

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

**IN A MATTER
BEFORE THE COMMISSIONER OF BANKS**

**MASSACHUSETTS DIVISION OF BANKS
Boston, Massachusetts
Petitioner**

vs.

**DIRECT FINANCE CORP.
Norwell, Massachusetts
Respondent**

Mortgage Broker License No: MB1535

**PROPOSED ORDER
AND DECISION
DOCKET NUMBER: 2015-011-MB**

**For the Division of Banks:
Amanda Loring, Esq.
Massachusetts Division of Banks
1000 Washington Street, 10th Floor
Boston, MA 02118**

**For Respondent:
Mark O'Connor, Esq.
Rich May, PC
176 Federal Street
Boston, MA 02110**

**Designated Administrative Hearing Officer of the Commissioner of Banks:
The Honorable Elizabeth Butler (Ret.)**

INTRODUCTION

THIS MATTER concerns a flyer and website advertising "Lifestyle Improvement Loans" created and distributed by a licensed mortgage broker. The matter has been litigated vigorously, with both parties filing a significant number of motions. The evidentiary hearing was held on,

November 9, 2016, pursuant to Massachusetts General Laws chapter 30A, sections 10 and 11 and the Standard Adjudicatory Rules of Practice and Procedure 801 CMR 1.01 *et seq.*

PROCEDURAL HISTORY

In response to receiving from a consumer a copy of an advertising flyer from Direct Finance Corp. (Direct Finance), the Division of Banks (the Division) investigated the flyer and website referenced on it. On September 17, 2015, the Division filed a Temporary Order to Cease and Desist and Notice of Administrative Penalty (Order) against Direct Finance, a mortgage broker licensed by the Division.

The Division alleged that the flyer and the website, both advertising a "Lifestyle Improvement Loan", were misleading and deceptive, in violation of G.L. c. 93A, §2(a), 940 CMR 8.04(1) and 209 CMR 42.12A(9). The Division alleged that the flyer, which it called a solicitation throughout the Cease and Desist Order, failed to make reference to the type and license number held by Direct Finance in violation of 209 CMR 42.15, 209 CMR 42.12A(13) and 209 CMR 42.12A(14). The Division alleged that Direct Finance failed to provide adequate employee oversight under 209 CMR 42.06(2)(d). In addition, the Division alleged that Direct Finance failed to demonstrate and maintain the character, reputation, integrity, and general fitness that would warrant the belief that the mortgage broker business will be operated honestly, fairly and soundly in the public interest in violation of G.L. c. 255E, §4 and 209 CMR 42.06(2)(e). The Division contended that the allegations in the Order supported the imposition of a \$25,000 administrative penalty against Direct Finance pursuant to G.L. c. 255E, §11.¹

On September 22, 2015, Direct Finance, through counsel, made a timely request for an administrative hearing. On September 25, 2015, Direct Finance answered the allegations in the Cease and Desist Order by denying any wrongdoing or intent to deceive or mislead through its website or the flyer, and by asserting that the flyer was not designed to communicate to ultimate consumers, but only to business contacts asking them to consider referring people to Direct

¹ The Order also calls for Direct Finance to cease and desist using the flyer, the website and any advertisements which have the tendency or capacity to mislead. Without any admission of wrongdoing, Direct Finance had voluntarily agreed shortly after its receipt of the Cease and Desist Order that it will no longer use either the flyer, the website or the term "Lifestyle Improvement Loan". See e.g., *Valles Direct Tr.* 215, 225. As this portion of the order is moot, it warrants no further discussion.

Finance who might benefit from a reverse mortgage. Direct Finance also noted that prior to the issuance of the Temporary Cease and Desist Order, Alain Valles, the President of the company, had revised the flyer to remove certain potentially confusing phrases and to add Direct Finance's mortgage broker license number.

Direct Finance removed the Website, and ceased using the revised flyer as well as the earlier one that was the subject of the Temporary Cease and Desist Order.

The following is a summary of the many filings made by the parties in this case:

After the parties exchanged discovery requests, each filed motions to compel discovery and their respective oppositions. Once the discovery motions were resolved, the Division filed a Motion for Summary Decision. Direct Finance responded with an Opposition, a Cross-Motion to Strike and an affidavit from Alain Valles. The Division filed a Reply to Direct Finance's Opposition, and an Opposition to Direct Finance's Motion to Strike.

Oral arguments on the Motion for Summary Decision were heard in person on July 20, 2016. In response to Direct Finance's objection to the recording of the motion hearing by the Division of Banks, the Hearing Officer made an oral order prohibiting the recording of that motion hearing. Both the Division's Motion for Summary Decision and Direct Finance's Motion to Strike were denied.

Prior to the Evidentiary Hearing, Direct Finance filed nine motions in limine. The Division filed corresponding oppositions. Oral arguments were heard in person on November 4, 2016. All motions in limine were denied except for Direct Finance's Motion in Limine as to Alleged Violations of 209 CMR 42.06(2)(c) and (d), which was allowed.²

The Evidentiary Hearing was held in person on November 9, 2016. The Division called Regional Field Managers Kimberly Wood-Grazulis and Harkeem Dixon as witnesses. Direct Finance called Alain Valles. The Division sought to introduce two letters from Direct Finance's attorney, Mark O'Connor, to the Division. Their admission was initially taken under advisement; they were later admitted into evidence as Exhibits 22 and 23, respectively. The Division filed a formal exception to the allowance of the motion in limine regarding 209 CMR

² As a result of the allowance of that motion in limine, the Division's allegation that Direct Finance failed to demonstrate and maintain the character, reputation, integrity, and general fitness that would warrant the belief that the mortgage broker business will be operated honestly, fairly and soundly in the public interest in violation of G.L. c. 255E, §4 and 209 CMR 42.06(2)(c) was rendered moot.

42.06(2)(c) and (d) as well as a motion regarding confidentiality of certain specified exhibits.

The motion regarding confidentiality was assented to by Direct Finance.

HEARING EXHIBITS

Below is a list of the exhibits admitted into evidence:

1. Direct Finance's Division's Cease and Desist Order dated September 17, 2015
2. Original Secret Angel Flyer (Becker Secret Angel flyer)³
3. Direct Finance's Lifestyle Improvement Loan website
4. Amended Secret Angel Solicitation authorized by Direct Finance (Valles Secret Angel flyer)⁴
5. Stephen Becker's Constant Contact List
6. Stephen Becker's Nationwide Multistate Licensing System (NMLS) Snapshot
7. Stephen Becker, Direct Finance Business Card
8. Regulatory Bulletin 5.1-106 (bates stamped DOB v. DFC 000157-164)
9. Direct Finance NMLS Company Information and Financial Statement Filing
10. [REDACTED]
11. [REDACTED]
12. Direct Finance website, <http://dfcreversemortgage.com>, dated April 13, 2012
13. 2012 Consent Order
14. [REDACTED]
15. 2015 Consent Order
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. National Council on Aging Consumer Booklet approved by the U.S. Department of Housing & Urban Development entitled "Use Your Home to Stay at Home"
20. Fannie Mae publication entitled "Considering a Reverse Mortgage?"

³ This Secret Angel flyer was created by Stephen Becker sometime prior to July 15, 2015. On that date, he provided a copy of Exhibit 2 to Alain Valles for his review and approval.

⁴ This Secret Angel flyer is the one Alain Valles authorized, after reviewing and revising Exhibit 2.

21. Direct Finance Brochure entitled "Reverse Mortgages: Pros, Cons & Myths"
22. Letter from Mark O'Connor to Christopher Pope dated September 25, 2015
23. Letter from Mark O'Connor to Amanda Loring dated March 4, 2016

STIPULATED FACTS

The Parties in this matter stipulated to the following facts⁵:

1. Maureen Canova is the Director at the Stoneham (MA) Senior Center.
2. At all relevant times, Stephen Becker was an employee of Direct Finance.
3. Stephen Becker brought to the Stoneham Senior Center a copy of the Becker Secret Angel flyer, and gave it to Maureen Canova.
4. Stephen Becker also brought to the Stoneham Senior Center a copy of his business card and gave it to Maureen Canova.
5. Stephen Becker asked Maureen Canova if he could make a presentation about reverse mortgages at the Stoneham Senior Center.

FINDINGS OF FACT

Based on the record, consisting of the exhibits entered into evidence, the credible testimony of Kimberly Wood-Grazulis, Harkeem Dixon, and Alain Valles, and reasonable inferences drawn therefrom, the Hearing Officer finds the following facts:

BACKGROUND – DIRECT FINANCE

1. Direct Finance is a full service mortgage broker company, founded in 1987 by Alain Valles, its President. Direct Finance is licensed by the Division as a mortgage broker; its license number is MB1535. Direct Finance currently does business in the Commonwealth of Massachusetts, as well as in New Hampshire, Maine and Rhode Island, where it is also licensed. In 2015, Direct Finance recorded [REDACTED] in gross revenues. It is a solvent company, capable of paying a monetary penalty of up to \$25,000 over a period of six months.
2. At all relevant times, Direct Finance did not hold any license other than a mortgage broker license.

⁵ See Exhibit C, for Identification.

⁶ Some of the parties' Proposed Findings of Fact are incorporated verbatim herein.

3. Alain Valles has worked in the mortgage industry business for about 27 years. He is a graduate of UMass Amherst and received a Master's of Real Estate from the MIT Center for Real Estate. A member of numerous professional organizations, he has published a number of articles in related journals. Mr. Valles is a Certified Reverse Mortgage Professional, the first in New England to receive that designation, and one of approximately 100 individuals in the United States who has received the CRMP certification. Direct Finance employs two additional loan officers who have received this certification.

4. Direct Finance paid Mr. Valles approximately \$350,000 in 2015.

5. At all relevant times, Stephen Becker was a licensed loan officer employed by Direct Finance. Both Mr. Valles and Stephen Becker have the necessary educational and business experience to engage in the mortgage broker business.

RELEVANT PRIOR EXAMINATIONS BY THE DIVISION OF BANKS

6. [REDACTED]

7. In 2012, the Division conducted an examination of Direct Finance, including its records and website, www.dfrreversemortgage.com.⁷ [REDACTED]

[REDACTED]

8. [REDACTED]

⁷ This website, with a Direct Finance Corp. heading, concerned reverse mortgages, and plainly said so: "At Last! Reverse Mortgages Explained Clearly"; "Guide to Our Website/ This website consists of five major sections, each of which provides a clearer understanding of Reverse Mortgages and whether or not you might benefit from obtaining one. BASICS...EXAMPLES...ABOUT Direct Finance Corp....HOMEBOWNER SURVEY...CONTACT US."

9.

[REDACTED]

10. Following the issuance of the 2012 Examination Report, the Division entered into the 2012 Consent Order with Direct Finance.

11.

[REDACTED]

12.

[REDACTED]

13.

[REDACTED]

14.

[REDACTED]

15. [Redacted]

[Redacted]

[Redacted]

[Redacted]

16. [Redacted]

17. [Redacted]

18. [Redacted]

19. [REDACTED]

[REDACTED]

20. [REDACTED]

[REDACTED]

21. [REDACTED]

[REDACTED]

THE LIFESTYLE IMPROVEMENT LOAN WEBSITE – A SUBJECT OF THE DIVISION’S ORDER

22. The Website was created in 2014 by Mr. Valles and Mr. Becker, assisted by a web designer. [REDACTED]

[REDACTED] The Website was separate from the main Direct Finance website.

23. Intentionally or not, Direct Finance inaccurately identified itself as a lender on the Website. (“We (the lender) will begin to process your paperwork.”)

24. [REDACTED]

25. The Website advertised a “Lifestyle Improvement Loan” product, without directly identifying that product as a reverse mortgage.

26. Nowhere on the Website was the Lifestyle Improvement Loan defined. Nowhere on the Website was it explained that a “Lifestyle Improvement Loan” was a reverse mortgage.

27. The Website included fifteen separate categories, or topics, each consisting of a page or two. The following text appeared in a box along the left side of the initial page of each category within the Website⁸:

LifestyleImprovementLoan.com
Enjoy yourself, It's later than you think
Call Steve Becker Today!
781-249-0083
Home/About Us/Contact Us
Testimonials
Request a FREE Consultation
Blog

MORTGAGE BROKER LICENSES
(all were listed, omitted here)

Reverse Mortgages
Common Reverse Mortgage Questions
Find Out if You Qualify for a Reverse Mortgage
How a Reverse Mortgage Works

28. The pages of the first three topics on the Website – “Works”, “A Reverse Mortgage”, and “Mortgage Questions” – described a reverse mortgage and its features. Nowhere on these pages did the term “Lifestyle Improvement Loan” appear, except in the website address.

29. Two of the Website’s topics – “Pay Off Your Mortgage” and “Pay Off /credit Cards and Other Loans” – comprised pages that referred to reverse mortgages and also stated, in bold: “Fill out the form below and receive a **FREE** consultation to learn if you qualify for a **Lifestyle Improvement Loan**”.

30. The final ten topics’ pages – “Afford Your Home – Remain Independent”, “Home Improvement”, “Estate & Investment Planning”, “Receive Additional Cash Flow”, “Helping Family & Gifting”, “Seniorize Your Home – When Physical Challenges Happen”, “Access to Rainy Day Funds”, “Private Home Care”, “Investment Property, Vacation home or new Home Purchase”, “The Active Senior – Put the Frosting Back on the Cake” – all referred exclusively to Lifestyle Improvement Loans. None of these referred to reverse mortgages as the vehicle to accomplish the stated purposes.

31. The Website stated: “the cash you receive from a Lifestyle Improvement Loan comes with no strings attached”; and “[o]ne incredible feature of a Lifestyle Improvement loan is a Line

⁸ The configuration of the text has been condensed for space purposes.

of Credit that gives you access to cash. Unlike a conventional home equity line of credit, a Lifestyle Improvement Loan's unused portion will 'grow', guaranteed, for as long as you live in your home."

32. While the funds available from a Home Equity Conversion Mortgage (HECM) line of credit can increase over time, depending upon interest rates, it is not guaranteed that a reverse mortgage line of credit will grow. The Website's reference to "guaranteed" growth of the unused portion of a line of credit was misleading.

33. The Website was misleading, in that it failed to state that a consumer must use funds from a reverse mortgage to pay off any existing mortgage before he or she can take any additional monies from a reverse mortgage.

34. The Website did not accurately and completely describe the Lifestyle Improvement Loan because it failed to define the term, Lifestyle Improvement Loan, or otherwise explicitly state that the term referred to a reverse mortgage.

35. [REDACTED]

36. [REDACTED]

37. [REDACTED]

THE BECKER "SECRET ANGEL" FLYER – A SUBJECT OF THE DIVISION'S ORDER

38. Sometime in 2015, prior to July 15, 2015, Stephen Becker created a "Secret Angel" flyer describing a "Lifestyle Improvement Loan." The loan so described was in fact a reverse mortgage (Becker Secret Angel flyer, Exhibit 2). He sent the flyer to Alain Valles, who did not revise it until September 2, 2015.

39. The Becker Secret Angel flyer contained the following text:

Become A Secret Angel!

We all know of at least one senior or retired couple, a relative, a friend, or acquaintance that is struggling with the financial burdens of retirement.

*You could be the secret angel that anonymously helps your friends or loved ones put the **GOLD** back in their **GOLDEN YEARS**. A Lifestyle Improvement Loan could be the answer.*

Your largest asset is your Home; use it to your Advantage.

The debt can never be negative (insured by FHA)

Creates a cash flow improvement of \$200-\$500 funded by the never account which the balance appreciates annually

What could be accomplished? So much...they could:

- *Pay off existing credit card debt
- *Pay off existing mortgage (if any)
- *Eliminate future mortgage payments as long as they occupy the home regardless of how long they live there
- *Help children or grandchildren with college or financial obligations
- *Make needed home repairs or improvements
- *Travel

*This is a great way to help someone you know **IMPROVE THEIR LIFESTYLE** if you think you know someone who would be interested in talking to me and learning more about how a Lifestyle Improvement Loan could help them, please contact me. Thank You.*

Steve Becker

Direct Finance Corporation
[address omitted]
781-249-0083 sbecker@dfmortgage.com

Be a Secret Angel

www.lifestylereimprovement.com

40. The Becker Secret Angel flyer stated that "The debt can never be a negative (insured by FHA)". This was a misleading statement.

41. Nowhere on the Becker Secret Angel flyer was it explained that a "Lifestyle Improvement Loan" is a reverse mortgage. This omission was misleading.

42. The Becker Secret Angel flyer did not explain the responsibilities or risks involved with a reverse mortgage, which was the product being promoted. This omission had the capacity to be misleading.

43. The Becker Secret Angel flyer did not explain that the product was a reverse mortgage, which would result in a lien being taken out on the property. Failing to state this was misleading.

44. Reverse mortgages put a borrower at risk for default and foreclosure. Because the Becker Secret Angel flyer did not disclose the true nature of the product it promoted, it was misleading.

45. With reverse mortgages, the insurance provided by the Federal Housing Administration (FHA) primarily protects the lenders. The reference on the Becker Secret Angel flyer to FHA insurance, without explaining that the product is a reverse mortgage, was misleading.

46. The Becker Secret Angel flyer did not include Direct Finance's license type or license number. This was a violation of 209 CMR 42.12A(14).

47. The language of the Secret Angel flyer was sufficiently broad to be applicable to an ultimate borrower or a person referring an ultimate borrower. Direct Finance's employee, Stephen Becker, distributed it broadly to his contact list and more narrowly to seniors attending targeted events. It was an advertisement.

48. In July or August, 2015, Stephen Becker sent copies of the Becker Secret Angel flyer to approximately 1,690 of his business contacts, a portion of whom he knew to be of an eligible age for a reverse mortgage. The language of this flyer specifically encompasses a direct consumer, "Your largest asset is your home; use it to your advantage", as well as someone who might make a referral on behalf of an eligible consumer.

49. In July or August, 2015, Stephen Becker went to the Stoneham Senior Center, to ask Maureen Canova if he could do a presentation on reverse mortgages. He gave her his business card which identified him as "Steve Becker, Director, Lifestyle Improvement Loan" with Direct Finance Corp.'s name and logo. He also gave her a copy of the Becker Secret Angel flyer, which contained no mention of a reverse mortgage.

THE VALLES SECRET ANGEL FLYER

50. On September 2, 2015, Mr. Valles revised the Becker Secret Angel flyer, and approved a new Secret Angel flyer (Valles Secret Angel flyer – Exhibit 4).

51. Some of the misleading aspects of the Becker Secret Angel flyer were corrected or deleted; however, the Valles Secret Angel flyer did not disclose that a "Lifestyle Improvement Loan" was, in fact, a reverse mortgage.⁹

⁹ The Valles Secret Angel flyer was not complained of in the Division's Temporary Cease and Desist Order.

52. On September 14, 2015 Mr. Becker went to the Woburn Council on Aging where he offered seniors copies of the Valles Secret Angel flyer.

53. On September 19, 2015, Mr. Becker attended a luncheon in Andover for the Andover -- North Andover New Comers and Empty Nesters. Copies of the Becker Secret Angel flyer and the Valles Secret Angel flyer were made available to the six senior citizens who attended.

REGULATORY BULLETIN 5.1-106

54. On December 15, 2010, the Division of Banks issued Regulatory Bulletin 5.1-106, Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks (Reg. Bulletin 5.1-106).

55. In Reg. Bulletin 5.1-106, the Division warned its licensees that "consumers are not always adequately informed that reverse mortgages are loans that must be repaid... Consumer misunderstanding about these matters also may be the result of advertisements declaring that reverse mortgage borrowers have no risk of losing their homes or are guaranteed to retain ownership of their homes for life."

56. Reg. Bulletin 5.1-106 goes on to state that "advertisements that are potentially misleading include 'income for life,' 'you'll never owe more than the value of your home,' 'no payments ever,' and 'no risk.'"

57. In Reg. Bulletin 5.1-106, the Division expressed concern that "[e]ven when provided, consumer counseling may not be fully effective in helping borrowers make informed decisions about reverse mortgage products.

58. Reg. Bulletin 5.1-106 advises that "Licensees should seek to provide clear and balanced information about the risks and costs [of reverse mortgages] as well as the benefits of these products in all forms of advertising."

59. As a Certified Reverse Mortgage Professional who is the President of Direct Finance, the holder of a Massachusetts mortgage broker license, Mr. Valles was familiar with the Division's Regulatory Bulletin 5.1-106.

60. Licensees like Direct Finance are required to stay up to date with the current changes to any regulation applicable to products they offer, including reverse mortgages.

61. The Division's regulatory bulletin provided substantial guidance for licensees offering reverse mortgages. Mr. Valles was interested and invested in having Direct Finance be in

compliance with the Division's regulations, and therefore was aware of current regulatory bulletins.

ANALYSIS AND RULINGS OF LAW

The Advertising for the Lifestyle Improvement Loan, a Reverse Mortgage,

Was Misleading

Both the Becker Secret Angel flyer and the Website advertised a product called a "Lifestyle Improvement Loan". Neither explained that this product is actually a reverse mortgage. Direct Finance was aware of these omissions.

After Mr. Valles proactively amended the Secret Angel flyer to remove some of the troublesome phrases, the new flyer still did not identify the loan product as a reverse mortgage. Direct Finance sanctioned the omission of the term "reverse mortgage" in its promotional materials.

Direct Finance's earlier Lifestyle Improvement Loan advertisement also failed to identify the "loan" as a reverse mortgage. By failing to identify its product as a reverse mortgage, it was not immediately apparent to the consumer that the product being advertised was a reverse mortgage. It also limited the ability of consumers to do their own independent research about the loan product.

The Division advised its licensees through its regulatory Bulletin that the "Licensee should use promotional materials and other product descriptions that provide information about the costs, terms, features, and risks of reverse mortgage products... Licensees should seek to provide clear and balanced information about the risks and costs as well as the benefits of these products in all forms of advertising." Regulatory Bulletin 5.1-106. Direct Finance's advertisements for a "Lifestyle Improvement Loan" failed to give clear information about the risks and costs of a reverse mortgage.

The Division has long expressed concerns that borrower counseling, required by law, is insufficient to adequately educate consumers about the terms of reverse mortgage. Counseling does not obviate the need, or a licensee's obligation, to provide for clear and responsible advertising.

Specific problems with the advertising on the Website and the Becker Secret Angel flyer were:

* "The debt can never be a negative (insured by FHA)". A reverse mortgage can be a negative, as tax and insurance default puts elderly borrowers at risk of foreclosure. The Division put its licensees on notice that an advertisement that promotes reverse mortgages as "no risk" could potentially mislead consumers. Regulatory Bulletin 5.1-106, Exhibit 8.

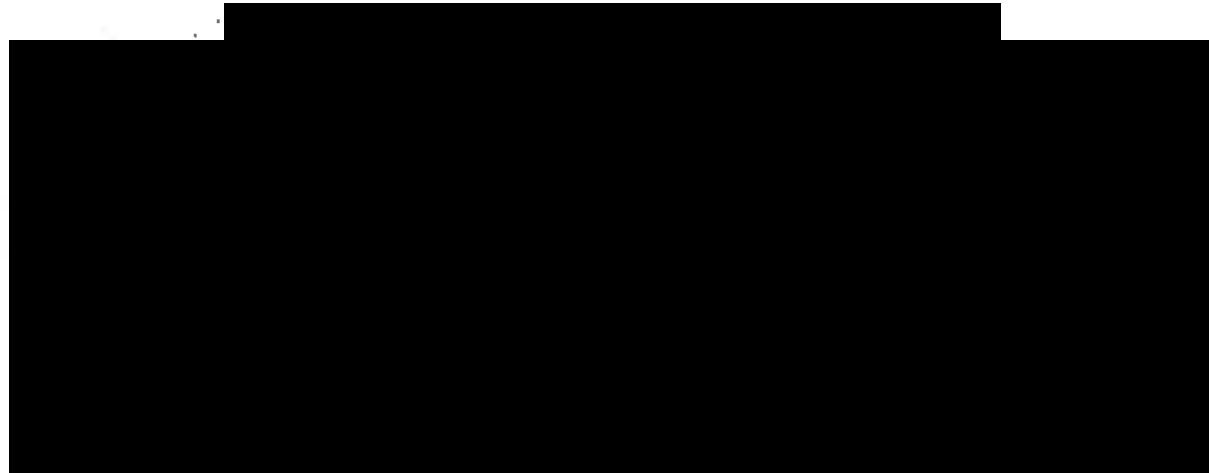
Nowhere does the flyer explain that the borrower must continue to pay the taxes and insurance for the property.

* In addition to stating that "[t]he debt can never be a negative" the Becker Secret Angel flyer also stated "insured by FHA". However, the insurance provided by the FHA is primarily for the benefit of the lender, not consumers. Merely stating "insured by FHA" is misleading and has the tendency or capacity to mislead consumers in thinking that the insurance is primarily for their protection. Claiming that a reverse mortgage "can never be a negative (insured by FHA)" was misleading and was therefore in violation of 940 CMR 8.04(1).

* The Website claimed that "the cash you receive from a Lifestyle Improvement Loan comes with no strings attached." This imprecise language has a capacity to mislead consumers, where it is not clear the loan offered is in fact a reverse mortgage. A reverse mortgage borrower's failure to keep up with taxes or insurance authorizes the lender to foreclosure. The Division has previously pointed out to its licensees that an advertisement that promoting reverse mortgages as "no risk" could potentially mislead consumers. Regulatory Bulletin 5.1-106,

* Direct Finance's assertion that "no strings attached" means that proceeds can be spent in any way a consumer wishes is factually inaccurate. A consumer is obliged to use funds from a reverse mortgage to pay off any existing mortgage before taking any additional monies from a reverse mortgage. Claiming that a reverse mortgage "comes with no strings attached" was misleading, and was therefore in violation of 940 CMR 8.04(1).

* The Website claimed that "[o]ne incredible feature of a Lifestyle Improvement loan is a Line of Credit that gives you access to cash. Unlike a conventional home equity line of credit, a Lifestyle Improvement Loan's unused portion will 'grow', guaranteed, for as long as you live in your home." In fact, there is no guarantee that a line of credit will grow. Claiming that a Line of Credit is a "feature" of all reverse mortgages which is "guaranteed, for as long as you live in your home", was misleading, and was therefore in violation of 940 CMR 8.04(1).



Direct Finance's use of advertisements containing representations or statements of fact that were misleading constituted an unfair or deceptive acts or practices, in violation of 940 CMR 8.04(1).

Failure to Disclose License Type

The Becker Secret Angel flyer failed to include Direct's license type and license number. The flyer was distributed directly to consumers and emailed to over 1600 business contacts. The inclusion of Direct's license type and number is required on all advertisements under 209 CMR 42.12A(13), and its omission was therefore an advertising violation.

and it justified a monetary penalty.

DISCIPLINE

At issue in this hearing was the appropriateness of the administrative penalty of \$25,000 imposed by the Order under G.L. c. 255B, §11.

The \$25,000 administrative penalty is expressly authorized by statute. G.L. c. 255B, §11 authorizes the Division to assess a penalty of up to \$5,000 against a licensee for each violation of any law applicable to the conduct of the business of making or brokering mortgage loans on residential property.

In addition to the problematic statements in the Becker Secret Angel flyer and the Website, as outlined above, all of which constituted violations of 940 CMR 8.04(1), the Becker Secret Angel flyer wrongfully failed to include Direct Finance's license type and license number in violation of 209 CMR 42.12A(13), as a matter of law. The Becker Secret Angel Flyer was

distributed to six (6) senior citizens who attended a luncheon at for the Andover -- North Andover New Comers and Empty Nesters.

The Becker Secret Angel Flyer was also emailed to over 1,600 business contacts, and was given to the Stoneham Senior Center Director in an effort to convince her to allow a presentation on reverse mortgages. As each of these distributions is a violation, a separate penalty could be imposed for each one.

In determining the appropriateness of the penalty, this hearing officer also considered the product that Direct Finance was advertising: reverse mortgages. In issuing a penalty, an agency may consider its need to vindicate its authority when issuing its administrative penalty, and issue a penalty with the aim of "detering future violations by this defendant and others." *Fall River Motor Sales, Inc.*, 409 Mass. 302, 313 (1991). Reverse mortgages are only available to seniors 62 and over. A reverse mortgage encumbers the largest asset of many of the targeted consumers, and may put seniors at risk for foreclosure of their homes. Advertising for this product must be clear and not misleading.

[REDACTED]

The Division's Bulletin made it clear that a licensee is responsible for its advertising; Mr. Valles was aware of the Bulletin. The record does not reflect any affirmative approval by the Division of this line of advertising.

[REDACTED]

[REDACTED] The prohibition against applying estoppel against a government agency is well settled. *Langlitz v. Bd. of Registration of Chiropractors*, 396 Mass. 374, 378 (1985); *LaBarge v. Chief Admin. Justice of the Trial Court*, 402 Mass. 462, 468 (1988). A licensee cannot reasonably rely on the Division's not citing a violation in a previous examination, nor did the Division waive its right to take corrective action at a later time.

[REDACTED]

[REDACTED] Using her judgment and

discretion, the hearing officer imposes an administrative penalty \$15,000, to be paid by Direct Finance within 90 days.

ORDER AND DECISION

1. Direct Finance is hereby ordered to pay an Administrative Penalty in the amount of \$15,000 for engaging in misleading and prohibited advertising, pursuant to the provisions of General Laws chapter 255E, section 11. Payment is to be made within 90 days.

2. This Final Decision and Order may be appealed by filing a written petition for judicial review within thirty (30) days after entry of this Final Order and Decision, pursuant to Massachusetts General Laws chapter 30A, sections 14 and 15.

Dated this 17 day of February, 2017.

By: Elizabeth Butler

The Honorable Elizabeth Butler (Ret.)
Administrative Hearing Officer

**BY ORDER AND DIRECTION OF THE COMMISSIONER OF BANKS THE ABOVE
PROPOSED ORDER IS MADE FINAL**

Dated at Boston, Massachusetts, this 24th day of February, 2017

By: Terence A. McGinnis

Terence A. McGinnis
Commissioner of Banks
Commonwealth of Massachusetts