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**BEFORE THE STATE OF WASHINGTON OFFICE OF THE INSURANCE
COMMISSIONER**

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OIC HEARINGS UNIT
PATRICIA D. PETERSEN
CHIEF PRESIDING OFFICER

In the Matter of:

STEVEN W. LUSA,
Applicant.

Docket No: 14-0023

APPLICANT'S MEMORANDUM

INTRODUCTION

On January 16, 2014, the Office of the Insurance Commissioner ("OIC") advised Mr. Steven W. Lusa that his application for a Washington resident insurance producer license had been denied. See Exhibit 1. The OIC's denial is based on two disciplinary actions against Mr. Lusa taken by the Department of Financial Institutions ("DFI"): DFI No. C-08-245-12FO01 against Vintage Escrow Inc., d/b/a Bellevue Escrow and Steven William Lusa (hereinafter, "the Vintage Proceeding") (Exhibit 2), and DFI No. C-08-066-08-SC01 against Western States Mortgage Corp., d/b/a Residential Capital Corp. and Steven William Lusa (hereinafter, "the WSMC Proceeding") (Exhibit 3). *Id.*

The OIC alleges that two actions demonstrate that Mr. Lusa used "fraudulent, coercive, or dishonest practices," or otherwise demonstrated "incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere," under RCW 48.17.530(h). However, in each case, the presence of mitigating circumstances or the absence of personal misconduct by Mr. Lusa show that his actions were neither fraudulent, coercive, dishonest, incompetent, untrustworthy, or irresponsible. Moreover, years of professional licensure without disciplinary action indicate that these two DFI cases are isolated incidents.

FACTS

1. Mr. Lusa has held at least a professional license as a Real Estate Managing Broker in Washington State from August 17, 1976 until August 5, 2011. See Exhibit 4. In addition, Mr. Lusa was licensed as a Designated Escrow Officer at Vintage Escrow Inc. from May 17, 1996 until his license expired on May 17, 2007. See Exhibit 2, Statement of Charges, 1.1(A) and (B). In this capacity, Mr. Lusa managed Vintage Escrow Inc. d/b/a Bellevue Escrow ("Vintage"). *Id.* Mr. Lusa was also the owner and Designated Broker of Western States Mortgage Corp. d/b/a Residential Capital Corp. (hereinafter, "WSMC"). See Exhibit 3, DFI No. C-08-066-08-SC01.

2. From 1976 until at least 2004, when the events of the two DFI proceedings at issue in this case occurred, Mr. Lusa held these professional licenses without any instances of disciplinary action being taken.

a. **DFI No. C-08-245-12FO01 against Vintage Escrow Inc., d/b/a Bellevue Escrow and Steven William Lusa (OAH Docket No. 2009-DFI-0045) (The Vintage Proceeding).**

3. The DFI began investigating Vintage Escrow Inc., d/b/a Bellevue Escrow ("Vintage") and Mr. Lusa (together, "Respondents") on February 25, 2008 for the time frame covering January 1, 2006 through February 29, 2008. See Exhibit 2, Initial Order, FOFs 6-7.

4. On January 7, 2009, the DFI initiated an action against the Respondents, charging them with a series of infractions related to maintenance of trust accounts and a series of infractions that occurred in the course of closing down its business. The DFI's charges included failing to maintain sufficient account balances in the company trust account; failing to timely deposit and disburse funds; failing to reconcile the trust accounts monthly; operating without a licensed Designated Escrow Officer; failing to file timely quarterly reports; and failure to report closure of office. See Exhibit 2, Statement of Charges.

5. The basis for the charge that the Respondents failed to maintain sufficient account balances in the trust account and to timely deposit and disburse funds is based on four Notices of Insufficient Funds/Overdraft, and on \$6,000 of undisbursed funds. The undisbursed funds were in a trust account that was being closed because it had become compromised. The Notices of Insufficient Funds/Overdraft similarly resulted from the closing of two compromised trust accounts and the opening of two new trust accounts. In addition, the Respondents were charged with failing to provide monthly reconciliation of the two compromised trust accounts. See Exhibit 2, Initial Order, FOF 14 and Footnote 2 (noting that "It is uncontroverted that these two trust accounts are the 'inactive' accounts that were closed to thwart losses due to identity theft."). These accounting discrepancies occurred even though Mr. Lusa had hired an accountant, Jonelle Wheeler of ACS Northwest, to assist him in managing and reconciling these accounts.

6. The other infractions occurred in the course of winding down Vintage. Vintage was struggling financially, and by March of 2007, Vintage had moved from a 15,000 square foot office space to a 3,000 square foot office space. Exhibit 2, Initial Order, page 10, FOF 42. On May 17, 2007, Mr. Lusa's license expired, which was overlooked amidst the downsizing of staff. As of December 31, 2007, Vintage was no longer taking in any new business. Exhibit 2, Initial Order, FOF 46. Regardless, he was charged with acting without a license from the date of expiration of his license until office closure forms had been received by the DFI. In addition, although office closure forms and quarterly reports for Vintage's final quarter of business before closing were sent to DFI, they were sent in late, resulting in further charges.

7. The DFI held Mr. Lusa responsible for each of these infractions, and prohibited him from the industry for a period of 5 years. Although the Initial Order indicated an intent to make the prohibition effective as of January 2009, the Final Order modified that date, to make the prohibition

effective on April 17, 2012 upon entry of the Final Order. Accordingly, Mr. Lusa will be prohibited from engaging in the industry until 2017, ten years after the investigation began, and eight years after the date indicated in the Initial Order.

b. DFI No. C-08-066-08-SC01 against Western States Mortgage Corp., d/b/a/ Residential Capital Corp., and Steven William Lusa, and Troy Bowers (OAH Docket No. 2009-DFI-0045) (The Western States Proceeding).

8. The DFI initiated proceedings against Western States Mortgage Corp., d/b/a/ Residential Capital Corp., and Steven William Lusa, and Troy Bowers (OAH Docket No. 2009-DFI-0045) (together, "Respondents") on April 28, 2009. The DFI's charges were related to three matters: the Carole Wade Complaint, the Carole Schroeder Complaint, and a Loan Officer Solicitation. See Exhibit 3, Amended Corrected Findings of Fact, Conclusion of Law, and Initial Order, FOF 4.2.

9. Carole Wade submitted a complaint to DFI after, among other things, her loan originator, Troy Bowers, secured a variable rate loan with pre-payment penalties instead of the fixed rate loan without pre-payment penalties as she had requested. In addition, Mr. Bowers failed to give Ms. Wade a Truth-in-Lending disclosure statement. *Id.*, FOF 4.10-4.23.

10. Carole Schroeder made loan payments to WSMC d/b/a/ Residential Capital Corp. (RCC) after RCC had sold her loan to Countrywide Home Loans. As soon as Mr. Lusa became aware of the situation, he and RCC acknowledge the error and promised to correct situation. *Id.*, FOF 4.32.

11. Mr. Lusa sent an email to an individual stating that no Washington State Loan Officer license was required to work for Western States. Mr. Lusa made this statement in good faith based on a Notice of Proposed Rule Making published on DFI's website indicating that a loan officer's license is not required for Exempt Mortgage Brokers. See Exhibit 5, page 13.

12. The proceeding initiated by the DFI resulted in entry of a Default Order. Mr. Lusa, who represented himself in the matter, missed the hearing after some confusion as to the date of the hearing. As indicated in Footnote 3 of the Final Decision and Order, "The [DFI] did provide information regarding a related but unconsolidated case involving the Respondent that might explain some of the confusion, but did not specifically address any telephone conversations between the Respondent and the OAH." Exhibit 3, Final Order, page 4, footnote 3.

ARGUMENTS

a. The OIC improperly denied Mr. Lusa's application based on RCW 48.17.530(1)(i).

The OIC denied Mr. Lusa's application for an insurance producer's license citing RCW 48.17.530(1)(i) and RCW 48.17.530(1)(h).

RCW 48.17.530(1)(i) gives the OIC the authority to deny an application if the applicant has had “an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory.” By asserting this provision, the OIC appears to allege that a loan originator license and a designated escrow officer license are equivalent to an insurance producer license.

The phrase “or its equivalent” is syntactically coupled to the phrase “in any other state, province, district, or territory,” which suggests that the RCW is targeting the literal equivalent of an insurance producer license, even if the license has a different name in another state or territory. Simply because there are some similarities in the requirements for several different types of professional licenses does not mean that each type of license is “equivalent.” Issues and circumstances that arise in some professions may never have occasion to arise in other professions.

Moreover, the RCW provides for alternative grounds for denial of a license if an applicant is deemed not to have met certain standards of professionalism, such as RCW 48.17.530(1)(h). RCW 48.17.530(1)(i) was improperly applied to deny Mr. Lusa’s application.

b. Mr. Lusa’s conduct, as evidence in the two DFI proceedings do not rise to the level of misconduct identified in RCW 48.17.530(1)(h).

RCW 48.17.530(1)(h) gives the OIC the authority to deny an application for “using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere.”

i. Mr. Lusa did not act fraudulently, coercively, or dishonestly.

In the Vintage Proceeding, the DFI acknowledged that Mr. Lusa’s “violations do not reflect any fraud or deceptive practice.” Exhibit 2, Initial Order, FOF 26. Mr. Lusa’s conduct in the WSMC Proceeding, even absent evidence from Mr. Lusa, also shows that Mr. Lusa did not act fraudulently, coercively, or dishonestly. In the WSMC Proceeding, Mr. Lusa was not personally involved in several of the circumstances that gave rise to the proceeding. Mr. Lusa was not the loan originator for Ms. Wade’s loan – instead it was his employee, Troy Bowers, who violated his professional obligations. As soon as Mr. Lusa learned of Ms. Schroeder’s complaint, he acted honestly, admitting the error and taking measures to correct it.

With regard to the loan officer solicitation, Mr. Lusa made statements that a license was not required for exempt mortgage brokers in good faith based on a DFI publication of a Notice of Proposed Rule Making. His statements do not amount to fraudulent, coercive, or dishonest actions.

ii. Mr. Lusa did not demonstrate incompetence, untrustworthiness, or financial irresponsibility.

Although in the Vintage Proceeding, several infractions occurred from 2006-2008, mitigating circumstances tend to show that Mr. Lusa was and is not incompetent, untrustworthy, or financially irresponsible. For example, several accounting errors occurred during the transition from two

compromised accounts to two new accounts. On the contrary, the record of the proceeding also includes evidence of Mr. Lusa's diligence. He closed trust accounts that had been compromised, and opened new ones. He hired an accountant to assist in maintaining the trust accounts. He was aware of his professional responsibilities, and attempted to comply.

Nevertheless, errors occurred as a result of the closed accounts, and again, around the time that Mr. Lusa began to wind down Vintage's business and after significant downsizing. Under these circumstances and pressures, Mr. Lusa did not act incompetently or in a manner that would reasonably justify calling his actions untrustworthy, incompetent, or financially irresponsible. The errors occurred despite the responsible actions he took, and Mr. Lusa was subject to disciplinary action.

iii. Misconduct of Mr. Lusa's employees should not be attributed to Mr. Lusa for purposes of this proceeding.

The OIC would impute all of the errors and actions of Mr. Lusa's employees in the Vintage Proceeding and in the WSMC Proceeding to Mr. Lusa, because Mr. Lusa was legally responsible for supervising his employees. However, Mr. Lusa's liability was raised in the appropriate forum – during the DFI proceedings. This proceeding has to do with whether or not Mr. Lusa is fraudulent, coercive, dishonest, incompetent, untrustworthy, or financially irresponsible under RCW 48.17.530(1)(h). Simply because Mr. Lusa was held liable for the conduct of his employees, it does not follow that every error or instance of misconduct made by his employees should also be imputed to him personally or be a reflection on his character or competence.

c. Mr. Lusa's professional career is evidence of his honesty, competence, trustworthiness, and responsibility.

Mr. Lusa held professional licenses for many years prior to the initiation of these two DFI proceedings. In the course of his work under these licenses, Mr. Lusa managed trust accounts in keeping with the law without any disciplinary action being taken against him. For example, as a real estate managing broker from 1976 until its cancellation in 2011, Mr. Lusa was required to maintain trust accounts and keep accurate records, in compliance with RCW 18.85.285, and to supervise employees in accordance with RCW 18.85.275. As owner of Vintage, Mr. Lusa successfully managed the business and its trust accounts from 1996 until 2006, when Vintage began its decline.

Mr. Lusa is capable and competent to maintain trust accounts in keeping with professional standards. The instances shown by the Vintage Proceeding were isolated, and the result of the rapid decline of a business.

d. Denial of Mr. Lusa's application for an insurance license would be inequitable.

The Initial Order in the Vintage Proceeding banned Mr. Lusa from the industry for a period of 5 years. The Initial Order indicated an effective date of January 7, 2009. The Final Order modified that effective date to April 17, 2012. Thus, the ban will remain in effect until April 7, 2017. The

Final Order in the WSMC Proceeding bans Mr. Lusa from participating in the affairs of any mortgage broker subject to licensure until September 27, 2015.

If Mr. Lusa's applicant for an insurance producer license is denied on the basis of these two DFI proceedings, it will be the first step towards an effective bar in any industry subject to professional licensure. This would work a significant hardship on Mr. Lusa as he attempts to start over professionally.

CONCLUSION

The OIC's denial of Mr. Lusa's application for an insurance license focuses on the detailed factual findings of two DFI proceedings, but fails to take into account the mitigating circumstances that are also of record in these proceedings. Although there were several technical violations that occurred in the course of winding down Vintage, Mr. Lusa did not shirk his professional responsibilities, but instead showed respect for them. He attempted to diligently monitor trust accounts by opening new accounts when others had been compromised, and by hiring an accountant to assist him. He attempted to send in the appropriate office closure forms and quarterly reports, even though late.

In the WSMC proceeding, the charges for the most part did not directly implicate Mr. Lusa's conduct. His statements regarding the necessity of the loan originator license were made in good faith, and without intent to deceive. His statements, although ultimately incorrect, show he was monitoring the DFI's website for rule changes.

In addition, Mr. Lusa's long career as a professional demonstrate that he has respect for and is capable of meeting the standards of professionalism required for an insurance producer license. Accordingly, Mr. Lusa's application for an insurance producer license, or a probationary license, should be granted.

Respectfully submitted,

On March 26, 2014

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Enclosures (6):

Appendix of Exhibits
Exhibits 1-5

APPENDIX OF EXHIBITS

Exhibit 1	Email correspondence from a representative of the Office of the Insurance Commissioner, Re: License Denial
Exhibit 2	Record of the Department of Financial Institutions in 2009-DFI-0040, No. C-08-245, including the Final Decision, dated 4/17/2012, the Initial Order, dated 5/20/2011, and the Statement of Charges, dated January 7, 2009
Exhibit 3	Record of the Department of Financial Institutions in 2009-DFI-0045, No. C-08-066-08-SC01, including the Final Decision and Order, dated 12/8/2010, and the Initial Order, dated 10/12/2010
Exhibit 4	Web Search Documents, Steven W. Lusa Licensure as Real Estate Managing Broker in Washington State
Exhibit 5	Screen Print of The Wayback Machine on September 13, 2006, and Proposed Rules, OTS-9121.3, pages 1-19