

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**



2  
3 In the Matter of the Revocation of the Mortgage Broker  
License of:

No. 09F-BD042-BNK

4 **LENDING HOUSE FINANCIAL CORP. AND DORON**  
5 **JAMPOLSKY, PRESIDENT**  
6 668 North 44<sup>th</sup> Street, #300  
Phoenix, AZ 85008

**SUPERINTENDENT'S FINAL  
DECISION AND ORDER**

7 Respondents.

8  
9 The Superintendent of Financial Institutions (the "Superintendent"), having reviewed the  
10 record in this matter including the exhibits, transcripts of the December 18, 2008 and March 16,  
11 2009 administrative hearings, and the Recommended Decision of the Administrative Law Judge  
12 ("ALJ") attached and incorporated herein by this reference, adopts in part, rejects in part and  
13 modifies in part the ALJ's Recommended Decision and issues this Final Findings of Fact,  
14 Conclusions of Law and Order as follows.

15 **FINDINGS OF FACT**

16 **Background and Procedure**

17 1. The Arizona Department of Financial Institutions ("Department") is authorized to  
18 license, examine and supervise the activity of residential mortgage broker companies in Arizona  
19 pursuant to A.R.S. §§6-901, *et seq.* Respondent Lending House Financial Corporation ("Lending  
20 House") is an Arizona corporation authorized to transact business in Arizona as a mortgage broker,  
21 license number MB0906011. The nature of Lending House's business is either directly or indirectly  
22 making, negotiating or offering to make or negotiate a mortgage loan for compensation or in the  
23 expectation of compensation. A.R.S. § 6-901(8).

24 2. Respondent Doron Jampolsky ("Mr. Jampolsky" or "Respondent Jampolsky") is the  
25 President and CEO of Lending House. He is the one hundred percent (100%) owner and  
26 Responsible Individual and is authorized to transact business in Arizona as a mortgage broker within  
27 the meaning of A.R.S. § 6-903(E).

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1 Respondents did not introduce any exhibits to refute any of Examiner Macias's findings, but relied  
2 solely on the testimony of Mr. Jampolsky. (Transcript of December 18, 2008 hearing, "Dec. Tr." pp.  
3 60-61, 92).

#### 4 Respondents' Unlicensed Activity in Tucson, California, Nevada and Florida

5 10. The Report sets forth and Examiner Macias testified to Respondents' mortgage broker  
6 activity conducted at unlicensed branches. Specifically, Respondents originated and closed at least  
7 twenty eight (28) loans at unlicensed branch locations in California, Nevada, Florida and Tucson,  
8 Arizona. Respondents earned broker fees totaling \$80,907.73 on the unlicensed activity. (Ex. 1, pp.  
9 9-11).

10 11. Examiner Macias testified that during her examination she reviewed employee files and  
11 loan files showing that Respondents' employees lived in California, Nevada, Florida and Tucson,  
12 Arizona and originated loans at locations in these states that were not licensed by the Department.  
13 Even if loan originators were working out of their homes in these states, if they were originating or  
14 soliciting loans they were required to have a branch license at that location. At the time of her  
15 examination, she asked Respondent Jampolsky if he had loan officers working in Tucson, California,  
16 Florida and Nevada and he admitted that he did have loan officers working in those locations. None  
17 of these locations were licensed as branches. (Exs. 2a-2b, 2g-2z, Dec. Tr. pp. 92-112).

18 12. During Respondent Jampolsky's testimony, he did not dispute the allegation that he  
19 conducted unlicensed activity in those four locations. He admitted that Respondents had a loan  
20 officer in California that completed but did not solicit loans. He also had one loan officer in each  
21 location, Tucson, Nevada and Florida, that solicit and originate loans. He testified that he talked to a  
22 representative of the Department that said he could do so. But, he did not obtain anything in writing  
23 from the Department that confirmed his conversation. After the examination, Mr. Jampolsky told  
24 the loan officers in these unlicensed locations to stop originating loans. (March 16, 2009 Trial  
25 Transcript ("March Tr.") pp. 26-30, 60-61).

#### 26 Respondents' Failure to Keep Sample Advertising

27 13. Examiner Macias' Report describes her findings that Respondents' records did not  
28 contain samples of all advertising Respondents used in their mortgage broker business. At hearing,

1 the Department presented an invoice from Mar Marketing, dated January 11, 2007 in the sum of  
2 \$1,000.00. The invoice stated the charges were for “advertising fees on following clients: Guillermo  
3 Gomez”. (Ex. 3). The Department also presented a check, dated January 19, 2007 in the amount of  
4 \$1,000.00 made payable to Mar Marketing with the following on the memo line “Marketing – flyers  
5 – Ads- (Ralph).” Respondents were unable to provide Examiner Macias with a copy of any  
6 advertising or marketing materials that were purchased from Mar Marketing. At the hearing,  
7 Respondent Jampolsky denied ever receiving any marketing materials from Mar Marketing. (Ex.1  
8 p.11; Ex. 3; Dec. Tr. pp. 113-115, March Tr. pp. 30-31).

9  
10 Respondents’ Failure to Conduct the Minimum Required Elements of a Reasonable  
11 Investigation Before Hiring Employees

12 14. Examiner Macias’ hearing testimony and examination of the personnel records of 29  
13 loan officers currently employed by Respondents, or employed by Respondents within the last two  
14 years, revealed the following failures to conduct a reasonable investigation before hiring:

15 a. In the employee files of 29 of the 29 employees sampled, the Former Employer Inquiry  
16 (“EI”) was not dated or was missing;

17 b. In the files of 29 of the 29 employees sampled, the Qualification and Competence  
18 Inquiries (“QIs”) were not dated or were missing;

19 c. In the files of 14 of the 29 employees sampled, the employee’s credit report was pulled  
20 several days, weeks or months after the hire date as recorded on the Respondents’ Employee Log;

21 d. In the files of four of the 29 employees sampled, the Federal I-9 Citizenship  
22 Verification forms and/or supporting identification documents were missing; and

23 e. In the files of three of the 29 employees sampled, the credit report contained  
24 derogatory credit information without an explanation. (Ex. 1, pp. 11-13; Exs. 4 and 5; Dec. Tr. pp.  
25 115-140).

26 15. Respondent Jampolsky disagreed with Examiner Macias’ testimony and Report but did  
27 not present any documentation to refute her findings. He described his protocol for conducting a  
28 reasonable investigation. He gave an explanation for why credit reports were dated several weeks,

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1 days or months after the employees' hiring date. He stated that he was the only person authorized to  
2 hire new employees. (March Tr. pp. 31-37).

### 3 Respondents Compensated Unlicensed Contractors

4 16. Examiner Macias testified that her examination revealed that Respondents purchased  
5 leads from Primary Residential Management, LLC, an unlicensed independent contractor. Examiner  
6 Macias testified that Respondent Jampolsky admitted to her that \$2,116.50 was paid for leads and  
7 that he knew that Primary Residential, LLC was not a licensed mortgage broker. At hearing,  
8 Respondent Jampolsky changed his explanation and testified that the \$2,116.50 was paid to Primary  
9 Residential Management as a down payment for shared office space. However, Respondents did not  
10 provide any documents in support of this contention. (Ex. 1, pp. 13-14; Ex. 6; Dec. Tr. pp. 140-142;  
11 March Tr. pp. 37-40). Mr. Jampolsky's testimony is disingenuous as the invoice from Primary  
12 Residential Management states: "Marketing / 10 hours \$2,000.00 Overhead Expenses \$116.50". (Ex.  
13 6).

### 14 Respondents' Payment of Loan Officers as Independent Contractors and Failure to Withhold Taxes

15 17. Examiner Macias explained that licensed mortgage brokers are prohibited from paying  
16 employees as independent contractors. Respondents are required to pay all employees on a W2 basis  
17 and to withhold taxes on those earnings. During the course of her examination, she found that  
18 Respondents paid five employees advances that were not reported to payroll and no payroll taxes  
19 were deducted. She included these incidences in her report as violations of A.R.S. § 6-909(B), the  
20 prohibition against payment to independent contractors that are not licensed as mortgage brokers.  
21 She testified that this statute is designed to prevent the payment of fees and commissions to  
22 employees without lawfully deducting state and federal taxes. During her examination, Respondent  
23 Jampolsky and his accountant met with Examiner Macias. The accountant admitted to Examiner  
24 Macias that payroll taxes were not deducted from these advances. (Ex. 6 and Ex. 1, pp 13-15; Dec.  
25 Tr. pp. 142-143).

26 18. During his testimony, Respondent Jampolsky admitted to paying these advances and  
27 not withholding any payroll taxes at the time of the payment. He did not dispute Examiner Macias'  
28 testimony or her examination findings, but disagreed that he did not pay the taxes at a later time.

1 While not addressing the five specific employee advances in the Report, he testified that oftentimes,  
2 employees had financial hardships and he would advance his loan officers money without  
3 withholding taxes and then would later notify his payroll company who would be responsible for  
4 deducting the taxes out of the loan officers' next paycheck. He testified that he followed this  
5 practice for the five advances in question and notified the payroll company, Paychex. He claimed  
6 that he produced this notice during the examination. On cross examination, he admitted he had no  
7 documentation of this notice. The Report and the hearing record do not include any evidence of such  
8 notice to Paychex. (March Tr. pp. 41-42, 61-62).

9 Respondents Failed to Maintain Correct and Complete Records

10 19. During her examination of Respondents' records, Examiner Macias requested all files  
11 of identified employees. Respondents were unable to provide any files on four employees: Paulino  
12 Dattingly, Kinoush Amini, Susan Desnoyers and Michael Hamer. Examiner Macias testified that she  
13 had reviewed records of Respondents' mortgage brokering activity that established these loan  
14 officers were Respondents' employees such as W2 forms and loan files. (Ex. 1, pp.14-15, Ex. 7; Dec.  
15 Tr. pp. 143-144).

16 20. During his testimony, Respondent Jampolsky admitted that he could not provide the  
17 requested employee files. He could not locate them to provide them to Examiner Macias as she  
18 requested. (March Tr. pp. 42-43).

19 Respondents Failed to Maintain Complete Organizational Files

20 21. Examiner Macias testified to Respondents' failure to maintain a complete  
21 organizational file, including minutes of any meetings. In the case at hand the licensee is a  
22 corporation. A.A.C. R20-4-917(B)(9) requires, unless the licensee is a natural person (and here it is  
23 a corporation, not a natural person), a licensee to keep an organizational file, including  
24 Organizational Documents for the entity, Minutes, and a record showing all ownership interests.  
25 There is no exception, as Respondent Jampolsky requested, for a single shareholder corporation. (Ex.  
26 1, p. 15; Dec. Tr. pp. 141-147; March Tr. pp. 43-44).

27 ...

28 ...

1                   Respondents Failed to Maintain Originals or Copies of All Mortgage Transactions

2           22. Examiner Macias testified to Respondents' failure to keep and maintain originals and  
3 copies of all loan files. Specifically, the evidence of record established that in two loan files,  
4 specifically the Wolinetz file and Salomon file, the initial loan applications were missing.  
5 Additionally, in the Silario and Salomon files, the final disposition of the loan, such as a settlement  
6 statement, denial letter or withdrawal letter, was missing. (Ex. 1, pp 15-16; Dec Tr. pp. 147-148;  
7 March Tr. pp. 44-46).

8                   Respondents Allowed Borrowers to Sign Blank Documents

9           23. During her exam, Examiner Macias found that Respondents allowed borrowers to sign  
10 30 separate affiliated business arrangement ("ABA") disclosures; five truth-in-lending disclosures;  
11 two good faith estimates; and one servicing transfer disclosure when these documents contained  
12 blank spaces to be filled in after having been signed. She testified that mortgage brokers should not  
13 present a loan file with signed loan documents with blank spaces. A borrower should know exactly  
14 what they are signing. Only relevant signed documents should be in a loan file. Respondent  
15 Jampolsky testified that he misunderstood the law and believed that the affiliated business  
16 arrangement disclosures should be signed when blank to indicate no other businesses were affiliated  
17 with Respondent Lending House (Ex. 1, pp. 16-17; Ex. 8; Dec. Tr. pp.148-150; March Tr. pp. 48-  
18 50).

19                   Respondents Failed to Comply with Federal Disclosures Enforceable Under State Law

20           24. Examiner Macias testified about her examination findings that Respondents failed to  
21 comply with federal disclosure requirements of Title I of the Consumer Credit Protection Act, 15  
22 U.S.C. §§ 1601 through 1666(j) and the Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601  
23 through 2617. Within three days of the loan application, Respondents are required to give a  
24 prospective borrower a Good Faith Estimate (GFE), a Truth-In-Lending Statement (TIL) and a  
25 Servicing Transfer Disclosure Statement as shown in Exhibit 9. (Dec. Tr. pp.153-154).

26           25. Examiner Macias found two loan files where the disclosures were not timely. Exhibit 9  
27 established that in the Valladares loan file the Preliminary TIL and GFE forms were electronically  
28 dated September 7, 2006 and hand-dated by the borrower on September 6, 2006. Respondent

1 Jampolsky explained that the one day difference was a scribner's error. Exhibit 9 established that the  
2 Preliminary TIL and GFE in the Lopez loan file were electronically dated January 19, 2006 and  
3 hand-dated by the borrower on January 29, 2007. Respondent Jampolsky also attributed the  
4 discrepancy to scribner's error. (Ex. 1. p. 18; Ex. 9; Dec. Tr. pp. 154-156; March Tr. pp. 50-51).

#### 5 Suspicious Loan Applications and Loan Application Discrepancies

6 26. Examiner Macias testified to her findings that: 1) Respondent Jampolsky, as a loan  
7 officer, took two signed applications from applicant Kim G. with different information pertaining to  
8 her income, years of employment and number of years at current residence; 2) Respondents' loan  
9 officer Rudy C. took two signed applications from applicant Patrick T. with different information  
10 pertaining to his monthly income; 3) Loan officer Respondent Jampolsky took three separate signed  
11 applications from applicant Nathan N. with different information pertaining to his monthly income.  
12 The first application dated December 6, 2005 showed a monthly income for Nathan N. as  
13 \$26,515.00. The second application, dated January 5, 2006 shows a monthly income of \$33,215.00  
14 and a third application, dated January 26, 2006 shows a monthly income of \$71,069.00. The loan  
15 applicant was also a loan officer working for Respondents. Even if the applicant is a loan officer on  
16 commission, the appropriate income amount is an average of the past 24 months. Examiner Macias  
17 could not testify to whether any of these loan applications were submitted to a lender. (Ex. 1, pp. 19-  
18 20; Exs. 11,12,13; Dec. Tr. pp. 162-180).

#### 19 Fraudulent Mortgage Loan to Isabelo Morales

20 27. Mr. Isabelo Morales (Mr. Morales) filed a complaint with the Department on October  
21 29, 2007 against Respondents. (Ex. 10a). In October 2007, Mr. Morales had a Wells Fargo mortgage  
22 on his home, loan number 6144153 ("Wells Fargo Mortgage"). He owed \$62,545.70. His monthly  
23 payment was \$678.32. Unbeknownst to him, the Wells Fargo Mortgage was paid off; a new  
24 mortgage with Citi Mortgage in his name, in the amount of \$153,142.99 with a monthly payment of  
25 \$1,048.85, ("Citi Mortgage") was recorded against his property. (Dec. Tr. pp. 25-27, Ex. 10).

26 28. Mr. Morales testified that the refinancing of his home through Citi Mortgage came as a  
27 complete and total surprise to him when he learned, on October 29, 2007, through a title company  
28

1 that documentation of his new loan was available for him to pick up. On October 29, when he  
2 reviewed the Citi Mortgage loan documents, he found that his signature had been forged on the loan  
3 documents. He learned that a loan officer named Ricardo Sarmiento had received a check for over  
4 \$80,000, representing the equity in his home. At that moment, he realized he had lost the equity in  
5 his home. (Dec. Tr. pp. 29-31). Mr. Morales did not authorize the pay off of his Wells Fargo  
6 Mortgage and did not apply for the Citi Mortgage. (Dec. Tr. pp. 27-28).

7 29. Examiner Macias testified about her examination of Respondents' records in  
8 connection with the Department's investigation of the fraudulent Morales loan. Her most significant  
9 findings include that Respondents' records establish that it originated, processed and brokered the  
10 fraudulent loan to Citi Mortgage. Respondents' employee Isaac Castillo was the processor of the  
11 loan. His employment with Respondents was confirmed to Examiner Macias by Respondent  
12 Jampolsky. Respondents requested a credit report on Mr. Morales from an independent credit  
13 reporting agency, Credit Plus. Examiner Macias also confirmed through Respondents' records that  
14 Mr. Jesse Gill was the branch manager at the location where the Morales loan was processed. (Dec.  
15 Tr. pp. 71, 79-80; Exs. 10j-10n).

16 30. It is undisputed that Mr. Morales is a victim of identity theft perpetrated by Mr.  
17 Sarmiento. Mr. Sarmiento stole Mr. Morales' identity, posed as Mr. Morales, refinanced his house  
18 and extracted over \$80,000 in equity. Respondents originated, processed and brokered the loan to  
19 Citi Mortgage and admitted to receiving a mortgage broker fee of \$7,687.50. (Exs. 10a-10p; Dec. Tr.  
20 pp. 26-41, 62-85).

21 31. Mr. Morales testified that he met Mr. Jesse Gill at Western Title on October 29, 2007  
22 when the forged loan documents were given to him. Mr. Gill introduced himself as Mr. Sarmiento's  
23 manager and said he worked at Lending House. Mr. Morales learned that Mr. Gill had already filed  
24 a complaint with the Phoenix Police Department regarding Mr. Morales' identity theft and the  
25 fraudulent loan. (Dec. Tr. pp. 40-41).

26 32. The Phoenix Police Department Report ("Police Report") reflecting Mr. Gill's  
27 complaint and the City of Phoenix Police Department's investigation was admitted into evidence  
28 without objection as Exhibit 10p. According to the Police Report, Mr. Gill advised the police that

1 “Ricardo M. Sarmiento stole approximately \$82,000 from a mortgage account”. (Ex. 10p, p. 3). On  
2 November 9, 2007, the Phoenix police arranged an encounter with Mr. Sarmiento at Respondents’  
3 office. According to the Police Report, the Phoenix Police, working with Mr. Gill, developed “a  
4 ruse” to lure Mr. Sarmiento to Respondents’ office to pick up a commission check. (Ex. 10p,  
5 11/21/07 Supplement, p. 1, DR NUMBER 2007 72092300 5).

6 33. When Mr. Sarmiento arrived at Respondents’ offices, the Phoenix police confronted  
7 Mr. Sarmiento. According to the Police Report Sarmiento stated that he worked for Respondents  
8 and worked for Mr. Gill. Mr. Sarmiento stated that he had been there approximately two months.  
9 (Ex.10p, 11/21/07 Supplement pp. 1-2, DR NUMBER 2007 72092300 5).

10 34. Respondent Jampolsky testified that he clearly stated to the Phoenix police that  
11 Sarmiento was not an employee. (Tr. p. 64). However, there is no reference in the Police Report to  
12 Respondent’s statement.

13 35. At the hearing, Respondent Jampolsky denied that Respondents ever employed Mr.  
14 Sarmiento. He testified that his company, Lending House, filed a complaint with the Phoenix Police  
15 about the identity theft of Mr. Morales. (March Tr. pp. 55-56). He admits that Mr. Gill worked for  
16 him. The Police Report clearly states that Mr. Gill worked for Respondents and that Mr. Gill was  
17 Sarmiento’s manager. Mr. Morales’ testimony of his conversation with Mr. Gill at the title company  
18 corroborates the Police Report and Examiner Macias’ findings. Respondents do not dispute that they  
19 processed and brokered the loan and accepted the broker fee from Citi Mortgage that the fraudulent  
20 Morales loan generated. (March Tr. p.65, Ex. 15).

21 36. Mr. Jampolsky’s denial of ever employing Mr. Sarmiento is contradicted by the  
22 testimony of Mr. Morales and the findings of the Phoenix Police Department as set forth in the  
23 Police Report, Exhibit 10p. Mr. Jampolsky’s denial must be weighed against the trustworthiness of  
24 the testimony of Examiner Macias, Mr. Morales and the Police Report. Also, Mr. Jampolsky’s  
25 credibility as a witness is in question in light of his impeached testimony regarding Respondents’  
26 acceptance of the mortgage broker fee from Citi Mortgage.

27 37. At the hearing, under oath, Mr. Jampolsky first stated emphatically that Respondents  
28 did not cash the check from Citi Mortgage in the amount of \$7,687.50. This testimony occurred,

1 during the first day of the hearing, when it appeared that the Department did not have evidence of  
2 Respondents' endorsement of the Citi Mortgage check. Mr. Jampolsky was quick to claim that no  
3 one cashes a check in his business but him and he had no recollection of cashing the Citi Mortgage  
4 broker fee check. (Dec. Tr. p. 226). On cross examination, Mr. Jampolsky admitted that the check  
5 had indeed been deposited into the Lending House bank account. (March Tr. pp. 64-65, Ex. 15). His  
6 testimony regarding the employment of Mr. Sarmiento should be considered in light of this  
7 impeachment and is not credible.

8 Respondent Jamplosky's Failure to Actively Manage as Responsible Individual

9 38. Examiner Macias and Assistant Superintendent Robert Charlton testified to Respondent  
10 Jampolsky's failure to supervise his loan officers and to actively manage Respondents' mortgage  
11 broker business. Mr. Charlton testified that under Arizona law the mortgage broker licensee is  
12 responsible for the actions of its employees. The large number of violations and the severity of the  
13 violations show that Respondent Jampolsky did not have appropriate oversight or internal controls  
14 and failed to actively manage the business. (Dec. Tr. pp. 181, 215-216).

15 39. Respondent Jampolsky confirmed his lack of supervision by explaining how Mr.  
16 Sarmiento, in his opinion not employed at Lending House, was able to originate, process and close a  
17 fraudulent loan at Lending House. (March Tr. pp. 66-68).

18 40. Respondent Jampolsky admits his company processed the fraudulent mortgage loan  
19 and, without remorse, received and deposited the check for the ill-gotten commission and fees.  
20 Claiming to be a victim himself, once he became aware of the circumstances surrounding the  
21 fraudulent mortgage loan, he never attempted to return the commission and fees to Mr. Morales.  
22 (March Tr. pp. 67-68).

23 CONCLUSIONS OF LAW

24 1. The Department has the authority and duty to regulate all persons engaged in the  
25 mortgage broker business and with the enforcement of statutes, rules, and regulations relating to  
26 mortgage brokers. A.R.S. §§6-901 *et seq.* See A.A.C. R20-4-101 *et seq.* and R20-4-901 *et seq.*

27 . . .  
28 . . .

1           2.    The Department bears the burden of proof and must establish Respondent's statutory  
2 violations by a preponderance of the evidence.<sup>1</sup> "A preponderance of the evidence is such proof as  
3 convinces the trier of fact that the contention is more probably true than not."<sup>2</sup> A preponderance of the  
4 evidence is the greater weight of the evidence, not necessarily established by the greater number of  
5 witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary  
6 weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient  
7 to incline a fair and impartial mind to one side of the issue rather than the other.

8           3.    The report of examination is prima facie evidence of the matters contained therein.  
9 A.R.S. § 6-129(D) The report of examination was admitted into the record without Respondents'  
10 objection. The report establishes a fact or may sustain a judgment unless contradictory evidence of  
11 sufficient weight is produced. ). *Barlage v. Valentine*, 210 Ariz. 270, 277, 110 P.3d 371, 378 (App.  
12 2005); *Bayless v. Industrial Commission*, 134 Ariz. 243, 655 p. 2d 363 (App. 1982).

13           4.    A.R.S. § 6-132 provides that the Superintendent may assess a monetary civil penalty of  
14 not more than \$5,000.00 against a person for a knowing violation of applicable statute or rule or  
15 order adopted or issued under state laws. The law specifically provides that "[e]ach day of violation  
16 constitutes a separate offense."

17           5.    The Department has the authority to charge an examination fee and a late penalty of  
18 \$50.00 per day for everyday the examination fee has not been paid beginning 30 days after the notice  
19 of examination assessment has been mailed. A.R.S. § 6-125.

20           6.    With regard to the Department's allegations, the Department provided credible and  
21 reliable evidence and has borne its burden to establish the following violations by a preponderance of  
22 the evidence:

- 23           a.    Respondents violated A.R.S. § 6-904(F) when Respondents employed loan officers,  
24 and allowed said loan officers to work out of their homes and participate in mortgage  
25 loan transactions at locations other than Respondents' principal place of business at  
26

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27 <sup>1</sup> See A.R.S. § 41-1092.07(G)(2); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369,  
372, 249 P.2d 837 (1952).

28 <sup>2</sup> Morris K. Udall, *Arizona Law of Evidence* § 5 (1960).

1 668 N. 44<sup>th</sup> Street, Suite 233 in Phoenix, Arizona without first obtaining a branch  
2 license from the Department.

- 3 b. Respondents violated A.A.C. R20-4-917(B)(7) when Respondents failed to maintain  
4 samples of all advertising relating to the mortgage broker's business in Arizona.
- 5 c. Respondents violated A.R.S. § 6-903(N) when Respondents failed to conduct the  
6 minimum elements of a reasonable investigation before hiring employees.
- 7 d. Respondents violated A.R.S. § 6-909(B) when Respondents contracted with, and  
8 compensated, Primary Residential Management, LLC, an unlicensed independent  
9 contractor.
- 10 e. Respondents violated A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(9) when  
11 Respondents failed to maintain a complete organizational file, including minutes of  
12 any meetings.
- 13 f. Respondents violated A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(6) when  
14 Respondents failed to keep and maintain originals and copies of all loan files.
- 15 g. Respondents violated A.R.S. § 6-909(A) and A.A.C. R20-4-921 when Respondents  
16 allowed borrowers to sign 30 separate affiliated business arrangement disclosures;  
17 five truth-in-lending disclosures; two good faith estimates; and one servicing transfer  
18 disclosure when these documents contained blank spaces to be filled in after  
19 signature.
- 20 h. Respondents violated A.R.S. § 6-909(B) by compensating five employees as  
21 independent contractors by issuing payroll advances without withholding taxes. The  
22 evidence was undisputed that no payroll taxes were withheld.
- 23 i. Respondents violated A.R.S. § 6-906(A) by failing to maintain, locate and present  
24 four employee files at the request of Examiner Macias. This statute and rule requires  
25 a licensee to "keep and maintain at all times correct and complete records as  
26 prescribed by the superintendent which will enable him to determine whether the  
27 licensee is conducting his business in accordance with this article."  
28 . . .

1 j. Respondent Doran Jampolsky violated A.R.S. § 6-903(E) by his failure to actively  
2 manage all of Respondent Lending House's activities and ensure compliance with the  
3 applicable statutes and rules governing mortgage brokers as evidenced by the  
4 violations described herein.

5 k. Respondents violated A.R.S. § 6-909(L) by making a false promise or  
6 misrepresentation or concealing an essential or material fact in the course of the  
7 mortgage broker business by submitting a fraudulent mortgage loan to Citi Mortgage.  
8 As a direct result of Respondents' violation of this statute, Mr. Isabelo Morales  
9 sustained the loss of equity in his home in the amount of a cash payout to Mr. Ricardo  
10 Sarmiento in the amount of \$82,499.26. Based upon the testimony of Respondent  
11 Doran Jampolsky, Responsible Individual and 100% owner of Respondents'  
12 mortgage brokering business, Respondents had knowledge of the fraudulent loan  
13 through the acts of its employees, Ricardo Sarmiento, Jesse Gill and Isaac Castillo.  
14 Respondents Lending House and Doran Jampolsky had knowledge of the likelihood  
15 and ease of a fraudulent mortgage loan being processed by their employees or even by  
16 someone not employed by Respondents.

17 l. Respondents violated A.R.S. § 6-909(N) by engaging in illegal or improper business  
18 practices by its origination, processing and submission of the fraudulent mortgage  
19 loan to Citi Mortgage and by its collection and retention of the mortgage broker fee  
20 generated by this fraudulent loan. Mr. Sarmiento's theft of Mr. Morales' identity  
21 would not have resulted in the loss of Mr. Morales' equity in his home but for the  
22 brokering of the fraudulent loan by Respondents to Citi Mortgage.

23 7. With regards to the following allegations, the Department did not satisfy its burden of  
24 proof to establish the following violations:

- 25 a. Respondents did not violate A.R.S. § 6-909(L) in the multiple loan applications for  
26 Kim G., Patrick T. and Nathan N.
- 27 b. Respondent did not violate A.R.S. § 6-906(D) and A.A.C. R20-4-917(b)(6)(e) by  
28 failing to comply with federal disclosure requirements of Title I of the Consumer

1 Credit Protection Act, 15 U.S.C. §§ 1601 through 1666(j) and the Real Estate  
2 Settlement Procedures Act, 12 U.S.C. §§ 2601 through 2617. The GFE, TIL and  
3 Servicing Transfer Disclosure Statement forms were electronically dated and hand-  
4 dated by the borrower on different dates. The Department failed to introduce  
5 sufficient evidence to outweigh the possibility of scribner error.

6 8. The complicity of others outside the employment of Respondents' mortgage business  
7 does not excuse Respondents from its violation of A.R.S. § 6-909(L) and its submission of a  
8 fraudulent mortgage to lender Citi Mortgage and the resulting direct harm to the victim of the  
9 fraudulent loan, Mr. Isabelo Morales.

10 9. The Department has established cause to suspend or revoke Respondents' license under  
11 A.R.S § 6-905(A)(3) and (4) and to impose a civil money penalty under A.R.S. § 6-132.

12 10. Respondents Lending House and Doran Jampolsky are liable for any damage caused to  
13 Mr. Isabelo Morales by any of the Respondents' employees while acting as the employee of the  
14 licensee. A.R.S. § 6-903(P).

15 **ORDER**

16 **IT IS ORDERED** that Respondents' Mortgage Broker License Number MB 0906011 is  
17 revoked effective as of the date of this Order.

18 **IT IS FURTHER ORDERED** that Respondents shall pay a civil money penalty in the  
19 amount of \$15,000.

20 **IT IS FURTHER ORDERED** that Respondents shall pay the examination fee of \$12,420  
21 and a late payment penalty of \$50.00 per day for every day the examination fee has not been paid  
22 beginning on November 29, 2008 and continuing until the examination fee is paid in full.

23 **IT IS FURTHER ORDERED** that the Official Hearing Record shall be the Reporter's  
24 Transcript of Proceedings dated December 18, 2008 and March 16, 2009, all admitted exhibits and  
25 documents and pleadings filed with the Superintendent and the Office of Administrative Hearings.

26 ...

27 ...

28 ...

1 **NOTICE**

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

6  
7 DATED this 14th day of May, 2009.

8 

9  
10  
11 Felecia Rotellini  
12 Superintendent of Financial Institutions

13 **SUPERINTENDENT'S ADOPTION, REJECTION AND MODIFICATION OF ALJ'S**

14 **RECOMMENDED DECISION**

15 **The Superintendent adopts in part, rejects in part and modifies in part the**  
16 **Administrative Law Judge's Recommended Findings of Fact as follows:**

- 17 1. The Superintendent rejects paragraph 1 for the following reasons:
- 18 a. The Administrative Law Judge (ALJ) does not accurately state the agency before  
19 which this hearing is held.
- 20 b. The ALJ is the delegate of the Superintendent of the Arizona Department of Financial  
21 Institutions (AzDFI). While the hearing is conducted at the Office of Administrative  
22 Hearings, the evidentiary hearing over which he presides is a proceeding of the  
23 Arizona Department of Financial Institutions as per A.R.S. § 6-138. Accordingly,  
24 every pleading filed in this matter states plainly that this matter is before the "Arizona  
25 Department of Financial Institutions".
- 26 c. The ALJ's reference in paragraph 2 of his recommended Findings of Fact accurately  
27 reflects the fact that AzDFI issued the license in question.
- 28

- 1           2.     The Superintendent rejects paragraph 2 for the following reasons:
- 2           a.     The ALJ misstates the statutory definition of the nature of the mortgage broker
- 3                 businesses and cites the wrong statute for the definition of a mortgage broker. The
- 4                 ALJ omits the term “indirectly” which should have been stated before the word
- 5                 “either”. Also, the statutory definition of a mortgage broker is set forth in A.R.S. § 6-
- 6                 901(8), not 6-901(6).
- 7           b.     The ALJ references the Respondent’s mortgage broker license as a “corporate
- 8                 license”. There is no such distinction or reference in the record or the statutes
- 9                 regulating the business of mortgage brokering in Arizona. Specifically, the
- 10                definitions of a mortgage broker “license” and “licensee” in A.R.S. §§ 6-901(5) and
- 11                (6), respectively, establish that a mortgage broker licensee is a “person licensed under
- 12                this article.” “Person” is defined in A.R.S. § 1-215(29) as, *inter alia*, a corporation,
- 13                company or natural person.
- 14           c.     The remainder of the findings of paragraph 2 have been incorporated into the
- 15                Superintendent’s Final Findings of Fact, Paragraph One.
- 16           3.     The Superintendent rejects paragraph 3 for the following reasons:
- 17           a.     The ALJ cites to a non-existent statute, A.R.S. § 6-906(E).
- 18           b.     The ALJ’s finding that there is no license number for Mr. Jampolsky in the record is
- 19                illogical and irrelevant. Mr. Jampolsky does not have a separate license. (See
- 20                paragraph 2 above for explanation.)
- 21           c.     The Notice of Hearing and the record establish that there is only one license in issue.
- 22           4.     The Superintendent modifies paragraph 4 by correcting the statutory cites and adopts it
- 23                as Paragraph Three of the Superintendent’s Final Findings of Fact.
- 24           5.     The Superintendent rejects in part and accepts in part paragraph 5 as follows:
- 25           a.     The ALJ’s footnote misstates the mandate of A.R.S. § 6-122(B)(3) and is rejected in
- 26                its entirety. The ALJ misquotes the statute and states that the section requires “an
- 27                examination of the business and affairs of each such financial institution at least once
- 28                in a five year period”. The term “financial institution” is not found in 6-122(B)(3).

- 1 b. The term “financial institution” is defined in A.R.S. § 6-101(8) to mean “banks, trust  
2 companies, savings and loans associations, credit unions consumer lenders,  
3 international banking facilities, and financial institution holding companies under the  
4 jurisdiction of the department.”
- 5 c. An “enterprise” (as referenced in § 6-122(B)(3)) is defined in A.R.S. § 6-101(6) to  
6 mean “any person under the jurisdiction of the department other than a financial  
7 institution”, which would include licensed mortgage broker companies.
- 8 d. A.R.S. § 6-122(B)(3) requires AzDFI to examine a financial enterprise at least once  
9 every five years.
- 10 e. The ALJ’s Recommended footnote is not a finding of fact and to the extent the ALJ  
11 was attempting to set forth the Superintendent’s authority to examine a mortgage  
12 broker, such a “finding” is actually a conclusion of law. Moreover, the authority of the  
13 Superintendent to conduct examinations is actually set forth in A.R.S. § 6-121.
- 14 f. The Superintendent adopts factual statements in the ALJ’s recommended decision  
15 paragraph 5 and incorporates those factual findings into the Superintendent’s Final  
16 Findings of Fact Paragraph Four.

17 6. The Superintendent accepts paragraph 6 and modifies it by incorporating it into the  
18 Superintendent’s Final Findings of Fact, Paragraph Six.

19 7. The Superintendent accepts in part and rejects in part paragraph 7 and incorporates it  
20 into Superintendent’s Final Findings of Fact, Paragraph Six.

21 8. The Superintendent accepts paragraph 8 and modifies it by incorporating it into the  
22 Superintendent’s Final Findings of Fact, Paragraphs Seven and Eight.

23 9. The Superintendent accepts in part and rejects in part paragraphs 9 through 23 for the  
24 following reasons:

- 25 a. The “findings of fact” begin with a conclusion of law.
- 26 b. The factual summaries are cursory, superfluous and incomplete.
- 27 c. There are no references to the evidentiary record which is the transcripts prepared by a  
28 court reporter and the exhibits admitted at the hearing.

1 d. To the extent there are factual statements supported by the record, they have been  
2 incorporated into the Superintendent's Final Findings of Fact with appropriate cites to  
3 the exhibits and testimony.

4 10. The Superintendent accepts the ALJ's recommended Findings of Fact paragraphs 24  
5 and 25.

6 **The Superintendent accepts in part, rejects in part and modifies in part the ALJs**  
7 **Recommended Conclusions of Law as follows:**

8 1. Accepts conclusions 1-5, 6(c) 6(d), 6(e) and 6(f) and 6(b) as to the violation of A.A.C.  
9 R20-4-917(B) and modifies them by incorporation into the Superintendent's Final Conclusions of  
10 Law.

11 2. Accepts conclusion 7 and modifies it by incorporation into the Superintendent's Final  
12 Conclusions of Law.

13 3. Accepts conclusion 8 except for the imposition of the cap on the late payment penalty  
14 because there is no authority in statute for the limiting of the late penalties. Furthermore,  
15 Respondents have had months to pay the examination fee and stop incurring the penalty fees. The  
16 failure to pay shows a lack of good faith and an intention to defy statutory authority. Regardless of  
17 the outcome of this proceeding, the examination fees are due and payable to the AzDfi.

18 4. Rejects conclusion 6(a) because Respondents did not introduce credible evidence that  
19 they did not compensate employees as independent contractors by failing to withhold payroll taxes.  
20 Respondents' testimony is insufficient to outweigh the documentary evidence established through  
21 the testimony of Examiner Macias and the Report of Examination.

22 5. Rejects conclusion 6(b) as to the violation of A.R.S. § 6-906(A) because the statute  
23 requires the maintenance of Respondent's complete records "which will enable the [Superintendent]  
24 to determine whether the licensee is conducting his business in accordance with this [A.R.S. § 6-901  
25 et seq.]" The employee files are necessary to determine if Respondents are properly supervising their  
26 employees and complying with all statutes relating to the business of mortgage brokering, such as  
27 compliant employee background checks.

28 . . .

1           6.    Rejects conclusion 6(g), on the grounds that the Superintendent's Final Findings of Fact  
2 set forth a preponderance of the evidence establishing Respondents' violation of A.R.S. § 6-909(L)  
3 by originating, processing and submitting a fraudulent mortgage loan application to Citi Mortgage.

4           7.    Rejects conclusion 7 on the grounds that the preponderance of the evidence establishes  
5 Respondents' numerous violations of the statutes and rules regulating its conduct as a mortgage  
6 broker. A.R.S. § 6-905 (A) (3) does not qualify nor quantify the number of violations of the law  
7 necessary for revocation of a license. Respondents have failed to introduce any direct evidence to  
8 dispute the findings of the Report of Examination and the testimony of the witnesses. The only  
9 evidence in the record to dispute the evidence of violations of the statutes and rules is the impeached  
10 testimony of Respondent Jampolsky who was caught in several misstatements including a lie  
11 regarding his acceptance of the broker fee check from Citi Mortgage. Because his license is at stake,  
12 his testimony is biased and lacks credibility.

13  
14           The Superintendent also rejects the ALJ's ruling that the "recorded record will control over  
15 any typewritten transcript". (Dec. Tr. pp. 7-8)<sup>1</sup>. The "recorded record" cannot be referenced for  
16 establishing a record for appeal; the recorded record is unreliable and can be manipulated. The  
17 typewritten transcripts prepared by a certified court reporter at the time of the hearings shall be the  
18 official record of this proceeding. It is readily available to all parties and more accurate than the  
19 ALJ's electronic recording of the proceeding. The deficient nature of the ALJ's Recommended  
20 Decision will be, partly, attributed to his utilization of the "recorded record."

21 ORIGINAL filed this 14<sup>th</sup> day of  
22 May, 2008, in the office of:

23 Felecia Rotellini  
24 Superintendent of Financial Institutions  
25 Arizona Department of Financial Institutions  
26 ATTN: June Beckwith

26 . . .

27 <sup>1</sup> The ALJ's ruling on the "recorded record" and his comment to the parties that if there is an appeal he will "let the two of you fight  
28 over which [typewritten or recorded] would be the official record" is, at a minimum, not judicious and ill-advised for future  
proceedings before the Arizona Department of Financial Institutions.

1 2910 North 44th Street, Suite 310  
2 Phoenix, Arizona 85018

3 COPY of the foregoing mailed/hand delivered  
4 This same date to:

5 Michael G. Wales, Administrative Law Judge  
6 Office of Administrative Hearings  
7 1400 West Washington, Suite 101  
8 Phoenix, AZ 85007

9 Nicholle Harris, Assistant Attorney General  
10 Office of the Attorney General  
11 1275 West Washington  
12 Phoenix, AZ 85007

13 Robert Charlton, Assistant Superintendent  
14 Gabriela Macias, Senior Examiner  
15 Arizona Department of Financial Institutions  
16 2910 N. 44th Street, Suite 310  
17 Phoenix, AZ 85018

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

20 Doron Jampolsky  
21 President  
22 Lending House Financial Corp.  
23 668 North 44<sup>th</sup> Street, #233  
24 Phoenix, AZ 85008

25 Jeffrey C. Matura  
26 Harper, Christian, Dichter & Graif, P.C.  
27 2700 N. Central Ave, Suite 1200  
28 Phoenix, AZ 85004  
Attorney for Respondents

By: June Beckwith

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**STATE OF ARIZONA**  
**IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

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

LENDING HOUSE FINANCIAL CORP. and  
DORON JAMPOLSKY, PRESIDENT  
668 North 44th Street, #300  
Phoenix, AZ 85008

Petitioners.

**No. 09F-BD042-BNK**

**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

13  
14  
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16  
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19

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**HEARING:** December 18, 2008 and March 16, 2009

**APPEARANCES:** Assistant Attorney General Craig Raby and Assistant Attorney  
General Nicholle Harris appeared on behalf of the Arizona Department of  
Financial Institutions. Attorney Jeffrey Matura appeared for Respondents  
Lending House Financial Corp. and Doron Jampolsky.

**ADMINISTRATIVE LAW JUDGE:** Michael G. Wales

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21

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**FINDINGS OF FACTS**

- 22  
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1. The Arizona State Banking Department ("Department") regulates, among other things, the making; negotiating; or offering to make or negotiate loans secured by Arizona real property.
  2. Lending House Financial Corp. ("Lending House") is an Arizona corporation, incorporated in 2001, authorized to transact business in Arizona as a mortgage broker, pursuant to corporate license no. MB 0906011, issued by the Arizona Department of Financial Institutions on January 2, 2007. As a mortgage broker, Lending House either directly makes, negotiates, or offers to make or negotiate a mortgage loan secured by Arizona Real property within the meaning of Arizona Revised Statutes ("A.R.S.") § 6-901(6).

Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, Arizona 85007  
(602) 542-9826

- 1 3. Doron Jampolsky ("Mr. Jampolsky") is the sole owner, President, and Responsible  
2 Individual for Lending House and is authorized to transact business in Arizona as  
3 a mortgage broker as outlined at A.R.S. § 6-906(E). No license number for Mr.  
4 Jampolsky was provided to the hearing record.
- 5 4. Neither Lending House nor Mr. Jampolsky (collectively "Respondents") are exempt  
6 from licensure as a mortgage broker within the meaning of A.R.S. §§ 6-901(6) and  
7 6-902.
- 8 5. On September 11, 2007, the Arizona Department of Financial Institutions  
9 ("Department") commenced an examination of Lending House's business activities  
10 pursuant to A.R.S. § 6-122(B)(3).<sup>1</sup> The examination concluded on October 10,  
11 2007.
- 12 6. The examination was conducted by Gabriela Macias, an examiner employed by  
13 the Department for the last three years.
- 14 7. As a result of the examination, the Department alleged in its Notice of Hearing and  
15 Complaint, dated October 29, 2008, that Respondents conducted certain unlawful  
16 activities or omissions on multiple dates in 2006 and 2007.
- 17 8. Respondents filed an answer on December 2, 2008 denying the allegations. The  
18 matter was set for the instant hearing before the Office of Administrative Hearings,  
19 an independent state agency. A hearing was held on December 18, 2008 and  
20 March 16, 2009 resulting in the following findings by the Administrative Law Judge.
- 21 9. Respondents did violate A.R.S. § 6-904(F) when Respondents employed loan  
22 officers, and allowed said loan officers to work out of their homes and participate  
23 in mortgage loan transactions at locations other than Respondents' principal place  
24 of business at 668 N. 44<sup>th</sup> Street, Suite 233 in Phoenix, Arizona without first  
25 obtaining a branch license from the Department. Respondent Doron Jampolsky  
26 admitted to having loan officers who were participating in mortgage loan  
27 transactions out of their homes in California, Nevada, Florida and Tucson, Arizona.  
28 Respondent Doron Jampolsky testified that as soon the examiner informed him  
29

30 <sup>1</sup> A.R.S. § 6-122(B)(3) requires an examination of the business and affairs of each such financial institution at least once in a five year period.

1 the Department would not condone such activity he stopped using loan officers  
2 outside of his principal place of business.

3 10. Respondents did violate A.A.C. R20-4-917(B)(7) when Respondents failed to  
4 maintain samples of all advertising relating to the mortgage broker's business in  
5 Arizona. Specifically, the Department presented an invoice from Mar Marketing,  
6 dated January 11, 2007 in the sum of \$1,000.00. The invoice stated the charges  
7 were for "advertising fees on following clients: Guillermo Gomez". The Department  
8 also presented a check, dated January 19, 2007 in the amount of \$1,000.00 made  
9 payable to Mar Marketing with the following on the memo line "Marketing - flyers -  
10 Ads- (Ralph)." Respondents were unable to provide Examiner Macias with a copy  
11 of any advertising or marketing materials that were apparently purchased from Mar  
12 Marketing.

13 11. Respondents did violate A.R.S. § 6-903(N) when Respondents failed to conduct  
14 the minimum elements of a reasonable investigation before hiring employees. An  
15 examination of the personnel records of 29 loan officers currently employed by  
16 Respondents, or employed by Respondents within the last two years, revealed the  
17 following failures to conduct a reasonable examination before hiring.

- 18 a) In the employee files of 29 of the 29 employees sampled, the Former  
19 Employer inquiry ("EI") was not dated or was missing;  
20 b) In the files of 29 of the 29 employees sampled, the Qualification and  
21 Competence Inquiries ("QIs") were not dated or were missing;  
22 c) In the files of 14 of the 29 employees sampled, the employee's credit report  
23 was pulled several days, weeks or months after the hire date as recorded on  
24 the Respondents' Employee Log; and  
25 d) In the files of four of the 29 employees sampled, the Federal I-9 Citizenship  
26 Verification forms and/or supporting identification documents were missing;  
27 and  
28 e) In the files of three of the 29 employees sampled, the credit report contained  
29 derogatory credit information without an explanation.

30 12. Respondents did violate of A.R.S. § 6-909(B) when Respondents contracted with,  
and compensated, Primary Residential Management, LLC, an unlicensed

1 independent contractor. Respondents purchased leads from Primary Residential  
2 Management, LLC. Examiner Macias testified that Respondent Doran Jampolsky  
3 admitted to her that \$2,116.50 was paid for leads and that he knew that Primary  
4 Residential, LLC was not a licensed mortgage broker. At hearing, Respondent  
5 Jampolsky testified that the \$2,116.50 was paid to Primary Residential  
6 Management as a down payment for shared office space, yet he did not provide  
7 any documents in support of this contention. This tribunal finds Mr. Jampolsky's  
8 testimony to be disingenuous as the invoice from Primary Residential  
9 Management states:

10 Marketing / 10 hours \$2,000.00

11 Overhead Expenses \$116.50

- 12 13. Respondents did not violate A.R.S. § 6-909(B) (Compensation of unlicensed  
13 independent contractors) as alleged by the Department in its Complaint, when  
14 Respondents issued payroll advances to five of its employees. While the evidence  
15 of record indicated that Respondents may have failed to report the advances to  
16 their payroll vendor, PayChex, and Federal and State taxes may have not been  
17 therefore deducted, the Department failed to establish the payments were  
18 anything but legitimate payroll advances to employees of the company.
- 19 14. Respondents did not violate A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)  
20 (Respondents to keep and maintain, at all times, correct and complete records), as  
21 alleged by the Department in its Complaint, when Respondents failed to locate  
22 and present four employee files when requested by Examiner Macias. A.R.S. § 6-  
23 906(A) and A.A.C. R20-4-917(B) address the requirements of record keeping for  
24 loan files, and are silent as to the requirements for recordkeeping of employee  
25 files. While Respondents may have violated other statutes or rules by failing to  
26 provide the employee files, they did not violate A.R.S. § 6-906(A) and A.A.C. R20-  
27 4-917(B) as alleged.
- 28 15. Respondents did violate A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(9) when  
29 Respondents failed to maintain a complete organizational file, including minutes of  
30 any meetings. In the case at hand the licensee is a corporation. A.A.C. R20-4-  
917(B)(9) requires, unless the licensee is a natural person (and here it is a

1 corporation, not a natural person), a licensee to keep an organizational file,  
2 including Organizational Documents for the entity, Minutes, and a record showing  
3 all ownership interests. There is no exception, as Respondents would like this  
4 tribunal to hold, for a single shareholder corporation.

5 16. Respondents did violate A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(6) when  
6 Respondents failed to keep and maintain originals and copies of all loan files.  
7 Specifically, the evidence of record established that in two loan files, specifically  
8 the Wolinetz file and Salomon file, the initial loan applications were missing.  
9 Additionally, in the Silario and Salomon files, the final disposition of the loan, such  
10 as a settlement statement, denial letter or withdrawal letter, was missing.

11 17. Respondents did violate A.R.S. § 6-909(A) and A.A.C. R20-4-921 when  
12 Respondents allowed borrowers to sign 30 separate affiliated business  
13 arrangement disclosures; five truth-in-lending disclosures; two good faith  
14 estimates; and one servicing transfer disclosure when these documents contained  
15 blank spaces to be filled in after having been signed. Doron Jampolsky's  
16 testimony that he misunderstood the law and believed that the affiliated business  
17 arrangement disclosures should be signed when blank to indicate no other  
18 businesses were affiliated with Respondent Lending House does not excuse the  
19 violations.

20 18. Respondents did not violate A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e)  
21 (failure to comply with the disclosure requirements of Title I of the Consumer  
22 Credit Protection Act (15 U.S.C. §§1601 through 1666(j)) and the Real Estate  
23 Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617). While the evidence  
24 of record established that in the Valladares loan file the Preliminary Truth in  
25 Lending Disclosure and Good Faith Estimate forms were electronically dated  
26 September 7, 2006 and hand-dated by the borrower on September 6, 2006, Mr.  
27 Jampolsky's explanation that the one day difference was simply a scribner's error  
28 is plausible. Likewise, while the evidence of record established that in the Lopez  
29 loan file the Preliminary Truth in Lending Disclosure and Good Faith Estimate  
30 forms were electronically dated January 19, 2006 and hand-dated by the borrower

1 on January 29, 2007, Mr. Jampolsky's explanation that the difference was simply a  
2 scribner's error is also plausible.

3 19. Respondents did not violate A.R.S. § 6-909(L) (making a false promise or  
4 misrepresentation or concealing an essential or material fact in the course of the  
5 mortgage broker business) when, as alleged by the Department, loan officer  
6 Doran Jampolsky took two signed applications from applicant Kim G. with different  
7 information pertaining to her income, years of employment and number of years at  
8 current residence. The Department failed to present evidence to prove that  
9 Respondent knew or should have known that loan applicant Kim G. was falsifying  
10 any information or that Respondents were required to disclose all applications to  
11 Kim G.'s lender and intentionally failed to do so.

12 20. Respondents did not violate A.R.S. § 6-909(L) (making a false promise or  
13 misrepresentation or concealing an essential or material fact in the course of the  
14 mortgage broker business) when, as alleged by the Department, loan officer Rudy  
15 C. took two signed applications from applicant Patrick T. with different information  
16 pertaining to his monthly income. The Department failed to present evidence to  
17 prove that Respondent knew or should have known that loan applicant Patrick T.  
18 was falsifying any information or that Respondents were required to disclose all  
19 applications to Patrick T.'s lender and intentionally failed to do so.

20 21. Respondents did not violate A.R.S. § 6-909(L) (making a false promise or  
21 misrepresentation or concealing an essential or material fact in the course of the  
22 mortgage broker business) when, as alleged by the Department, loan officer  
23 Doran Jampolsky took three separate signed applications from applicant Nathan  
24 N. with different information pertaining to his monthly income. The first application,  
25 dated December 6, 2005 showed a monthly income form Nathan N. as  
26 \$26,515.00. The second application, dated January 5, 2006 shows a monthly  
27 income of \$33,215.00 and a third application, dated January 26, 2006 shows a  
28 monthly income of \$71,069.00. Even if the applicant was an employee or  
29 independent contractor working for Respondent Lending House, the Department  
30 failed to present any evidence to prove that the applicant's income was falsified, or  
that Respondent knew or should have known that loan applicant Nathan N. was

1 falsifying any information, or that Respondents were required to disclose all  
2 applications to Nathan N.'s lender and intentionally failed to do so.

3 22. Respondents did not violate A.R.S. § 6-909(L) (making a false promise or  
4 misrepresentation or concealing an essential or material fact in the course of the  
5 mortgage broker business) when loan officer Richard Sarmiento, employed by  
6 Allegro Financial, obtained a loan for victim Isabelo M. to refinance the \$63,500.00  
7 balance on his mortgage. Unbeknownst to Respondents or to Isabelo M., Mr.  
8 Sarmiento then substantially increased the amount of the loan requested and  
9 opened an escrow account, identifying himself as a loan officer for Respondent  
10 Lending House. Sarmiento also set up an account at Bank of America using  
11 Isabelo M.'s identification documents he obtained through the guise of securing a  
12 loan for Isabelo M. When the loan funded, Sarmiento, again fraudulently  
13 identifying himself as Isabelo M., received a cash payout of \$82,499.26 from the  
14 Bank of America. An additional \$65,500.00 went to Isabelo M.'s initial lender as a  
15 payoff on the initial mortgage, and a check in the amount of \$7,687.50 was sent to  
16 Respondent Lending House for the broker's fee. Aside from the fact that  
17 Sarmiento used Lending House' name to set up the escrow for his scheme, and  
18 the fact that Respondent Lending House received a check for broker's fees, the  
19 Department did not introduce any evidence to show that Sarmiento was ever  
20 employed by, or supervised by, Respondent Lending House, or that Respondents  
21 had any knowledge of, participation in, or responsibility for, any part of Sarmiento's  
22 scheme.

23 23. Respondent Doran Jampolsky did violate A.R.S. § 6-903(E) by his failure to  
24 actively manage all of Respondent Lending House's activities and ensure  
25 compliance with the applicable statutes and rules governing mortgage brokers as  
26 evidenced by the violations set forth above in paragraphs 9 through 12, 16, and  
27 17.

28 24. On October 29, 2008, the Department sent Respondents a copy of the  
29 examination report and an invoice, pursuant to A.R.S. § 6-125, assessing a  
30 statutory fee of \$12,420.00 for the examination. Respondents were also advised  
that the fee was due within 30 days of the date of the invoice and, pursuant to

1 A.R.S. § 6-125(D), a penalty of \$50.00 per day would be assessed until paid.  
2 Assistant Superintendent Robert Charleton testified that Respondents have not yet  
3 paid the examination fee.

4 25. Pursuant to A.R.S. 6-132, Respondents' violations are grounds for a civil penalty  
5 of not more than \$5,000.00 for each violation for each day. Assistant  
6 Superintendent Charleton testified that the Department believes a civil penalty of  
7 \$15,000.00 is appropriate. Mr. Charleton testified that the basis for the civil  
8 penalty was the large number of violations and the lack of appropriate oversight of  
9 personnel that resulted in the \$80,000.00 loss of equity by Mr. Isabelo M.

10 **CONCLUSIONS OF LAW**

- 11 1. The Superintendent of the Department has the authority to regulate all persons  
12 engaged in the mortgage business and enforce the applicable statutes and rules.  
13 See A.R.S. Title 6, Chapter 9, Article 2.
- 14 2. A.R.S. § 6-132 provides that the Superintendent of the Department may assess a  
15 monetary civil penalty of not more than \$5,000.00 against a person for a knowing  
16 violation of applicable statute or rule or order adopted or issued under state  
17 banking laws. The law specifically provides that "[e]ach day of violation constitutes  
18 a separate offense."
- 19 3. The Department has adopted administrative rules further defining or setting forth  
20 practice and procedure applicable to licenses which were granted under the  
21 Department's authority. See A.A.C. R20-4-101 *et. seq.* and R20-4-901 *et. seq.*
- 22 4. The Department bears the burden to prove each of the charges in its Complaint by  
23 a preponderance of the evidence. See Arizona Administrative Code R2-19-119.  
24 A preponderance of the evidence is "such proof as convinces the trier of fact that  
25 the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF  
26 EVIDENCE § 5 (1960).
- 27 5. With regard to the Department's allegations, the Department provided credible  
28 and reliable evidence of the alleged violations as follows:  
29 a. Respondents did violate A.R.S. § 6-904(F) when Respondents employed  
30 loan officers, and allowed said loan officers to work out of their homes and

1 participate in mortgage loan transactions at locations other than  
2 Respondents' principal place of business at 668 N. 44<sup>th</sup> Street, Suite 233  
3 in Phoenix, Arizona without first obtaining a branch license from the  
4 Department.

5 b. Respondents did violate A.A.C. R20-4-917(B)(7) when Respondents  
6 failed to maintain samples of all advertising relating to the mortgage  
7 broker's business in Arizona.

8 c. Respondents did violate A.R.S. § 6-903(N) when Respondents failed to  
9 conduct the minimum elements of a reasonable investigation before hiring  
10 employees.

11 d. Respondents did violate of A.R.S. § 6-909(B) when Respondents  
12 contracted with, and compensated, Primary Residential Management,  
13 LLC, an unlicensed independent contractor.

14 e. Respondents did violate A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(9)  
15 when Respondents failed to maintain a complete organizational file,  
16 including minutes of any meetings. In the case at hand the licensee is a  
17 corporation.

18 f. Respondents did violate A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(6)  
19 when Respondents failed to keep and maintain originals and copies of all  
20 loan files.

21 g. Respondents did violate A.R.S. § 6-909(A) and A.A.C. R20-4-921 when  
22 Respondents allowed borrowers to sign 30 separate affiliated business  
23 arrangement disclosures; five truth-in-lending disclosures; two good faith  
24 estimates; and one servicing transfer disclosure when these documents  
25 contained blank spaces to be filled in after having been signed.

26 h. Respondent Doran Jampolsky did violate A.R.S. § 6-903(E) by his failure  
27 to actively manage all of Respondent Lending House's activities and  
28 ensure compliance with the applicable statutes and rules governing  
29 mortgage brokers as evidenced by the violations set forth above.

30 6. With regard to the Department's other allegations, the Department did not  
provide credible and reliable evidence of the alleged violations as follows:

- 1 a. Respondents did not violate A.R.S. § 6-909(B) (Compensation of  
2 unlicensed independent contractors) as alleged by the Department in its  
3 Complaint, when Respondents issued payroll advances to five of its  
4 employees.
- 5 b. Respondents did not violate A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)  
6 (Keep and maintain, at all times, correct and complete records), as  
7 alleged by the Department in its Complaint, when Respondents failed to  
8 locate and present four employee files when requested by Examiner  
9 Macias.
- 10 c. Respondents did not violate A.R.S. § 6-906(D) and A.A.C. R20-4-  
11 917(B)(6)(e) (failure to comply with the disclosure requirements of Title I  
12 of the Consumer Credit Protection Act (15 U.S.C. §§1601 through 1666(j))  
13 and the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601  
14 through 2617) when alleged by the Department, the Preliminary Truth in  
15 Lending Disclosure and Good Faith Estimate forms were electronically  
16 dated and hand-dated by the borrower on different dates. Mr.  
17 Jampolsky's explanation that the difference was simply a scribner's error  
18 is plausible.
- 19 d. Respondents did not violate A.R.S. § 6-909(L) (making a false promise or  
20 misrepresentation or concealing an essential or material fact in the course  
21 of the mortgage broker business) when, as alleged by the Department,  
22 loan officer Doran Jampolsky took two signed applications from applicant  
23 Kim G. with different information pertaining to her income, years of  
24 employment and number of years at current residence. The Department  
25 failed to present evidence to prove that Respondent knew or should have  
26 known that loan applicant Kim G. was falsifying any information or that  
27 Respondents were required to disclose all applications to Kim G.'s lender  
28 and intentionally failed to do so.
- 29 e. Respondents did not violate A.R.S. § 6-909(L) (making a false promise or  
30 misrepresentation or concealing an essential or material fact in the course  
of the mortgage broker business) when, as alleged by the Department,

1 loan officer Rudy C. took two signed applications from applicant Patrick T.  
2 with different information pertaining to his monthly income. The  
3 Department failed to present evidence to prove that Respondent knew or  
4 should have known that loan applicant Patrick T. was falsifying any  
5 information or that Respondents were required to disclose all applications  
6 to Patrick T.'s lender and intentionally failed to do so.

7 f. Respondents did not violate A.R.S. § 6-909(L) (making a false promise or  
8 misrepresentation or concealing an essential or material fact in the course  
9 of the mortgage broker business) when, as alleged by the Department,  
10 loan officer Doran Jampolsky took three separate signed applications from  
11 applicant Nathan N. with different information pertaining to his monthly  
12 income. The Department failed to present any evidence to prove that the  
13 applicant's income was falsified, or that Respondent knew or should have  
14 known that loan applicant Nathan N. was falsifying any information, or that  
15 Respondents were required to disclose all applications to Nathan N.'s  
16 lender and intentionally failed to do so.

17 g. Respondents did not violate A.R.S. § 6-909(L) (making a false promise or  
18 misrepresentation or concealing an essential or material fact in the course  
19 of the mortgage broker business) when, as alleged by the Department, a  
20 loan officer Richard Sarmiento, employed by Allegro Financial, obtained a  
21 loan for victim Isabelo M. and fraudulently obtained a cash-out payment.  
22 The Department did not introduce any evidence to show that Sarmiento  
23 was ever employed by, or supervised by, Respondent Lending House, or  
24 that Respondents had any knowledge of, participation in, or responsibility  
25 for, any part of Sarmiento's scheme.

26 7. Taking all of the foregoing into consideration, the Administrative Law Judge  
27 concludes that, pursuant to A.R.S. § 6-905(A)(3) and (4), the requested license  
28 revocation by the Superintendent of the Department is not appropriate, but rather  
29 a suspension for a period of 60 days from the effective date of the Order in this  
30 matter is deemed a more just and fair penalty in light of the violations proven.

1 8. Likewise, while the imposition of a monetary civil penalty is clearly appropriate  
2 pursuant to A.R.S. § 6-132, the Department's initial assessment of a \$15,000.00  
3 penalty was based on, as testified to by Mr. Charleton, the large number of  
4 violations and the lack of appropriate oversight of personnel that resulted in the  
5 \$80,000.00 loss of equity by Mr. Isabelo M. As neither the large number of  
6 violations nor the lack of appropriate oversight of personnel that resulted in the  
7 \$80,000.00 loss was established, the \$15,000.000 penalty should be reduced.  
8 However, in light of the fact that Respondents have received a \$7,687.50 broker  
9 fee for which they admittedly were not entitled, and have indicated no intention to  
10 return said money to its rightful owner, this tribunal is dissuaded from any  
11 significant reduction. Therefore, the civil penalty imposed remains at  
12 \$15,000.00.

13 9. In regards to the examination fee, pursuant to A.R.S. § 6-125(D) Respondents  
14 shall pay a late payment penalty of 50.00 per day for every day the examination  
15 fee has not been paid beginning 30 days after the notice of examination  
16 assessment has been mailed. The late payment penalty is capped at the  
17 examination fee amount.

#### 18 RECOMMENDED ORDER

19 On the effective date of the Order entered in this matter, Respondents' Arizona  
20 mortgage broker's license shall be suspended for 60 days;

21  
22 Pursuant to A.R.S. § 6-132, a civil penalty shall be imposed upon Respondents  
23 in the amount of \$15,000.00 for the violations of A.R.S. §§ 6-903, 6-906, 6-909 and  
24 A.A.C. R20-4-102, R20-4-917 and R20-4-921;

25  
26 Pursuant to A.R.S. § 6-125, Respondents shall reimburse the Department in the  
27 amount of the exam fee of \$12,420.00;

28  
29 Furthermore, as the evidence of record indicates that the Cover Letter,  
30 Examination Fee Invoice and Examination Report were mailed to Respondents on

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October 29, 2008, pursuant to A.R.S. § 6-125(D) Respondents shall pay a late fee of \$50.00 per day beginning November 29, 2008, not to exceed \$12,420.00.

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 in this matter will be forty (40) days from the date of that certification.

Done this day, April 6, 2009.

Office of Administrative Hearings

  
\_\_\_\_\_  
Michael G. Wales  
Administrative Law Judge

Original transmitted by mail this  
9 day of April, 2009, to:

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

By \_\_\_\_\_