

1 THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
2 FINANCE AND CORPORATE SECURITIES DIVISION
3 CORPORATE SECURITIES SECTION
4 BEFORE THE DIRECTOR OF
5 THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
6 STATE OF OREGON

7 In the matter of:) O-93-0038
8) CEASE AND DESIST ORDER
9 CLAYTON A. WINKLER, d.b.a.) ORDER IMPOSING CIVIL PENALTY
10 DOUBLE EAGLE MORTGAGE CO.,) ORDER DENYING EXEMPTIONS
11) and
12) CONSENT OF WINKLER
13 Respondent.) TO ENTRY OF ORDER

14 **PREAMBLE**

15 WHEREAS the Director of the Department of Insurance and Finance,
16 and his successor, the Director of the Department of Consumer and
17 Business Services (hereinafter the "Director") have conducted an
18 investigation of Respondent Clayton A. Winkler (hereinafter
19 "Winkler") and his business, Double Eagle Mortgage Co., and have
20 determined that Winkler has transacted securities and mortgage
21 broker business in the State of Oregon in violation of ORS
22 Chapter 59, the Oregon Securities Law; and

23 WHEREAS Winkler wishes to resolve and settle this matter, and
24 agrees to conduct all future business in compliance with the
25 statutory requirements of ORS Chapter 59, the Oregon Securities
26 Law;

27 THEREFORE, as evidenced by Winkler's signature on this Order and
28 the payment of the civil penalty imposed herein, Clayton A.
Winkler **CONSENTS** to entry of this Order to Cease and Desist,
Order Imposing Civil Penalty and Order Denying Exemptions, based
upon the Director's Findings of Fact and Conclusions of Law as

**CEASE AND DESIST ORDER, ORDER DENYING EXEMPTIONS, ORDER
IMPOSING CIVIL PENALTY and CONSENT OF WINKLER**

1 set forth below.

2 **FINDINGS OF FACT**

3 The Director **FINDS** that:

4 1. Respondent Clayton A. Winkler (hereinafter "Winkler")
5 resides at 980 Washburn Lane, Medford, Oregon 97501.
6 Winkler may be served with process at his residence or at the
7 business office of Double Eagle Mortgage Co., located at 613
8 Market St., Medford, Oregon 97504.

9 2. Double Eagle Mortgage Co., (hereinafter "DEM") is an assumed
10 business name for Clayton A. Winkler. Winkler and his wife, Judy
11 Winkler, are listed as registrants for DEM. Winkler designates
12 himself as "President" of DEM.

13 3. Winkler and DEM have been engaged in the loan brokering
14 business in Oregon since on or before May of 1991. This business
15 consists of pre-qualifying lenders for real estate loans and
16 placing the loans with institutional lenders. Winkler employed
17 or contracted with a number of individuals to act as loan
18 officers to assist him at DEM.

19 4. Neither Winkler nor DEM have ever been licensed with the
20 State of Oregon, Securities Section, to transact business as a
21 mortgage broker or mortgage broker salesperson, as defined under
22 ORS Chapter 59.

23 On June 10, 1991, Winkler filed an application, with the Oregon
24 Securities Section, to be licensed as a mortgage broker. On June
25 12, 1991 Winkler was notified by the Securities Section that the
26 application was incomplete. On September 17, 1991 the Securities
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1 Section declared the application abandoned and closed the
2 applicant file. Winkler was never issued a license.

3 5. On or about December of 1991, Winkler and/or his agents
4 arranged to fund a loan for Charles Rush. The loan was secured
5 by a trust deed on property located at 141 Hersey St., Ashland,
6 Oregon. The real estate paper (note and trust deed) was sold to
7 Don and Gloria Littman of Medford, Oregon. Although terms of the
8 note and the escrow company instructions were prepared by the
9 Littman's son, Winkler effected the transaction through his DEM
10 business and received a \$4,000 commission on the deal.

11 6. On or about January of 1992, Winkler and/or his agents
12 arranged again to fund a loan for Charles Rush. The loan was
13 secured by a trust deed on property located at 141 Hersey St.,
14 Ashland, Oregon. The real estate paper was sold to Randy and
15 Betty Stringer of Central Point, Oregon. Winkler met with Randy
16 Stringer and presented the deal to him. Winkler and DEM prepared
17 the necessary documents for the transaction, including the
18 instructions for the escrow company. Winkler and DEM received
19 \$2,700 in commission on the deal.

20 7. On or about February of 1992, Winkler and/or his agents
21 arranged to fund a loan for Charles and Linda Skeeters. The loan
22 was secured by a trust deed on property located at 176 S. Stage
23 Rd., Medford, Oregon. The real estate paper was sold to Donald
24 and Gloria Littman of Medford, Oregon. Winkler met with Donald
25 Littman and discussed the deal with him. Winkler and DEM
26 prepared documents for the transaction, including instructions to
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1 the escrow company. Winkler and DEM received \$2,100 in
2 commissions on the deal.

3 8. On or about August of 1991, Winkler and/or his agents
4 arranged to fund a loan for Robert and Kathryn Wilds. The loan
5 was secured by a trust deed on property located at 3397 Delta
6 Waters Rd. in Medford, Oregon. Fractional interests in the real
7 estate paper were sold to Barbara Feinstein and Connie Sloper,
8 who were residents of Oregon at the time of the transaction.
9 Although Winkler brought the borrowers into the transaction and
10 Joe Carlson and Robert Cox introduced the two investors to the
11 transaction, Winkler and DEM closed the transaction, and prepared
12 the documents for the transaction, including escrow instructions
13 to the escrow company. Winkler also assured the others that he
14 and DEM could sell fractional interests in real estate paper
15 under his business license. The escrow company paid Winkler and
16 DEM a commission of \$8,400 for the deal. Later the commission
17 was split three ways with Carlson, Cox and Winkler each
18 receiving \$2,800.

19 9. The fractional interests in real estate paper sold to
20 Barbara Feinstein and Connie Sloper, described in paragraph 8
21 above, were never registered with the Oregon Securities Section
22 for sale in Oregon.

23 10. On May 11, 1992 members of the Securities Section visited
24 the DEM office at 516 Crater Lake Ave., Medford, Oregon. The
25 purpose of the visit was to conduct an examination of DEM's
26 operation and in particular, to look for files that reflected
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1 sales of real estate paper to private investors. During the
2 visit no files for the Rush/Littman transaction, the
3 Rush/Stringer transaction, the Skeeter/Littman transaction, or
4 the Wilds/Feinstein and Sloper transaction were found at the
5 office of DEM.

6 On May 21, 1992 Winkler was interviewed under oath by members of
7 the Securities Section and he confirmed that no files for the
8 above-described transactions existed at the office of DEM.

9 11. Winkler and DEM did not provide the necessary disclosures to
10 investors nor preserve the necessary documentation in the
11 Rush/Littman transaction, the Rush/Stringer transaction and the
12 Skeeter/Littman transaction as required by Oregon Administrative
13 Rule 441-35-021. The non-disclosures include but are not limited
14 to:

- 15 a. written disclosure documents providing summaries of
16 all necessary disclosure information;
- 17 b. outstanding tax balance information provided by county
18 tax assessing departments;
- 19 c. tax assessed value information;
- 20 d. copies of the note and instrument created in the
21 transaction;
- 22 e. statements of whether the investor would be the
23 beneficiary of casualty insurance on the underlying
24 property; and
- 25 f. copies of acknowledgements signed by the investor
26 acknowledging receipt of the necessary disclosure
27 information.

28 12. In addition to the transactions described above, Winkler and
DEM directly and by and through his agents made several other
attempts to sell real estate paper to investors in Oregon. These

1 offers included real estate paper involving property at:

- 2 a. 5911 Foley Lane, Central Point, Oregon (the Burns
3 loan).
- 4 b. 612 "J" Street, Medford, Oregon (the Chaplin 4-plex
5 loan).
- 6 c. 1249 McKenzie Canyon Rd., Ashland, Oregon (the
7 Englebrecht/Frechione loan).
- 8 d. 9367 Table Rock Rd., Central Point, Oregon (the
9 Touvelle Tavern loan).

10 13. During the course of the examination at the DEM office on
11 May of 11, 1992, Winkler was asked if he and DEM had sold real
12 estate paper to private investors in Oregon. Winkler stated that
13 no such sales had occurred.

14 During the course of the interview on May 21, 1992, Clay Winkler
15 was asked, while under oath, for the names of all private
16 investors in Oregon with whom he did business. Winkler responded
17 that he didn't "have any private investors to do business up here
18 (in Oregon)" and then added that he had one private investor, Don
19 Littman.

20 In truth and in fact, Winkler and DEM had transacted business
21 with four private investors in Oregon and had offered real estate
22 paper investments to several others.

23 CONCLUSIONS OF LAW

24 1. The notes and trust deeds offered and sold by Winkler and
25 DEM as described in Findings of Fact 5, 6, 7, 8 and 12 constitute
26 real estate paper as defined in ORS 59.015(13).

27 2. The sale of real estate paper is the sale of a security as
28 defined in ORS 59.015(17).

1 3. The transactions described in Findings of Fact 5, 6, 7 and
2 12 were exempt from the registration provisions of ORS 59.055.
3 However, Winkler and DEM, by effecting transactions in real
4 estate paper with private investors, met the definition of a
5 mortgage broker as defined in ORS 59.015(10). Therefore, Winkler
6 and DEM violated the licensing requirements of ORS 59.165.

7 4. The Wilds/Feinstein and Sloper transaction described in
8 Finding of Fact 8, constitutes the sale of fractional interests
9 in real estate paper. Fractional interests in real estate paper
10 are not exempt from the registration provisions of ORS 59.055.
11 Winkler and DEM, by effecting the Wilds/Feinstein and Sloper
12 transaction, violated ORS 59.055. Winkler and DEM, by acting as
13 unlicensed Mortgage Brokers in this transaction, also violated
14 ORS 59.165.

15 5. Winkler and DEM, by failing to maintain required transaction
16 files and by failing to provide necessary disclosure or preserve
17 a record of that disclosure, violated ORS 59.195, OAR 441-195-035
18 and OAR 441-35-021.

19 6. Winkler and DEM, by misrepresenting the fact that private
20 investor sales were being made at DEM and misrepresenting the
21 number of private investors that Winkler and DEM had in Oregon,
22 violated ORS 59.135(4) and ORS 59.451.

23 **ORDER**

24 THEREFORE, the Director hereby **ORDERS** that Winkler and DEM shall
25 **CEASE AND DESIST** from violating all provisions of ORS Chapter 59,
26 including:

27 **CEASE AND DESIST ORDER, ORDER DENYING EXEMPTIONS, ORDER**
28 **IMPOSING CIVIL PENALTY and CONSENT OF WINKLER**

- 1 a. transacting business in violation of ORS 59.055;
2 b. transacting business in violation of ORS 59.135; and
3 b. transacting business in violation of ORS 59.165 and

4 Pursuant to ORS 59.045, Winkler and DEM are **DENIED** the use of any
5 exemptions provided in ORS 59.025 and 59.035.

6 Pursuant to ORS 59.995, Winkler is further **ORDERED TO PAY** a CIVIL
7 PENALTY in the amount of \$6,500 for the following violations:

- 8 a. \$4,000 for the four unlicensed transactions in
9 violation of ORS 59.165;
10 b. \$1,000 for the unregistered transaction in violation of
11 ORS 59.055;
12 c. \$1,000 for the misrepresentations made in violation of
13 ORS 59.135 and 59.451; and
14 d. \$500 for violations of the books and records
15 requirements of ORS 59.195, OAR 441-195-035 and OAR
16 441-35-021.

17 Pursuant to ORS 59.235, Winkler is further **ORDERED TO PAY**, as a
18 cost of the investigation, \$144.50 for copying expenses incurred
19 by the Securities Section and previously billed to Winkler
20 through his attorney.

21 The Director reserves the right to take all necessary steps to
22 enforce this Order or take enforcement action should any new
23 violations of ORS Chapter 59 be discovered.

24 Dated at Salem, Oregon this 3rd day of January,
25 1994.

26 
KERRY BARNETT

DIRECTOR
DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES

27 **CEASE AND DESIST ORDER, ORDER DENYING EXEMPTIONS, ORDER**
28 **IMPOSING CIVIL PENALTY and CONSENT OF WINKLER**

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1 **CONSENT TO ENTRY OF ORDER BY CLAYTON A. WINKLER**

2 I, CLAYTON A. WINKLER, state that I am the respondent herein;
3 that I have read the foregoing order and that I know and fully
4 understand thereof; that I admit that the factual allegations
5 contained herein are true and correct; that I have been advised
6 of my right to a hearing; that I consent to the entry of this
7 Order voluntarily, and without any force or duress; that I
8 understand that the Director reserves the right to take further
9 actions to enforce this Order, or, upon discovery, to enforce
10 other violations of the Oregon Securities Law or Oregon Mortgage
11 Broker/Banker Law by me; that I will fully comply with the terms
12 and conditions stated herein.

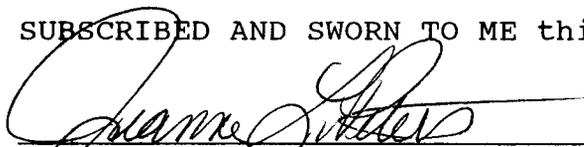
13 I, CLAYTON A. WINKLER, further assure the Director that I will
14 not transact business in the State of Oregon unless such
15 transactions are in full compliance with ORS Chapter 59.

16 I understand that this Consent Order is a public document.

17 DATED this 28 day of December, 1993.

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20 
CLAYTON A. WINKLER

21 SUBSCRIBED AND SWORN TO ME this 28th day of December, 1993.

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23 _____
NOTARY PUBLIC FOR OREGON

24 My commission expires: 5.3.96



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28 **CEASE AND DESIST ORDER, ORDER DENYING EXEMPTIONS, ORDER
IMPOSING CIVIL PENALTY and CONSENT OF WINKLER**