MIKE KREIDLER
STATE INSURANCE COMMISSIONER

STATE OF WASHINGTON

Phone: (360) 725-7000

FILED

OFFICE OF
INSURANCE COMMISSIONER 2011 OCT -7 A 11: 38

HEARINGS UNIT
Fax: (360) 664-2782

Patricia D. Petersen
Chief Hearing Officer
(360) 725-7105

Kelly A. Cairns
Paralegal
(360) 725-7002
KellyC@oic.wa.gov

BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of	)	**Docket No. 11-0036**
	)	
Mark S. Kinder,	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER**
	)	
Applicant.	)	
	)	

TO: Mark Kinder
7918 150th Street E
P.O. Box 731483
Puyallup, WA 98375

COPY TO: Mike Kreidler, Insurance Commissioner
Michael G. Watson, Chief Deputy Insurance Commissioner
John F. Hamje, Deputy Commissioner, Consumer Protection Division
Robin Aronson, Staff Attorney, Legal Affairs Division
Carol Sureau, Deputy Commissioner, Legal Affairs Division
Office of the Insurance Commissioner
PO Box 40255
Olympia, WA 98504-0255

Pursuant to RCW 34.05.434, 34.05.461, 48.04.010 and WAC 10-08-210, and after notice to all interested parties and persons the above-entitled matter came on regularly for hearing before the Washington State Insurance Commissioner commencing at 10:00 a.m. on September 16, 2011. All persons to be affected by the above-entitled matter were given the right to be present at such hearing during the giving of testimony, and had reasonable opportunity to inspect all documentary evidence. The Insurance Commissioner appeared pro se, by and through Robin Aronson, Esq., Staff Attorney in his Legal Affairs Division. Mark S. Kinder appeared pro se.

NATURE OF PROCEEDING

The purpose of the hearing was to take testimony and evidence and hear arguments as to whether the Insurance Commissioner's decision to deny the Applicant's application for a Washington Resident Insurance Producer's License should be confirmed, set aside or modified. Said denial, documented in the Insurance Commissioner's email letter dated and transmitted on December 3, 2010, is based primarily on the disciplinary actions taken against the Applicant by the Washington State Department of Financial Institutions, Division of Consumer Services, for alleged violation of the Mortgage Broker Practices Act while the Applicant was licensed as a mortgage broker. By letter dated December 6, 2010, and filed with the Hearings Unit on February 28, 2011, the Applicant requested this hearing to contest the Insurance Commissioner's denial.

FINDINGS OF FACT

Having considered the evidence and arguments presented at the hearing, and the documents on file herein, the undersigned presiding officer designated to hear and determine this matter finds as follows:

1. The hearing was duly and properly convened and all substantive and procedural requirements under the laws of the state of Washington have been satisfied. This Order is entered pursuant to Title 48 RCW and specifically RCW 48.04; Title 34 RCW; and regulations pursuant thereto.

2. On November 30, 2010, Mark S. Kinder (the "Applicant") submitted his application to the Washington State Insurance Commissioner ("OIC") for a Washington resident insurance producer's license. On the application he answered "yes" to the question asking whether he had ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration. [OIC Ex. 1.] At the same time on November 30, the Applicant provided a letter of explanation to the OIC. [OIC Ex. 2.] The OIC conducted an investigation of the proceeding disclosed by the Applicant, and on December 3, the OIC transmitted a letter by email to the Applicant, advising him that the OIC had denied his application. By letter dated December 6, 2010, the Applicant requested a hearing to contest the OIC's denial, which was received by and filed with the Hearings Unit on February 28, 2011. Accordingly, the undersigned acknowledged receipt of the Applicant's request and held a prehearing teleconference which included all parties and the undersigned on March 25. During said prehearing teleconference, the undersigned outlined procedure to be expected at hearing, and answered all questions and concerns of the parties. At that time, the parties agreed that the hearing should commence on May 13, 2011, and a Notice of Hearing was entered scheduling the proceeding. Following several continuances, the hearing was held on September 16, 2011. The OIC was represented by Robin Aronson, Staff Attorney in the OIC's Legal Affairs Division, and the Applicant represented himself.

3. The Applicant is an individual who is approximately 50 years old and is a resident of Puyallup, Washington. The Applicant was licensed as a mortgage broker in Washington, under the names of Mark Kinder and Mark Kinder d/b/a America First Mortgage, beginning in 1996. The Applicant was the sole owner of the agency, America First Mortgage, and was responsible for the acts of all individuals he employed therein. [Testimony of Applicant.]

4. On February 15, 2007, the Washington State Department of Financial Institutions, Consumer Protection Division ("DFI") filed lengthy charges against the Applicant in a proceeding to revoke his mortgage broker license. As stated in its Amended Statement of Charges filed on December 5, 2007 [OIC Ex. 4], DFI's grounds for revoking the Applicant's mortgage broker licenses were:

> *Violation of RCW 19.146.0201(1), (2), (6), (7), and (8) for directly or indirectly employing a scheme, device or artifice to defraud or mislead borrowers or lenders or any person, engaging in an unfair or deceptive practice toward any person, obtaining property by fraud or misrepresentation, failing to make disclosures to loan applicants and non-institutional investors as required by RCW 19.146.030 and any other applicable state or federal law, and making, in any manner, any false or deceptive statement or representation with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engaging in bait and switch advertising, and negligently making any false statement or knowingly and willfully making any omission of material fact with any reports filed in connection with an investigation being conducted by the Department.*

5. Facts supporting DFI's Statement of Charges were derived from an extensive two year investigation into the Applicant's business transactions. As part of the DFI investigation, numerous witness interviews were conducted by DFI Financial Examiner Will Halstead of the DFI Enforcement Unit. [OIC Ex. 7, Witness Interview Summaries written and certified by Examiner Halstead.] Said interviews are with consumers, employees and business associates. A review of the numerous interview summaries shows a clear pattern of conduct by the Applicant by which he deceived consumers about the nature of their loans, interest rates and fees. He misstated consumer's income in an attempt to qualify them for loans they could not afford. He was misleading consumers into believing they were receiving full document loans and were qualifying for loans based upon an accurate assessment of their financial picture. The Applicant was also misleading the banks and financial institutions and failed to look out for his clients' best interests.

6. The Applicant was represented by legal counsel in his defense of DFI's charges filed against him. On September 14, 2009, the Applicant entered into a Consent Order with DFI, where he agreed not to contest the Amended Statement of Charges in consideration of the terms of the Consent Order. A 50 page Agreed Statement of Facts was attached to said Consent Order. The Applicant signed the Consent Order and the Agreed Statement of Facts. [OIC Ex. 5.]

7. The Consent Order to which the Applicant agreed provided that he surrender his mortgage broker license, which he did on September 30, 2009. [OIC Ex. 2.] Said Consent Order further provided that the Applicant's mortgage broker license be revoked for 30 years. As part of the settlement, the Applicant also entered into a Confession of Judgment for a fine in the amount of $150,000 owed to DFI plus $16,800 as an investigation fee owed to DFI. [OIC Ex. 5.] Said Confession was filed in the Pierce County Superior Court on January 15, 2010, acknowledging his debt of $166,800.00. [OIC Ex. 6.]

8. During the course of his owning and operating his mortgage broker agency, the Applicant hired Ms. Danielle Lee to serve as his office manager in 2007. The Applicant instructed Ms. Lee to take both a 30 hour on-line continuing education class and a 3 hour class for Mr. Kinder. When she finished the courses (she states she did so by just clicking through the material) she printed out a course Affidavit which the Applicant signed as having personally taken and completed the courses. Said courses were continuing education courses required to maintain Applicant's Washington real estate license. [OIC Ex. 8.]

9. The Applicant held an active real estate salesperson license up until October 5, 2009, authorizing him to sell real estate with Dove Realty from 1999 until 2009. [OIC Ex. 9.] On October 12, 2009, the Applicant applied to reactivate his real estate salesperson's license with the Washington State Department of Licensing in order to affiliate with and work with RL Realty Group. [OIC Ex. 9.] The Applicant disclosed that he had been the subject of a revocation and fine pertaining to a professional license and submitted a letter of explanation. In that letter of explanation the Applicant acknowledged his failure to adequately supervise his staff for three years while operating his mortgage brokerage business. [OIC Ex. 9.] DOL denied the Applicant's application to reactivate his real estate license based upon the conduct he committed while working as a mortgage broker. DOL determined that the Consent Order and Confession of Judgment entered by DFI were directly related to the practice of real estate as a salesperson. DOL has barred the Applicant from seeking application for reactivation of his real estate salesperson license for ten years. The Applicant did not appeal DOL's decision. [Testimony of Applicant.]

10. While the Applicant acknowledges his failure to handle many instances in his mortgage brokerage business properly, at the same time he advises that he was nearly completely absent from his business during 2005-07 for personal reasons, however, he admits that he regularly collected the funds produced by his agency from commissions and fees. [Testimony of Applicant.] He states that he did not supervise his employees and accepts that such supervision was his responsibility. [Testimony of Applicant.] However, when most of the consumers were interviewed [OIC Ex. 7], many consumers were clearly dealing directly with the Applicant. In other situations, consumers were led to believe by the Applicants' staff that he was directly involved. [OIC Ex. 7.]

11. Mr. Jeffrey Baughman, Licensing Manager with the OIC, appeared as the sole witness on behalf of the OIC. Mr. Baughman presented his testimony in a clear and credible manner and presented no apparent biases.

12. Mark S. Kinder appeared as the sole witness on his behalf. Mr. Kinder appeared credible, but his statements throughout his testimony were simply not supported by the evidence presented and admitted, such as the summaries of interviews with a multitude of consumers who were hurt by the Applicant's activities. At the same time, Mr. Kinder showed a lack of understanding and lack of empathy toward the nature of his deceptive acts or toward the consumers he harmed.

13. By his activities above, the Applicant has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state.

14. Based upon his activities found above, and the fact that, as above, the Applicant has conducted fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state, it is reasonable that the OIC's denial of the Applicant's application for a resident insurance producer's license should be upheld.

CONCLUSIONS OF LAW

1. Based upon the above Findings of Facts, it is hereby concluded that the Applicant has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state as contemplated by RCW 48.27.530(h).

2. Pursuant to RCW 48.17.530(1)(h), the OIC may refuse to issue an Insurance Producer's License if the Applicant has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere.

3. Pursuant to the above Findings of Facts and Conclusions of Law, to the effect that the Applicant has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state as contemplated by RCW 48.27.530(h), it is hereby concluded that the OIC's denial of the application of Mark S. Kinder for a Resident Insurance Producer's License in Washington should be upheld.

ORDER

On the basis of the foregoing Findings of Facts and Conclusions of Law,

IT IS HEREBY ORDERED that the Washington State Insurance Commissioner's decision to deny the Application by Mark S. Kinder for a Resident Insurance Producer's License in Washington is UPHELD. Further, it is recommended that should the Applicant reapply for either a Resident or Non-Resident Insurance Producer's License in Washington, said application

should include a consideration of the facts found herein and should be considered, if at all, only after several years following the date of entry of this Order.

This Order is entered at Tumwater, Washington, this 7th day of October, 2011, pursuant to Title 48 RCW, RCW 34.05, and regulations applicable thereto.

PATRICIA D. PETERSEN
PRESIDING OFFICER

Pursuant to RCW 34.05.461(3), the parties are advised that they may seek reconsideration of this order by filing a request for reconsideration under RCW 34.05.470 with the undersigned within 10 days of the date of service (date of mailing) of this order. Further, the parties are advised that, pursuant to RCW 34.05.514 and 34.05.542, this order may be appealed to Superior Court by, within 30 days after date of service (date of mailing) of this order, 1) filing a petition in the Superior Court, at the petitioner's option, for (a) Thurston County or (b) the county of the petitioner's residence or principal place of business; and 2) delivery of a copy of the petition to the Office of the Insurance Commissioner; and 3) depositing copies of the petition upon all other parties of record and the Office of the Attorney General.

Declaration of Mailing

I declare under penalty of perjury under the laws of the State of Washington that on the date listed below, I mailed or caused delivery through normal office mailing custom, a true copy of this document to the following people at their addresses listed above: Mark S. Kinder, Mike Kreidler, Michael G. Watson, John F. Hamje, Esq., Robin Aronson, Esq., and Carol Sureau, Esq.,

DATED this 7th day of October, 2011.

KELLY A. CAIRNS