

STATE OF ARIZONA
DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

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

No. 20F-BD-005-FIN

ORDER

RUSSELL HENRY

Petitioner

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

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

NOTIFICATION OF RIGHTS

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

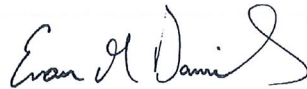
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1 Respondent may appeal the final decision of the Director to the Superior Court of
2 Maricopa County for judicial review, pursuant to A.R.S. § 20-166. A party filing an appeal
3 must notify the Office of Administrative Hearings of the appeal within ten days after filing
4 the complaint commencing the appeal, pursuant A.R.S. § 12-904(B).

5 DATED this 28th day of January, 2021.

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Evan G. Daniels, Director
9 Arizona Department of Insurance and
10 Financial Institutions

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18 **COPY** of the foregoing electronically transmitted
19 this 1st day of February, 2021, to:

20 Thomas Shedden, Administrative Law Judge
21 Office of Administrative Hearings
22 <https://portal.azoah.com/submission>

23 **COPY** mailed same date by U.S.
Certified Mail, Electronic Receipt Requested, to:

24 Russell Henry
25 16401 North 40th Street, #A
26 Phoenix, AZ 85032
Petitioner

9489 0090 0027 6265 2236 24

1 COPY of the foregoing delivered/mailed same date to:

2 Deian Ousounov, Regulatory Legal Affairs Officer
3 Ana Starcevic, Paralegal Project Specialist
4 Steven Fromholtz, Licensing Division Manager
5 Michelle Castaneda, Licensing Supervisor
6 Arizona Department of Insurance and Financial Institutions
7 100 N 15th Avenue, Suite 261
8 Phoenix, Arizona 85007

9 Russell Henry
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11 Petitioner

12 Lynette Evans, Assistant Attorney General
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14 Attorney for the Department of Insurance and Financial Institutions

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12 Ana Starcevic for
13 Francine Juarez

1 5. Mr. Henry was licensed in the State of Washington as a loan originator on
2 November 15, 2006 and as a mortgage broker on May 25, 2012 under the d.b.a. Home
3 Finance. Mr. Henry was Home Finance's owner and designated broker.

4 6. Mr. Henry provided a written statement with his application in which he
5 acknowledged that in 2018 the Washington Department of Financial Institutions had
6 revoked his loan originator's and mortgage broker's licenses. According to Mr. Henry's
7 statement, Washington DFI's revocations were for non-compliance and not fraud. He
8 stated that he did not dispute Washington DFI's findings, and he acknowledged that his
9 broker's license should have been revoked, but he disputed that his loan originator
10 license should have been. He added that in 2015 he started a charity that raises money
11 to assist disabled veterans.

12 7. Between May 2014 and January 2019, Mr. Henry entered into three
13 consent orders with the Washington DFI. Through those consent orders, Mr. Henry
14 acknowledged that he had not complied with the first and second consent orders, and
15 he agreed to a lifetime ban from participating in activities regulated by the Washington
16 DFI.

17 8. In a letter dated October 28, 2020, the Department informed Mr. Henry
18 that his application had been denied based on violations of ARIZ. REV. STAT. sections 6-
19 991.05(A)(2), (A)(5) and (A)(7).

20 9. The Department based its decision to deny Mr. Henry's application on the
21 violations found by Washington DFI and because Arizona loan originators deal with the
22 same subject matter that Washington DFI regulates.

23 10. Mr. Henry requested a hearing, which led to the instant matter being
24 scheduled.

25 11. On May 28, 2014, the Washington DFI issued a "Statement of Charges,
26 and Notice of Intention to Enter an Order to Suspend License, Order Restitution,
27 Impose Fine, and Collect Investigation Fee" (the first "Statement of Charges"), through
28 which it alleged that Mr. Henry d.b.a. Home Finance had (1) directly or indirectly
29 employed a scheme, device or artifice to defraud, engaged in an unfair or deceptive
30 practice, obtained property by fraud or misrepresentation, and made a false or

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

6 12. In a Consent Order entered on December 18, 2014 (the first Consent
7 Order), Mr. Henry and Washington DFI resolved the first Statement of Charges. In the
8 first Consent Order, Mr. Henry agreed not to contest the first Statement of Charges.
9 Among other things, through the Consent Order Mr. Henry agreed to pay restitution to
10 two consumers who had filed complaints against him and to Cease and Desist from
11 violating RCW 19.146.0201.

12 13. In the first Consent Order, Mr. Henry acknowledged that he had
13 completely read and understood the terms and that he had voluntarily entered the
14 Consent Order.

15 14. Through the first Consent Order, Washington DFI imposed a fine of \$3000
16 against Mr. Henry, with the fine stayed for two years, provided that the stay could be
17 lifted if the DFI found that Mr. Henry had not complied with the first Consent Order.

18 15. On October 13, 2016, Washington DFI issued a "Statement of Charges,
19 and Notice of Intention to Enter an Order to Suspend License, Order Restitution,
20 Impose Fine, Collect Investigation Fee, and Recover Costs and Expenses" (the second
21 "Statement of Charges").

22 16. In its second Statement of Charges, Washington DFI alleged that Mr.
23 Henry had failed to timely provide loan applicants with rate locks, that he had failed to
24 make all required disclosures, he had co-mingled funds by depositing trust funds in his
25 operating account, he did not have a trust account as required, and he had failed to
26 timely file call reports. Washington DFI found that these acts or omissions were
27 apparently in violation of RCW 19.146.0201, RCW 19.146.030, RCW 19.146.050, and
28 WAC 208-660-400.

29 17. In a Consent Order entered on March 8, 2017 (the second Consent
30 Order), Mr. Henry and Washington DFI resolved second Statement of Charges. In the

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

4 18. Through the second Consent Order, Mr. Henry and Washington DFI
5 agreed that he would be prohibited from participating in the affairs of any mortgage
6 broker licensed by, or subject to Washington DFI's regulation, with that prohibition
7 stayed contingent on Mr. Henry's compliance with the terms of the second Consent
8 Order.

9 19. In the second Consent Order, Mr. Henry acknowledged that he had
10 completely read and understood the terms and that he had voluntarily entered the
11 Consent Order.

12 20. In a third Consent Order entered on January 24, 2019, Washington DFI
13 reported its findings that Mr. Henry had not fully complied with the second Consent
14 Order.

15 21. Through the third Consent Order, Mr. Henry and Washington DFI agreed
16 that the Washinton DFI had a sufficient basis on which to lift the stayed sanctions set
17 out in the second Consent Order, that DFI would not do so in consideration of Mr.
18 Henry's agreement to the terms of the third Consent Order, that Mr. Henry's mortgage
19 broker and loan originator licenses had expired, and that Mr. Henry would be
20 permanently prohibited from participating in the affairs of any mortgage broker or
21 consumer loan company licensed by, or subject to Washington DFI's regulation.

22 22. In the third Consent Order, Mr. Henry acknowledged that he had
23 completely read and understood the terms and that he had voluntarily entered the
24 Consent Order.

25 23. Mr. Henry acknowledged that in Washington he had been out of
26 compliance and he had taken some of the rules for granted. But he testified to the effect
27 that there was no evidence of fraud or actual damage to anyone, and that some of the
28 disclosures he had failed to provide were redundant in that those disclosures were also
29 made by others involved in the transactions.

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

4 ***

5 2. Has violated any law, rule or order.

6 ***

7 5. Has had an administrative agency of this state, the federal
8 government or any other state or territory of the United States
9 enter an order against the applicant or licensee involving
10 fraud, deceit or misrepresentation, and the facts relating to the
11 order indicate that it would be contrary to the interest of the
12 public to permit the person to be licensed.

13 ***

14 7. Has had a loan originator license, consumer lender license,
15 mortgage broker license or mortgage banker license revoked
16 or denied in this state or any other state.

17 5. Washington DFI's first Statement of Charges and related Consent Order
18 involved fraud, deceit or misrepresentation. The preponderance of the evidence shows
19 that Mr. Henry violated the first and second Consent Orders he entered into with
20 Washington DFI, and that his transgressions were serious enough that he agreed to a
21 lifetime ban of activities regulated by Washington DFI, which are the same type of
22 activities that he would be engaging in if he received the license at issue. Consequently,
23 the Department's Director has discretion to deny Mr. Henry's application based on ARIZ.
24 REV. STAT. sections 6-991.05(A)(2), (5) and (A)(7).

25 6. Mr. Henry has failed to demonstrate by a preponderance of the evidence
26 that the Department's decision to deny his application should be overturned.

27 7. Mr. Henry's appeal should be dismissed.

28 **ORDER**

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

30 *In the event of certification of the Administrative Law Judge Decision by the Director of
the Office of Administrative Hearings, the effective date of the Order is five days after
the date of that certification.*

1 Done this day, January 19, 2021.

2 /s/ Thomas Shedden
3 Thomas Shedden
4 Administrative Law Judge

5 Transmitted electronically to:

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7 Evan Daniels, Director
8 Arizona Department of Insurance and Financial Institutions
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