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**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO**

STATE OF IDAHO, DEPARTMENT OF FINANCE, CONSUMER FINANCE BUREAU,)	Docket No. 2008-8-08
Complainant,)	ORDER TO CEASE AND DESIST FROM VIOLATING THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT AND IMPOSING AFFIRMATIVE DUTIES
DMI FUNDING INCORPORATED, dba DIRECT MORTGAGE,)	
Respondent.)	
_____)	

Gavin M. Gee, Director of the Department of Finance, State of Idaho (Director) has caused to be conducted an investigation of the mortgage brokering/lending activities of DMI FUNDING INCORPORATED, dba DIRECT MORTGAGE (hereinafter referred to as the “Respondent”). Pursuant to that investigation, it appears to the Director that the Respondent has violated the Idaho Residential Mortgage Practices Act, Idaho Code § 26-3101 *et seq.* (the Act). Pursuant to § 26-3106(2) of the Act, the Director hereby alleges the following facts that constitute the basis for the issuance of this “Order to Cease and Desist from Violating the Idaho Residential Mortgage Practices Act and Imposing Affirmative Duties.”

THE RESPONDENT

1. The Respondent is incorporated under the laws of Idaho, and has been licensed by the State of Idaho, Department of Finance (Department) to conduct mortgage brokering/lending activities in Idaho since October 27, 2005. The Respondent holds Idaho Mortgage Broker/Lender License No. MBL-5112 for its home office, which the Department's current records show is located at 1003 South Allante Place, Boise, Idaho 83709. The Respondent's president is Karl R. Aguilera.

FINDINGS OF FACT

2. On Sunday, October 26, 2008, a Department Consumer Finance Bureau examiner/investigator read an article in Boise's local newspaper, *The Idaho Statesman*, reporting that at least forty (40) boxes filled with files containing Social Security Numbers, bank account numbers, address and credit histories of at least one hundred (100) people had been left unprotected outside a Boise recycling center on Saturday, October 25, 2008.

3. On Monday, October 27, 2008, the Department learned that the boxes, as well as other loose papers filled with confidential personal and financial information, that had been left outside the Boise recycling center, implicated the Respondent. At that point, the Department initiated an investigation into the incident.

4. The Department's investigation showed that the Respondent had been storing documents related to its mortgage brokering/lending business in at least four (4) local storage units. The Respondent had failed to pay monthly storage fees on at least one (1) of those storage units. Despite several written and verbal notices provided by the storage company to representatives of the Respondent's business warning of a possible eviction from the storage unit

and auction of the unit's contents if the arrearages were not paid, the Respondent failed to pay the arrearages, and on October 25, 2008, the contents of the storage facility were auctioned.

5. The contents of the Respondent's storage facility included approximately forty-eight (48) boxes of documents and enough loose papers to fill two (2) large storage bins of the type maintained by the recycling center. Those documents and loose papers included complete mortgage loan applications and related loan documents; records concerning both employees of the Respondent's and applicants for employment, to include W-2s and Social Security information; records concerning the Respondent's clients and investors; tax records; and even personal and confidential information concerning the Respondent's president. Interestingly, such documents also included a copy of the Respondent's "Privacy Policy," which stated: "We maintain physical, electronic, and procedural safeguards that comply with federal standards to guard your nonpublic personal information."

6. On October 25, 2008, Boise-area resident F.R. purchased the contents of the Respondent's storage facility at auction. F.R. was hoping to be able to sell the paper for recycling purposes. On that same date, F.R. took the loose documents he had purchased at auction to the Boise recycling center. An employee of the recycling center examined some of the documents and identified them as confidential loan documents. The recycling center employee informed F.R. that such documents must be shredded, and placed such documents in two large bins that were taken inside of the recycling center's warehouse to keep them secure. Later that same day, after the recycling center had closed for the day, F.R. left approximately forty-eight (48) boxes of the Respondent's documents containing confidential personal and financial information outside the recycling center's facility.

7. Later in the evening of October 25, 2008, Boise-area resident C.Z. dropped off some articles for recycling outside the same recycling center's facility and noticed the approximately forty-eight (48) boxes sitting outside the facility. C.Z. examined some of the documents included in the boxes, recognized them immediately as containing confidential personal and financial information, and contacted *The Idaho Statesman* and the Boise City Police Department. A police officer then contacted the recycling center, who immediately sent a representative to the facility and took the boxes inside for safekeeping.

8. On October 27, 2008, an examiner/investigator for the Department contacted the recycling center and was informed that the approximately forty-eight (48) boxes the recycling center was securely storing apparently belonged to the Respondent, a mortgage broker/lender licensee of the Department. The examiner/investigator was informed by a representative of the recycling center that the Respondent's president had visited the recycling center that same morning and admitted that the boxes and loose papers belonged to the Respondent. The Respondent's representative sought to obtain custody of the boxes and loose papers, but the recycling center denied that request. On October 28, 2008, the Department served a subpoena on the recycling center, took possession of the boxes and loose documents in the storage bins, and moved them to a locked and secure facility under the control of the Department. A review by Department examiners/investigators of such boxes and loose documents confirmed that they belonged to the Respondent. Based upon the Department's investigation, it appears that the confidential information contained in those documents sat unattended and in the public domain for a period of at least between three (3) to four (4) hours on October 25, 2008, in front of the recycling center, before the seriousness of the situation was discovered and the boxes and loose papers could be secured and safeguarded.

CONCLUSIONS OF LAW

9. Section 26-3109(1)(b) of the Idaho Residential Mortgage Practices Act provides that violation of any state or federal law, rule or regulation pertaining to mortgage brokering or mortgage lending, as defined in § 26-3102 of the Act, by any licensee or any partner, officer, director, manager, member, employee or agent of the licensee, is grounds for revocation or suspension of a license issued under the Act, establishing a violation of the Act.

10. The Financial Services Modernization Act of 1999, Pub.L. No. 106-102, 113 Stat. 1338 (1999), more commonly known as the Gramm-Leach-Bliley Act or “GLB,” establishes a comprehensive legal framework governing the privacy and security of personal financial information for the financial industry. See *Privacy Law*, Charlene Brownlee and Blaze D. Waleski, Law Journal Press, § 3.01, pp.3-5 (2006); 15 U.S.C.A., § 6801 *et seq.*

11. The Gramm-Leach-Bliley Act required federal agencies, including the Federal Trade Commission (FTC), to implement rules that pertain to the sector of the financial industry over which such agencies have jurisdiction. *Privacy Law*, § 3.01, pp. 3-6.

12. In response to the requirements of the Gramm-Leach-Bliley Act, the FTC enacted a series of rules labeled “Standards for Safeguarding Customer Information.” 16 CFR § 314.1 *et seq.* The purpose of those rules was to set forth “standards for developing, implementing, and maintaining reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information.” 16 CFR § 314.1(a). 16 CFR § 313.1(b) of the FTC rules provides that mortgage brokers and mortgage lenders fall within the scope of the FTC’s rules relating to privacy of consumer financial information.

13. The FTC’s rules setting “standards for safeguarding customer information,” at 16 CFR § 314.3(a), require that mortgage brokers and mortgage lenders develop, implement, and

maintain a written comprehensive information security program, to include physical safeguards appropriate to the size and complexity of the company, for the purpose of insuring the security and confidentiality of customer information. As noted above, a copy of the Respondent's "Privacy Policy" was included in the boxes of confidential documents that ended up sitting in front of a recycling center in the public domain for at least a three (3) to four (4) hour period unattended and unprotected, as referenced in paragraph 8 above.

14. The Respondent's failure to abide by the spirit and substance of the FTC's "Standards for Safeguarding Customer Information," as set forth in 16 CFR § 314.1, to which the Respondent was subject pursuant to 16 CFR § 313.1 as referenced above, resulting in the confidentiality of personal and financial information of possibly hundreds of Idaho residents and others being breached or subject to breach, constituted a violation by the Respondent of federal law applicable to mortgage brokers and mortgage lenders, within the meaning of and in violation of § 26-3109(1)(b) of the Idaho Residential Mortgage Practices Act.

15. Idaho Code § 26-3106(2) provides that if the Director finds that a person has violated or is violating, or that there is reasonable cause to believe that a person is about to violate the provisions of the Idaho Residential Mortgage Practices Act, the Director may, in his discretion, order the person to cease and desist from the violations.

16. Idaho Code § 26-3105(1)(e) provides that the Director, pursuant to Chapter 52, Title 67, Idaho Code, may issue orders that, in the opinion of the Director, are necessary to execute, enforce and effectuate the purposes of the Act.

ORDER

NOW, THEREFOR, based on the foregoing, the Director HEREBY FINDS that the Respondent has violated the Idaho Residential Mortgage Practices Act as set forth above. The Director FURTHER FINDS that the issuance of this Order is necessary and appropriate for the public interest or for the protection of the public consistent with the purposes of the Act, and that, in the opinion of the Director, is necessary to execute, enforce and effectuate the purposes of the Act.

THEREFORE, the Director HEREBY ORDERS the Respondent to Cease and Desist from violating the Idaho Residential Mortgage Practices Act by failing to abide by federal law and rules requiring the safeguarding of confidential personal and financial information of its customers and others whose confidential personal and/or financial information is in the custody or control of the Respondent.

FURTHER, the DIRECTOR HEREBY ORDERS the Respondent to carry out the following tasks and duties to mitigate or prevent injury to others from the Respondent's violations of the Act, to include:

- (1) Conduct an examination of all of the Respondent's records currently in the Department's safekeeping and any other records in its custody or control that may subject customers, employees, or others to a breach of confidential personal and/or financial information, for the purpose of identifying customers and others whose personally identifiable information and/or financial information may have been compromised or are subject to compromise;
- (2) Provide written notification to the customers and other individuals referenced in paragraph (1) above of the breach or potential breach of their personally

identifiable information and/or financial information in a form approved by the Director;

- (3) Once the written notification referenced in paragraph (2) above has been approved by the Director, provide certification to the Department that such notice has been accomplished within a timeline approved by the Director;
- (4) Destroy all records appropriate for destruction in a manner comporting with applicable federal rules, including the FTC rules referenced above;
- (5) Once the records referenced in paragraph (4) above have been properly destroyed, certify to the Department in a timely manner, by affidavit of a company principal or officer, that such records have been properly destroyed; and
- (6) Provide certification to the Department that any other records in storage or in the Respondent's possession have been properly destroyed or are safeguarded within the requirements of the federal laws and rules referenced above, and any other federal laws and rules applicable to such destruction or safeguarding.

IT IS FURTHER ORDERED that from this point forward, the Respondent shall comply with all requirements of the Idaho Residential Mortgage Practices Act and all federal laws and rules applicable to mortgage brokering or mortgage lending, including the rules concerning properly safeguarding and disposing of confidential personal and/or financial information of customers or others, which information should come within the Respondent's custody or control.

This ORDER is EFFECTIVE UPON ISSUANCE, subject to the Respondent's rights as explained below.

IT IS SO ORDERED.

DATED this 12TH day of NOVEMBER, 2008.



STATE OF IDAHO
DEPARTMENT OF FINANCE


GAVIN M. GEE, Director

NOTICE

The Respondent is HEREBY NOTIFIED that this ORDER TO CEASE AND DESIST FROM VIOLATING THE IDAHO RESIDENTIAL MORTGAGE PRACTICES AND IMPOSING AFFIRMATIVE DUTIES is a final order of the Director.

The Respondent may file a motion for reconsideration or request for hearing concerning this final order within fourteen (14) days of the service date of this order. Any such motion for reconsideration or request for hearing must be in writing, addressed to:

Michael Larsen
Consumer Finance Bureau Chief
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031

A copy of the motion for reconsideration or request for a hearing shall also be served on the Department's counsel in this matter, A. René Martin, Deputy Attorney General, at the following address:

A. René Martin
Deputy Attorney General
Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031

The Department will dispose of a motion for reconsideration within twenty-one (21) days of the receipt of a motion for reconsideration, or the motion will be considered denied by operation of law. Idaho Code § 67-5246(4); Idaho Rules of Administrative Procedure of the Attorney General (IRAP) at IDAPA 4.11.01.740.02.a. Should the Respondent make a timely request for a hearing, the Department shall schedule a hearing within the twenty-one (21) day time period.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order may appeal to the district court by filing a petition in the district court of the county in which:

- i. A hearing was held;
- ii. The final agency action was taken;
- iii. The party seeking review of the order resides, or operates its principal place of business in Idaho; or
- iv. The real property or personal property that was the subject of the agency action is located.

See IDAPA 04.11.01.740.02.b.

An appeal must be filed within twenty-eight (28) days of (a) the service date of this final order, (b) of an order denying a motion for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a motion for reconsideration or schedule a hearing, whichever is later. See Idaho Code § 67-5273. The filing of an appeal to the district court does not itself stay the effectiveness or enforcement of the order under appeal. See IDAPA 04.11.01.740.02.c.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12 day of October, 2008, a true and correct copy of the foregoing ORDER TO CEASE AND DESIST FROM VIOLATING THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT AND IMPOSING AFFIRMATIVE DUTIES was served upon the following by the designated means:

DMI Funding Incorporated,
dba Direct Mortgage
Attn: Karl R. Aguilera
1003 South Allante Place
Boise, ID 83709

- U.S. Mail, postage prepaid
- Certified mail
- Facsimile (208) 388-0103

DMI Funding Incorporated,
dba Direct Mortgage
Attn: Karl R. Aguilera
4696 W. Overland Rd., Ste. 140
Boise, ID 83709

- U.S. Mail, postage prepaid
- Certified mail
- Facsimile (208) 388-0103


