

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMERCE

In the Matter of Family First Home Preservation Corporation, LLC; Tobias I.A. West, individually; and Nathan C. Bishop, individually

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION
UPON DEFAULT**

This matter came on before Administrative Law Judge James E. LaFave on June 30, 2014, for a Prehearing Conference at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). There was no appearance by or on behalf of Family First Home Preservation Corporation, LLC, Tobias I.A. West, or Nathan C. Bishop (Respondents).

STATEMENT OF THE ISSUES

1. Whether the Respondents engaged in unlicensed loan modifications in violation of Minn. Stat. § 58.04, subd. 1 (2012)?
2. Whether the Respondents failed to deposit advance fees into a trust account in violation of Minn. Stat. § 58.16, subd. 4 (2012)?
3. Whether the Respondents failed to disclose to each customer the percentage of customers who actually received a funded loan during the 12-month period before the date the contract was signed, while charging advance fees, in violation of Minn. Stat. § 58.16, subd. 2(a)(6) (2012)?
4. Whether the Respondents, by accepting advance fees and failing to identify the trust account into which the fees would be deposited, violated Minn. Stat. § 58.16, subd. 2(b)(1) (2012)?
5. Whether the Respondents charged and collected mortgage foreclosure consultant fees prior to fully performing each and every service contracted for in violation of Minn. Stat. § 325N.04(1) (2012)?
6. Whether the Respondents, by failing to complete any of the tasks it was paid to complete in advance, demonstrated untrustworthiness, incompetence and financial irresponsibility in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(v) (2012)?

7. Whether the Respondents, by failing to provide refunds of advance fees for uncompleted tasks, demonstrated financial irresponsibility in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(v) (2012)?

8. Whether the Respondents failed to perform in conformance with its written agreements with customers in violation of Minn. Stat. § 58.13, subd. 1(5) (2012)?

9. Whether Respondents by fraudulently, deceptively, and dishonestly offering a money back guarantee and claiming that it had the ability to force lenders to modify loans, engaged in fraudulent, deceptive and dishonest practices in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012)?

10. Whether the Respondents, by making false statements in connection with its offers for loan modifications, made false, deceptive and misleading statements in connection with a residential loan transaction in violation of Minn. Stat. § 58.16, subd. 4 (2012)?

11. Whether the Respondents disseminated at least one misleading advertisement to a Minnesota resident in violation of Minn. Stat. § 58.13, subd. 9 (2012)?

12. Whether the Respondents, by falsely holding out Family First Home Preservation Corporation, LLC (FFHPC) as a law firm, when FFHPC was not a law firm, engaged in fraudulent, deceptive and dishonest practices in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012)?

13. Whether the Respondents, by choosing not to make a sincere attempt at completing the services for which it was paid advance fees, engaged in fraudulent, deceptive and dishonest practices in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012)?

14. Whether the Respondents, by failing to deposit advance fees into a trust account, failed to provide to each borrower a monthly written accounting of all disbursements of the borrowers' funds from the trust account in violation of Minn. Stat. § 58.16, subd. 6 (2012)?

15. Whether the Respondents, by spending advance fees paid by customers on personal luxury instead of depositing the fees into trust accounts, engaged in dishonest acts and practices in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012)?

16. Whether the Respondents, by advising at least two Minnesota customers to stop making payments on their residential mortgage loans, engaged in fraudulent, deceptive and dishonest practices in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012)?

17. Whether the Respondents, by withdrawing funds from customers' bank accounts prior to the agreed and written date, engaged in fraudulent, deceptive and dishonest practices in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012)?

18. Whether the Respondents, by failing to ensure its employees held the appropriate licenses required by Chapter 58A of Minnesota Statutes, demonstrated they are incompetent and unqualified to act under the authority of the Commissioner in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(v) (2012)?

19. Whether the Respondents, by failing or choosing not to respond to customer telephone inquiries, failing or choosing not to maintain e-mail addresses, and ultimately allowing their phone lines to be shut down removed its customers' ability to communicate or request refunds and thereby demonstrated untrustworthiness and incompetence in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012)?

20. Whether the Respondents, by being issued a Temporary Order to Cease and Desist by the Washington Department of Financial Institutions, were subject to a disciplinary action of another state regulatory agency in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(vii) (2012)?

21. Whether the Respondents, by entering into an Agreed Order to Cease and Desist with the Washington Department of Financial Institutions, were subject to a disciplinary action of another state regulatory agency in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(vii) (2012)?

22. Whether the Respondents FFHCP and Bishop, by being issued a Final Order to Cease and Desist and Order Assessing Civil Penalties Entered by Default by the Oregon Department of Consumer and Business Services, were subject to a disciplinary action of another state regulatory agency in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(vii) (2012)?

SUMMARY OF RECOMMENDATION

The Administrative Law Judge concludes that Respondents are in default and recommends that the allegations in the Notice and Order for Prehearing Conference and Hearing be accepted as true and deemed proven.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On April 22, 2014, a Notice of Hearing, Order for Prehearing Conference, and Statement of Charges (Notice and Order for Hearing) in this matter was mailed to Respondents at their last known address.¹

¹ See Attachment A at Affidavit of Service.

2. The Notice and Order for Hearing indicated that a Prehearing Conference would be held in this matter on June 30, 2014, at 1:30 p.m., at the Office of Administrative Hearings, 600 Robert Street North, St. Paul, Minnesota.²

3. In conformity with Minn. R. 1400.5700, the Notice and Order for Hearing requires that any party intending to “appear at the prehearing conference and hearing must file a Notice of Appearance form and return it to the Administrative Law Judge within 20 days of the date of service” of the Notice and Order for Hearing.³

4. In conformity with Minn. R. 1400.6000, the Notice and Order for Hearing in this matter also includes the following statement:

Respondent’s failure to appear at the prehearing conference, settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in a finding that the Respondent is in default, that the Department’s allegations contained in the Statement of Charges may be accepted as true, and that Respondent may be subject to discipline by the Commissioner, including revocation, suspension, censure, or the imposition of civil penalties.⁴

5. Respondents did not file a Notice of Appearance with the undersigned.

6. No one appeared at the June 30, 2014 Prehearing Conference on behalf of Respondents. No request was made for a continuance, nor was any communication received by the undersigned from Respondent prior to the June 30, 2014 Prehearing Conference.

7. Respondents’ failure to appear at the Prehearing Conference was without consent of the Administrative Law Judge.

8. Because Respondents failed to appear at the Prehearing Conference, Respondents are in default.

9. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of Hearing, Order for Prehearing Conference, and Statement of Charges, a copy of which is attached as Attachment A, are taken as true, deemed proven without further evidence, and incorporated by reference into these Findings of Fact.

Based on the Findings of Fact, the Administrative Law Judge makes the following:

² *Id.* at 2.

³ *Id.* at 4.

⁴ *Id.* at 11.

CONCLUSIONS OF LAW

1. The Department of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. § 14.50 and Minn. Stat. § 58.12.
2. The Respondents received timely and proper notice of the Prehearing Conference in this matter when the Department sent the Notice and Order for Hearing to their last known addresses.
3. The Department has complied with all relevant procedural requirements of statute and rule.
4. Under Minn. R. 1400.6000, the Respondents are in default as a result of their failure to appear at the scheduled prehearing conference.
5. Under Minn. R. 1400.6000, when a party defaults by failing to appear at a prehearing conference without the prior consent of the judge, the allegations and the issues set out in the Notice and Order for Hearing may be taken as true and deemed proven. The Administrative Law Judge therefore deems the allegations to be true.
6. The Respondents engaged in unlicensed loan modifications in violation of Minn. Stat. § 58.04, subd. 1 (2012).
7. The Respondents failed to deposit advance fees into a trust account in violation of Minn. Stat. § 58.16, subd. 4 (2012).
8. The Respondents failed to disclose to each customer the percentage of customers who actually received a funded loan during the 12-month period before the date the contract was signed, while charging advance fees, in violation of Minn. Stat. § 58.16, subd. 2(a)(6) (2012).
9. The Respondents accepted advance fees and failed to identify the trust account into which the fees would be deposited in violation of Minn. Stat. § 58.16, subd. 2(b)(1) (2012).
10. The Respondents charged and collected mortgage foreclosure consultant fees prior to fully performing each and every service contracted for in violation of Minn. Stat. § 325N.04(1) (2012).
11. The Respondents, by failing to complete any of the tasks it was paid to complete in advance, demonstrated untrustworthiness, incompetence and financial irresponsibility in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(v) (2012).
12. The Respondents, by failing to provide refunds of advance fees for uncompleted tasks, demonstrated financial irresponsibility in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(v) (2012).

13. The Respondents failed to perform in conformance with its written agreements with customers in violation of Minn. Stat. § 58.13, subd. 1(5) (2012).

14. The Respondents by fraudulently, deceptively, and dishonestly offering a money back guarantee and claiming that it had the ability to force lenders to modify loans, engaged in fraudulent, deceptive and dishonest practices in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012).

15. The Respondents, by making false statements in connection with its offers for loan modifications, made false, deceptive and misleading statements in connection with a residential loan transaction in violation of Minn. Stat. § 58.16, subd. 4 (2012).

16. The Respondents disseminated at least one misleading advertisement to a Minnesota resident in violation of Minn. Stat. § 58.13, subd. 9 (2012).

17. The Respondents, by falsely holding out that Family First Home Preservation Corporation, LLC (FFHPC) was a law firm, when FFHPC was not a law firm, engaged in fraudulent, deceptive and dishonest practices in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012).

18. The Respondents, by choosing not to make a sincere attempt at completing the services for which it was paid advance fees, engaged in fraudulent, deceptive and dishonest practices in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012).

19. The Respondents, by failing to deposit advance fees into a trust account, failed to provide to each borrower a monthly written accounting of all disbursements of the borrowers' funds from the trust account in violation of Minn. Stat. § 58.16, subd. 6 (2012).

20. The Respondents, by spending advance fees paid by customers on personal luxury instead of depositing the fees into trust accounts, engaged in dishonest acts and practices in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012).

21. The Respondents, by advising at least two Minnesota customers to stop making payments on their residential mortgage loans, engaged in fraudulent, deceptive and dishonest practices in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012).

22. The Respondents, by withdrawing funds from customers' bank accounts prior to the agreed and written date, engaged in fraudulent, deceptive and dishonest practices in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012).

23. The Respondents, by failing to ensure its employees held the appropriate licenses required by Chapter 58A of the Minnesota Statutes, demonstrated they are incompetent and unqualified to act under the authority of the Commissioner in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(v) (2012).

24. The Respondents, by failing or choosing not to respond to customer telephone inquiries, failing or choosing not to maintain e-mail addresses, and ultimately allowing their phone lines to be shut down removed its customers' ability to communicate or request refunds and thereby demonstrated untrustworthiness and incompetence in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(iv) (2012).

25. The Respondents, by being issued a Temporary Order to Cease and Desist by the Washington Department of Financial Institutions, were subject to a disciplinary action of another state regulatory agency in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(vii) (2012).

26. The Respondents, by entering into an Agreed Order to Cease and Desist with the Washington Department of Financial Institutions, were subject to a disciplinary action of another state regulatory agency in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(vii) (2012).

27. The Respondents FFHCP and Bishop, by being issued a Final Order to Cease and Desist and Order Assessing Civil Penalties Entered by Default by the Oregon Department of Consumer and Business Services, were subject to a disciplinary action of another state regulatory agency in violation of Minn. Stat. § 58.12, subd. 1(b)(2)(vii) (2012).

28. The Department has grounds to take disciplinary action against the Respondent's license based upon the allegations set forth in the Notice of Hearing, Order for Prehearing Conference, and Statement of Charges

29. An order by the Department taking disciplinary action against the Respondent's license is in the public interest.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner take disciplinary action against Respondents Family First Home Preservation Corporation, LLC, Tobias I.A. West, and Nathan C. Bishop.

Dated: July 30, 2014

s/James E. LaFave

JAMES E. LAFAVE
Administrative Law Judge

Reported: Default

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce (Commissioner) will make the final decision after a review of the record. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten calendar days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact Michael Rothman, Commissioner, Department of Commerce, Attn: Heidi Retterath, Suite 500, 85 Seventh Place East, St. Paul, MN 55101, (651) 539-1445, to learn the procedure for filing exceptions or presenting argument.

The record closes upon the filing of exceptions to the Report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and Administrative Law Judge of the date the record closes. If the Commissioner fails to issue a final decision within 90 days of the close of the record, this Report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within ten working days to allow the Judge to determine the discipline imposed.

Under Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.