

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

No. 07F-BD111-BNK

3 **PROFESSIONAL MORTGAGE PLANNERS,**
4 **INC. AND DALE M. PROST, PRESIDENT**

CONSENT ORDER

5 14301 N. 87th Street, Suite 311
6 Scottsdale, AZ 85260

Petitioners.

7
8 On April 18, 2007, the Arizona Department of Financial Institutions ("Department") issued a
9 Notice of Hearing alleging that Petitioners had violated Arizona law. Wishing to resolve this matter
10 in lieu of an administrative hearing, and without admitting liability, Petitioners do not contest the
11 following Findings of Fact and Conclusions of Law, and consent to the entry of the following Order.

12 **FINDINGS OF FACT**

13 1. Petitioner Professional Mortgage Planners, Inc. ("PMPI") is an Arizona corporation
14 authorized to transact business in Arizona as a mortgage broker, license number MB 0018893,
15 within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of PMPI's business is that of making,
16 negotiating, or offering to make or negotiate loans secured by Arizona real property, within the
17 meaning of A.R.S. § 6-901(6).

18 2. Petitioner Dale M. Prost ("Mr. Prost") is President of PMPI. Mr. Prost is authorized to
19 transact business in Arizona as a mortgage broker within the meaning of A.R.S. § 6-903(E).

20 3. A November 28, 2006 examination of PMPI conducted by the Department revealed that
21 PMPI and Mr. Prost:

22 a. Failed to obtain a branch office license from the Superintendent prior to originating
23 two (2) loans, specifically:

24 i. The branch office located at 7898 E. Acoma, Suite 102, Phoenix, AZ 85015;

25 b. Petitioners conducted unlicensed activity by originating or processing mortgage loans
26 before obtaining a mortgage broker branch office license from the Department, specifically:

- 1 i. Petitioners originated at least two (2) loans from the aforementioned office
2 approximately three (3) to four (4) days prior to the branch license being issued;
- 3 c. Transferred or assigned branch office licenses without prior written consent of the
4 Superintendent, specifically:
- 5 i. Petitioners failed to assume liability for branch office leases as required by the
6 Department; and
- 7 ii. Petitioners required branch managers to sign an “Interim Branch Office
8 Agreement and Responsible Individual Agreement” requiring the branch
9 managers to be responsible for all branch start-up costs and which stated, in part:
10 “...As a branch of Professional Mortgage Planners, Inc., it is mutually agreed
11 and accepted to compensate Dale Prost \$2,250.00 the first month, \$2,000.00 the
12 second month, \$1,750.00 the third month, \$1,500.00 the fourth thru ninth month
13 if necessary. After the 9th month if State Bank has not issued a license the fee per
14 month would revert to \$2,250.00 per month until the license is issued. This
15 agreement would be reviewed and possibly adjusted or terminated if the
16 Mortgage License is not issued within a one year period. In addition to the
17 monthly fee, a closing fee of \$150.00 per file would be received. Under this
18 agreement there will be no ceilings as to the compensation and fees paid”; and
- 19 iii. The Petitioners’ branch office license determined by the Department as assigned
20 or transferred was opened prior to the Department issuing its specific
21 clarifications in February 2006 regarding what constitutes a transfer or
22 assignment of a license. Petitioners closed the branch prior to the audit
23 conducted by the Department;
- 24 d. Failed to conduct the minimum elements of reasonable employee investigations
25 before hiring;
- 26

- 1 e. Failed to maintain a copy of the employee file for Michael Mooney;
- 2 f. Failed to update and reconcile records for the prior calendar quarter, specifically;
- 3 i. Checking account #xxxxxxxxxxx1098 bank statements had not been reconciled.
- 4 Petitioners have since explained that the account had been inactive for a period of
- 5 months;
- 6 g. Allowed one (1) borrower to sign a preliminary truth in lending statement containing
- 7 blank spaces; and
- 8 h. Failed to provide the Examiner with a complete record of monies received at the time
- 9 of the examination. Petitioners have since submitted to the Department an acceptable cash receipts
- 10 journal.

11 4. Based upon the above Facts, the Department issued and served upon PMPI and Mr. Prost an

12 Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to Entry of Order (“Cease

13 and Desist Order”) on April 18, 2007.

14 5. On May 9, 2007, Petitioners filed a Request for Hearing to appeal the Cease and Desist

15 Order.

16 LAW

17 1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to

18 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,

19 rules and regulations relating to mortgage brokers.

20 2. By the conduct set forth in the Findings of Fact, PMPI and Mr. Prost have violated

21 the mortgage broker statutes and rules as follows:

- 22 a. A.R.S. § 6-904(F) by originating or processing mortgage loans at unlicensed branch
- 23 office locations;
- 24 b. A.R.S. § 6-903(A) by failing to obtain a license before acting as a mortgage broker;
- 25 c. A.R.S. § 6-903(O) by transferring or assigning their mortgage broker license;
- 26

- 1 d. A.R.S. § 6-903(N) and A.A.C. R20-4-102 by failing to conduct the minimum
2 elements of reasonable employee investigations before hiring employees;
3 e. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B) by failing to maintain correct and
4 complete records;
5 f. A.A.C. R20-4-917(C) by failing to update and reconcile records for the prior calendar
6 quarter;
7 g. A.R.S. § 6-909(A) and A.A.C. R20-4-921 by allowing borrowers to sign regulated
8 documents containing blank spaces; and
9 h. A.A.C. R20-4-917(B)(2) by failing to maintain a complete record of monies received.

10 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order
11 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to
12 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
13 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
14 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
15 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-905; and (4) an order or any
16 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
17 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

18 8. Pursuant to A.R.S. § 6-132, Respondents' violations of the aforementioned statutes
19 are grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation
20 for each day.

21 **ORDER**

22 1. Petitioners shall immediately stop the violations set forth in the Findings of Fact and
23 Conclusions of Law.

24 2. Petitioners shall pay to the Department a civil money penalty in the amount of **three**
25 **thousand dollars (\$3,000.00), due and payable on Friday, July 13, 2007.** PMPI and Mr. Prost are
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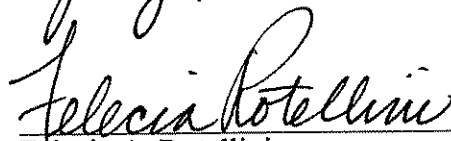
1 jointly and severally liable for payment of the civil money penalty.

2 3. The provisions of this Order shall be binding upon Petitioners, and resolves the Notice of
3 Hearing, subject to Petitioners' payment of the civil money penalty and subject to compliance with
4 the requirements of this Order. Should Petitioners fail to comply with this Order, the Superintendent
5 shall initiate further disciplinary proceedings against Petitioners' license.

6 4. The provisions of this Order shall be binding upon PMPI and Mr. Prost, their employees,
7 agents, and other persons participating in the conduct of the affairs of PMPI.

8 5. This Order shall become effective upon service, and shall remain effective and
9 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,
10 or set aside.

11 SO ORDERED this 3rd day of July, 2007.

12
13 
14 Felecia A. Rotellini
Superintendent of Financial Institutions

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16 **CONSENT TO ENTRY OF ORDER**

17 1. Petitioners acknowledge that they have been served with a copy of the foregoing
18 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
19 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

20 2. Petitioners admit the jurisdiction of the Superintendent and consent to the entry of the
21 foregoing Findings of Fact, Conclusions of Law, and Order.

22 3. Petitioners state that no promise of any kind or nature has been made to induce them
23 to consent to the entry of this Order, and that they have done so voluntarily.

24 4. Petitioners acknowledge that the acceptance of this Agreement by the Superintendent
25 is solely to settle this matter and does not preclude this Department, any other agency or officer of
26

1 this state or subdivision thereof from instituting other proceedings as may be appropriate now or in
2 the future.

3 5. Dale M. Prost, on behalf of Professional Mortgage Planners, Inc. and himself,
4 represents that he is the President, and that, as such, has been authorized by Professional Mortgage
5 Planners, Inc. to consent to the entry of this Order on its behalf.

6 6. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest
7 the validity of this Cease and Desist Order.

8

9 DATED this 28th day of June, 2007.

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By: Dale M Prost
Dale M. Prost, President
Professional Mortgage Planners, Inc.

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15 ORIGINAL of the foregoing filed this 3
16 day of July, 2007, in the office of:

16

17 Felecia A. Rotellini
18 Superintendent of Financial Institutions
19 Arizona Department of Financial Institutions
ATTN: June Beckwith
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

18

19

20 COPY mailed same date to:

21 Daniel Martin, Administrative Law Judge
22 Office of the Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

23

24 Erin O. Gallagher, Assistant Attorney General
25 Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

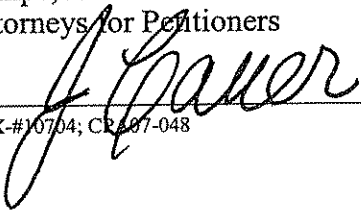
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1 Robert D. Charlton, Assistant Superintendent
2 Gabriela Macias, Senior Examiner
3 Arizona Department of Financial Institutions
4 2910 N. 44th Street, Suite 310
5 Phoenix, AZ 85018

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

8 Dale M. Prost, President
9 Professional Mortgage Planners, Inc.
10 14301 N. 87th Street, Suite 311
11 Scottsdale, AZ 85260

12 Kenneth J. Willmott, Esq.
13 WILLMOTT & ASSOCIATES
14 7551 S. Willow Drive, Suite 101
15 Tempe, Arizona 85283
16 Attorneys for Petitioners

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18 _____
19 PHX-#10704; CR 07-048
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