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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,)

Complainant,)

vs.)

PINNACLE CAPITAL MORTGAGE)
CORPORATION,)

Respondent.)
_____)

Docket No. 2012-8-02

CONSENT ORDER

The Idaho Department of Finance, Consumer Finance Bureau (Department) has conducted an examination of the mortgage brokering/lending and related business activities of PINNACLE CAPITAL MORTGAGE CORPORATION (Respondent), and has concluded therefrom that Respondent has engaged in violations of the Idaho Residential Mortgage Practices Act, Idaho Code § 26-31-101 *et seq.* (the Act), and applicable rules. The Director of the Idaho Department of Finance (Director) and Respondent have agreed to resolve this matter through the entry of this Consent Order, in lieu of a formal administrative proceeding seeking revocation of

Respondent's license under the Act and other sanctions, or a civil enforcement lawsuit. The Director deems it appropriate and in the public interest to enter into this Consent Order, and Respondent voluntarily consents to its entry.

RESPONDENT

ME

1. Respondent is a licensed mortgage broker/lender in the state of Idaho, holding Idaho Mortgage Broker/Lender License No. MBL-6950 since March 26, 2009. Respondent also maintains unique identifying number NMLS-81395 through the Nationwide Mortgage Licensing System and Registry. Respondent's home office is located at ^{3010 Lava Ridge Court} ~~1620 East Roseville Parkway~~, Suite ²²⁰ ~~248~~, Roseville, California. Respondent currently maintains Idaho-licensed branch locations in Lodi, California; Bellevue, Idaho; Boise, Idaho; Meridian, Idaho; Nampa, Idaho; Rexburg, Idaho; Portland, Oregon; Federal Way, Washington; Kirkland, Washington; and Spokane, Washington. In the past, Respondent maintained Idaho-licensed branch locations in Blackfoot, Idaho; Moscow, Idaho; Linn, Oregon; Redmond, Oregon; and Wenatchee, Washington.

THE EXAMINATION

2. Between February 21, 2012 and February 24, 2012, pursuant to Idaho Code § 26-31-204(3), the Department conducted an examination of Respondent's mortgage brokering/lending activities in Idaho at Respondent's home office in Roseville, California (Examination), which included the review of ninety (90) residential mortgage loan files. The examiners compiled an examination report (Examination Report) detailing the issues discovered as a result of the Examination. The Examination included a review of internal policies and controls established by Respondent to ensure its business practices complied with the Act.

3. Respondent was informed of the examiners' findings and was given an opportunity to respond. Respondent submitted a response to the Examination Report on June 30, 2012. The response was intended as a statement of the corrective action Respondent took or had begun to undertake to prevent a recurrence of any matter referenced in the Examination Report which constituted a compliance violation.

FACTS

4. Respondent entered into Services Agreements with Legacy Lending Group (Legacy) and Affinity Mortgage Corporation (Affinity) (collectively the "affiliated entities"), which companies are separate legal entities from Respondent. However, the affiliated entities appear to be owned or controlled by licensed loan originators employed by Respondent. The Services Agreement listed the services that the affiliated entities would perform at specific branch locations in Idaho. The services were categorized as marketing, recruiting, training, technology and IT support, accounting, vendor management, post-closing services, and quality control. In return, pursuant to the Services Agreement, the net profits of each branch would be paid to the affiliated entity that provided services for that branch. In practice, the affiliated entities did not perform these services and were not compensated for the services. The net profits of the branch were transferred to the branch, which was in reality, additional compensation for the residential mortgage loans originated by the branch. In some cases, the origination fees were paid to Respondent, who in turn would compensate the employee responsible for the origination. In addition, the affiliated entities billed Respondent for specific services such as rent, marketing and management services. The amount of the billings were not based on any services performed by the affiliated entities, but instead were based on the compensation the affiliated entity should be paid for originating loans. The billings were a

method to transfer more of the origination fees to the affiliated entities disguised as service fees and allowed the affiliated entities to be paid for brokerage services they performed. The examiners determined that the monies paid to the affiliated entities, and which were identified as expenses within Respondent's financial records, were in fact additional compensation derived from loan origination activities conducted by Respondent's employees.

5. In other instances, the origination fees were dispersed directly to the affiliated entities by lenders. These disbursements were classified as "Commission Income" by Legacy and as "Loan Fees Received" by Affinity. In these cases, the actual mortgage loan origination services were performed by the affiliated entities. Respondent did not exercise any oversight of such compensation methods by the affiliated entities.

6. The examiners found twenty-five (25) loan files that contained evidence of licensable mortgage activities being undertaken by loan originators not licensed by the Department.

7. The examiners' review of Respondent's loan files disclosed that, in many cases, there was no evidence that a number of documents were delivered to the borrower. Additionally, there were documents in the borrower file that lacked the required signature of the borrower. Also, in many cases, records were not provided to the examiners for review, and in cases where they were provided, many required documents were missing.

8. Neither of the affiliated entities maintain licenses under the Act to engage in mortgage brokering/lending activities in Idaho. Further, some loan originators employed by Respondent are also employed by either Legacy or Affinity.

VIOLATIONS

9. From information obtained during the Examination, the examiners concluded that Respondent engaged in numerous violations of the Act, including, but not limited to, the following:

a. Respondent failed to diligently supervise or oversee the mortgage brokering/lending related activities of mortgage loan originators employed by Respondent at the branch locations operated by the affiliated entities in Idaho, in violation of Idaho Code § 26-31-207(1)(h). Specifically, the statute provides that the Director has the power to suspend a license if the licensee fails to supervise diligently and control the mortgage-related activities of a mortgage loan originator who is employed by the licensee. Here, the managers and control persons of the affiliated entities were employees of Respondent, and these employees allowed the affiliated entities to engage in unlicensed activities, as referenced in above. Respondent's failure to monitor the activities at the branch locations resulted in the violation of Idaho Code § 26-31-207(1)(h).

b. Through its contractual relationship with the affiliated entities, Respondent engaged in the business of making or brokering residential mortgage loans from a place of business for which Respondent failed to hold a license, in violation of Idaho Code § 26-31-206(7). In one (1) case, an Idaho residential loan was originated from Respondent's Bellevue, Washington branch office. This branch office is not licensed with the Department. In four (4) other cases, loans were originated by Respondent under a name, Alpine Mortgage, which is not licensed with the Department. These five (5) originations constitute violations of Idaho Code § 26-31-206(7).

c. On at least twenty-five (25) occasions, Respondent engaged in mortgage loan origination activity through persons who at the time of such mortgage loan origination activity did not hold an Idaho mortgage loan originator license, in violation of Idaho Code § 26-31-211(10). The activities were performed by employees of the affiliated companies on behalf of Respondent.

d. In all ninety (90) loan files examined, Respondent failed to provide information to the borrower regarding Respondent, to include the services that may be provided and the services that will be provided, upon receipt of an application and before receipt of any moneys from a borrower. Respondent's failure to provide such information to borrowers constitutes violations of Rule 50.01 of the Rules Pursuant to the Idaho Residential Mortgage Practices Act.

e. In thirty-three (33) loan files examined, Respondent either did not provide required documents to borrowers, or failed to retain all records relating to the origination of mortgage loans. Further, Respondent failed to provide ten files for the examiners' review. Because Respondent failed to retain all records relating to the origination of mortgage loans and failed to provide the examiners with all requested files, information about Respondent's business activities was not reasonably available to the examiners. As a result, examiners were unable to determine whether Respondent was fully complying with the provisions of Part 2 of the Act. Respondent's failure to retain records relating to the origination of mortgage loans constitutes violations of Idaho Code § 26-31-208(1). This statute requires every licensee to maintain records in a manner that will enable the Director to determine whether the licensee is complying with Part 2 of the Act. Respondent's failure to maintain records in a manner that will enable the Director to

determine whether the licensee is complying with the provisions of Part 2 of the Act constitutes a separate violation of Idaho Code § 26-31-208(1).

f. In at least nine (9) instances, Respondent obtained signatures from borrowers on disclosure documents and other forms, which contained blanks to be filled in later. Each document where Respondent obtained borrower signatures in which material information was left blank to be filled in later, constituted violations of Idaho Code § 26-31-211(4).

g. At the request of the examiners, Respondent provided a pipeline report containing information about residential mortgage loans originated by Respondent. In thirteen (13) instances, Respondent falsely represented on the pipeline report the loan originator associated to the residential mortgage loan for specific borrowers. Respondent's representation that certain loan originators originated residential mortgage loans when in fact, a different loan originator originated the residential mortgage loan constituted a misrepresentation in connection with a residential mortgage loan, within the meaning of and in violation of Idaho Code § 26-31-211(5).

REMEDIES

10. Respondent admits to at least one hundred seventy-seven (177) violations of the Act set forth in paragraph 9 above.

11. In the Examination Report, the examiners requested that Respondent provide written assurance that it has implemented certain compliance and oversight measures to prevent future violations of the Act. Respondent provided the written assurance on June 30, 2012. The examiners requested that Respondent address four (4) specific violations.

12. To address the violations identified in paragraph 9.a above, Respondent has undertaken three specific steps. First, it has enhanced its procedures and training of branch

personnel to ensure deposits for broker checks are handled correctly. Now, Respondent receives all broker checks and all physical files, which ensures the proper receipt and handling of money and the proper documentation of loans. Second, Respondent issued a new procedure requiring branches to forward all invoices relating to expenses such as office expenses, salaries, and mortgage loan originator commissions to Respondent to ensure proper payment. Respondent will conduct an internal audit to ensure the procedures are being followed. Third, Respondent has provided written assurance that it is no longer making payments to any affiliated entities as requested in the Examination Report. Now Respondent pays the branch managers directly in W-2 wages for all income earned from the origination of mortgage loans. Respondent is receiving all of the income and paying all of the operating expenses of the branches.

13. To address the violations described in paragraph 9.b above, Respondent stated that it is committed to compliance with the Idaho SAFE Act. Its Compliance Department will have oversight of all licensing activities and will closely monitor the licensing and renewal of licensing of all loan originators and the locations where they work. The Compliance Department will conduct internal audits of the licensing procedures and use the audit results as a basis for remedial action. The first audit will be completed by no later than August 31, 2012.

14. To address the violations described in paragraph 9.g above, Respondent will train the branches on the proper flow of data and the importance of the integrity of the data, particularly the data regarding licensed loan originators. The audit to be completed by no later than August 31, 2012 by Respondent will address this matter.

15. To address all of the violations described in the Examination Report, Respondent agrees to pay to the Department an administrative penalty in the amount of seventy thousand dollars (\$70,000) and an additional five thousand dollars (\$5,000) as attorney fees and

investigative costs incurred by the Department in pursuing this matter, for a total payment to the Department of seventy-five thousand dollars (\$75,000), by no later than August 31, 2012.

16. The Department agrees that if Respondent timely and fully complies with payment of the sums set forth in paragraph 15 above and the other terms set forth herein, the Department will forgo seeking further penalties or other sanctions for the violations referenced above, as well as all other violations of the Act, rules promulgated under the Act, and federal law and regulations found by the examiners during the Examination.

17. Respondent acknowledges that it is aware of and understands all violations found by Department examiners that were set forth in the Examination Report. Respondent further acknowledges that should all such violations not be rectified immediately and procedures put in place to correct the activities giving rise to such violations, and should the Department find after the entry of this Consent Order that such violations have continued to occur, the Department hereby notifies Respondent that it intends to seek revocation of all Idaho licenses held by Respondent under the Act.

18. Respondent agrees to comply with all provisions of the Act, all rules promulgated thereunder, this Consent Order, and all federal laws and regulations applicable to its mortgage brokering/lending business at all times in the future.

19. Respondent acknowledges and understands that this Consent Order is an administrative action that must be disclosed to the Department on future licensing and renewal forms. The disclosure requirements of other states may also require disclosure of the same.

DATED this 29th day of August, 2012.

PINNACLE CAPITAL MORTGAGE
CORPORATION

By: Robert Bolivar
ROBERT BOLIARO, PRESIDENT
Title

DATED this 30th day of August, 2012.

STATE OF IDAHO
DEPARTMENT OF FINANCE

Michael Larsen
MICHAEL LARSEN
Consumer Finance Bureau Chief

IT IS SO ORDERED.

DATED this 30th day of AUGUST, 2012.



STATE OF IDAHO
DEPARTMENT OF FINANCE

Gavin M. Gee
GAVIN M. GEE, Director
Idaho Department of Finance

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30 day of August, 2012, I caused a true and correct fully-executed copy of the foregoing CONSENT ORDER to be served on the following by the designated means:

Pinnacle Capital Mortgage Corporation
Attn: Brian Duval, Compliance and Risk Officer
16520 SW Upper Boones Ferry Rd., Ste. 250
Portland, OR 97224

U.S. mail, postage prepaid
 Certified mail
 Facsimile
 Email: bduval@pcmloan.com

Pinnacle Capital Mortgage Corporation
Attn: Mark Ely, Compliance and Risk Officer
3010 Lava Ridge Ct., Ste. 220
Roseville, CA 95661

U.S. mail, postage prepaid
 Certified mail
 Facsimile
 Email: mely@pcmloan.com

Pinnacle Capital Mortgage Corporation
Attn: Robert Boliard, President
3010 Lava Ridge Ct., Ste. 220
Roseville, CA 95661

U.S. mail, postage prepaid
 Certified mail
 Facsimile
 Email



Paralegal