





1 has also been doing business from offices located at 1309 359<sup>th</sup> Street, Federal Way,  
2 Washington 98003.

3 2. On or about September 5, 2001, the Director licensed KoBay to engage in  
4 Oregon residential mortgage transactions, assigning license number ML-2455 to the  
5 business. At that time, no branch offices were designated by KoBay to the Director.

6 3. Ben Klimok ("Klimok") is, by information and belief, a resident of the State  
7 of Washington and was, at all times relevant herein, employed by KoBay.

8 4. On or about the week of April 4, 2005, Klimok accepted a residential  
9 mortgage loan application from Uselton, an Oregon resident. Klimok, who was working  
10 at the time from a KoBay branch office located at 6991 E. Camelback Road, Suite  
11 B200, Scottsdale, Arizona 85251, then contacted Thomas Guitar ("Guitar"), a property  
12 appraiser working from offices located in Beaverton, Oregon. Klimok requested that  
13 Guitar perform a second appraisal of the Uselton residential property located in St.  
14 Helens, Oregon. Klimok told Guitar that he wanted the property to be appraised at a  
15 value of \$192,500. Klimok repeatedly asked Guitar if the property could be appraised at  
16 that value, even though Guitar had not seen the property. Guitar told Klimok that he  
17 could not determine the value of the property until he appraised it, but he understood  
18 that Klimok expected the appraisal to come in at \$192,500. Once Guitar performed the  
19 appraisal, the value was less than \$192,500. After Klimok received the appraisal, he  
20 called Guitar and threatened him using statements such as "Am I going to have to come  
21 to Portland and take care of you?" and "Am I going to have to come to Portland and  
22 beat your ass?"

23 5. Klimok attempted to influence Guitar's appraisal of the Uselton property by  
24 telling Guitar the exact value expected from the appraisal prior to Guitar's viewing of the  
25 property. Once the appraisal was done and came in less than \$192,500, Klimok  
26 threatened Guitar. KoBay exerted no effective control over Klimok's activities with



1 respect to the attempted influencing of the appraisal or the threatening behavior by  
2 Klimok after the appraisal had been made.

3 6. During the relevant times herein, KoBay engaged in at least one Oregon  
4 residential mortgage loan transactions from a branch office location at 6991 E.  
5 Camelback Road, Suite B200, Scottsdale, Arizona 85251.

6 7. KoBay did not notify the Director of its Scottsdale, Arizona branch office  
7 location within thirty days of the opening the office.

8 8. KoBay did not notify the Director that Klimok was employed as a  
9 residential mortgage loan originator for KoBay within thirty days of the start of Klimok's  
10 employment.

### 11 CONCLUSIONS OF LAW

12 The Director **CONCLUDES** that:

13 9. KoBay violated ORS 59.969(1) by failing to notify the Director of the  
14 employment of Klimok as a loan originator within thirty days of hire.

15 10. KoBay violated ORS 59.950(2) and OAR 441-860-0030 by failing to notify  
16 the Director of its Scottsdale, Arizona branch office location not later than thirty days  
17 prior to the opening the office.

18 11. KoBay violated ORS 59.865(2) by engaging in unfair or unethical practices  
19 or conduct in connection with a mortgage business when Klimok threatened and  
20 attempted to influence an appraiser.

21 12. KoBay violated ORS 59.856(15) by failing to supervise diligently and  
22 control the mortgage-related activities of Klimok.

23 13. Klimok violated ORS 59.971(1) by engaging in unethical practices or  
24 conduct in connection with a mortgage business by threatening and attempting to  
25 influence an appraiser.

26 ////

1 **ORDER**

2 **NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING ORDERS:**

3 14. Pursuant to the authority of ORS 59.885(4), the Director hereby **ORDERS**  
4 KoBay to **CEASE AND DESIST** from violating any provision of the Oregon Mortgage  
5 Lender Law, OAR 441-850-0005 through 441-885-0010, or any rule, order, or policy  
6 issued by the Division.

7 15. Pursuant to the authority of ORS 59.996, the Director hereby **ASSESESSES**  
8 the following **CIVIL PENALTIES:**

9 a. KoBay is assessed a civil penalty in the amount of \$20,000 (twenty  
10 thousand dollars), \$5,000 (five thousand dollars) for each of the four violations  
11 described above in the Conclusions of Law, Paragraphs 9 through 12; and

12 b. Klimok is assessed a civil penalty of \$5,000 (five thousand dollars) for the  
13 violation described in the Conclusions of Law, Paragraph 13.

14 16. The Director **SUSPENDS** payment of the entire assessed civil penalty  
15 against Ben Klimok and **SUSPENDS** \$10,000 (ten thousand dollars) of the assessed  
16 civil penalty against KoBay Financial Corp. for a three-year period. If, in the three-year  
17 period following the date of the Order, KoBay Financial Corp. or Ben Klimok violate any  
18 provision of the Oregon Mortgage Lender Law, OAR 441-850-0005 through 441-885-  
19 0010, or any rule, order, or policy issued by the Division, the suspended portion of the  
20 assessed civil penalties will become immediately due and payable. If KoBay Financial  
21 Corp. and Ben Klimok do not violate the Oregon Mortgage Lender Law, OAR 441-850-  
22 0005 through 441-885-0010, or any rule, order, or policy issued by the Division in the  
23 three years from the date of the Order, the suspended portion of the civil penalty is  
24 waived.

25 17. KoBay is permitted to pay the assessed penalty in four payments of not  
26 less than \$2,500 (two thousand five hundred dollars) in each payment. The total

Division of Finance and Corporate Securities  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387



1 assessed penalty shall be received by the Department of Consumer and Business  
2 Services no later than January 31, 2006. Payments shall be made by check paid to the  
3 order of the Department of Consumer and Business Services and mailed to Fiscal  
4 Services Section, DCBS, PO Box 14610, Salem OR 97309-0445.

5 18. The date of this Order is the day the Director signs the Order.

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

8 Dated this 16<sup>th</sup> day of NOVEMBER, 2005 at Salem, Oregon.

9 CORY STREISINGER, Director  
10 Department of Consumer and Business Services

11 

12 David C. Tatman, Acting Administrator  
13 Division of Finance and Corporate Securities

14 APPROVED AS TO FORM:

15 \_\_\_\_\_  
16 Attorney for Respondents

Dated: \_\_\_\_\_

17 **CORPORATE CONSENT TO ENTRY OF ORDER**  
18 (for KoBay Financial Corp.)

19 I, Viktor Kobzar, state that I am an officer of KoBay Financial Corp. and I am  
20 authorized to act on its behalf; that I have read the foregoing Order and that I know and  
21 fully understand the contents hereof; that I and this entity have been advised of the right  
22 to a hearing and of the right to be represented by counsel in this matter; that KoBay  
23 Financial Corp., voluntarily and without any force or duress, consents to the entry of this  
24 Order, expressly waiving any right to a hearing in this matter; that KoBay Financial  
25 Corp. executes this Consent as a settlement of the matters referred to in the foregoing  
26 Order; that KoBay Financial Corp., understands that the Director reserves the right to

Division of Finance and Corporate Securities  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387



1 take further actions to enforce this Order or to take appropriate action upon discovery of  
2 other violations of the Oregon Securities Law; and that KoBay Financial Corp. will fully  
3 comply with the terms and conditions stated herein.

4 KoBay Financial Corp. further assures the Director that neither KoBay Financial  
5 Corp., nor its officers, directors, employees or agents, will effect mortgage transactions  
6 in Oregon unless such activities are in full compliance with Chapter 59 of the Oregon  
7 Revised Statutes.

8 KoBay Financial Corp. understands that this Consent Order is a public  
9 document.

10 Dated this 9 day of November, 2005.

11  
12 By: \_\_\_\_\_

Viktor Kobzar

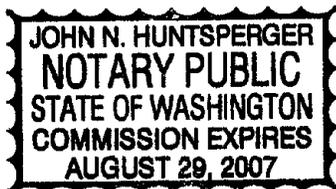
President

13  
14 Office Held

15  
16 **CORPORATE ACKNOWLEDGMENT**

17 There appeared before me this 9<sup>TH</sup> day of NOVEMBER, 2005, Viktor  
18 Kobzar, who was first duly sworn on oath, and stated that he was and is an officer of  
19 KoBay Financial Corp., and that he is authorized and empowered to sign this Consent  
20 to Entry of Order on behalf of KoBay Financial Corp., and to bind KoBay Financial Corp.  
21 to the terms hereof.

Division of Finance and Corporate Securities  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387



Signature of Notary \_\_\_\_\_

Notary Public for the State of: WASHINGTON

My commission expires: 8-29-2007

1 **CONSENT TO ENTRY OF ORDER**  
2 (for Ben Klimok individually)

3 I, Ben Klimok, state that I am a resident of the State of Washington, that I have  
4 read the foregoing Order and that I know and fully understand the contents hereof; that I  
5 execute this Consent as a settlement of the matter referred to in the Order; that I have  
6 been advised of my right to a hearing, and that I have the right to be represented by  
7 counsel in this matter; that I voluntarily consent to the entry of this Order without any  
8 force or duress, expressly waiving any right to a hearing in this matter; that I understand  
9 that the Director reserves the right to take further actions against me to enforce this  
10 Order or to take appropriate action upon discovery of other violations of the Oregon  
11 Mortgage Lender Law by me; and that I will fully comply with the terms and conditions  
12 stated herein.

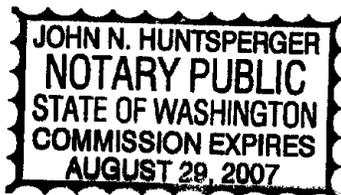
13 I further assure the Director that I will not engage in the activities of a securities  
14 broker-dealer, investment adviser, or mortgage broker, or act as a salesperson for any  
15 of these unless such activities are in full compliance with Chapter 59 of the Oregon  
16 Revised Statutes.

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

18 Dated this 9 day of November, 2005.

19   
20 Ben Klimok

21   
22 SUBSCRIBED AND SWORN to before me this 9TH day of NOVEMBER, 2005.



24   
Signature of Notary Public

25 Notary Public for the State of: WASHINGTON

26 My commission expires: 8-29-2007

Division of Finance and Corporate Securities  
Labor and Industries Building  
350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
Telephone: (503) 378-4387