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STATE INSURANCE COMMISSIONER

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HEARINGS UNIT
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BEFORE THE STATE OF WASHINGTON
OFFICE OF INSURANCE COMMISSIONER

In the Matter of)

STEVEN W. LUSA,)

Applicant.)

Docket No. 14-0023

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND FINAL ORDER

TO: Steven W. Lusa
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John F. Hamje, Deputy Commissioner, Consumer Protection Division
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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 March 27, 2014. 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 Darryl E.



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Colman, Esq., Staff Attorney in his Legal Affairs Division. Steven W. Lusa appeared and was represented by his attorney, Stephanie Holmes, Esq.

NATURE OF PROCEEDING

The purpose of the adjudicative proceeding was to take testimony and evidence and hear arguments from the Insurance Commissioner and from Steven W. Lusa as to whether the Insurance Commissioner's decision to deny Mr. Lusa's application for a Washington resident insurance producer's license should be upheld, set aside or modified in some way. According to the Insurance Commissioner's letter to Mr. Lusa dated January 16, 2014, the Insurance Commissioner based his denial on the fact that Mr. Lusa had two disciplinary actions taken against him by the Department of Financial Institutions (DFI). On February 18, 2014, the Applicant filed a Demand for Hearing to contest the Insurance Commissioner's denial of his license application based upon arguments set forth therein.

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. Steven W. Lusa (Mr. Lusa) is a resident of Snohomish, Washington. On January 16, 2014, the Insurance Commissioner (OIC) informed Mr. Lusa that his Application for a Washington resident insurance producer's license had been denied. The OIC denied Mr. Lusa's Application, stating as grounds for denial that he had had two disciplinary actions taken against him by the Washington State Department of Financial Institutions (DFI). The DFI actions resulted in the revocation of Mr. Lusa's escrow agent license and the denial of his application for a loan originator license, respectively. Mr. Lusa appealed both DFI's revocation of his escrow agent license and DFI's denial of his application for a loan originator license; both appeals were the subject of adjudicative proceedings before DFI and the facts which were found by the administrative law judge in those proceedings are the basis for the OIC's denial of Mr. Lusa's Application for an insurance producer's license.
3. Vintage Escrow dba Bellevue Escrow (Vintage), owned and operated by Mr. Lusa, was licensed by DFI to conduct business as an escrow agent on May 17, 1996, and remained licensed until December 31, 2007 when its license expired. Mr. Lusa was also the licensed Designated

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Escrow Officer for Vintage until his license expired on May 17, 2007. DFI examined Vintage's books and records, ultimately determining that Vintage operated without a licensed Designated Escrow Officer from May 17, 2007 through March 13, 2008.

4. In addition, ALJ and DFI found that Vintage received four Notices of Insufficient Funds and/or Overdraft notices from its bank between January and July 2006, and that Mr. Lusa failed to ensure that deposits were at least equal to disbursements on one of the agency's trust accounts. Further, two of the trust accounts were not reconciled monthly, and Mr. Lusa and Vintage never provided the bank statements for the accounts despite DFI's request for them. Also, DFI's examination uncovered \$5,000 in trust funds that had not been disbursed as of late February 2008, even though Vintage stopped taking new business when its license expired December 31, 2007. At the same time, following up on a previous citation, Mr. Lusa did not adequately explain to DFI Vintage's failure to immediately disburse trust funds from a previous escrow transaction in February 2007.

5. The ALJ revoked the escrow agent licenses of both Mr. Lusa and Vintage while imposing a substantial fine in an Initial Order entered May 20, 2011. DFI's Director Scott Jarvis issued the agency's Final Decision on April 17, 2012, modifying and upholding the ALJ's decision. In DFI's Final Decision, at Finding of Fact 26, Director Jarvis found that:

The Department concluded that Respondents' violations were serious ones, since they reflect breaches in the fiduciary duties entrusted to escrow agents and escrow officers, duties that are set forth in detail in the Act. For example, practicing without a designated escrow officer license is a violation that can be prosecuted as a misdemeanor. The Department further concluded that there were a number of such violations over a significant period of time that reflect Respondents' failure to properly manage the trust bank accounts, and therefore were not one-time errors or lapses in judgment. And though the Department acknowledges that Respondents' violations do not reflect any fraud or deceptive practice, the nature of Respondents' conduct represents a breach in the trust placed in escrow agents and officers, which is codified in the Act. Finally, the fact that there was \$6,000 remaining in one of Respondents' escrow accounts, which should have been promptly disbursed upon closing raised the question of Respondents' competence to perform as escrow agents and officers. [OIC Ex. 1-A, pg. 9, para. 4.8]

6. Ultimately, DFI's Final Decision revoked the licenses of both Mr. Lusa and Vintage, banned them from the escrow agent industry for five years, and imposed on them both a \$27,000 fine and more than \$17,000 in examination and investigation fees, which remain unpaid. Although the Final Decision explicitly stated Mr. Lusa's right to petition for reconsideration or for judicial review, Mr. Lusa did not do so.

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7. Mr. Lusa was also investigated by DFI for conduct relating to his operation of Western State Mortgage Corporation (WSMC). Mr. Lusa was the owner and the licensed mortgage broker of WSMC.

8. At the hearing based upon a Statement of Charges filed by DFI in 2009, an ALJ found that Mr. Lusa had solicited loan originators by stating in a September 2006 email that no Washington license was required to work for WSMC. Furthermore, the ALJ determined that Mr. Lusa and WSMC knowingly withheld information during DFI's investigation of the erroneous email exchange, and that the email itself constituted an unfair or deceptive practice. In that hearing, the ALJ also found that Mr. Lusa's company, WSMC, through loan originator Troy Bowers, Mr. Lusa's employee, had not provided required documents and disclosures to WSMC borrower Carol Wade in 2005. In particular, WSMC did not disclose a yield spread premium nor provide the required Truth-in-Lending Disclosure Statement. Moreover, while Ms. Wade had requested that WSMC obtain her a fixed-rate loan without prepayment penalties, WSMC instead signed her up for a variable rate loan that was subject to prepayment penalties without disclosing the discrepancy to Ms. Wade. Furthermore, WSMC, through Mr. Bowers, arranged a second mortgage on Ms. Wade's property without her consent and without any Good Faith Estimate or Truth-in-Lending disclosures. As a result, Ms. Wade was forced to refinance her mortgages, incurring an \$8,360.96 prepayment penalty, on top of an increased loan origination fee and an appraisal fee, which were not disclosed to her. When DFI investigated Ms. Wade's complaint, WSMC and Mr. Lusa denied any wrongdoing and did not provide an adequate response to DFI's 2006 request for documents from Ms. Wade's loan file.

9. In addition, in the WSMC case, the ALJ found that WSMC, dba Residential Capital Corporation, arranged a loan for WSMC borrow Carole Schroeder, instructing Ms. Schroeder to make payments to WSMC. However, WSMC sold Ms. Schroeder's loan to Countrywide Home Loans, Inc. (Countrywide), without ever informing Ms. Schroeder of the sale or telling her to make her payments to Countrywide. Accordingly, Ms. Schroeder made her loan payments to WSMC for several months, and WSMC cashed each of her checks without forwarding any payments to Countrywide. Ms. Schroeder only learned of the error when her credit report showed delinquencies to Countrywide, despite having made each monthly payment as instructed by WSMC. While Mr. Lusa and WSMC admitted in correspondence with the Better Business Bureau and Countrywide that the payments were not forwarded, Mr. Lusa and WSMC never responded to DFI's February 2009 directive requiring the production of Ms. Schroeder's loan file and documents for DFI's investigation.

10. The ALJ's October 12, 2010 Initial Order in the WSMC case denied a loan originator's license to Mr. Lusa, banned WSMC and Mr. Lusa from practicing in the mortgage broker industry for five years, imposed fines and investigative fees on both in the amount of \$37,500 and \$3,504 respectively, and ordered Mr. Lusa and WSMC to pay restitution to Ms. Wade in the amount of \$16,638.40. Upon review, the Director of DFI found that Mr. Lusa had adequate notice and opportunity to be heard, and that no evidence in the record supported Mr. Lusa's claims of failing to receive the notice of hearing or of substantive error by the ALJ.

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Accordingly, Director Jarvis entirely affirmed the ALJ's findings and decision, and upheld the denial, prohibition from practice as a mortgage broker, fines imposed, and restitution to Ms. Wade required in his Final decision of December 5, 2010. Although the Initial Decision explicitly stated Mr. Lusa's right to petition for reconsideration or for judicial review, Mr. Lusa did not do so.

11. Russell Johnson, Financial Legal Examiner Supervisor for the Department of Financial Institutions, appeared as a witness on behalf of the OIC. Mr. Johnson presented his testimony in a detailed and credible manner and presented no apparent biases.

12. Steven W. Lusa, the Applicant, appeared as a witness on his own behalf. Mr. Lusa presented his testimony in a detailed and credible manner and presented no apparent biases.

13. Based upon the above Findings, it is reasonable that the OIC's action denying the Applicant's application for a Washington resident insurance producer's license be upheld.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, it is hereby concluded:

1. The adjudicative proceeding herein 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. The OIC has cited RCW 48.17.530(1)(h) as a basis for denial of Mr. Lusa's Application. RCW 48.17.530(1)(h) gives the Commissioner the authority to deny an application if the applicant used fraudulent, coercive, or dishonest practices, or has demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere. Based upon the above Findings of Facts, Mr. Lusa did demonstrate incompetence, untrustworthiness, or financial irresponsibility in this state. Therefore, as the OIC argues, RCW 48.17.530(1)(h) provides adequate authority for the OIC to deny Mr. Lusa's Application.

3. The OIC has also cited RCW 48.17.530(1)(i) as a basis for denial of Mr. Lusa's Application. RCW 48.17.530(1)(i) gives the Commissioner the authority to deny an application if the applicant has had an insurance producer's license, or its equivalent, denied, suspended, or revoked in any state. As found above, an escrow agent's license, and a mortgage broker's license is in this situation equivalent to an insurance producer's license. Therefore, as the OIC argues, RCW 48.17.530(1)(i) provides adequate authority for the OIC to deny Mr. Lusa's Application.

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4. The evidence amply supports the OIC's denial of Mr. Lusa's Application for a Washington resident insurance producer's license under either RCW 48.17.530(1)(h) or RCW 48.17.530(1)(i).

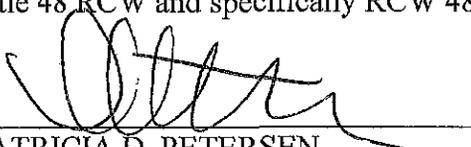
5. Based upon the above Findings of Facts, it is hereby concluded that the OIC's denial of Mr. Lusa's Application for a Washington resident insurance producer's license should be upheld.

ORDER

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

IT IS HEREBY ORDERED that the Washington State Insurance Commissioner's January 16, 2014 denial of the Washington resident insurance producer's license Application submitted by Steven W. Lusa on or before January 16, 2014 is upheld.

ENTERED AT TUMWATER, WASHINGTON, this 13th day of May, 2014, pursuant to Title 48 RCW and specifically RCW 48.04 and Title 34 RCW and regulations applicable thereto.



PATRICIA D. PETERSEN
Chief 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.

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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: Steven W. Lusa, Stephanie Holmes, Esq., Mike Kreidler, James T. Odiorne, John F. Hamje, AnnaLisa Gellermann, Esq., and Darryl E. Colman, Esq.

DATED this 14th day of May, 2014.


KELLY A. CAIRNS