

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE
DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of James D. Ober; Wendy L. Ober; Accredited Financial, Inc.; Eagle River Financial, LLC; Mortgage Planners, Inc.; OFC Properties, Inc.; Aurora Pliego de Burgos; Raul Omana; Raul Pliego; RP New Horizons, LLC; Peter DeNardo; Alex Sanchez; Jose Torres; and Mario Rodriguez

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

A prehearing conference was held on September 7, 2011, at the Office of Administrative Hearings by Administrative Law Judge Beverly Jones Heydinger, pursuant to Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges, dated June 21, 2011.

The following Respondents failed to appear at the Prehearing Conference, did not notify the Administrative Law Judge that they would not appear and have not contacted the Administrative Law Judge concerning their intent to participate in this proceeding: Accredited Financial, Inc., Eagle River Financial, LLC, OFC Properties, Inc., RP New Horizons, LLC, and Alex Sanchez.

At the Prehearing Conference on September 7, 2011, Michael J. Tostengard, Assistant Attorney General, appearing on behalf of the Department of Labor and Industry, requested that a default order be entered against the Respondents who failed to appear. That request was reiterated in a letter dated September 22, 2011.

This Recommendation addresses only those Respondents who failed to appear at the Prehearing Conference on September 7, 2011.

On June 9, 2012, the Department filed an Amended Statement of Charges, adding specificity to the claims against Alex Sanchez, RP New Horizons, OFC Properties, Inc., and Accredited Financial, Inc.

Based on the failure of such Respondents to appear at the Prehearing Conference, to provide an address where service can be made, and based on the

record as a whole, the Administrative Law Judge recommends that the Commissioner issue an Order affirming some of the alleged violations, as set forth below.

STATEMENT OF THE ISSUES

1. Did Respondents fail to act in borrower's best interest and utmost good faith and fail to disclose to borrower all material facts, in violation of Minn. Stat. § 58.16, subd. 1(1) and (3) (sic)?¹

2. Did Respondents fail to perform in conformance with their written agreements with borrowers, investors, other licensees, or exempt persons, in violation of Minn. Stat. § 58.13, subd. 1 (a)(5)?

3. Did Respondents make false, deceptive, or misleading statements in connection with a residential mortgage loan, in violation of Minn. Stat. § 58.13, subd. 1 (a)(9)?

4. Did Respondents conduct a residential loan business under any name other than the licensee, in violation of Minn. Stat. § 58.13, subd. 1 (a)(10)?

5. Did Respondents operate without either a Residential Mortgage Originator (RMO) or Residential Mortgage Servicer (RMS) license, in violation of Minn. Stat. §58.04, subs. 1 and 2?

6. Did Respondents fail to disburse funds according to contractual or statutory obligations, in violation of Minn. Stat. § 58.13, subd. 1a (4)?

7. Did Respondents make a loan with intent that the loan would not be repaid and that Respondents would obtain title via foreclosure, in violation of Minn. Stat. § 58.13, subd. 1 (a)(13)?

8. Did Respondents make a loan without verifying the borrower's reasonable ability to make the scheduled payments, in violation of Minn. Stat. § 58.13, subd. 1(a)(24)?

9. Did Respondents OFC Properties and RP New Horizons, LLC, perform real estate broker activity without a license, in violation of Minn. Stat. § 82.81, subd. 1?

10. Did Respondents OFC Properties and RP New Horizons, LLC, act on behalf of more than one party without the knowledge and consent of all parties, in violation of Minn. Stat. § 82.81, subd. 12 (a)(1)?

11. Did Respondents OFC Properties and RP New Horizons, LLC, act in dual capacity of licensee and undisclosed principal, in violation of Minn. Stat. § 82.81, subd. 12 (a)(2)?

¹ Minnesota Statutes are cited to the 2010 Edition.

12. Did Respondents OFC Properties and RP New Horizons, LLC, advertise real estate broker services in a misleading way, in violation of Minn. Stat. § 82.81, subd. 12 (a)(8)?

13. Did Respondents OFC Properties and RP New Horizons, LLC, make material misrepresentations of fact, in violation of Minn. Stat. § 82.81, subd. 12 (a)(9)?

14. Did Respondents OFC Properties and RP New Horizons, LLC, make false or misleading statements or allow another to do so in order to induce an action, in violation of Minn. Stat. § 82.81, subd. 12 (a)(10)?

15. Did Respondents OFC Properties and RP New Horizons, LLC, fail to account or remit money belonging to another or commingle real estate funds, in violation of Minn. Stat. § 82.81, subds. 12 (a) (11) and (12)?

16. Did Respondents OFC Properties and RP New Horizons, LLC, fail to maintain a trust account, in violation of Minn. Stat. § 82.81, subd. 12 (a)(15)?

17. Did Respondents OFC Properties and RP New Horizons, LLC, pay benefits to unlicensed persons, which lead to the procurement of a buyer, in violation of Minn. Stat. § 82.81, subd. 12 (a)(14)?

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

FINDINGS OF FACT

1. On June 21, 2011, the Notice of and Order for Hearing, Order for Prehearing Conference, Order to Show Cause, and Statement of Charges (Order for Hearing), was sent via first class mail to all of the Respondents, including Accredited Financial, Inc., Eagle River Financial, LLC, OFC Properties, Inc., RP New Horizons, LLC, and Alex Sanchez, to the address on file with the Department, as appears from the Affidavit of Service by First Class Mail filed in this proceeding.

2. Accredited Financial, Inc., is a Wyoming Corporation; Eagle River Financial, LLC, is a Wisconsin limited liability company; OFC Properties is a California corporation and RP New Horizons, LLC is a Minnesota Limited Liability Company. OFC Properties is licensed by the Department as a master plumber, mechanical contractor and residential building contractor. Accredited Financial, Inc., and Eagle River Financial, LLC and Alex Sanchez are not licensed in any capacity by the State of Minnesota. RP New Horizons is not licensed as either a Residential Mortgage Originator or Residential Mortgage Servicer.

3. Respondents Accredited Financial, Inc., Eagle River Financial, LLC, OFC Properties, Inc., RP New Horizons, LLC, and Alex Sanchez (Respondents) failed to appear at the prehearing conference, did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

4. The Order for Hearing stated, in part:

Respondents' failure to appear at the prehearing conference may result in a finding that Respondents are in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

5. Because Accredited Financial, Inc., Eagle River Financial, LLC, OFC Properties, Inc., RP New Horizons, LLC, and Alex Sanchez failed to appear, they are in default.

6. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Order for Hearing related to these Respondents are taken as true and incorporated by reference into these Findings of Fact.

7. Citations to the transcripts or hearing exhibits in these Findings of Fact are not inclusive of all applicable evidentiary support in the record.

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

CONCLUSIONS

1. The Department and the Administrative Law Judge have jurisdiction to consider this matter pursuant to Minn. Stat. §§ 14.50, 45.027, 58.12 and 82.82.

2. Attempts were made to serve the Respondents by the Department and the Administrative Law Judge at the last known address, but the mailings could not be delivered and were returned by the U.S. Post Office.

3. The Department failed to allege sufficient facts to demonstrate that Respondents failed to act in borrower's best interest and utmost good faith and failed to disclose to borrower all material facts, in violation of Minn. Stat. § 58.16, subd. 1(1) and (3) (sic).

4. The Department failed to allege sufficient facts to demonstrate that Respondents failed to perform in conformance with their written agreements with borrowers, investors, other licensees, or exempt persons, in violation of Minn. Stat. § 58.13, subd. 1 (a)(5).

5. Respondents made false, deceptive, or misleading statements in connection with a residential mortgage loan, in violation of Minn. Stat. § 58.13, subd. 1 (a)(9).

6. Respondents conducted a residential loan business under a name other than the licensee, Mortgage Planners, Inc., in violation of Minn. Stat. § 58.13, subd. 1 (a)(10).

7. Respondents operated without either a Residential Mortgage Originator (RMO) or Residential Mortgage Servicer (RMS) license, in violation of Minn. Stat. § 58.04, subds. 1 and 2.

8. The Department failed to allege sufficient facts to demonstrate that Respondents failed to disburse funds according to contractual or statutory obligations, in violation of Minn. Stat. § 58.13, subd. 1a (4).

9. Respondents made a loan with intent that the loan would not be repaid and that Respondents would obtain title via foreclosure, in violation of Minn. Stat. § 58.13, subd. 1 (a)(13).

10. Respondents made a loan without verifying the borrower's reasonable ability to make the scheduled payments, in violation of Minn. Stat. § 58.13, subd. 1 (a)(24).

11. Respondents OFC Properties and RP New Horizons, LLC, performed real estate broker activity without a license, in violation of Minn. Stat. § 82.81, subd. 1.

12. Respondents OFC Properties and RP New Horizons, LLC, acted on behalf of more than one party without the knowledge and consent of all parties, in violation of Minn. Stat. § 82.81, subd. 12 (a)(1).

13. Respondents OFC Properties and RP New Horizons, LLC, acted in the dual capacity of licensee and undisclosed principal, in violation of Minn. Stat. § 82.81, subd. 12 (a)(2).

14. The Department failed to allege sufficient facts to demonstrate that Respondents OFC Properties and RP New Horizons, LLC, advertised real estate broker services in a misleading way, in violation of Minn. Stat. § 82.81, subd. 12 (a)(8).

15. Respondents OFC Properties and RP New Horizons, LLC, made material misrepresentations of fact, in violation of Minn. Stat. § 82.81, subd. 12 (a)(9).

16. Respondents OFC Properties and RP New Horizons, LLC, made false or misleading statements or allowed another to do so in order to induce an action, in violation of Minn. Stat. § 82.81, subd. 12 (a)(10).

17. The Department failed to allege sufficient facts to demonstrate that Respondents OFC Properties and RP New Horizons, LLC, failed to account or remit money belonging to another or commingled real estate funds, in violation of Minn. Stat. § 82.81, subds. 12 (a) (11) and (12).

18. The Department failed to allege sufficient facts to demonstrate that Respondents OFC Properties and RP New Horizons, LLC, failed to maintain a trust account, in violation of Minn. Stat. § 82.81, subd. 12 (a)(15).

19. The Department failed to allege sufficient facts to demonstrate that Respondents OFC Properties and RP New Horizons, LLC, paid benefits to unlicensed persons, which lead to the procurement of a buyer, in violation of Minn. Stat. § 82.81, subd. 12 (a)(14).

20. Any Findings of Fact more properly designated as Conclusions are hereby adopted as such.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum incorporated herein, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge recommends that the Commissioner take disciplinary action against the Respondents, consistent with the proven violations.

Dated: June 29, 2012

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Default; not recorded

NOTICE

This report is a recommendation, not a final decision. The 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 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: Melissa Knoepfler, Suite 500, 85 Seventh Pl E, St. Paul, MN 55101, 651-296-2715, 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.

Pursuant to 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.

MEMORANDUM

In a default, it is necessary to take the alleged facts and determine whether those facts constitute the alleged violations. The burden is on the Department to allege sufficient facts to support each of the violations. When the connection between the facts and the alleged violations is not apparent, no violation may be found. The connections may be obvious to the Department, but that is not sufficient. In this case, although there are many allegations against many Respondents, the link between the alleged facts and the alleged violations was not always clear. In those instances, it was not appropriate to conclude that the violations occurred. Since it appears that, apart from Sanchez, the rest of the Respondents that were subject to default were shells used by Respondents James Ober, Wendy Ober and Raul Pliego, who have chosen not to contest the allegations against them, the insufficiency of the pleadings against Respondents RP New Horizons, OFC Properties, Accredited Financial and Eagle River Financial may be inconsequential.

Failure to act in the borrower's best interest and disclose all material facts to the borrower.

The allegations support the conclusion that the lender, Franklin America Mortgage Company, was defrauded, but do not make clear who the defrauded borrower was. There are references to unnamed straw buyers, but no named borrowers, with the exception of other named Respondents. In addition, the statutory citation is incorrect, but may refer to § 58.16, subd. 2 (1) and (3).

Failure to perform in conformance with their written agreements with borrowers, investors, other licensees, or exempt persons.

As with the above, there are insufficient facts alleged to identify what written agreements were breached with which borrowers, investors, other licensees or exempt persons.

Failure to disburse funds according to contractual or statutory obligations.

There were insufficient facts alleged to identify what contractual or statutory obligations were violated by the manner in which the funds were disbursed.

Additional Allegations against OFC Properties and RP New Horizons, LLC.

There were insufficient allegations to show that OFC Properties and RP New Horizons, LLC, advertised real estate broker services in a misleading way, failed to account or remit money belonging to another or commingling real estate, failed to maintain a trust account or paid benefits to unlicensed persons which lead to the procurement of a buyer.

Although there were insufficient facts to warrant some of the alleged violations, based on the number of proven violations, the file will be closed and returned to the Commissioner to determine the appropriate sanction. The Department may file an additional amended Notice and Order for Hearing and Statement of Charges if it seeks to pursue the remaining charges.

B.J.H.