

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES
BEFORE THE DIRECTOR OF THE DEPARTMENT
OF CONSUMER AND BUSINESS SERVICES

In the Matter of:

Case No. DM-11-0054

Brian J. Colombana,

**ORDER TO CEASE AND DESIST,
ORDER ASSESSING CIVIL PENALTY**

Respondent.

ENTERED BY DEFAULT

On July 22, 2011, Director of the Department of Consumer and Business Services for the State of Oregon (hereafter the "Director"), acting by and pursuant to the authority of the Oregon Mortgage Lending Law, ORS 86A.100 *et seq.*, and the Oregon Debt Management Service Providers Law, ORS 697.602 *et seq.*, issued Administrative Order No. DM-11-0054 to Cease and Desist and Assessing Civil Penalties and Notice of Right to Hearing (hereafter "the Order") against Brian J. Colombana (hereinafter "Respondent").

On July 25, 2011, Respondents were duly served with true copies of the Proposed Order by regular, first-class mail and by certified mail, postage prepaid, and addressed to Respondent at the following address: 23016 Lake Forest Dr. Ste 351, Laguna Hills, California 92653. The copy of the order sent via regular U.S. mail has not been returned and is therefore presumed to have been delivered as addressed. On August 1, 2011, the United States Post Office delivered copies of the proposed order via certified mail, which was signed for by Tammy Bloom. Respondents have not made a written request for a contested case hearing in this matter and the time to do so has expired.

NOW THEREFORE, after consideration of the Investigation Report and accompanying exhibits submitted in this matter by Jason Weber, Enforcement Officer, the Director hereby

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 issues the following Findings of Fact, Conclusions of Law, and Final Order:

2 **FINDINGS OF FACT**

3 The Director FINDS that:

4 **A. Respondent**

5 1. Brian J. Colombana (hereinafter "Respondent"), lists his address as 23016 Lake
6 Forest Drive, Suite 351, Laguna Hills, California, 92653.

7 2. Respondent is not a licensed mortgage banker, broker, or loan originator in Oregon
8 and is not registered as a debt management service provider in Oregon.

9 3. Respondent has not obtained a unique identifier from the Nationwide Mortgage
10 Licensing System and Registry.

11 4. Respondent was licensed as an attorney by the California state Bar on November 29,
12 2005. On June 20, 2010, Respondent was no longer eligible to practice law in California. On
13 February 11, 2011, Respondent was disbarred by the California state bar. Respondent was never
14 licensed to practice law in Oregon.

15 **B. PN transaction**

16 5. At all times relevant to this matter, the individual consumer identified herein as "PN"
17 was an Oregon resident. At all relevant times herein, PN was a party to a home mortgage loan
18 secured by real estate located in Gresham, Oregon.

19 6. On or about September 10, 2009, Respondent and PN entered into a contract whereby
20 Respondent agreed to negotiate a loan modification for a loan secured by residential real
21 property located in Gresham, Oregon on behalf of PN in exchange for valuable consideration.

22 7. On September 10, 2009, PN paid \$2,990 to Respondent.

23 8. On information and belief, Respondent has not conducted any substantive
24 conversations with PN's mortgage lender that have resulted in a modification of PN's residential
25 real estate loan.

26 9. On or about October 25, 2010, the Division of Finance and Corporate Securities



1 notified Respondent in writing that it was required to comply with the licensing requirements of
2 the Oregon Mortgage Lender law or the registration requirements of the statutes regarding debt
3 management service providers to collect and retain fees in exchange for offering to assist Oregon
4 consumers in adjusting the terms of their residential real estate loans.

5 10. The Division requested, in writing, that Respondent refund the fees collected from PN
6 within 21 days from October 25, 2010, because it did not perform its promise to obtain a
7 modification of the terms of PN's residential real estate loan.

8 11. As of the date of this order, Respondent has failed to refund the fees that it collected
9 from PN.

10 CONCLUSIONS OF LAW

11 The Director CONCLUDES that:

12 12. Respondent acted as a "mortgage broker" as defined by ORS 86A.100(7)(a)(C) when
13 he offered to negotiate the terms of PN's mortgage loan in exchange for compensation.

14 13. Respondent engaged in a "residential mortgage transaction in this state" as defined by
15 ORS 86A.103(2) when they offered to negotiate a home mortgage loan secured by real estate
16 located in Oregon.

17 14. Respondent violated ORS 86A.103(1) when they engaged in a residential mortgage
18 transaction in Oregon without first being licensed as either a mortgage banker or mortgage
19 broker as described herein.

20 15. Respondent violated ORS 86A.154(2) when it knowingly made an untrue statement
21 of material fact by telling PN that Respondent would attempt to negotiate PN's residential real
22 estate loan when in reality Respondent did not conduct any substantive conversations with PN's
23 mortgage lender that have resulted in a modification of PN's residential real estate loan.

24 16. Respondent performed a "debt management service" as defined by ORS
25 697.602(2)(c) when they offered to modify terms and conditions of an existing loan or obligation
26 in exchange for compensation.



1 17. Respondent violated ORS 697.612(1)(a) when they performed a debt management
2 service without first registering with the Director under ORS 697.632.

3 18. The \$2,990 fee collected by Respondent exceeded the amount permitted by ORS
4 697.692(1).

5 19. Respondent violated ORS 697.662(7)(a) when it collected fees from PN that
6 exceeded the amounts permitted by ORS 697.692(1).

7 20. Respondent violated ORS 697.662(4) when it offered to perform a debt management
8 service without evaluating, as part of the budget analysis the debt management service provider
9 must perform under ORS 697.652(2), whether the debt management service is or would be
10 advantageous to the consumer.

11 21. Respondent violated ORS 697.662(5) when it performed a debt management service
12 without having a good faith belief formed after conducting an evaluation described in ORS
13 697.662(4) that the consumer can or will comply with the terms of the agreement described in
14 ORS 697.652.

15 **ORDERS**

16 NOW, THEREFORE, THE DIRECTOR ISSUES THE FOLLOWING ORDERS:

17 *Cease and Desist Order*

18 22. The Director, pursuant to his authority under ORS 86A.127 and ORS 697.825 hereby
19 ORDERS Respondent to CEASE AND DESIST from violating Oregon's Mortgage Lender law
20 and Oregon's Debt Management Service Providers law.

21 *Order Assessing Civil Penalty*

22 23. The Director, pursuant to ORS 86A.992, and ORS 697.832, may assess CIVIL
23 PENALTIES of up to \$5,000 per violation against persons who violate the Oregon Mortgage
24 Lender law and the Debt Management Service Providers law. Pursuant to these provisions, the
25 Director, hereby ORDERS Respondent to pay the State of Oregon a CIVIL PENALTY totaling
26 \$20,000. This total civil penalty is calculated as follows: \$5,000 for unregistered and unlicensed



1 loan modification activity in violation of ORS 86A.103(1) and ORS 697.612(1); \$5,000 for
2 mortgage fraud in violation of ORS 86A.154(2); \$5,000 for collecting excessive fees in
3 violation of ORS 697.692(1) and ORS 697.662(7)(a); and \$5,000 for offering to perform a debt
4 management service without a good faith belief that it would actually be beneficial to the
5 consumer in violation of ORS 697.662(4) and ORS 697.662(5).

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

8 IT IS SO ORDERED.

9 Dated this 5th day of October, 2011, Nunc Pro Tunc July 22, 2011.

10
11 SCOTT L. HARRA, Acting Director
12 Department of Consumer and Business Services

13 /s/ David Tatman

14 David C. Tatman, Administrator
15 Division of Finance and Corporate Securities

16 **NOTICE:** You are entitled to judicial review of this Order. Judicial review may be obtained by filing
17 a petition with the Court of Appeals in Salem, Oregon within 60 days from the service of this Order.
18 Judicial review is pursuant to the provisions of ORS 183.482 to the Oregon Court of Appeals.

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