

BEFORE THE ARKANSAS SECURITIES COMMISSIONER
ASD CASE NO. C-08-045
ORDER NO. C-08-045-09-CO02

RECEIVED

09 NOV -2 AM 8:17

ARKANSAS SECURITIES DEPT.

IN THE MATTER OF:

SOUTHERN MORTGAGE COMPANY OF ARKANSAS
LICENSE NO. 10624

RESPONDENTS

CONSENT ORDER

This Consent Order is entered pursuant to the Arkansas Fair Mortgage Lending Act (“FMLA”), Ark. Code Ann. §§ 23-39-501 through 23-39-518, the Rules of the Arkansas Securities Commissioner (“Rules”) promulgated under the FMLA and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-303 in accordance with an agreement by and between the Staff of the Arkansas Securities Department (“Staff”) and the Respondent, Southern Mortgage Company of Arkansas (“Southern Mortgage”), in full and final settlement of all claims that could be brought against Southern Mortgage by the Staff on the basis of the facts set forth herein.

Southern Mortgage admits the jurisdiction of the FMLA and the Arkansas Securities Commissioner (“Commissioner”), waives its right to a formal hearing and, without admitting or denying the findings of facts made herein, consents to the entry of this order and agrees to abide by its terms.

FINDINGS OF FACT

1. From on or about January 20, 2006, through on or about January 30, 2007, certain Southern Mortgage employees, in the course of their employment as mortgage

loan officers, engaged in a pattern of submitting inaccurate statements on stated income mortgage loans that were being brokered by the employees. Specifically, the Southern Mortgage employees, (referred to herein, collectively, as “employee Respondents”), would normally initiate the loan brokering process by taking a loan application from a borrower, at which time employers were identified and monthly incomes were determined. This process was followed by submission of the borrower’s application to the prospective lenders. In each of the loan files more particularly described below, the employee Respondents submitted inflated monthly income amounts to the prospective lenders. The submission of these inaccurate statements to the prospective lenders during the course of brokering the stated income mortgage loans was the result of the employee Respondents’ failure to exercise reasonable skill, care and diligence in the preparation of the mortgage loan applications. Even assuming, without conceding, that the activity described above was not encouraged or authorized by Southern Mortgage, the failure to exercise reasonable skill, care and diligence by the employee Respondents was reasonably discoverable through minimal supervision or internal auditing procedures.

2. Candice Ann Wallace (“Wallace”), was licensed as a loan officer for Southern Mortgage from June 4, 2004, until April 12, 2007. During that time, Wallace was also designated as branch manager for the Fayetteville office of Southern Mortgage. Further, on August 5, 2009, a Consent Order in case number C-08-045 was entered by the Commissioner concerning Wallace’s involvement in the violations of the FMLA as detailed herein.

3. On or about January 30, 2006, Wallace initiated the process of brokering a mortgage loan for Arkansas resident one (“AR1”) in the amount of \$215,000.00, to be

secured by real property located in Springdale, Arkansas. Wallace took a loan application from AR1 by telephone. Wallace subsequently submitted documents to the lender representing that AR1's monthly income was \$5,800.00. However, AR1's payroll records reflect an average monthly income of \$2,556.08 in 2005, and \$1,799.21 in 2006. The inflated monthly income amount submitted to the lender by Wallace was a misstatement of material fact which likely deceived the lender, or subsequent mortgagees, concerning the borrower's ability to repay the loan.

4. On or about March 13, 2006, Wallace initiated the process of brokering a mortgage loan for Arkansas resident two ("AR2") in the amount of \$164,000.00, to be secured by real property located in Springdale, Arkansas. Wallace took a loan application from AR2 by telephone. Wallace subsequently submitted documents to the lender representing that AR2's average monthly income was \$5,000.00. However, AR2's payroll records reflect an average monthly income of \$2,965.96 in 2005, and \$2,091.94 in 2006. The inflated monthly income amount submitted to the lender by Wallace was a misstatement of material fact which likely deceived the lender, or subsequent mortgagees, concerning the borrower's ability to repay the loan.

5. On or about January 30, 2007, Wallace initiated the process of brokering a mortgage loan for Arkansas resident three ("AR3") in the amount of \$140,125.00, to be secured by real property located in Bentonville, Arkansas. Wallace took a loan application from AR3 by telephone. Wallace completed a handwritten application reflecting that AR3's average monthly income was \$5,900.00. Wallace also completed a second typewritten application reflecting that AR3's average monthly income was \$6,000.00. Wallace subsequently submitted documents to the lender representing that

AR3's average monthly income was \$6,000.00. However, AR3's payroll records reflect an average monthly income of \$2,445.60 in 2005, and \$2,634.94 in 2006. The inflated monthly income amount submitted to the lender by Wallace was a misstatement of material fact which likely deceived to deceive the lender, or subsequent mortgagees, concerning the borrower's ability to repay the loan.

6. David L. Williams ("Williams") was a licensed loan officer for Southern Mortgage from May 19, 2005 until April 15, 2008. While employed by Southern Mortgage, Williams was located at the Little Rock branch office.

7. On or about November 21, 2006, Williams initiated the process of brokering a mortgage loan for married couple, Arkansas resident four ("AR4"), in the amount of \$273,000.00, to be secured by real property located in Little Rock, Arkansas. Williams took a handwritten loan application from AR4 at the Southern Mortgage branch office in Little Rock. The handwritten loan application reflected that AR4's combined average monthly income was \$5,845.00. Williams subsequently completed a typewritten loan application for AR4 reflecting a combined average monthly income of \$9,000.00. The typewritten loan application was submitted to the lender falsely representing that AR4 had a combined average monthly income of \$9,000.00. The inflated monthly income amount submitted to the lender by Williams was a misstatement of material fact which likely deceived the lender, or subsequent mortgagees, concerning the borrowers' ability to repay the loan.

LEGAL AUTHORITY AND CONCLUSIONS OF LAW

8. The acts described in ¶¶ one through seven above demonstrate a pattern of misconduct taking place within the Southern Mortgage organization that was reasonably

discoverable through minimal supervision or internal auditing procedures. The failure of Southern Mortgage to reasonably supervise its branches, loan officers, and employees is a violation of Ark. Code Ann. § 23-39-513(14). Southern Mortgage's failure to supervise warrants warrant disciplinary action in the form of a suspension of its Arkansas license, as authorized by Ark. Code Ann. § 23-39-514(a)(1) and (a)(2)(B), and Ark. Code Ann. §§ 23-39-505(n)(3)(A) and 505(n)(3)(B). In addition, a civil penalty should be imposed against Southern Mortgage for each violation as authorized by Ark. Code Ann. § 23-39-514(b).

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

10. The Commissioner by order may impose a civil penalty that shall not exceed \$10,000.00 for each violation by a mortgage broker 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 Staff and the Respondent, Southern Mortgage Company of Arkansas, it is hereby ordered that:

- I. The surrender of the Arkansas mortgage broker license of the Respondent, Southern Mortgage, shall be accepted, upon condition that Southern Mortgage shall not apply to the Arkansas Securities Department for a license to engage in the mortgage loan business in Arkansas for a period of two (2) years.

II. That the Respondent, Southern Mortgage, shall be responsible for the payment of a civil penalty in the amount of \$1,000.00 to the Arkansas Securities Department. In addition, the Respondent, Southern Mortgage, shall pay the Arkansas Securities Department an examination fee in the amount of \$1,435.96. The payment of said civil penalty and examination fee shall be made by Southern Mortgage to the Arkansas Securities Department within thirty (30) calendar days of the date of the entry of this order.

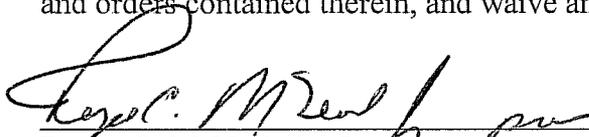
IT IS SO ORDERED.



A. HEATH ABSHURE
Arkansas Securities Commissioner

November 2, 2009
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.



Royce C. McNeal, Jr., President
Southern Mortgage Company of Arkansas

10-27-09
Date



Scott S. Freydl, Staff Attorney
Arkansas Securities Department

11/2/09
Date