

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

In the Matter of the Mortgage Originator
License of Meredian Financial
Corporation; Fortis Title Solutions
Corporation; James T. Assali; and
and Paul Ferris

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on before Administrative Law Judge Kathleen D. Sheehy on May 31, 2011, for a prehearing conference at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce (Department). There was no appearance by Meredian Financial Corporation, Fortis Title Solutions Corporation, James T. Assali, or Paul Ferris (Respondents). The record closed upon the Respondent's default on May 31, 2011.

STATEMENT OF ISSUES

May the Department discipline the Respondents because:

1. By misrepresenting the availability and cost of mortgage loans, misrepresenting their relationship with customers' existing lenders, and failing to pay refunds of rate lock fees when loans were offered on different and less favorable terms, the Respondents violated standards of conduct, engaged in fraudulent, coercive, deceptive, or dishonest acts or practices, or otherwise demonstrated untrustworthiness, financial irresponsibility, or incompetence, as provided in Minn. Stat. §§ 45.027, subd. 7(a)(4), 58.12, subd. 1(b)(2)(iv)-(v), and 58.13, subds. 1(a)(6) & (9) (2010);¹

2. By failing to deposit advance fees into trust accounts and failing to notify consumers of their statutory right to rescind loan contracts, the Respondents violated standards of conduct and engaged in practices that demonstrated incompetence, financial irresponsibility, or untrustworthiness, as provided in Minn. Stat. §§ 45.027, subd. 7(a)(4), 58.12, subd. 1(b)(2)(i), (iv)-(v), 58.13, subd. 1(a)(1)-(2) & (4), and 58.16, subds. 2(a)(5)-(6), 3 & 4;

¹ All references to Minnesota Statutes are to the 2010 edition.

3. By engaging in unlicensed mortgage origination activities, Respondent Fortis Title Solutions violated Minn. Stat. §§ 58.02, subs. 19 & 23, 58.04, subs. 1 & 3, and 58.12, subd. 1(b)(2)(i);

4. By creating and using Fortis Title Solutions as a shell company to deceive the credit card industry into accepting charges for rate lock fees on behalf of Meredian, Respondents Meredian, Assali, and Ferris engaged in fraudulent, coercive, deceptive, or dishonest acts or practices, and otherwise demonstrated untrustworthiness, financial irresponsibility, or incompetence, as provided in Minn. Stat. §§ 45.027, subd. 7(a)(4), 58.12, subd. 1(b)(2)(iv)-(v), 58.13, subd. 1(a)(6) & (9);

5. By failing to provide affiliated business disclosure statements describing the common ownership of Meredian and Fortis Title Solutions, the Respondents violated 12 U.S.C. §§ 2602(7) and 2607, 24 C.F.R. § 3500.15, and Minn. Stat. §§ 58.12, subd. 1(b)(2)(iv)-(v), and 58.13, subd. 1(8);

6. By providing false, incomplete, and misleading information to the Commissioner, and by refusing to respond to an administrative subpoena issued by the Department, the Respondents violated Minn. Stat. §§ 45.027, subd. 7(a)(3), and 58.12, subd. 1(b)(2)(ix); and

7. By engaging in mortgage origination activities that resulted in cease and desist orders in California and Georgia, the Respondents are precluded from involvement in an industry or profession regulated by the Department, as provided in Minn. Stat. § 58.12, subd. 1(b)(2)(vii).

Based upon the files, records, and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On April 29, 2011, a copy of the Notice and Order for Prehearing Conference was sent by first-class mail to the Respondents and their counsel in California.²

2. The Respondents failed to appear at the prehearing conference, did not obtain prior approval from the Administrative Law Judge to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

3. The Notice and Order for Prehearing Conference contained the following notice:

Respondents' failure to appear at the prehearing conference . . .
may result in a finding that Respondents are in default, that the

² Affidavit of Service by First Class Mail (Apr. 29, 2011).

Department's allegations contained in the Statement of Charges may be accepted as true, and that Respondents may be subject to discipline by the Commissioner, including debarment, revocation, suspension, censure, or the imposition of civil penalties.³

4. Because Respondents failed to appear at the prehearing conference, they are in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Statement of Charges are taken as true and incorporated by reference into these Findings of Fact.

6. The Statement of Charges alleges that Respondent Meredian Financial Corporation is a licensed mortgage originator in Minnesota and that its license became inactive in 2011 after it failed to pay an assessment; that Fortis Title Solutions Corporation is not licensed as a residential mortgage originator in Minnesota and is consequently precluded from collecting rate lock fees from Minnesota residents; and that James Assali was the owner and president of Meredian and Fortis until October 2, 2007, when he transferred his ownership interests to Paul Ferris, the current owner.

7. The Statement of Charges also alleges that the Respondents contacted Minnesota homeowners and misrepresented the Respondents' relationship with the lenders currently holding mortgages on their homes; the Respondents induced Minnesota residents to pay "rate lock" fees for new residential mortgage loans, the terms and availability of which were misrepresented; the Respondents failed to deposit these funds into trust accounts, and failed to refund at least \$30,406 in advance fees paid by 12 Minnesota residents when the loans were offered on different and less favorable terms; Respondents Meredian, Assali, and Ferris created Fortis Title Solutions Corporation as a conduit for these rate lock fees in order to deceive credit card issuers, after the credit card industry refused to process further charges on behalf of Meredian; Respondent Fortis Title Solutions issued rate lock letters and collected advance fees on mortgage loans from at least 45 Minnesota residents, despite its unlicensed status; the Respondents failed to provide the affiliated business disclosures and other disclosures required in connection with making these loans; the Respondents failed to notify customers of their statutory right to rescind these loan agreements; and the Respondents provided misleading and incomplete information to the Department in response to an information request and failed to respond to an administrative subpoena regarding their mortgage business in Minnesota.

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

³ Notice and Order for Prehearing Conference at 17.

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Respondents under Minn. Stat. §§ 14.50; 45.024; 45.027, subd. 1; and 58.12.

2. The Respondents received due, proper, and timely notice of the charges against them, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant procedural legal requirements.

4. Under Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. A default occurs when a party fails to appear without the prior consent of the judge at a prehearing conference. On default, the allegations of and the issues set out in that Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. The Respondents are in default herein as a result of their failure, without the prior consent of the Administrative Law Judge, to appear at the prehearing conference.

6. Residential mortgage originators who solicit or receive an advance fee in exchange for assisting a borrower located in Minnesota in obtaining a loan secured by a lien on residential real estate, or who offer to act as an agent of the borrower in obtaining a loan secured by such a lien, shall be considered to have created a fiduciary relationship with the borrower.⁴ The terms of any such contract are subject to disclosure requirements and cancellation rights described in Minn. Stat. § 58.16, subs. 2 and 3.

7. No person acting as a residential mortgage originator or servicer shall charge a fee for a product or service where the product or service is not actually provided.⁵ In addition, no person acting as a residential mortgage originator shall make or cause to be made, directly or indirectly, any false, deceptive, or misleading statement or representation in connection with a residential loan transaction, including, without limitation, a false, deceptive, or misleading statement or representation regarding the borrower's ability to qualify for any mortgage product.⁶

⁴ Minn. Stat. § 58.16, subd. 1.

⁵ Minn. Stat. § 58.13, subd. 1(a)(6).

⁶ Minn. Stat. § 58.13, subd. 1(a)(9).

8. By representing that customers were pre-approved for residential mortgage loans at favorable interest rates, holding themselves out as the existing lender or agent of the existing lender, and failing to provide refunds of rate lock fees when loans were offered on different and less favorable terms, the Respondents charged a fee for a product not actually provided and misled Minnesota consumers, in violation of Minn. Stat. §§ 58.13, subd. 1(a)(6) & (9). This conduct also demonstrates that Respondents engaged in fraudulent, deceptive, or dishonest acts or practices and are untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under authority or license granted by the Commissioner, as provided in Minn. Stat. §§ 45.027, subd. 7(a)(4), and 58.12, subd. 1(b)(2)(iv)-(v) (Count I).

9. No person acting as a residential mortgage originator or servicer shall fail to maintain a trust account to hold trust funds received in connection with a residential mortgage loan; fail to deposit all trust funds into a trust account within three business days of receipt, commingle trust funds with other funds, or use trust account funds for any purpose other than that for which they are received; or fail to disburse funds according to its contractual or statutory obligations.⁷ A residential mortgage originator shall deposit into a trust account all fees received before the time a loan is actually funded. The trust account must be in a financial institution located within the state of Minnesota, and, with respect to advance fees, the account must be controlled by an unaffiliated accountant, attorney, or bank.⁸

10. Any written contract made between a residential mortgage originator and borrower must contain a statement that notifies the borrower of the unconditional right to cancel the contract and disclose the cancellation rights and procedures required by statute, and must disclose, with respect to the 12-month period ending ten business days before the date of the contract in question, the percentage of the mortgage originator's customers for whom loans have actually been funded as a result of the residential mortgage originator's services.⁹

11. By failing to deposit advance fees into trust accounts as required by law, and by failing to include mandatory contractual language in their agreements with homeowners, the Respondents violated Minn. Stat. §§ 58.13, subd. 1(a)(1), (2) & (4), and Minn. Stat. § 58.16, subds. 2(a)(5)-(6), 3 & 4. This conduct also demonstrates that Respondents engaged in fraudulent, deceptive, or dishonest acts or practices and are untrustworthy, financially irresponsible, or otherwise incompetent or unqualified to act under authority or license granted by the Commissioner, as provided in Minn. Stat. §§ 45.027, subd. 7(a)(4), and 58.12, subd. 1(b)(2)(iv)-(v) (Count II).

⁷ Minn. Stat. § 58.13, subd. 1(a)(1)-(2) & (4).

⁸ Minn. Stat. § 58.13, subd. 4.

⁹ Minn. Stat. § 58.16, subds. 2(a)(5)-(6), 3.

12. Assisting or offering to assist a borrower in applying for a residential mortgage loan, or negotiating or offering to negotiate the terms or conditions of a residential mortgage loan with a lender on behalf of a borrower, for compensation or gain or expectation of compensation or gain, is activity that constitutes mortgage brokering, and it requires a residential mortgage originator license in Minnesota.¹⁰

13. Fortis Title Solutions engaged in unlicensed residential mortgage origination activities by issuing rate lock letters and collecting advance fees from Minnesota residents. Fortis Title Solutions accordingly is subject to discipline under Minn. Stat. § 58.12, subd. 1(b)(2)(i) (Count III).

14. By creating and using Fortis Title Solutions as a conduit to deceive the credit card industry into accepting charges made on behalf of Meredian, Respondents Meredian, Assali and Ferris engaged in fraudulent, coercive, deceptive, or dishonest acts or practices, and otherwise demonstrated untrustworthiness, financial irresponsibility or incompetence, in violation of Minn. Stat. §§ 45.027, subd. 7(a)(4), 58.12, subd. 1(b)(2)(iv)-(v), and 58.13, subd. 1(a)(6) & (9) (Count IV).

15. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.¹¹ An affiliated business arrangement is not prohibited under this section so long as a disclosure is made of the existence of such an arrangement to the person being referred and, in connection with such referral, such person is provided a written estimate of the charge or range of charges generally made by the provider to which the person is referred.¹² The written disclosure must describe the nature of the relationship between the provider of settlement services (or business incident thereto) and the person making the referral and of an estimated charge or range of charges generally made by such provider. The disclosures must be provided no later than the time of each referral.¹³

16. By failing to provide the mandatory affiliated business disclosure statements with regard to the common ownership of Meredian and Fortis Title Solutions, the Respondents violated 12 U.S.C. § 2607 and 24 C.F.R. § 3500.15. This same conduct constitutes a violation of Minn. Stat. §§ 58.12, subd. 1(b)(2)(iv)-(v), and 58.13, subd. 1(8) (Count V).

17. Persons subject to the authority of the Commissioner of Commerce must comply with requests for information, documents, or other requests from the

¹⁰ Minn. Stat. §§ 58.02, subds. 19, & 23; 58.04, subds. 1 & 3.

¹¹ 12 U.S.C. § 2607(c).

¹² 12 U.S.C. § 2607(4).

¹³ 24 C.F.R. § 3500.15(b)(1).

department within the time specified in the request.¹⁴ The Commissioner may take disciplinary action against a person who has provided false, misleading, or incomplete information or has refused to allow a reasonable inspection of records or premises.¹⁵

18. By providing false, misleading, and incomplete information in response to a request by the Commissioner, the Respondents violated Minn. Stat. § 45.027, subd. 7(a)(3) and 58.12, subd. 1(b)(2)(ix) (Count VI).

19. The Commissioner may take disciplinary action against any person who has been the subject of disciplinary action, an order of suspension or revocation, a cease and desist order or injunction order, or order barring involvement in an industry or profession issued by any state or federal regulatory agency.¹⁶

20. The Respondents are subject to discipline in Minnesota pursuant to Minn. Stat. § 58.12, subd. 1(b)(2)(vii) based on the cease and desist orders issued in California and Georgia, which preclude the Respondents from involvement in an industry or profession regulated by the Department.

21. Disciplinary action against the Respondents is in the public interest.

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

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Department of Commerce take adverse action against the Respondents.

Dated: June 7, 2011

s/Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Default (not recorded)

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision

¹⁴ Minn. Stat. § 45.027, subd. 1a.

¹⁵ Minn. Stat. § 45.027, subd. 7(a)(3).

¹⁶ Minn. Stat. § 58.12, subd. 1(b)(2)(vii).

shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Mike Rothman, Commissioner, Minnesota Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

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. 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 the Administrative Law Judge of the date on which the record closes. To comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

Under Minn. Stat. § 14.62, subd. 1, the agency 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.