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BEFORE THE ARKANSAS SECURITIES COMMISSIONER

ASD CASE NO. C-07-015

ORDER NO. C-07-015-08-C001

ARKANSAS SECURITIES DEPT.

IN THE MATTER OF

**BOARDWALK MORTGAGE GROUP, LLC,
(FORMERLY KNOWN AS BENTON MORTGAGE
GROUP, LLC), LICENSE NO. 28263;**

**SAMUEL AARON MITCHELL, LICENSE NO.
31382;**

**KEVIN RYAN ABERNATHY,
LICENSE NO. 29408**

RESPONDENTS

CONSENT ORDER

A hearing before the Arkansas Securities Commissioner ("Commissioner"), in the above captioned matter commenced on September 23, 2008, and was concluded on September 24, 2008. Mike Spades, Jr., and Alexandra Stephens, staff attorneys for the Arkansas Securities Department, appeared on behalf of the staff of the Arkansas Securities Department ("ASD Staff"). Respondent Samuel Mitchell appeared with his attorney, Kevin O'Dwyer. Mr. O'Dwyer also appeared on behalf of Respondent Boardwalk Mortgage Group, LLC. Respondent Kevin Abernathy appeared and testified pursuant to a witness subpoena requested by the ASD Staff. During the hearing, documentary evidence and testimony was taken from thirteen (13) witnesses. At the conclusion of the hearing, the Commissioner offered the parties an opportunity to submit post-hearing briefs. It was agreed that post-hearing briefs should be submitted simultaneously within two weeks from the date that the transcript of the hearing is received from the court reporter. The September 23, 2008, hearing transcript was received on September 29, 2008. The September 24, 2008, hearing transcript was received on October 6, 2008. The ASD

2008. The September 24, 2008, hearing transcript was received on October 6, 2008. The ASD Staff and the Respondents have since agreed to a settlement of the issues in this matter. The ASD Staff and the Respondents agree to the entry of this Consent Order, and consent to all terms, conditions, and orders contained herein, and waive any right to appeal from the order. The Respondents' consent to the entry of this order shall not be deemed as an admission or as a denial of the facts recited in Paragraphs 7 and 8(a) through 8(e), below. Based upon consideration of the pleadings, testimony of the witnesses, documentary evidence, arguments of counsel, and all other matters, the Commissioner hereby finds, concludes and orders:

FINDINGS OF FACT

1. Benton Mortgage Group, LLC ("Benton Mortgage"), became licensed with the Arkansas Securities Department ("ASD"), as a mortgage loan broker on November 15, 2005. Benton Mortgage later changed its name to Boardwalk Mortgage Group, LLC ("Boardwalk Mortgage"). Benton Mortgage and Boardwalk Mortgage have conducted business at all pertinent times at 5000 J.F.K. Boulevard, Suite D, in North Little Rock, Arkansas. The mortgage broker license of Boardwalk Mortgage is scheduled to expire on December 31, 2008.
2. The records of the ASD reflect that during the history of Benton Mortgage and Boardwalk Mortgage, the company has undergone several changes in its ownership. At the time that Benton Mortgage was granted its license as a mortgage broker, the ASD records reflect that ownership of the company was vested in Steve Benton and Tom Warren ("Warren"), with Steve Benton owning an interest of sixty percent (60%), and Warren owning an interest of forty percent (40%). Benton Mortgage amended its records with the ASD on August 25, 2006, to reflect that Steve Benton was no longer an owner,

and that ownership was vested in Sam Mitchell (“Mitchell”), and Warren. The documents received by the ASD on August 25, 2006, indicate that Mitchell held an ownership interest of fifty-one percent (51%), and that Warren held an ownership interest of forty-nine percent (49%). At the same time, Benton Mortgage submitted documentation to the ASD reflecting that it was changing its name to Boardwalk Mortgage. On December 1, 2006, Boardwalk Mortgage submitted documentation to the ASD reflecting that Warren no longer held an ownership interest in the company, and that Mitchell held an ownership interest in the company of one-hundred percent (100%).

3. The records on file with the ASD reflect that there has been one management change during the life of Benton Mortgage and Boardwalk Mortgage. From November 10, 2005, through August 21, 2006, Barry Williams was designated as the managing principal of Benton Mortgage. ASD records reflect that on August 21, 2006, the same date that the company name changed its name to Boardwalk Mortgage, Barry Williams was removed as the managing principal. On that date, Mitchell was designated as president and managing principal of Boardwalk Mortgage, and has remained in those positions until this time.
4. In addition to his ownership interest and management status, ASD records reflect that Mitchell has been licensed as a loan officer for Boardwalk Mortgage since May 4, 2006. Mitchell’s loan officer license is scheduled to expire on December 31, 2008.
5. Warren was licensed with the ASD as a loan officer for Benton Mortgage, and later for Boardwalk Mortgage, from September 30, 2005, until February 12, 2007.

6. Another employee, Kevin Ryan Abernathy (“Abernathy”), was licensed with the ASD as loan officer for Benton Mortgage, and later for Boardwalk Mortgage, from August 1, 2006, through May 28, 2008.
7. On or about February 15, 2007, ASD Staff received information from Warren alleging fraudulent mortgage loan brokering activities on certain loan files brokered by Boardwalk Mortgage. Warren furnished the ASD Staff with specific loan files in which he alleged that material alterations had been made to financial documents by agents of Boardwalk Mortgage prior to submission of those documents to lenders for loan approval. The activities allegedly taking place on the identified loan files spanned a time period from June 23, 2006, through January 30, 2007. Following Warren’s meeting with ASD Staff, an investigation took place, and evidence was gathered.
8. During the recent hearing in this matter before the Commissioner, the ASD Staff presented evidence of the following activities taking place at Boardwalk Mortgage between June 23, 2006, and January 30, 2007:
 - (a) On or about December 4, 2006, Arkansas Resident No. 1 (“AR1”), submitted a loan application to Boardwalk Mortgage for the purpose of obtaining a mortgage loan to be secured by real property located at 105 North Monroe in Cabot, Arkansas. The application was taken from AR1 over the telephone by Warren. On or about January 8, 2007, AR1’s financial institution, Arkansas Federal Credit Union (“AFCU”), provided verification of AR1’s checking account balance to Boardwalk Mortgage. The AFCU verification of deposit (“VOD”), reflected that AR1 had a checking account balance of \$829.00, with an average balance of \$723.39 during the previous two months. However, on or about January 30,

2007, when Boardwalk Mortgage submitted the VOD to a lender for approval of a mortgage loan, the VOD had been materially altered. The altered VOD reflected that AR1 had a checking account balance as \$3,829.00, and an average balance for the previous two months of \$3,723.39.

- (b) On or about November 8, 2006, Arkansas Resident No. 2 (“AR2”) submitted a loan application to Boardwalk Mortgage for the purpose of obtaining a mortgage loan to be secured by real property located at 3349 Highway 61 North in Blytheville, Arkansas. The application was taken from AR2 over the internet by Warren. On or about December 20, 2006, AR2’s financial institution, First National Bank of Blytheville, provided verification of AR2’s checking account balance to Boardwalk Mortgage. The First National Bank verification of deposit (“VOD”), reflected that AR2 had a checking account balance of \$8,460.34, with an average balance of \$5,047.18 during the previous two months. However, on or about January 10, 2007, when Boardwalk Mortgage submitted the VOD to a lender for approval of a mortgage loan, the VOD had been materially altered. The altered VOD reflected that AR2 had a checking account balance of \$18,460.34, and an average balance for the previous two months of \$15,047.18.
- (c) On or about September 8, 2006, Arkansas Resident No. 3 (“AR3”) submitted a loan application to Boardwalk Mortgage for the purpose of obtaining a mortgage loan to be secured by real property located at 10 Aloha Circle in Sherwood, Arkansas. The application was taken from AR3 over the telephone by Mitchell. On or about January 8, 2007, AR3’s financial institution, U.S. Bank, provided verification of AR3’s checking account balance to Boardwalk Mortgage. The

U.S. Bank verification of deposit (“VOD”), reflected that AR3 had a checking account balance of \$2,795.58, with an average balance of \$243.43 during the previous two months. However, on or about September 8, 2006, when Boardwalk Mortgage submitted the VOD to a lender for approval of a mortgage loan, the VOD had been materially altered. The altered VOD reflected that AR3 had a checking account balance of \$5,795.58, and an average balance for the previous two months of \$5,243.43.

- (d) On or about June 23, 2006, Arkansas Resident No. 4 (“AR4”), submitted a loan application to Boardwalk Mortgage for the purpose of obtaining a mortgage loan to be secured by real property located at 22 Winterfern Cove in Little Rock, Arkansas. The application was taken from AR4 over the telephone by Mitchell. On or about June 6, 2006, AR4’s financial institution, Regions Bank, provided verification of AR4’s checking account balance to Boardwalk Mortgage. The Regions Bank verification of deposit (“VOD”), reflected that AR4 had a checking account balance of \$1,800.96, with an average balance of \$4,429.14 during the previous two months. However, on or about June 23, 2006, when Boardwalk Mortgage submitted the VOD to a lender for approval of a mortgage loan, the VOD had been materially altered. The altered VOD reflected that AR4 had a checking account balance as \$41,800.96, and an average balance for the previous two months of \$34,429.14.
- (e) On or about September 1, 2006, Arkansas Resident No. 5 (“AR5”), submitted a loan application to Boardwalk Mortgage for the purpose of obtaining a mortgage loan to be secured by real property located at 104 Buccaneer in Hot Springs,

Arkansas. The application was taken from AR5 in person by Abernathy. A separate loan application was submitted by AR5 to Boardwalk Mortgage on September 8, 2006. Prior to submission of either loan application to Boardwalk Mortgage, AR5 had forwarded an authentic copy of a monthly bank statement on the account of AR5 at First National Bank of Hot Springs dated August 26, 2006. While in the possession of Boardwalk Mortgage, AR5's August 26, 2006, bank statement was materially altered. The most prominent of the alterations was made to an entry dated August 21, 2006, reflecting a deposit of \$200.00. The August 26, 2006, bank statement was altered while at Boardwalk Mortgage to make it appear that a deposit of \$14,200.00 had been made on August 21, 2006. While in the possession of Boardwalk Mortgage, five (5) other entries contained in the August 26, 2006, bank statement, including the ending balance and daily balance summaries, were materially altered to make those entries mathematically consistent with the \$14,000.00 false entry reflected on the August 21, 2006, deposit. On August 29, 2006 the altered bank statement was transmitted by wire from Boardwalk Mortgage to a lender. The falsified bank statement was intentionally submitted to a lender for purposes of misleading, deceiving, and defrauding a lender, and inducing the mortgage lender to approve the funding of a mortgage loan. Two other fraudulent documents were subsequently submitted to the same lender by Boardwalk Mortgage in its effort to obtain approval of a mortgage loan for AR5. On September 8, 2006, Boardwalk Mortgage submitted a counterfeit Internal Revenue Service 2005 Form 1099-MISC reflecting that AR5 had received \$14,500.00 in royalty income during 2005 from a company

identified as Smith Investments, LLC, P.O. Box 13407, Maumelle, Arkansas 72113. Along with the bogus 2005 Form 1099 MISC, a letter dated September 6, 2006, was transmitted from Boardwalk Mortgage to the lender on fake letterhead of a company identified as Smith Investments, LLC. The contents of the letter were drafted to communicate confirmation that AR5 has received royalty payments from the company, consistent with the counterfeit 2005 Form 1099-MISC.

9. The entry of this order is in the public interest.

CONCLUSIONS OF LAW

10. The Commissioner may by order deny, suspend, revoke, or refuse to issue or renew a license of a licensee or applicant if the Commissioner finds that the order is in the public interest and the licensee, or any loan officer or managing principal has violated or failed to comply with any provision of the FMLA. Ark. Code Ann. §23-39-514(a)(1) and (a)(2)(B)

11. The FMLA states it is unlawful for any person in the course of any mortgage loan transaction or activity to misrepresent or conceal any material fact or make any false promise likely to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or to pursue a course of misrepresentation through agents or otherwise. Ark. Code Ann. §23-39-513(1).

12. The FMLA states it is unlawful for any person in the course of any mortgage loan transaction or activity in connection with the brokering, making, purchase, or sale of any mortgage loan, to engage in any transaction, practice, or course of business that is not in good faith or fair dealing; is misleading or deceptive; or constitutes a fraud upon any person. Ark. Code Ann. §23-39-513(7)(A)-(C).

13. The FMLA states it is unlawful for any person in the course of any mortgage loan transaction or activity to engage in practices that are dishonest or unethical in the mortgage industry. Ark. Code Ann. §23-39-513(12).

14. The Commissioner by order may impose a civil penalty that shall not exceed \$10,000.00 for each violation by a mortgage broker or loan officer upon a licensee or any partner, officer, director, member, manager, or other person occupying a similar status or performing a similar function on behalf of a licensee for any violation of the FMLA. Ark. Code Ann. §23-39-514(b)(1)-(2).

ORDER

By agreement and with the consent of the ASD Staff, Respondent Boardwalk Mortgage, Respondent Samuel Mitchell, Respondent Kevin Abernathy, and all counsel of record, it is hereby ordered that:

- I. The Arkansas mortgage broker license of Respondent Boardwalk Mortgage, license Number 28263, is hereby revoked.
- II. The surrender of the loan officer license of Respondent Samuel Mitchell should be accepted, upon condition that Mr. Mitchell, or any entity owned or controlled in whole or in part by Mr. Mitchell, shall not apply to the Arkansas Securities Department for a license to engage in the mortgage loan business in Arkansas for a period of five (5) years to commence upon the entry of the Consent Order, and that during the five (5) year period, Mr. Mitchell shall refrain from owning, controlling, being employed by, or participating in any capacity in the conduct of the affairs of any mortgage banker or mortgage broker licensed by the Securities Commissioner in

any capacity until such time as Mr. Mitchell has been issued a new mortgage broker, mortgage banker, or mortgage loan officer license by the Commissioner.

III. That Respondent Boardwalk Mortgage shall be responsible for the hearing costs in the matter by payment of a civil penalty in the amount of \$5,631.01, and that payment of said costs shall be made to the Arkansas Securities Department within sixty (60) calendar days of the date of this order.

IV. That the surrender of the loan officer license of Respondent Kevin Abernathy shall be accepted without further condition.

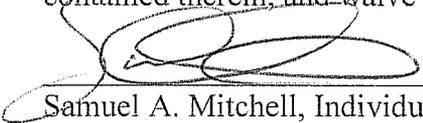
IT IS SO ORDERED.



A. HEATH ABSHURE
Arkansas Securities Commissioner

November 10, 2008
DATE

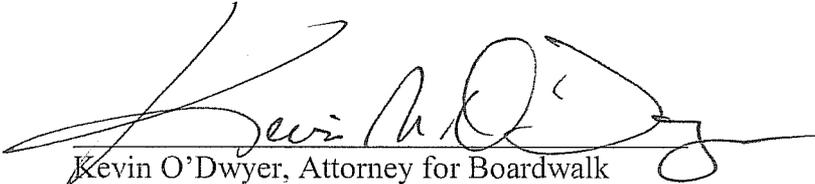
I hereby agree to the entry of this Consent Order, and consent to all terms, conditions, and orders contained therein, and waive any right to an appeal from this order.



Samuel A. Mitchell, Individual and as
President of Boardwalk Mortgage Group, LLC

October 28, 2008

Date



Kevin O'Dwyer, Attorney for Boardwalk
Mortgage Group, LLC, and
Samuel Mitchell, Individually

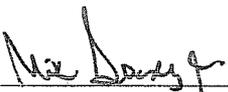
Date



Kevin Abernathy, Individually

11/5/08

Date



Mike Spades, Jr.
Staff Attorney, Arkansas Securities Department

11/6/08

Date