

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker/Mortgage
3 Banker License of:

No. 06F-BD031-BNK

CONSENT ORDER

4 **ASSURITY FINANCIAL SERVICES, L.L.C.**
5 **AND TROY P. HAMLER, C.E.O.**
6 1225 West Washington Street, Suite 201
7 Tempe, AZ 85281

Petitioners.

8 On February 22, 2006, the Arizona Department of Financial Institutions (“Department”)
9 issued a Notice of Hearing alleging that Petitioners had violated Arizona law. Wishing to resolve
10 this matter in lieu of an administrative hearing and without admitting liability, Petitioners do not
11 contest the following Findings of Fact and Conclusions of Law, and consent to the entry of the
12 following Order.

13 FINDINGS OF FACT

14 1. Petitioner Assurity Financial Services, L.L.C. (“Assurity”) is an Arizona foreign
15 limited liability company, authorized to transact business in Arizona as a mortgage banker, license
16 number BK 0907309, within the meaning of A.R.S. §§ 6-941 *et seq.* The nature of Assurity’s
17 business is that of making, negotiating, or offering to make or negotiate a mortgage banking loan or
18 a mortgage loan secured by Arizona real property, within the meaning of A.R.S. § 6-941(5).

19 2. Prior to and around July 7, 2005, Assurity was authorized to transact business in
20 Arizona as a mortgage broker, license number MB 0905822, within the meaning of A.R.S. §§ 6-901
21 *et seq.*, and while licensed as a mortgage broker, the nature of Assurity’s business was that of
22 making, negotiating, or offering to make or negotiate loans secured by Arizona real property, within
23 the meaning of A.R.S. § 6-901(6).

24 3. Petitioner Troy P. Hamler (“Mr. Hamler”) is the C.E.O. of Assurity and is authorized
25 to transact business in Arizona as a mortgage banker within the meaning of A.R.S. § 6-941(5), as
26 outlined within A.R.S. § 6-943(F). Mr. Hamler was also authorized to transact business in Arizona

1 as a mortgage broker within the meaning of A.R.S. § 6-903(E) from approximately September 15,
2 2003 through July 7, 2005.

3 4. Mr. Hamler and Assurity are not exempt from licensure as a mortgage banker within
4 the meaning of A.R.S. §§ 6-942 and 6-941(5). Prior to and around July 7, 2005, Mr. Hamler and
5 Assurity were not exempt from licensure as a mortgage broker within the meaning of A.R.S.
6 §§ 6-901(6) and 6-902.

7 **Mortgage Broker License MB 0905822**

8 5. On or around June 9, 2004, the Department received a copy of one of Petitioners'
9 advertisements/solicitations. On June 9, 2004, the Department advised Petitioners that this
10 advertisement/solicitation was not in compliance with the mortgage loan advertising requirements,
11 specifically stating that the advertisement/solicitation was "Misleading, misrepresentation: Falsely
12 indicates that you are corresponding on behalf of HUD, violation of A.R.S. § 6-909(L)." In June of
13 2004, Department examiners William Teeters and Lori Mann verbally confirmed that the
14 advertisement/solicitation was not in compliance with Arizona law.

15 6. On or about November 22, 2004, the Department received a complaint from Arizona
16 resident Larry W. Clark ("Mr. Clark"), who enclosed an advertisement/solicitation he received from
17 Petitioners entitled "Escrow Refund Notice," which claimed, in part, that Mr. Clark's mortgage loan
18 had a potentially over-funded escrow account carrying an annual accrual of \$2,711.00. Mr. Clark
19 stated that he did not have or need to have an escrow account because he paid cash for his home and
20 took out a home equity loan to cover pool and landscaping expenses.

21 7. On or about November 24, 2004, the Department sent a letter to Petitioners,
22 requesting a response to Mr. Clark's complaint.

23 8. On December 3, 2004, Calvin B. Hamler, submitted a written response to Ms. Mann
24 regarding Mr. Clark's complaint. In that response, Petitioners indicated that the
25 advertisement/solicitation, and four other mail pieces, had been approved by the State of Nevada.

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1 9. On December 9, 2004, Ms. Mann, on behalf of the Department, wrote Mr. Larry
2 Clark a letter regarding his complaint and provided Petitioners with a copy of said letter. In that
3 correspondence, Ms. Mann stated that the review of his complaint "had been completed." Ms. Mann
4 further stated: "Examination of the supporting documents described in your complaint reveals
5 insufficient evidence of a violation of the Arizona Revised Statutes Title 6 to warrant intervention at
6 this time."

7 10. On or about March 18, 2005, the Department received a complaint, referred by the
8 Arizona Attorney General's Office, from Arizona resident Tambra Williams ("Ms. Williams"),
9 stating that she received an advertisement/solicitation from Petitioners. In her complaint, Ms.
10 Williams claims that when she called the 800 telephone number provided on the advertisement/
11 solicitation regarding the escrow funds, she spoke with a representative by the name of Mr. Tim
12 Brown who asked her "several questions including my date of birth and SS#." Ms. Williams further
13 claims that she called her mortgage company and they advised her that she did not have excess funds
14 in her escrow account.

15 11. On or about April 20, 2005, the Department sent a letter to Petitioners and requested a
16 response to Ms. Williams' complaint.

17 12. On April 28, 2005 Mr. Troy Hamler, on behalf of Petitioners provided Ms. Mann a
18 detailed response with attachments, including a copy of the solicitation, addressing Ms. Williams
19 complaint. The Department noted, in the copy of Petitioners' advertisement/solicitation provided in
20 the response to Ms. Williams' complaint, that Petitioners failed to include the principal place of
21 business license number as required. Petitioners' solicitation did, however, include its name and
22 Arizona License number on every mail piece sent to Arizona.

23 13. Between November 2004 and July 18, 2005, Petitioners and the Department
24 exchanged a series of correspondence regarding the Department's position that Petitioners were
25 using misleading language.

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- 1 i. Buydown Refund Notice; Second Notice Letter; Third Notice Letter; Final
2 Notice Letter; Balloon Payment Alert; Second Alert Letter; Third Alert Letter;
3 Final Payment Alert Letter; Escrow Refund Notice; Second Notice Letter;
4 Third Notice Letter; Final Notice Letter; MIP Refund; Second Notice Letter;
5 Third Notice Letter; Final Notice Letter; Prepayment Penalty; Second Notice
6 Letter; Third Notice Letter; and Final Notice Letter;
- 7 c. made a false promise or misrepresentation or concealed an essential or
8 material fact in the course of the mortgage banker business when sending out each of the
9 aforementioned twenty (20) advertising solicitation letters;
- 10 d. failed to conduct the minimum required elements of reasonable employee
11 investigations before hiring at least fourteen (14) employees;
- 12 i. failed to obtain a completed employment eligibility verification form
13 "I-9" when hiring fourteen (14) employees;
- 14 ii. failed to properly document prior employer inquiries when hiring
15 fourteen (14) employees; and
- 16 iii. failed to inquire regarding the applicant's qualifications and
17 competence for the position when hiring one (1) employee;
- 18 e. failed to prominently display its original mortgage banker license, issued by
19 the Department, at its office;
- 20 f. paid \$1,081.00 in compensation to iNetMedia, who is an unlicensed lead
21 source;
- 22 g. used an unlawful appraisal disclosure placing a 90-day limit upon borrowers
23 to receive a copy of an appraisal report or to request transfer or return of an appraisal report
24 for which the borrowers had already paid; and
- 25 h. failed to furnish, within a reasonable time, any information that may be
26 required by the Superintendent;

- 1 i. the Department requested copies of a mailing list for leads purchased and
2 never received such information.

3 18. Based upon the above findings, the Department issued and served upon Assurity and
4 Mr. Hamler an Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to Entry of
5 Order ("Cease and Desist Order") on January 13, 2006.

6 19. On January 30, 2006, Petitioners filed a Request for Hearing to appeal the Cease and
7 Desist Order.

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

9 **CONCLUSIONS OF LAW**

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

13 2. Pursuant to A.R.S. §§ 6-901 *et seq.*, the Superintendent has the authority and duty to
14 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,
15 rules and regulations relating to mortgage brokers.

16 3. During all relevant times while licensed in Arizona as a mortgage broker, and by the
17 conduct set forth above in the Findings of Fact, Assurity and Mr. Hamler violated statutes and rules
18 governing mortgage brokers as follows:

19 a. A.R.S. § 6-909(C) by knowingly advertising, displaying, distributing, or
20 causing or permitting to be advertised, displayed, distributed in any manner whatever, a false,
21 misleading or deceptive statement or representation;

22 b. A.R.S. § 6-909(L) by making a false promise or misrepresentation or
23 concealing an essential or material fact in the course of the mortgage broker business; and

24 c. A.R.S. § 6-909(N) by engaging in illegal or improper business practices by
25 circulating, distributing, mailing, disseminating an advertisement that does not comply with
26 the mortgage advertising requirements;

1 4. By the conduct set forth in the Findings of Fact, Assurity and Mr. Hamler violated the
2 following applicable mortgage banker laws and rules:

- 3 a. A.R.S. §§ 6-943(N) and 6-946(E) by failing to include the license number, as issued
4 on its principal place of business license, within all regulated advertising and business
5 solicitations;
- 6 b. A.R.S. § 6-947(D) by advertising, displaying, or distributing false, misleading, or
7 deceptive statements or representations with regard to the rates, terms, or conditions
8 for a mortgage banking loan or mortgage loan;
- 9 c. A.R.S. § 6-947(L) by making a false promise or misrepresentation or concealing an
10 essential or material fact when sending out twenty (20) advertising solicitation letters;
- 11 d. A.R.S. § 6-943(O) and A.A.C. R20-4-102 by failing to conduct the minimum
12 elements of reasonable employee investigations before hiring employees;
- 13 e. A.R.S. § 6-944(C) by failing to prominently display its original mortgage banker
14 license, issued by the Department, at its office;
- 15 f. A.R.S. § 6-947(B) and A.A.C. R20-4-102 by paying compensation to unlicensed,
16 independent contractors who were acting as mortgage brokers or mortgage bankers;
- 17 g. A.R.S. § 6-946(C) by using an unlawful appraisal disclosure placing a 90-day limit
18 upon borrowers to receive a copy of an appraisal report or to request transfer or return
19 of an appraisal report for which the borrowers had already paid; and
- 20 h. failed to furnish, within a reasonable time, any information that may be required by
21 the Superintendent.

22 5. The violations set forth above constitute grounds for issuance of an order directing
23 Petitioners to cease and desist from the violative conduct and to take the appropriate affirmative
24 actions, within a reasonable period of time prescribed by the Superintendent, to correct the
25 conditions resulting from the unlawful acts, practices, and transactions, pursuant to A.R.S. § 6-137.

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- i. shall prominently display its original mortgage banker license, issued by the Department, at its office;
- j. shall not pay compensation to, contract with, or employ as an independent contractor, a person who is acting as a mortgage broker or mortgage banker, but who is not licensed in Arizona as such;
- k. shall not use an unlawful appraisal disclosure that places a 90-day limit upon borrowers to receive a copy of an appraisal report or to request transfer or return of an appraisal report for which the borrowers had already paid; and
- l. shall furnish, within a reasonable time, any information that may be required by the Superintendent.

2. Assurity Financial Services and Mr. Hamler shall immediately pay to the Department a civil money penalty in the amount of fifteen thousand dollars (\$15,000.00).

3. The provisions of this Order shall be binding upon Petitioners, their employees, agents, and other persons participating in the conduct of the affairs of Petitioners.

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

SO ORDERED this 10th day of April, 2006.



 Felecia A. Rotellini
 Superintendent of Financial Institutions

CONSENT TO ENTRY OF ORDER

1. Petitioners acknowledge that they have been served with a copy of the foregoing Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the same, are aware of their right to an administrative hearing in this matter, and have waived the same.

1 Craig A. Raby, Assistant Attorney General
Office of the Attorney General
2 1275 West Washington
Phoenix, AZ 85007
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4 Robert D. Charlton, Assistant Superintendent
Anthony Arroyo, Senior Examiner
Arizona Department of Financial Institutions
5 2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
6

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

8 Troy Hamler, C.E.O.
Assurity Financial Services, L.L.C.
9 1225 West Washington Street, Suite 201
Tempe, AZ 85281
10

11 Gary A. Husk, Esq.
Attorney at Law
411 N. Central Avenue, Suite 640
12 Phoenix, Arizona 85004
Attorney for Petitioners
13

14 Gregg E. Kay, Esq.
General Counsel
Assurity Financial Services, Inc.
15 6025 S. Quebec St., Suite 350
Englewood, CO 80111
16

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