

1 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
2 DIVISION OF FINANCE AND CORPORATE SECURITIES
3 BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND
4 BUSINESS SERVICES

4 In the Matter of:)

M-08-0046-82

5 Smart Equity Mortgage Investments)

FINAL AMENDED ORDER TO
CEASE AND DESIST, ACCEPTING
SURRENDER OF MORTGAGE
BANKER / BROKER LICENSE,
ENTERED BY DEFAULT

6 LLC,)

7)

8 Respondent.)

9 On May 8, 2009 the Director of the Department of Consumer and Business
10 Services (the "Director") acting by the authority of Oregon Revised Statutes ("ORS")
11 Chapter 59.840 et seq. (the "Oregon Mortgage Lender Law"), issued Administrative
12 Order M-08-0046-82, AMENDED ORDER TO CEASE AND DESIST, ACCEPTING
13 SURRENDER OF MORTGAGE BANKER / BROKER LICENSE WITH NOTICE OF
14 RIGHT TO HEARING (the "Proposed Order") against Smart Equity Mortgage
15 Investments, LLC (the "Respondent").

16 On or about May 12, 2009 Respondent was mailed true copies of the Proposed
17 Order by regular, first-class mail and by certified mail, postage prepaid, return receipt
18 requested, and addressed to: 2105 Silver Lea Ct., Eugene, OR 97404. The certified
19 mailing was signed for and the regular mailing was not returned to the Division.

20 Respondent has not advised the Division of Finance and Corporate Securities
21 (the "Division") of any change in its address or cessation of business at any of its
22 offices, as required by Oregon Administrative Rule ("OAR") 441-860-0070.

23 Respondent has not made a written request for a contested case hearing in this
24 matter and the time to do so has expired.

25 NOW THEREFORE, after consideration of the Division's investigative file and
26 related documents, the Director hereby issues the following Findings of Fact,



1 Conclusions of Law, and Final Order.

2

FINDINGS OF FACT

3 The Director **FINDS** that:

4 1. Respondent is a company engaged in Oregon residential mortgage lending
5 operating from a principal place of business located at 2105 Silver Lea Ct., Eugene,
6 OR 97404. Respondent obtained a license (ML# 3971) to engage in Oregon
7 residential mortgage transactions on 2/3/2006. That license was set to expire on
8 2/5/2009 until it was renewed on that date. It is currently set to expire on 2/05/2011.

9 2. Senate Bill 1064, passed in the 2008 supplemental legislative session, required
10 that the Department's Division of Finance and Corporate Securities (the "Division"),
11 obtain from mortgage bankers and brokers reports concerning their residential
12 mortgage activities. The Department issued temporary Oregon Administrative Rule
13 ("OAR") 441-865-0022 on May 7, 2008. As part of that procedure, the Department sent
14 a copy of the temporary rule to all licensees, and the rule was also posted on the
15 Division's website.

16 3. In response to industry concerns about the ability of licensees to gather and report
17 certain information required under OAR 441-865-0022, the Department suspended that
18 temporary rule and issued a new one on June 26, 2008, OAR 441-865-0024,
19 containing all of the same language, but making reporting voluntary for certain items.

20 4. OAR 441-865-0024 requires reporting of certain data designed to allow legislators
21 and state officials to gauge the health of the mortgage industry in Oregon, and set a
22 deadline of August 30, 2008 for the 2007 annual reports.

23 5. On or about June 26, 2008 a copy of OAR 441-865-0024 was mailed to all
24 licensees, and the same was posted on the Division's website.

25 6. On or about July 31, 2008 a public website was opened for licensees to use to file
26 their reports, and a notification email was sent to all valid email addresses that the

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1 Mortgage Lender Section had for active licensees. All "undeliverable" emails were
2 tracked on a spreadsheet, as were "out-of-office" replies. The Division complied with
3 all requests to forward emails to new addresses.

4 7. On or about August 4, 2008 a letter was mailed to all companies who had an
5 active mortgage license any time after July 31, 2008 informing them of the requirement
6 to file an annual report.

7 8. On or about August 11, 2008 the Division sent out the Summer 2008 edition of the
8 Mortgage Regulation News newsletter to all licensees. The article on the outside back
9 cover of the newsletter detailed the annual report requirement, including the due date,
10 how to report, and consequences for failing to file the report.

11 9. On or about August 14, 2008 an email was set to those companies who had not
12 yet filed an annual report and for which the Division had a valid email address,
13 reminding them of the requirement to file the report. Again, "undeliverable" and "out-of-
14 office" replies were tracked on a spreadsheet, and the Division complied with all
15 requests to forward emails to new email addresses.

16 10. Between September 17 and September 19, 2008 letters were sent to
17 approximately two hundred twenty five (225) licensees who had a license in 2007 but
18 had not yet filed an annual report. The letter again advised the licensees of the
19 requirement to file an annual report, and of the consequences for failing the report.
20 Further, the letter stated that companies who had not filed annual reports by October 3,
21 2008 would be forwarded to the Enforcement Unit for assessment of a civil penalty.

22 11. As of October 10, 2008 Respondent had not filed an annual report for business
23 conducted in 2007.

24 12. On October 14, 2008 the Director issued the Proposed Order against
25 Respondent.

26 13. In response to the Proposed Order Respondent complied with OAR 441-865-

1 0024 by filing an annual report and provided the Division a written explanation as to the
2 circumstances surrounding Respondent's failure to provide the Annual Report in a
3 timely manner.

4 14. Respondent's letter explaining the circumstances surrounding the failure to file an
5 annual report on time was sufficiently compelling to justify waiving the proposed civil
6 penalty.

7 15. Respondent has decided to surrender its Oregon residential mortgage banker /
8 broker's license as of the date the Director or her nominee signs this Order, and to not
9 reapply for an Oregon residential mortgage banker / broker's license for a period of six
10 months from that date.

11 **CONCLUSIONS OF LAW**

12 1. By failing to file an annual report with the Director by August 30, 2008,
13 Respondent violated ORS 59.860(3) and OAR 441-865-0024.

14 **ORDER**

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

16 The Director, pursuant to her authority under ORS 59.885(4), hereby **ORDERS**
17 that Respondent shall **CEASE AND DESIST** from violating any provision of Oregon
18 Mortgage Lender Law, OAR 441-850-0005 through 441-885-0010 and any rule, order or
19 policy issued by the Division;

20 The Division accepts the surrender of Respondent's residential mortgage banker
21 / broker license as of the date of this Order, on the condition that Respondent not
22 reapply for an Oregon residential mortgage banker / broker license for a period of six
23 months from the date of this Order. This condition is not a finding of fault on behalf of
24 Respondent.

25 The date of this Order is the day the Director or the Director's nominee signs the
26 Order. The entry of this Order in no way limits further remedies which may be available

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1 to the Director under Oregon law.

2

3 Dated this 3rd day of JUNE, 2009, at Salem, Oregon.

4 NUNC PRO TUNC May 8, 2009.

5

6 CORY STREISINGER, Director
7 Department of Consumer and Business Services

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9 David Tatman, Administrator
10 Division of Finance and Corporate Securities

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NOTICE OF APPEAL RIGHTS

13 You are entitled to seek judicial review of this Final Order. Judicial review may be
14 obtained by filing a petition for review with the Oregon Court of Appeals in Salem,
15 Oregon within sixty (60) days from the date of service of this Final Order. Judicial
16 review is pursuant to the provisions of **ORS 183.482**.

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