

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Removal and Prohibition of:

No. 12F-BD003-BNK

3 **TIMOTHY E. MUDD**
4 10645 N. Tatum Blvd. #200-541
5 Phoenix, AZ 85028

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER**

6 Respondent.

7 On August 18, 2011, the Arizona Department of Financial Institutions (“Department”) issued
8 a Notice of Hearing and Intent to Remove and Prohibit From Further Participation in Any Manner in
9 the Conduct of the Affairs of a Financial Institution or Enterprise and Complaint (“Notice of
10 Hearing” and/or “Complaint”) in the above-captioned matter. A copy of the Notice is attached
11 hereto and incorporated by this reference. The Notice of Hearing required Respondent to provide a
12 written answer to the allegations set forth in the Notice within twenty (20) days of the issuance of the
13 Notice of Hearing. The twenty-day deadline for the filing of Respondent’s answer to the Complaint
14 elapsed on September 7, 2011. As of this date, Respondent has failed to file an answer.

15 On September 22, 2011, counsel for the Department filed a Request for Default. Pursuant to
16 A.A.C. R20-4-1209(D), a party that fails to file an answer within the time provided shall be deemed
17 to be in default, and the Superintendent may regard any assertions in the notice of hearing as
18 admitted by the defaulting party.

19 FINDINGS OF FACT

- 20 1. Notice of Hearing and Complaint were properly served upon Respondent.
21 2. Respondent failed to file a written answer to the Complaint and is, therefore, in default.
22 3. The allegations in the Notice of Hearing and Complaint are deemed admitted.

23 CONCLUSIONS OF LAW

24 1. Pursuant to Title 6, Chapter 7 of the Arizona Revised Statutes, the Superintendent has the
25 authority and duty to regulate all persons engaged in the mortgage broker and mortgage banker
26

1 business and with the enforcement of statutes, rules, and regulations relating to mortgage brokers
2 and mortgage bankers.

3 2. Respondent Timothy E. Mudd's conduct, as set forth attached Notice of Hearing,
4 constitutes acts, omissions, and practices that demonstrate personal dishonesty and unfitness to
5 continue in office or to participate in the conduct of the affairs of any financial institution or
6 enterprise and is grounds for the removal and the prohibition of Mr. Mudd from participating in any
7 manner in the conduct of the affairs of any financial institution or enterprise within the meaning of
8 A.R.S. § 6-161(A)(1) and A.R.S. § 6-161(A)(4).

9 3. Mr. Mudd's April 27, 2011, conviction for one count of mail fraud, a felony offense,
10 constitutes grounds for the removal and the prohibition of Mr. Mudd from participating in any
11 manner in the conduct of the affairs of any financial institution or enterprise, pursuant to A.R.S.
12 § 6-161(A)(4).

13 4. The violations, set forth in the attached Notice of Hearing, constitute grounds for the
14 Superintendent to order the removal and the prohibition of Mr. Mudd from further participation in
15 any manner as a director, officer, employee, agent or other person in the conduct of the affairs of any
16 financial institution or enterprise, pursuant to A.R.S. § 6-161(E).

17 ORDER

18 1. Respondent is hereby removed or prohibited from further participation in any manner
19 in the conduct of the affairs of a financial institution or enterprise pursuant to A.R.S. §§ 6-161(A),
20 (B), and (C), effective upon the issuance of this Order.


21 2. Respondent is hereby removed and prohibited from further participation in any
22 manner as a director, officer, employee, agent or other person in the conduct of the affairs of any
23 financial institution or enterprise, pursuant to A.R.S. § 6-161 (E), effective upon the issuance of this
24 Order.

25 ...

26 ...

1 3. The hearing set for November 29, 2011, at 8:00 a.m. before Administrative Law
2 Judge, Lewis Kowal shall be vacated.

3 DATED this 6th day of October, 2011.

4
5 
6 Lauren W. Kingry
7 Superintendent of Financial Institutions
8 Arizona Department of Financial Institutions

9 COPY of the foregoing mailed
10 this 6th day of Oct, 2011, to:

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

15 Natalia A. Garrett
16 Assistant Attorney General
17 Office of the Attorney General
18 1275 W. Washington Street
19 Phoenix, AZ 85007

20 Robert D. Charlton, Assistant Superintendent
21 Attn: Sabrina Hampton
22 Arizona Department of Financial Institutions
23 2910 N. 44th Street, Suite 310
24 Phoenix, AZ 85018

25 COPY of the foregoing mailed
26 this 6th day of Oct, 2011, to:


1 Timothy E. Mudd
2 10645 N. Tatum Blvd. #200-541
3 Phoenix, AZ 85028
4 Respondent

5 Timothy E. Mudd
6 3 To 5, LLC
7 1649 E. Bethany Home Rd.
8 Phoenix, AZ 85016
9 Respondent

10 ...

11 ...

1 Edward F. Novak, Esq.
2 Polsinelli Shughart P.C.
3 One E. Washington St, Suite 1200
4 Phoenix, AZ 85004-2568
5 Attorney for Respondent

6 
7 # 2304206

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Removal and Prohibition of:

No. 12F-BD003-BNK

3 **TIMOTHY E. MUDD**
4 10645 N. Tatum Blvd. #200-541
5 Phoenix, AZ 85028

6 Respondent.

**NOTICE OF HEARING AND INTENT
TO REMOVE AND PROHIBIT FROM
FURTHER PARTICIPATION IN ANY
MANNER IN THE CONDUCT OF THE
AFFAIRS OF A FINANCIAL
INSTITUTION OR ENTERPRISE AND
COMPLAINT**

7
8 PLEASE TAKE NOTICE that, under Arizona Revised Statutes ("A.R.S.") §§ 6-138, 6-161,
9 and 41-1092.02, the above-captioned matter will be heard through the Office of Administrative
10 Hearings, an independent agency, and is scheduled for November 29, 2011, from 8:00 a.m. to
11 12:00 noon at the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
12 Arizona, (602) 542-9826 (the "Hearing").

13 The purpose of the Hearing is to determine whether grounds exist to remove or prohibit
14 Respondent from further participation in any manner in the conduct of the affairs of a financial
15 institution or enterprise pursuant to A.R.S. §§ 6-161(A), (B), and (C), and to prohibit Respondent,
16 after a removal order has become final, from further participation in any manner as a director,
17 officer, employee, agent or other person in the conduct of the affairs of any financial institution or
18 enterprise pursuant to A.R.S. § 6-161(E).

19 Pursuant to A.R.S. § 6-138, the Superintendent of Financial Institutions for the State of
20 Arizona (the "Superintendent") delegates the authority vested in the Superintendent, whether implied
21 or expressed, to the Director of the Office of Administrative Hearings or the Director's designee to
22 preside over the Hearing as the Administrative Law Judge, to make written recommendations to the
23 Superintendent consisting of proposed Findings of Fact, Conclusions of Law, and Order. The Office
24 of Administrative Hearings has designated Lewis Kowal, at the address and phone number listed
25 above, as the Administrative Law Judge for these proceedings. Pursuant to Arizona Administrative
26

1 Code ("A.A.C.") Rule 2-19-104 and A.R.S. §§ 41-1092.01(H)(1) and 41-1092.08, the
2 Superintendent retains authority to enter orders granting a stay, orders on motions for rehearing, final
3 decisions or other order or process which the Administrative Law Judge is specifically prohibited
4 from entering.

5 Motions to continue this matter shall be made in writing to the Administrative Law Judge not
6 less than fifteen (15) days prior to the date set for the Hearing. A copy of any motion to continue
7 shall be mailed or hand-delivered to the opposing party on the same date of filing with the Office of
8 Administrative Hearings.

9 A.R.S. § 41-1092.07 entitles any person affected by this Hearing to appear in person and by
10 counsel, or to proceed without counsel when submitting evidence, to have a reasonable opportunity
11 to inspect all documentary evidence, to cross-examine witnesses, to present evidence and witnesses
12 in support of his/her interests, and to have subpoenas issued by the Administrative Law Judge to
13 compel attendance of witnesses and production of evidence. Pursuant to A.R.S. § 41-1092.07(B),
14 any person may appear on his or her own behalf or by counsel.

15 Pursuant to A.R.S. § 41-1092.07(E), a clear and accurate record of the proceedings will be
16 made by a court reporter or by electronic means. Any party that requests a transcript of the
17 proceedings shall pay the cost of the transcript for the court reporter or other transcriber.

18 Questions concerning issues raised in this Notice of Hearing should be directed to Assistant
19 Attorney General Natalia A. Garrett, (602) 542-7726, 1275 West Washington, Phoenix, Arizona
20 85007, natalia.garretti@azag.gov.

21 NOTICE OF APPLICABLE RULES

22 On February 7, 1978, the Arizona Department of Financial Institutions (the "Department")
23 adopted A.A.C. R20-4-1201 through R20-4-1220, which were amended September 12, 2001, setting
24 forth the rules of practice and procedure applicable in contested cases and appealable agency actions
25 before the Superintendent. The hearing will be conducted pursuant to these rules and the rules
26

1 governing procedures before the Office of Administrative Hearings, A.A.C. R2-19-101 through R2-
2 19-122. A copy of the procedures to be followed is enclosed.

3 Pursuant to A.A.C. R20-4-1209, Respondent shall file a written answer within twenty (20)
4 days after issuance of this Notice of Hearing. The answer shall briefly state the Respondent's
5 position or defense and shall specifically admit or deny each of the assertions contained in this
6 Notice of Hearing. If the answering Respondent is without or is unable to reasonably obtain
7 knowledge or information sufficient to form a belief as to the truth of an assertion, Respondent shall
8 so state, which shall have the effect of a denial. Any assertion not denied is deemed admitted.
9 When Respondent intends to deny only a part or a qualification of an assertion, or to qualify an
10 assertion, Respondent shall expressly admit so much of it as is true and shall deny the remainder.
11 Any defense not raised in the answer is deemed waived.

12 **If a timely answer is not filed, pursuant to A.A.C. R20-4-1209(D), Respondent will be**
13 **deemed in default** and the Superintendent may deem the allegations in this Notice of Hearing as
14 true and admitted and the Superintendent may take whatever action is appropriate pursuant to A.R.S.
15 §§ 6-123, 6-131 and 6-161(B).

16 Respondent's answer shall be mailed or delivered to the Arizona Department of Financial
17 Institutions, 2910 North 44th Street, Suite 310, Phoenix, Arizona 85018, with a copy mailed or
18 delivered to the Office of Administrative Hearings, 1400 West Washington, Suite 101, Phoenix,
19 Arizona 85007 and to Assistant Attorney General Natalia A. Garrett, Consumer Protection &
20 Advocacy Section, Attorney General's Office, 1275 West Washington, Phoenix, Arizona 85007.

21 **Persons with disabilities may request reasonable accommodations such as interpreters,**
22 **alternative formats, or assistance with physical accessibility.** Requests for special
23 accommodations must be made as early as possible to allow time to arrange the accommodations. If
24 accommodations are required, call the Office of Administrative Hearings at (602) 542-9826.

25 . . .

26 . . .

1 COMPLAINT

2 1. Respondent Timothy E. Mudd ("Mr. Mudd") is a managing member of 3 To 5, LLC,
3 a limited liability company that is not and was not, at any time material herein, authorized to transact
4 business in Arizona as a mortgage broker within the meaning of A.R.S. § 6-901 *et seq.* or as a
5 mortgage banker within the meaning of A.R.S. § 6-941 *et seq.*

6 2. Mr. Mudd, individually and in his capacity as the member of 3 To 5, LLC, engaged in
7 business of making, negotiating, or offering to make or negotiate a mortgage loan secured by
8 Arizona real property within the meaning of A.R.S. § 6-901(11) and/or A.R.S. § 6-941(5).

9 3. On or about June 3, 2008, an Indictment was filed against Mr. Mudd in *United States*
10 *of America v. Mudd, et al.*, United States District Court, Northern District of Illinois, case number
11 1:08-CR-00452-2, charging Mr. Mudd with one count of committing an offense or aiding and
12 abetting in the offense of fraud by wire, in violation of 18 U.S.C. §§ 1343 and 2 (Count One); and
13 one count of committing an offense or aiding and abetting in the offense of frauds and swindles, in
14 violation of 18 U.S.C. §§ 1341 and 2 (Count Five).

15 4. On or about June 25, 2009, Mr. Mudd withdrew the plea of not guilty and entered a
16 plea of guilty as to County Five (conspiracy to commit frauds and swindles).

17 5. On April 27, 2011, in the matter of *United States of America v. Mudd, et al.*, case
18 number 1:08-CR-00452-2, the Court adjudicated Mr. Mudd guilty of one (1) count of mail fraud, a
19 felony offense, in violation of 18 U.S.C. §§ 1341 and 2.

20 6. For his sentence, Mr. Mudd was ordered to commit to the custody of the Bureau of
21 Prisons to be imprisoned for a total term of twenty-two (22) months. Mr. Mudd was ordered to
22 surrender for service of sentence before 2 p.m. on December 30, 2011.

23 7. Upon release from imprisonment, Mr. Mudd was ordered to stay on supervised
24 release for a term of two (2) years subject to standard and special conditions of supervision. The
25 Court also ordered Mr. Mudd to pay a special assessment of one hundred dollars (\$100.00) and
26 restitution in the amount of \$837,438.00.

1 ORIGINAL of the foregoing filed this 18th
2 day of August, 2011, in the office of:

3 Lauren W. Kingry
4 Superintendent of Financial Institutions
5 Arizona Department of Financial Institutions
6 ATTN: June Beckwith
7 2910 N. 44th Street, Suite 310
8 Phoenix, AZ 85018

9 COPY mailed/delivered same date to:

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


14 Robert D. Charlton, Assistant Superintendent
15 Attn: Sabrina Hampton
16 Arizona Department of Financial Institutions
17 2910 N. 44th Street, Suite 310
18 Phoenix, AZ 85018

19 Natalia A. Garrett
20 Assistant Attorney General
21 Office of the Attorney General
22 1275 W. Washington Street
23 Phoenix, AZ 85007

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

26 Timothy E. Mudd
10645 N. Tatum Blvd. #200-541
Phoenix, AZ 85028
Respondent

Timothy E. Mudd
3 To 5, LLC
1649 E. Bethany Home Rd.
Phoenix, AZ 85016
Respondent

23 By: 
24 #2251389