

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 12F-BD007-BNK

3 **BELLA FUNDING, LLC AND DONALD A.**
4 **TOMASIAN, MANAGING MEMBER**
5 16375 N. 99th Place
6 Scottsdale, AZ 85260

Petitioners.

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

7 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the
8 record in this matter, including the Administrative Law Judge Decision attached and incorporated
9 herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of
10 Law and Order as follows:

11 **ORDER**

12 **IT IS ORDERED** affirming the Cease and Desist Order and civil money penalty issued on
13 October 3, 2011 Docket Number 12F-BD024-SBD. Petitioners shall jointly and severally pay the
14 civil monetary penalty in the amount of \$25,000.00 within thirty (30) days of the effective date of
15 this Order.

16 **NOTICE**

17 The parties are advised that, pursuant to A.R.S. § 41-1092.09, this Order shall be final
18 unless Petitioners submit a written motion for rehearing no later than thirty (30) days after service
19 of this decision. The motion for rehearing or review must specify the particular grounds upon
20 which it is based as set forth in A.A.C. R20-4-1219. A copy shall be served upon all other parties
21 to the hearing, including the Attorney General, if the Attorney General is not the party filing the
22 claim of error. In the alternative, the parties may seek judicial review of this decision pursuant to
23 A.R.S. § 41-1092.08(H).

24 DATED this 25th day of June, 2012.

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27 _____
28 Lauren W. Kingry
Superintendent of Financial Institutions

1 ORIGINAL filed this 25th day of June, 2012 in the office of:

2 Lauren W. Kingry, Superintendent of Financial Institutions
3 Arizona Department of Financial Institutions
4 ATTN: June Beckwith
5 2910 North 44th Street, Suite 310
6 Phoenix, Arizona 85018

7 COPY mailed same date to:

8 Lewis D. Kowal, Administrative Law Judge
9 Office of the Administrative Hearings
10 1400 West Washington, Suite 101
11 Phoenix, AZ 85007

12 Craig Raby, Assistant Attorney General
13 Office of the Attorney General
14 1275 West Washington
15 Phoenix, AZ 85007

16 Robert D. Charlton, Assistant Superintendent
17 Tammy Seto, Financial Institutions Examiner Sr.
18 Arizona Department of Financial Institutions
19 2910 N. 44th Street, Suite 310
20 Phoenix, AZ 85018

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

23 Donald Tomasian
24 16375 N. 99th Place
25 Scottsdale, AZ 85260

26 By: 
27
28

1 private lender of money in Arizona specializing in "tough to do"
2 transactions involving real property. See Exhibit 4.

3 c. LinkedIn is a business sharing website that lists resumes and
4 contains other information about businesses.

5 d. Ms. Seto was able to access Bella Funding's LinkedIn webpage,
6 which indicated that the page is accessible to the public.

7 e. The information contained on the LinkedIn web page established
8 that Bella Funding, through Mr. Tomasian, was offering to make or
9 negotiate a mortgage loan or mortgage banking loan. A mortgage loan
10 involves the entity directly funding the loan while a mortgage banking loan
11 involves the entity brokering the loan but the funding is derived from a
12 third party.

13 f. On March 16, 2011, Ms. Seto sent a letter to Bella Funding asking
14 for information about the lending activities of Bella Funding in the state of
15 Arizona. See Exhibit 5. Bella Funding did not respond to that letter.

16 g. The Department obtained information that First American Title
17 Insurance Company ("First American") was involved in closing loans for
18 Bella Funding.

19 h. On August 12, 2011, the Department sent a letter to First American
20 requesting a list of transactions and documents involving Bella Funding
21 as a broker or lender in transactions. See Exhibit 6.

22 i. In response to the above-mentioned letter, First American sent the
23 Department Final Settlement Statements. See Exhibits 8, 9, and 10.

24 j. Upon review of the documents the Department received from First
25 American and other information and documentation obtained during the
26 course of her investigation of Bella Funding, Ms. Seto determined that for
27 compensation, Respondents were arranging or negotiating mortgage
28 loans or mortgage banking loans regarding Arizona real property, secured
29 by deeds of trust on those properties. Ms. Seto determined that by
30

1 Respondents engaging in such activities, a mortgage banker license was
2 required.

3 5. On October 3, 2011, the Department issued a Cease and Desist Order requiring
4 Respondents to cease and desist from all mortgage banker activity in the state of
5 Arizona until they have obtained a mortgage banker license from the Department, pay a
6 civil monetary penalty of \$25,000.00 to the Department, and comply with all statutes
7 and rules regulating Arizona mortgage bankers. See Exhibit 1.

8 6. First American provided to the Department documents that showed with respect
9 to a new loan on the property located at 3865 Highway 68, Golden Valley, Arizona,
10 (File # 291-4762004) Bella Funding charged and received a loan origination fee of
11 \$40,000.00, a document preparation fee of \$500.00, an underwriting fee of \$500.00,
12 and a processing fee of \$995.00. See Exhibit 8. Further, the loan amount of
13 \$800,000.00 was directly funded by Bella Funding. *Id.*

14 7. A Deed of Trust was recorded in the Maricopa County Recorder's Office
15 regarding the property that was the subject of the loan in File # 291-4762004. See
16 Exhibit 14.

17 8. First American provided documents to the Department that showed with respect
18 to a loan on the properties located at 2201 East McDowell Road, 2211 East McDowell
19 Road, and 14833 North 12th Street, Phoenix, Arizona, (File # 443-526337) Bella
20 Funding brokered funding of loans, and Mr. Tomasian c/o Bella Funding charged and
21 received loan discount points of \$5,600.00, a loan processing fee of \$1,250.00, a loan
22 set up fee of \$500.00, a site inspection fee of \$750.00, and a document preparation fee
23 of \$500.00. See Exhibit 9.

24 9. A Deed of Trust was recorded in the Maricopa County Recorder's Office
25 regarding the properties that were the subject of the loan in File # 443-526337. See
26 Exhibit 12.

27 10. First American provided documents to the Department that showed with respect
28 to a loan on a property located at 4150 North 35th Avenue, Phoenix, Arizona, Lot 2,
29 (File # 443-5298165) Bella Funding brokered funding of a loan, and Bella Funding/Mr.
30 Tomasian charged and received a loan origination fee of \$9,000.00, a loan discount fee

1 of \$51,000.00, a loan document fee of \$1,500.00, a loan processing fee of \$1,450.00,
2 and a site inspection fee of \$750.00. See Exhibit 10.

3 11. A Deed of Trust was recorded in the Maricopa County Recorder's Office
4 regarding the properties that were the subject of the loan in File # 443-5298165. See
5 Exhibit 13.

6 12. Robert Charlton ("Mr. Charlton"), Assistant Superintendent of the Department,
7 testified that he is Ms. Seto's supervisor and that Ms. Seto discussed this matter with
8 him and provided him with documents she obtained regarding the business activities of
9 Respondents in the state of Arizona.

10 13. Mr. Charlton, who is familiar with the Department's statutes and rules and
11 oversees the Department's regulation of mortgage bankers, testified that based on the
12 information the Department compiled regarding Respondents, they were both acting as
13 a mortgage banker and received compensation for such activities without being
14 licensed by the Department. Mr. Charlton further testified that such activities warranted
15 the issuance of a cease and desist order.

16 14. Mr. Charlton testified that the Department arrived at the \$25,000.00 civil penalty
17 by looking at the particular activities of Respondents, and he considered what the
18 Department has historically imposed as a civil penalty.

19 15. Mr. Charlton also testified that there were at least eight acts established by the
20 documents the Department obtained during the course of its investigation of Bella
21 Funding that showed that Bella Funding, through its managing member, Mr. Tomasian,
22 engaged in the offering or negotiating, or actually made or negotiated mortgage loans
23 or mortgage banking loans. According to Mr. Charlton, such acts are violations of law
24 that support a civil penalty in excess of \$25,000.00.

25 16. In its closing argument, the Department requested that the Cease and Desist
26 Order be upheld and that a civil monetary penalty in the amount of \$25,000.00 be
27 imposed against Bella Funding and Mr. Tomasian, jointly and severally.

28 17. No evidence or argument was presented by Respondents to refute or rebut the
29 evidence and arguments presented by the Department.

30 **CONCLUSIONS OF LAW**

1 1. The Superintendent of the Department has the authority to regulate all persons
2 engaged in the mortgage banker business and enforce the applicable statutes and
3 rules. See A.R.S. Title 6, Chapter 9, Article 2.

4 2. This matter concerns disciplinary action that the Department seeks to take
5 against Bella Funding and Mr. Tomasian. Therefore, the Department has the burden of
6 proving by a preponderance of the evidence that the allegations set forth in the Notice
7 of Hearing issued in this matter constitute violations of the State's laws regulating
8 mortgage bankers. See A.R.S. § 41-1092.07(G) and A.A.C R2-19-119.

9 3. A "preponderance of the evidence is such proof as convinces the trier of fact that
10 the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF
11 EVIDENCE § 5 (1960). It is "[e]vidence which is of greater weight or more convincing
12 than the evidence which is offered in opposition to it; that is, evidence which as a whole
13 shows that the fact sought to be proved is more probable than not." BLACK'S LAW
14 DICTIONARY 1182 (6th ed. 1990)

15 4. A mortgage banker is defined in A.R.S. § 6-941(5) as "a person who is not
16 exempt under section 6-942 and who for compensation or in the expectation of
17 compensation either directly or indirectly makes, negotiates or offers to make or
18 negotiate a mortgage banking loan or a mortgage loan."

19 5. A mortgage loan is defined as "any loan, other than a mortgage banking loan,
20 secured by a mortgage or deed of trust or any lien interest on real estate located in this
21 state and created with the consent of the owner of the real estate." A.R.S. § 6-941(8).

22 6. A mortgage banking loan is defined as "a loan which is funded exclusively from
23 the mortgage banker's own resources, which is directly or indirectly secured by a
24 mortgage or deed of trust or any lien interest on real estate located in this state and
25 which is created with the consent of the owner of the real property. . . ." A.R.S. § 6-
26 941(6).

27 7. Compensation is defined in A.R.S. § 6-941(2) as "anything of value or any
28 benefit including points, commissions, bonuses, referral fees, loan origination fees and
29 other similar fees but excluding periodic interest resulting from the application of the
30

1 note rate of interest to the outstanding principal balance remaining unpaid from time to
2 time.”

3 8. A person is not entitled to receive compensation for arranging or negotiating a
4 mortgage loan or mortgage banking loan for compensation without being licensed as a
5 mortgage banker. See A.R.S. § 6-947(B).

6 9. The weight of the evidence of record established that Bella Funding and Mr.
7 Tomasian violated the provisions of A.R.S. § 6-943(A) by acting as a mortgage banker
8 in the state of Arizona without obtaining a mortgage banker’s license from the
9 Department. There was no evidence presented that Respondents met any of the
10 exceptions from licensure that are set forth in A.R.S. § 6-942.

11 10. The weight of the evidence of record established that Bella Funding and Mr.
12 Tomasian violated the provisions of A.R.S. § 6-947(B) by accepting compensation for
13 arranging for or negotiating mortgage banking loans or mortgage loans without having
14 obtained a mortgage banker’s license from the Department.

15 11. The Department proved by a preponderance of the evidence that grounds exist
16 for the Department for the issuance of the Cease and Desist Order pursuant to A.R.S. §
17 6-137.

18 12. Grounds exist, based on the above-found violations, for the imposition of a civil
19 monetary penalty. See A.R.S. § 6-132.

20 13. The weight of the evidence of record established that the civil penalty of
21 \$25,000.00 sought by the Department is reasonable and appropriate under the
22 circumstances.

23 **ORDER**

24 Based on the above, the Cease and Desist Order is upheld and, within 30 days
25 of the effective date of the Order entered in this matter, Bella Funding and Mr.
26 Tomasian shall jointly and severally pay to the Department a civil monetary penalty in
27 the amount of \$25,000.00.

28 *In the event of certification of the Administrative Law Judge Decision by the*
29 *Director of the Office of Administrative Hearings, the effective date of the Order will be 5*
30 *days from the date of that certification.*

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Done this day, June 12, 2012.

/s/ Lewis D. Kowal
Administrative Law Judge

Transmitted electronically to:
Lauren Kingry, Superintendent
Arizona Department of Financial Institutions