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

In the Matter of:	**M-05-0007-2**
David Garza,	**ORDER TO CEASE AND DESIST ORDER ASSESSING CIVIL PENALTIES**
Respondent.	**And CONSENT TO ENTRY OF ORDER**

The Director of the Department of Consumer and Business Services for the State of Oregon (hereinafter "the Director") acting by the authority of the Chapter 59 of the Oregon Revised Statutes (hereinafter cited as "the Oregon Mortgage Lender Law"), hereby issues the following Findings of Fact, Conclusions of Law, Order and Notice of Right to a Public Hearing:

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FINDINGS OF FACT

The Director **FINDS** that:

1. Columbia Funding Group, Inc. (hereinafter "CFG") is an Oregon corporation licensed by the Director to engage in Oregon residential mortgage lending since June 28, 2001.

2. At all times relevant hereto, David Garza was a loan originator for CFG.

3. CFG ordered a full 1004 appraisal of the Oregon residential real property located at 244 NE 56th Avenue in Hillsboro, Oregon 97124 through Williams Associates Real Estate Appraisers, Inc. (hereinafter "WAREA") in connection with a mortgage loan that CFG was attempting to arrange for Oregon consumers.

4. WAREA accepted the appraisal assignment from CFG, appraised the property, and provided CFG with the value derived from the appraisal.

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5. CFG was unable to use the appraisal completed by WAREA because the value was not sufficient to meet CFG's needs.

6. WAREA attempted to collect payment from CFG for the appraisal service provided.

7. CFG did not send WAREA payment in response to WAREA's request for payment for the appraisal services rendered. Instead, David Garza sent a letter to WAREA dated January 20, 2004 stating that "For whatever reason, your appraiser took the liberty to do the appraisal when you never intended to arrive at the price that we needed to close this transaction."

8. The January 20, 2004 letter further stated, "We told the appraiser that it is of no good to us if we can't get the value of the offer."

9. In the letter, the David Garza derides the appraiser's decision about what should be included in the value in the comment "this was a brand new home and the buyer decided they wanted a few upgrades that your appraiser didn't want to include."

10. David Garza further noted in the letter that he had attempted to get the appraiser to change the value in the statement: "if you [sic] appraiser would have done a little bit of work, and adjusted the value, this would not have been an issue and we would have closed this transaction on time. Both the Realtor and I tried to convince her to make the change, the appraiser would not do it."

11. David Garza provided comparable sales data to WAREA in an attempt to get WAREA to change the value. WAREA rejected the comparable sales data provided by David Garza.

12. CFG obtained an appraisal from another appraiser which CFG used to close the transaction. WAREA reviewed that appraisal and found that the comparable sales data used was older than that which WAREA used. In the one instance where WAREA and the other appraiser used the same comparable sale, WAREA took into account the

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sales concessions made whereas the other appraiser did not.

13. CFG did not authorize David Garza to write the letter or deny payment to WAREA for services rendered.

14. The Director acknowledges that Respondent does not admit to the Findings of Fact or Conclusions of Law contained in this order but Respondent, wishing to settle this matter, agrees to abide by the orders contained herein

CONCLUSIONS OF LAW

The Director **CONCLUDES** that:

1. WAREA is required by ORS 674.130 and ORS 674.140(2) to comply with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (hereinafter "FIRREA") since this appraisal was for a federally-related mortgage transaction.

2. FIRREA requires that the appraisal be conducted pursuant to the requirements of the Uniform Standards of Professional Appraisal Practice (hereinafter "USPAP").

3. The Management Section of the Ethics Rule of USPAP prohibits an appraiser from accepting an appraisal assignment, or making compensation arrangements for the assignment, that are contingent upon any of five conditions. Those conditions are: 1) the reporting of a predetermined result (e.g., opinion of value); 2) a direction in assignment results that favors the cause of the client; 3) the amount of a value opinion; 4) the attainment of a stipulated result; or the occurrence of a subsequent event directly related to the appraiser's opinions and specific to the assignment's purpose.

4. The Conduct Section of the Ethics Rule of USPAP requires that the appraisal be completed with impartiality, objectivity, and independence, without accommodating personal interests or acting as an advocate for a party.

5. By withholding payment for the assignment because WAREA did not return the value that Columbia Funding Group, Inc. needed, by communicating to the appraiser in a manner designed to have the appraiser change the value determination and by its

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statements in its letter of January 20, 2004, David Garza engaged in unfair or unethical conduct in the mortgage business in violation of ORS 59.971(1)(a) by attempting to persuade an appraiser to complete an appraisal assignment in violation of the requirements of the Ethics Rule of USPAP.

ORDER

The Director, pursuant to ORS 59.885(4) hereby **ORDERS** that David Garza will **CEASE AND DESIST** from violating ORS 59.971(1)(a).

The Director, pursuant to ORS 59.996 hereby **ORDERS** David Garza to pay the State of Oregon a civil penalty of $5,000 for the violation of ORS 59.971(1)(a).

The Director suspends payment of $3,000 of the assessed civil penalty for a three-year period. If in the period between the date of the Order to three years from the date of the Order, Respondent violates any provision of the Oregon Mortgage Lender Law, OAR 441-850-0005 through 441-885-0010 or any rule, order, or policy issued by the Director, the suspended portion of the assessed civil penalty will become immediately due and payable. If Respondent does not violate the Oregon Mortgage Lender Law, OAR 441-850-0005 through 441-885-0010 or any rule, order, or policy issued by the Director in three years from the date of the Order, the suspended portion of the civil penalty is waived.

The date of this order is the day the Director or Director's nominee signs the order. The entry of this Order in no way limits further remedies which may be available to the Director under Oregon law.

Dated this 9th day of September, 2005 at Salem, Oregon.

CORY STREISINGER, Director
Department of Consumer and Business Services

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Floyd Lanter, Administrator
Division of Finance and Corporate Securities

CONSENT TO ENTRY OF ORDER

I, David Garza, state that I have read the foregoing Order and that I know and fully understand the contents hereof; that I have been advised of the right to a hearing and of the right to be represented by counsel in this matter; that I voluntarily and without any force or duress, consent to the entry of this Order without admitting the Findings of Fact or Conclusions of Law contained herein but agreeing to be bound by the orders herein, expressly waiving any right to a hearing in this matter; that I understand that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations of the Oregon Mortgage Lender Law; and that I will fully comply with the terms and conditions stated herein.

I further assure the Director that I will not effect mortgage transactions in Oregon unless such activities are in full compliance with Chapter 59 of the Oregon Revised Statutes.

I understand that this Consent Order is a public document.

Dated this 30th day of August, 2005.

By _____
David Garza

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ACKNOWLEDGMENT

Signed before me this 30th day of August, 2005, by David Garza, who was first duly sworn on oath.

OFFICIAL SEAL
ANNE D. KNESAL
NOTARY PUBLIC-OREGON
COMMISSION NO. 360206
MY COMMISSION EXPIRES AUG. 14, 2006

Notary Public
for the State of: Oregon
My commission expires: 8/14/06

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