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COMMONWEALTH OF PENNSYLVANIA 2022 AUG 15 AM 9:06
BANKING AND SECURITIES COMMISSION

PA DEPARTMENT OF
BANKING AND SECURITIES

Commonwealth of Pennsylvania	:	
Department of Banking and	:	
Securities, Compliance Office	:	
	:	
v.	:	Docket No. : 210055 (BNK-C&D)
	:	
Robert Pinzhoffer	:	

NOTICE OF RIGHT TO APPEAL

You are hereby notified that you have the right to appeal the attached Final Order issued by the Commonwealth of Pennsylvania, Banking and Securities Commission.

If you wish to appeal this Final Order you may file a petition for review with the Prothonotary of the Commonwealth Court of Pennsylvania that complies with the format and timing requirements of the applicable Pennsylvania Rules of Appellate Procedure. Pa. R.A.P. 1511-1561. Failure to file a petition for review within 30 days of the mailing date of this Final Order will result in it becoming final and unappealable. You may reach the Commonwealth Court at 717-255-1650.

Please be advised that this Notice of Right to Appeal is not intended to and does not constitute legal advice. You may consult an attorney regarding your legal rights including your right to appeal the Final Order or your right to file an application for rehearing or reconsideration under the General Rules of Administrative Practice and Procedure. 1 Pa. Code § 35.241.

FILED

COMMONWEALTH OF PENNSYLVANIA
BANKING AND SECURITIES COMMISSION

2022 AUG 15 AM 9:06
PA DEPARTMENT OF
BANKING AND SECURITIES

Commonwealth of Pennsylvania
Department of Banking and
Securities, Compliance Office

v.

Robert Pinzhoffer

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Docket No. : 210055 (BNK-C&D)

FINAL ORDER

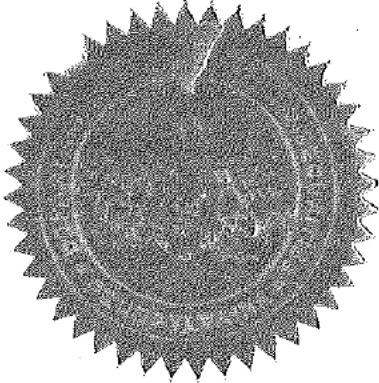
AND NOW, the Pennsylvania Banking and Securities Commission (“Commission”) issues this Final Order in the matter of *Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Non-Depository Institutions, Compliance Office v. Robert Pinzhoffer, 210055 (BNK-C&D)*.

The Commission reviewed the attached proposed report and proposed order, which were served upon the parties by letter dated May 10, 2022, pursuant to 1 Pa. Code § 35.207. No party filed exceptions. The Commission placed the matter on the agenda for its regular meeting of August 11, 2022.

Pursuant to the final adjudication authority granted to the Commission under section 1122-A of the Department of Banking and Securities Code, 71 P.S. § 733-1122-A, the Commission issues this Final Order.

The Commission adopts the hearing officer’s proposed report and proposed order as written, with one exception: The initial paragraph on page 21 of the hearing officer’s proposed report contains content that does not apply to the matter. Accordingly, the Commission strikes that one paragraph in its entirety.

This Final Order shall be effective 30 days after the Commission mails it.



BY ORDER OF THE COMMISSION:

Redacted

Richard Vague
Vice Chair
Pennsylvania Banking and Securities Commission

So ORDERED this 16th day of August, 2022

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES

FILED

Commonwealth of Pennsylvania
Department of Banking and Securities,
Compliance Office

2022 MAY 10 AM 7:39

v.

Docket No. 210055 (BNK-C&D)

PA DEPARTMENT OF
BANKING AND SECURITIES

Robert Pinzhoffer,
Respondent

PROPOSED REPORT

Monty J. Batson
Hearing Officer

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE OF GENERAL COUNSEL
DEPARTMENT OF STATE
OFFICE OF HEARING EXAMINERS
P.O. Box 2649
Harrisburg, PA 17105-2649

HISTORY

On July 27, 2021, the Commonwealth of Pennsylvania, Department of Banking and Securities ("Department"), through its Compliance Office, issued and served Robert Pinzhoffer ("RP") a *Notice of Right to Appeal and Request a Hearing* ("Notice") and a *Suspension and Cease and Desist Order* ("C&D Order") alleging that Respondent committed certain violations of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 *et seq.* ("MLA").¹

The *C&D Order* specifically alleged that RP engaged in the mortgage loan business as a Mortgage Broker without having an active license to broker mortgage loans, as required by the MLA at 7 Pa. C.S. § 6111(a) and failed to respond to the Department's requests for information. The *C&D Order* further alleged RP engaged in the mortgage loan business as a mortgage broker without having a bond coverage for mortgage originators, as required by the MLA at 7 Pa. C.S. § 6131(e)(3). Finally, the *C&D Order* alleged that, at the time of initially filing for a mortgage broker application, Respondent failed to pay the Department an application fee, as required by the MLA at Section 6132(a).

On RP's Application for Licensure ("Application"), RP indicates a principal place of business at Redacted ("Address"). The Department mailed the *Notice* and *C&D Order* to RP's address via certified mail and first-class mail on July 27, 2021. The ordinary, first-class mailing sent to RP at the Address was not returned to the Bureau as undeliverable within fifteen days after mailing. Service of the *Notice* and *C&D Order* upon RP in the foregoing manner was in accordance with the requirements of § 33.31 of the General Rules of Administrative Practice and Procedure ("GRAPP"), 1 Pa. Code § 33.31. The *Notice* advised RP of the right to appeal the *C&D Order* by filing a Petition with Department's Docket Clerk² within 14 days of the date of the Order as provided in 1 Pa. Code § 35.20, and notified RP that:

If the Docket Clerk does not receive your petition within 14 days, you will waive your right to a hearing and the Order will be deemed final. The petition must be in writing, state clearly and concisely your grounds of

¹ Act of July 8, 2008, P.L. 796, effective November 5, 2008, known as the Mortgage Licensing Act, 7 Pa.C.S. §§ 6101-6153.

² The notice identified the Department's Docket Clerk as Eileen Smith and her mailing address as 17 N. Second Street, Suite 1300, Harrisburg, Pa 171101, and email address as RA-BNDDOCKETCLERT@pa.gov

interest in the subject matter, the facts you rely upon, the law you rely upon, and the relief you seek as required by 1 Pa. Code §35.17.

On September 14, 2021, Secretary of Banking and Securities Richard Vague designated the undersigned to serve as the hearing officer for the Department in this matter.

RP neither filed an Appeal to the *C&D Order* with the Department and Request a Hearing, nor requested an extension of time to do so. As more than 30 days had passed since the date of service of the *Notice* and *C&D Order* with no Answer filed by RP, the Department filed a *Motion to Deem Facts Admitted and Entry of Default Judgment* ("MDFA") on September 27, 2021. No Answer to the MDFA has been filed by RP, as provided in the General Rules of Administrative Practice and Procedure at 1 Pa. Code §35.179.³

On December 8, 2021, the hearing officer issued an *Order Granting Motion to Deem Facts Admitted and Entry of Default Judgment*. ("Default Judgment Order"). The *Default Judgment Order* entered judgment by default against RP and deemed the factual allegations of Paragraphs 1 through 39 of the *Order* admitted.

This proposed report is issued in accordance with the Secretary's letter of September 14, 2021.

³ § 35.179. Objections to motions.

Any participant shall have 10 days within which to answer or object to any motion unless the period of time is otherwise fixed by the agency head or the presiding officer.

FINDINGS OF FACT

1. The Department of Banking and Securities ("Department") is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Mortgage Licensing Act, 7 Pa. C.S. § 6101 *et seq.* ("MLA"). (*C&D Order*, Paragraph 1).

2. The Compliance Office is primarily responsible for administering and enforcing the MLA for the Department. (*Id.*, Paragraph 2).

3. Robert Pluzhoffer ("RP") maintains his principal place of business at Redacted
). (*Id.*, Paragraph 3).

4. RP was licensed as a Mortgage Broker, license #60576, but that license expired on December 31, 2020. (*Id.*, Paragraph 4).

5. RP was also licensed as a Mortgage Originator, license #60580, but that license expired December 31, 2020. (*Id.*, Paragraph 5).

6. RP, d/b/a Peak Homes, applied for and was granted a new a Mortgage Broker license, license #81837, effective April 14, 2021, under the MLA. (*Id.*, Paragraph 6).

7. The status of license #81837 was "approved deficient", meaning that that the license was conditional on RP completing certain actions to remove the deficiencies. (*Id.*, Paragraph 7).

8. The deficiencies included completing an FBI fingerprint check for a criminal background check and answering certain disclosure questions. (*Id.*, Paragraph 8).

9. On April 19, 2021, RP's mortgage broker license fee payment was returned for insufficient funds. (*Id.*, Paragraph 9).

10. RP applied for and was granted a new a Mortgage Originator license, license #81838, effective April 14, 2021. (*Id.*, Paragraph 10).

11. The MLA defines the "mortgage loan business" as "The 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.” 7 Pa. C.S. § 6102. (*Id.*, at Paragraph 11).

12. The MLA defines a “mortgage broker” as “A person who engages in the mortgage loan business by directly or indirectly negotiating or placing mortgage loans for others in the primary market for consideration.” 7 Pa. C.S. § 6102. (*Id.*, Paragraph 12).

13. A person engaged in the mortgage loan business as a mortgage broker is required to be licensed as a Mortgage Broker. 7 Pa. C.S. § 6111(a). (*Id.*, Paragraph 13).

14. On April 9, 2021, a licensed lender contacted the Department to provide information that RP had submitted a mortgage loan application. (*Id.*, Paragraph 14).

15. At the time, RP did not have an active license to broker mortgage loans. (*Id.*, Paragraph 15).

16. On April 15, 2021, RP admitted to the Compliance Office that RP had taken a mortgage loan application and had submitted the mortgage loan application to a licensed institution for funding even though RP was not licensed under the MLA at the time. (*Id.*, Paragraph 16).

17. On April 15, 2021, RP told the Compliance Office that the company had taken only one mortgage loan application during the period in which the company was not licensed. (*Id.*, Paragraph 17).

18. Despite RP’s statement to the Compliance Office that RP had only taken one mortgage loan application while RP was not licensed, RP communicated to the Department’s Licensing Office that RP had other pending Pennsylvania mortgage loan applications. (*Id.*, Paragraph 18).

19. Based on RP’s statement to the Department’s Licensing Office, the Compliance Office decided to investigate whether RP took other Pennsylvania mortgage loans applications while RP was not licensed to take applications or broker mortgage loans. (*Id.*, Paragraph 19).

20. Section 6138(a)(1) of the MLA authorizes the Department to make investigations as necessary to administer the provisions of the law. (*Id.*, Paragraph 20).

21. On April 15, 2021, the Compliance Office sent an email to RP provide confirmation of the number of mortgage loan applications taken during the period when RP was not licensed. (*Id.*, Paragraph 21).

22. RP did not provide a response to this email. (*Id.*, Paragraph 22).

23. On April 26, 2021, the Compliance Office telephoned RP on his cell phone to follow up on the request for confirmation of the number of mortgage loan applications taken during the unlicensed period. There was no answer, so a voicemail was left with this request. (*Id.*, Paragraph 23).

24. RP did not return the voicemail. (*Id.*, Paragraph 24).

25. On May 3, 2021, the Compliance Office telephoned RP on his cell phone to follow up on the request for confirmation of the number of mortgage loan applications taken during the unlicensed period. There was no answer, so a voicemail was left with this request. (*Id.*, Paragraph 25).

26. RP did not return the voicemail. (*Id.*, Paragraph 26).

27. On May 5, 2021, the Compliance Office telephoned RP on his cell phone to follow up on the request for confirmation of the number of mortgage loan applications taken during the unlicensed period. There was no answer, so a voicemail was left with this request. (*Id.*, Paragraph 27).

28. RP did not return the voicemail. (*Id.*, Paragraph 28).

29. On May 10, 2021, the Compliance Office telephoned RP on his cell phone to follow up on the request for confirmation of the number of mortgage loan applications taken during the unlicensed period. There was no answer, so a voicemail was left with this request. The voicemail also stated that failure to provide confirmation of the number of mortgage loans brokered may result in a non-consent order against the institution. (*Id.*, Paragraph 29).

30. RP did not return the voicemail. (*Id.*, Paragraph 30).

31. On May 14, 2021, the Compliance Office telephoned RP at two different numbers provided on the website for Peak Home Loans, one of which was the telephone number of record in the NMLS for RP. Both numbers were out of service. (*Id.*, Paragraph 31).

32. On May 17, 2021, the Compliance Office sent an email to an email address listed on the company website requesting confirmation of the number of mortgage loan applications taken during the unlicensed period. (*Id.*, Paragraph 32).

33. There was no response to the email. (*Id.*, Paragraph 33).

34. RP has not responded to the Compliance Office's requests for information. (*Id.*, Paragraph 34).

35. A person engaged in the mortgage loan business as a mortgage broker is required to maintain a bond coverage for mortgage originators. 7 Pa. C.S. § 6131(e). (*Id.*, Paragraph 35).

36. On May 27, 2021, the Compliance Office received notice that RP's Sponsor of Mortgage Originators Bond will be cancelled effectively on June 9, 2021. (*Id.*, Paragraph 36).

37. Compliance confirmed that the bond has been cancelled. (*Id.*, Paragraph 37).

38. Section 6132(a) of the MLA states, in pertinent part, "an applicant shall pay to the Department at the time an application is filed an initial nonrefundable application fee..." (*Id.*, Paragraph 38).

39. Payment of RP's mortgage broker application fee was returned for insufficient funds. (*Id.*, Paragraph 39).

40. On July 27, 2021, the Compliance Office issued a Suspension and Cease and Desist Order ("Order") to Robert Pinzhoffer ("Respondent Pinzhoffer") pursuant to 7 Pa. C.S.A. §§ 6138-6139. (MDFA, Paragraph 1).

41. The Notice of Right to Appeal and Hearing attached to the Bureau's Order provides that the Respondent Pinzhoffer had fourteen (14) days to file his Appeal and request for a Hearing from the date of the Order. Respondent Pinzhoffer's appeal or request for a hearing was therefore due on August 10, 2021. 1 Pa. Code § 35.20. (*Id.*, Paragraph 2).

42. Pursuant to the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1-35.251, orders "shall be served by the office of the agency by mail...by mailing a copy thereof to

the person to be served, addressed to the person designated in the initial pleading or submittal at his principal office or place of business.” 1 Pa. Code § 33.31. (*Id.*, Paragraph 3).

43. On RP’s Application for Licensure (“Application”), RP indicated a principal place of business at Redacted (“Address”). (*Id.*, Paragraph 4).

44. On July 27, 2021, the Office of Chief Counsel mailed the Order via certified mail to RP at the Address. The United States Postal Service tracking information for the certified mailings indicates that the certified mailing was delivered on August 2, 2021. (*Id.*, Paragraph 5, and Exhibit A thereto).

45. On July 27, 2021, the Office of Chief Counsel mailed the Order via ordinary, first-class mail to RP at the Address. The attached Affidavit of Eileen Smith, legal assistant for the Department’s Office of Chief Counsel, describes the circumstances surrounding the ordinary, first-class mailing. (*Id.*, Paragraph 6, and Exhibit B thereto).

46. The ordinary, first-class mailing sent to RP at the Address was not returned to the Bureau as undeliverable within fifteen days after mailing. (*Id.*, Paragraph 7).

47. RP did not request an extension of time to file his Appeal and Request for Hearing. (*Id.*, Paragraph 8).

48. RP has not filed any appeal or request for a hearing. (*Id.*, Paragraph 9).

49. On September 27, 2021, the Department filed a *Motion to Deem Facts Admitted and Entry of Default Judgment* (“*M DFA*”) and served it on RP at his address on file with the Department. (Official Notice – Department Records⁴).

⁴ Official notice is taken in accordance with the rule that a licensing board may take official notice of its own records. General Rules of Administrative Practice and Procedure, 1 Pa. Code § 31.1 *et seq.*, at § 35.173; see also, *Palaseo v. Commonwealth of Pennsylvania Board of Probation and Parole*, 521 A.2d 991 (Pa. Cmwlth. 1987) (The doctrine of official notice allows an agency to take official notice of facts which are obvious and notorious to an expert in the agency’s field and those facts contained in reports and records in the agency’s files); *Gleason v. State Bd. of Medicine*, 900 A.2d 430, 440 (Pa. Cmwlth. 2006), *appeal denied*, 917 A.2d 316 (Pa. 2007) (licensing board may take official notice of its own records). All subsequent such references will be cited as “Department records.”

50. RP did not file an Answer to the *MDFA* within 10 days as required by the General Rules of Administrative Practice and Procedure at 1 Pa. Code §35.179. (Department records).

51. On December 8, 2021, the Hearing Officer issued an *Order Granting Motion to Deem Facts Admitted and Entry of Default Judgment*, in which the factual allegations set forth in Paragraphs 1 through 39 of the *C&D Order* were deemed admitted. (Department records).

52. Respondent has been served with the *C&D Order*, *MDFA* and all subsequent orders, notices, documents, and pleadings filed in this matter. (Department records).

CONCLUSIONS OF LAW

1. The Department has jurisdiction in this matter under the MLA, 7 Pa. C.S. §§6101, 6111(a), 6131(e), 6132, 6133(f), 6138. (Findings of Fact Nos. 1-6,10).

2. Section 6102 of the MLA defines a "Mortgage broker" as "A person who engages in the mortgage loan business by directly or indirectly negotiating or placing mortgage loans for others in the primary market for consideration." (7 Pa. C.S. § 6102).

3. Section 6102 of the MLA defines the "Mortgage loan business" as "The business of: (1) advertising, causing to be advertised, soliciting, negotiating, or arranging in the ordinary course of business or offering to make or making mortgage loans; or (2) servicing mortgage loans." (7 Pa. C.S. § 6102).

4. RP violated Section 6111(a) of the MLA, 7 Pa. C.S. § 6111(a), by engaging in the mortgage loan business when not licensed to do so. (Findings of Fact Nos. 14-18).

5. RP violated Section 6131(e)(3) by failing to provide and maintain the required surety bond. (Findings of Fact Nos. 36-37).

6. RP violated Section 6132(a) by having his mortgage broker license application fee returned for insufficient funds. (Findings of Fact No. 39).

7. RP is subject to discipline by the Department pursuant to Section 6133(f) because RP's Mortgage Broker license, license #81837 was "approved deficient", meaning that that the license was conditional on RP completing certain actions to remove the deficiencies, which RP failed to correct by completing an FBI fingerprint check for a criminal background check and answering certain disclosure questions. (Findings of Fact Nos. 6-8).

8. RP violated Section 6138(a)(3) by failing to respond to the Department's requests for information, thereby hindering the Department's ability to make an investigation. (Findings of Fact Nos. 14-19, 21-34).

9. RP received adequate notice of this proceeding and was afforded, but declined, an opportunity to be heard, in accordance with section 4 of the Administrative Agency Law, 2 Pa. C.S. § 504. (Findings of Fact Nos. 1-6, 40-50).

DISCUSSION

Service/Default

The *Notice* attached to the *C&D Order* advised RP of the right to appeal the *C&D Order* by filing a Petition with Department's Docket Clerk within 14 days of the date of the Order as provided in 1 Pa. Code § 35.20, and advised if the Docket Clerk did not receive RP's petition within 14 days, RP would be deemed to have waived his right to a hearing and the Order would be deemed final. Despite the Notice and warning that RP would be deemed to have waived his right to a hearing if RP did not file a Petition with Department's Docket Clerk within 14 days of the date of the Order, RP failed to file a Petition or otherwise respond to the allegations in the *C&D Order* within the specified 14 day period. The first-class mailing sent to RP at his address was not returned to the Bureau as undeliverable within 15 days of mailing. This establishes the presumption of service of the *C&D Order* upon Respondent. (*Id.*) See, *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment, Appeal and Review*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994); *John Kenneth, Ltd. v. Com., U.C.B.R.*, 444 A.2d 824, 826 (Pa. Cmwlth. 1982) (“[w]here notice, mailed to a party’s last known address, is not returned by the postal authorities as undeliverable, the party is presumed to have received notice”). “Notice of administrative action which is mailed to the interested party’s last known address has been found to be reasonable notice.” *Kobylski v. Milk Marketing Board*, 516 A.2d 75, 77 (Pa. Cmwlth. 1984) (citing *Yarbrough v. Department of Public Welfare*, 478 A.2d 956 (Pa. Cmwlth. 1984)). Accordingly, RP was properly served with the *Notice* and the *C&D Order*, and all other subsequent filings sent to it at RP’s address. (Findings of Fact Nos. 1-6, 40-50).

Accordingly, on September 27, 2021, the Department filed its *MDFA*, copies of which were served upon RP at RP’s address, which was the same address at which the *C&D Order* had been served. In the *MDFA*, the Bureau asked that the facts as set forth in the *C&D Order* be deemed admitted pursuant

to GRAPP at 1 Pa. Code § 35.37.⁵ Therefore, RP was on notice that failure to respond to the *C&D Order* would result in the waiver of his right to a hearing and that the Commission may enter a final order against him. Yet, RP never answered or otherwise responded to the *C&D Order* or the *MDFA*. Therefore, it followed that, under the Order of December 8, 2021, RP was found to be in default, and the facts alleged in *C&D Order* were deemed admitted. 1 Pa. Code §§ 35.35, 35.37.

The procedural history set forth above satisfactorily demonstrates that RP has been afforded adequate notice of the charges, as well as an opportunity to be heard on them. It is, therefore, now proper to enter a final order in this disciplinary proceeding without a hearing. See, *Celane v. Insurance Commissioner*, 415 A.2d 130 (Pa. Cmwlth. 1980).

Violations

In its *C&D Order*, the Department charged that RP violated Section 6111(a), 7 Pa. C.S. § 6111(a), of the MLA by engaging in the mortgage loan business when not licensed to do so.⁶ As established by the facts deemed admitted, on April 9, 2021, a licensed lender contacted the Department to provide information that RP had submitted a mortgage loan application. At the time, RP did not have an active license to broker mortgage loans. On April 15, 2021, RP admitted to the Compliance

⁵ Section 35.37 of the GRAPP provides as follows:

§ 35.37. Answers to orders to show cause.

A person upon whom an order to show cause has been served under § 35.14 (relating to orders to show cause) shall, if directed so to do, respond to the same by filing within the time specified in the order an answer in writing. The answer shall be drawn so as specifically to admit or deny the allegations or charges which may be made in the order, set forth the facts upon which respondent relies and state concisely the matters of law relied upon. Mere general denials of the allegations of an order to show cause which general denials are unsupported by specific facts upon which respondent relies, will not be considered as complying with this section and may be deemed a basis for entry of a final order without hearing, unless otherwise required by statute, on the ground that the response has raised no issues requiring a hearing or further proceedings. A respondent failing to file answer within the time allowed shall be deemed in default, and relevant facts stated in the order to show cause may be deemed admitted.

1 Pa. Code § 35.37 (emphasis added).

⁶ Section 6111. License requirements

(a) General rule. "Except as provided under subsections (b) and (c) and section 6112 (relating to exceptions to license requirements), 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 servicer or mortgage originator as provided under this chapter . . ." (7 Pa. C.S. § 6111(a)).

Office that RP had taken a mortgage loan application and had submitted the mortgage loan application to a licensed institution for funding even though RP was not licensed under the MLA at the time. On April 15, 2021, RP told the Compliance Office that the company had taken only one mortgage loan application during the period in which the company was not licensed. Despite RP's statement to the Compliance Office that RP had only taken one mortgage loan application while RP was not licensed, RP communicated to the Department's Licensing Office that RP had other pending Pennsylvania mortgage loan applications. Based on the admitted facts, the Department has established that Respondent RP violated Section 6111(a) of the MLA by engaging in the mortgage loan business when not licensed to do so.

The Department also charged in its *C&D Order* that RP violated Section 6131(e)(3), 7 Pa. C.S. § 6131(e)(3), of the MLA by failing to provide and maintain the required surety bond.⁷ As further established by the facts deemed admitted, on May 27, 2021, the Compliance Office received notice that RP's Sponsor of Mortgage Originators Bond will be cancelled effectively on June 9, 2021. Based on the admitted facts, the Department has established that Respondent RP violated Section 6131(e)(3) of the MLA by failing to provide and maintain the required surety bond.

The Department next charged in its *C&D Order* that RP violated Section 6132(a), 7 Pa. C.S. § 6132(a), of the MLA.⁸ The facts deemed admitted establish that Payment of RP's mortgage broker application fee was returned for insufficient funds. Based on the admitted facts, the Department has established that RP violated Section 6132(a) of the MLA by having his mortgage broker license application fee returned for insufficient funds.

⁷ Section 6131, Application for license

(e) Mortgage Broker license: (3) "A mortgage broker shall obtain and maintain a surety bond in an amount that will provide coverage for the mortgage originators sponsored by the applicant or licensee, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth . . ." (7 Pa. C.S. § 6131(e)(3)).

⁸ Section 6132, License fees

(a) Initial application fees. --"Except as set forth in subsections (a.1) and (d)(1), an applicant shall pay to the department at the time an application is filed an initial nonrefundable application fee as set forth under this subsection." (7 Pa. C.S. § 6132(a)).

The Department next charged in its *C&D Order* that RP is subject to disciplinary action by the Department pursuant to Section 6133(f), 7 Pa. C.S. § 6133(f)⁹ of the MLA because RP's Mortgage Broker license, license #81837 was approved conditionally and RP failed to comply with the Department's conditions. The facts deemed admitted establish that RP's Mortgage Broker license, license #81837 was "approved deficient", meaning that that the license was conditional on RP completing certain actions to remove the deficiencies. The Department conditionally granted RP's Mortgage Broker license, license #81837, provided RP complete an FBI fingerprint check for a criminal background check and answer certain disclosure questions. RP failed to meet the Department's conditions relative to RP's Mortgage Broker license, license #81837. Based on the admitted facts, the Department has established that RP is subject to disciplinary action by the Department pursuant to Section 6133(f) of the MLA.

Finally, the Department charged that RP is subject to disciplinary action by the Department pursuant to Section 6138(a)(3), 7 Pa. C.S. § 6138(a)(3)¹⁰, of the MLA because RP hindered the Department's ability to make an investigation into the extent of RP's unlicensed practice activity by failing to respond to the Department's requests for information. The admitted facts establish that RP told the Compliance Office that the company had taken only one mortgage loan application during the period in which the company was not licensed. Based on RP's statement to the Department's Licensing Office, the Compliance Office decided to investigate whether RP took other Pennsylvania mortgage

⁹ Section 6133. Issuance of license

(f) Conditional licenses. —"The department may impose conditions on the issuance of any license under this chapter. If the department determines that conditions imposed upon a licensee have not been fulfilled, the department may take any action authorized under this chapter against the licensee that the department deems necessary. In the case of mortgage originator applicants, the department may issue mortgage originator licenses effective immediately upon receipt of an application, which licenses shall be conditional licenses issued under this subsection." (7 Pa. C.S. § 6133(f)).

¹⁰ Section 6138. Authority of department

(a) General authority. —"The department shall have the authority to:

(1) Examine any instrument, document, account, book, record or file of a licensee or any person having a connection to the licensee or make other investigation as may be necessary to administer the provisions of this chapter. Pursuant to this authority, the department may remove any instrument, document, account, book, record or file of a licensee to a location outside of the licensee's office location. The costs of the examination shall be borne by the licensee or the entity subject to the examination." (7 Pa. C.S. § 6138(a)(3)).

loans applications while RP was not licensed to take applications or broker mortgage loans. On April 15, 2021, the Compliance Office sent an email to RP provide confirmation of the number of mortgage loan applications taken during the period when RP was not licensed. RP did not provide a response to this email.

On April 26, 2021, the Compliance Office telephoned RP on his cell phone to follow up on the request for confirmation of the number of mortgage loan applications taken during the unlicensed period. There was no answer, so a voicemail was left with this request. On May 3, 2021, the Compliance Office telephoned RP on his cell phone to follow up on the request for confirmation of the number of mortgage loan applications taken during the unlicensed period. There was no answer, so a voicemail was left with this request. RP did not return the voicemail. 27. On May 5, 2021, the Compliance Office telephoned RP on his cell phone to follow up on the request for confirmation of the number of mortgage loan applications taken during the unlicensed period. There was no answer, so a voicemail was left with this request. RP did not return the voicemail. On May 10, 2021, the Compliance Office telephoned RP on his cell phone to follow up on the request for confirmation of the number of mortgage loan applications taken during the unlicensed period. There was no answer, so a voicemail was left with this request. The voicemail also stated that failure to provide confirmation of the number of mortgage loans brokered may result in a non-consent order against the institution. RP did not return the voicemail.

On May 14, 2021, the Compliance Office telephoned RP at two different numbers provided on the website for Peak Home Loans, one of which was the telephone number of record in the NMLS for RP. Both numbers were out of service. On May 17, 2021, the Compliance Office sent an email to an email address listed on the company website requesting confirmation of the number of mortgage loan applications taken during the unlicensed period. There was no response to the email. RP has not responded to the Compliance Office's requests for information. Based on the admitted facts, the Department has established that RP hindered the Department's ability to make an investigation into the

extent of RP's unlicensed practice activity by failing to respond to the Department's requests for information and is subject disciplinary action by the Department pursuant to Section 6138(a)(3) of the MLA.

As a general matter, in a case such as this, the Department bears the burden of proving the allegations in the *C&D Order* by a preponderance of the evidence. *Lansberry v. Pennsylvania Public Utility Commission*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). A preponderance of the evidence is generally understood to mean that the evidence demonstrates a fact is more likely to be true than not to be true, or if the burden were viewed as a balance scale, the evidence in support of the Commonwealth's case must weigh slightly more than the opposing evidence. *Se-Ling Hostery, Inc. v. Margulies*, 70 A.2d 854, 856 (Pa. 1949). The Department, therefore, has the burden of proving the charges against Respondent with evidence that is substantial and legally credible, not by mere "suspicion" or by only a "scintilla" of evidence. *Lansberry*, 578 A.2d at 602. "Preponderance of the evidence is tantamount to a 'more likely than not standard'...Proof by a preponderance of the evidence is 'often alluded to as a weighing of the evidence and a determination based upon which way the mythical scales are tipped'." *Agostino v. Township of Collier*, 968 A. 2d 258, 269 (Pa. Cmwlth. 2009) (citing *Commonwealth v. McJett*, 811 A. 2d 104, 110 (Pa. Cmwlth. 2002)), (citations omitted).

The factual allegations of the *C&D Order* have been deemed admitted, by default; hence, any objection by RP to the accuracy of the factual averments is waived. The deemed admitted facts establish that the Department has met its burden of proof as to the violations alleged in the *C&D Order*.

Sanctions

RP's violation of various provisions of the MLA authorizes the Department under Section 6138(a)(4)¹¹ of to "Issue . . . orders as may be necessary for the proper conduct of the mortgage loan business by licensees, the issuance and renewal of licenses and the enforcement of this chapter." Also,

¹¹ 7 Pa. C.S. § 6138(a)(4).

under Section 6139¹² of the MLA, 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. . . ." Finally, Section 6140¹³ of the MLA authorizes the Department to impose fines of up to \$10,000 per offense on both licensed and unlicensed persons. Accordingly, the following Order should issue.

¹² 7 Pa. C.S. § 6139

¹³ Section 6140. Penalties

(a) Persons operating without licenses. --A person subject to the provisions of this chapter and not licensed by the department who violates any provision of this chapter or who commits any action which would subject a license to suspension, revocation or nonrenewal under section 6139 (relating to suspension, revocation or refusal) may be fined by the department up to \$10,000 for each offense.

(b) Violation by licensee. --A person licensed under this chapter or director, officer, owner, partner, employee, mortgage originator or agent of a licensee who violates a provision of this chapter or who commits any action which would subject the license to suspension, revocation or nonrenewal under section 6139 may be fined by the department up to \$10,000 for each offense.

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES**

Commonwealth of Pennsylvania	:	
Department of Banking and Securities,	:	
Compliance Office	:	
	:	
v.	:	Docket No. 210055 (BNK-C&D)
	:	
Robert Pinzhoffer,	:	
Respondent	:	

PROPOSED ORDER

AND NOW, this 2nd day of May 2022, in accordance with the foregoing findings of fact, conclusions of law and discussion, it is **ORDERED** that:

No later than the effective date of this Order, RP's Mortgage Broker license, #81838, and Mortgage Originator license, #81838, shall be **SUSPENDED**, meaning that RP and its owners, officers, directors and/or employees, shall not engage in the mortgage loan business in Pennsylvania as defined in Section 6102 of the MLA, 7 Pa. C.S. § 6102, until such time that the issues described above are resolved and the license suspension is lifted.

RP is further ordered to:

- a. Provide the Compliance Office with a list of all Pennsylvania mortgage loan applications which RP took, between January 1, 2021, and April 13, 2021. The list shall contain the following:
 - i. the name and address of the Pennsylvania consumers,
 - ii. the date RP took the application,
 - iii. the status of the loan application, i.e., whether it was submitted to a lender and, if so, whether the application was approved, denied, or is pending or in any other status,

- iv. if the application was submitted to a lender, the name of the lender,
- b. Provide proof of active bond coverage in the form of a new Sponsor of Mortgage Originators Bond; or proof of the continuance of the cancelled bond in the form of a Bond Reinstatement, Bond Cancellation Rescind Notice, or Bond Verification.
- c. File a valid and working phone number to which RP will respond as the contact phone number for RP in NMLS.
- d. Update NMLS disclosure question C-5, providing an explanation regarding the revocation of your company license in the State of California. Additionally, upload any documentation relevant to this action.
- e. Complete an FBI Fingerprint check for license applicants residing or working in states other than Pennsylvania by submitting a fingerprint card by mail to Identigo. The fingerprint check will be for the qualifying individual.

RP shall provide the information in a and b above to Andrew Bohr, Non-Depository Financial Institutions Examiner, Compliance Office via email at aboehr@pa.gov within 10 days of the date of this Order.

RP shall cease and desist from engaging in mortgage loan activities including advertising, causing to be advertised, soliciting, negotiating, or arranging in the ordinary course of business or offering to make or making mortgage loans, until such time that the license suspension is lifted.

Within 30 days of the effective date of this Order, AIA shall refund to all consumers who were charged a processing fee the portion of the processing fee which is in excess of the documentation fee allowed at the time of the sale and provide evidence of such refunds to the Department.

Within 30 days of the effective date of this Order, RP shall pay a fine of fifty thousand dollars (\$50,000). The fine payment shall be paid through the Department of Banking and Securities Portal (the "Portal"). RP can contact Andrew Bohr via email at abohr@pa.gov for instructions on how to make payments through the Portal.

Nothing in this Order shall prevent the Compliance Office from taking any further administrative action as deemed necessary.

The effective date of this Order shall be 30 days after the date this Order is signed below.

BY ORDER:

Redacted

Monty J. Batson
Hearing Officer

For the Department: Charles D. Vance, Jr., Esquire
Assistant Counsel
Office of Chief Counsel
Commonwealth of Pennsylvania
Department of Banking and Securities
Market Square Plaza
17 N. 2nd Street
Suite 1300
Harrisburg, PA 17101

For Respondent: Robert Pinzhoffer

Redacted

Docket Clerk: Linnea Freeberg
Commonwealth of Pennsylvania
Department of Banking and Securities
Market Square Plaza
17 N. Second Street
Suite 1300
Harrisburg, PA 17101

Date of Mailing: 5/3/22

FILED

COMMONWEALTH OF PENNSYLVANIA 2022 AUG 15 AM 9:06
BANKING AND SECURITIES COMMISSION

PA DEPARTMENT OF
BANKING AND SECURITIES

Commonwealth of Pennsylvania
Department of Banking and
Securities, Compliance Office

v.

Robert Pinzhoffer

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Docket No. : 210055 (BNK-C&D)

CERTIFICATE OF SERVICE

On behalf of the agency, I certify that I have this day caused to be served a copy of the foregoing *Final Order* upon the following persons pursuant to 1 Pa. Code § 33.31:

BY CERTIFIED AND FIRST-
CLASS MAIL:

Robert Pinzhoffer

Redacted

BY HAND DELIVERY:

Charles Vance, Assistant Counsel
Commonwealth of Pennsylvania
Department of Banking and Securities
17 North Second Street, Suite 1300
Harrisburg, PA 17101
Counsel for Compliance Office

Dated this 16th day of August, 2022

Redacted

Eileen Smith, Docket Clerk
PA Banking and Securities Commission
17 N. 2nd Street, Suite 1300
Harrisburg, PA 17101
Telephone: (717) 783-4186