

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

COMMISSIONER OF BANKS
MORTGAGE LOAN ORIGINATOR
LICENSING
Docket No. 2010-267

In the Matter of
ARIC CHANDLER BERNER

Mortgage Loan Originator License No. MLO

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) FINDINGS OF FACT AND
) TEMPORARY ORDER TO
) CEASE AND DESIST
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The Commissioner of Banks ("Commissioner") having determined that Aric Chandler Berner, ("Aric Berner" or the "Licensee"), has engaged in, or is engaging in, or is about to engage in, acts or practices constituting violations of Massachusetts General Laws chapter 255F and applicable regulations found at 209 CMR 41.00 *et seq.*, hereby issues the following FINDINGS OF FACT AND TEMPORARY ORDER TO CEASE AND DESIST ("Temporary Order") pursuant to General Laws chapter 255F, section 11(a).

FINDINGS OF FACT

1. The Division of Banks ("Division"), has jurisdiction over the licensing and regulation of persons engaged in the activities of a mortgage loan originator in Massachusetts pursuant to Massachusetts General Laws chapter 255F, section 2.
2. Aric Berner is, and at all relevant times has been, a Massachusetts licensed mortgage loan originator doing business in the Commonwealth.
3. On July 31, 2009, Governor Deval Patrick signed into law Chapter 44 of the Acts of 2009, "An Act Adopting the Federal Secure and Fair Enforcement for Mortgage

Licensing Act of 2008" ("Chapter 44"). Chapter 44 amended Massachusetts General Laws chapter 255F governing the licensing of mortgage loan originators and brought Massachusetts into compliance with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act").

4. Chapter 44 included amendments to Massachusetts General Laws chapter 255F mandating that applicants for a mortgage loan originator license comply with certain revised requirements, including but not limited to, the following: (a.) Completion of a minimum of twenty (20) hours of pre-licensing education approved by the Nationwide Mortgage Licensing System (NMLS); (b.) Achievement of a passing score, defined as not less than seventy-five percent (75%) correct, on the written SAFE Mortgage Loan Originator Test developed by the NMLS; and (c.) Submission of fingerprints to the Federal Bureau of Investigation for a criminal history background check (collectively, the "SAFE Requirements").

5. Pursuant to SECTION 4 of Chapter 44, applicants for a mortgage loan originator license who applied after August 1, 2009, would be granted until July 31, 2010 to satisfy the SAFE Requirements to ensure compliance with Massachusetts General Laws chapter 255F and 209 CMR 41.00 *et seq.*

6. Effective September 15, 2009, the Division revised its regulations 209 CMR 41.00 *et seq.*, governing mortgage loan originators, to ensure that the regulations were compliant with Massachusetts General Laws chapter 255F, as amended by Chapter 44.

7. In implementing the testing requirement referenced above in Section 4(b.), the Division's regulation 209 CMR 41.04(2)(f) set forth that a license applicant would be

required to achieve a passing score, as so defined, on both the National and Massachusetts components of the written SAFE Mortgage Loan Originator Test developed by the NMLS.

8. The Division initially notified licensees of the above referenced SAFE Requirements, and the corresponding compliance timing deadlines, by an industry letter that was dated and published on the Division's website as of September 17, 2009, and included a link to the relevant portion of the Division's website which contained a series of Frequently Asked Questions on Chapter 44 ("FAQs") describing the SAFE Requirements.

9. The FAQs provided the following notice and disclosure: "If a currently licensed mortgage loan originator does not meet all requirements for licensure under Chapter 44 by the stated deadlines, [the Division] will be unable to approve the mortgage loan originator for continued licensure."

10. On October 23, 2009, the Division issued instructions regarding the 2010 Streamlined License Renewal Process for Mortgage Loan Originators ("Renewal Instructions") to all licensed mortgage loan originators. The Renewal Instructions again directed mortgage loan originators to information relative to the SAFE Requirement deadlines that would apply during 2010.

11. The Division also sent numerous Reminder Notifications alerting all qualifying licensed mortgage loan originators of the approaching July 31, 2010 SAFE Requirement compliance deadline, including but not limited to, email notifications dated June 14, 2010, June 24, 2010, July 2, 2010, and July 8, 2010.

12. On July 13, 2010, the Division issued a Final Notice to all qualifying licensed mortgage loan originators of the July 31, 2010 SAFE Requirement compliance deadline,

notifying such individuals that failure to comply with the SAFE Requirements would result in the entering of a Temporary Cease and Desist Order by the Division against the individual after July 31, 2010.

A. Failure to Obtain a Passing Score on the Massachusetts SAFE Mortgage Loan Originator Test

13. Massachusetts General Laws chapter 255F, section 6(a) states, in part:

An applicant for a mortgage loan originator's license shall pass . . . a qualified written examination developed by the Nationwide Mortgage Licensing System and Registry.

14. The Division's regulation 209 CMR 41.04(2)(f) states, in part:

An Applicant must pass a qualified written test developed by the NMLS and administered by a test provider approved by the NMLS. Such test shall include a national component and a Massachusetts component. An applicant must pass each component with a test score of not less than 75% correct answers to questions.

15. As of the date of this Temporary Order, Aric Berner has failed to obtain a passing score on the Massachusetts component of the SAFE Mortgage Loan Originator Test according to records maintained in the NMLS.

B. Failure to Obtain a Passing Score on the National SAFE Mortgage Loan Originator Test

16. Massachusetts General Laws chapter 255F, section 6(a) states, in part:

An applicant for a mortgage loan originator's license shall pass . . . a qualified written examination developed by the Nationwide Mortgage Licensing System and Registry.

17. The Division's regulation 209 CMR 41.04(2)(f) states, in part:

An Applicant must pass a qualified written test developed by the NMLS and administered by a test provider approved by the NMLS. Such test shall include a national component and a Massachusetts component. An applicant must pass each component with a test score of not less than 75% correct answers to questions.

18. As of the date of this Temporary Order, Aric Berner has failed to obtain a passing score on the National component of the SAFE Mortgage Loan Originator Test according to records maintained in the NMLS.

C. Failure to Complete a Request for a Criminal Background Check through the NMLS

19. Massachusetts General Laws chapter 255F, section 3(a) states, in part:

The applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including: (i) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check;

20. The Division's regulation 209 CMR 41.04(2)(c) states, in part:

An Applicant shall consent to a state and federal criminal history record check and furnish to the NMLS a set of the Applicant's fingerprints, in a form acceptable for such purpose, for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check.

21. The NMLS criminal background check procedures require that mortgage loan originators request a Criminal Background Check through NMLS, pay the associated processing fee(s), and have their fingerprints taken by an authorized NMLS fingerprint vendor.

22. As of the date of this Temporary Order, Aric Berner has failed to comply with the criminal background check requirements as set forth above.

CONCLUSIONS OF LAW

23. Based upon the information contained in Paragraphs 1 through 22, by failing to obtain a passing score on the Massachusetts component of the SAFE Mortgage Loan Originator Test, Aric Berner has violated Massachusetts General Laws chapter 255F, section 6(a) and the Division's regulation 41.04(2)(f).

24. Based upon the information contained in Paragraphs 1 through 22, by failing to obtain a passing score on the National component of the SAFE Mortgage Loan Originator Test, Aric Berner has violated Massachusetts General Laws chapter 255F, section 6(a) and the Division's regulation 41.04(2)(f).

25. Based upon the information contained in Paragraphs 1 through 22, by failing to complete a request for a criminal background check through the NMLS, Aric Berner has violated Massachusetts General Laws chapter 255F, section 3(a) and the Division's regulation 209 CMR 41.04(2)(c).

26. Based upon the information contained in Paragraphs 1 through 22, the Commissioner has determined that:

- (a) Aric Berner has engaged in, is engaging in, or is about to engage in, acts or practices which warrant the belief that Aric Berner has failed to demonstrate the character, reputation, integrity, and general fitness such as to command the confidence of the community in violation of the standards governing the licensing and conduct of a mortgage loan originator

including, but not limited to, the provisions of the Division's regulations at 209 CMR 41.00 *et seq.*; and

(b) Aric Berner is currently in violation of Massachusetts General Laws chapter 255F and the Division's regulation 209 CMR 41.00 *et seq.*

27. Based upon the information contained in Paragraphs 1 through 22, had the facts and conditions found therein existed at the time of Aric Berner's original mortgage loan originator license application, the Commissioner would have been warranted in refusing to issue such license. Further, the facts and conditions set forth in Paragraphs 1 through 22 present sufficient grounds for the revocation of Aric Berner's mortgage loan originator license pursuant to Massachusetts General Laws chapter 255F, section 11 and the Division's regulation at 209 CMR 41.10(21).

ORDER TO CEASE AND DESIST

28. After taking into consideration the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, it is hereby:

29. ORDERED that Aric Berner shall immediately cease engaging in the activities of a mortgage loan originator, as those activities are defined under Massachusetts General Laws chapter 255F, section 1 and 209 CMR 41.00 *et seq.*, relative to any residential property in Massachusetts not otherwise expressly permitted by the terms of this Temporary Order. Therefore, Aric Berner is ordered to immediately cease accepting Massachusetts residential mortgage loan applications and to cease offering or negotiating terms of a residential mortgage loan for residential property located in Massachusetts.

30. IT IS FURTHER ORDERED that Aric Berner shall immediately transfer all pending Massachusetts residential mortgage loan applications originated by Aric Berner to Aric Berner's Sponsoring Entity for placement with a mortgage loan originator licensed in Massachusetts.

31. IT IS FURTHER ORDERED that Aric Berner shall submit to the Commissioner a detailed record, prepared as of the date of submission, of all of the pending residential mortgage loan applications originated by Aric Berner for property located in Massachusetts. The records to be produced shall be submitted to the Commissioner within five (5) days of the effective date of this Temporary Order and shall include all information on file regarding the Licensee's open application list, including but not necessarily limited to, the following:

- (a) The names of all individuals from whom Aric Berner has accepted an application for a residential mortgage loan; the applicants' addresses and telephone numbers; the amount of each loan; application status (i.e. filed, submitted to lenders, cleared to close, etc.); scheduled closing dates; rate lock status; a description of any fees collected from the applicant; and a list identifying the lender with whom each applicant's application was placed.

32. IT IS FURTHER ORDERED that this Temporary Order shall become effective immediately and shall remain in effect unless set aside, limited, or suspended by the Commissioner or upon court order after review under Massachusetts General Laws chapter 30A.

(a) It is understood that the Licensee may petition the Commissioner to vacate or modify this Temporary Order upon presenting to the Division satisfactory evidence that the Licensee has fully remedied the deficiencies set forth in the Temporary Order.

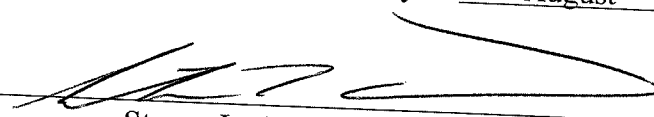
33. IT IS FURTHER ORDERED that this Temporary Order shall not be construed as approving any act, practice, or conduct not specifically set forth herein which was, is, or may be in violation of relevant state or federal laws and regulations.

34. IT IS FURTHER ORDERED that a hearing will be scheduled on this matter to determine whether or not such Temporary Order shall become permanent and final only upon receipt of a written request for such a hearing from Aric Berner within twenty (20) days of the effective date of this Temporary Order. If no hearing is requested within this twenty (20) day period, this Temporary Order shall become permanent and final until it is modified or vacated by the Commissioner.

BY ORDER AND DIRECTION OF THE COMMISSIONER OF BANKS.

Dated at Boston, Massachusetts, this 9th day of August, 2010.

By: _____


Steven L. Antonakes
Commissioner of Banks
Commonwealth of Massachusetts