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OFFICE OF  
INSURANCE COMMISSIONER 2011 SEP 12 A 9:10Hearings Unit, DIC  
Patricia D. Peterson  
Chief Hearing Officer*In The Matter of*

Mark Kinder,

NO. 11-0036

OIC HEARING MEMORANDUM

## FACTS

**Application for Resident Insurance Producer License:**

On November 30, 2010 Mark Kinder applied for a Washington resident producer 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. He also acknowledged having a child support obligation that was in arrearage that he was making current payments on at the time. **(OIC Exhibit 1)**. Mr. Kinder provided a letter of explanation to the OIC dated November 30, 2010. **(OIC Exhibit 2)**. The application and request for a producer licensed was denied on December 3, 2010 pursuant to RCW 48.17.530 (1) (h), for a history of using fraudulent, coercive, or dishonest practices, and demonstrating incompetence, untrustworthiness, and financial irresponsibility in this state. The specific conduct engaged in by Mr. Kinder and which supports the denial of a producer license is described below. A copy of the denial notice to Mr. Kinder is submitted as **OIC Exhibit 3**.

**Charges Filed by DFI:**

Upon investigation as to Mr. Kinder's involvement in an administrative proceeding regarding a professional license it was discovered that Mr. Kinder had been the subject of a lengthy investigation by the Department of Financial Institutions, Division of Consumer Services for violation of the Mortgage Broker Practices Act. Mark Kinder and Mark Kinder d/b/a America First Mortgage had been licensed as a mortgage broker in 1996. Mr. Kinder surrendered his license on September 30, 2007 after charges were filed against him in February 15, 2007 by DFI. An Amended Statement of Charges filed by DFI on December 6, 2007 **(OIC Exhibit 4)** summarizes Mr. Kinder's conduct and DFI's grounds for entry of an Order to Revoke License as follows:

“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.”

Mr. Kinder was represented by legal counsel in his defense of the charges filed against him by DFI. On September 14, 2009 a Consent Order was entered. Mr. Kinder agreed not to contest the Statement of Charges filed by DFI in consideration of the terms of the Consent Order. A 50 page Agreed Statement of Facts is attached to and incorporated by reference into the Consent Order. Mr. Kinder signed the Consent Order and Agreed Statement of Facts. **(OIC Exhibit 5)** As such, Mr. Kinder should not be allowed to contest the facts behind the DFI charges at the time of the OIC hearing.

The Consent Order provided that Mr. Kinder's mortgage broker license be revoked for 30 years, and that he enter into a Confession of Judgment for a fine in the amount of \$150,000 owed to DFI and for an investigation fee in the amount of \$16,8000 owed to DFI. Mr. Kinder was going through a Chapter 13 Bankruptcy at the time and the Consent Order provided that none of the terms of the Consent Order would be altered or in any way impaired by the Bankruptcy; that the debt owed to DFI would survive the bankruptcy. The Confession of Judgment was entered with the Pierce County Superior Court on January 15, 2010. **(OIC Exhibit 6)**.

#### **DFI Witness Interviews:**

DFI conducted an extensive two year investigation into Mr. Kinder's business transactions. As part of the DFI investigation, numerous witness interviews were conducted. The interviews were conducted by DFI Financial Examiner Will Halstead of the DFI Enforcement Unit. The declaration of William Halstead with annexed interview summaries is attached as **OIC Exhibit**

7. There are interviews with consumers, employees, and business associates. The contact information for each interviewee is provided on the summary.

A summary from **Exhibit 7** of a few of the interviews with consumers shows the following:

**Consumer V. Brown:** Mr. Kinder represented loans were full document loans when in fact they were stated income loans. Her income was inflated and grossly misstated in the loan documents without her knowledge. Was unaware of the large fees being charged. Kinder agreed to pay part of her mortgage payment and did so for 6 months.

**Consumer A. Gessner:** Purchased a home and financing through Kinder. Wanted a fixed rate loan and Kinder put them in a variable rate loan they could not afford when interest rates rose. Misled as to the large amount of fees they paid. Income on the loan documents is inflated along with other misstatements of information.

**Consumers K. and D. Delahousaye:** Refinanced home. Were not told about large amount of fees by Kinder. Amount of income Kinder put on loan documents is greatly inflated.

**Consumer C. Walker:** 5 transactions with Kinder. Misled as to the fees on all transactions. Believed on 1 transaction it was a full document loan and instead it was a stated income loan and the income is inflated.

**Consumer J. Brown:** Kinder sold her a home for rental property and did the financing. Income on loan documents is inflated and misstates that the property was to be her primary residence. She thought fees paid were less than \$10,000 and shocked to learn the fees were in excess of \$32,000. Unaware Kinder was receiving a rebate on her loan. Thought the loan was a full document loan and instead it was a stated income loan.

...

There is a clear pattern of conduct here by Mr. Kinder by which he was deceiving consumers about the nature of their loans, interest rates, and fees. He was misstating 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. Mr. Kinder was misleading the banks and financial institutions. He was acting out of greed and not looking out for his clients' best

interests.

To date, and despite entering into the Agreed Statement of Facts and Consent Order, Mr. Kinder denies any wrong doing, blaming his staff that he admits he failed to supervise, and remains seemingly unremorseful. The acts committed by Mr. Kinder either directly or under his supervision were all deliberate acts of fraud and deception based upon greed and what was good for his own pocket book. Mr. Kinder has shown himself to be dishonest and untrustworthy.

#### **Deceptive Act re Real Estate Continuing Education Course:**

Submitted as **OIC Exhibit 8** is the interview statement of Daniel Lee. Ms. Lee was hired by Mark Kinder to serve as his office manager in 2007. She admits that she was instructed to and took both a 30 hour on-line continuing education class and a 3 hour class for Mr. Kinder. When Ms. Lee finished the courses (as she states by just clicking through the material) she printed out a course Affidavit which Mr. Kinder signed as having taken the class. Mr. Kinder responded to DFI's investigation of this issue by blaming his employees.

#### **Application to DOL for Reactivation of Real Estate License:**

Up until October 5, 2009 Mr. Kinder held an active real estate salesperson license to sell with Dove Realty. On October 12, 2009 Mr. Kinder applied to reactivate his real estate salesperson's license with the Department of Licensing in order to affiliate with and work with RL Realty Group. (**OIC Exhibit 9**) Mr. Kinder 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 Mr. Kinder acknowledged his failure to adequately supervise his staff for three years while operating his mortgage brokerage business. (**OIC Exhibit 9**) DOL denied Mr. Kinder'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 Mr. Kinder from seeking application for reactivation of his real estate salesperson license for ten years. Mr. Kinder did not appeal DOL's decision.

**Mr. Kinder's response to the OIC licensure inquiry:**

Submitted as **OIC Exhibit 2** is Mr. Kinder's explanation to the OIC as to what happened with his business. He states that he was essentially absent from his business during 2005-2007 for personal reasons. He states that he did not supervise his employees, yet when most of the consumers were interviewed ( **see Exhibit 7**), the consumers either were dealing directly with Mr. Kinder or were led to believe by Mr. Kinder's staff that he was directly involved. Mr. Kinder in his statement shows no remorse for his actions, stating that the actions were not criminal and that he "just did not supervise my staff". He was more than happy to collect commissions and fees from his staff's work.

Mr. Kinder's statement shows a lack of understanding and callousness towards the nature of the deceptive acts that he committed and toward the consumers he harmed.

**LEGAL AUTHORITY AND ARGUMENT**

Mr. Kinder's application for a resident producer license was denied by the Office of the Insurance Commissioner based upon **RCW 48.17.530(1)(h)**, for engaging in conduct involving the use of fraudulent, coercive, or dishonest practices, and for demonstrating incompetence, untrustworthiness, and financial irresponsibility in this state .

The evidence shows that the acts committed by Mr. Kinder either directly or under his supervision were all deliberate acts of fraud and deception based upon greed and what was good for his own pocket book. Mr. Kinder has shown himself to be dishonest and untrustworthy. He has engaged in numerous deceptive acts by which he has demonstrated clear financial irresponsibility. The fiduciary capacity under which an insurance producer operates is no different than that of a mortgage broker or real estate agent. As an insurance producer Mr. Kinder would be selling financial products, providing financial advice to the public, and handling consumers' money. He would also be required to take continuing education courses, which as described on p. 4 of this memo; he falsified documents in this regard as a real estate salesperson. As a producer, it would be expected of him to provide advice and sell products in the best interest of the consumers. Mr. Kinder has not shown that he can be trusted to act honestly and responsibly. Mr. Kinder's statements in response to OIC, DFI and DOL show a lack of concern for his past conduct, a lack of concern for consumers, and a general disregard for the laws in this State.

For the above-stated reasons, the OIC urges the Hearing Officer to uphold the denial of Mr. Kinder's application for a resident producer license.

Respectfully Submitted this 8 day of September, 2011.

MIKE KREIDLER  
Insurance Commissioner

By 

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