

JUL 16 2010

J. DAVID NAVARRO, Clerk
By *Maisha Burke*
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

STATE OF IDAHO, DEPARTMENT OF
FINANCE, CONSUMER FINANCE
BUREAU,

Plaintiff,

vs.

ACCESS MORTGAGE COMPANY,
INC., a Washington corporation,

Defendant.

Case No. CV-OC-09-05284

MEMORANDUM DECISION
AND ORDER

Defendant Access Mortgage Company, Inc. (Access) is a Washington corporation involved in mortgage lending or mortgage brokering. Mortgage lending and mortgage brokering in Idaho is regulated activity and subject to the provisions of the Residential Mortgage Practices Act (RMPA), Idaho Code § 26-3101 *et seq.*¹ RMPA authorizes the State of Idaho, Department of Finance (Department of Finance) to seek injunctive and other relief involving violations of the RMPA, and any rule promulgated pursuant to the Act. Idaho Code § 26-3106(1).

The Idaho Financial Fraud Prevention Act (IFFPA), Idaho Code § 67-2751 *et seq.* prohibits fraudulent practices involving financial institutions. IFFPA authorizes the Department of Finance to seek injunctive and other relief involving violations of IFFPA.

¹ This act was revised and amended in 2009. 2009 Session Laws, ch. 97 (now codified as 26-31-101 *et seq.* and referred to as the Idaho Residential Mortgage Practices Act." The references herein are to the former provisions.

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1 The Department of Finance filed this action against Access on March 19, 2009. In Count
2 One of the Complaint, the Department of Finance alleged that Access improperly used unlicensed
3 loan originators to engage in loan origination activities in Idaho in violation of Idaho Code § 26-
4 3104(3). In Counts Two through Four of the Complaint, the Department of Finance alleged
5 separate instances of misrepresentations in violation of Idaho Code § 26-3114(8). In Count Five
6 of the Complaint, the Department of Finance alleged that Access obstructed a lawful investigation
7 by refusing to provide documents to the Department of Finance in violation of Idaho Code § 26-
8 3111(1). In Count Six of the Complaint, the Department of Finance alleged that Access
9 improperly obtained signatures of borrowers to a residential loan application that had blanks to be
10 filled in later in violation of Idaho Code § 26-3114(4). In Count Seven of the Complaint, the
11 Department of Finance alleged that Access submitted an application for a residential mortgage
12 loan that contained false information in violation of Idaho Code § 67-2752(1) of IFFPA. In Count
13 Eight of the Complaint, the Department of Finance alleged that Access committed separate
14 violations of Regulation X, 24 C.F.R. § 3500.7(b), of the Real Estate Settlement Procedures Act
15 (RESPA), 12 U.S.C. § 2607, as well as Rule 50.02.b of the Rules pursuant to RMPA, by failing to
16 provide a good faith estimate of the range of costs associated with an application. In Count
17 Twelve,² the Department of Finance alleges that Access violated an order of the Director
18 authorizing the relief specified in Idaho Code § 26-3106(a)-(e).
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21 Access filed an Answer to the Complaint on April 24, 2009.
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25 ² The numbering sequence of the Counts is not clear. The Complaint enumerates Counts One, Two through Four,
26 Five, Six, Seven, Eight and Twelve. There is no mention of Counts Nine, Ten or Eleven.

1 On December 22, 2009, the Department filed a motion for partial summary judgment on all
2 allegations of the Complaint, except some of those pertaining to Access' dealings with Robert C.
3 Crandall and Maxine V. Crandall. Specifically, the Department of Finance alleged that 1) Access
4 violated Idaho Code § 26-3104(3) by originating mortgage loans through an unlicensed loan
5 originator on 405 separate occasions; 2) Access committed three (3) separate violation of Idaho
6 Code § 26-3114(5) by making misrepresentations to the Department of Finance; 3) Access
7 violated Idaho Code § 26-3111(c) by refusing to provide a document as requested by the
8 Department of Finance; 4) Access violated Idaho Code § 26-3114(4) twice by obtaining signatures
9 to documents that contained blanks to be filled in later; 5) Access violated federal law by offering
10 a referral bonus to borrowers;³ 6) Access violated Idaho Code § 26-3114(5) by representing on its
11 website that Access was properly licensed in Idaho when it was not;⁴ 7) Access violated Idaho
12 Code § 26-3106(1) by failing to abide by the terms of an "Agreement and Order" issued by the
13 Department of Finance in 2005 in which Access agreed to comply with RMPA, and Access did
14 not.
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16 Access filed an opposition to the motion for partial summary judgment. In the opposition,
17 Access concedes that it engaged in 405 instances of unlicensed mortgage. Access did not agree
18 that the Department of Finance had shown that it was entitled to additional relief.
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20 The Court heard argument on the motion for partial summary judgment on February 9,
21 2010. A. René Martin, Deputy Idaho Attorney General, appeared and argued for the Department
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25 ³ There is no corresponding allegation in the Complaint regarding this claim.

26 ⁴ There is no corresponding allegation in the Complaint regarding this claim.

1 of Finance. Dennis M. Charney, Charney and Associates, PLLC, appeared and argued for Access.
2 During the hearing, the Court found that the Department of Finance had made a sufficient showing
3 that there were no genuine issues of material fact as to any of the claims at issue. Accordingly, the
4 burden shifted to Access to show that there was some fact dispute. Access did not support its
5 arguments with any admissible evidence. Accordingly, the Court found that the Department of
6 Finance was entitled to partial summary judgment as requested as to the existence of the
7 violations. The Court indicated a hearing would be required to allow for evidence on the financial
8 penalties requested.
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10 On February 10, 2010, Mr. Charney filed a motion to withdraw as counsel for Access.
11 Initially, the Department of Finance opposed the motion. Later, the Department of Finance
12 withdrew any objection. The Court granted leave to withdraw following a hearing on April 12,
13 2010. The Order granting leave to withdraw provided that if Access failed to appear through a
14 newly appointed attorney within twenty (20) days of the service of the Order granting leave to
15 withdraw, such failure to appear would be grounds for entry of judgment with prejudice without
16 further notice. Such Order was served and Access has failed to appear through new counsel.
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18 On May 21, 2010, the Department of Finance filed a motion for entry of default and default
19 judgment as to the counts of the complaint that were not the subject of the earlier ruling on the
20 motion for partial summary judgment. These matters came for hearing before the Court on June 8,
21 2010. A. René Martin, Deputy Idaho Attorney General, appeared and argued for the Department
22 of Finance. The Court granted default as requested. The Court heard testimony from Michael
23 Larsen, Consumer Finance Bureau Chief, Department of Finance, K.C. Schaler, Supervising
24 Examiner/Licensing, Department of Finance and Tom Little, an Investigator for the Department of
25 Finance.
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1 The violations by Access were aggravated and serious because Access previously had
2 violated many of the same provisions. In 2005, the Department of Finance entered an Order in
3 which Access had to pay a \$15,000 fine and ordered Access to refrain from further violations.
4 Within a short amount of time from the Order, Access again repeatedly violated RMPA in spite of
5 the Order. The Court has determined that the penalties should be severe both as a deterrent to
6 Access and others, as well as a measure of punishment for its conduct.

7 Based upon the evidence presented, and being otherwise duly informed in the premises, the
8 Court will find and order as follows:

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10 1. As alleged in Count One of the Complaint, Access committed 405 willful
11 violations of Idaho Code § 26-2104(3) in conducting loan origination activities
12 in Idaho through unregistered mortgage brokers in violation of Idaho Code §
13 26-3104(3). Pursuant to Idaho Code § 26-3106(1)(b), in effect at the time of
14 this conduct, the Court can assess a civil penalty in an amount not to exceed
15 five thousand dollars (\$5,000.00) for each violation. These constitute 405
16 separate violations. The Court will assess a civil fine in the amount of
17 \$2,500.00 for each of these violations. (\$1,012,500.00 total.)
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19 2. As alleged in Counts Two through Four of the Complaint, Access willfully
20 violated Idaho Code § 26-3114(5) by misrepresenting information to the
21 Department of Finance. These constitute three (3) separate violations. Pursuant
22 to Idaho Code § 26-3106(1)(b), in effect at the time of this conduct, the Court
23 can assess a civil penalty in an amount not to exceed five thousand dollars
24 (\$5,000.00) for each violation. As an exercise of discretion, the Court will
25 assess a civil penalty of \$2,500 for each violation. (\$7,500.00 total.)
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3. As alleged in Count Five of the Complaint, Access willfully violated Idaho Code § 26-3111(1) by refusing to supply the Department of Finance with information as lawfully requested in an investigation. Pursuant to Idaho Code § 26-3106(1)(b), in effect at the time of this conduct, the Court can assess a civil penalty in an amount not to exceed five thousand dollars (\$5,000.00) for each violation. As an exercise of discretion, the Court will impose a civil penalty in the amount of \$2,500.00. (\$2,500.00 total.)
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4. As alleged in Count Six of the Complaint, Access willfully violated Idaho Code § 26-3114(4) by obtaining signatures of borrowers Robert and Maxine Crandall on two (2) separate documents which contained blanks to be filled in later by Access. These constitute two (2) separate violations. Pursuant to Idaho Code § 26-3106(1)(b), in effect at the time of this conduct, the Court can assess a civil penalty in an amount not to exceed five thousand dollars (\$5,000.00) for each violation. As an exercise of discretion, the Court will impose a civil penalty in the amount of \$5,000.00 for each violation. (\$10,000.00 total.)
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5. As alleged in Count Seven of the Complaint, Access willfully violated Idaho Code § 67-2752(1) by submitting a loan application that contained false information. Pursuant to Idaho Code § 67-2755(2)(b), the Court can assess a civil penalty in an amount not to exceed five thousand dollars (\$5,000.00) for such violation. As an exercise of discretion, the Court will impose a civil penalty in the amount of \$2,500.00 for this violation. (\$2,500.00 total.)

1 6. As alleged in Count Twelve of the Complaint, Access willfully violated Idaho
2 Code § 26-3106(1) by intentionally violating an Order of the Director of the
3 Department of Finance by continuing to violate provisions of RMPA as
4 evidenced by the above findings. Pursuant to Idaho Code § 26-3106(1)(b), in
5 effect at the time of this conduct, the Court can assess a civil penalty in an
6 amount not to exceed five thousand dollars (\$5,000.00). As an exercise of
7 discretion, the Court will impose a civil penalty in the amount of \$5,000.00 for
8 this violation. (\$5,000.00 total.)

10 7. As alleged in Count Eight of the Complaint, Access willfully violated IDAPA
11 12.01.050.02.b by intentionally failing to provide Robert and/or Maxine
12 Crandall with good faith estimates of the closing costs on three (3) separate
13 occasions, which is a violation of Idaho Code § 26-3106(1). These constitute
14 three (3) separate violations. Pursuant to Idaho Code § 26-3106(1)(b), in effect
15 at the time of this conduct, the Court can assess a civil penalty in an amount not
16 to exceed five thousand dollars (\$5,000.00). As an exercise of discretion, the
17 Court will impose a civil penalty in the amount of \$5,000.00 for each of these
18 violations. (\$15,000 total.)

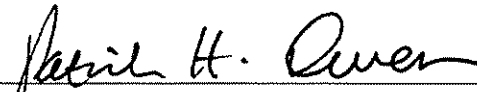
20 8. Pursuant to Idaho § Code 26-3106(1)(e), the Court will order restitution to the
21 Department of Finance in the amount of \$27,322.18 on behalf of Robert and
22 Maxine Crandall.
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1 9. The Court hereby enjoins Access permanently from engaging in acts or
2 practices which would constitute violations of the Idaho Residential Mortgage
3 Practices Act, Idaho Code § 26-31-101 *et seq.* and the Idaho Financial Fraud
4 Prevention Act, Idaho Code § 67-2750 *et seq.*, or any rule or order thereunder.

5 Counsel for the Department of Finance is directed to submit a form of judgment consistent
6 with the foregoing.

7 IT IS SO ORDERED.

8 Dated this 16 day of July 2010.

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11 _____
12 Patrick H. Owen
13 District Judge
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CERTIFICATE OF MAILING

I, J. David Navarro, the undersigned authority, do hereby certify that I have mailed, by United States Mail, a true and correct copy of the within instrument as notice pursuant to Rule 77(d) I.R.C.P. to each of the attorneys of record in this cause in envelopes addressed as follows:

A RENE MARTIN
DEPUTY ATTORNEY GENERAL
STATE OF IDAHO
DEPT OF FINANCE
POST OFFICE BOX 83720
BOISE IDAHO 83720-0031

DENNIS M. CHARNEY
CHARNEY & ASSOCIATES, PLLC
1191 E IRON EAGLE DR
EAGLE, ID 83616

J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho

Date: July 16, 2010

By 
Deputy Clerk