STATE OF ARIZONA

Department of Insurance and Financial Institutions
FILED January 29, 2021 by AS

# STATE OF ARIZONA DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

In the Matter of the Original Application for Loan Originator License of:

No. 20F-BD-005-FIN

ORDER

**RUSSELL HENRY** 

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Petitioner

On January 19, 2021, the Office of Administrative Hearings through Administrative Law Judge Thomas Shedden issued an Administrative Law Judge Decision ("Recommended Decision") received by the Director of the Arizona Department of Insurance and Financial Institutions ("Director") on January 21, 2021, a copy of which is attached and incorporated by reference. The Director has reviewed the Recommended Decision and enters the following:

- 1. The Director ADOPTS the Recommended Findings of Fact and Conclusions of Law.
- 2. The Director ADOPTS the Recommended Order and orders that the Department's denial of Petitioner's Arizona mortgage loan originator license application is upheld.

### **NOTIFICATION OF RIGHTS**

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

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1 Respondent may appeal the final decision of the Director to the Superior Court of 2 Maricopa County for judicial review, pursuant to A.R.S. § 20-166. A party filing an appeal must notify the Office of Administrative Hearings of the appeal within ten days after filing 3 4 the complaint commencing the appeal, pursuant A.R.S. § 12-904(B). 5 DATED this 28th day of January , 2021. 6 Evan & Dami 7 Evan G. Daniels, Director 8 Arizona Department of Insurance and Financial Institutions 9 10 11 12 13 14 15 16 17 18 COPY of the foregoing electronically transmitted this 1st day of February 19 , 2021, to: 20 Thomas Shedden, Administrative Law Judge Office of Administrative Hearings 21 https://portal.azoah.com/submission 22 COPY mailed same date by U.S. 23 Certified Mail, Electronic Receipt Requested, to: 24 Russell Henry 9489 0090 0027 6265 2236 24 16401 North 40<sup>th</sup> Street, #A 25 Phoenix, AZ 85032 26 Petitioner

1	COPY of the foregoing delivered/emailed same date to:
2	Deian Ousounov, Regulatory Legal Affairs Officer Ana Starcevic, Paralegal Project Specialist
3	Steven Fromholtz, Licensing Division Manager
4	Michelle Castaneda, Licensing Supervisor Arizona Department of Insurance and Financial Institutions
5	100 N 15 <sup>th</sup> Avenue, Suite 261 Phoenix, Arizona 85007
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7	Russell henry russhomefinancing@gmail.com
8	Petitioner
9	Lynette Evans, Assistant Attorney General
10	AdminLaw@azag.gov Attorney for the Department of Insurance and Financial Institutions
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12	Ana Starcevic for Francine Juarez
13	Tranchic Juaicz
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STATE OF ARIZONA

Department of Insurance and Financial Institutions

RECEIVED January 21, 2021 by AS

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Original Application for Loan Originator License of:

**RUSSELL HENRY** 

Petitioner

No. 20F-BD-005-FIN

ADMINISTRATIVE LAW JUDGE **DECISION** 

**HEARING:** December 29, 2020

APPEARANCES: Russell Henry on his own behalf; Lynette Evans, Esq. for the Department of Insurance and Financial Institutions

**ADMINISTRATIVE LAW JUDGE**: Thomas Shedden

# **FINDINGS OF FACT**

- 1. On November 20, 2020, the Arizona Department of Insurance and Financial Institutions ("Department") issued a Notice of Hearing<sup>1</sup> setting the abovecaptioned matter for hearing on December 29, 2020 at the Office of Administrative Hearings in Phoenix, Arizona.<sup>2</sup>
- Petitioner Russell Henry appeared and testified on his own behalf. The 2. Department presented the testimony of Michelle Castaneda, its Licensing Supervisor.
- On September 30, 2020, Mr. Henry filed with the Department an 3. application for a loan originator license.
- Through his application, Mr. Henry disclosed that he had been found to be in violation of regulations or statutes related to financial services, and that orders against him had been issued in such matters.

<sup>&</sup>lt;sup>1</sup> Through a Notice of Errata filed December 10, 2020, the Department noted that the Notice of Hearing erroneously gave the docket number as 20F-BD005-BNK.

<sup>&</sup>lt;sup>2</sup> At the hearing, the Department acknowledged that there were two errors in "Facts" at paragraph 7, both of which are related to Consent Order issued by the State of Washington. In both cases, the Notice of Hearing shows that Mr. Henry d.b.a Home Finance had not made refunds to consumers, which is incorrect, in that those refund were paid.

- 5. Mr. Henry was licensed in the State of Washington as a loan originator on November 15, 2006 and as a mortgage broker on May 25, 2012 under the d.b.a. Home Finance. Mr. Henry was Home Finance's owner and designated broker.
- 6. Mr. Henry provided a written statement with his application in which he acknowledged that in 2018 the Washington Department of Financial Institutions had revoked his loan originator's and mortgage broker's licenses. According to Mr. Henry's statement, Washington DFI's revocations were for non-compliance and not fraud. He stated that he did not dispute Washington DFI's findings, and he acknowledged that his broker's license should have been revoked, but he disputed that his loan originator license should have been. He added that in 2015 he started a charity that raises money to assist disabled veterans.
- 7. Between May 2014 and January 2019, Mr. Henry entered into three consent orders with the Washington DFI. Through those consent orders, Mr. Henry acknowledged that he had not complied with the first and second consent orders, and he agreed to a lifetime ban from participating in activities regulated by the Washington DFI.
- 8. In a letter dated October 28, 2020, the Department informed Mr. Henry that his application had been denied based on violations of ARIZ. REV. STAT. sections 6-991.05(A)(2), (A)(5) and (A)(7).
- 9. The Department based its decision to deny Mr. Henry's application on the violations found by Washington DFI and because Arizona loan originators deal with the same subject matter that Washington DFI regulates.
- 10. Mr. Henry requested a hearing, which led to the instant matter being scheduled.
- 11. On May 28, 2014, the Washington DFI issued a "Statement of Charges, and Notice of Intention to Enter an Order to Suspend License, Order Restitution, Impose Fine, and Collect Investigation Fee" (the first "Statement of Charges"), through which it alleged that Mr. Henry d.b.a. Home Finance had (1) directly or indirectly employed a scheme, device or artifice to defraud, engaged in an unfair or deceptive practice, obtained property by fraud or misrepresentation, and made a false or

deceptive statement or representation with regard to the terms of a mortgage loan, in apparent violation of RCW 19.146.0201(1), (2), (3) and (7); and (2) failed to act in the borrower's best interest and in the utmost good faith toward borrowers and failed to use reasonable care in performing duties, in apparent violation of RCW 19.146.095(1)(a) and (d).

- 12. In a Consent Order entered on December 18, 2014 (the first Consent Order), Mr. Henry and Washington DFI resolved the first Statement of Charges. In the first Consent Order, Mr. Henry agreed not to contest the first Statement of Charges. Among other things, through the Consent Order Mr. Henry agreed to pay restitution to two consumers who had filed complaints against him and to Cease and Desist from violating RCW 19.146.0201.
- 13. In the first Consent Order, Mr. Henry acknowledged that he had completely read and understood the terms and that he had voluntarily entered the Consent Order.
- 14. Through the first Consent Order, Washington DFI imposed a fine of \$3000 against Mr. Henry, with the fine stayed for two years, provided that the stay could be lifted if the DFI found that Mr. Henry had not complied with the first Consent Order.
- 15. On October 13, 2016, Washington DFI issued a "Statement of Charges, and Notice of Intention to Enter an Order to Suspend License, Order Restitution, Impose Fine, Collect Investigation Fee, and Recover Costs and Expenses" (the second "Statement of Charges").
- 16. In its second Statement of Charges, Washington DFI alleged that Mr. Henry had failed to timely provide loan applicants with rate locks, that he had failed to make all required disclosures, he had co-mingled funds by depositing trust funds in his operating account, he did not have a trust account as required, and he had failed to timely file call reports. Washington DFI found that these acts or omissions were apparently in violation of RCW 19.146.0201, RCW 19.146.030, RCW 19.146.050, and WAC 208-660-400.
- 17. In a Consent Order entered on March 8, 2017 (the second Consent Order), Mr. Henry and Washington DFI resolved second Statement of Charges. In the

second Consent Order, Mr. Henry and Washington DFI agreed that his loan originator license and mortgage broker license were revoked, with the revocations stayed contingent on Mr. Henry's compliance with the terms of the second Consent Order.

- 18. Through the second Consent Order, Mr. Henry and Washington DFI agreed that he would be prohibited from participating in the affairs of any mortgage broker licensed by, or subject to Washington DFI's regulation, with that prohibition stayed contingent on Mr. Henry's compliance with the terms of the second Consent Order.
- 19. In the second Consent Order, Mr. Henry acknowledged that he had completely read and understood the terms and that he had voluntarily entered the Consent Order.
- 20. In a third Consent Order entered on January 24, 2019, Washington DFI reported its findings that Mr. Henry had not fully complied with the second Consent Order.
- 21. Through the third Consent Order, Mr. Henry and Washington DFI agreed that the Washinton DFI had a sufficient basis on which to lift the stayed sanctions set out in the second Consent Order, that DFI would not do so in consideration of Mr. Henry's agreement to the terms of the third Consent Order, that Mr. Henry's mortgage broker and loan originator licenses had expired, and that Mr. Henry would be permanently prohibited from participating in the affairs of any mortgage broker or consumer loan company licensed by, or subject to Washington DFI's regulation.
- 22. In the third Consent Order, Mr. Henry acknowledged that he had completely read and understood the terms and that he had voluntarily entered the Consent Order.
- 23. Mr. Henry acknowledged that in Washington he had been out of compliance and he had taken some of the rules for granted. But he testified to the effect that there was no evidence of fraud or actual damage to anyone, and that some of the disclosures he had failed to provide were redundant in that those disclosures were also made by others involved in the transactions.

- 24. Regarding a complaint that he had failed to lock the rate for a customer, Mr. Henry testified that the rate had been locked, but expired. Regarding a complaint that he had quoted closing costs of \$66, whereas the actual cost was \$1800, Mr. Henry testified that the paperwork had a typo and should have shown a cost of \$660.
- 25. Regarding the allegation that Mr. Henry had comingled funds, he testified that he had never had a trust account because he did not take funds from people, and that in the incident in question, he had paid a fee for a customer who then paid him back which was found to be a violation. But according to Mr. Henry, the law at issue was poorly written and is no longer in effect.
- 26. Mr. Henry's opinion is that he is worthy of a license, considering that he will be under the supervision of a managing broker. The Department did not find this to be persuasive because Mr. Henry is the person who would hold a license and good character is required.
- 27. Mr. Henry's opinion is that the Department's decision to "revoke" his right to make a living is not fair, and that "the punishment does not fit the crime."

#### **CONCLUSIONS OF LAW**

- 1. Mr. Henry bears the burden of persuasion. See ARIZ. REV. STAT. § 41-1092.07(G)(1).
- 2. The standard of proof on all issues in this matter is that of a preponderance of the evidence. ARIZ. ADMIN. CODE § R2-19-119.
  - 3. A preponderance of the evidence is:

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

BLACK'S LAW DICTIONARY 1373 (10th ed. 2014).

4. ARIZ. REV. STAT. section 6-991.05(A) provides in part:

The superintendent may deny a license to a person or suspend or revoke a license if the superintendent finds that an applicant or licensee:

- 2. Has violated any law, rule or order.
- 5. Has had an administrative agency of this state, the federal government or any other state or territory of the United States enter an order against the applicant or licensee involving fraud, deceit or misrepresentation, and the facts relating to the order indicate that it would be contrary to the interest of the public to permit the person to be licensed.
- 7. Has had a loan originator license, consumer lender license, mortgage broker license or mortgage banker license revoked or denied in this state or any other state.
- 5. Washington DFI's first Statement of Charges and related Consent Order involved fraud, deceit or misrepresentation. The preponderance of the evidence shows that Mr. Henry violated the first and second Consent Orders he entered into with Washington DFI, and that his transgressions were serious enough that he agreed to a lifetime ban of activities regulated by Washington DFI, which are the same type of activities that he would be engaging in if he received the license at issue. Consequently, the Department's Director has discretion to deny Mr. Henry's application based on ARIZ. REV. STAT. sections 6-991.05(A)(2), (5) and (A)(7).
- 6. Mr. Henry has failed to demonstrate by a preponderance of the evidence that the Department's decision to deny his application should be overturned.
  - 7. Mr. Henry's appeal should be dismissed.

## <u>ORDER</u>

IT IS ORDERED that Russell Henry's appeal is dismissed.

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 is five days after the date of that certification.

Done this day, January 19, 2021.

/s/ Thomas Shedden
Thomas Shedden
Administrative Law Judge

Transmitted electronically to:

Evan Daniels, Director Arizona Department of Insurance and Financial Institutions