

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES
FINANCE SECTION



BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
STATE OF OREGON

In the Matter of

ORDER NO. O-01-0024

IBIS CAPITAL CORP DBA IBIS
CAPITAL AND DUSTY SMITH

CEASE AND DESIST ORDER AND
CONSENT TO IMPOSITION OF CIVIL
PENALTIES

To: IBIS Capital Corp dba IBIS Capital
Dusty Smith
833 Willamette Street
Eugene, Oregon 97401

WHEREAS the Director of the Department of Consumer and Business Services for the State of Oregon (hereinafter "the Director") conducted an investigation of IBIS Capital Corp dba IBIS Capital and Dusty Smith, and determined that IBIS Capital Corp dba IBIS Capital and Dusty Smith engaged in activities constituting violations of ORS 59.840 through 59.965 (hereinafter "the Oregon Mortgage Lender Law"); and

WHEREAS IBIS Capital Corp dba IBIS Capital and Dusty Smith wish to resolve and settle this matter with the Director;

NOW THEREFORE, as evidenced by the authorized signatures subscribed on this order IBIS Capital Corp dba IBIS Capital and Dusty Smith hereby **CONSENT** to entry of this order upon the Director's Findings of Fact and Conclusions of Law as stated hereinafter:

FINDINGS OF FACT

071301-039-002001-0500-10000

The Director **FINDS** that:

1. IBIS Capital Corp dba IBIS Capital (hereinafter "IBIS"), incorporated in Oregon on January 13, 1997 engages in residential mortgage transactions in Oregon or on

1 Oregon real property in expectation of compensation.

2 2. James Aaron Daywitt is the sole owner of IBIS.

3 3. IBIS, as the broker for an Oregon residential mortgage loan for an Oregon
4 couple, submitted a loan application to Rainland Mortgage Company (hereinafter
5 "Rainland") for funding a first-second combination loan.

6 4. One of the conditions to close the loan included providing a verification of that
7 the consumer had funds to close in the amount of \$857.61 and reserves in the amount
8 of \$2,569.38.

9 5. Dusty Smith, the loan officer of IBIS working on this consumer loan, received
10 the verification of deposit on the consumers' account from U-Lane-O Credit Union
11 (hereinafter "U-Lane-O") that showed insufficient funds in the account to meet the
12 required condition.

13 6. In order to satisfy the required condition, Dusty Smith created a verification of
14 deposit for the consumers' account at U-Lane-O that indicated that the current balance
15 was \$5,602.69, the average balance for the previous two months was \$5,324.54, and
16 containing the signature of an employee of U-Lane-O named Sandy Yaniw.

17 7. At the time that Dusty Smith created the verification of deposit, the actual
18 account balances were significantly less and would not have meet the required
19 condition.

20 8. IBIS submitted the false verification of deposit created by Dusty Smith to
21 Rainland.

22 9. Rainland, as part of their quality control process, attempted to verbally verify
23 the funds in the consumers' account at U-Lane-O. When Rainland called U-Lane-O,
24 they learned that the funds in the account did not match those reported on the
25 verifications of deposit submitted by IBIS to meet the condition to fund the loans.

26 10. On March 22, 2001, Rainland sent a letter to U-Lane-O requesting that they

1 review the two verifications of deposit submitted by IBIS and acknowledge if they were
2 correct or incorrect.

3 11. On March 23, 2001, U-Lane-O sent a letter to Rainland indicating that the
4 verifications of deposit were not correct, that Sandy Yaniw had not signed to the two
5 forms, and that the actual balances for the account were a current balance of \$83.82
6 and an average balance of \$11.29.

7 12. Upon notification of the false verifications of deposit by Rainland, IBIS
8 reviewed the file, concurred that the verifications of deposit were not correct, and
9 withdrew the loan from Rainland. IBIS removed the false verifications of deposit from
10 the file and submitted the clean file to another lender for funding.

11 13. Prior to the notice provided by Rainland, only Dusty Smith was aware of the
12 submission of the false verification of deposit. Aaron Daywitt had not knowledge of this
13 until notified by Rainland.

14 14. IBIS sent a letter to U-Lane-O on March 21, 2001 indicating that the company
15 had removed the verifications of deposit from the file and had held several meetings
16 regarding the responsibility to provide accurate information to lenders and had put in
17 place more stringent quality control measures.

18 **CONCLUSIONS OF LAW**

19 The Director **CONCLUDES** that:

20 1. IBIS violated ORS 59.930(3) by engaging in an act, practice, or course of business
21 which operates or would operate as a fraud or deceit upon any person when the loan
22 officer created false verifications of deposit and the company submitted the false
23 verifications of deposit to the lender to satisfy conditions to close the loan.

24 2. IBIS violated ORS 59.865(2) by engaging in dishonest, fraudulent, or illegal practices
25 or conduct in any business or profession or unfair or unethical practices or conduct in
26 connection with the mortgage business when the loan officer created false verifications

1 of deposit and the company submitted the false verifications of deposit to the lender to
2 satisfy conditions to close the loan. Violations of ORS 59.865(2) constitute grounds to
3 revoke IBIS's mortgage lender license.

4 **ORDER**

5 The Director, pursuant to ORS 59.885(4), hereby **ORDERS** that IBIS Capital
6 Corp dba IBIS Capital and Dusty Smith will **CEASE AND DESIST** from violating any
7 provision of Oregon Mortgage Lender Law, OAR 441-850-0005 through 441-885-0010
8 and any rule, order, or policy issued by the Division.

9 The Director, pursuant to ORS 59.996 hereby **ORDERS** IBIS Capital Corp dba
10 IBIS Capital to pay the State of Oregon a civil penalty of \$1000.00 for the one violation
11 of ORS 59.930(3).

12 The Director suspends payment of \$900.00 of the assessed civil penalty for a
13 three year period. If in the period between the date of the Order to three years from the
14 date of the Order, IBIS Capital Corp dba IBIS Capital violates any provision of the
15 Oregon Mortgage Lender Law, OAR 441-850-0005 through 441-885-0010 or any rule,
16 order, or policy issued by the Division, the suspended portion of the assessed civil
17 penalty will become immediately due and payable. If IBIS Capital Corp dba IBIS Capital
18 does not violate the Oregon Mortgage Lender Law, OAR 441-850-0005 through 441-
19 885-0010 or any rule, order, or policy issued by the Division in the three year period, the
20 suspended portion of the civil penalty is waived. The date of the Order is the date the
21 Director signs the Order.

22 The entry of this Order in no way limits further remedies which may be available
23 to the Director under Oregon law.

24 Dated this 18th day of July, 2001.

25 **MARY C. NEIDIG, DIRECTOR**
26 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

1
2 by 
3 **GREGORY A. MALKASIAN, ACTING ADMINISTRATOR**
4 **DIVISION OF FINANCE AND CORPORATE SECURITIES**

5 **CONSENT TO ENTRY OF ORDER**

6 I, J. AARON DAYWITT, state that I am the
7 Owned of IBIS Capital Corp dba IBIS Capital, and I am authorized
8 to act on its behalf; that I have read the foregoing Order and that I know and fully
9 understand the contents hereof; that IBIS Capital Corp dba IBIS Capital admits the
10 findings of fact herein, voluntarily consents to the entry of this Order without further
11 hearing, expressly waiving any right to a hearing in this matter; that IBIS Capital Corp
12 dba IBIS Capital understands that the Director reserves the right to take further actions
13 to enforce this order or to take appropriate action upon discovery of other violations of
14 Oregon Mortgage Lender Law; and that IBIS Capital Corp dba IBIS Capital will fully
15 comply with Oregon Mortgage Lender Law.

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

17 Dated this 11th day of July, 2001.

18 By J. AARON DAYWITT President
19 (Office Held)

20 
21 (Signature)

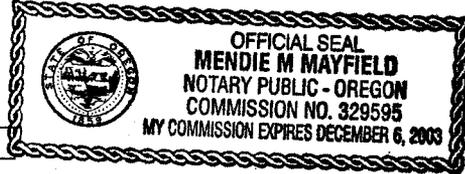
22
23 **CORPORATE ACKNOWLEDGMENT**

24 There appeared before me this 11th day of July, 2001,
25 J. Aaron Daywitt, who was first duly sworn on oath, and stated that s/he was
26 and is the President of IBIS Capital Corp dba IBIS Capital and

1 J. AARON DAYWITT is authorized and empowered to sign this Consent to Entry of
2 Order on behalf of IBIS Capital Corp dba IBIS Capital and to bind IBIS Capital Corp dba
3 IBIS Capital to the terms hereof.

4 Mendie M. Mayfield

5 Signature of Notary Public
6 Notary Public for the State of: Oregon
My Commission expires: 12-6-2003



7 **CONSENT TO ENTRY OF ORDER**

8 I, Dusty Smith, state that I have read the foregoing Order and that I know and
9 fully understand the contents hereof; that I admit the findings of fact herein, voluntarily
10 consent to the entry of this Order without further hearing, expressly waiving any right to
11 a hearing in this matter; that I understand that the Director reserves the right to take
12 further actions to enforce this order or to take appropriate action upon discovery of other
13 violations of Oregon Mortgage Lender Law; and that I will fully comply with Oregon
14 Mortgage Lender Law.

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

16 Dated this 11th day of July, 2001.

17
18 By Dusty Smith
19 Dusty Smith

20 Sworn to before me this 11th day of July, 2001.

21
22 Mendie M. Mayfield

23 Signature of Notary Public
24 Notary Public for the State of: Oregon
My Commission expires: 12-6-2003

