

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 12F-BD028-SBD

3 **ACTIVE FUNDING GROUP, LLC**

CONSENT ORDER

4 8925 East Pima Center Parkway
5 Suite 135
6 Scottsdale, AZ 85258

Respondent.

7
8 On October 12, 2011, the Arizona Department of Financial Institutions (“Department”)
9 issued an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order,
10 alleging that Respondents had violated Arizona law. Wishing to resolve this matter as an exercise of
11 its business judgment in lieu of an administrative hearing, and without admitting liability,
12 Respondent consents to the following Findings of Fact and Conclusions of Law, and consents to the
13 entry of the following Order.

14 FINDINGS OF FACT

15 1. Respondent Active Funding Group, LLC (hereafter referred to as “AFG or
16 Respondent”) is an Arizona limited liability company which, based on the conduct set forth herein,
17 engaged in the business of a mortgage banker within the meaning of A.R.S. § 6-941 *et seq.* and in
18 the business of a commercial mortgage banker within the meaning of A.R.S. § 6-971 *et seq.*

19 2. AFG is not and was not, at any time material herein, licensed to transact business in
20 Arizona as mortgage banker or as commercial mortgage banker.

21 3. For the conduct set forth herein, Respondent was not exempt from licensure as a
22 mortgage banker pursuant to A.R.S. § 6-942 or as a commercial mortgage banker pursuant to A.R.S.
23 § 6-972.

24 4. AFG advertises itself as a “specialty finance” company based in Arizona, hard-money
25 lender, asset-based lender, and/or a local direct source, private lender, issuing loans exclusively to
26 professionals, investors or individual who are not consumers.

1 5. The terms of a typical transaction funded by AFG provide for a six (6) month loan at
2 18% annual interest rate, with \$1,000.00 “additional interest one-time payment.”

3 6. AFG made, negotiated or offered to make or negotiate mortgage banking
4 loans/mortgage loans, and it did so for compensation or in the expectation of compensation while
5 unlicensed as a mortgage banker as set forth below. Specifically, AFG collected or expected to
6 collect compensation in the amount of \$1,000 as “additional interest one-time payment,” or “a one-
7 time additional interest cost.”

8 7. AFG made, negotiated or offered to make or negotiate commercial mortgage loans
9 while unlicensed as a commercial mortgage banker as set forth below. Specifically:

10 a. AFG’s advertisement stated that it “will consider lending on any acceptable real
11 estate asset,” specifying “allowed collateral types” as the following types of real
12 property:

- 13 • Single family residential, detached
- 14 • Single family residential, attached
- 15 • Town homes, detached
- 16 • Town homes, attached
- 17 • Condominiums
- 18 • Multi-family rental properties (under 20 units)
- 19 • Commercial retail under \$1M loan amount
- 20 • Commercial office under \$1M loan amount.

21 b. AFG’s website described AFG’s “Current Financing Programs” as follows: “Asset
22 based investor financing is always available from [AFG]. These products are
23 **available on any properties** that our investor clients would like to purchase,
24 provided they fall under our “accepted collateral” category including without
25 limitation . . . commercial properties (retail/office under \$1M), . . .” (Emphasis in the
26 original.) See <http://www.activefundinggroup.com/AZ/content/view/173>.

8. These Findings of Fact shall also serve as Conclusions of Law.

1 CONCLUSIONS OF LAW

2 1. Pursuant to A.R.S. § 6-941 *et seq.* and A.R.S. § 6-971 *et seq.*, the Superintendent has
3 the authority and duty to regulate all persons engaged in the mortgage banker and commercial
4 mortgage banker business and with the enforcement of statutes, rules and regulations relating to
5 mortgage bankers and commercial mortgage bankers.

6 2. A person is engaging in the business of a "mortgage banker" if that person "for
7 compensation or in the expectation of compensation either directly or indirectly makes, negotiates or
8 offers to make or negotiate a mortgage banking loan or a mortgage loan." *See* A.R.S. § 6-941(5).¹

9 3. A person is engaging in the business of a "commercial mortgage banker" if that
10 person engages in the following: "(a) Originating commercial mortgage loans. (b) Servicing
11 commercial mortgage loans. (c) Either directly or indirectly making, negotiating or offering to make
12 or negotiate commercial mortgage loans." A.R.S. § 6-971(2).²

13 4. AFG engaged in unlicensed activity as a mortgage banker and a commercial
14 mortgage banker as set forth herein.

15 5. Specifically, by the conduct set forth in the Findings of Fact, AFG violated the
16 following provisions:
17
18

19 ¹ The term "mortgage banking loan" means "a loan which is funded exclusively from the
20 mortgage banker's own resources, which is directly or indirectly secured by a mortgage or deed of
21 trust or any lien interest on real estate located in this state and which is created with the consent of
22 the owner of the real property." A.R.S. § 6-941(6). The term "mortgage loan" means "any loan,
other than a mortgage banking loan, secured by a mortgage or deed of trust or any lien interest on
real estate located in this state and created with the consent of the owner of the real estate." A.R.S. §
6-941(8).

23 ² The term "commercial mortgage loan" means "a loan that is directly or indirectly secured
24 by a mortgage or deed of trust or any lien interest on commercial property and created with the
25 consent of the owner of the commercial property." A.R.S. § 6-971(3). The term "commercial
26 property" means "real estate that is located in this state and that is not used for a one to four family
residence." A.R.S. § 6-971(5).

1 a. A.R.S. § 6-943(A), by acting as a mortgage banker in Arizona without having first
2 applied for and obtained a mortgage banker license.

3 b. A.R.S. § 6-973(A), by acting as a commercial mortgage banker in Arizona without
4 having first applied for and obtained a commercial mortgage banker license.

5 6. The violations set forth above constitute grounds for: (1) the issuance of an order
6 pursuant to A.R.S. § 6-137 directing Respondent to cease and desist from the violative conduct and
7 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the
8 Superintendent to correct the conditions resulting from the unlawful acts, practices, and transactions;
9 (2) the imposition of a monetary civil penalty pursuant to A.R.S. § 6-132; and (3) an order or any
10 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
11 bankers and commercial mortgage bankers pursuant to A.R.S. §§ 6-941 *et seq.*, 6-971 *et seq.*

12 **ORDER**

13 1. To the extent it has not already done so, Respondent shall immediately stop the
14 violations set forth in the Findings of Fact and Conclusions of Law.

15 2. Respondent shall immediately cease all mortgage banker and commercial mortgage
16 banker business in Arizona until such time as they have obtained mortgage banker and commercial
17 mortgage banker licenses from the Superintendent as prescribed by A.R.S. § 6-941 *et seq.* and
18 A.R.S. § 6-971 *et seq.*

19 3. Respondent shall pay to the Department a civil money penalty in the amount of
20 **twenty-five thousand dollars (\$25,000.00).**

21 4. The provisions of this Order shall be binding upon Respondent, its employees, agents
22 and other persons participating in the conduct of the affairs of Respondent.

23 5. This Order shall become effective upon service, and shall remain effective and
24 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated
25 or set aside.

1 SO ORDERED this 28 day of November, 2011.

2 Lauren Kingry
3 Superintendent of Financial Institutions

4 By: 
5 Robert D. Charlton
6 Assistant Superintendent of Financial Institutions

7 **CONSENT TO ENTRY OF ORDER**

8 1. Respondent acknowledges that it has been served with a copy of the foregoing
9 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, has read the same,
10 is aware of its right to an administrative hearing in this matter, and has waived the same.

11 2. Without admitting liability, Respondent admits the jurisdiction of the Superintendent
12 and consents to the entry of the foregoing Findings of Fact, Conclusions of Law, and Order.

13 3. Respondent states that no promise of any kind or nature has been made to induce
14 them to consent to the entry of this Order, and that they have done so voluntarily.

15 4. Respondent agrees to immediately cease from engaging in the violative conduct set
16 forth in the Findings of Fact and Conclusions of Law.

17 5. Respondent acknowledges that the acceptance of this Agreement by the
18 Superintendent is solely to settle this matter and does not preclude this Department, any other agency
19 or officer of this state or subdivision thereof from instituting other proceedings as may be
20 appropriate now or in the future.

21 6. Gregg Reichman, on behalf of TDJ LLC, represents that he is a Managing Member of
22 TDJ LLC, which manages AFG, and that, as such, has been authorized by AFG to consent to the
23 entry of this Order on its behalf.

24 7. Jody Angel, on behalf of Union Equity LLC and AFG, represents that he is a
25 Managing Member of Union Equity LLC, which manages AFG, and that, as such, has been
26 authorized by AFG to consent to the entry of this Order on its behalf.

1 8. Respondent waives all rights to seek judicial review or otherwise to challenge or
2 contest the validity of this Consent Order.

3 DATED this 21 day of November, 2011.

4
5 By: 
6 Gregg Reichman, on behalf of TDJ LLC acting as the
7 Managing Member of Active Funding Group, LLC

8 By: 
9 Jody Angel, on behalf of Union Equity LLC acting as
10 the Managing Member of Active Funding Group, LLC

11 ORIGINAL of the foregoing filed this 28th
12 day of November, 2011, in the office of:

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

18 COPY mailed/delivered same date to:

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

23 Robert D. Charlton, Assistant Superintendent
24 Tammy Seto, Senior Examiner
25 ATTN: Sabrina Hampton
26 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

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

Active Funding Group, LLC
8925 E. Pima Center Pkwy, # 135
Scottsdale, AZ 85258
Respondent

1 Jim Belanger, Esq.
2 Coppersmith Schermer & Brockelman, PLC
3 2800 N. Central Ave., Suite 1200
4 Phoenix, AZ 85004
5 Attorneys for Respondent

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