

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2
3 In the Matter of the Revocation of the Mortgage
Broker License of:

No. 08F-BD004-BNK

4 **GUTI GROUP, INC. AND IVAN GUTIERREZ,**
5 **PRESIDENT**

6 1616 East Indian School Road, Suite 100
Phoenix, AZ 85016

Respondents.

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

7
8 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the
9 record in this matter, including the transcripts of the October 11, 2007 and December 11, 2007
10 administrative hearings, and the, Administrative Law Judge Decision attached and incorporated
11 herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of
12 Law and Order as follows:

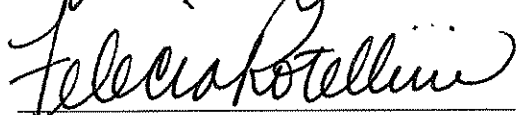
13 ORDER

14 IT IS ORDERED that Respondents' Mortgage Broker License Number MB 0908201 is
15 revoked effective as of the date of this Order.

16 NOTICE

17 The parties are advised that this Order becomes effective immediately and the provisions of
18 this Order shall remain effective and enforceable except to the extent that, and until such time as,
19 any provision of this Order shall have been modified, terminated, suspended, or set aside by the
20 Superintendent or a court of competent jurisdiction.

21
22 DATED this 23rd day of January, 2008.

23
24 

25 Felecia Rotellini
Superintendent of Financial Institutions

26 ...

27 ...

1 ORIGINAL filed this 23rd day of
2 January, 2008 in the office of:

3 Felecia Rotellini
4 Superintendent of Financial Institutions
5 Arizona Department of Financial Institutions
6 ATTN: June Beckwith
7 2910 North 44th Street, Suite 310
8 Phoenix, Arizona 85018

9 COPY of the foregoing mailed/hand delivered
10 This same date to:

11 Lewis D. Kowal, Administrative Law Judge
12 Office of Administrative Hearings
13 1400 West Washington, Suite 101
14 Phoenix, AZ 85007

15 Erin O. Gallagher, Assistant Attorney General
16 Office of the Attorney General
17 1275 West Washington
18 Phoenix, AZ 85007

19 Robert D. Charlton, Assistant Superintendent
20 Judi Moss, Senior Examiner
21 Arizona Department of Financial Institutions
22 2910 N. 44th Street, Suite 310
23 Phoenix, AZ 85018

24 Ivan Gutierrez
25 President and Statutory Agent for
26 Guti Group, Inc.
27 1616 East Indian School Road, Suite 100
28 Phoenix, AZ 85016

AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

Donald J. Newman
Keller, Keller & Newman, P.L.L.C.
7330 N. 16th Street, Suite C-117
Phoenix, AZ 85020

BY: June Beckwith

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Revocation of the
Mortgage Broker
License of:

No. 08F-BD004-BNK

ADMINISTRATIVE
LAW JUDGE DECISION

GUTI GROUP, INC. AND IVAN
GUTIERREZ, PRESIDENT
1616 East Indian School Road, Suite 100
Phoenix, AZ 85016

Respondents

HEARING: October 11 and December 11, 2007

APPEARANCES: Assistant Attorney General Erin Gallagher for the Arizona
Department of Financial Institutions; Ivan Gutierrez on his own behalf and on behalf of
Guti Group, Inc. on October 11, 2007; Don Newman, Esq. on behalf of Ivan Gutierrez
and Guti Group, Inc. on December 11, 2007

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

Background

1. Guti Group, Inc. ("Guti Group") is an Arizona corporation authorized to transact business in Arizona as a mortgage broker, license number MB 0908201.
2. At all times material to this matter, Ivan Gutierrez ("Mr. Gutierrez") was the president and owner of Guti Group. In that capacity, he controlled the business activities of Guti Group.
3. From January 4, 2007 through January 31, 2007, the Arizona Department of Financial Institutions ("Department") conducted a routine examination of Guti Group's

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 business office ("examination") at 1616 East Indian School Road, Suite 100, Phoenix,
2 Arizona ("Indian School office").

3 4. As a result of the examination, a Report of Examination (Exhibit 1) was issued
4 revealing that Guti Group and Mr. Gutierrez ("Respondents") had violated State laws
5 regarding mortgage brokers.

6 5. The Department examiner in charge of the examination was Judy Moss ("Ms.
7 Moss"). Ms. Moss testified in detail as to the results of the examination that is set forth
8 in the Examination Report attached to this Decision and incorporated herein.

9 6. The Administrative Law Judge has determined that to the extent noted herein,
10 the Examination Report is credible, accurate, and supported by documentary evidence
11 presented by the Department.

12 7. Ms. Moss testified that during the examination as well as at the conclusion of the
13 examination, she went over the examination findings with Mr. Gutierrez.

14 8. Ms. Moss testified as to her belief that the nature and number of the violations
15 found by the Department exceeded the norm and was of concern to the Department.

16 Examination Results

17 Reasonable Employee Investigations

18 9. At hearing, Mr. Gutierrez stipulated that Respondents failed to conduct the
19 minimum elements of reasonable employee investigations before hiring employees by
20 failing to:

21 a. Conduct, collect and review documents authorized by the Immigration
22 and Control Act of 1986 before hiring three employees.

23 b. Obtain a completed and signed Employee Eligibility Verification Form
24 before hiring twenty-nine employees.

25 c. Obtain a completed and signed employment application before hiring
26 twelve employees.

27 d. Obtain a signed statement attesting to all of an applicant's felony
28 convictions and obtain detailed information as to each conviction before hiring
29 twenty-nine employees.

30 e. Consult with an applicant's most recent or next most recent employer or
failed to date such inquiry before hiring twenty-nine employees.

1 f. Inquire into an applicant's qualification and competence before hiring
2 twenty-nine employees and/or failed to identify a date when such inquiry
3 occurred.

4 g. Obtain a current credit report before hiring twenty-seven employees.

5 h. Conduct further investigation of nine employees with derogatory credit
6 reports.

7 10. Guti Group represented that it has assigned and trained Camile Martinez ("Ms.
8 Martinez") to conduct investigations of prospective employees. Her duties involve:

9 a. Reviewing original identification required to complete Federal Form I-9;

10 b. Completing, dating and signing Federal Form I-9;

11 c. Making sure employment applications are completed;

12 d. Obtaining signed statements attesting to felony convictions;

13 e. Inquiring into an applicant's most recent or next most recent employer;

14 f. Inquiring into an applicant's knowledge and competency for the position;
15 and

16 g. Obtaining a credit report on the applicant.

17 11. Guti Group represented that it will conduct further investigation of an applicant if
18 the information it receives from documents raises questions as to an applicant's
19 honesty, integrity or competence. At a minimum, Guti Group represented that it will
20 require a written explanation from an applicant regarding such questions and will
21 maintain copies of the investigative reports for at least two years from date of
22 termination.

23 12. Ms. Moss testified there are still some issues with respect to the approach that
24 the Respondents intend to use regarding employee investigations. Ms. Moss would like
25 to see documentation showing: a) the position of the person being contacted; b)
26 showing that the person has the authority to act on behalf of the employer; c) a list of
27 the questions asked of the employer; and d) the date the person left or was terminated
28 from employment.

29 Insolvency

30 13. Guti Group appeared to be insolvent within the meaning of A.R.S. § 47-
1201(23), as follows:

1 a. From the information Ms. Moss received from Respondents during
2 the time of the examination, the payroll account of Guti Group showed
3 negative daily balances on August 22 and 23, 2006, November 8 and 9,
4 2006, two overdraft items and three insufficient funds on returned items
5 were reflected in the August 31, 2006 statement.

6 b. The November 30, 2006 statement of the account reflects one
7 overdraft item and one insufficient fund returned item.

8 14. Documents presented to the Department during the examination showed that
9 Guti Group had a solvency issue. However, Ms. Moss testified that the documents
10 Respondents provided to the Department with the Response to the August 2, 2007
11 Examination Report ("Response") shows there is no insolvency issue.

12 Failure to Provide Requested Information Timely

13 15. Reconciliations of Guti Group's bank accounts, complete financial
14 statements, general ledger back-up documents, and copies of all bank statements,
15 back-up documentation for reconciliations check registers, all records of advertising and
16 documentation supporting advertising invoices were not presented to the Department's
17 examiners during the examination.

18 16. Ms. Moss testified that for the size of a mortgage broker business like Guti
19 Group, the Department conducted the examination over a longer period than it normally
20 does.

21 17. According to Ms. Moss, Respondents had more than a reasonable time to
22 provide the requested documents to the Department during the examination period and
23 failed to do so. Consequently, even though documents were provided in the Response,
24 the Department asserted its view that Guti Group should have had the documents
25 available to present to the Department in a reasonable time from the date when the
26 Department made the request for documents. However, Ms. Moss acknowledged that
27 the reason for filing a response to an examination report is to provide an opportunity for
28 a licensee to address and correct violations that were observed during an examination.

29 18. Mr. Gutierrez provided as an explanation for not providing all of the
30 documentation that the Department requested that because it was the holiday time and
the people who could locate the documents were on vacation.

1 19. Upon learning of the intended date of examination, Mr. Gutierrez contacted Ms.
2 Moss and requested that the examination date be continued. Ms. Moss denied the
3 request and informed him that she would be at the Guti Group's office on January 4,
4 2007.

5 20. Mr. Gutierrez stated that the office was closed from December 20, 2006 through
6 January 2, 2007.

7 21. The office manager kept certain documents in her locked cabinets. Mr. Gutierrez
8 had a key to the cabinets but had given it to the office manager, who had lost her key.
9 Consequently, because the office manager was on vacation Mr. Gutierrez could not
10 produce certain documents during the examination. When the office manager returned
11 from vacation on January 9, 2007, Mr. Gutierrez was able to obtain additional
12 documents.

13 22. Mr. Gutierrez testified that he attempted to contact his accountant, who had
14 certain financial records, and was unable to obtain or a response from him until mid-
15 January 2007. When he received additional documents from the accountant he then
16 provided them to the Department.

17 23. Ms. Moss testified that Respondents failed to address in the Response how in
18 the future Respondents will have the documents available in a timely manner so they
19 can be reviewed by the Department.

20 Failure to Maintain Complete Records

21 24. Respondents failed to keep and maintain correct and complete records, as
22 evidenced by their failure to produce to the Department:

- 23 a. Copies of bank statements.
- 24 b. Complete and accurate back-up documentation for reconciliations.
- 25 c. Check registers.
- 26 d. Advertising records and samples.
- 27 e. Back-up documentation for advertising invoices.

28 25. Subsequent to the examination, advertising and invoices were provided to the
29 Department. Ms. Moss found that the invoices did not support the advertising presented
30 to the Department based on her experience as an examiner and her familiarity with the
cost of advertising.

1 26. Mr. Gutierrez testified that advertising in the Hispanic community is more
2 expensive than advertising for the general public.

3 27. Ms. Moss testified that, in the Response, Respondents blamed others and did
4 not state what action would be taken to avoid such a violation in the future. Ms. Moss
5 also testified that the Respondents did not state how Guti Group will keep a file on
6 advertisements as they are approved and published,

7 28. Mr. Gutierrez testified that about two weeks after the examination Guti Group
8 hired Bill Teeters ("Mr. Teeters"), a former Department auditor. Mr. Teeters, acting as a
9 consultant, is assisting Respondents with compliance and quality control. Mr. Teeters
10 was coming to the Indian School office once a month and is now scheduled to come in
11 to the office every two to three months.

12 Failure to Maintain Originals or Copies of Loan Transaction Documents

13 29. Respondents failed to maintain originals or copies of pertinent documents
14 relating to loan transactions that they were involved in, as follows:

- 15 a. On four mortgage loan files, five documents of final
16 disposition were missing.
- 17 b. In one file, there were two mortgage transactions and there
18 should have been two final disposition documents.

19 30. In the Response, Respondents asserted that Tom Mura ("Mr. Mura"), the
20 Responsible Individual for Guti Group, has conducted a two hour training class for Guti
21 Group's two loan processors to ensure all loan documentation is done properly and
22 maintained.

23 31. Respondents represented that Mr. Mura will also spend two hours each week
24 training and updating loan originators as well as processors.

25 32. Ms. Moss testified that the Response adequately addressed this violation.

26 Failure to Comply with Disclosure Requirements

27 33. Respondents failed to comply with disclosure requirements of Title 1 of the
28 Consumer Credit Protection Act¹ and, the Real Estate Settlement Procedures Act², a

29
30 ¹ 15 U.S.C. §§ 1601-1666j.

² 12 U.S.C. §§ 2601-2617.

1 and the regulations promulgated under those acts as required by A.R.S. § 6-906.D. and
2 A.A.C. R20-4-917.B.6.e., as follows:

- 3 a. For fifteen loans, Respondents failed to calculate the annual
4 percentage rate correctly by failing to include the cost of the loan.
- 5 b. Respondents failed to disclose one loan as a variable rate
6 loan.
- 7 c. Yield spread premiums³ were not disclosed within good faith
8 estimates to 7 borrowers.
- 9 d. Servicing transfer disclosures were defective or not issued
10 to four borrowers.
- 11 e. Regarding 16 borrowers, initial truth-in-lending disclosures
12 were not issued, were incomplete or defective.
- 13 f. Good faith estimates were defective when issued to two
14 borrowers.

15 34. Respondents believe that they have addressed this issue by providing training,
16 as mentioned above. In addition, Guti Group has hired an internal auditor who reviews
17 mortgage loan files to ensure proper documentation and compliance. When mistakes
18 are noted, the employee responsible is informed. It is grounds for termination if that
19 employee is non-compliant in the future.

20 35. Ms. Moss testified that the Respondents adequately addressed this violation in
21 the Response.

22 Blank Spaces on Loan Documents

23 36. Borrowers signed regulated documents containing blank spaces, as follows:

- 24 a. Three truth-in-lending disclosures were incomplete.
- 25 b. One initial good faith estimate was incomplete.
- 26 c. Three anti-coercion statements were incomplete.
- 27 d. Three servicing transfer statements were incomplete.

28
29 ³ According to Ms. Moss, the yield spread premium is essentially the difference between a wholesale rate
30 and a retail rate.

1 37. Guti Group has implemented a policy where employees will not permit borrowers
2 to sign regulated documents until the documents are fully completed and employees
3 have been trained regarding this policy.

4 38. Ms. Moss testified that Respondents adequately addressed this violation in the
5 Response.

6 Compensation to Unlicensed Contractors

7 39. Respondents paid compensation to unlicensed contractors, as follows:

- 8 a. Intel Marketing Group received \$2,000.00 for 200 mortgage leads.
- 9 b. Escrow funds of \$9,395.81 and \$4,704.25 were paid directly to loan
10 officer Greg Young without any payroll tax deductions.
- 11 c. Thirty-two employees were paid a total of \$293,448.42 on a 1099
12 basis instead of W-2s.

13 40. Ms. Moss testified that bonuses were paid to Guti Group's employees prior to
14 Guti Group becoming licensed by the Department.

15 41. Mr. Gutierrez had been told by Mr. Mura that employees had to be paid on a W-2
16 basis and not a 1099 basis. Mr. Gutierrez was in the process of rectifying that situation
17 before the Department's examination took place. He paid employees on a 1099 basis
18 on advice of the accountant.

19 42. Ms. Moss testified that, in the Response, Respondents blamed everyone else
20 and did not accept responsibility for this violation.

21 43. Respondents have hired Paychex to handle payroll and employees are no longer
22 paid on a 1099 basis. Ms. Moss testified that rather than relying on a vendor, which
23 could change, she as the examiner, would like to see a statement from Respondents
24 that Guti Group employees will not be paid on a 1099 basis now or in the future.

25 Failure to Maintain Bank Account Activity Source Documents

26 44. Respondents failed to maintain all bank activity source documents by failing to
27 have receipted deposit tickets.

28 45. Guti Group represented that it has always maintained such records and asserted
29 in the Response that it provided such records to the Department's examiners upon
30 receipt of same from its accountant when he returned from vacation.

1 46. Ms. Moss testified that, in the Response, Respondents blamed others and did
2 not state what action would be taken to avoid such a violation in the future.

3 Failure to Maintain Good Standing

4 47. Guti Group failed to remain in good standing with the Arizona Corporation
5 Commission by having an undeliverable address on record with the Commission.

6 48. Guti Group addressed this deficiency upon notification by Ms. Moss of the
7 situation.

8 49. The evidence of record established that Guti Group was of good standing with
9 the Arizona Corporation Commission as of January 10, 2007.

10 Failure to Update and Reconcile Records

11 50. Guti Group failed to adequately update and reconcile its monthly records and
12 failed to provide documentation to the Department to show its financial status in relation
13 to its financial accounts.

14 51. Guti Group asserted that upon obtaining documents from its accountant, it
15 provided documents to the Department showing reconciliation of its accounts.

16 52. Ms. Moss testified that the Respondents did not state how they will do their
17 reconciliation and financials in a timely manner.

18 Failure to Obtain Approval for Computer Format

19 53. Respondent failed to obtain approval from the Superintendent of the Department
20 to maintain Guti Group's account reconciliation in a computer format that did not
21 generate all required information for the Department to review, as follows:

- 22 a. Complete past monthly account reconciliations were
23 not provided to the Department.
- 24 b. Reconciliations were missing check registers.
- 25 c. The reconciliations were missing an outstanding
26 check listing to support and verify the reconciliation
27 adjustments.

28 54. Mr. Gutierrez testified that Guti Group has submitted notification to the
29 Department about the use of Guti Group's computer format and has not heard further
30 from the Department with regard to that submission.

1 55. Ms. Moss testified that the Department does not send written approval for a
2 licensee to use a computer format but, if the Department had a problem with the
3 computer format, it would notify the licensee, accordingly. Ms. Moss also testified that
4 Respondents have adequately addressed this violation.

5 Illegal or Improper Business Practices

6 56. Respondents engaged in illegal or improper business practices in the course of
7 conducting mortgage broker business by making misleading federal disclosures to
8 borrowers of the terms and condition of the mortgage loans by disclosing on truth-in-
9 lending disclosures annual percentage rates that did not include the cost of the loan.
10 This resulted in the annual percentage rates being higher in the final truth-in-lending at
11 closing of the transactions and failing to disclose in the truth-in-lending disclosure when
12 there was a variable rate.

13 57. Respondents assert that they never intentionally misled borrowers and believe
14 that the training that has been implemented sufficiently addresses this issue.

15 58. Ms. Moss testified that, in the Response, Respondents blamed certain
16 employees for this violation but did not specifically indicate in the Response what action
17 would be taken to avoid a future violation.

18 Suspicious Loans

19 59. Respondents submitted loan applications that were suspicious or had
20 discrepancies, as follows:

21 a. Rosie Barraza.

22 1. The November 2, 2006 loan application listed the borrower's
23 occupation as tape finisher with a gross monthly wages of
24 \$3,500.00.

25 2. Another loan application dated December 20, 2006 listed the
26 borrower's gross monthly wage as \$3,900.00 at the same
27 occupation.

28 3. The borrower's credit report contained three alerts from 3
29 credit reporting agencies recommending that the borrower be
30 identified before credit is extended.

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4. The credit report showed that the social security number used by the borrower was issued to Arizona residents between 1986 and 1988. Yet, a copy of the borrower's permanent resident card shows he has been resident since June 9, 2005.

b. Enrique Gomez Cervantes.

1. GUTI Group had an unsigned and undated loan application for Mr. Cervantes listing his occupation as a compressor assembler with gross monthly wages of \$3,600.00. On the application the "face to face" interview box was checked indicating that there had been a face to face interview.

2. GUTI Group had a second unsigned and undated loan application showing the borrower's monthly wages as \$4,800.00.

3. A third loan application signed and dated June 19, 2006 showing the borrower's monthly wages as \$4,300.00.

c. Paulino Garcia Datingaling.

1. GUTI Group had two loan applications handled by loan officer Greg Young for the purchase of two separate properties on June 5, 2006 indicating that both of those properties were the primary residences of the borrower.

2. One application showed the borrower's monthly gross wages as \$9,300.00 and listed the borrower living in a rental property with a monthly rent of \$2,000.00.

3. The second loan application showed the borrower's gross monthly wages as \$7,900.00 and listed the borrower living in a rental property with a monthly rental of \$1,000.00.

d. Andrea Datingaling-Panaligan.

1. The borrower completed two mortgage loan applications to obtain two loans for the purchase of a primary residence. The loan applications differ in the number of properties the borrower owned as rental properties.

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2. On three loan applications the borrower's monthly earnings are listed as \$13,600.00 and one application listed her monthly earnings as \$15,300.00.

3. The borrower's net worth is listed differently on the loan applications.

4. The borrower's credit report contained a fraud/victim alert issued by the borrower on August 25, 2000 and has three address discrepancies and twelve Aka's reported.

e. Josephina Datingaling.

1. The borrower completed two mortgage loan applications for the purchase of a residence. The loan applications differ as to the number of rental properties owned by the borrower.

2. The borrower's earnings are listed as \$10,200.00 per month on one application, \$9,300.00 on three applications, and \$8,500.00 per month on the other application.

3. The applications show a different net worth of the borrower.

f. Ruben Arredondo.

1. The borrower completed a mortgage loan application on March 21, 2006 for refinancing of his residence which showed a salary of \$2,500.00 per month and employment by Alliance Painting as a painter for eight years.

2. On the application, the "face to face" interview box was checked and indicated the interviewer was Martha Arredondo who was employed by T. Mura Mortgage.

3. Guti Group's file contained another refinance mortgage loan application completed by the borrower on the same date which had the "face to face" interview box checked indicating the interviewer as Martha Arredondo employed by Guti Group.

4. On the second application, the borrower's salary is listed as \$4,400.00 per month with the same employer, Alliance Painting, indicating he had been employed there twelve years.

1 5. The borrower's net worth is listed in a different amount on
2 each application.

3 g. Victor Gutierrez.

4 1. Guti Group's file had three mortgage loan applications dated
5 March 29, 2006, March 31, 2006 and April 5, 2006. The employer
6 and employment history is the same on all three applications.

7 However, the borrower's gross monthly salary changed from
8 \$4,500.00 to \$3,800.00 between March 29, 2006 and April 5, 2006.

9 2. The borrower's present and previous addresses are listed
10 differently on the applications and were reversed.

11 3. There are differences in the applications as to the borrower's
12 net worth statement of assets and liabilities.

13 4. The borrower's credit report indicates there are variations
14 between inquiry and on-file addresses for the borrower.

15 60. Mr. Gutierrez testified that he contacted the borrowers of 22 loans that the
16 Department reviewed during the examination and learned that, with the exception of
17 three loans, two of which did not fund, all loans were in good standing and the
18 borrowers were paying the loans.

19 61. Ms. Moss testified that subsequent activity with respect to the loans at issue
20 does not address the concerns the Department has that, at the time of processing the
21 loan applications, the information presented was not explained, which is what lenders
22 need in order to make a decision with respect to approval of the loans. The
23 Department expressed concern that only the borrowers and not the lenders were
24 contacted regarding the status of the loans.

25 Unlicensed Activity

26 62. Respondents engaged in unlicensed mortgage broker activity by originating
27 seven mortgage loans prior to Guti Group obtaining a mortgage broker license. This
28 was evidenced by the loan documents containing the name Guti Group as the
29 mortgage broker.

30 63. From March 2006 through April 2006, Mr. Gutierrez operated a branch office of
 T. Mura Mortgage at the above-mentioned business address. Mr. Gutierrez leased the

1 space and operated as the branch office while he was in process of getting a mortgage
2 broker license for Guti Group.

3 64. Mr. Gutierrez testified that he entered into a verbal lease arrangement with Mr.
4 Mura before the Guti Group became licensed and before he began operating as a
5 branch office of T. Mura Mortgage.

6 65. Guti Group obtained its mortgage broker license on April 19, 2006. Prior to Guti
7 Group obtaining its license, all loan applications processed were done while loan
8 originators and employees were employed with T. Mura Mortgage.

9 66. Mr. Gutierrez testified that during the transition from being a branch office of T.
10 Mura Mortgage and beginning to operate as Guti Group, half of the computers that
11 were used had software indicating T. Mura Mortgage as the mortgage broker and the
12 other half contained software indicating the mortgage broker as Guti Group.

13 67. For the loans that the Department asserts constituted unlicensed activity, some
14 employees working on the loans while employed with T. Mura Mortgage used the
15 computer with the software containing Guti Group as the mortgage broker, which was a
16 mistake and incorrect.

17 68. Respondents presented documentation showing that those loans that contained
18 the mistake were transferred from T. Mura to Guti Group or closed under T. Mura. With
19 the exception of one loan that did not close, the loans were either transferred from T.
20 Mura Mortgage to Guti Group or remained with T. Mura Mortgage, depending on what
21 was best for the client.

22 69. Ms. Moss testified that Respondents did not address in the Response how they
23 would correct this violation.

24 Responsible Individual Was Not in Active Management

25 70. Mr. Mura failed to be in active management of Guti Group's activities by failing to
26 ensure that Guti Group complied with State laws regulating mortgage brokers. As
27 reflected above, there was no credible showing that Mr. Mura directed or supervised
28 Respondents.

29 71. Mr. Mura either transferred or assigned his mortgage broker license #0905848
30 by applying for and obtaining a branch license at Guti Group's business address of
1616 East Indian School Road Phoenix, Arizona and knew or should have known that

1 Guti Group was originating and processing mortgage loans at that address prior to
2 obtaining its own mortgage broker license

3 72. Respondent maintained that Mr. Mura was in active management, had keys to
4 the office, and could come and go as he pleased.

5 73. Mr. Mura trained Guti Group's loan processors and loan originators. Mr.
6 Gutierrez testified that Mr. Mura visits the Indian School office at a minimum three to
7 four times a month.

8 74. Guti Group hired a trainer, Ms. Martinez, to train Guti Group's employees. Ms.
9 Martinez trained the employees both prior to and after the examination.

10 75. Ms. Moss testified that Guti Group has not adequately addressed this deficiency
11 because the Response does not indicate how Mr. Mura will advise Guti Group on how
12 to maintain compliance with the State's mortgage broker laws.

13 Failure to Maintain Complete List of Checks

14 76. Guti Group failed to maintain a complete listing of checks written by not including
15 in the check register all of the payee's names and the purpose of payments.

16 77. Guti Group asserted that it has always maintained such records and made them
17 available to the Department's examiners when its accountant returned from vacation.

18 78. Ms. Moss testified that, in the Response, Respondents blamed others and did
19 not state what action would be taken to avoid such a violation in the future.

20 Failure to Maintain Concurrent Employment Forms

21 79. Guti Group's personnel file for Mr. Mura did not contain written approval of Mr.
22 Mura's other licensed employers for Mr. Mura to be the Responsible Individual for Guti
23 Group when he was also employed and acting as the Responsible Individual for such
24 other licensees.

25 80. In the Response, Guti Group represented that it maintained a concurrent
26 employment agreement signed by all concurrent employers for Mr. Mura and that the
27 examiners were provided with the agreement.

28 81. Ms. Moss testified on cross-examination that the Department received a copy of
29 the agreement along with the license application for Guti Group in March 2006.

30 However, according to Ms. Moss, Guti Group did not maintain a copy of the agreement
in Mr. Mura's personnel file. Ms. Moss testified that subsequent to licensing there could

1 be developments or changes regarding Mr. Mura's employment activities that should be
2 reflected in Mr. Mura's personnel file.

3 82. Ms. Moss testified that, in the Response, Respondents adequately addressed
4 this situation.

5 Failure to have Document Agreements

6 83. In eight mortgage loan files, Respondents failed to have signed document
7 agreements, which are required for loans under \$200,000.00.

8 84. GUTI Group represented that it has implemented the use of a form document that
9 it believes satisfies the document agreement requirement and will use that document in
10 connection with all loan transactions, including those greater than \$200,000.00.

11 85. Ms. Moss testified that, in the Response, Respondents adequately addressed
12 this violation.

13 Incomplete Loan Application List

14 86. Respondents failed to maintain a complete loan application list by
15 not having a provision for entering the final disposition and date of final disposition.

16 87. GUTI Group represented that it has added final disposition dates to its loan
17 application list, which it believes addresses the deficiency noted in the examination.

18 88. Ms. Moss testified that, in the Response, Respondents adequately addressed
19 this violation.

20 Incomplete Record of Monies Received

21 89. Respondents failed to maintain a complete record of monies received in its
22 mortgage broker business activities and did not have complete information as to a
23 payor's name, date the monies were received, the amount of monies received, and the
24 purpose for collecting the monies including the identification of any related loan.

25 90. GUTI Group asserted that it has always maintained such records and that the
26 records were presented to the Department's examiners upon their accountant's return
27 from vacation.

28 91. Ms. Moss testified that in the Response Respondents blamed others and did not
29 state what action would be taken to avoid such a violation in the future.
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CONCLUSIONS OF LAW

1. The Superintendent has the authority to regulate all persons engaged in the mortgage broker business. See A.R.S. §§ 6-901 et. seq.

2. This matter is a disciplinary proceeding wherein the Department must prove by a preponderance of the evidence that Respondents violated the State's laws regulating mortgage brokers. See A.AC. R2-19-119.

3. A preponderance of the evidence is "evidence of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." Black's Law Dictionary, 1182 (6th ed. 1990).

4. The evidence of record establishes that the acts of Guti Group as set forth above occurred during the time when Mr. Gutierrez was the owner of Guti Group and knew or should have known of its activities and such acts are attributable to him.

5. The weight of the evidence of record established that Respondents failed to conduct the minimum elements of reasonable employee investigations before hiring employees, in violation of A.R.S. § 6-903(N) and A.A.C. R20-4-102.

6. The weight of the evidence established that though Guti Group did not present sufficient information to show solvency during the examination, Guti group subsequently provided documentation showing that as of September 2006 Guti Group was not insolvent as defined in A.R.S. § 47-1201(23). Consequently, the allegation that Guti Group was insolvent does not provide an independent ground to suspend or revoke Guti Group's mortgage broker license. The Administrative Law Judge concludes that Respondents did not violate A.R.S. § 6-905(A)(1).

7. The documents explaining or addressing the violations noted during the examination were for the most part, provided to the Department in the Response to the Examination Report in August 2007. Respondents were aware of the findings of the examination and of the document deficiencies. Respondents could have, prior to issuance of the Examination Report, provided such documents to the Department. The weight of the evidence established that Respondents failed to furnish requested

1 information to the Department within a reasonable time, as required by A.R.S. § 6-
2 905(A)(4).

3 8. The weight of the evidence of record established that Respondents failed to
4 keep and maintain at all times correct and complete records as required by A.R.S. § 6-
5 906(A) and A.A.C. R20-4-917(B).

6 9. The weight of the evidence of record established that Respondents failed to
7 maintain originals or copies of pertinent documents from all loan transactions for at
8 least 5 years from the date of the mortgage loan closing in violation of A.R.S. § 6-
9 906(A) and A.A.C. R20-4-917(B)(6).

10 10. The weight of the evidence of record established that Respondents
11 failed to comply with the disclosure requirements of Title I of the Consumer Protection
12 Act and Real Estate Settlement Procedures Act and regulations promulgated
13 thereunder as required by A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e).

14 11. Respondents allowed borrowers to sign loan transaction documents containing
15 blank spaces without obtaining proper written authorization from the borrowers to
16 complete the blank spaces in violation of A.R.S. § 6-909(A) and A.A.C. R20-4-921.

17 12. The weight of the evidence of record established that Respondents contracted
18 with or paid compensation to unlicensed independent contractors in violation of A.R.S.
19 § 6-909(B) and A.A.C. R20-4-102.

20 13. Respondents failed to maintain a complete record of monies received in
21 connection with its mortgage broker business in violation of A.A.C. R20-4-917(B)(2).

22 14. Respondents failed to maintain a complete listing of all checks written in
23 connection with a mortgage loan business in violation of A.A.C. R20-4-917(B)(3).

24 15. Respondents failed to maintain all bank account activity source documents
25 relating to the mortgage broker business in violation of A.A.C. R20-4-917(B)(4).

26 16. Respondents failed to maintain samples of every piece of advertising relating to
27 the mortgage broker business in violation of A.A.C. R20-4-917(B)(7).

28 17. While Guti Group failed to maintain good standing with the Arizona Corporation
29 Commission, there was no credible evidence that Guti Group did not maintain an
30 organizational file, as required. Thus the weight of the evidence of record does not
establish a violation of A.A.C. R20-4-917(B)(9).

1 18. Guti Group failed to adequately reconcile its checking accounts and failed to
2 provide to the Department documentation to support its financial status relating to the
3 accounts in violation of A.A.C. R20-4-917(C).

4 19. Guti Group failed to obtain advance approval from the Superintendent of the
5 Department prior to maintaining its checking account reconciliation in a computer
6 format that did not generate all required information, in violation of A.A.C. R20-4-
7 917(A).

8 20. Respondents engaged in illegal or improper business practices by making
9 misrepresentations or concealing material facts in the course of the mortgage broker
10 business in violation of A.R.S. §§ 6-909(L) and 6-909(N).

11 21. Respondents engaged in unlicensed mortgage broker activity in violation of
12 A.R.S. § 6-903(A).

13 22. Respondents failed to ensure that Guti Group's Responsible Individual
14 maintained a position of active management violation of A.R.S. § 6-903(E). Mr. Mura
15 transferred or assigned mortgage broker license # 0905848 by allowing Respondents to
16 originate mortgage loans as a branch at the business address of Guti Group prior to
17 Guti Group obtaining a mortgage broker license in violation of A.R.S. § 6-903(O) and
18 A.A.C. R20-4-102.

19 23. Respondents failed to use a statutorily correct document agreement in at least
20 eight mortgage loan files, in violation of A.R.S. § 6-906(C).

21 24. The evidence of record did not establish that Respondents failed to obtain the
22 prior written approval of all concurrently licensed employers prior to hiring Mr. Mura as
23 Guti Group's Responsible Individual. Thus, no violation of A.R.S. § 6-909(H) is found.

24 25. Respondents failed to maintain a complete loan application list in violation of
25 A.A.C. R20-4-917(B)(1).

26 26. Although Guti Group has attempted to address the violations noted during the
27 examination, the evidence of record established that Guti Group was operating without
28 active management and was not fully complying with the law. Some of the attempts, as
29 noted by Ms. Moss, do not sufficiently address the violations that were of concern to the
30 Department. Of particular note is that Guti Group is still relying on Mr. Mura and Ms.

1 Martinez to train and supervise Guti Group when they were doing such activities during
2 the time period when the violations occurred.

3 27. The violations of the laws as set forth above, constitute grounds for the
4 Department to suspend or revoke the mortgage broker License of Guti Group license
5 number MB 0908201 pursuant to A.R.S. §6-905(A).

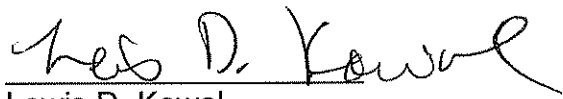
6 28. Based on the above-found violations of law, grounds exist for a civil penalty of
7 not more than \$5,000.00 for each violation for each day to be imposed pursuant to
8 A.R.S. § 6-132.

9 29. The Department requested that a civil penalty of \$30,000.00 be imposed jointly
10 against Guti Group and Mr. Gutierrez. The Administrative Law Judge concludes that
11 given the number and nature of the violations found to exist and that with respect to
12 some violations, Respondents have not made adequate corrections or sufficiently
13 addressed some of the violations found during the examination, and revocation is the
14 most appropriate discipline to be imposed.

15 **ORDER**

16 Based on the above, Mortgage Broker License Number MB 0908201 shall be
17 revoked on the effective date of the Order entered in this matter.

18 Done this day, December 31, 2007.

19 
20 Lewis D. Kowal
21 Administrative Law Judge

22
23 Original transmitted by mail this
24 31 day of Dec, 2007, to:

25
26 Arizona Department of Financial Institutions
27 Felecia Rotellini, Superintendent
28 ATTN: Susan L. Ross
29 2910 North 44th Street, Suite 310
30 Phoenix, AZ 85018

By 