

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

FILED

2011 JUN 16 AM 10:47

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF BANKING,
BUREAU OF COMPLIANCE,
INVESTIGATION AND LICENSING,

Petitioner,

v.

WF&K MORTGAGE, INC.
JOHN J. FARRENCE, individually,
ARTHUR W. KARBOWSKI, individually,
THOMAS J. WALSH, and,
TIMOTHY J. TANANA, individually,

Respondents.

Docket No.: 100143 (ENF-ORD) DEPT OF BANKING

NOTICE OF RIGHT TO APPEAL

You, WF&K Mortgage, Inc., John J. Farrence, Arthur W. Karbowski, Thomas J. Walsh and Timothy J. Tanana are hereby notified that you have the right to appeal the attached Final Order (the "Order") issued by the Commonwealth of Pennsylvania Department of Banking.

If you wish to appeal the attached Order, you must file a petition for review with the Prothonotary of the Pennsylvania Commonwealth Court within 30 days of the date of mailing of the attached Order, in accordance with and pursuant to Title 65 P.S. § 66.4(a). If you file a petition for review with the Prothonotary of the Pennsylvania Commonwealth Court, the petition for review must comply with Pennsylvania Rules of Appellate Procedure 1511 *et seq.*

Please be advised that failure to file a petition for review with the Prothonotary of the Pennsylvania Commonwealth Court pursuant to the Pennsylvania Rules of Appellate Procedure will result in the attached Order becoming final and unappealable.

In addition, please be advised that this Notice of Right to Appeal is not intended to and does not constitute legal advice. You should consult an attorney regarding your legal rights including your right to appeal the attached Order or your right to file an application for rehearing or reconsideration.

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

2011 JUN 16 AM 10:47

PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF BANKING,
BUREAU OF COMPLIANCE,
INVESTIGATION AND LICENSING,

Petitioner,

v.

WF&K MORTGAGE, INC.
JOHN J. FARRENCE, individually,
ARTHUR W. KARBOWSKI, individually,
THOMAS J. WALSH and,
TIMOTHY J. TANANA, individually,

Respondents.

Docket No.: 100143 (ENF-ORD)

FINAL ORDER

AND NOW, this 15th day of June, 2011, based upon the pleadings filed in this case, all matters of record, the Proposed Report and Final Order attached hereto prepared by Hearing Officer Jackie Weist Lutz, Esquire, the failure of WF&K Mortgage, Inc., John J. Farrence, Arthur W. Karbowski, Thomas J. Walsh and Timothy J. Tanana to file exceptions to or otherwise oppose the Hearing Officer's Proposed Report and Final Order and the findings and conclusions contained therein, the Hearing Officer's Proposed Report is **ADOPTED** in its entirety, and it is hereby

ORDERED and **DECREED** that

- (1) Respondent Timothy J. Tanana shall be prohibited, as a person or as a corporation, or as any other form of organization of any kind whatsoever, from working in any capacity, including that of a licensee, and employee, an independent contractor, an agent or a representative, in any activity regulated by

the Department, as authorized by section 6138(a)(5) of the Mortgage Licensing Act, 7 Pa. C.S. §6138(a)(5);

- (2) Respondent Timothy J. Tanana shall be fined \$5,000.00 per offense in the total amount of **Eighty-Five Thousand Dollars (\$85,000.00)**, as authorized by section 6140(a) of the Mortgage Licensing Act, 7 Pa. C.S. §6140(a), for the 17 consumer loans he originated without a valid license and for the 17 fees that he received directly or indirectly in his own name from these consumers;
- (3) In the event that full restitution has not been made to the consumers listed in the Department's Amended Appendix A attached to the Department's *Motion to Amend Appendix A of the Order to Show Cause*, Respondent Tanana shall be ordered to make consumer restitution, jointly and severally with Respondents WF&K, John J. Farrence and Arthur W. Karbowski, in the amounts reflected on *Amended Appendix A* attached hereto.

By:

VICTORIA A. REIDER
EXECUTIVE DEPUTY SECRETARY

Date of Mailing: 6/16/11

AMENDED APPENDIX A

Consumer Name	Refund Owed
	\$5,000
	\$6,660
	\$5,985.58
	\$5,687
	\$1,600
	\$500
	\$1960
	\$500
	\$296
	\$5,000
	\$4,000
	\$400
	\$1,000
	\$9,000
	\$2,500
	\$1,049
	\$2,000

FILED

COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF BANKING

2011 MAY -9 PM 1:41

PA DEPT OF BANKING

Commonwealth of Pennsylvania,	:	
Department of Banking,	:	
Bureau of Compliance, Investigation,	:	
and Licensing,	:	
Petitioner	:	
	:	
v.	:	
	:	Docket No. : 100143 (ENF -ORD)
WF&K Mortgage, Inc., and	:	
John J. Farrence, individually, and,	:	
Arthur W. Karbowski, individually, and	:	
Thomas J. Walsh, individually, and	:	
Timothy J. Tanana, individually,	:	
Respondents	:	

PROPOSED REPORT

Dates of Hearing: February 28, 2011
March 1, 2011
March 2, 2011
March 3, 2011

Hearing Officer: Jackie Wiest Lutz, Esquire

PROCEDURAL HISTORY

This matter originated on June 14, 2010 with the filing of an *Order to Show Cause* (“OTSC”) by the Department of Banking, Bureau of Compliance, Investigation and Licensing (“Department”), which directed WF&K Mortgage, Inc., John J. Farrence, Arthur W. Karbowski, Thomas J. Walsh and Timothy J. Tanana (hereinafter, collectively, the “Respondents”), to show cause why the Department, upon consideration of the factual allegations contained within the OTSC and applicable law, should not impose specific penalties set forth in the OTSC against Respondents for their alleged violations of the Mortgage Licensing Act.

On August 12, 2010, Barbara A. Darkes, Esquire, filed a *Notice to Plead, Answer to Order to Show Cause and New Matter* on behalf of Respondent Timothy J. Tanana (“Tanana”). The Department, through its counsel, Lauren A. Sassani, Esquire and Sarah E. Sedlak, Esquire, filed a response to Tanana’s New Matter on September 2, 2010.

On August 23, 2010, the Secretary of Banking designated Victoria A. Reider, Executive Deputy Secretary, to act as the adjudicator for this matter (“Adjudicator”). Thereafter, on September 15, 2010, the Adjudicator designated Jackie Wiest Lutz, Esquire, to act as the presiding officer for the Department (“Hearing Officer”) and to prepare and file with the Department’s Docket Clerk, Linnea Freeberg, a proposed report in accordance with 1 Pa. Code §§35.202 and 35.205.

On September 21, 2010, Joseph R. Rydzewski, Esquire filed an unopposed request for an extension of time to file an Answer to the OTSC on behalf of his clients, Respondents WF&K, John T. Farrence (“Farrence”) and Arthur W. Karbowski (“Karbowski”), respectively. By *Order* dated September 23, 2010, Respondents WF&K,

Farrence and Karbowski were granted an extension of time until October 27, 2010 to file an answer to the OTSC.

Subsequently, on October 13, 2010, a *Motion for an Extension of Time to File an Answer* and a *Praecipe for Entry of Appearance* was filed by Michael J. O'Brien, Esquire, on behalf of his client, Thomas J. Walsh ("Walsh").

On October 15, 2010, an *Order Granting Extension of Time to File Answer and Scheduling Pre-Hearing Conference* was issued by the Hearing Officer. Under the terms of this Order, Respondent Walsh was granted an extension until November 1, 2010 to file an answer to the OTSC and a telephonic pre-hearing conference was scheduled for December 8, 2010.¹

On or about October 25, 2010 and October 29, 2010, respectively,² an *Answer to Order to Show Cause and New Matter* were filed on behalf of Respondents WF&K, Farrence and Karbowski, and Respondent Walsh. The Department's Bureau of Compliance, Investigation and Licensing subsequently filed a *Response to Thomas J. Walsh's New Matter* and a *Response to WF&K, John J. Farrence and Arthur W. Karbowski's New Matter* on November 3, 2010.

On November 24, 2010, counsel for Respondent Tanana requested an unopposed continuance of the pre-hearing conference scheduled for December 8, 2010 due to a pre-existing scheduling conflict. An *Order Re-Scheduling Pre-Hearing Conference* was subsequently issued by the Hearing Officer on November 29, 2010, re-scheduling the pre-hearing conference for December 16, 2010.

¹ The Department's Bureau of Compliance, Investigation and Licensing filed an *Objection to Thomas J. Walsh's Motion for an Extension of Time to File an Answer on October 22, 2010*.

² Neither Answer that was received by the Hearing Officer was a time-stamped document.

The pre-hearing conference occurred as scheduled on December 16, 2010.

Following the conference call, an *Order Scheduling Hearing and Deadlines for Action* was issued by the Hearing Officer, which scheduled the hearing on the Department's OTSC for February 28, 2011 through March 3, 2011, commencing at 9:00 each day at the Pennsylvania Department of Banking, 17 N. Second Street, Suite 1300, Conference Rooms A&B, Harrisburg, PA 17101.

On January 26, 2011, a *Motion to Amend Appendix A of the Order to Show Cause* was filed by the Department. This motion was granted by *Order* dated February 7, 2011.

On January 28, 2011, a *Motion for Telephonic Testimony in Regards to* and was filed by the Department. This motion was granted by *Order* dated February 8, 2011. Also on January 28, 2011, a *Motion for Telephonic Testimony in Regards to* was filed by the Department. This motion was denied by *Order* dated February 8, 2011. Subsequently, on February 11, 2011, the Department's Bureau of Compliance, Investigation and Licensing filed a *Motion to Schedule Witnesses for Specific Hearing Dates*. This motion was granted by *Order* dated February 14, 2011.

On February 17, 2011, Barbara A. Darkes, Esquire filed a *Withdrawal of Appearance* on behalf of Respondent Tanana. Thereafter, on February 24, 2011, an executed *Consent Agreement and Order* between the Department's Bureau of Compliance, Investigation and Licensing and Respondents WF&K Mortgage, Farrence and Karbowski was filed. On the same date, an executed *Consent Agreement and Order* was filed between the Department's Bureau of Compliance, Investigation and Licensing and Respondent Walsh.

By letter dated February 24, 2011, Sarah E. Sedlak, Esquire, notified the Hearing Officer that Counts I, II and IV of the OTSC were resolved by the executed Consent Agreements and Order pertaining to Respondents WF&K, Farrence, Karbowski and Walsh. Ms. Sedlak advised the Hearing Officer that Counts III and V of the OTSC are solely against Respondent Tanana and “[t]he Bureau will proceed with the hearing on those remaining counts.”

On February 28, 2011, March 1, 2011, March 2, 2011 and March 3, 2011, respectively, the hearing in this matter proceeded, as scheduled, against Respondent Tanana. Lauren A. Sassani, Esquire and Sarah E. Sedlak, Esquire appeared on behalf of the Department’s Bureau of Compliance, Investigation and Licensing. Respondent Tanana did not appear for his scheduled hearing.

At the conclusion of evidence on March 3, 2011, counsel for the Department’s Bureau of Compliance, Investigation and Licensing waived the opportunity to file a post-hearing brief, opting, instead, to make a closing argument for the record.

The matter is now before the Secretary for final disposition.

FINDINGS OF FACT³

BACKGROUND:

1. The Department of Banking (“Department”) is the administrative agency of the Commonwealth that is authorized and empowered to administer and enforce the Mortgage Licensing Act, 7 Pa. C. S. §6101 *et. seq.* (N.T. 03/02/11, pgs. 65-67, 89-94, 96-97; Official Notice, 7 Pa. C. S. §6101 *et. seq.*)
2. The Bureau of Compliance, Investigation and Licensing (“Bureau”) is responsible for administering and enforcing the Mortgage Licensing Act for the Department. (N.T. 03/02/11, pgs. 65-67, 89-94, 96-97; Official Notice, 7 Pa. C. S. §6101 *et. seq.*)
3. WF&K Mortgage, Inc. (“Respondent WF&K”) was formerly licensed as a First Mortgage Broker under Chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act, 63 P.S. §456.301 *et. seq.* (“MBBCEPA”), and as a Secondary Mortgage Broker under the Secondary Mortgage Loan Act, 7 P.S. §6601 *et. seq.* (“SMLA”). (Official Notice – Department Records)
4. Under the MBBCEPA, mortgage loan originators were not required to be licensed. (N.T. 03/02/11, p. 110; Official Notice - 63 P.S. §456.301 *et. seq.*)
5. On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by 7 Pa. C.S. §§6101 *et. seq.* (N.T. 03/02/11, pgs. 107-111; Official Notice)
6. On August 5, 2009, 7 Pa. C.S. §§6101 *et. seq.* was amended by Act 31 of 2009, H.B. 1654 (P.N. 2448) (hereinafter, “Mortgage Licensing Act.”). (N.T. 03/02/11, pgs. 107-111; Official Notice)

³ References to the notes of testimony from the multiple days of hearings will be referred to as “N.T.” followed by the hearing date, followed by page number.

7. The Mortgage Licensing Act was enacted in order to be in compliance with the Secure and Fair Enforcement for Mortgage Licensing Act (“SAFE ACT”), which sets forth certain federal requirements mandating loan originator licensing and standards for all state regulators regarding the qualifications for a mortgage originator. (N.T. 03/02/11, pgs. 90, 110-111)
8. Under the Mortgage Licensing Act, in order to engage in the mortgage loan business in Pennsylvania, a person must be licensed as a mortgage broker, mortgage lender, mortgage loan correspondent or mortgage originator. (Official Notice, 7 Pa. C.S. §6111(a)).
9. On November 5, 2008, the Department granted Respondent WF&K a conditional license under the Mortgage Licensing Act; Respondent WF&K is now licensed under the Mortgage Licensing Act as a Mortgage Broker with the Nationwide Mortgage Licensing System and Registry (“NMLSR”) identification number 51362. (Official Notice – Department’s records)
10. The Mortgage Licensing Act defines the phrase, “mortgage loan business” to mean, “[t]he business of advertising, causing to be advertised, soliciting, negotiating or arranging in the ordinary course of business or offering to make or making mortgage loans.” (N.T. 03/02/11, p. 93; Official Notice, 7 Pa. C.S. §6102; PDB Exhibit 98 (Tab 87))
11. Under both the Mortgage Licensing Act and the SAFE Act, loan originators are also required to hold a license. (N.T. 03/02/11, pgs. 110-111)
12. A loan processor is a person who works for a mortgage company and performs mainly clerical duties such as collecting pay stubs and gathering bank statements and

other necessary information to send to the lender for completion. (N.T. 03/02/11, pgs. 67-68)

13. Loan processors are generally paid either by the hour or by salary. (N.T. 03/02/11, p. 70)

14. The Mortgage Licensing Act defines a mortgage loan originator as, *inter alia*, “[a]n individual who takes a mortgage loan application *or* offers or negotiates terms of a mortgage loan for compensation or gain.” (N.T. 03/02/11, pgs. 91-93; Official Notice, 7 Pa. C.S. §6102; PDB Exhibit 98 (Tab 87))

15. The SAFE Act defines a mortgage loan originator as, *inter alia*, “an individual who - - (I) takes a residential mortgage loan application; *and* (II) offers or negotiates terms of a residential mortgage loan for compensation or gain. (N.T. 03/02/11, pgs. 91-93; Official Notice, 12 USCS §5102(3); PDB Exhibit 97 (Tab 86))

16. Under Pennsylvania’s Mortgage Licensing Act, if an individual takes a mortgage loan application *or* offers or negotiates the terms of a mortgage loan for compensation or gain, a license is required. (N.T. 03/02/11; Official Notice, 7 Pa. C.S. §§6101 *et. seq.*)

17. Under Pennsylvania’s Mortgage Licensing Act, a mortgage loan originator who engages in the mortgage loan business shall not “accept any fees from consumers in the mortgage originator’s own name.” (Official Notice, 7 Pa. C.S. §6123(8))

18. Mortgage loan originators are normally paid a percentage of the total fees that are paid to the company for whom they work; for example, if \$5,000.00 in fees is paid to a mortgage company or mortgage broker, the mortgage loan originator may take a 40% or 50% split on the total fee. (N.T. 03/02/11, p. 69)

19. When the Mortgage Licensing Act was first passed, the Department received a massive volume of new applications from loan originators because, under the Mortgage Licensing Act, mortgage loan originators now had to be licensed for the first time. (N.T. 03/02/11, p. 111-112)

20. Due to the large volume of applications that were received by individuals wanting to become licensed as a mortgage loan originator, and the very short transition time in which the Department had to process thousands and thousands of applications, the Department issued conditional licenses to certain individuals so as not to negatively impact the industry; the conditional licenses were issued with the condition that the Department would continue to investigate and, if the Department determined, upon investigation, that there were issues regarding an individual's background check, the Department would then initiate proceedings to revoke that license. (N.T. 03/02/11, pgs. 96-97)

21. Individuals who received a conditional license were permitted to originate mortgages in the interim period pending receipt of a full license. (N.T. 03/02/11, pgs. 98-99)

22. At all relevant and material times, Timothy J. Tanana (hereinafter, "Respondent Tanana" or "Tanana") was employed by Respondent WF&K. (Transcripts, 02/28/2011, 03/01/2011, 03/02/2011, 03/03/2011 and 03/04/2011, *passim*)

23. On January 2, 2009, Respondent Tanana applied with the Department through the NMSLR for a mortgage originator license using his assigned NMSLR unique identifier of 147651. (Official Notice – Department records)

24. At all relevant and material times, Timothy Siwy ("Siwy") was the Director of the Division of Licensing, Investigation and Compliance for the Department; as Director, Siwy supervised these three divisions. (N.T. 03/02/11, p. 89)

25. Respondent Tanana disclosed on his application that he had a felony conviction. (N.T. 03/02/11, p. 113)

26. Siwy spoke personally with Respondent Tanana by phone to inquire of the nature of the felony and was told by Tanana that his felony was a theft conviction that occurred in the year 2000. (N.T. 03/02/11, pgs. 101)

27. Because Respondent Tanana's felony was beyond the Department's internal guidelines of seven years, a licensing decision was made to grant Tanana a conditional license until the Department could obtain the court documents to verify the type of theft and whether there were mitigating or aggravating circumstances with respect to that incident. (N.T. 03/02/11, p. 101, 113-114)

28. Respondent Tanana was among the many applicants who were originally granted a conditional license contingent upon the results of his FBI background check. (N.T. 2/28/11, p. 17; 03/02/11, p. 100)

29. After granting Respondent Tanana a conditional license, the Department received Tanana's completed criminal background results and learned that Tanana also had a felony drug conviction that was more recent in date than seven years. (N.T. 03/02/11, pgs. 101-103)

30. Upon receipt of this information, Siwy contacted Respondent Tanana again by phone and gave Tanana the option of revoking his conditional license, which would be a lifetime ban, or surrendering his conditional license and reapplying anew for a mortgage

originator license in November of 2009 after the conviction date was beyond the Department's seven-year guideline. (N.T. 2/28/11, pgs. 17-18; 03/02/11, pgs. 101, 103, 114).

31. Respondent Tanana opted to surrender his conditional license and did, in fact, surrender that license on March 24, 2009. (N.T. 02/28/11, pgs. 22-23; 03/02/11, pgs. 106, 114).

32. At all relevant and material times, Jeffrey Perdue ("Perdue") was a special investigator for the Department whose responsibilities include investigating mortgage originators, mortgage originator applications and background investigations. (N.T. 02/28-11, p. 16)

33. Respondent Tanana subsequently reapplied for a mortgage originator license in November of 2009. (N.T. 03/02/11, p. 106)

34. Upon receipt of Respondent Tanana's reapplication, the Department conducted an extensive background check into Tanana's criminal background and his past practices with respect to mortgage loan originations to determine if Tanana qualified for the license. (N.T. 03/02/11, p. 106)

35. The investigative section of the licensing division conducted this investigation under the supervision of special investigator Perdue. (N.T. 03/02/11, p. 107)

36. By coincidence, while Respondent Tanana's reapplication was being investigated, an in-house scheduled examination was being conducted of Respondent WF&K. (N.T. 02/28/11, p. 19)

37. During the in-house examination of Respondent WF&K, examiner Jennifer Krupa ("Krupa") had suspicions, based upon her examination of loan logs for Respondent

WF&K, that Respondent Tanana was originating loans for WF&K despite having surrendered his conditional license. (N.T. 02/28/11, p. 19-20)

38. At all relevant and material times, Ryan Walsh (“Walsh”) was employed by the Department as an administrator in the Compliance Division; as a compliance administrator, Walsh’s duties include taking information received from examinations and other divisions of the Department and enforcing the statutes. (N.T. 03/02/11, p. 66)

39. Walsh became familiar with Respondent WF&K and was assigned to the matter when a report of examinations and other investigative materials was forwarded to the Compliance Division from the Licensing and Investigation divisions. (N.T. 03/02/11, p. 66)

40. Respondent Tanana’s name was listed in the report of examinations as a possible unlicensed mortgage originator who was engaging in business through Respondent WF&K. (N.T. 03/02/11, p. 67)

41. As part of Perdue’s investigation, he reviewed the information and reports from Krupa’s examination and then conducted an independent investigation by asking Respondent WF&K to provide him with a list of loans in the form of a log to begin that process. (N. T. 02/28/11, pgs. 21-21)

42. A loan log is a list of loans that are broken down by file name/loan number, the Borrower’s information, the amount of the loan, the term, and the rate, the type of loan, the date of the application and the date of the closing as well as who processed the loan and who originated the loan. (N.T. 02/28/11, p. 21)

43. PDB Exhibit 63 (Tab 53) is a true and correct copy of the Loan Summary Report that Perdue obtained from Respondent WF&K. (N.T. 02/28/11, p. 21)

44. Upon receipt of the Loan Summary Report from Respondent WF&K, Perdue began contacting the consumers whose names appeared in the report in conjunction with Respondent Tanana's name in an attempt to ascertain from the consumers *who* originated their loans. (N.T. 02/28/11, p. 21-22)

45. Perdue's interviews with several consumers led him to believe that Respondent Tanana did not stop originating mortgage loans once he surrendered his conditional license on March 24, 2009. (N.T. 02/28/11, p. 25)

46. The consumers who Perdue spoke with all told him a similar narrative - they were contacted by Respondent Tanana about their loan; and, Respondent Tanana came to their home personally to advise them of the different types of loans that were available and their rates and to complete the application forms. (N.T. 02/28/11, p. 25)

(i) _____

47. After speaking with several consumers, the scope of Perdue's investigation changed when one consumer, _____ ("_____") made the comment to Perdue during the course of her interview: "I knew I shouldn't have given Mr. Tanana that check for \$5,000.00" (N.T. 02/28/11, p. 25-26)

48. _____ became familiar with Respondent Tanana when US Energy sent Respondent Tanana to talk to her about obtaining a loan after representatives from US Energy gave her an estimate of \$28,000.00 for a new roof; _____ did not use US Energy to install her new roof but did use Respondent Tanana to obtain a loan after obtaining another estimate for her roof. (N.T. 03/01/11, pgs. 128-130)

49. In total, _____ met with Respondent Tanana four times; the second time that Tanana came to _____'s home they discussed interest rates and completed the paperwork

for her loan. During this occasion, Tanana told that his fee for getting her the loan was \$5,000.00. (N.T. 03/01/11, p.133)

50. Closing on 's loan occurred at 's home on July 9, 2009; following the closing, gave Respondent Tanana a personal check in the amount of \$5,000.00, but, made the check out to because that is who Tanana told her to make the check payable. (N.T. 03/01/11, pgs. 134-136; PDB Exhibit 6 (Tab 5))

51. Perdue requested to send him a copy of her settlement statement and a copy of the check that she gave to Tanana; Perdue also requested an investigative subpoena to be issued to the lender, GSF Mortgage Corporation, of 15430 West Capital Drive, Suite 100 Brookfield, WI 53005, for a copy of the HUD-1 Settlement Statement for 's closing on her loan. (N.T. 02/28/11, p. 26; 03/01/11, pgs. 13-14)

52. As a matter of law, any fees that are paid to anyone in connection with a settlement of a loan must be listed on the Settlement Statement. (N.T. 02/28/11, p. 35)

53. PDB Exhibit 67 (Tab 57) is a true and correct copy of the Settlement Statement for 's loan dated July 7, 2009 that Perdue received from ; no settlement charges are listed for Respondent Tanana; Line 803 lists a \$425.00 Appraisal Fee for one . (N.T. 03/01/11, pgs. 13-14, 23-25, 27; PDB Exhibit 67 (Tab 57))

54. After speaking with , Perdue interviewed Tanana on three occasions in late February 2010, early March 2010. (N.T. 02/28/11, p. 27)

55. At first, Tanana told Perdue that he was working as a loan processor, but, then admitted that he was working as a loan originator because he was going to people's houses, taking applications and quoting them rates. (N.T. 02/28/11, p. 27)

56. Tanana also initially told Perdue that he was not aware that he was not allowed to take applications and quote rates, but, he later admitted that he had completed the education requirements to become licensed and learned during that process that he was not allowed to take applications or quote rates, but, continued to do so anyway. (N.T. 02/28/11, p. 27)

57. During Perdue's 2nd interview with Tanana in February of 2010, Tanana admitted to Perdue by phone that he lied during his first interview and that he had taken money for personal means from two consumers; he then said that he wanted to talk more about that, but, wanted to do so with counsel present. (N.T. 02/28/11, p. 27-28)

58. Perdue interviewed Respondent Tanana a third time with counsel present; during this interview, Respondent Tanana confessed that he could not live with keeping secrets any longer; that he had originated in excess of 50 mortgages without a license; and, that he stole money from [redacted] and eight (8) other consumers identified on a list provided by Tanana's attorney. (N.T. 02/28/11, pgs. 30-31)

59. PDB Exhibit 33 (Tab 31) is an e-mail that was sent to Perdue from Tanana's attorney that contains the list of consumers from whom Tanana admitted during the interview that he had stolen money. (N.T. 02/28/11, pgs. 30-31)

60. After reviewing this list of consumers, Perdue attempted to contact every consumer on the list as well as every consumer whose name was associated with Respondent Tanana on the Loan Summary Report that was provided by Respondent WF&K for the entirety of calendar year 2009. (N.T. 02/28/11, p. 31)

61. Most of Perdue's consumer contact occurred between January 2010 and March 2010. (N.T. 02/28/11, p. 31)

(ii)

62. (“ ”) was among the consumers whose name appeared on the list provided by Tanana’s counsel to Perdue from whom Tanana admitted he stole money. (PDB Exhibit 33 (Tab 31))

63. In March of 2009 and his wife found a property on in Edwardsville that they were interested in buying and placed an offer on the house; they used Respondent Tanana to obtain a loan for the initial mortgage, but, the offer on that house ultimately fell through. (N.T. 02/28/11, pgs. 37-40)

64. In June of 2009, and his wife found their current residence and contacted Respondent Tanana again for assistance in obtaining a mortgage; on this occasion, Tanana came to the ’s residence to complete the mortgage application. Tanana only mentioned to the ’s the availability of an FHA Mortgage at this time. (N.T. 02/28/11, pgs. 40-41)

65. The ’s met with Respondent Tanana a 2nd time regarding their loan because Tanana said that he needed local tax information; during this meeting Tanana told the ’s that in order to keep their closing costs down, they would have to pay him separately after the closing was completed and that his fee was \$500.00. (N.T. 02/28/11, pgs. 41-42)

66. Prior to closing, the ’s attorney found a major error in the original mortgage application and demanded that Tanana redo the paperwork; closing on the ’s loan ultimately occurred on August 4, 2009 at the attorney’s office. (N.T. 02/28/11, pgs. 42-43)

67. Respondent Tanana was not permitted by the _____'s attorney to be present at the closing; however, later that evening, after the closing took place, Respondent Tanana came to the _____'s residence to collect his fee. (N.T. 02/28/11, pgs. 43-44)

68. Although Tanana originally quoted his fee to be \$500.00, he increased the fee to \$580.00 because of the extra paperwork that Tanana was required to complete. (N.T. 02/28/11, pgs. 44-45)

69. The _____'s paid Respondent Tanana in cash, but, did not receive a receipt for their \$580.00 cash payment. (N.T. 02/28/11, pgs. 45, 47)

70. The _____'s had no further contact with Respondent Tanana until a time latter when Tanana telephoned Mrs. _____ to let her know that they might be contacted by the Department of Banking. (N.T. 02/28/11, p. 45)

71. Perdue requested an investigative subpoena to be issued to the lender, M&T Bank, of One Fountain Plaza, 6th Floor, Buffalo, NY 14203-1495, for a copy of the HUD-1 Settlement Statement for the _____'s closing on their loan. (N.T. 03/01/11, pgs. 10-11; PDB Exhibit 40 (Tab 37))

72. PDB Exhibits 44 (Tab 41) and 47 (Tab 44) are true and correct copies of the Deposition Affidavit and Settlement Statement that Perdue received from the records custodian of M&T Bank for the _____'s closing on their loan; no settlement charges are listed on the Settlement Statement for Respondent Tanana. (N.T. 02/28/11, pgs. 32-33, 03/01/11, pgs. 10-13; PDB Exhibits 44 (Tab 41) and 47 (Tab 44))

(iii)

73. () was among the consumers whose name appeared on the list provided by Tanana's counsel to Perdue from whom Tanana admitted he stole money.

(PDB Exhibit 33 (Tab 31))

74. and his wife, , obtained their original mortgage through Respondent WF&K and then also refinanced through the company; Respondent Tanana handled the refinancing of the 's loan. (N.T. 02/28/11, pgs. 51-53)

75. Respondent Tanana came to the residence for the initial meeting at which time they discussed interest rates and completed the application; Tanana told the 's that his rate would be locked at 5.25% if he closed by the end of December. (N.T. 02/28/11, p. 53)

76. Just prior to closing, Respondent Tanana approached and told him that there was an adjustment that needed to be made amounting to approximately \$297.00; Tanana told that he (Tanana) could either pay this himself and could reimburse him so that closing could proceed as scheduled, or Tanana would have to re-file all of the paperwork, which would delay closing and affect the interest rate for the loan. (N.T. 02/28/11, p. 56)

77. ultimately decided to reimburse Respondent Tanana for the payment to protect his interest rate. (N.T. 02/28/11, p. 56)

78. Closing on the loan was held at Respondent WF&K at the end of December of 2009; Tanana instructed to meet him a few blocks before WF&K's building to give him his check because it would not be legal to give him the check in front of anyone else. (N.T. 02/28/11, p. 58)

79. At the time just assumed that he was paying Tanana back so he agreed to the arrangement; used a check to pay Tanana. (N.T. 02/28/11, pgs. 57, 59)

80. PDB Exhibit 22 (Tab 20) is a true and accurate copy of the check that wrote to Tanana; the payee line on the check reads "cash." The back of the check shows that Tanana signed the check. (N.T. 02/28/11, pgs. 57-58; PDB Exhibit 22 (Tab 20))

81. Respondent Tanana later contacted to let him know that he was going to be contacted by a detective because he (Tanana) was in a bit of trouble. (N.T. 02/28/11, p. 59)

82. Perdue requested an investigative subpoena to be issued to the lender, GSF Mortgage Corporation of 15430 West Capital Drive, Suite 100, Brookfield, WI 53005 for a copy of the HUD-1 Settlement Statement for the closing on the loan. (N.T. 02/28/11, p. 34 and 03/01/11, p. 11; PDB Exhibit 41 (Tab 38))

83. PDB Exhibit 52 (Tab 49) is a true and correct copy of the Settlement Statement that Perdue received in response to the investigative subpoena; no settlement charges are listed on the Settlement Statement for Respondent Tanana. (N.T. 02/28/11, pgs. 34-35, PDB Exhibit 52 (Tab 49))

(iv) _____

84. (" ") was among the consumers whose name appeared on the list provided by Tanana's counsel to Perdue from whom Tanana admitted he stole money. (PDB Exhibit 33 (Tab 31))

85. contacted Respondent WF&K in or around October or November of 2009 to refinance his home; Respondent Tanana handled the refinancing of 's loan. (N.T. 03/01/11, pgs. 32-33)

86. Respondent Tanana told that he could obtain a mortgage loan for him at 5% interest and that he could save money; Tanana asked to pay him \$500.00 cash for doing that for him. (N.T. 03/01/11, p. 34-35)

87. Closing on 's loan occurred at 's home on December 15, 2009; Respondent Tanana was present at the closing along with a guy from Pioneer Abstract. (N.T. 03/01/11, p. 34-35)

88. paid Tanana \$500.00 in cash the night of the closing outside the presence of the guy from Pioneer Abstract. (N.T. 03/01/11, p. 36)

89. does not know why the \$500.00 fee was not part of his Settlement Statement. (N.T. 03/01/11, p. 36)

90. After paid Respondent Tanana his \$500.00 fee, the only other time that he had any contact with Tanana was when Tanana called him to tell him that he might be getting a phone call or letter because Tanana was in trouble. (N.T. 03/01/11, p. 37)

91. Perdue requested an investigative subpoena to be issued to the lender, GSF Mortgage Corporation of 15430 West Capital Drive, Suite 100, Brookfield, WI 53005 for a copy of the HUD-1 Settlement Statement for the closing on the . loan. (N.T. 03/01/11, p. 11; PDB Exhibit 41 (Tab 38))

92. PDB Exhibit 51 (Tab 48) is a true and correct copy of the Settlement Statement that Perdue received in response to the investigative subpoena; no settlement charges are listed on the Settlement Statement for Respondent Tanana. (N.T. 03/01/11, pgs. 14-16, PDB Exhibit 51 (Tab 48))

(v)

93. (" ") used Respondent WF&K to obtain a loan for a new roof and furnace for his home; first met Respondent Tanana when Tanana and "Frank", a gentleman who works for US Energy, came out to his house to speak with him about the loan. (N.T. 03/01/11, pgs. 42-43, 54-55)

94. During the meeting, was told by Tanana and "Frank" that he would need money upfront in order to get his loan at 5% interest; did not have the money so "Frank" told him that he would put the money up for him, and could just turn over the check that would get at the settlement to "Frank" for putting up the money for him. (N.T. 03/01/11, pgs. 45-46, 48, 57-58, 60)

95. A week or so after the first meeting that had with Tanana and "Frank", Respondent Tanana came out to ' house with an "older man" to complete all of the paperwork; Tanana instructed in advance of this meeting not to mention anything to the older man about the money that Frank was putting up for him. (N.T. 03/01/11, pgs. 46, 60)

96. Closing on the loan occurred at ' home on February 6, 2009; Tanana, and the older man and ' mother were present for the closing. (N.T. 03/01/11, pgs. 47; PDB Exhibit 9 (Tab 7))

97. At the end of closing, was handed a check for \$5,985.58; signed his name on the back of the check and gave it to Tanana, who said he was going to give it to "Frank." (N.T. 03/01/11, pgs. 49, 58)

98. PDB Exhibit 43 (Tab 40) is a true and correct copy of the check that received at closing, signed, and handed over to Tanana. (N.T. 03/01/11, pgs. 49, 65; PDB Exhibit 43 (Tab 40))

99. Perdue requested an investigative subpoena to be issued to Pioneer Abstract Company of Luzerne County, and GSF Mortgage Corporation of Brookfield, WI, for a copy of the HUD-1 Settlement Statement for the closing on the loan. (N.T. 03/01/11, pgs. 11-14; PDB Exhibits 39 (Tab 36) and 65 (Tab 55))

100. PDB Exhibits 68 (Tab 58) and 9 (Tab 7) are true and correct copies of the Settlement Statements that Perdue received in response to his investigative subpoena and from , respectively; no settlement charges for Respondent Tanana are listed on either Settlement Statement. (N.T. 03/01/11, pgs. 19-21; PDB Exhibits 68 (Tab 58) and 9 (Tab 7))

(vi) _____

101. (“ ”) was among the consumers whose name appeared on the list provided by Tanana’s counsel to Perdue from whom Tanana admitted he stole money. (PDB Exhibit 33 (Tab 31))

102. became familiar with WF&K Mortgage through a phone call from a gentleman named “Frank” who does home repairs; Frank came to ’s home and provided and his wife, , with an estimate for a new roof and windows. (N.T. 03/01/11, pgs. 67-68)

103. “Frank” told that Respondent Tanana would take care of the financing for him. (N.T. 03/01/11, p. 68)

104. Respondent Tanana came to _____'s home twice and met with _____ in his kitchen; Tanana told _____ that he would get him the lowest interest rate that he could, which was around 5%. (N.T. 03/01/11, pgs. 70-71)

105. Closing on _____'s loan took place on April 10, 2009 in _____'s kitchen; _____ anticipated receiving money back after the closing to use towards his new roof and windows. (N.T. 03/01/11, p. 71, 75-76; PDB Exhibit 69 (Tab 59))

106. Respondent Tanana was paid a fee of \$5,687.00 by the _____'s for his services; the fee was paid by personal check at closing. (N.T. 03/01/11, pgs. 72-73, 77; PDB Exhibit 11 (Tab 9))

107. Perdue requested an investigative subpoena to be issued to GSF Mortgage Corporation of Brookfield, WI, for a copy of the HUD-1 Settlement Statement for the closing on the _____ loan; Perdue also requested a copy of the Settlement Statement from the _____'s. (N.T. 03/01/11, pgs. 13-14; PDB Exhibit 65 (Tab 55))

108. PDB Exhibits 69 (Tab 59) and 10 (Tab 8) are true and correct copies of the Settlement Statements that Perdue received in response to his investigative subpoena and from Mr. and Mrs. _____, respectively; no settlement charges for Respondent Tanana are listed on either Settlement Statement. (N.T. 03/01/11, pgs. 14, 27-29; PDB Exhibits 66 (Tab 56), 69 (Tab 59) and 10 (Tab 8))

(vii) _____

109. _____ ("_____") became involved with Respondent WF&K when two people came to his house to solicit business for the installation of new windows and doors. (N.T. 03/01/11, p. 80-81)

110. _____ did not have money to pay for these repairs, but, was told by these folks that he could refinance his mortgage through Respondent WF&K. (N.T. 03/01/11, pgs. 81-83)

111. _____ dealt with Respondent Tanana at WF&K and met with Tanana on two occasions to complete the paperwork for his loan; closing on _____'s loan took place on June 22, 2009 at _____'s home. (N.T. 03/01/11, pgs. 85-86)

112. _____ and his wife, _____, were to receive \$24, 420.12 "Cash to Borrower" at closing; Tanana's fee for his services was \$6,600.00. (N.T. 03/01/11, pgs. 89, 94; PDB Exhibit 50 (Tab 47))

113. Tanana knew the day and the time that _____'s money would be in _____'s bank account; Tanana met _____ at his bank and went with him inside while _____ got a cashier's check for Tanana in the amount of \$6,600.00. (N.T. 03/01/11, pgs. 85, 87-89; PDB Exhibit 64.(Tab 54))

114. Tanana then cashed the cashier's check "right on the spot;" _____ noticed that Tanana "was like in a hurry to cash it." (N.T. 03/01/11, p. 89)

(viii) _____

115. _____ ("_____") was among the consumers whose name appeared on the list provided by Tanana's counsel to Perdue from whom Tanana admitted he stole money. (PDB Exhibit 33 (Tab 31))

116. _____ became familiar with Respondent WF&K through Respondent Tanana; _____ was referred to Respondent Tanana through a friend's daughter who obtained a mortgage through Tanana. (N.T. 03/01/11, pgs. 102-103)

117. initiated the contact with Respondent Tanana because she was interested in refinancing her home; Tanana subsequently came to 's home on two or three occasions to meet with her to discuss the details of her loan, complete the paperwork, and take pictures of her home. (N.T. 03/01/11, pgs. 104, 114)

118. was supposed to receive \$3,378.25 at closing; at first, Tanana wanted that entire amount for his fee, but, thought that was too much; she offered to pay Tanana \$1,600.00 and he was happy with that. (N.T. 03/01/11, pgs. 108-109)

119. Closing on 's loan occurred on June 25, 2009 at 's home; Tanana told her not to mention anything about his fee while the guy from the bank was there. (N.T. 03/01/11, p. 110)

120. gave Tanana a post-dated check in the amount of \$1,600.00 for his services on the date of her closing after the guy from the bank left. (N.T. 03/01/11, pgs. 105-106, 110-111; PDB Exhibit 16 (Tab 13))

121. PDB Exhibit 14 (Tab 12) is a true and correct copy of 's copy of the Settlement Statement that she signed at closing, which contains mathematical notations that made to show the portion of the "Disbursements to Borrower" totaling \$3,378.25 that would go to her and the portion that would be paid to Tanana, as follows:

	3378
Tim	<u>1600</u>
Me	1778

(N.T. 03/01/11, pgs. 107, 110-111, 121-122; (PDB Exhibit 14 (Tab 12)

122. wrote the notations on her copy of the Settlement Statement after the closing. (N.T. 03/01/11, p. 125)

123. Perdue requested an investigative subpoena to be issued to M&T Bank of One Fountain Plaza, 6th Floor, Buffalo, NY 14203-1495 for any and all documents pertaining to _____ mortgage loan that was brokered by Respondent WF&K (N.T. 03/01/11, pgs. 10-11; PDB Exhibit 40 (Tab 37))

124. PDB Exhibit 45 (Tab 42) is a true and correct copy of the Settlement Statement that Perdue received in response to his investigative subpoena; no settlement charges for Respondent Tanana are listed the Settlement Statement. (N.T. 03/01/11, pgs. 12-13, 21, 23; PDB Exhibits 44 (Tab 41) and 45 (Tab 42))

(ix) _____

125. _____ (“_____”) was contacted by phone by Respondent WF&K to inquire whether he was interested in refinancing. (N.T. 03/02/11, p. 39)

126. After discussing the issue with his wife, _____, _____ called Respondent WF&K back and was put in touch with Respondent Tanana; Tanana discussed interest rates with _____ and told him that the interest rate to refinance would be 5% or below. (N.T. 03/02/11, pgs. 39-40)

127. After completing the paperwork for the loan, closing ultimately took place in _____’ kitchen on July 16, 2009; a man from Pioneer Abstract went over the paperwork for the loan with _____ and then Tanana came in and the closing was completed. (N.T. 03/02/11, pgs. 41-42)

128. After the man from Pioneer Abstract left, Respondent Tanana told _____ that, in the haste to get the paperwork done, he forgot to put down his commission; Tanana told _____ that he needed a check for \$1,049.00 (N.T. 03/02/11, p. 42)

129. 's wife told Tanana that she was not going to make out any check until the money was in the bank; after the money was deposited in the bank, Mrs. called Tanana and he came back and got his check. (N.T. 03/02/11, pgs. 42-43)

130. PDB Exhibit 37 (Tab 35) is a true and correct copy of the canceled check that the gave Tanana for his fee. (N.T. 03/02/11, p. 43)

131. Perdue requested an investigative subpoena to be issued to GSF Mortgage Corporation of Brookfield, WI for a copy of the HUD-1 Settlement Statement pertaining to the loan. (N.T. 03/02/11, pgs. 10-11; PDB Exhibit 65 (Tab 55))

132. PDB Exhibit 36 (Tab 34) is a true and correct copy of the Settlement Statement that Perdue received in response to his investigative subpoena; no settlement charges for Respondent Tanana are listed the Settlement Statement. (N.T. 03/02/11, pgs. 10-12)

(x) _____

133. was referred to Respondent WF&K by her father-in-law, , who used Respondent WF&K to refinance his home; and her husband, , also wanted to refinance their mortgage and obtain a loan for a new roof and siding and to pay off debts. (N.T. 03/02/11, pgs. 46-47, 49)

134. The met with Respondent Tanana twice at their home to discuss interest rates and to complete paperwork for the loan. (N.T. 03/02/11, p. 47)

135. The second time that the met with Tanana was actually at the closing, which was held at their home on October 1, 2009; Respondent Thomas Walsh was also present at this time. (N.T. 03/02/11, p. 48)

136. The were to receive \$31,987.05 cash back at settlement to be used for a new roof, siding and to pay off debts. (03/02/11, pgs. 48-49)

137. At closing, in the presence of Respondent Walsh, Respondent Tanana told the
that he needed a check for \$2,000.00 to finish processing and filing the
paperwork. (N.T. 03/02/11, p. 49)

138. Mrs. wrote Tanana a check for \$2,000.00 on October 6, 2009; PDB
Exhibit 35 (Tab 33) is a true and correct copy of the check that Mrs. wrote to
Tanana. (N.T. 03/02/11, pgs. 49-50; PDB Exhibit 35 (Tab 33))

139. Perdue requested an investigative subpoena to be issued to M&T Bank of One
Fountain Plaza, 6th Floor, Buffalo, NY 14203-1495 for copies of the HUD-1 Settlement
Statement for the loan; PDB Exhibit 96 (Tab 85) is a true and correct copy of the
settlement papers. (03/02/11, pgs. 15, 48; PDB Exhibits 94 (Tab 83), 95 (Tab 84)
and 96 (Tab 85))

140. No settlement charges for Respondent Tanana are listed the Settlement Statement.
(N.T. 03/02/11, p. 14; PDB Exhibit 96 (Tab 85))

141. After settlement was completed, Mrs. received a telephone call from
Respondent Tanana asking her not to mention that she gave him any money because he
could lose his license. (N.T. 03/02/11, pgs. 50-51)

(xi) _____

142. (“ ”) was among the consumers whose name appeared
on the list provided by Tanana’s counsel to Perdue from whom Tanana admitted he stole
money. (PDB Exhibit 33 (Tab 31))

143. became familiar with Respondents WF&K and Tanana through US
Energy, who contacted the ’s to provide them with energy efficient windows
and a new roof. (N.T. 03/02/11, pgs. 54-55)

144. and his wife, , were not looking to make these improvements to their home, but, ultimately decided to do so after meeting with two US Energy salesmen; the salesmen told the 's that they had a guy that would take care of the refinancing for them. (N.T. 03/02/11, pgs. 55-56)

145. Respondent Tanana contacted the 's by phone a couple of times and, ultimately, came to their home to discuss the details of the refinancing; Mrs. wanted a 15-year note and Tanana told the 's that he could get them a five percent interest rate on their refinance, but, told the 's that because their credit was not the greatest, he would have to charge them a fee of \$5,000.00. (N.T. 03/02/11, p. 56, 59-61)

146. Closing on the loan occurred on October 28, 2009 at the 's home; on the day of the closing, Respondent Tanana telephoned Mr. and told him to make the check out to him for \$5,000.00, but, not to give it to him in front of the gentleman who would be attending the settlement because "it is none of his business." (N.T. 03/02/11, p. 61)

147. PDB Exhibit 30 (Tab 28) is the check that gave to Tanana. (N.T. 03/02/11, p. 61)

148. PDB Exhibit 29 (Tab 27) is a true and correct copy of the Settlement Statement that the 's received during the closing of their loan. (N.T. 03/02/11, pgs. 16, 58)

149. Perdue requested an investigative subpoena to be issued to M&T Bank of One Fountain Plaza, 6th Floor, Buffalo, NY 14203-1495 for copies of all documents pertaining to the loan; PDB Exhibit 46 (Tab 43) is a true and correct copy of the

Perdue from whom Tanana admitted he stole money. (N.T. 03/02/11, p. 26; PDB Exhibits 28 (Tab 26), 33 (Tab 31) and 49 (Tab 46))

154. *and* wrote out a check dated 5/18/09 payable to "Tim Tanana" in the amount of \$400; the 's settlement date was 05/12/2009. (N.T. 03/02/11, pgs. 18-23; PDB Exhibit 26 (Tab 24))

155. The 's check was endorsed by Tanana and ;
 is the wife of Respondent Thomas Walsh and is the sister of Tanana. (N.T. 03/02/11, p. 23)

156. wrote out a check dated 10-15-09 payable to "Tim Tanana" in the amount of \$4,000.00; 's settlement date was 10/09/2009. (N.T. 03/02/11, pgs. 23-25; PDB Exhibits 72 (Tab 62) and 24 (Tab 22))

157. *and* wrote out a check dated 4/17/09 to "Tim Tanana" in the amount of \$2,500.00; the 's settlement date was 04/14/2009. (N.T. 03/02/11, pgs. 27-28; PDB Exhibits 70 (Tab 60) and 17 (Tab 15))

158. *and* wrote out a check dated 6-17-09 payable to "Tim Tanana" in the amount of \$9,000.00; the 's settlement date was 06/12/2009. (N.T. 03/02/11, pgs. 29-30; PDB Exhibits 71 (Tab 61) and 19 (Tab 17))

159. The 's check was endorsed by Tanana and ;
 is the wife of Respondent Thomas Walsh and is the sister of Tanana. (N.T. 03/02/11, p. 30; PDB Exhibit 19 (Tab 17))

160. wrote out a cashier's check dated April 24, 2009 to "Tim Tanana" in the amount of \$1,000.00; the settlement date was 04/24/2009. (N.T. 03/02/11, pgs. 32-33; PDB Exhibits 53 (Tab 50) and 32 (Tab 30))

counts in the Department's Order to Show Cause against Respondents WF&K, Farrence and Karbowski. (N.T. 03/02/11, p. 76; PDB Exhibit 93 (Tab 82))

167. A hearing in connection with the Department's charges against Respondent

Tanana was held on February 28, 2011, March 1, 2011, March 2, 2011 and March 3, 2011 at the Pennsylvania Department of Banking, 17 North Second Street, 13th Floor, Harrisburg, PA 17101. (Transcript, *passim*)

168. Respondent Tanana opted not to appear for his scheduled hearing. (Transcript, *passim*)

CONCLUSIONS OF LAW

1. The Secretary of Banking has jurisdiction in this matter. (Findings of Fact Nos. 1-168)

2. Respondent Tanana was served with a copy of the Order to Show Cause, filed an Answer With New Matter in response thereto and was granted, but, declined, an opportunity to be heard in accordance with the Administrative Agency Law, 2 Pa. C.S. §504. (Record and Transcript, *passim*)

3. No person shall engage in the mortgage loan business in this Commonwealth without being licensed as a mortgage broker, mortgage lender, mortgage loan correspondent or mortgage originator. (7 Pa. C.S. §6111(a))

4. The Mortgage Licensing Act applies to “[a]ny person who engages in the mortgage loan business in this Commonwealth” regardless of whether that person is licensed or not. (7 Pa. C.S. §6151(2))

5. A licensee engaging in the mortgage loan business shall not [i]n the case of a mortgage originator, accept any fees from consumers in the mortgage originator’s own name. . . .” (7 Pa. C.S. §6123(8))

6. Section 6138(a)(5) of the Mortgage Licensing Act authorizes the Department to prohibit or permanently remove a person or licensee responsible for a violation of the act from working in the present capacity or in any other capacity of the person or licensee related to activities regulated by the Department. (7 Pa. C.S. §6138(a)(5))

, and , and
, and , and , and
and and

and and to pay him fees directly
under the guise that the fees were associated with their mortgage loan closings when, in
fact, none of the fees were disclosed on the Settlement Statements of these consumers.

(Findings of Fact Nos. 1-162)

12. The evidence supports a finding that Respondent Tanana should be
prohibited from working in any capacity, including that of a licensee, an employee, an
independent contractor, an agent or a representative, in any activity regulated by the
Department. (Findings of Fact Nos. 1-168)

13. The evidence supports a finding that Respondent Tanana should be fined
a minimum of \$5,000.00 per offense in the total amount of Eighty-Five Thousand Dollars
(\$85,000.00), as authorized by section 6140(a) of the Mortgage Licensing Act, 7 Pa. C.S.
§6140(a), for the consumer loans he originated without a valid license and for the 17 fees
that he received directly or indirectly in his own name from these consumers. (Findings
of Fact Nos. 1-168)

DISCUSSION

Respondent Tanana is charged by the Department with violating sections 6111(a), 6123(8) and 6139(a)(3) of the Mortgage Licensing Act, 7 Pa. C.S. §§6111(a), 6123(8)

and 6139(a)(3), respectively. These sections provide, in pertinent part, as follows:

§6111. License requirements

(a) General rule. - - . . . on and after the effective date of this section, no person shall engage in the mortgage loan business in this Commonwealth without being licensed as a mortgage broker, mortgage lender, mortgage loan correspondent or mortgage originator as provided under this chapter. . . .

. . .

§6123. Mortgage loan business prohibitions

A licensee engaging in the mortgage loan business shall not:

. . .

(8) In the case of a mortgage originator, accept any fees from consumers in the mortgage originator's own name. . . .

§6139. Suspension, revocation or refusal

(a) Departmental Action. - - The department may suspend, revoke or refuse to renew a license issued under this chapter if any fact or condition exists or is discovered which, if it had existed or had been discovered at the time of filing of the application for the license, would have warranted the department in refusing to issue the license or if a licensee or director, officer, partner, employee or owner of a licensee has:

. . .

(3) Engaged in dishonest, fraudulent or illegal practices or conduct in a business or unfair or unethical practices or conduct in connection with the mortgage loan business.

The Mortgage Licensing Act defines the phrase, "mortgage loan business" to mean, in part, "[t]he business of . . . soliciting, negotiating or arranging in the ordinary course of business or offering to make or making mortgage loans." 7 Pa. C.S. §6102. A mortgage loan originator is defined to mean: "an individual who takes a mortgage loan

application or offers or negotiates terms of a mortgage loan for compensation or gain.” 7 Pa. C.S. §6102.

Under the Act, “[a] person licensed under this chapter or director, officer, owner, partner, employee or agent of a licensee who violates a provision of this chapter or who commits any action which would subject the licensee to suspension, revocation or nonrenewal under section 6139 may be fined by the department up to \$10,000 for each offense.” 7 Pa. C.S. §6140(b).

The evidence against Respondent Tanana is uncontested and amply supports the Department’s charges. It is undisputed that Tanana surrendered his conditional mortgage originator license to the Department on March 24, 2009. Thus, Tanana was prohibited by law from engaging in the mortgage loan business in this Commonwealth after that date. Yet, the record is replete with examples of consumer loans that were originated by Tanana when he was no longer licensed to do so.

From the outset, it is notable that Tanana *confessed* to special investigator Perdue, with his counsel present, that he originated “in excess of 50 mortgages without a license” (N.T. 02/28/11, p. 29) and that he *stole money* from _____ and the following other consumers: _____ and

_____, _____ and _____ and _____ and _____ . (PDB Exhibit 33 (Tab 31)). Many of the consumers from whom Tanana confessed to having stole money also provided testimony regarding their dealings with Tanana. It is clear from the consumer’s testimony that Tanana *stole money* from these consumers by accepting fees directly or indirectly from these consumers for his loan origination service through dishonest, fraudulent and unethical practices.

The testimony of the consumers demonstrates that Tanana's customary way of doing business was to contact consumers about their loan either individually or in concert with representatives of questionable business organizations who were offering to install new roofs, windows, siding, etc. to these consumers, and then go to the consumers' homes to personally discuss with them the different types of loans and interest rates available to them. Tanana would typically complete the application for the loan during his second visit to the consumer's home. During that visit or just before the closing on the loan, which was always held at the consumer's home, Tanana would tell the consumer that his fee for "keeping their closing costs down", or for "saving them money", or taking care of a "last minute adjustment", or for getting them a low interest rate when their credit "was not the greatest," etc. was a set amount. Tanana then instructed the consumers to pay him personally after the closing or just before the closing— outside the presence of anyone else in attendance. The consumers generally paid Tanana in cash or by personal check or cashier's check made payable directly to Tanana.⁴

. testified that she gave Tanana a check for \$5,000 for his fee in getting her the loan. (PDB Exhibit 6 (Tab 5)). Tanana told . to make her check out to , who is listed on 's Settlement Statement as an appraiser. Line 803 of 's Settlement Statement lists a \$425 Appraisal Fee for ; however, no settlement charges are listed for Respondent Tanana on 's Settlement Statement, which is consistent with Tanana's admission to having stole money from

. As special investigator Perdue explained during his testimony, fees that are paid

⁴ True and accurate copies of all such checks that were made payable to Tanana by affected consumers. have been admitted as exhibits and are part of the evidentiary record.

to anyone in connection with a settlement of a loan must be listed on the Settlement Statement as a matter of law.

testified that she was able to negotiate a deal with Tanana.

was supposed to receive \$3,378.25 back at closing. testified that, at first, Tanana wanted that entire amount for his fee. thought that was too much and offered to pay Tanana \$1,600.00. According to , Tanana "was happy with that." (N.T. 03/01/11, pgs. 108-109) testified that she gave Tanana a post-dated check in the amount of \$1,600.00 for his services on the date of her closing "after the guy from the bank left." (N.T. 03/01/11, pgs. 105-106). PDB Exhibit 16 (Tab 13) is a true and accurate copy of the check that gave Tanana, which corroborates her testimony. No settlement charges are listed for Respondent Tanana on 's Settlement Statement, which is consistent with Tanana's admission to having stole money from . (PDB Exhibit 45 (Tab 42))

The 's were not so lucky. testified that the 's credit was not the greatest. As a result, Tanana told them that he would have to charge them a fee of \$5,000.00. testified that on the day of the closing, Tanana telephoned him and told him to make the check out to him (Tanana) for \$5,000 but not to give it to him in front of the gentleman who would be attending the settlement because "it is none of his business." (N.T. 03/02/11, p. 61) did as instructed (PDB Exhibit 30 (Tab 28)). 's Settlement Statement, likewise, contains no settlement charges for Tanana. (PDB Exhibit 46 (Tab 43)).

testified that Tanana told him that he could save him money by getting him a loan at 5% interest, but, Tanana's fee for doing that would be \$500.00.

testified that Tanana asked him to pay him his \$500.00 in cash the night of his closing outside the presence of the "guy" from Pioneer Abstract. 's Settlement Statement, likewise, contains no settlement charges for Tanana. (PDB Exhibit 52 (Tab 49)).

The evidence establishes that the business practices exhibited by Tanana with respect to the consumers from whom Tanana admitted to special investigator Perdue he stole money is consistent with the pattern and practice of behavior that Tanana exhibited with other consumers who testified, and who were identified on a loan log provided to special investigator Perdue by Respondent WF&K as having had dealt with Respondent Tanana. For example, testified that he became involved with Tanana when two people came to his house to solicit business for the installation of new windows and doors. testified that he and his wife did not have money to pay for the repairs and were referred to Respondent WF&K and, ultimately, Tanana, to refinance their mortgage. Tanana completed the paperwork for the loan and, true to form, the closing took place at the 's home on June 22, 2009. At the closing, the 's were to receive \$24,420.12 "cash to borrower;" Tanana's fee for his services was \$6,600.00. testified that Tanana knew the day and the time that the money would be in their bank account. According to ; Tanana literally accompanied him to the bank while he () obtained a cashier's check for Tanana in the amount of \$6,600.00 (PDB Exhibit 64 (Tab 54)). According to , "Timmy" cashed it right on the spot. "He was like in a hurry to cash it." (N.T. 02/28/11, p. 89)

testified that he was contacted by phone by Respondent WF&K to inquire whether he was interested in refinancing. testified that after discussing the issue with his wife, he called Respondent WF&K back and was put in touch with Tanana, who discussed interest rates with , and told him that his interest rate to refinance would be 5% or below. Similar to other consumer closings, closing on the loan ultimately took place in ' kitchen on July 16, 2009. testified that a man from Pioneer Abstract went over the paperwork for the loan with and then Tanana came in and the closing was completed. testified that after the man from Pioneer Abstract left, Tanana told him that he needed a check for \$1,049.00 because, in his haste to get the paperwork done, he forgot to put down his commission. wrote out a check to Tanana in the amount of \$1,049.00 after his money from closing was deposited in the bank. PDB Exhibit 37 (Tab 35) is a true and accurate copy of ' check, which corroborates ' testimony. The Settlement Statement for and contains no settlement charges for Tanana.

, the daughter-in-law of and , testified that she and her husband, , were actually referred to Respondent WF&K by their father-in-law, to refinance their mortgage and to obtain a loan for a new roof and siding. Tanana was the representative from Respondent WF&K with whom the ' dealt. Consistent with Tanana's routine, he met with the ' twice at their home to discuss interest rates and to complete the paperwork for the loan. Mrs. testified that Tanana and Respondent Thomas Walsh attended the closing on their loan, which was held at their home on October 1, 2009. At closing, in the presence of Respondent Walsh, Tanana told the ' that he needed a check for \$2,000.00 to finish processing and filing the

paperwork. Mrs. ultimately wrote out a personal check for \$2,000.00 to Tanana dated October 6, 2009. PDB Exhibit 35 (Tab 33) is a true and accurate copy of that check, which corroborates testimony. Nowhere on the Settlement

Statement does a charge appear for Tanana.

The preceding findings of fact and the evidence presented throughout the four-day hearing in this matter show that seventeen consumers were scammed of money through their dealings with Tanana. The consumers who testified were unsophisticated, credulous consumers who placed their trust in Tanana to obtain a loan for them either to refinance their homes or to make repairs to their homes. Tanana met with these consumers, he sat at their kitchen tables and he led them on to believe that he was providing them a great service. In fact, Tanana obtained loans for these consumers, as promised, but, he preyed on the consumers' lack of sophistication by requesting and collecting fees directly from them. The consumers did not know that all fees associated with a mortgage must be included on a Settlement Statement. They just did what they were told.

Several of the affected consumers did not testify,⁵ but, special investigator Perdue learned from these consumers during the course of his investigation that they, too, used the services of Respondent Tanana to obtain a loan through Respondent WF&K and that they, too, wrote out checks to Tanana for fees associated with their loans. As part of his continued investigation, special investigator Perdue obtained Settlement Statements for these consumers' loans through investigative subpoenas directed to the records custodian of GSF Mortgage Corporation, the lender. He also obtained copies of cancelled checks payable to Tanana by these consumers. These documents are all part of the evidentiary

⁵ and and and and

record and corroborate the consumers' information to Perdue that they obtained a loan through WF&K and wrote out a check to Tanana, close in proximity to their respective settlement dates, similar to the consumers who testified. (See, Findings of Fact Nos. 152-

162) Based upon Tanana's confession to special investigator Perdue that he originated "in excess of 50 mortgages without a license," it is sufficient and reasonable to infer from these documents, that Respondent Tanana acted in conformity with his established routine in his dealings with these additional consumers.⁶

The Bureau seeks through its charges to prohibit Tanana, as a person or as a corporation, or as any other form of organization of any kind whatsoever, from working in any capacity, including that of a licensee, an employee, an independent contractor, an agent or a representative, in any activity regulated by the Department, as authorized by section 6138(a)(5) of the Mortgage Licensing Act, 7 Pa. C.S. §6138(a)(5). The Department also requests that Tanana be fined One Thousand Dollars (\$1,000.00) for

⁶ Rule 406 of the Pennsylvania Rules of Evidence provides that [e]vidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice." Pa. R.E. 406 (2011).

Courts have discussed the concept of *routine practice* within the meaning of Pa. R.E. 406 more within the context of a business organization than habit of a person. See, for example, *Baldrige v. Matthews*, 378 Pa. 566 (Pa. 1954) (a hotel clerk's testimony that it was routine practice for the hotel to require advance payment when guests register without luggage was admissible to show that the defendant had luggage with him when he stayed at the hotel); *Frey v. Harley Davidson Motor Co.*, 734 A. 2d 1 (Pa. Super. 1999) (the trial court properly admitted evidence of a motorcycle dealership's routine business practice without requiring evidence of specific instances). However, in *General Equipment Manufacturers v. Westfield Insurance Company*, 635 A. 2d 173 (Pa. Super. 1993), the Pennsylvania Superior Court, recognized that "evidence of a course of conduct or dealing followed by a person may be admitted to prove that he acted in accordance with it on a given occasion, provided such a course of conduct or dealing is shown to have been continuous and systematic." *Id.* at 185.

Further, circumstantial evidence, where properly proved, is entitled to as much weight as direct evidence. *A.B. v. Slippery Rock Area School District*, 906 A. 2d 674, 679 (Pa. Cmwlth. 2006).

each of the consumers from whom Tanana obtained fees through illegal practices,⁷ and that Tanana be ordered to make consumer restitution to the consumers listed in its Amended Appendix A jointly and severally with Respondents WF&K, John J. Farrence and Arthur W. Karbowski, respectively.

The Mortgage Licensing Act authorizes the Department to impose fines of up to \$10,000.00 per offense. Ryan Walsh, Administrator in the Department's Bureau of Compliance Division, testified in response to questions from the Hearing Officer that the reason the Bureau is seeking only \$1,000.00 per offense/loan against Respondent Tanana is because that is consistent with what it has done in the past. Given the egregious nature of Tanana's offenses, and the damaging effect that such dishonest, fraudulent and illegal practices has on the reputation and the integrity of the mortgage industry as a whole, it is recommended that the fine amount be increased to \$5,000.00 per consumer loan, in the total amount of \$85,000.00. The evidence establishes that Tanana's gross income in 2009 when he admittedly stole money from consumers was \$167,652.05, almost double this amount. A fine of only \$1,000.00/consumer loan would have no appreciable effect on Respondent Tanana and, under the circumstances, would have no deterrent effect on others who may be similarly predisposed to commit like offenses.

It is therefore recommended as follows:

⁷ The Department in closing statements and in its OTSC references 19 consumers and asks that a fine in the amount of \$19,000.00 be imposed against Respondent Tanana. However, the evidence that was presented during the hearing and in the Department's *Amended Appendix A*, which lists the names of WF&K consumers to whom the Department believes the Respondents owe a monetary refund, includes only 17 consumers.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

Commonwealth of Pennsylvania,	:	
Department of Banking,	:	
Bureau of Compliance, Investigation,	:	
and Licensing,	:	
Petitioner	:	
	:	
v.	:	
	:	Docket No. : 100143 (ENF –ORD)
WF&K Mortgage, Inc., and	:	
John J. Farrence, individually, and,	:	
Arthur W. Karbowski, individually, and	:	
Thomas J. Walsh, individually, and	:	
Timothy J. Tanana, individually,	:	
Respondents	:	

PROPOSED FINAL ORDER

AND NOW, this 9th day of May, 2011, based upon the foregoing Findings of Fact, Conclusions of Law and Discussion, it is recommended that:

(1) Respondent Timothy J. Tanana shall be prohibited, as a person or as a corporation, or as any other form of organization of any kind whatsoever, from working in any capacity, including that of a licensee, an employee, an independent contractor, an agent or a representative, in any activity regulated by the Department, as authorized by section 6138(a)(5) of the Mortgage Licensing Act, 7 Pa. C.S. §6138(a)(5);

(2) Respondent Timothy J. Tanana shall be fined \$5,000.00 per offense in the total amount of Eighty-Five Thousand Dollars (\$85,000.00), as authorized by section 6140(a) of the Mortgage Licensing Act, 7 Pa. C.S. §6140(a), for the 17 consumer loans he originated without a valid license and for the 17 fees that he received directly or indirectly in his own name from these consumers;

(3) In the event that full restitution has not been made to the consumers listed in the Department's Amended Appendix A attached to the Department's *Motion to Amend Appendix A of the Order to Show Cause*, Respondent Tanana shall be ordered to make consumer restitution, jointly and severally with Respondents WF&K, John J. Farrence and Arthur W. Karbowski, in the amounts reflected on *Amended Appendix A* attached hereto.

Jackie Wiest Lutz
Hearing Officer

Date of Mailing: May 9, 2011

AMENDED APPENDIX A

Consumer Name	Refund Owed
	\$5,000
	\$6,660
	\$5,985.58
	\$5,687
	\$1,600
	\$500
	\$1960
	\$500
	\$296
	\$5,000
	\$4,000
	\$400
	\$1,000
	\$9,000
	\$2,500
	\$1,049
	\$2,000

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

FILED

2011 JUN 16 AM 10:47

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF BANKING,
BUREAU OF COMPLIANCE,
INVESTIGATION AND LICENSING,

Petitioner,

v.

WF&K MORTGAGE, INC.
JOHN J. FARRENCE, individually,
ARTHUR W. KARBOWSKI, individually,
THOMAS J. WALSH and,
TIMOTHY J. TANANA, individually,

Respondents.

Docket No.: 100143 (ENF. ORD)
PA DEPT OF BANKING

CERTIFICATE OF SERVICE

I hereby certify that on June 16th, 2011, I have served a true and correct copy of the foregoing documents and all attachments thereto and/or enclosures therewith, upon the following individuals in accordance with the requirements of 1 Pa. Code § 33.31 (relating to service by agency), in the manner indicated below:

BY FIRST CLASS U.S. MAIL:

Michael J. O'Brien, Esquire
Oliver, Price & Rhodes
P.O. Box 240
1212 South Abington Road
Clarks Summit, PA 18411

Joseph R. Rydzewski, Esquire
Spall, Rydzewski, Anderson, Lalley & Tunis, P.C.
Lake Wallenpaupack Office
2573 R.T. 6
Hawley, PA 18428

Timothy J. Tanana
417 Varsity Drive
Throop, PA 18512

BY HAND DELIVERY

✓ Lauren A. Sassani, Assistant Counsel
Department of Banking
17 North Second Street, Suite 1300
Harrisburg, PA 17101-2290

By:

Linnea Freeberg, Docket Clerk
Commonwealth of Pennsylvania
Department of Banking
17 N. 2d Street, 13th Floor
Harrisburg, PA 17101
(717) 783-2255