

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Banker License of: No. 09F-BD066-BNK

3 **ARTISAN MORTGAGE, L.L.C #1 AND**  
4 **FREDERICK J. STROUSE, III, MANAGING**  
5 **MEMBER/RESPONSIBLE INDIVIDUAL**  
9051 West Kelton Lane, Suite 8  
Peoria, Arizona 85382

**CONSENT ORDER**

6 Petitioners.

7 On May 13, 2009, the Arizona Department of Financial Institutions (“Department”) issued a  
8 Notice of Hearing alleging that Petitioners had violated Arizona law. Wishing to resolve this matter  
9 in lieu of an administrative hearing and without admitting liability, Petitioners do not contest the  
10 following Findings of Fact and Conclusions of Law, and consent to the entry of the following Order.

11 FINDINGS OF FACT

12 1. Petitioner Artisan Mortgage, L.L.C. #1 (“Artisan”) is an Arizona limited liability  
13 company authorized to transact business in Arizona as a mortgage banker, license number BK  
14 0907489, within the meaning of A.R.S. §§ 6-941, *et seq.* The nature of Artisan’s business is that of  
15 making, negotiating, or offering to make or negotiate a mortgage banking loan or a mortgage loan  
16 secured by Arizona real property within the meaning of A.R.S. § 6-941(5).

17 2. Petitioner Frederick J. Strouse, III (“Mr. Strouse”) is a thirty three and a third percent  
18 (33.3%) owner, Managing Member and the Responsible Individual of Artisan and is authorized to  
19 transact business in Arizona as a mortgage banker within the meaning of A.R.S. § 6-941(5), as  
20 outlined within A.R.S. § 6-943(F).

21 3. Artisan and Mr. Strouse are not exempt from licensure as mortgage bankers within the  
22 meaning of A.R.S. §§ 6-942 and 6-941(5).

23 4. An examination of Artisan conducted by the Department, beginning September 11, 2007  
24 and concluding November 13, 2007, revealed that Petitioners:

- 25 a. Failed to prominently display the mortgage banker license in their principal place of  
26 business;

1 b. Acted as a mortgage banker while unlicensed, specifically:

2 i. Artisan generated and issued a Good Faith Estimate, a Truth-In-Lending  
3 Disclosure statement, and a Servicing Transfer Disclosure Statement for a  
4 borrower in June of 2005, prior to obtaining a license from the Department;

5 ii. Beginning August 20, 2007, Artisan permitted an individual not employed by  
6 Petitioners to originate and negotiate a mortgage loan from an unlicensed  
7 office located at 3105 Clearwater Drive, #B, Prescott, Arizona 86305. Artisan  
8 received compensation in the amount of four thousand, one hundred seventy  
9 five dollars (\$4,175.00) from this unlicensed transaction;

10 iii. On August 23, 2007, Artisan permitted another individual not employed by  
11 Petitioners to generate and issue a Loan Status Report from an unlicensed  
12 office located at 8151 East Indian Bend Road, Suite 101, Scottsdale, Arizona  
13 85250; and

14 iv. Between September 19, 2007 and October 9, 2007, Artisan permitted an  
15 employee to originate and close mortgage loans at an unlicensed office  
16 located at 2111 East Highland Avenue, Phoenix, Arizona 85016;

17 c. Failed to obtain a branch office license from the Superintendent and designate a  
18 person from each branch to oversee the operations of that office, specifically:

19 i. Artisan originated and processed a mortgage loan from an office located at  
20 3105 Clearwater Drive, #B, Prescott, Arizona 86305 ("Prescott office"). The  
21 Prescott office utilized an automated telephone message which stated its  
22 location was awaiting the Department's approval of a branch license.  
23 Furthermore, the automated telephone message also disclosed the names and  
24 telephone numbers of the loan officers originating and/or processing mortgage  
25 banking business from the Prescott office. The Department never received an  
26 application for a branch license for the Prescott office and has not issued a

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- branch license for the Prescott office location;
- ii. Artisan originated and processed a mortgage loan from an office located at 2295 Valley Creek Drive, Elgin, Illinois 60123. The Department has not issued a branch license to Petitioners for an office located at 2295 Valley Creek Drive, Elgin, Illinois 60123. The Department never received an application for a branch license for an office located at 2295 Valley Creek Drive, Elgin, Illinois 60123;
- iii. Artisan permitted mortgage loans to be processed at an office located at 8151 East Indian Bend Road, Suite 101, Scottsdale, Arizona 85250. The Department has not issued a branch license to Petitioners for an office located at 8151 East Indian Bend Road, Suite 101, Scottsdale, Arizona 85250. The Department never received an application for a branch license for an office located at 8151 East Indian Bend Road, Suite 101, Scottsdale, Arizona 85250; and
- iv. Artisan permitted mortgage loans to be processed at an office located at 2111 East Highland Avenue, Phoenix, Arizona 85016. The Department has not issued a branch license to Petitioners for an office located at 2111 East Highland Avenue, Phoenix, Arizona 85016. The Department never received an application for a branch license for an office located at 2111 East Highland Avenue, Phoenix, Arizona 85016;
- d. Failed to obtain the written consent of the Superintendent prior to effecting a change of control of Artisan, specifically:
  - i. Each of Artisan's officers acquired more than twenty percent (20%) of the outstanding shares of Artisan without obtaining prior written consent from the Department, specifically:
    - 1. According to the Department's records, the following persons or

1 entities each owned twenty percent (20%) interest in Artisan:

- 2 a. FYDAQ, Inc.;
- 3 b. Flying Capital, Inc.;
- 4 c. Christian R. Walsh;
- 5 d. Michael D. Herdmann; and
- 6 e. Frederick J. Strouse, III; and

7 2. Walsh, Herdman and Strouse purchased all shares from FYDAQ, Inc.  
8 and Flying Capital, Inc. without the benefit of prior written approval  
9 from the Department. At all relevant times, the following persons  
10 each own thirty three and one third percent (33.3%) interest in Artisan:

- 11 a. Christian R. Walsh;
- 12 b. Michael D. Herdmann; and
- 13 c. Frederick J. Strouse, III;

- 14 e. Failed to include the name and mortgage banker license number as issued on the  
15 mortgage banker's principal place of business license within the text of eleven (11)  
16 regulated advertisements or business solicitations;
- 17 f. Failed to maintain samples of every piece of advertising related to its Arizona  
18 mortgage banker business;
- 19 g. Failed to conduct the minimum elements of reasonable employee investigations prior  
20 to hiring employees, specifically:
  - 21 i. Failed to obtain a completed Employment Eligibility Verification (Form I-9)  
22 prior to hiring at least two (2) employees;
  - 23 ii. Failed to obtain a completed and signed employment application prior to  
24 hiring at least one (1) employee;
  - 25 iii. The signed statements attesting to all of an applicant's felony convictions,  
26 including detailed information regarding each conviction was either

- 1 incomplete or limited to seven years for at least twelve (12) employees;
- 2 iv. Failed to consult with the applicant's most recent or next most recent
- 3 employer, if any, prior to hiring at least five (5) employees;
- 4 v. Failed to inquire regarding the applicant's qualifications and competence for
- 5 the position prior to hiring at least five (5) employees;
- 6 vi. Failed to obtain a current credit report from a credit reporting agency prior to
- 7 hiring at least three (3) employees; and
- 8 vii. Failed to investigate further after at least one (1) employee's credit report
- 9 contained derogatory information;
- 10 h. Failed to maintain originals or copies of loan transactions, specifically:
- 11 i. Failed to maintain the loan application and Good Faith Estimate for loan
- 12 number 90000002;
- 13 ii. Failed to maintain the loan application for loan number 90000049;
- 14 iii. Failed to maintain the Servicing Transfer Disclosure for loan number
- 15 90000210;
- 16 iv. Failed to maintain the Good Faith Estimate, Truth in Lending Disclosure
- 17 statements, and the Affiliated Business Arrangement Disclosure for loan
- 18 number 90000552;
- 19 v. Failed to maintain the Servicing Transfer Disclosure for loan number
- 20 90000728; and
- 21 vi. Failed to maintain the Good Faith Estimate and Document of Final
- 22 Disposition for loan number 90001483;
- 23 i. Allowed borrowers to sign regulated documents containing blank spaces, specifically:
- 24 i. At least eight (8) Authorizations to Complete Blank Spaces were signed in
- 25 blank;
- 26 ii. At least two (2) Optional Credit Insurance Disclosures were signed in blank;

- 1           iii.    At least two (2) Servicing Transfer Disclosures were signed in blank;
- 2           iv.    At least three (3) Borrower's Certificates of Tangible Net Benefit were signed
- 3                 in blank; and
- 4           v.    At least two (2) Truth in Lending Disclosures were signed in blank;
- 5        j.    Failed to comply with the disclosure requirements of Title I of the Consumer Credit
- 6           Protection Act (15 U.S.C. §§ 1601 through 1666j) ("CCPA"), the Real Estate
- 7           Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617) ("RESPA"), and the
- 8           regulations promulgated under these acts, specifically:
- 9                 i.    The Servicing Transfer Disclosure contains blank spaces and is signed by the
- 10                 borrower and the Good Faith Estimate failed to disclose a Yield Spread
- 11                 Premium of two thousand, four hundred fifteen dollars (\$2,415.00) in the file
- 12                 for loan number 90000242;
- 13                 ii.   The Initial Truth in Lending Disclosure contains blank spaces and is signed by
- 14                 the borrower and the annual percentage rate on the Truth in Lending
- 15                 Disclosure is not calculated correctly in the file for loan number 90001861;
- 16                 iii.   The Initial Truth in Lending Disclosure contains blank spaces and is signed by
- 17                 the borrower and the Good Faith Estimate failed to disclose a Yield Spread
- 18                 Premium of three thousand, thirty dollars (\$3,030.00) in the file for loan
- 19                 number 90001957;
- 20                 iv.   The Servicing Transfer Disclosure contains blank spaces and is signed by the
- 21                 borrower in the file for loan number 90001231;
- 22                 v.    The Good Faith Estimate is missing from the file for loan number 90000002;
- 23                 vi.   The Servicing Transfer Disclosure Statement is missing from the file for loan
- 24                 number 90000210;
- 25                 vii.   The Good Faith Estimate, Truth in Lending Disclosure and Servicing Transfer
- 26                 Disclosure in the file for loan number 90000275 were prepared and issued

- 1 prior to obtaining a license from the Department;
- 2 viii. The Good Faith Estimate, Truth in Lending Disclosure and Servicing Transfer
- 3 Disclosure are missing from the file for loan number 90000552;
- 4 ix. The Servicing Transfer Disclosure is missing from the file for loan number
- 5 90000728;
- 6 x. The annual percentage rate on the Truth in Lending Disclosure is not
- 7 calculated correctly in the file for loan number 90001835;
- 8 xi. The Good Faith Estimate is missing from the file for loan number 90001483;
- 9 xii. The Good Faith Estimate failed to disclose a Yield Spread Premium of one
- 10 thousand, four hundred forty eight dollars and seventy six cents (\$1,448.76) in
- 11 the file for loan number 90001174; and
- 12 xiii. The Good Faith Estimate failed to disclose a Yield Spread Premium of one
- 13 thousand, six hundred twenty dollars (\$1,620.00) in the file for loan number
- 14 90001182;
- 15 k. Frederick J. Strouse, III, Artisan's Responsible Individual, failed to be in active
- 16 management of Petitioners' activities, as demonstrated by the violations cited herein,
- 17 specifically:
- 18 i. While branch office license applications were pending, Artisan permitted
- 19 mortgage business to be conducted at these unlicensed offices. According to
- 20 the Mr. Strouse, he instructed all employees not to conduct business from
- 21 those unlicensed offices. Artisan's employees continued to conduct Arizona
- 22 mortgage business after they had received instruction from the Mr. Strouse to
- 23 cease; and
- 24 ii. The Department's examiner discovered unlicensed activity of which the
- 25 Responsible Individual was not aware;
- 26 l. Used an unlawful appraisal disclosure that limits a borrower to ninety (90) days in

1           which the borrower may request a copy of an appraisal for which the borrower has  
2           paid; and

3           m. Made false promises or misrepresentations or concealed essential or material facts in  
4           the course of the mortgage banker business, specifically:

5           i. An investigation conducted as a result of consumer complaint number  
6           4012578 provided evidence of misrepresentations and omissions of material  
7           facts, specifically:

8           1. Misrepresentation to the Builder/User of the Loan Status Report:

9           A Loan Status Report (“LSR”) was signed on May 20, 2007 by  
10           Mike Herdman, who was at all relevant times a loan officer and  
11           thirty three and one third percent (33.3%) owner of Artisan.  
12           Artisan was a preferred lender for Biltmore Homes. The LSR  
13           indicated that Artisan had “received and reviewed a completed  
14           written signed Application/1003 with all requested disclosures and  
15           supporting documentation. Based on information provided and a  
16           [tri-merged credit report], the Buyer is pre-qualified.” The loan  
17           file contains a signed Application/1003 dated July 23, 2007, but  
18           not one for May 20, 2007 as the LSR states. The supporting  
19           documentation, such as pay stubs, W-2 Forms, bank statements,  
20           etc. were also not provided to Artisan until July 23, 2007. In  
21           addition, the loan file did not contain a loan approval dated May  
22           20, 2007. The Buyers relied upon these misrepresentations and  
23           Biltmore Homes used these misrepresentations to retain the  
24           Buyers’ deposits. The Purchase Contract specified, “upon the  
25           receipt by Seller of Loan Status Report, all earnest money deposits  
26           shall automatically become non-refundable to Buyer”; and

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2. Omission of Material Fact from the Lender: The Buyers borrowed the funds required for the earnest money deposit and option deposit, totaling four thousand, six hundred twenty one dollars (\$4,621.00). Per the terms of Flagstar Bank’s underwriting requirements, “...funds must not have been borrowed...funds obtained from credit card advances are not acceptable.” The funds were borrowed and were not included in the liabilities shown on the loan application dated July 23, 2007. The misstated lower liabilities shown on the loan application matched the liabilities on the credit report which was run two months prior on May 20, 2007. Artisan did not follow up on its request for two bank statements instead of the one bank statement it received. Had Artisan done so, it could have seen the four thousand dollar (\$4,000.00) wire-in loan on May 22, 2007 for the earnest money deposit or the credit card advances of eight hundred fifty dollars (\$850.00) on July 2, 2007. Artisan did not run another credit report after it took the loan application to confirm the accuracy of the information therein. Had this information been disclosed regarding the borrowed funds as was required, per the underwriting terms the loan was not eligible for the Fannie Mae MyCommunity Mortgage program and may not have been approved.

5. Based upon the above findings, the Department issued and served upon Artisan and Mr. Strouse an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order (“Cease and Desist Order”) on March 19, 2009. The Cease and Desist Order included the assessment of a civil money penalty in the amount of thirty thousand dollars (\$30,000.00) against Petitioners.



1 documents containing blank spaces;

2 j. A.R.S. § 6-946(E) and A.A.C. R20-4-1806(B)(6)(e), by failing to comply with the  
3 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.  
4 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§  
5 2601 through 2617), and the regulations promulgated under these acts;

6 k. A.R.S. § 6-943(F) and A.A.C. R20-4-102, by the failure of the Responsible  
7 Individual to be in active management of Respondents' activities;

8 l. A.R.S. § 6-946(C), by using an unlawful appraisal disclosure that limits a borrower to  
9 ninety (90) days in which the borrower may request a copy of an appraisal for which  
10 the borrower has paid; and

11 m. A.R.S. § 6-947(L), by making false promises or misrepresentations or concealing  
12 essential or material facts in the course of the mortgage banker business.

13 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order  
14 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to  
15 take the appropriate affirmative actions, within a reasonable period of time prescribed by the  
16 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and  
17 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the  
18 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-945; and (4) an order or any  
19 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage  
20 bankers pursuant to A.R.S. §§ 6-123 and 6-131.

21 4. Petitioners failed to conduct their mortgage banker business in accordance with the  
22 law, which is grounds for the suspension or revocation of Petitioners' mortgage banker license,  
23 pursuant to A.R.S. § 6-945(A).

24 5. Petitioners misrepresented or concealed essential or material facts in the course of the  
25 mortgage banker business, which is grounds for suspension or revocation of Petitioners' mortgage  
26 banker license, pursuant to A.R.S. § 6-945(A).

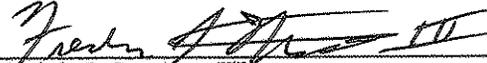




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6. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest the validity of this Cease and Desist Order.

DATED this 15 day of June, 2009.

By   
Frederick J. Strouse, III  
Responsible Individual/Managing Member  
Artisan Mortgage, L.L.C. #1

ORIGINAL of the foregoing filed this 18<sup>th</sup> day of June, 2009, in the office of:

Felecia A. Rotellini  
Superintendent of Financial Institutions  
Arizona Department of Financial Institutions  
ATTN: June Beckwith  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

COPY mailed/delivered same date to:

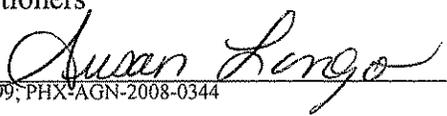
Hon. Lewis D. Kowal  
Administrative Law Judge  
Office of the Administrative Hearings  
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Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

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

3 Frederick J. Strouse  
4 Artisan Mortgage, LLC #1  
5 8937 E. Bell Rd., Ste. 101  
6 Scottsdale, AZ 85260  
7 Petitioners

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