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3 **STATE OF OREGON**
4 **DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**
5 **DIVISION OF FINANCIAL REGULATION**

6 In the Matter of:

Division Case No.: DM 15-0011

OAH Case No.: 1604469

7 Benjamin R. Horton,

**FINAL ORDER TO CEASE AND DESIST
AND ASSESSING CIVIL PENALTIES**

8 Respondent.

9 On September 16, 2015, the Department of Consumer and Business Services, Division
10 of Financial Regulation (Division or DFR) issued an Order to Cease and Desist, Proposed Order
11 Assessing Civil Penalties and Notice of Right to a Hearing (Order to Cease and Desist) to
12 Preferred Law PLLC, Modification Review Board LLC, American Home-Loan Counselors, and
13 Benjamin R. Horton (Respondents). On October 5, 2015, Benjamin R. Horton, on behalf of
14 Respondents, requested a hearing.

15 On February 9, 2016, the Division referred the hearing request to the Office of
16 Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ)
17 Dove L. Gutman to preside at hearing.

18 On February 17, 2016, the Division issued an Amended Order to Cease and Desist,
19 Proposed Order Assessing Civil Penalties and Notice of Right to a Hearing as to Benjamin R.
20 Horton Only (Amended Order to Cease and Desist).

21 On April 21, 2016, ALJ Gutman convened a prehearing telephone conference. Senior
22 Assistant Attorney General Joanna Tucker Davis represented the Division. Benjamin R. Horton
23 (Horton or Respondent) appeared and represented himself. During the telephone conference,
24 ALJ Gutman set dates for the parties to file Motions for Summary Determination (June 9,
25 2016), Responses (June 30, 2016), and Replies (July 21, 2016). ALJ Gutman also scheduled the
26 hearing for October 4, 2016 through October 6, 2016.

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





1 On June 7, 2016, Horton filed Respondent’s Motion for Summary Determination and
2 attachment (Verification). On June 9, 2016, Ms. Tucker Davis filed the Division’s Motion for
3 Summary Determination (MSD) and Exhibits A1 through A37.

4 On June 21, 2016, Horton filed his Reply and attachment (Verification). On June 28,
5 2016, the Division filed its Response to Respondent’s MSD. On July 21, 2016, ALJ Gutman
6 closed the record and took the matter under advisement.

7 On August 9, 2016, ALJ Gutman issued a Ruling on Motion for Summary
8 Determination, granting the Division’s MSD and denying Horton’s MSD. Because there were
9 other allegations in the Division’s Amended Notice to Cease and Desist that were not raised in
10 the Division’s MSD, those other allegations remained for hearing.

11 On September 7, 2016, the Division issued its Second Amended Order to Cease and
12 Desist, Proposed Order Assessing Civil Penalties and Notice of Right to a Hearing as to
13 Benjamin R. Horton Only (Second Amended Order to Cease and Desist), withdrawing all of the
14 remaining issues for hearing and requesting that a Proposed Order be issued in the case.

15 On September 19, 2016, ALJ Gutman, issued an Amended Ruling on Motions for
16 Summary Determination, and Proposed Order and concluded that all of the issues were decided
17 and granted summary determination in favor of the Division. ALJ Gutman denied
18 Respondent’s Motion for Summary Determination.

19 Respondent has not filed exceptions to the Proposed Order and the time for doing so has
20 expired.

21 **Therefore, having reviewed the entire record in this matter, the Director issues the**
22 **following finding of fact, conclusions of law and issue a final order consistent with that**
23 **proposed by OAH.**

24 ISSUES

25 Whether there are genuine issues of material fact that remain to be determined, and if not,
26 whether the Division or Respondent is entitled to a ruling as a matter of law.

1 *Division's issues*

2 2. Whether Respondent violated ORS 86A.103(1) by engaging in residential mortgage
3 transactions in Oregon without first obtaining a license as a mortgage broker under ORS
4 86A.095 to 86A.198.

5 3. Whether Respondent violated ORS 697.612(1)(a) by performing a debt management
6 service without Respondent, Preferred Law PLLC (PL), Modification Review Board LLC
7 (MRB), and American Home Loan Counselors (AHLIC) being registered with the Director to
8 provide such a service.

9 4. Whether Respondent violated ORS 697.612(1)(b)(A) by soliciting and receiving an
10 application from DH and JB for a debt management service when Respondent, PL, MRB, and
11 AHLIC were not registered as debt management service providers.

12 5. Whether Respondent violated ORS 697.612(1)(b)(E) when Respondent, through PL,
13 MRB, and AHLIC provided advice, assistance, instruction or instruction material regarding debt
14 management service to DH and JB when Respondent, PL, MRB, and AHLIC were not registered
15 as debt management service providers.

16 6. Whether Respondent, by and through PL, MRB, and AHLIC violated ORS
17 697.692(1)(a) by accepting or receiving an initial fee of more than \$50 from DH and JB.

18 7. Whether Respondent, by and through PL, MRB, and AHLIC published an
19 advertisement that contained a false, misleading or deceptive statement or representation in that
20 the Oregon Department of Justice was not involved with any Preferred Law matter, in violation
21 of ORS 86A.163(1).

22 8. Whether Respondent and all entities owned or controlled by Respondent shall be
23 ordered to cease and desist from violating Oregon statutes regulating mortgage lending, ORS
24 86A.100 et seq., and debt management service providers, ORS 697.602 to 697.842.

25 9. Whether Respondent shall be ordered to pay civil penalties, jointly and severally with
26 PL, MRB, and AHLIC in the amount of \$35,000 as follows:



- a. \$10,000 for committing two violations of ORS 86A.103(1), ORS 697.612(1)(b)(E), ORS 697.612(1)(a);
- b. \$10,000 for committing two violations of ORS 697.612(1)(b)(A);
- c. \$10,000 for committing two violations of ORS 697.692(1)(a); and
- d. \$5,000 for committing one violation of ORS 86A.163(1).

Respondent's issues

10. Whether Respondent cannot be held liable under ORS 86A.103(1) and 86A.163(1) because Respondent did not engage or offer to engage in “residential mortgage transactions” as a “mortgage broker.”

11. Whether Respondent cannot be held liable under ORS 697.612(1)(a), 697.612(1)(b)(A), 697.612(1)(b)(E) and 697.692(1)(a) because Respondent did not perform any “debt management services.”

DOCUMENTS CONSIDERED

The following documents were reviewed and considered in this matter: Respondent’s MSD and attachment (Verification), the Division’s MSD and Exhibits A1 through A37, Respondent’s Reply and attachment (Verification), the Division’s Response to Respondent’s MSD, and the pleadings.

LEGAL STANDARD FOR SUMMARY DETERMINATION

Motions for Summary Determination are governed by OAR 137-003-0580, which provides, in pertinent part:

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.





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(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

1 (11) The administrative law judge’s ruling may be rendered on a
2 single issue and need not resolve all issues in the contested case.

3 (12) If the administrative law judge’s ruling on the motion
4 resolves all issues in the contested case, the administrative law
5 judge shall issue a proposed order in accordance with OAR 137-
6 003-0645 incorporating that ruling or a final order in accordance
7 with OAR 137-003-0665 if the administrative law judge has
8 authority to issue a final order without first issuing a proposed
9 order.

10 FINDINGS OF FACT

11 *Background*

12 1. Benjamin R. Horton (Horton or Respondent) is an attorney who is licensed to
13 practice law in Utah and Texas. (Exs. A3, A6.) Horton is not licensed to practice law in
14 Oregon. (Exs. A3, A7.) Horton’s address on the Utah State Bar website is 8180 South 700 East
15 Suite 110, Sandy, Utah 84070. (Ex. A6.)

16 2. Preferred Law PLLC (PL) was first registered with the State of Utah on October 26,
17 2011, with a principle place of business of 2825 E. Cottonwood Parkway, Suite 500, Salt Lake
18 City, Utah 84121. Horton is listed as PL’s Registered Agent. Horton is the only member and
19 manager of PL. Horton is the only attorney at PL. (Exs. A1, A2, A3, A35.)

20 3. Modification Review Board LLC (MRB) filed Articles of Organization with the State
21 of Utah on October 26, 2011, with a reported address of 9035 S 700 E Suite 203, Sandy, Utah
22 84070. Horton is listed as MRB’s Registered Agent. Jonathan and Sandra Hanley are listed as
23 members and initial managers. (Exs. A3, A5.)

24 4. American Home-Loan Counselors (AHLC) was first registered with the State of Utah
25 on September 21, 2012, with a principle address of 8180 South 700 East Suite 110, Sandy, Utah
26 84070. AHLC is registered as a non-profit corporation. Jonathan Hanley is listed as the
Registered Agent. (Exs. A3, A24.)



1 5. AM Property Management, LLC (AM) was first registered with the State of Utah on
2 November 1, 2011, with a reported address of 8180 South 700 East #110, Sandy, Utah, 84070.

3 Horton is listed as the Registered Agent of AM. (Ex. A36.)

4 6. PL and AHLC have the same phone number. (Exs. A1, A15.)

5 7. PL and MRB have the same address and phone number on documents they provide to
6 consumers. (Exs. A1, A12, A13.)

7 8. PL and MRB post the same advertisement on their respective web sites. (Ex. A1,
8 A31.)

9 9. PL, MRB, and AHLC share some of the same employees, including Jonathan Hanley,
10 Shannon Martinez, and Bobbi Collins. (Ex. A1, A12, A25.)

11 10. Horton, PL, MRB, and AHLC have never been registered with the Oregon Secretary
12 of State to conduct business in Oregon. (Exs. A3, A4.)

13 11. Horton, PL, MRB, and AHLC have never been registered to provide debt
14 management services in Oregon. (Exs. A3, A8.)

15 12. Horton, PL, MRB, and AHLC have never been licensed to provide mortgage banker
16 or mortgage broker services in Oregon. (Ex. A9.)

17 *Transaction involving DH*

18 13. On or about March 27, 2012, DH, an Oregon resident, contracted with MRB and PL
19 to assist him with obtaining a loan modification for his real property located in Creswell,
20 Oregon. On March 27, 2012, DH received a “Service Agreement and Application for Mortgage
21 Assistance” from MRB. The form authorized MRB to negotiate on DH’s behalf to obtain
22 modification relief services. DH filled out and returned the form to MRB. (Exs. A1, A10,
23 A12.)

24 14. On or about April 2, 2012, DH received an email from Shannon Martinez, an
25 employee of PL, stating, in part:
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I am your Paralegal assigned to your case. Please call me to go over some information on your file. I need to gather these documents for your application, in order to continue working on your case and getting you placed in review with your lender.

Here are [sic] a list of documents that are being requested:

Please return all the attached forms within 48 hours, so I am able to get started on your modification.

Service Retainer – attached
Borrowers Authorization – attached

Shannon Martinez
Paralegal
Preferred Law, PLLC

(Ex. A14.) DH signed and returned the attached documents, including the borrower’s authorization form, authorizing MRB to engage in modification relief services on DH’s behalf; the fee and representation agreement with PL for assistance with the loan modification, including negotiating the terms of the loan with the lender; and an agreement allowing PL to withdraw monthly payments from DH’s bank account for the loan modification services. (Exs. A1, A10, A13, A14, A16, A17.)

15. On or about April 16, 2012, DH began making monthly payments of \$650 to Horton and PL. DH paid six monthly payments of \$650 (4/12 through 9/12), and six monthly payments of \$297 (10/12 through 3/13). AM and/or PL deducted the monthly payments from DH’s bank account. (Exs. A16, A17.)

16. DH paid Horton and PL \$5,682 to obtain a mortgage modification. DH did not receive a mortgage modification for his Creswell property. DH did not receive a refund from Horton, PL or MRB. (Exs. A10, A16, A17.)

17. On December 19, 2014, a Sheriff’s Deed was entered in Lane County Deeds and Records showing that DH’s home had gone into foreclosure. (Exs. A15, A21.)

1 *Transaction involving JB*

2 18. On or about November 23, 2012, JB, an Oregon resident, contracted with AHLC
3 and PL to assist him with obtaining a loan mortgage modification for his real property in
4 Glendale, Oregon. AHLC sent JB a packet of documents to fill out and return, including an
5 application and/or borrower's authorization form, authorizing AHLC to engage in modification
6 relief services on JB's behalf. JB filled out the documents and returned them to AHLC. (Exs.
7 A1, A22, A23, A26, A27.)

8 19. On or about November 23, 2012, JB signed a fee and representation agreement with
9 PL for assistance with the loan mortgage modification, including negotiating the terms of the
10 loan with the lender. JB also signed an agreement allowing PL to withdraw monthly payments
11 from his checking account for those services. (Exs. A1, A22, A23, A26, A27.)

12 20. On or about November 23, 2012, JB began making monthly payments of \$650 to
13 Horton and PL. JB paid six monthly payments of \$650 (11/12 through 4/13), and fifteen
14 monthly payments of \$297 (5/13 through 8/14). (Exs. A23, A26, A27.)

15 21. In November 2013, PL faxed a loan modification application to JB's loan service
16 provider, Ocwen Loan Servicing. PL corresponded with Ocwen Loan Servicing through
17 August 2014 regarding a loan modification for JB. (Ex. A37.)

18 22. On September 30, 2014, Horton sent a letter to JB stating that he had sent a
19 qualified written request (QWR) to JB's lender. In the letter, Horton also stated that PL was
20 performing its federal analysis and review of all of the documentation supplied by JB's lender in
21 response to the QWR, and that mortgage assistance relief services had been directed to AHLC.
22 (Ex. A28.)

23 23. JB paid Horton and PL \$8,355 to obtain a loan mortgage modification. JB did not
24 receive a loan mortgage modification for his Glendale property. JB did not receive a refund
25 from Horton, PL or AHLC. (Exs. A1, A22.)

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1 24. On May 31, 2016, according to A Notice of Sheriff's Sale Real Property, JB's home
2 was to be sold at auction. (Exs. A3, A30.)

3 *Complaints and investigations*

4 25. In March 2013, Horton responded to a complaint filed on the "Get Out of Debt
5 Guy" website, an on-line complaint board, acknowledging that PL is his law firm and it "assists
6 homeowners with federal home loan assistance." (Exs. A3, A33.)

7 26. In July 2013, DH filed a complaint against PL with the Division. (Exs. A10, A11.)

8 27. On September 11, 2013, Debbie Myers, Financial Examiner with the Division, sent
9 a letter to Ms. Martinez of PL, requesting a response to the letter regarding unregistered debt
10 management services activities of PL and requesting a refund on behalf of DH. (Exs. A11,
11 A18.) On September 27, 2013, Ms. Myers sent a similar letter to PL. (Ex. A19.)

12 28. On October 3, 2013, Horton responded to Ms. Myers' September 27, 2013 letter
13 stating, among other things, that he was the attorney and manager responsible for PL. (Ex.
14 A20.)

15 29. On November 14, 2014, JB filed a complaint against PL and AHLC with the
16 Division. (Exs. A22, A23.)

17 30. On November 23, 2014, Lonnie Bates, Financial Examiner with the Division, sent a
18 letter to PL and AHLC advising them of JB's complaint and requesting a response. (Exs. A23,
19 A29.) The Division did not receive a response to Mr. Bates' letter. (Ex. A23.)

20 31. On December 12, 2014, the Banking Commissioner for the State of Connecticut
21 issued a Temporary Order to Cease and Desist, Order to Pay Restitution, Notice of Intent to
22 Issue Order to Cease and Desist, Notice of Intent to Impose Civil Penalty and Notice of Right to
23 a Hearing against Preferred Law, PLLC. (Ex. A35.)

24 32. On January 10, 2014, United States Magistrate Judge Evelyn J. Furse entered a
25 Memorandum Decision and Order in Case No 2:13-cv-92-EJV where Jonathan Hanley, an
26 individual, Modification Review Board, LLC, a Utah limited liability corporation, Preferred



1 Law, LLC, a Utah limited liability corporation, and Benjamin R. Horton, an individual, were
2 defendants in a civil law suit filed in the United States District Court, District of Utah, Central
3 Division on February 4, 2013. (Exs. A31, 32.) In the Order, Judge Furse found the Defendants’
4 contract with the plaintiffs (for a loan modification) to be unconscionable. (Ex. A32 at 17.)

5 33. On or about June 17, 2016, Cynthia L. Domas, Financial Enforcement Officer with
6 the Division, performed an internet search of PL’s website, which revealed a list of lenders that
7 PL worked with and a list of testimonials from satisfied customers from over 24 states,
8 including one from Oregon. The testimonial and advertisement from Oregon stated:

9 Oregon
10 Department of Justice
11 Appeal. 2% interest rate,
12 \$40,000 principal forgiven
& \$40,000 principal
Deferred.

13 (Exs. A3, A34.)

14 *Other matters*

15 34. On September 16, 2015, the Division issued an Order to Cease and Desist, Proposed
16 Order Assessing Civil Penalties and Notice of Right to a Hearing (Order to Cease and Desist) to
17 Preferred Law PLLC, Modification Review Board LLC, American Home-Loan Counselors, and
18 Benjamin R. Horton (Respondents). (*Order to Cease and Desist.*)

19 35. On November 25, 2015, the Division issued a Final Order to Cease and Desist and
20 Final Order Assessing Civil Penalties Entered by Default as to Preferred Law, PLLC,
21 Modification Review Board, LLC, and American Home Loan Counselors only. (Ex. A1.)

22 36. On February 17, 2016, the Division issued an Amended Order to Cease and Desist,
23 Proposed Order Assessing Civil Penalties and Notice of Right to a Hearing as to Benjamin R.
24 Horton Only. (*Amended Order to Cease and Desist.*)



1 37. On September 7, 2016, the Division issued a Second Amended Order to Cease and
2 Desist, Proposed Order Assessing Civil Penalties and Notice of Right to a Hearing as to
3 Benjamin R. Horton Only. (*Second Amended Order to Cease and Desist.*)

4 CONCLUSIONS OF LAW

5 1. There are no genuine issues of material fact that remain to be determined, and the
6 Division is entitled to a ruling as a matter of law. OAR 137-000-0580.

7 2. Respondent violated ORS 86A.103(1) by engaging in residential mortgage
8 transactions in Oregon without first obtaining a license as a mortgage broker under ORS
9 86A.095 to 86A.198.

10 3. Respondent violated ORS 697.612(1)(a) by performing a debt management service
11 without Respondent, Preferred Law (PL), Modification Review Board LLC (MRB), and
12 American Home Loan Counselors (AHLIC) being registered with the Director to provide such a
13 service.

14 4. Respondent violated ORS 697.612(1)(b)(A) by soliciting and receiving an
15 application from DH and JB for a debt management service when Respondent, PL, MRB, and
16 AHLIC were not registered as debt management service providers.

17 5. Respondent violated ORS 697.612(1)(b)(E) when Respondent, through PL, MRB,
18 and AHLIC provided advice, assistance, instruction or instruction material regarding debt
19 management service to DH and JB when Respondent, PL, MRB, and AHLIC were not registered
20 as debt management service providers.

21 6. Respondent, by and through PL, MRB, and AHLIC violated ORS 697.692(1)(a) by
22 accepting or receiving an initial fee of more than \$50 from DH and JB.

23 7. Respondent, by and through PL, MRB, and AHLIC published an advertisement
24 that contained a false, misleading or deceptive statement or representation in that the Oregon
25 Department of Justice was not involved with any Preferred Law matter, in violation of ORS
26 86A.163(1).



1 8. Respondent and all entities owned or controlled by Respondent shall be ordered to
2 cease and desist from violating Oregon statutes regulating mortgage lending, ORS 86A.100 et
3 seq., and debt management service providers, ORS 697.602 to 697.842.

4 9. Respondent shall be ordered to pay civil penalties, jointly and severally with PL,
5 MRB, and AHLC in the amount of \$35,000 as follows:

6 a. \$10,000 for committing two violations of ORS 86A.103(1), ORS
7 697.612(1)(b)(E), ORS 697.612(1)(a);

8 b. \$10,000 for committing two violations of ORS 697.612(1)(b)(A);

9 c. \$10,000 for committing two violations of ORS 697.692(1)(a); and

10 d. \$5,000 for committing one violation of ORS 86A.163(1).

11 *Respondent's issues*

12 10. Respondent can be held liable under ORS 86A.103(1) and 86A.163(1) because
13 Respondent did engage or offer to engage in “residential mortgage transactions” as a “mortgage
14 broker.”

15 11. Respondent can be held liable under ORS 697.612(1)(a), 697.612(1)(b)(A),
16 697.612(1)(b)(E) and 697.692(1)(a) because Respondent did perform “debt management
17 services.”

18 **OPINION**

19 1. The Division contends its Motion for Summary Determination should be granted.
20 The Division contends that there are no genuine issues of material fact that remain to be
21 determined, and it is entitled to a ruling as a matter of law. Respondent contends that his
22 Motion for Summary Determination should be granted. Respondent contends that there are no
23 genuine issues of material fact that remain to be determined, and he is entitled to a ruling as a
24 matter of law.





1 4. The evidence in the record establishes that Horton, through PL, MRB and
2 AHLC, contracted with DH and JB to provide mortgage loan modifications for residential
3 properties located in Oregon for compensation.

4 5. PL is Horton's law firm. PL and MRB have the same address and phone number
5 on documents they provide to consumers. PL and AHLC have the same phone number. PL,
6 MRB and AHLC share the same employees, including Jonathan Hanley, Shannon Martinez, and
7 Bobbie Collins. Horton acknowledged to the Division that it was his law firm that contracted
8 with DH and JB, and it was his employees that communicated with DH and JB. As such,
9 Horton directed and controlled PL, MRB and AHLC in their transactions with DH and JB.
10 Accordingly, Horton is responsible for the transactions involving DH and JB.

11 6. Horton, through PL, MRB and AHLC, offered to negotiate a mortgage loan
12 modification for DH and JB, both of whom were Oregon residents and had mortgages on their
13 residential homes located in Oregon. DH and JB signed documents with MRB and/or AHLC to
14 obtain loan modification services. In addition, DH and JB both signed a contract with PL for
15 services that included negotiating the terms on their residential mortgage loans.

16 7. The evidence in the record establishes that Horton acted as a mortgage broker
17 when he, for compensation, or in the expectation of compensation, either directly or indirectly
18 made, negotiated, or offered to make or negotiate a modification to the terms and conditions of
19 a mortgage loan for DH and JB.

20 8. The evidence in the record also establishes that Horton engaged in residential
21 mortgage transactions in this state by acting as a mortgage broker when he, through PL, MRB
22 and AHLC, offered to negotiate a modification to the terms and conditions of DH's and JB's
23 individual residential mortgage loans secured by property located in Oregon.

24 9. Therefore, the evidence in the record establishes that Horton acted as a mortgage
25 broker and engaged in residential mortgage transactions in Oregon in his dealings with DH and
26 JB.



1 *Division's issues*

2 10. *Whether Respondent violated ORS 86A.103(1) by engaging in residential*
3 *mortgage transactions in Oregon without first obtaining a license as a mortgage broker under*
4 *ORS 86A.095 to 86A.198.*

5 11. ORS 86A.103 is titled “License required to engage in residential mortgage
6 transactions as mortgage banker or mortgage broker” and provides:

7 (1) It is unlawful for any person to engage in residential mortgage transactions in
8 this state as a mortgage banker or mortgage broker unless the person is licensed
9 under ORS 86A.095 to 86A.198. A person who is a mortgage banker or
10 mortgage broker under ORS 86A.100, but who does not engage in residential
11 mortgage transactions in this state, is not required to obtain a license under ORS
12 86A.095 to 86A.198.

13 (2) For purposes of this section, a person “engages in residential mortgage
14 transactions in this state” when any act constituting the business of a mortgage
15 banker or mortgage broker and involving a residential mortgage transaction
16 originates from this state or is directed to and received in this state or when the
17 real estate that is the subject of the activities of the mortgage banker or mortgage
18 broker is located in this state.

19 12. Pursuant to ORS 86A.103(1), it is unlawful for any person to engage in
20 residential mortgage transactions in this state as a mortgage banker or mortgage broker unless
21 the person is licensed under ORS 86A.095 to 86A.198. A mortgage broker means a person that
22 either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage loan for
23 compensation, or in the expectation of compensation. ORS 86A.100(5)(a)(C).

24 13. As stated previously, Horton, through PL, MRB and AHLG, offered to negotiate
25 a mortgage loan modification for DH and JB, both of whom were Oregon residents and had
26



1 mortgages on their residential homes located in Oregon. Horton was not licensed in Oregon as
2 a mortgage banker or mortgage broker at the time.

3 14. The evidence in the record establishes that Horton engaged in residential
4 mortgage transactions in this state as a mortgage banker or mortgage broker without being
5 licensed under ORS 86A.095 to 86A.198. Thus, Horton violated ORS 86A.103(1).

6 15. *Whether Respondent violated ORS 697.612(1)(a) by performing a debt*
7 *management service without Respondent, Preferred Law (PL), Modification Review Board LLC*
8 *(MRB), and American Home Loan Counselors (AHLIC) being registered with the Director to*
9 *provide such a service.*

10 ORS 697.612 is titled “Registration requirement; exceptions” and states, in part:

11 (1) A person that has not registered with the Director of the
12 Department of Consumer and Business Services under ORS
13 697.632 may not engage in business in this state in the course of
14 which the person:
15

16 (a) Performs a debt management services;

17 ORS 697.602 provides, in part:

18 (2) “Debt management service” means an activity for which a
19 person receives money or other valuable consideration or expects
20 to receive money or other valuable consideration in return for:

21 *****

22 (d) Obtaining or attempting to obtain as an intermediary on a
23 consumer’s behalf a concession from a creditor including, but not
24 limited to, a reduction in the principal, interest, penalties or fees
associated with a debt.

25 16. As indicated above, a person may not engage in debt management services in
26 Oregon without being registered with the Division.



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17. Horton, through PL, MRB and AHLC, contracted to negotiate a mortgage loan modification for DH and JB, both of whom were Oregon residents and had mortgages on their residential homes located in Oregon.

18. DH and JB signed documents with MRB and/or AHLC to obtain loan modification services. In addition, DH and JB both signed a contract with PL for services that included negotiating the terms on their residential mortgage loans.

19. Horton, through PL, MRB and AHLC, attempted to obtain a modification of DH's and JB's mortgage loans from their respective lenders, and was compensated with money for those attempts. Horton, PL, MRB and AHLC were not registered with the Division to perform the debt management services provided to DH and JB. Consequently, Horton violated ORS 697.612(1)(a).

20. *Whether Respondent violated ORS 697.612(1)(b)(A) by soliciting and receiving an application from DH and JB for a debt management service when Respondent, PL, MRB, and AHLC were not registered as debt management service providers.*

ORS 697.612 provides:

(1) A person that has not registered with the Director of the Department of Consumer and Business Services under ORS 697.632 may not engage in business in this state in the course of which the person:

(b) Receives money or other valuable consideration or expects to receive money or other valuable consideration for:

(A) Soliciting or receiving an application from a consumer for a debt management service;



1 21. Pursuant to the authority cited above, a person that is not registered with the
2 Division may not engage in business in Oregon in the course of which the person receives
3 money or expects to receive money for soliciting or receiving an application from a consumer
4 for a debt management service.

5 22. *DH*. On March 27, 2012, DH received a “Service Agreement and Application
6 for Mortgage Assistance” from MRB. The form authorized MRB to negotiate loan
7 modification relief services on DH’s behalf. DH filled out and returned the form to MRB. On
8 April 2, 2012, Ms. Martinez, with PL, sent an email to DH requesting that he fill out several
9 attached forms, including a borrower’s authorization and fee agreement, so PL could get started
10 on DH’s modification. DH filled out the forms and returned them to PL. On April 16, 2012,
11 DH began making payments to PL for the loan modification services.
12

13 23. The evidence in the record establishes that Horton, through PL and MRB,
14 solicited and received an application from DH for a debt management service while expecting
15 to receive money for said service. In addition, the evidence in the record establishes that
16 Horton, PL and MRB where not registered with the Division to engage in debt management
17 service in Oregon. Consequently, Horton violated ORS 697.612(1)(b)(A).

18 25. *JB*. On or about November 23, 2012, JB received an application and/or
19 borrower’s authorization form from AHLC, authorizing AHLC to engage in modification relief
20 services on JB’s behalf. JB filled out the documents and returned them to AHLC. JB also
21 received a fee agreement from PL, authorizing PL to provide assistance with loan mortgage
22 modification. JB signed and returned the agreement. On November 23, 2012, JB began making
23 payments to PL for the loan modification services.

24 26. The evidence in the record establishes that Horton, through PL and AHLC,
25 solicited and received an application from JB for a debt management service while expecting to
26 receive money for said service. The evidence in the record also establishes that Horton, through



1 PL and AHLC, were not registered with the Division to engage in debt management service in
2 Oregon. Consequently, Horton violated ORS 697.612(1)(b)(A).

3 27. *Whether Respondent violated ORS 697.612(1)(b)(E) when Respondent, through*
4 *PL, MRB, and AHLC provided advice, assistance, instruction or instructional material regarding*
5 *debt management service to DH and JB when Respondent, PL, MRB, and AHLC were not*
6 *registered as debt management service providers.*

7 ORS 697.612 provides:

8 (1) A person that has not registered with the Director of the
9 Department of Consumer and Business Services under ORS
10 697.632 may not engage in business in this state in the course of
11 which the person:

12 *****

13 (b) Receives money or other valuable consideration or expects to
14 receive money or other valuable consideration for:

15 *****

16 (E) Providing advice, assistance, instruction or instructional
17 material concerning a debt management service to a consumer.

18 28. As cited above, a person that is not registered with the Division may not engage
19 in business in Oregon in the course of which the person receives money or expects to receive
20 money for providing advice or assistance concerning a debt management service to a consumer.

21 29. Horton, through PL and MRB, provided advice and/or assistance to DH
22 concerning a mortgage loan modification. Horton, through PL and MRB, provided the
23 assistance for compensation and without being registered with the Division. Thus, Horton
24 violated ORS 697.612(1)(b)(E).

25 //

1 30. Additionally, Horton, through PL and AHLC, provided advice and/or assistance
2 to JB concerning a mortgage loan modification. Horton, through PL and AHLC, provided the
3 assistance for compensation and without being registered with the Division. Therefore, Horton
4 violated ORS 697.612(1)(b)(E).

5 31. *Whether Respondent, by and through PL, MRB, and AHLC violated ORS*
6 *697.692(1)(a) by accepting or receiving an initial fee of more than \$50 from DH and JB.*

7 ORS 697.692 is titled “Fees” and provides, in part:

8 (1) A debt management service provider may charge a consumer
9 only the following fees:

10 (a) An initial fee of not more than \$50.

11 32. As indicated above, a debt management service provider may charge a consumer
12 an initial fee of not more than \$50.

13 33. *DH.* On or about March 27, 2012, DH contracted with MRB and PL to assist
14 him with obtaining a loan modification for his real property in Creswell, Oregon. On or about
15 April 2, 2012, DH signed a fee and representation agreement with PL for assistance with the
16 loan modification. DH also signed an agreement allowing PL to withdraw monthly payments
17 from his bank account for those services. On April 16, 2012, DH paid an initial fee of \$650 to
18 Horton and PL, which is in excess of \$50. Accordingly, Horton, by and through PL and MRB
19 violated ORS 697.692(1)(a).

20 34. *JB.* On or about November 23, 2012, JB contracted with AHLC and PL to assist
21 him with obtaining a loan modification for his real property in Glendale, Oregon. On or about
22 November 23, 2012, JB signed a fee and representation agreement with PL for assistance with
23 the loan modification. JB also signed an agreement allowing PL to withdraw monthly payments
24 from his checking account for those services. On November 23, 2012, JB paid an initial fee of
25





1 \$650 to Horton and PL, which is in excess of \$50. As such, Horton, by and through PL and
2 AHLC violated ORS 697.692(1)(a).

3 35. *Whether Respondent, by and through PL, MRB, and AHLC published an*
4 *advertisement that contained a false, misleading or deceptive statement or representation in*
5 *that the Oregon Department of Justice was not involved with any Preferred Law matter, in*
6 *violation of ORS 86A.163(1).*

7 ORS 86A.163 is titled “Prohibited advertisements” and provides, in part:

8 A mortgage banker or mortgage broker shall not use or cause to
9 be published any advertisement that:

10 (1) Contains any false, misleading or deceptive statement or
11 representation;

12 36. Pursuant to ORS 86A.163, a mortgage banker or mortgage broker shall not use
13 or cause to be published any advertisement that contains any false, misleading or deceptive
14 statement or representation.

15 37. On or about June 17, 2016, Respondent, through PL, published an advertisement
16 on PL’s website listing the lenders that PL worked with and the deals that PL was able to obtain
17 for its clients in approximately 24 states, including Oregon. The testimonial and advertisement
18 from Oregon refers to the “Department of Justice” and purports to have had \$40,000 of the
19 client’s loan forgiven and \$40,000 of the loan deferred. Respondent is not lawfully allowed to
20 perform or advertise this service in Oregon.

21 38. The evidence in the record establishes that Respondent, by publishing an
22 advertisement that falsely advertises that he can prided these services in Oregon, violated ORS
23 86.A163(1).

24 39. *Whether Respondent and all entities owned or controlled by Respondent shall be*
25 *ordered to cease and desist from violating Oregon statutes regulating mortgage lending, ORS*
26 *86A.100 et seq., and debt management service providers, ORS 697.602 to 697.842.*



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ORS 697.825 is titled “Enforcement; orders” and provides, in part:

(1) The Director of the Department of Consumer and Business

Services may, if the director has reason to believe that a person:

(a) Violated, is violating or is about to violate ORS 697.612,

697.642 to 697.702 or 697.752, a rule adopted under ORS

697.632 or an order issued under ORS 697.652 or 697.732, issue

an order to cease and desist from the violation.

ORS 86A.127 provides, in part:

(4) If the director has reasonable cause to believe that any person

has been engaged, is engaging or is about to engage in any

violation of any provision of ORS 86A.095 to 86A.198, may issue

an order, subject to ORS 86A.139, directed to the person, and to

any other person directly or indirectly controlling the person, to

cease and desist from the violation or threatened violation.

40. Pursuant to the statutory authority cited above, the Director of the Division has the authority to order a person to cease and desist from violating Oregon statutes regulating mortgage lending and debt management service providers.

42. In this matter, because Horton, through PL, MRB, and AHLC, has violated various Oregon statutes regulating mortgage lending and debt management service providers, it is entirely appropriate for the Director to order Horton and his various entities to cease and desist from that behavior.

43. Accordingly, Respondent and all entities owned or controlled by Respondent shall be ordered to cease and desist from violating Oregon statutes regulating mortgage lending and debt management service providers.

1 44. *Whether Respondent shall be ordered to pay civil penalties, jointly and severally*
2 *with PL, MRB, and AHLC in the amount of \$35,000 as follows:*

3 *a. \$10,000 for committing two violations of ORS 86A.103(1), ORS*
4 *697.612(1)(b)(E), ORS 697.612(1)(a);*

5 *b. \$10,000 for committing two violations of ORS*
6 *697.612(1)(b)(A);*

7 *c. \$10,000 for committing two violations of ORS 697.692(1)(a);*
8 *and*

9 *d. \$5,000 for committing one violation of ORS 86A.163(1).*

10 ORS 697.832 is titled “Civil penalties” and provides, in part:

11 (1) In addition to any other liability or penalty provided by law,
12 the Director of the Department of Consumer and Business
13 Services may impose a civil penalty on a person in an amount not
14 to exceed \$5,000 for each violation of ORS 697.612 or 697.642 to
15 697.702, rules adopted under ORS 697.632 or order issued under
16 ORS 697.825.

17 ORS 86A.992 provides, in part:

18 (1) In addition to all other penalties and enforcement provisions
19 provided by law, any person who violates or who procures, aids or
20 abets in the violation of any provision of ORS 86A.095 to
21 86A.198 or any rule or order of the Director of the Department of
22 Consumer and Business Services shall be subject to a penalty of
23 not more than \$5,000 for every violation, which shall be paid to
24 the General Fund of the State Treasury.
25
26





1 45. As indicated above, the Director of the Division may impose a civil penalty of
2 not more than \$5,000 for every violation of ORS 697.612 or 697.642 to 697.702, and any
3 provision of ORS 86A.095 to 86A.198.

4 46. A review of the record establishes the following:

5 a. Horton violated ORS 86A.103(1), ORS 697.612(1)(a), and ORS
6 697.612(1)(b)(E). The Division’s requested civil penalty amount of \$10,000 is appropriate for
7 the violations.

8 b. Horton committed two violations of ORS 697.612(1)(b)(A). The civil penalty
9 amount of \$10,000 is appropriate for the violations.

10 c. Horton committed two violations of ORS 697.692(1)(a). The civil penalty
11 amount of \$10,000 is appropriate for the violations.

12 d. Horton committed one violation of ORS 86A.163(1). The civil penalty amount
13 of \$5,000 is appropriate for the violation.

14 Consequently, Horton shall pay civil penalties jointly and severally with PL, MRB, and
15 AHLC, in the amount of \$35,000 for the violations.

16 *Respondent’s issues*

17 47. *Whether Respondent cannot be held liable under ORS 86A.103(1), 86A.154(3)*
18 *and 86A.163(1) because Respondent did not engage or offer to engage in “residential mortgage*
19 *transactions” as a “mortgage broker.”*

20 48. Respondent contends that he did not offer or engage in residential mortgage
21 transactions as a mortgage broker. However, as set forth previously, the evidence in the record
22 establishes that Respondent, through PL, MRB and AHLC, engaged in residential mortgage
23 transactions in this state as a mortgage banker or mortgage broker and without being licensed
24 with the Division. Thus, Respondent’s argument is unpersuasive.

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1 49. Respondent also contends that PL’s fee agreement included a disclaimer that PL
2 did not offer loan modification assistance.

3 50. However, the evidence in the record establishes that despite any disclaimer,
4 Respondent, through PL, offered and engaged in loan modification assistance with DH and JB.
5 On April 2, 2012, Ms. Martinez, paralegal of PL, notified DH that he needed to fill out the
6 attached forms within 48 hours so she could get started on his “modification.” Additionally, in
7 November 2013, PL communicated with Ocwen Loan Servicing about modifying JB’s loan.
8 Moreover, DH and JB contracted with and paid money to PL for loan modification services.
9 Thus, regardless of any disclaimer contained in PL’s fee agreement, Respondent, through PL,
10 offered and engaged in loan modification assistance for DH and JB for compensation and
11 without being licensed with the Division.
12

13 51. *Whether Respondent cannot be held liable under ORS 697.612(1)(a),*
14 *697.612(1)(b)(A), 697.612(1)(b)(E) and 697.692(1)(a) because Respondent did not perform any*
15 *“debt management services.”*

16 52. Respondent contends that he did not perform a debt management service.
17 However, as set forth previously, the evidence in the record establishes that Respondent,
18 through PL, MRB and AHLC, performed debt management services for DH and JB for
19 compensation and without being registered with the Division. Consequently, Respondent’s
20 argument is unpersuasive.

21 53. Respondent also contends that he did not charge an initial fee. However, both
22 DH and JB paid an initial fee of \$650 to Horton and PL. As such, Respondent’s argument is not
23 persuasive.

24 *Additional arguments by Respondent*

25 54. Respondent contends that he has no control over MRB and AHLC.
26 However, Respondent is the registered agent for MRB and, as such, has authority to make

1 decisions for MRB. In addition, Respondent’s own law firm, PL, shares the same phone
2 number with AHLC, and by reasonable inference, the same office location. Moreover, PL and
3 MRB have the same address and phone number on the documents they provide to consumers.
4 Furthermore, PL, MRB, and AHLC, share some of the same employees. Finally, MRB and
5 AHLC utilize PL’s fee agreement as part of their application process with consumers. Thus, the
6 evidence clearly establishes that PL, MRB and AHLC are intertwined in their business actions,
7 and Respondent has authority and/or control over all three entities.

8 55. Respondent also contends that the Division has failed to allege sufficient facts to
9 pierce the corporate veil and hold Respondent personally liable for the actions of PL or the other
10 entities.

11 56. The laws that are at issue in this case (ORS chapters 697 and 86A) govern both
12 individuals and entities. Although the entities in this case have been sanctioned via a default
13 order, Respondent is being held individually responsible for his actions in violating the laws of
14 Oregon. The evidence in the record establishes that Respondent violated the laws of Oregon
15 and should be penalized for those violations. Accordingly, Respondent’s argument is without
16 merit.

17 57. In this matter, the ALJ granted Summary Determination and found that the
18 Division had interpreted its rules fairly and uniformly and that the proposed civil penalties were
19 appropriate. The ALJ also determined that Respondent’s Motion for Summary Determination
20 was without merit. Because the ruling and Proposed Order resolved all of the issues, the hearing
21 that was previously scheduled for October 4th through the 6th was cancelled.

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1 This Order is a “Final Order” under ORS 183.310(6)(b). Subject to that provision, the
2 entry of this Order does not limit other remedies that are available to the Director under Oregon
3 law.

4 Dated this 2nd day of December, 2016.

5
6 PATRICK M. ALLEN, Director
Department of Consumer and Business Services

7 /S/ David Tatman

8 David C. Tatman
9 Chief of Enforcement

10 **NOTICE:** You are entitled to judicial review of this Order. Judicial review may be obtained
11 by filing a petition for review within 60 days from the service of this order. Judicial review is in
12 accordance with ORS 183.428.(1) to the Oregon Court of Appeals.
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Division of Financial Regulation
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

