

DIVISION OF REAL ESTATE
DEPARTMENT OF COMMERCE
P.O. BOX 146711
160 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711
Telephone: (801) 530-6747

BEFORE THE DIVISION OF REAL ESTATE OF
THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

In the Matter of the Mortgage Loan Originator
License of **KATHY HOPKINS**, Respondent

**ORDER OF DEFAULT AND FINAL
ORDER**

Case # MC-41139

The Utah Division of Real Estate (Division) brought allegations against Kathy Hopkins (Respondent) based upon information and belief arising out of an investigation conducted by the Division under its authority as set forth in Utah Code Ann. § 61-2c-401 (2010). On May 13, 2010, the Division sent a notice of agency action to Respondent by certified mail. The notice was sent to Respondent's address of record, and also to Ascent Home Loans, her employer of record. The notice informed Respondent that the Commission would hear the matter on June 2, 2010 at 10:00 A.M., and included the following warning:

If you fail to appear for any scheduled hearing, you may be held in default and an Order may be entered consistent with the terms of the Petition without further notice to you. If you are held in default, the maximum sanction required in the Petition may be imposed against you.

According to employees of Ascent Home Loans, the notice was scanned and e-mailed to Respondent. The hearing was held as scheduled. Applicant failed to appear.

On these facts, the Commission and Director find that the Division fulfilled its obligation pursuant to Utah Admin. Code § R151-46b-8(2)(b) to serve Respondent with notice of her hearing. They therefore enter a default against Respondent and issue a final order in this matter.

FINAL ORDER

The Director, pursuant to a grant of authority from the Commission and on its behalf, now enters the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

At the hearing, the Division presented evidence as follows:

1. In approximately June of 2007, Respondent accepted \$750 from Debi and Douglas Prisbrey. The money was intended to pay for an appraisal of the clients' property and for services to improve their credit scores. Respondent did not obtain from her clients a signed, written statement outlining the conditions, if any, under which all or part of the fees would be refunded to them. Several months later, with no indication that their loan was moving forward, the clients requested their money back. Respondent refused to refund the fees, and also refused to provide a copy of the appraisal report.
2. On April 17, 2008, the Division received a complaint from Taylor Bean & Whitaker (TB&W) against Respondent. The complaint alleged that Respondent misrepresented her fees in a purchase transaction where she acted as agent for buyers Ed and Phyllis Calton. The final settlement statement, as entered into evidence, shows a loan amount of \$100,800 and reveals that Respondent charged her clients a discount fee of \$2,613.74, a processing fee of \$495, and a brokerage fee of \$500. In addition, the borrowers paid Respondent \$3,724 prior to closing. This advance payment was not disclosed to TB&W.
3. On April 2, 2008, the Division received a complaint from Garth Ungerman against Respondent. The complaint alleged that Mr. Ungerman agreed to sell a home to a

couple who had been renting the home from him, but were behind in their rent. The parties agreed on a purchase price of \$60,000, and the buyers were represented by Respondent in applying for financing. Although Respondent knew the buyers were behind in their rent, she twice instructed Mr. Ungerman to submit rent verification forms stating that the buyers were current. In addition, Respondent twice created purchase contracts to change the selling price and indicate gift equity from Mr. Ungerman. Simultaneously, Respondent created two gift statements showing that Mr. Ungerman intended to transfer gift equity to the borrowers when, in reality, he did not.

4. On December 1, 2008, the Division received a complaint from Abby Ivory against Respondent. The complaint alleged that Respondent ran radio ads indicating that she was affiliated with Elk Ridge Financial after transferring her license to Eagle Mortgage, Inc. Records from various radio stations indicate that the ads aired at least 275 times after Respondent transferred her license.
5. On or about December 15, 2008, the Division received information indicating that Respondent created a false e-mail address in order to pose as Matthew Glenn, PLM for Eagle Mortgage. Under this guise, she asked an appraiser to change the client name on an appraisal report. When the appraiser declined, stating that the appraisal was completed for another lender and could not be used outside of that order, Respondent again posed as Mr. Glenn in an e-mail stating that Eagle Mortgage was in possession of a release form that would allow the appraiser to make the change. The appraiser again declined, and Respondent sent a third e-mail, still posing as Mr. Glenn, and stating that the borrower was very angry.

6. Respondent owned and operated Elk Ridge Financial and was responsible for the company and its operations. The Division investigated the company offices after being informed by the landlord that the company had abandoned the premises. The investigators discovered 32 boxes of abandoned mortgage files that included loan applications, tax returns, social security numbers, employment and address histories, and other sensitive personal financial information.

Having no evidence to rebut the information and evidence presented and argued by the Division, the Commission and the Director find that Respondent acted as alleged.

CONCLUSIONS OF LAW

Upon consideration of the evidence, and testimony before them, the Commission and the Director find that the facts as presented and argued by the Division support the following conclusions of law:

1. Respondent charged the Prisbreds up-front fees without providing written disclosure as to whether, and under what circumstances, the fees would be refunded. This action constitutes one violation of Utah Code Ann. § 61-2c-301(1)(b), which prohibits a licensee from charging an up-front fee without obtaining the borrower's signature on a disclosure explaining what circumstances, if any, will trigger a refund of all or part of the fee.
2. Respondent charged the Caltons fees totaling \$7,332.74 on a loan amount of \$100,800. These fees exceed 7% of the loan amount. The Division and Commission find this to be an excessive fee. This action constitutes one violation of Utah Code Ann. § 61-2c-301(1)(b), which prohibits a licensee from charging an excessive fee in connection with a residential mortgage loan transaction.

3. Respondent submitted a false statement of her broker fees to the lender on the Calton loan. It is unlikely that the lender would have approved the loan had Respondent disclosed that she was charging additional, and excessive, fees outside of closing. Therefore, the Commission and Director conclude that Respondent withheld this information in order to induce the lender to extend credit. This action constitutes one violation of Utah Code Ann. § 61-2c-301(1)(d), which prohibits a licensee from making a false statement or representation, causing false documents to be generated, or knowingly permitting false information to be submitted to a lender in order to induce the lender to extend credit.
4. Respondent twice participated in the creation of falsified rent verification forms regarding Mr. Ungerman's renters. These actions constitute two additional violations of Utah Code Ann. § 61-2c-301(1)(d).
5. Respondent twice participated in the creation of falsified gift statements regarding the transfer of Mr. Ungerman's property. These actions constitute two additional violations of Utah Code Ann. § 61-2c-301(1)(d).
6. Regarding the transfer of Mr. Ungerman's property, Respondent twice created REPCs so as to impose settlement terms different from those agreed to by the parties. These actions constitute two additional violations of Utah Code Ann. § 61-2c-301(1)(d), which prohibits a licensee from engaging in an act or omission in transacting the business of residential mortgage loans that constitutes dishonesty, fraud, or misrepresentation.

7. Respondent caused a false settlement statement to be generated and presented to the Caltons. This action is dishonest, fraudulent, and misleading and constitutes one additional violation of Utah Code Ann. § 61-2c-301(1)(l).
8. Respondent instructed Mr. Ungerman to create false documents. This action is dishonest, fraudulent, and misleading and constitutes one additional violation of Utah Code Ann. § 61-2c-301(1)(l).
9. Respondent submitted false documents to the lender in the purchase transaction regarding Mr. Ungerman's property. This action is dishonest, fraudulent, and misleading and constitutes one additional violation of Utah Code Ann. § 61-2c-301(1)(l).
10. Respondent posed as PLM Matthew Glenn in her dealings with an appraiser. This action is misleading and constitutes one additional violation of Utah Code Ann. § 61-2c-301(1)(l).
11. Respondent aired radio ads stating that she was affiliated with Elk Ridge Financial after transferring her license to Eagle Mortgage, Inc. This action is a misrepresentation in advertising and constitutes on violation of Utah Code Ann. § 61-2c-301(1)(m), which prohibits a licensee from engaging in false or misleading advertising.
12. Respondent failed to account to the Prisbreds for money tendered to pay for an appraisal and for credit repair. It is unclear from the record whether Respondent used the money for a different purpose or retained the money without arranging for the services to be performed. Regardless, her failing to account for the funds tendered constitutes one violation of Utah Code Ann. § 61-2c-301(1)(n), which

requires a licensee to account for monies received in connection with a residential mortgage loan.

13. Respondent failed to provide the Prisbreds with a copy of their appraisal within 90 days of being requested to do so. This action constitutes one violation of Utah Code Ann. § 61-2c-301(1)(o), which requires a licensee to provide a borrower who has paid for an appraisal with a copy of the appraisal report no later than 90 calendar days after receiving a request to do so.
14. Respondent abandoned the records of Elk Ridge Financial, thus exposing sensitive personal information to potential misuse. This action constitutes one violation of Utah Administration Code § R162-204-1-3, which requires a licensee to dispose of records in a manner that reasonably safeguards personal information.

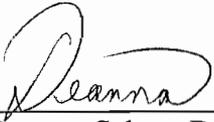
In summary, the Commission and the Director find a total of 17 violations of the regulations that govern mortgage licensees. The Commission and Director further conclude that Utah Code Ann. § 61-2c-402 (2009) allows them to impose a civil penalty up to \$2,500 for every violation and to revoke a mortgage license upon a finding that a licensee has violated a provision of Utah Code Ann. § 61-2c, *et seq.* or the rules promulgated thereunder.

ORDER

Based upon the foregoing findings of fact and conclusions of law, Kathy Hopkins's mortgage loan originator license is revoked, and Ms. Hopkins is assessed a civil penalty of \$42,500. This order shall be effective on the signature date below.

DATED this 21st day of June, 2010.

UTAH DIVISION OF REAL ESTATE


Deanna Sabey, Director
Division of Real Estate

NOTICE OF RIGHT TO ADMINISTRATIVE REVIEW

A request or motion to set aside this order by default may be filed with the presiding officer and/or with the Director of the Division of Real Estate pursuant to UTAH CODE ANN. § 63G-4-209(3)(a) and the Utah Rules of Civil Procedure. If a defaulted party wishes a review of the presiding officer's decision on a motion to set aside a default, UTAH CODE ANN. § 63G-4-209(3)(c) provides that agency review of the presiding officer's decision on a motion to set aside a default order may be obtained by filing a request for agency review with the Executive Director, Department of Commerce, 160 East 300 South, Box 146701, Salt Lake City, Utah 84114-6701, within thirty (30) days after the date of the presiding officer's decision. The agency action in this case was an informal proceeding. The laws and rules governing agency review of this proceeding are found in Title 63G, Chapter 4 of the Utah Code, and Rule 151-46b of the Utah Administrative Code.

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of June, 2010, a true and correct copy of the foregoing document was sent first class mail, postage prepaid, to the following:

Kathy Hopkins
P.O. Box 539
Gunnison, UT 84634

Ascent Home Loans, Inc.
Attn.: Jason D. Dozois, PLM
9780 Pyramid Ct., Ste. 150
Englewood, CO 80112-7004


Renda Christensen