

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In the Matter of:

No. 24A-025-FIN

4 **CERTIFICATION OF DECISION**
5 **OF ADMINISTRATIVE**
6 **LAW JUDGE**

7 Summit Lending Solutions, LLC
8 (License No. MB-0944661)

9
10 Pursuant to the licensee's timely request, the Office of Administrative Hearings hereby
11 certifies the recommended decision in this matter as the final agency decision pursuant to A.R.S.
12 § 41-1092.08(I).

13 Done this day, October 9, 2024.

14
15 /s/ Tammy L. Eigenheer
16 Assistant Presiding Administrative Law Judge

17
18 Copy mailed/e-mailed/faxed to:

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 24A-025-FIN

Summit Lending Solutions, LLC
(License No. MB-0944661)
Petitioner.

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARING: September 20, 2024 at 1:00 PM.

APPEARANCES: Assistant Attorney General Zachary Howard, Esq. appeared on behalf of the Arizona Department of Insurance and Financial Institutions (“Department”) with Alicia Preston as a witness. Craig Pribyl appeared on behalf of Summit Lending Solutions (“Petitioner”). Tammy Soto and Laura Reyes observed.

ADMINISTRATIVE LAW JUDGE: Jenna Clark.

EXHIBITS ADMITTED INTO EVIDENCE: The NOTICE OF HEARING, August 13, 2024, HEARING ORDER, Department Exhibits 1-10, and Petitioner Exhibits C and F were admitted into the evidentiary record.

Having heard the evidence and testimony and having considered the record in this matter, the undersigned Administrative Law Judge hereby makes the following Findings of Fact and Conclusions of Law and issues the following RECOMMENDED ORDER to the Director of the Department.

FINDINGS OF FACT

BACKGROUND AND PROCEDURE

1. The Department was created and enabled by the State of Arizona to administer enumerated State laws by protecting the public interest through licensure and regulation of the consumer lender profession.¹

2. On October 12, 2017, the Department issued Mortgage Broker License No. MB-0944661 to Petitioner.² Petitioner’s license was last renewed on December 19, 2023, and is set to expire on December 31, 2024.

a. Administrative Notice is taken that Petitioner also holds licenses in the additional jurisdictions, as follows:

¹ See Arizona Revised Statutes (“ARIZ. REV. STAT.”) §§6-121 and 6-601 *et seq.*

² See Department Exhibit 1.

1 Colorado mortgage company registration on October 12, 2017.³

2 Idaho mortgage broker/lender license MLB-9449.⁴

3 Oregon mortgage lending license ML-5637 issued March 15, 2018.⁵

4 Washington consumer loan company license CL-1678996 issued October
5 31, 2017.⁶

6 Wyoming mortgage lender/broker license 3129 issued February 01, 2018.⁷

7 3. On September 16, 2022, Mr. Pribyl updated Petitioner's main and mailing
8 address(es) with the Department from 2980 E. Northern Ave., Ste. C Phoenix, AZ 85026
9 to 3195 S. Price Rd., Ste. 26 Chandler, AZ 85248.⁸

10 4. On February 19, 2023, Mr. Pribyl updated Petitioner's main and mailing
11 address(es) with the Department from 3195 S. Price Rd., Ste. 26 Chandler, AZ 85248 to
12 4280 Dark Hallow Rd. Medford, OR 9751.⁹

13 HEARING EVIDENCE

14 5. The Department called Alicia Preston as a witness. Petitioner called Craig
15 Pribyl as a witness. The substantive evidence of record is as follows:

16 a. On April 18, 2024, the Department commenced a routine Mortgage Broker
17 Report of Examination for License No. MB-0944661, regarding statutory
18 compliance, supervision and organization, and operations and controls.¹⁰
19 By the time the examination concluded on May 09, 2024, Petitioner had
20 been found in violation of three (3) State of Arizona statutes, rules, and/or
21 regulations.

22 i. Petitioner was cited for violation of ARIZ. REV. STAT. § 6-904(H) for
23 allegedly soliciting and/or originating Arizona mortgage loans from
24 3195 S. Price Rd., Ste. 26 Chandler, AZ 85248, which did not
25 possess a branch license.¹¹ Petitioner originated eleven (11)

26 ³ See <https://www.nmlsconsumeraccess.org/EntityDetails.aspx/COMPANY/1678996>.

27 ⁴ *Id.*

28 ⁵ *Id.*

29 ⁶ *Id.*

30 ⁷ *Id.*

⁸ See Department Exhibit 10.

⁹ *Id.*

¹⁰ See Department Exhibit 2.

¹¹ *Id.*

1 mortgage loan applications from the Chandler location.¹² It was
2 further determined that Petitioner was without a licensed branch
3 office location from January 20, 2023, through April 30, 2023.¹³

4 ii. Petitioner was also cited for violation of ARIZ. ADMIN. CODE. R20-4-
5 917(C) for allegedly failing to provide reconciled bank statements for
6 operating accounts ending in 1158 and 4703 for years 2022 through
7 2024, though it was later determined that at least ten (10)
8 transactions occurred during that period.¹⁴

9 1. In 2018, Petitioner was cited by the Department for the same
10 violation during that examination.¹⁵

11 iii. Petitioner was also cited for violation(s) of ARIZ. REV. STAT. §§ 6-
12 903(W) and 6-991.03(J) for allegedly failing to submit its Mortgage
13 Call Report (“MCR”) within forty-five (45) days of the end of 2022’s
14 3rd quarter, due November 14, 2022, as required by the National
15 Multistate Licensing System (“NMLS”).¹⁶ Petitioner filed the MCR at
16 issue a day late on November 15, 2022.¹⁷

17 b. On April 30, 2024, the Department approved Petitioner for an Arizona
18 Mortgage Branch License.¹⁸ A customer service representative, Mary
19 Cisneros, reached out to Mr. Pribyl on behalf of the Department to advise
20 that the issuance of a license number and certificate to Petitioner would be
21 delayed due to the implementation of a new state system.¹⁹

22 i. On May 09, 2024, Mr. Pribyl with Ms. Cisneros as to why, after he
23 updated Petitioner’s address(es) to Oregon, the Department was not
24 triggered or otherwise compelled to notify him of his requirement to
25 obtain a branch license for the Chandler, Arizona location.²⁰

26 ¹² *Id.*

27 ¹³ *Id.*

28 ¹⁴ *Id.*

29 ¹⁵ See Department Exhibit 4.

30 ¹⁶ See Department Exhibit 2.

¹⁷ *Id.*

¹⁸ See Department Exhibit 7.

¹⁹ See Department Exhibit 8.

²⁰ *Id.*

- 1 c. On May 10, 2024, Ms. Cisneros replied that the issue was two-fold: (1) a
2 Department employee should have taken a second look, as no automated
3 system is in place, and noticed; and (2) Mr. Pribyl, as a licensee, should
4 have been familiar with the Department's "brick and mortar" requirement.²¹
5 d. On an unknown date, the Department advised Petitioner of its intent to
6 assess a \$5,000.00 Civil Penalty against it pursuant to ARIZ. REV. STAT. §
7 6-132.
8 e. On an unknown date, Mr. Pribyl submitted a timely appeal to the
9 Department on behalf of Petitioner.

10 **ADDITIONAL EVIDENCE**

- 11 f. Mr. Pribyl testified that because he did not receive a response from the
12 Department to his reply²² regarding the ARIZ. ADMIN. CODE. R20-4-917(C)
13 citation after Petitioner's 2018 examination, he thought his explanation was
14 sufficient and that no further action need be taken by either party. Mr. Pribyl
15 testified that after he was made aware of his requirement to obtain a branch
16 license he did so, and would have done so earlier had he been aware of the
17 requirement sooner. Mr. Pribyl conceded that he did, in fact, file Petitioner's
18 Q-3 2022 MCR a day late.
19 g. Ms. Preston testified that because of Petitioner's prior branch license
20 history,²³ Mr. Pribyl knew or should have known that a branch license was
21 required for the Chandler, Arizona location. Ms. Preston opined that, at a
22 minimum, Mr. Pribyl should have utilized the NMLS Resource Center's
23 comprehensive checklist compiler which details information regarding
24 Mortgage Broker Branch Licensing on its website.²⁴

25 **CLOSING ARGUMENTS**

26 6. In closing, Petitioner argued that each alleged violation had been remedied,
27 and that there was no ill-intent on its part not to comply with the Department's regulations.
28 Petitioner noted that the issues were circumstantially related to Mr. Pribyl's need to

29 ²¹ *Id.*

²² See Department Exhibit 5; see also Petitioner Exhibit F.

²³ See Department Exhibit 6.

²⁴ See Department Exhibit 9.

1 relocate to Oregon for familial reasons, and opined that no similar circumstances would
2 occur in the future now that those issues have been resolved. Per Mr. Pribyl, neither he
3 nor Petitioner could afford the Department's proposed assessment.

4 7. In closing, the Department argued that it had sustained its burden of proof
5 which thusly warranted the assessment of a civil penalty against Petitioner as disciplinary
6 action.

7 **CONCLUSIONS OF LAW**

8 1. The Department was created and enabled to administer certain laws of the
9 State of Arizona by protecting the public interest through the regulation of financial
10 institutions and enterprises.²⁵

11 2. The Director of the Department is vested with the authority to regulate all
12 persons engaged in mortgage banking and has the duty to enforce statutes and rules
13 relating to these activities.²⁶ The matter was properly brought before OAH for
14 adjudication.²⁷

15 3. The Department bears the burden of proof to establish that cause to levy a
16 civil penalty against Petitioner's license by a preponderance of the evidence.²⁸ Petitioner
17 bears the burden to establish factors in mitigation of the penalty and affirmative defenses
18 by the same evidentiary standard.²⁹

19 4. "A preponderance of the evidence is such proof as convinces the trier of fact
20 that the contention is more probably true than not."³⁰ A preponderance of the evidence is
21 "[t]he greater weight of the evidence, not necessarily established by the greater number of
22 witnesses testifying to a fact but by evidence that has the most convincing force; superior
23 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable
24 doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than
25 the other."³¹

26 ²⁵ See ARIZ. REV. STAT. § 6-110.

27 ²⁶ See ARIZ. REV. STAT. § 6-941 *et seq.*

28 ²⁷ See ARIZ. REV. STAT. §§6-123, 6-131, 6-138 and 41-1092 *et seq.*

29 ²⁸ See ARIZ. REV. STAT. § 41-1092.07(G)(2); ARIZ. ADMIN. CODE R2-19-119; *see also Vazzano v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

30 ²⁹ See Arizona Administrative Code ("ARIZ. ADMIN. CODE") R2-19-119(B)(2).

31 ³⁰ MORRIS K. UDALL, ARIZONA LAW OF EVIDENCE § 5 (1960).

³¹ BLACK'S LAW DICTIONARY at page 1220 (8th ed. 1999).

1 5. ARIZ. REV. STAT. § 6-132 provides that the Department may assess a civil
2 penalty of no more than \$5,000.00 against a licensee for any knowing violation of any
3 provision of a statute or adopted rule.

4 6. ARIZ. REV. STAT. § 6-904(H) provides, in pertinent part, that every licensed
5 mortgage broker shall designate and maintain a principal place of business within the
6 State of Arizona for the transaction of business. If a licensee wishes to maintain one or
7 more locations in addition to a principal place of business, the licensee shall first obtain a
8 branch office license.

9 7. ARIZ. REV. STAT. § 6-903(W) provides that a licensee who employs a loan
10 originator shall comply with section 6-991.03.

11 8. ARIZ. REV. STAT. § 6-991.03(J) provides that a mortgage broker shall submit
12 reports of condition to the NMLS that that contain required information.

13 9. ARIZ. ADMIN. CODE. R20-4-917(C) provides that if a licensee shall reconcile
14 and update all records monthly if more than ten (10) transactions occurred during the
15 prior calendar quarter, but if ten (10) or fewer transactions occurred during the prior
16 calendar quarter a licensee shall reconcile and update all records at least once each
17 calendar quarter.

18 10. Statutes shall be liberally construed to affect their objects and to promote
19 justice.³² In interpreting a statute, “[w]e first consider the language of the statute and, if it
20 is unclear, turn to other factors, including ‘the statute’s context, subject matter, historical
21 background, effects, consequences, spirit, and purpose.’”³³

22 11. Statutes should be interpreted to provide a fair and sensible result.³⁴ “In
23 applying a statute its words are to be given their ordinary meaning unless the legislature
24 has offered its own definition of the words or it appears from the context that a special
25 meaning was intended.”³⁵

26 ³² See ARIZ. REV. STAT. § 1-211(B).

27 ³³ *McMurren v. JMC Builders, Inc.*, 204 Ariz. 345, 350 ¶ 12, 63 P.3d 1082, 1087 (App. 2003) (citing *Norgord*
v. State ex rel. Berning, 201 Ariz. 228, P7, 33 P.3d 1166, ¶ 7 (App. 2001), quoting *Hobson v. Mid-Century*
Ins. Co., 199 Ariz. 525, P8, 19 P.3d 1241, ¶ 8 (App. 2001)).

28 ³⁴ See *Gutierrez v. Industrial Commission of Arizona*, 226 Ariz. 395, 249 P.3d 1095 (2011)(citation omitted);
29 *State v. McFall*, 103 Ariz. 234, 238, 439 P.2d 805, 809 (1968) (“Courts will not place an absurd and
unreasonable construction on statutes.”).

30 ³⁵ *Mid Kansas Federal Savings and Loan Ass’n of Wichita v. Dynamic Development Corp.*, 167 Ariz. 122,
128, 804 P.2d 1310, 1316 (1991).

1 12. The Tribunal is required to apply equitable principles when rendering
2 decisions.³⁶ The application of equity entails offering a remedy to avoid an
3 unconscionable or unjust result.³⁷

4 13. Here, the material facts are not in dispute.

5 14. The credible evidence of record reflects that Petitioner committed violations
6 of ARIZ. REV. STAT. §§ 6-904(H), 6-903(W), 6-991.03(J), and ARIZ. ADMIN. CODE. R20-4-
7 917(C), and that as such, the Department established grounds to levy a civil penalty
8 against Petitioner.

9 15. Therefore, the only issue remaining is whether Petitioner raised a sufficient
10 justification for the reduction or nullification of the proposed civil penalty. This is an
11 affirmative defense that Petitioner bears the burden to establish. Here, Petitioner
12 established that it had remediated all of the underlying actions that resulted in the citations
13 received, as well as provided reasonable explanations as to why certain courses of action
14 were taken that resulted in the underlying actions at issue. Mr. Pribyl also expressed
15 remorse for his prior misunderstandings and untimeliness, evincing Petitioner's
16 regulatability and willingness to acquiesce to the Department's authority.

17 16. Notably, the Department did not provide any explanation whatsoever as to
18 how the amount of the proposed civil penalty was calculated, only establishing its statutory
19 authority to levy said penalty against its licensees.

20 17. Because the Department established Petitioner's violations of ARIZ. REV.
21 STAT. §§ 6-904(H), 6-903(W), 6-991.03(J), and ARIZ. ADMIN. CODE. R20-4-917(C) by a
22 preponderance of the evidence, it also established grounds to discipline MB-0944661 by
23 way of civil penalty. However, based on the credible evidence of record and given the
24 totality of the circumstances, the Tribunal is not in agreement with the amount of the
25 Department's proposed civil penalty in this matter. As such, it is the recommendation of
26 this Tribunal that the Department's proposed \$5,000.00 civil penalty against Petitioner be
27 reduced to more appropriately correspond with the conduct in this case.

28
29 _____
30 ³⁶ *Seitz v. Industrial Commission of Arizona*, 184 Ariz. 599, 603 (Ariz. Ct. App., Div. 1, 1995).

³⁷ *Sanders v. Folsom*, 104 Ariz. 283, 289, 451 P.2d 612 (Ariz. 1969), quoting *Merrick v. Stephens*, 337 S.W.2d 713, 719 (Mo. App. 1960).

RECOMMENDED ORDER

Based on the foregoing,

IT IS RECOMMENDED that on the effective date of the FINAL ORDER in this matter, Petitioner Summit Lending Solutions, LLC, Mortgage Broker License No. MB-0944661 be assessed a seven hundred fifty dollar (\$750.00) civil penalty by the Department.

IT IS FURTHER RECOMMENDED that if the assessed civil penalty is not paid in full within thirty (30) days of effective date of the FINAL ORDER in this matter, the Arizona Attorney General, on request of the Deputy Director, shall bring an action in Superior Court, Maricopa County against Petitioner for the recoupment of the assessment.³⁸

NOTICE

*Pursuant to ARIZ. REV. STAT. § 41-1092.08(I), the licensee may accept the Administrative Law Judge Decision by advising the Office of Administrative Hearings in writing not more than **ten (10) days** after receiving the decision. If the licensee accepts the Administrative Law Judge Decision, the decision shall be certified as the FINAL DECISION by the Office of Administrative Hearings.*

*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 will be **forty (40) days** from the date of that certification.*

Pursuant to ARIZ. ADMIN. CODE R4-46-306.01 Respondent may submit a written request for rehearing to the Department pursuant to guidelines outlined in ARIZ. REV. STAT. § 41-1092.09, specifying the reason for the request. It is not necessary to request a rehearing prior to filing an appeal to Superior Court.

Done this day, October 07, 2024.

Office of Administrative Hearings

/s/ Jenna Clark
Administrative Law Judge

Transmitted by either mail, e-mail, or facsimile to:

_____ ³⁸ The court may enforce the assessed civil penalty or may impose a different civil penalty in an amount it deems appropriate.

1 Barbara D. Richardson, Director
2 c/o Ana Starcevic, Paralegal
3 Deian Ousounov, Chief Financial Deputy Director
4 Alena Carraveta Regulatory Legal Affairs Officer
5 Tammy Seto, Assistant Director
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