

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

COMMISSIONER OF BANKS
MORTGAGE LENDER AND
MORTGAGE BROKER
LICENSING
Docket No. 2009-063

In the Matter of)
Jeffery E. Toney d/b/a Bestway Mortgage)
Malden, MA)
Mortgage Broker License No. MB4614)
_____)

FINDINGS OF FACT AND
TEMPORARY ORDER TO
CEASE AND DESIST

The Commissioner of Banks (“Commissioner”) having determined that Jeffery E. Toney d/b/a Bestway Mortgage (“BESTWAY MORTGAGE” or the “Licensee”), with his main address located at 574 Salem Street, Malden, MA 02148, has engaged in, or is engaging in, or is about to engage in, acts or practices constituting violations of Massachusetts General Laws chapter 255E and applicable regulations found at 209 CMR 42.00 *et seq.*, hereby issues the following FINDINGS OF FACT AND TEMPORARY ORDER TO CEASE AND DESIST (“Temporary Order”) pursuant to General Laws chapter 255E, section 7(b).and chapter 255F, section 8(b).

FINDINGS OF FACT

1. The Division of Banks (“Division”), through the Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in the business of a mortgage lender and mortgage broker in Massachusetts pursuant to Massachusetts General Laws chapter 255E, section 2.

2. The Division, through the Commissioner, also has jurisdiction over the licensing and regulation of persons engaged in the business of a mortgage loan originator in Massachusetts pursuant to Massachusetts General Laws chapter 255F, section 2.

3. Bestway Mortgage is, and at all relevant times has been, a Massachusetts licensed mortgage broker doing business in the Commonwealth.

A. Failure to Obtain and Maintain a Surety Bond

4. Effective as of December 31, 2008, the Division's regulation 209 CMR 42.06(2)(a) states, in part:

An Applicant [for a license as a mortgage broker] shall demonstrate and maintain: . . . 2. a bond of \$75,000 in such form and with such sureties as may be approved by the Commissioner. The surety bond must contain a clause that the insurance company will notify the Commissioner at least 30 days prior to canceling the surety bond for any reason. The Commissioner shall automatically suspend the license on the date the cancellation takes effect, unless the surety bond has been replaced or renewed.

5. The amendments to 209 CMR 42.06(2)(a) followed a public hearing held on July 10, 2007, by the Division for the purpose of affording all interested parties an opportunity to provide oral and written testimony regarding the proposed amendments to 209 CMR 42.00 *et seq.*, including the surety bond requirement. The public hearing was followed by a 10-day comment period which remained open until July 20, 2007.

6. Upon finalization of the amendments to 209 CMR 42.00 *et seq.*, the Division issued an Industry Letter dated September 10, 2007 and distributed to all lender and broker licensees at the time, providing advance notice to mortgage lenders and brokers of the substantial revisions to the Division's regulations, including the necessity to obtain the surety bond, stating, in part:

Any entity licensed on or before September 7th will be required to comply with the new net worth and surety bond requirements by December 31, 2008....Conducting business without obtaining the surety bond is a violation of the above cited regulation. The Division considers failure to obtain said surety bond a serious violation.

7. The Division's Regulatory Bulletin 5.2-101: Bond Requirements for Licensed Mortgage Lenders and Mortgage Brokers, issued on January 24, 2008, states, in part:

Pursuant to the Division's regulation 209 CMR 42.06(2)(a)(2), as a condition of obtaining and holding a mortgage broker license, a mortgage broker must establish and maintain a corporate surety bond of \$75,000. The duration of the corporate surety bond must be continuous and shall be issued by a bonding company or insurance company authorized to do business in Massachusetts.

8. On or about October 30, 2008, the Division sent detailed instructions to all licensed mortgage brokers and mortgage lenders regarding the 2009 license renewal application process, which included the following directive: "LICENSEES MUST HAVE EXECUTED SURETY BONDS IN PLACE BY DECEMBER 31, 2008." [Emphasis in original.]

9. On or about February 20, 2009, the Division sent additional information and instructions to all licensed mortgage brokers and mortgage lenders regarding the 2009 renewal requirements. The instructions provided that licensees must mail the original notarized surety bond to the Division by March 31, 2009.

10. On or about April 30, 2009, the Division sent notices to all licensed mortgage brokers and mortgage lenders who had not filed the required surety bond with the Division. The April 30, 2009 notice provided such licensees with additional time to submit the required surety bond(s) and stated, in part, that:

[A]n original, notarized corporate surety bond . . . **must be** submitted to the Division by **Friday, May 15, 2009**. ... [T]he necessity to obtain the corporate surety bond is a requirement for *all* mortgage broker and mortgage lender licensees as a condition of maintaining the license, without exception. [Emphasis in original.]

11. As of the date of this Temporary Order, Bestway Mortgage has failed to file with the Division the required corporate surety bond.

B. Failure to Submit Financial Statements as Required

12. The Division's regulation 209 CMR 42.06(2)(b)3 states:

3. Renewal Applications. Within 90 days of the close of its fiscal year, an Applicant for [mortgage broker] license renewal shall submit financial statements for the preceding fiscal year that have been **audited or reviewed** by an independent certified public accountant and such other financial information as the Commissioner may require. [Emphasis supplied.]

13. On or about October 30, 2008, the Division sent detailed instructions to all licensed mortgage brokers and mortgage lenders regarding the 2009 license renewal application process.

14. The license renewal instructions notified each recipient that by December 31, 2008, all mortgage lender and mortgage broker licensees were required to establish compliance with 209 CMR 42.03 and 209 CMR 42.06, respectively, including the requirement to submit to the Division audited or reviewed financial statements, as determined by the type of license(s) held, within ninety (90) days of the end of a licensee's fiscal year end.

15. On or about February 20, 2009, the Division sent instructions to all licensed mortgage brokers and mortgage lenders regarding the 2009 license renewal requirements.

Pursuant to the instructions contained therein, all licensed mortgage brokers and mortgage lenders with a fiscal year end date of December 31st were directed to file through the Nationwide Mortgage Licensing System (NMLS) the required financial statements between March 9th and March 31, 2009. All licensed mortgage brokers and mortgage lenders with a fiscal year end date other than December 31st were directed to submit directly to the Division their financial statements prepared for the twelve-month period ending December 31, 2008.

16. As of the date of this Temporary Order, the Licensee has failed to provide the required financial statements to fulfill the Division's license renewal requirements.

CONCLUSIONS OF LAW

17. Based upon the information contained in Paragraphs 1 through 16, by failing to obtain and maintain a surety bond, Bestway Mortgage has violated 209 CMR 42.06(2)(a).

18. Based upon the information contained in Paragraphs 1 through 16, by failing to file a surety bond with the Division on or before May 15, 2009, Bestway Mortgage has failed to satisfy the Division's filing requirements for licensed mortgage brokers which are a condition of holding the license(s) for the license period ending December 31, 2009.

19. Based upon the information contained in Paragraphs 1 through 16, engaging in further activity under the mortgage license(s) without a surety bond, and in the absence of the intended protections of such bond for the consumers of the Commonwealth, would constitute the operation of the licensed business in a financially irresponsible manner in violation of the Division's regulation 209 CMR 42.06(2)(a)2.

20. Based upon the information contained in Paragraphs 1 through 16, by failing to file the financial statements that are required pursuant to the license renewal process, Bestway Mortgage has violated 209 CMR 42.06(2)(b)3.

21. Based upon the information contained in Paragraphs 1 through 16, the Commissioner has determined that:

- (a) Bestway Mortgage has engaged in, is engaging in, or is about to engage in, acts or practices which warrant the belief that it is not operating honestly, fairly, soundly and efficiently in the public interest in violation of standards governing the licensing and conduct of a mortgage broker including, but not limited to, the provisions of the Division's regulations at 209 CMR 42.00 et seq.; and
- (b) The public interest will be irreparably harmed by delay in issuing an **ORDER TO CEASE AND DESIST** to Bestway Mortgage.

22. Based upon the information contained in Paragraphs 1 through 16, had the facts and conditions found therein existed at the time of Bestway Mortgage's original mortgage broker 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 16 present sufficient grounds for the revocation of Bestway Mortgage's mortgage broker license pursuant to Massachusetts General Laws chapter 255E, section 6 and the Division's regulation at 209 CMR 42.04(2)(b), 42.07(2)(b).

ORDER TO CEASE AND DESIST

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

24. ORDERED that Bestway Mortgage and any and all officers, members, managers, employees, independent contractors, or agents, operating on behalf of Bestway Mortgage, and their successors or assigns, shall immediately cease engaging in the activities of: (a) a mortgage broker, as those activities are defined under Massachusetts General Laws chapter 255E, section 1, and (b) a mortgage loan originator, as those activities are defined under Massachusetts General Laws chapter 255F, section 1, on behalf of Bestway Mortgage relative to any residential property in Massachusetts, not otherwise expressly permitted by the terms of this Temporary Order. Therefore, Bestway Mortgage is ordered to immediately cease soliciting or accepting, either directly or indirectly, any residential mortgage loan applications from consumers for residential property located in Massachusetts.

25. IT IS FURTHER ORDERED that Bestway Mortgage, shall immediately place any fees previously collected from Massachusetts consumers relative to any pending mortgage loan applications in a separate escrow account maintained at a federally insured bank.

26. IT IS FURTHER ORDERED that Bestway Mortgage shall immediately place with one or more qualified broker(s) or lender(s), as appropriate based on the status of the application and with no loss to applicants, all of its pending Massachusetts residential mortgage loan applications. Bestway Mortgage shall place such applications with a licensed Massachusetts broker(s) or lender(s), as appropriate, or with a financial institution(s) that is

exempt from the mortgage licensing requirements under Massachusetts General Laws chapter 255E, section 2.

27. IT IS FURTHER ORDERED that as soon as possible, but in no event later than two days after the effective date of this Temporary Order, Bestway Mortgage shall submit the following information in writing to the Commissioner:

- (a) A detailed record of all pending residential mortgage loan applications, which shall include, but is not limited to, the following: customer name, address, telephone number; all prepaid loan fees submitted by the customer; amount of loan; application status (i.e. filed, submitted to lenders); scheduled closing date; rate lock status; the location of all original open application files; and a list of applicable wholesale lenders. The latter list should include telephone numbers of contact persons familiar with Bestway Mortgage's submitted loans.

28. IT IS FURTHER ORDERED that Bestway Mortgage shall immediately secure all pending mortgage loan application files and, to the extent that any original documents must be forwarded to the relevant mortgage lender or mortgage broker pursuant to this Temporary Order, a copy of such document, correspondence, or paper relating to the mortgage loan shall be retained in Bestway Mortgage's books and records and shall be available to the Commissioner, in their entirety, immediately upon request on the date and time specified by the Commissioner.

29. IT IS FURTHER ORDERED that this Temporary Order shall become effective immediately and shall remain in effect unless vacated, modified, or suspended by the

Commissioner or upon court order after review under Massachusetts General Laws chapter 30A.

- (a) It being 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 complied with the provisions of this Temporary Order and has obtained and filed with the Division the required surety bond(s) in accordance with the applicable regulations and regulatory bulletins.

30. 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 Bestway Mortgage 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 4th day of June, 2009.

By: _____

Steven L. Antonakes
Commissioner of Banks
Commonwealth of Massachusetts