

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

No. 09F-BD074-BNK

3 **RICKY RAY SOWERS DBA AMERICAN**
4 **EQUITY FINANCIAL**
5 1441 E. Thomas Road
6 Phoenix, AZ 85014

**SUPERINTENDENT'S FINAL
DECISION AND ORDER OF
REVOCATION**

Respondent.

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

11 ORDER

12 IT IS ORDERED that Respondent's Mortgage Broker License Number MB 0907891 is
13 revoked effective as of the date of this Order.

14 NOTICE

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

19 DATED this 6th day of August, 2009.



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21 Felecia Rotellini
22 Superintendent of Financial Institutions

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27 ...

1 ORIGINAL filed this 6th day of August, 2009 in the office of:

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

5 COPY of the foregoing mailed/hand delivered
6 This same date to:

7 Kay Abramssohm, Administrative Law Judge
8 Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

9 Erin Gallagher, Assistant Attorney General
10 Office of the Attorney General
11 1275 West Washington
Phoenix, AZ 85007

12 Richard Fergus, Licensing Division Manager
13 Robert Charlton, Assistant Superintendent
Arizona Department of Financial Institutions
14 2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

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

16 Ricky Ray Sowers
17 DBA American Equity Financial
1441 E. Thomas Road
18 Phoenix, AZ 85014

19 Ricky Ray Sowers
20 DBA American Equity Financial
10685 N. 113th Street
Scottsdale, AZ 85259

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22 BY: June Beckwith
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1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 In The Matter Of the Mortgage Broker
License of:

No. 09F-BD074-BNK

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5 RICKY RAY SOWERS
6 dba AMERICAN EQUITY FINANCIAL
7 1441 E. Thomas Road
Phoenix, AZ 85014

**ADMINISTRATIVE
LAW JUDGE DECISION**

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9 **HEARING:** Convened on June 30, 2009; hearing record held open for court
reporter's transcript and concluded on July 15, 2009.

10 **APPEARANCES:** Petitioner Ricky Ray Sowers failed to appear. Assistant
11 Attorney General Erin O. Gallagher represented the Arizona Office of Financial
Institutions.

12 **ADMINISTRATIVE LAW JUDGE:** Kay A. Abramsohn
13

14
15 The question presented by this case is whether grounds exist to revoke the
16 Mortgage Broker License issued to Ricky Ray Sowers. Based on the evidence of
17 record, the Administrative Law Judge makes the following Findings of Fact,
Conclusions of Law and Order:

18 **FINDINGS OF FACT**

19 1. Pursuant to Arizona Revised Statutes ("A.R.S.") § 6-901 *et seq.*, the
20 Arizona Office of Financial Institutions (the "Department") is the duly constituted
21 authority for licensing and regulating mortgage practice in the State of Arizona.

22 2. Petitioner Ricky Ray Sowers ("Mr. Sowers") is the holder of Mortgage
23 Broker License No. MB0907891 issued by the Department. See Exhibit 1. A.R.S § 6-
24 903(G) provides that all Arizona licensed mortgage brokers are required to hold a
25 current surety bond in the amount required by A.R.S. § 6-903(H).

26 3. On December 19, 2008, the Department received notice that Nova
27 Casualty Company would cancel Mr. Sowers' surety bond effective thirty days from his
28 receipt of the cancellation notice for reason of nonpayment. See Exhibit 2.
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1 4. By notice dated December 22, 2008, the Department notified Mr. Sowers
2 that a lapse in the bond coverage was a violation for which administrative action would
3 proceed in the absence of certain evidence of bond renewal. See Exhibit 3.

4 5. On May 20, 2009, the Department issued to Mr. Sowers an Order of
5 Summary Suspension and Notice of Hearing to Revoke ("Order and Notice"), setting
6 forth the above facts and the background in support of its suspension of Mr. Sowers'
7 license. See Exhibit 5. The Order and Notice further informed Mr. Sowers that a
8 hearing was set in the matter in which the Department intended to request that his
9 license be revoked. The Oder and Notice was sent to two addresses, one of which was
10 the address of record, on file with the Department.

11 6. Pursuant to A.R.S. §§ 6-138 and 41-1092.01 et seq., the administrative
12 hearing in this matter was scheduled through the Arizona Office of Administrative
13 Hearings, a state agency independent of the Department.

14 7. At the time set for hearing, Mr. Sowers failed to appear. For fifteen
15 minutes after the time the hearing was scheduled to convene, Mr. Sowers did not arrive
16 for the hearing. With a failure to appear and present any evidence to the contrary or in
17 possible mitigation to the allegations, Mr. Sowers would be unable to demonstrate that
18 the Department's allegations of violations were inaccurate or erroneous.

19 8. The Department indicated that its Order and Notice sent to the address of
20 record had been returned to the Department. The Department indicated that it had not
21 received any notification from Mr. Sowers of any different address.

22 9. At hearing, the Department offered evidence in support of the above facts
23 and offered the legal justification for revoking the license.

24 10. At hearing, the Department requested that the court reporter's transcript
25 be designated as the official record of the hearing.

CONCLUSIONS OF LAW

26 1. The Superintendent of Financial Institutions has authority to suspend or
27 revoke the mortgage broker license at issue in this matter pursuant to A.R.S. § 6-905.

28 2. In this proceeding, the Department bears the burden to prove, by a
29 preponderance of the evidence, that grounds exist to revoke Mr. Sowers' license. See
30 A.A.C. R2-19-119. A preponderance of the evidence is "such proof as convinces the

1 trier of fact that the contention is more probably true than not." Morris K. Udall, ARIZONA
2 LAW OF EVIDENCE § 5 (1960).

3 3. A.R.S. § 6-903(G) and (H) provide that the licensee must obtain and
4 maintain a surety bond in a certain amount as a condition of licensure. A.R.S. § 6-
5 903(G) provides that the Department must have on deposit every licensee's surety
6 bond; this is a condition of licensure. A.R.S. § 6-905(A)(3) authorizes the
7 Superintendent of Financial Institutions to suspend or revoke a license for violation of
8 any applicable law or rule. Therefore, the Department is authorized to revoke a license
9 for a violation of the surety bond requirement(s).

10 4. Arizona Administrative Code ("A.A.C.") R20-4-916 requires a licensee to
11 notify the Department within five days of a change of address of its principal place of
12 business (or of any branch office).

13 5. The hearing record demonstrated that Mr. Sowers' surety bond was being
14 canceled and that the Department did not receive from Mr. Sowers any evidence of a
15 bond renewal (or a new bond). The evidence at hearing established that Mr. Sowers
16 violated the applicable statutes and administrative rule by failing to maintain a surety
17 bond and by failing to timely notify the Department of a change of address.

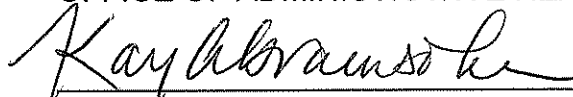
18 6. Based upon the determined violation to maintain a current surety bond,
19 Mr. Sowers' license should be revoked.

20 **RECOMMENDED DECISION**

21 Based upon the foregoing considerations, the undersigned Administrative Law
22 Judge hereby recommends that Mr. Sowers' license MB0907891 with the Department
23 be revoked.

24 Done this day, July 24, 2009

25 OFFICE OF ADMINISTRATIVE HEARINGS

26 

27 Kay A. Abramsohn
28 Administrative Law Judge
29
30

1 Original transmitted by mail this 30 day of July, 2008, to:

2 Arizona Department of Financial Institutions
3 Felecia A. Rotellini
4 ATTN: Susan Longo
5 2910 N. 44th Street, Suite 310
6 Phoenix, AZ 85018

7 By Chris Fiskled
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