

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

ASD CASE NO. C-07-015

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

**REQUEST FOR REVOCATION OF LICENSES AND HEARING**

Comes now the Staff of the Arkansas Securities Department (“Department”), by and through its attorney, Alexandra Stephens, and for its Request for Revocation of Licenses and Hearing, states:

**Administrative Authority**

This matter concerns the revocation of licenses to conduct business as a mortgage broker and a loan officer pursuant to the Arkansas Fair Mortgage Lending Act (“FMLA”), Ark. Code Ann. § 23-39-501 *et seq.*, and is therefore properly before the Arkansas Securities Commissioner (“Commissioner”).

**Respondents and Related Parties**

1. Boardwalk Mortgage Group, LLC (“Boardwalk”) is a mortgage broker company (formerly known as Benton Mortgage Group, LLC [“Benton”]) located in North Little Rock, Arkansas, license number 28263. Boardwalk has been licensed as a mortgage broker with the Department since November 15, 2005. Boardwalk’s license as a mortgage broker is scheduled to expire on June 30, 2008.

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2. Samuel Aaron Mitchell (“S. Mitchell”) is a licensed loan officer, license number 31382, and the managing principal for Boardwalk. S. Mitchell has been licensed as a loan officer for Boardwalk since May 4, 2006. S. Mitchell’s loan officer license is scheduled to expire on May 31, 2008. S. Mitchell has been the managing principal of Boardwalk since November 7, 2006. S. Mitchell is also an officer of C & L Homes, Inc., a domestic corporation registered with the Arkansas Secretary of State Office.

3. Kevin Ryan Abernathy (“Abernathy”) is a licensed loan officer, license number 29408, for Boardwalk. Abernathy has been licensed as a loan officer for Boardwalk since August 1, 2006. Abernathy’s loan officer license is scheduled to expire on August 31, 2008.

4. Thomas Charles Warren (“Warren”) is a former loan officer for Boardwalk. Warren was licensed as a loan officer for Benton and Boardwalk from September 30, 2005 to February 12, 2007.

5. Landan K. Mitchell (“L. Mitchell”) is a former loan officer for Boardwalk. L. Mitchell was licensed as a loan officer for Boardwalk from February 5, 2006 to November 28, 2007. L. Mitchell is also an officer of C & L Homes, Inc., a domestic corporation registered with the Arkansas Secretary of State Office.

**Facts to be Presented by Securities Department Staff**

6. On or about December 4, 2006, Arkansas Resident No. 1 (“AR1”) submitted a Uniform Residential Loan Application to Boardwalk. A Uniform Residential Loan Application is a form used to record relevant financial information about an applicant who applies for a mortgage loan. Warren accepted the Uniform Residential

Loan Application from AR1 via a telephone interview. A copy of the Uniform Residential Loan Application is attached hereto as "Exhibit A".

7. On or about January 8, 2007, Arkansas Federal Credit Union, AR1's financial institution, provided verification to Boardwalk the checking account balance of AR1 as \$829.00 with an average balance for the previous two months of \$723.39. Arkansas Federal Credit Union provided this information to Boardwalk via a verification of deposit. A verification of deposit is a signed form that provides verifications of amounts on deposit at financial institutions. A copy of the verification of deposit submitted by Arkansas Federal Credit Union is attached hereto as "Exhibit B".

8. On or about January 30, 2007, Boardwalk submitted a verification of deposit for AR1 to a mortgage lender in an attempt to facilitate a mortgage closing that indicates Arkansas Federal Credit Union verified AR1's checking account balance as \$3,829.00 rather than \$829.00 with an average balance for the previous two months of \$3,723.39 rather than \$723.39. A copy of the verification of deposit submitted to the mortgage lender is attached hereto as "Exhibit C".

9. On or about November 8, 2006, Arkansas Resident No. 2 ("AR2") submitted a Uniform Residential Loan Application to Boardwalk. Warren accepted the Uniform Residential Loan Application from AR2 via an internet interview. A copy of the Uniform Residential Loan Application is attached hereto as "Exhibit D".

10. On or about December 20, 2006, First National Bank, AR2's financial institution, provided verification to Boardwalk the checking account balance of AR2 as \$8,460.34 with an average balance for the previous two months of \$5,047.18. First National Bank provided this information to Boardwalk via a verification of deposit. A

copy of the verification of deposit submitted by First National Bank is attached hereto as “Exhibit E”.

11. On or about January 10, 2007, Boardwalk submitted a verification of deposit for AR2 to a mortgage lender in an attempt to facilitate a mortgage closing that indicates First National Bank verified AR2’s checking account balance as \$18,460.34 rather than \$8,460.34 with an average balance for the previous two months of \$15,047.18 rather than \$5,047.18. A copy of the verification of deposit submitted to the mortgage lender is attached hereto as “Exhibit F”.

12. On or about July 24, 2006, Arkansas Resident No. 3 (“AR3”) submitted a Uniform Residential Loan Application to Benton. S. Mitchell accepted the Uniform Residential Loan Application from AR3 via a telephone interview. A copy of the Uniform Residential Loan Application is attached hereto as “Exhibit G”.

13. On or about September 6, 2006, US Bank, AR3’s financial institution provided verification to Benton the checking account balance of AR3 as \$2,795.58 with an average balance for the previous two months of \$243.43. US Bank provided this information to Benton via a verification of deposit. A copy of the verification of deposit submitted by US Bank is attached hereto as “Exhibit H”.

14. On or about September 8, 2006, Benton submitted a verification of deposit for AR3 to a mortgage lender in an attempt to facilitate a mortgage closing that indicates US Bank verified AR3’s checking account balance as \$5,795.58 rather than \$2,795.58 with an average balance for the previous two months of \$5,243.43 rather than \$243.43. A copy of the verification of deposit submitted to the mortgage lender is attached hereto as “Exhibit I”.

15. On or about June 23, 2006, Arkansas Resident No. 4 (“AR4”) submitted a Uniform Residential Loan Application to Benton. S. Mitchell accepted the Uniform Residential Loan Application from AR4 via a telephone interview. A copy of the Uniform Residential Loan Application is attached hereto as “Exhibit J”.

16. On or about June 6, 2006, Regions Bank, AR4’s financial institution provided verification to Benton verified the checking account balance of AR4 as \$1,800.96 with an average balance of \$4,429.14. Regions Bank provided this information to Benton via a verification of deposit. A copy of the verification of deposit submitted by Regions Bank is attached hereto as “Exhibit K”.

17. On or about June 23, 2006, Benton submitted a verification of deposit for AR4 to a mortgage lender in an attempt to facilitate a mortgage closing that indicates Regions Bank verified AR4’s checking account balance as \$41,800.96 rather than \$1,800.96 with an average balance of \$34,429.14 rather than \$4,429.14. A copy of the verification of deposit submitted to the mortgage lender is attached hereto as “Exhibit L”.

18. On or about September 1, 2006, Arkansas Resident No. 5 (“AR5”) submitted a Uniform Residential Loan Application to Benton. Abernathy accepted the Uniform Residential Loan Application from AR4 via a face-to-face interview. A copy of the Uniform Residential Loan Application is attached hereto as “Exhibit M”.

19. On or about September 8, 2006, Benton submitted documentation, including a 2005 1099-MISC, which is an Internal Revenue Service tax form, in the amount of \$14,500.00 and other documents regarding the financials of AR5 to a mortgage lender in an attempt to facilitate a mortgage closing. These documents indicate

AR5 receives royalty checks from a family business. A copy of the 2005 1099-MISC is attached hereto as "Exhibit N".

20. The 2005 1099-MISC form indicates the Payer is Smith Investments, LLC, and reflects an address of P.O. Box 13407, Maumelle, Arkansas 72113.

21. The Arkansas Secretary of State's Office reflects the existence of "Smith Investments, LLC" as registered in the State of Arkansas but at a different address than indicated on the 2005 1099-MISC. Smith Investments, LLC has confirmed there is no relation between Smith Investments, LLC and AR5.

22. According to the United States Post Office, the address reflected on the 2005 1099-MISC for Smith Investments, LLC, P.O. Box 13407, Maumelle, Arkansas, is rented to C & L Homes, as rented by "Landan Mitchell, President" on October 7, 2005. Department records indicate L. Mitchell was a licensed loan officer for Boardwalk. A copy of the rental application for the post office box is attached hereto as "Exhibit O".

23. On or about October 10, 2005, a complaint was filed in the Circuit Court of Pulaski County, Arkansas, Case No. CV 2005-12575, Block 2 Limited Partnership d/b/a Block 2 Lofts, Plaintiff vs. Landan Mitchell, Defendant vs. Arvest Bank, Third-party Defendant alleging theft, forgery, and fraud against L. Mitchell. A copy of the complaint is attached hereto as "Exhibit P".

24. On or about December 8, 2005, L. Mitchell completed a FMLA Form 014 Application for an Arkansas loan officer license as an employee of Benton (now known as Boardwalk). Stephen Benton signed as the Company's authorized representative. It was submitted and received by the Department on December 15, 2005. A copy of the

FMLA Form 014 Application for Managing Principal, Branch Manager or Loan Officer is attached hereto as “Exhibit Q”.

25. In his application, L. Mitchell answered a series of questions, including question 3 (a) – (f). L. Mitchell gave negative responses to each question. Question 3 (f) of the application asks:

**“Have you been named as a defendant in any pending civil court proceeding in which a complaint alleges fraud, dishonesty, misrepresentation, theft, misappropriation, bad faith, deceptive trade practices, or predatory lending practices?”**

L. Mitchell answered “No”.

26. The Department reviewed the loan officer license application of L. Mitchell and, based upon the information provided by L. Mitchell and affirmed by Stephen Benton, the application and license was approved on February 3, 2006 with an expiration date of February 28, 2007.

27. On or about December 6, 2006, L. Mitchell completed a FMLA Form LO-003 for a renewal of his Arkansas loan officer license as an employee of Boardwalk (formerly known as Benton). Sam Mitchell signed as the Company’s authorized representative. It was submitted and received by the Department on December 11, 2006. A copy of the FMLA Form LO-003 Loan Officer License Renewal Application is attached hereto as “Exhibit R”.

28. In his application for renewal, L. Mitchell answered a series of questions, including question 2 (a) – (f). L. Mitchell gave negative responses to each question. Question 2 (f) of the application for renewal asks:

**“Have you been named as a defendant in any pending civil court proceeding in which a complaint alleges fraud, dishonesty, misrepresentation, theft, misappropriation, bad faith, deceptive trade practices, or predatory lending practices?”**

L. Mitchell answered “No”.

29. The Department reviewed the loan officer license renewal application of L. Mitchell and, based upon the information provided by L. Mitchell and affirmed by Sam Mitchell, the application and license was approved on March 1, 2007 with an expiration date of February 28, 2008.

30. L. Mitchell was terminated by Boardwalk on November 28, 2007.

31. On or about May 27, 2005, Warren accepted a plea in Case No. CV 2005-532, State of Arkansas, Plaintiff vs. Thomas Charles Warren, Defendant, for three years probation, restitution of \$7,140.00, plus fines and court costs for Hot Check Violations. A copy of the plea agreement is attached hereto as “Exhibit S”.

32. The records of the Department do not reflect that Boardwalk notified the Department of Warren’s felony conviction.

33. Warren was terminated by Boardwalk on February 12, 2007.

**Legal Authority**

34. 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, including filing an application for license that, as of its effective date or as of any date after filing, contained any omission



or statement that, in light of the circumstances under which it was made, is false or misleading with respect to any material fact. Ark. Code Ann. § 23-39-514(a)(1) and (a)(2) (A) and (B)

35. 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).

36. 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).

37. 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).

38. The FMLA states it is unlawful for any person in the course of any mortgage loan transaction or activity to unreasonably fail to supervise the loan officers and employees of the mortgage broker. Ark. Code Ann. § 23-39-513(14).

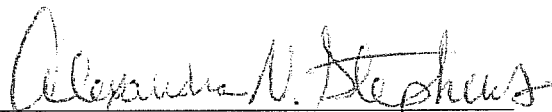
39. The Commissioner by order may impose a civil penalty that shall not exceed \$10,000.00 for each violation by a mortgage broker or loan officer upon a licensee or any partner, officer, director, member, manager, or other person occupying a

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).

### Summary

For the reasons set forth herein, the Department requests that a hearing be held to consider whether the mortgage broker license of Boardwalk Mortgage Group, LLC, and the loan officer licenses of Samuel Aaron Mitchell, and Kevin Ryan Abernathy should be revoked for failing to comply with the Fair Mortgage Lending Act ("FMLA"), Ark. Code Ann. §§ 23-39-501, *et. seq.*, by: 1) engaging in practices that are dishonest or unethical; 2) brokering five loans that are misleading or conceal material facts constituting fraud upon persons; 3) filing applications for license that, as of the effective date contained omissions or statements that, in light of the circumstances under which they were made, were false or misleading with respect to material facts; and 4) failing to reasonably supervise its loan officers and employees, pursuant to Ark. Code Ann. § 23-39-513 (12), § 23-39-513 (1) and (7), § 23-39-514 (a)(2)(A), and § 23-39-513 (14) respectively.

Landan Kyle Mitchell and Thomas Charles Warren are no longer licensed by the State of Arkansas.



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