

STATE OF ARIZONA
Department of Insurance and Financial Institutions
FILED June 7, 2023 by AS

STATE OF ARIZONA

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

**In the Matter of the Mortgage Broker
License of:**

No. 23A-009-FIN

PHOENIX RISING FINANCIAL, LLC

ORDER

Arizona Mortgage Broker License No.
1002731

Respondent

On May 15, 2023, the Office of Administrative Hearings, through Administrative Law Judge Adam D. Stone, issued an Administrative Law Judge Decision (“Recommended Decision”). The Director of the Arizona Department of Insurance and Financial Institutions (“Director”) received the Recommended Decision on the same date, a copy of which is attached and incorporated by reference. Respondent failed to accept the Recommended Decision within ten days of receipt. Therefore, the Director has reviewed the Recommended Decision and enters the following:

1. The Director ADOPTS the Findings of Fact, except to correct the following:
 - a) Page 1, line 24, should read, “regulation of the **mortgage broker** profession.”
 - b) Page 3, line 4, should read, “whether the Department had cause to revoke Respondent’s **mortgage broker** license”
 - c) Page 4, lines 14 and 15 should read, “The Director of the Department is vested with the authority to regulate entities engaged in **mortgage broker** business and has the duty to enforce statutes and rules relating to **mortgage brokers.**”
 - d) Page 4, footnote 16, should read, “*See* ARIZ. REV. STAT. § 6-901 *et seq.*”
 - e) Page 6, line 9 should read “grounds exist for discipline to be taken against Respondent’s **mortgage broker** license,”

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2. The Director ADOPTS the Conclusions of Law.

3. The Director ADOPTS the Recommended Order.

4. The Director ORDERS the following:

Respondent’s Arizona mortgage broker license, number 1002731, is revoked effective immediately.

NOTIFICATION OF RIGHTS

Pursuant to Arizona Revised Statutes (“A.R.S.”) § 41-1092.09, Respondent may request a rehearing or review with respect to this Order by filing a written motion with the Director within 30 days after the date of this Order, setting forth the basis for relief under Arizona Administrative Code R20-6-114(B). Pursuant to A.R.S. § 41-1092.09, it is not necessary to request a rehearing before filing an appeal to the Superior Court.

Respondent may appeal the final decision of the Director to the Superior Court of Maricopa County for judicial review, pursuant to A.R.S. § 6-139. A party filing an appeal must notify the Office of Administrative Hearings of the appeal within ten days after filing the complaint commencing the appeal, pursuant A.R.S. § 12-904(B).

DATED and EFFECTIVE this 7th day of June, 2023.

Barbara D. Richardson

Barbara D. Richardson, Director
Arizona Department of Insurance and
Financial Institutions

1 ORIGINAL of the foregoing filed electronically
this 8th day of June 2023, to:

2 Adam D. Stone, Administrative Law Judge
3 <https://portal.azoah.com/submission>
4 Office of Administrative Hearings

5 COPY mailed the same date by Certified Mail,
Return Receipt Requested, to:

6 Phoenix Rising Financial LLC
7 Attn: Kevin E. Reed
8 2200 E. Camelback Road, Suite 221
Phoenix, AZ 85016

9 Respondent 9489 0090 0027 6486 6701 77

10 COPY of the foregoing delivered the same date, to:

11 Deian Ousounov, Assistant Director
12 Gio Espinosa, Regulatory Legal Affairs Officer
13 Ana Starcevic, Paralegal Project Specialist
14 Steven Fromholtz, Licensing Division Manager
15 Tammy Seto, Assistant Director
16 Aqueelah Currie, Insurance and Appraisal Licensing Supervisor
17 Michelle Castaneda, Financial Enterprises Licensing Supervisor
18 Linda Lutz, Legal Assistant
19 Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261
Phoenix, Arizona 85007

18 Phoenix Rising Financial LLC
19 kreed@prfloans.com
20 Respondent

21 Zachary Howard, Assistant Attorneys General
22 Zachary.Howard@azag.gov
23 AdminLaw@azag.gov
Attorney for the Department

24 *Ana Starcevic*
25 _____
26

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Mortgage Broker
License of:

No. 23A-009-FIN

Phoenix Rising Financial, LLC
Arizona Mortgage Broker License No.
1002731

**ADMINISTRATIVE LAW JUDGE
DECISION**

Respondent

HEARING: May 2, 2023

APPEARANCES: The Department of Insurance and Financial institutions was represented by Assistant Attorney General Zachary Howard.

ADMINISTRATIVE LAW JUDGE: Adam D. Stone

Having heard the evidence and testimony and having considered the record in this matter, the undersigned Administrative Law Judge hereby makes the following Findings of Fact and Conclusions of Law and issues the following RECOMMENDED ORDER to the Director of the Department.

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. The Department was created and enabled by the State of Arizona to administer enumerated State laws by protecting the public interest through licensure and regulation of the consumer lender profession.¹

2. Respondent was a licensed Arizona mortgage broker and the holder of mortgage broker license number 1002731. Respondent's mortgage broker license was issued by the Department on August 8, 2019.² The license was most recently renewed on January 21, 2022, and was set to expire on December 31, 2023.³

¹ See Arizona Revised Statutes ("ARIZ. REV. STAT.") §§6-110 and 6-901 *et seq.*

² See Department Exhibit 1.

³ *Id.*

Office of Administrative Hearings
1740 West Adams Street, Lower Level
Phoenix, Arizona 85007
(602) 542-9826

1 3. On October 21, 2022, the Department sent Respondent a notification
2 regarding a scheduled examination of Respondent's business practices in Arizona.⁴

3 4. After Respondent failed to respond to that notification, and two additional e-
4 mails were sent to Respondent, one on October 28, 2022,⁵ and another on November 4,
5 2022.⁶

6 5. The Department then sent Respondent several more e-mail
7 communications on February 1, 9, and 15, 2023,⁷ requesting Respondent contact the
8 Department immediately. On February 15, 2023, Respondent e-mailed the Department
9 indicating that he would contact the Department by February 17, 2023.⁸

10 6. After Respondent again failed to contact the Department as indicated,
11 another follow up e-mail was sent on February 22, 2023,⁹ and again Respondent failed
12 to respond.

13 7. On February 24, 2023, the Department's Regulatory Legal Affairs Officer
14 sent Respondent one last e-mail requesting an immediate response, as well as indicating
15 that a failure to respond could lead to a license suspension or revocation.¹⁰

16 8. While in the middle of the above efforts to have Respondent submit to
17 examination, Respondent completed a renewal process through the Nationwide
18 Multistate Licensing System & Registry. One of the requirements of the renewal process
19 required the filing of Respondent's bond certificate.

20 9. After review of the bond certificate,¹¹ the Department determined that the
21 Bond was invalid because it did not contain Respondent's signature.

22 10. The Department's licensing specialist sent multiple e-mails to Respondent
23 on January 31, February 8 and 10, 2023,¹² and Respondent failed to respond.

24 11. Finally, on February 16, 2023, the Regulatory Legal Affairs Officer sent an
25 e-mail requesting an updated bond certificate.¹³

26 ⁴ See Department Exhibit 2.

27 ⁵ See Department Exhibit 4.

28 ⁶ See Department Exhibit 5.

29 ⁷ See Department Exhibits 9-12.

30 ⁸ See Department Exhibit 13.

⁹ See Department Exhibit 14.

¹⁰ See Department Exhibit 15.

¹¹ See Department Exhibits 17 and 21.

¹² See Department Exhibit 16.

¹³ See Department Exhibit 18.

1 12. The Department then referred this matter to the Office of Administrative
2 Hearings, an independent state agency, for an evidentiary hearing on May 2, 2023. Per
3 the NOTICE OF HEARING issued on March 28, 2023, the issue to be determined was
4 whether the Department had cause to revoke Respondent’s consumer lender license
5 based on the foregoing alleged conduct.

HEARING EVIDENCE

6 13. The Department called Richard Fergus and Michelle Castaneda as a
7 witnesses and submitted Exhibits 1-21. The NOTICE OF HEARING was also admitted as its
8 own exhibit.

9 14. Mr. Fergus was a Senior Examiner with the Department and testified as to
10 Respondent’s failure to submit to the examination.

11 15. Mr. Fergus testified to the above timelines and the email correspondence
12 which was sent to Respondent and the general lack of response thereto. Also, Mr. Fergus
13 testified that there were several voicemails left for Respondent which too went ignored.

14 16. Further, Mr. Fergus testified that he also attempted a site visit to
15 Respondent’s address of record. Upon arrival, Mr. Fergus noted that the suite was
16 occupied by a law firm and not Respondent.¹⁴ In addition, Mr. Fergus testified that he
17 spoke with a receptionist who was unaware of Respondent conducting business in that
18 location.

19 17. Finally, Mr. Fergus testified that when Respondent finally emailed him back
20 on February 15, 2023, he reminded Respondent that there was a holiday and any
21 response could be delayed. However, Mr. Fergus testified that Respondent never
22 followed up as he indicated.

23 18. Michelle Castaneda was a Licensing Supervisor for the Department and
24 testified as to the insufficient bond.

25 19. Ms. Castaneda testified that after reviewing Respondent’s bond, she noted
26 that it did not contain the signature of Respondent’s representative.

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30 ¹⁴ See Exhibit 7.

1 20. Further, Ms. Castaneda sent an email to the bond company on March 8,
2 2023 to inquire as to validity of an unsigned bond, and the company responded that it
3 would be invalid without Respondent’s signature.¹⁵

4 21. Finally, Ms. Castaneda testified that as of today, Respondent has not
5 updated his bond information.

6 22. In closing, the Department argued that because Respondent failed to
7 submit to the examination and has failed to comply with the bond requirements, its license
8 should be revoked.

9 23. Respondent failed to respond to the Notice of Hearing and while the tribunal
10 waited ten minutes prior to the commencement of hearing, Respondent’s representative
11 failed to appear at the hearing and present any evidence to defend its license.

12 **CONCLUSIONS OF LAW**

13 1. The Director of the Department is vested with the authority to regulate
14 entities engaged in business as consumer lenders and has the duty to enforce statutes
15 and rules relating to consumer lending.¹⁶ The matter was properly brought before Office
16 of Administrative Hearings pursuant to ARIZ. REV. STAT. §§ 41-1092 *et seq.*

17 2. The NOTICE OF HEARING the Department mailed to Respondent’s address of
18 record is sufficient, and Respondent is deemed to have received notice of the hearing in
19 this matter.¹⁷ Because the Department mailed all correspondence to Respondent in the
20 same manner and failed to receive any mail returned as undeliverable, Respondent is
21 deemed to have received all correspondence regarding this matter from the Department
22 as well.

23 3. The Department bears the burden of proof to establish that cause to sanction
24 Respondent’s license by a preponderance of the evidence.¹⁸ Respondent bears the burden
25 to establish factors in mitigation of the penalty and affirmative defenses by the same
26 evidentiary standard.¹⁹

27 _____
28 ¹⁵ See Exhibit 21.

29 ¹⁶ See ARIZ. REV. STAT. § 6-601 *et seq.*

30 ¹⁷ See ARIZ. REV. STAT. §§ 41-1092.04, 41-1092.05(D), and 41-1061(A).

¹⁸ See ARIZ. REV. STAT. § 41-1092.07(G)(2); ARIZ. ADMIN. CODE R2-19-119; *see also Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

¹⁹ See Arizona Administrative Code (“ARIZ. ADMIN. CODE”) R2-19-119(B)(2).

1 4. "A preponderance of the evidence is such proof as convinces the trier of fact
2 that the contention is more probably true than not."²⁰ A preponderance of the evidence is
3 "[t]he greater weight of the evidence, not necessarily established by the greater number of
4 witnesses testifying to a fact but by evidence that has the most convincing force; superior
5 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
6 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
7 the other."²¹

8 5. Here, the material facts are not in dispute. Respondent failed to submit to
9 an examination by the Department. Examinations are required by ARIZ. REV. STAT. § 6-
10 121,²² and Respondent failed submit to the same.

11 6. In addition, the lack of a fully executed bond by the licensee was a violation
12 of ARIZ. REV. STAT. § 6-903(J).²³

13 7. Further, Respondent failed to maintain a principal place of business in
14 violation of ARIZ. REV. STAT. § 6-904(H).²⁴

15 ²⁰ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

16 ²¹ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

17 ²² All financial institutions and enterprises shall be subject to examination and supervision by the
18 department.

19 ²³ Every person licensed as a mortgage broker or a commercial mortgage broker shall deposit with the
20 deputy director, before doing business as a mortgage broker or a commercial mortgage broker, a bond
21 executed by the licensee as principal and a surety company authorized to do business in this state as
22 surety. The bond shall be conditioned on the faithful compliance of the licensee, including the licensee's
23 directors, officers, members, partners, trustees and employees, with this article. The bond is payable to any
24 person injured by the wrongful act, default, fraud or misrepresentation of the licensee or the licensee's
25 employees and to this state for the benefit of the person injured. Only one bond is required for any person,
26 firm, association or corporation irrespective of the number of officers, directors, members, partners or
27 trustees who are employed by or are members of such firm, association or corporation. A suit may not be
28 commenced on the bond after the expiration of one year following the commission of the act on which the
29 suit is based, except that claims for fraud or mistake are limited to the limitation period provided in section
30 12-543, paragraph 3. If an injured person commences an action for a judgment to collect from the bond,
the injured person shall notify the deputy director of the action in writing at the time of the commencement
of the action and shall provide copies of all documents relating to the action to the deputy director on
request.

²⁴ H. Every licensed mortgage broker and licensed commercial mortgage broker shall designate and
maintain a principal place of business in this state for the transaction of business. The license shall specify
the address of the licensee's principal place of business. If a licensee wishes to maintain one or more
locations in addition to a principal place of business, the licensee shall first obtain a branch office license
from the deputy director and designate a person for each branch office to oversee the operations of that
office. The licensee shall submit a fee as set forth in section 6-126 for each branch office license. If the
deputy director determines that the applicant is qualified, the deputy director shall issue a branch office
license indicating the address of the branch office. The licensee shall conspicuously display the branch
office license in the branch office. If the address of the principal place of business or of any branch office is
changed, the licensee shall immediately notify the deputy director of the change and the deputy director
shall endorse the change of address on the license for a fee as prescribed in section 6-126.

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8. Therefore, the only issue remaining is whether Respondent raised a sufficient justification or excuse for failing to comply with the Department's requests or correspond in a timely manner. This is an affirmative defense that Respondent bears the burden to establish. Because Respondent failed to appear and provide testimony, this burden has not been sustained. Respondent's absence is a factor in aggravation. The record reflects that Respondent had no affirmative defense(s) for its inaction.

9. Because the Department established by a preponderance of the evidence that Respondent violated the above statutes, the Department has also established that grounds exist for discipline to be taken against Respondent's consumer lender license, up to and including revocation per ARIZ. REV. STAT. § 6-905(A)(2) and (3).²⁵

RECOMMENDED ORDER

Based on the aforementioned Findings of Fact and Conclusions of Law,
IT IS RECOMMENDED that on the effective date of the FINAL ORDER in this matter, Respondent Phoenix Rising Financial, LLC, License No. 1002731, be revoked.

Pursuant to A.R.S. § 41-1092.08(I), the licensee may accept the Administrative Law Judge Decision by advising the Office of Administrative Hearings in writing not more than ten (10) days after receiving the decision. If the licensee accepts the Administrative Law Judge Decision, the decision shall be certified as the final decision by the Office of Administrative Hearings.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be forty (40) days from the date of that certification.

Done this day, May 15, 2023.

/s/ Adam D. Stone
Administrative Law Judge

²⁵ A. The deputy director may deny a license to a person or suspend or revoke a license if the deputy director finds that an applicant or licensee:...2. Has violated any applicable law, rule or order. 3. Refuses to allow an examination by the deputy director of the licensee's books and affairs or refuses or fails, within a reasonable time, to furnish any information or make any report that may be required by the deputy director...

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Transmitted by either mail, e-mail, or facsimile to:

Barbara D. Richardson,
Department of Insurance and Financial Institutions - Financial

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By: OAH Staff