirectly makes, negotiates, or offers to make or
24 negotiate” to mean “[p]roviding consulting or advisory services in connection with a mortgage loan
25 transaction, mortgage banking loan transaction . . . [t]o a borrower, concerning the location or identity of
26 potential investors or lenders; or [p]roviding assistance in preparing an application for a mortgage loan
transaction, mortgage banking loan transaction . . . regardless of whether the person providing assistance
directly contacts any potential investor or lender; and [p]rocessing a loan [which is further defined as
‘obtaining a loan application’s supporting documents for use in underwriting’].”

1 the Superintendent is solely to settle this matter and does not preclude this Department, any other
2 agency or officer of this state or subdivision thereof from instituting other proceedings as may be
3 appropriate now or in the future.

4 6. Respondent waives all rights to seek judicial review or otherwise to challenge or
5 contest the validity of this Cease and Desist Order.

6 DATED this ____ day of _____, 2014.

7

8 By: _____
9 James Gappa

10 ORIGINAL of the foregoing filed this 6th
11 day of May, 2014, in the office of:

12 Lauren W. Kingry, Superintendent of Financial Institutions
13 Arizona Department of Financial Institutions
14 ATTN: June Beckwith
15 2910 N. 44th Street, Suite 310
16 Phoenix, AZ 85018

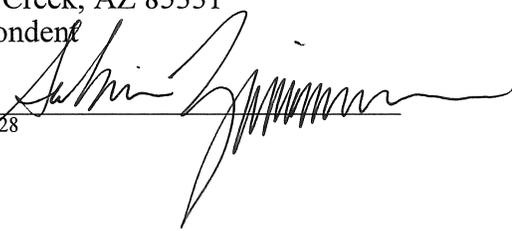
17 COPY mailed/delivered same date to:

18 Natalia A. Garrett, Assistant Attorney General
19 Office of the Attorney General
20 1275 W. Washington St.
21 Phoenix, AZ 85007
22 Natalia.Garrett@azag.gov

23 Robert D. Charlton, Assistant Superintendent
24 Dawn Wismer, Examiner-in-Charge
25 ATTN: Sabrina Zimmerman
26 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
Sabrina.Zimmerman@azdfi.gov

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

James Gappa
4107 E. Burnside Trail
Cave Creek, AZ 85331
Respondent

By: 
3605528