

1 On May 31, 2007, Respondent filed an Application for Adjudicative Hearing. On June 1,
2 2007, the Department made a request to the Office of Administrative Hearings (OAH) to assign an
3 Administrative Law Judge (ALJ) to schedule and conduct a hearing on the Statement of Charges. On
4 June 6, 2007, OAH issued a Notice of Assignment of Administrative Law Judge assigning ALJ Robert
5 P. Kingsley (ALJ Kingsley) to preside over prehearing and hearing proceedings and issue an Initial
6 Decision. On June 6, 2007, ALJ Kingsley issued a Notice of Hearing scheduling a hearing on
7 Wednesday, June 13, 2007, at 9:00 a.m. That Notice contained the following warning to the parties:
8 **“Any party failing to appear, attend, or otherwise participate at any stage of this proceeding**
9 **may be held in default and a decision may be entered against their interest.”** The Notice of
10 Hearing was mailed to the Respondent at the address Respondent provided in his Application for
11 Adjudicative Hearing.
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13 On June 13, 2007, at 10:00 a.m., ALJ Kingsley inquired into the status of the parties and
14 determined that Respondent had not appeared. At that time, ALJ Kingsley instructed that the hearing
15 would not convene until 10:15 a.m. to permit Respondent additional time to arrive. On June 13, 2007,
16 at 10:15 a.m., ALJ Kingsley convened the hearing and determined that Respondent had failed to
17 appear. The Department moved for an order of default based on Respondent’s failure to appear and
18 ALJ Kingsley found the Respondent to be in default. On June 14, 2007, ALJ Kingsley issued an Order
19 of Default affirming the Statement of Charges and ordering a Permanent Order to Cease and Desist.
20 On June 14, 2007, ALJ Kingsley sent the Order of Default Order to the address provided in
21 Respondent’s Application for Adjudicative Hearing.
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23 Pursuant to RCW 34.05.440(3), Respondent had seven (7) days from the date of service of the
24 Order of Default and Initial Order to file a written motion with OAH requesting that the Order of
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1 Default and Initial Order be vacated, and stating the grounds relied upon. Respondent did not make a
2 request to vacate during the statutory period. Pursuant to RCW 34.05.464 and WAC 10-08-211,
3 Respondent had twenty (20) days from the date of service of the Order of Default and Initial Order to
4 file a Petition for Review of the Order of Default and Initial Order with the Director. Respondent did
5 not file a Petition for Review during the statutory period.

6 B. Record Presented. The record presented to the Director's designee for her review and
7 for entry of a final decision included the following:

- 8 1. Statement of Charges, Temporary Order to Cease and Desist, cover letters dated May
9 17, 2007, Notices of Opportunity to Defend and Opportunity for Hearing, and blank
10 Applications for Adjudicative Hearing for David Brian Capelli, with documentation
11 of service;
- 12 2. Application for Adjudicative Hearing for David Brian Capelli;
- 13 3. Request to OAH for Assignment of Administrative Law Judge;
- 14 4. Notice of Assignment of Administrative Law Judge dated June 6, 2007, with
15 documentation of service;
- 16 5. Notice of Hearing dated June 6, 2007, with documentation of service;
- 17 6. Order of Default dated June 14, 2007, with documentation of service.

18 C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.440(2), the
19 Director's designee hereby adopts the Statement of Charges and the Temporary Order to Cease and
20 Desist, which are attached hereto.

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2 II. FINAL ORDER

3 Based upon the foregoing, and the Director's designee having considered the record and
4 being otherwise fully advised, NOW, THEREFORE:

5 A. IT IS HEREBY ORDERED, That:

- 6 1. Respondent David Brian Capelli shall immediately cease and desist from participating
7 in the conduct of the affairs of any mortgage broker subject to licensure by the
8 Director, in any manner, specifically including, but not limited to originating any
9 residential mortgage loan, assisting with the origination of any residential mortgage
10 loan, and holding himself out as able to assist any person with applying for or
11 obtaining any residential mortgage loan; and
- 12 2. Respondent David Brian Capelli's license to conduct the business of a Loan Originator
13 is revoked; and
- 14 3. Respondent David Brian Capelli is banned from participation in the conduct of the
15 affairs of any mortgage broker subject to licensure by the Director, in any manner,
16 through December 10, 2013.

17 B. Reconsideration. Pursuant to RCW 34.05.470, Respondent has the right to file a
18 Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition
19 must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150
20 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia,
21 Washington 98504-1200, within ten (10) days of service of the Final Order upon Respondent. The
22 Petition for Reconsideration shall not stay the effectiveness of this order nor is a Petition for
23 Reconsideration a prerequisite for seeking judicial review in this matter.

24 A timely Petition for Reconsideration is deemed denied if, within twenty (20) days from the date
25 the petition is filed, the agency does not (a) dispose of the petition or (b) serve the parties with a written
notice specifying the date by which it will act on a petition.

1 C. Stay of Order. The Director's designee has determined not to consider a Petition
2 to Stay the effectiveness of this order. Any such requests should be made in connection with a Petition
3 for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

4 D. Judicial Review. Respondent has the right to petition the superior court for judicial
5 review of this agency action under the provisions of chapter 34.05 RCW. For the requirements for filing
6 a Petition for Judicial Review, see RCW 34.05.510 and sections following.

7 E. Service. For purposes of filing a Petition for Reconsideration or a Petition for
8 Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service
9 attached hereto.
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11 DATED this 12th day of July, 2007.



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13 STATE OF WASHINGTON
14 DEPARTMENT OF FINANCIAL INSTITUTIONS

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16 DEBORAH BORTNER
17 DIRECTOR
18 DIVISION OF CONSUMER SERVICES

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

NO. C-07-133-07-SC01

DAVID BRIAN CAPELLI,
Loan Originator

STATEMENT OF CHARGES and
NOTICE OF INTENTION TO ENTER
AN ORDER TO REVOKE LICENSE AND
PROHIBIT FROM INDUSTRY

Respondent.

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INTRODUCTION

Pursuant to RCW 19.146.220 and RCW 19.146.223, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 19.146 RCW, the Mortgage Broker Practices Act (Act)¹. After having conducted an investigation pursuant to RCW 19.146.310 and RCW 19.146.235, and based upon the facts available as of date of this document, the Director, through his designee, Division of Consumer Services Director Deborah Bortner, institutes this proceeding and finds as follows:

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I. FACTUAL ALLEGATIONS

18 **1.1 Respondent David Brian Capelli (Respondent Capelli)** was licensed by the Department of Financial
19 Institutions of the State of Washington (Department) to conduct business as a loan originator on February 28,
20 2007, and continues to be licensed to date. Respondent Capelli is licensed to conduct the business of a Loan
21 Originator for Abacus Mortgage, Inc., and Open Mortgage, Inc., both of which are mortgage brokers licensed
22 under the Act.

23 **1.2 False Statements and Omission of Material Information on License Application.** Respondent
24 Capelli submitted an application to the Department for a loan originator license, which was received by the
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¹ RCW 19.146 (2007)

1 Department on or about December 10, 2006. The "Criminal Disclosure" section of the loan originator license
2 application consists of eight questions, each answered by selecting either "Yes" or "No." Respondent Capelli
3 answered "No" to the following questions on the "Criminal Disclosure" section of his loan originator license
4 application:

- 5 • 1-Have you ever been convicted of or plead guilty or nolo contendere ("no contest") in a
6 domestic, foreign, or military court to any felony?
- 7 • 2-Have you ever been charged with any felony?

8 The Department investigated Respondent Capelli's criminal history and determined that on February 11, 2005,
9 Respondent Capelli was convicted in the 6th Circuit Court of the State of Michigan of the following crimes:

10 A. Obtaining Personal Identity Information Without Authorization, a felony crime pursuant to
11 Michigan Compiled Laws 750.285, and

12 B. False Pretenses, a felony crime pursuant to Michigan Compiled Laws 750.218(4)(a).

13 Respondent Capelli was obligated by statute to answer questions on the loan originator license application
14 truthfully and to provide the Department with complete details of all events or proceedings.

15 **1.3 On-Going Investigation.** The Department's investigation into the alleged violations of the Act by
16 Respondent continues to date.

17 II. GROUNDS FOR ENTRY OF ORDER

18 **2.1 Requirement of No Prior Convictions.** Based on the Factual Allegations set forth in Section I above,
19 on the date Respondent Capelli submitted his loan originator license application he failed to meet the
20 requirements of RCW 19.146.310(1)(d) and WAC 208-660-350(2)(c) by having been convicted of a felony
21 within seven years of the filing of the present application.

22 **2.2 Requirement to Provide Information on License Application.** Based on the Factual Allegations set
23 forth in Section I above, on the date Respondent Capelli submitted his loan originator license application he
24 failed to meet the requirements of RCW 19.146.300(1) and (2) and RCW 19.146.310(1)(b) by failing to provide
25 an accurate and complete license application in the form prescribed by the Director.

1 **2.3 Requirement to Demonstrate Character and General Fitness.** Based on the Factual Allegations set
2 forth in Section I above, on the date Respondent Capelli submitted his loan originator license application he
3 failed to meet the requirements of RCW 19.146.310(1)(g) and WAC 208-660-350(2)(a) by failing to
4 demonstrate character and general fitness such as to command the confidence of the community and to warrant
5 a belief that the business will be operated honestly and fairly within the purposes of the Act.

6 **2.4 Prohibited Practices.** Based on the Factual Allegations set forth in Section I above, on the date
7 Respondent Capelli submitted his loan originator license application he was in apparent violation of RCW
8 19.146.0201(8) and WAC 208-660-500(3)(i) for negligently making any false statement or willfully making
9 any omission of material fact in connection with any application or any information filed by a licensee in
10 connection with any application, examination or investigation conducted by the Department.

11 III. AUTHORITY TO IMPOSE SANCTIONS

12 **3.1 Authority to Revoke License.** Pursuant to RCW 19.146.220(2)(b), the Director may revoke a license
13 for false statements or omission of material information on the application that, if known, would have allowed
14 the director to deny the application for the original license.

15 **3.2 Authority to Prohibit from the Industry.** Pursuant to RCW 19.146.220(5)(a) and (b), the Director
16 may issue orders prohibiting from participation in the conduct of the affairs of a licensed mortgage broker, any
17 loan originator for any violation of RCW 19.146.0201(1) through (9) or false statements or omission of material
18 information on the application that, if known, would have allowed the Director to deny the application for the
19 original license.

20 IV. NOTICE OF INTENTION TO ENTER ORDER

21 Respondent Capelli's violations of the provisions of chapter 19.146 RCW and chapter 208-660 WAC, as
22 set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions,
23 constitute a basis for the entry of an Order under RCW 19.146.220, RCW 19.146.221, and RCW 19.146.223.
24 Therefore, it is the Director's intention to ORDER that:

25 **4.1** Respondent David Brian Capelli's license to conduct the business of a loan originator be revoked; and

1 4.2 Respondent David Brian Capelli be prohibited from participation in the conduct of the affairs of any
2 mortgage broker subject to licensure by the Director, in any manner, through December 10, 2013.

3 **V. AUTHORITY AND PROCEDURE**

4 This Statement of Charges and Notice of Intention to Enter an Order to Revoke License and Prohibit from
5 Industry (Statement of Charges) is entered pursuant to the provisions of RCW 19.146.220, RCW 19.146.221,
6 RCW 19.146.223 and RCW 19.146.230, and is subject to the provisions of chapter 34.05 RCW (The
7 Administrative Procedure Act). Respondent may make a written request for a hearing as set forth in the
8 NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this
9 Statement of Charges.

10 Dated this 17th day of May, 2007.

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13 DEBORAH BORTNER
14 Director
15 Division of Consumer Services
16 Department of Financial Institutions

17 Presented by:

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19 STEVEN C. SHERMAN
20 Financial Legal Examiner

21 Approved by:

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23 JAMES R. BRUSSELBACK
24 Enforcement Chief



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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING:
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

DAVID BRIAN CAPELLI,
Loan Originator,

Respondent.

C-07-133-07-SC01

NOTICE OF OPPORTUNITY TO DEFEND
AND OPPORTUNITY FOR HEARING

8 THE STATE OF WASHINGTON TO:

DAVID BRIAN CAPELLI

9 YOU ARE HEREBY NOTIFIED that a STATEMENT OF CHARGES has been filed by the Department
10 of Financial Institutions, a true and correct copy of which is attached and made a part hereof.

11 YOU ARE HEREBY NOTIFIED that you may file an application for an adjudicative hearing before the
12 Washington State Department of Financial Institutions on the Statement of Charges. Service of this notice is
13 deemed complete upon deposit in the United States mail. YOUR APPLICATION MUST BE RECEIVED BY
14 THE DEPARTMENT OF FINANCIAL INSTITUTIONS WITHIN TWENTY (20) DAYS FROM THE DATE
15 YOU RECEIVED THIS NOTICE. If you demand a hearing, you will be notified of the time and place for the
16 hearing at least seven (7) days in advance of the hearing date.

17 At the hearing, you may appear personally, and by counsel, if you desire. The hearing will be as informal
18 as is practical within the requirements of the Administrative Procedure Act (see chapter 34.05 RCW). The hearing
19 will be recorded. The primary concern will be getting to the truth of the matter insofar as the Statement of Charges
20 is concerned. Technical rules of evidence will not be binding at the hearing except for the rules of privilege
21 recognized by law. You have the right to present evidence and witnesses in your own behalf, and to cross-examine
22 those witnesses presented in support of the Statement of Charges. You may require the attendance of witnesses by
23 subpoena. If you are limited English- speaking or hearing impaired, you have the right to have an interpreter
24 appointed at no cost to you, as discussed below.

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NOTICE OF OPPORTUNITY TO DEFEND
AND OPPORTUNITY FOR HEARING

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
150 Israel Rd SW
PO Box 41200
Olympia, WA 98504-1200
(360) 902-8703

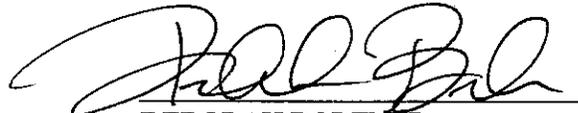
1 INTERPRETER AVAILABILITY. If you or a witness for you is a person who, because of non-English-
2 speaking cultural background, cannot readily speak or understand the English language, or if you or a witness for
3 you is a person who, because of a hearing impairment or speech defect, cannot readily understand or communicate
4 in spoken language, including persons who are deaf, deaf and blind, or hard of hearing, AND YOU NEED AN
5 INTERPRETER, then a qualified interpreter will be appointed at no cost to you or to the witness. You may request
6 the appointment of a qualified interpreter by indicating your request on the attached Application for Adjudicative
7 Hearing form.

8 YOU ARE FURTHER NOTIFIED that if the Department of Financial Institutions does not RECEIVE the
9 Application for Adjudicative Hearing form within twenty (20) days from the date you received this notice, this will
10 constitute a waiver of your right to a hearing and the Director will find that you do not contest the allegations of the
11 Statement of Charges. Upon such a finding by the Director a final order will be immediately entered disposing of
12 this matter as described in the Statement of Charges. If you desire a hearing in this matter, please return the
13 attached Application for Adjudicative Hearing to:

14 Department of Financial Institutions
15 Division of Consumer Services
16 Attn: Fatima Batic
17 PO Box 41200
18 Olympia, Washington 98504-1200

19 Dated this 17th day of May, 2007.



20 
21 DEBORAH BORTNER
22 Director
23 Division of Consumer Services
24 Department of Financial Institutions

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
CONSUMER SERVICES DIVISION**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

C-07-133-07-TD01

DAVID BRIAN CAPELLI,
Loan Originator

TEMPORARY ORDER TO
CEASE AND DESIST

Respondent.

7 THE STATE OF WASHINGTON TO: DAVID BRIAN CAPELLI

8 COMES NOW the Director of the Washington State Department of Financial Institutions (Director), by
9 and through his designee Deborah Bortner, Division Director, Division of Consumer Services (designee), and
10 finding that the public is likely to be substantially injured by delay in issuing a cease and desist order, the Director,
11 through his designee, Division of Consumer Services Director Deborah Bortner, enters this temporary order to
12 cease and desist pursuant to chapter 19.146 RCW, the Mortgage Broker Practices Act (Act), based on the
13 following findings:

14 **I. FACTUAL FINDINGS**

15 **1.1 Respondent David Brian Capelli (Respondent Capelli)** was licensed by the Department of
16 Financial Institutions of the State of Washington (Department) to conduct business as a loan originator on
17 February 28, 2007, and continues to be licensed to date. Respondent Capelli is currently licensed to conduct
18 the business of a Loan Originator for Abacus Mortgage, Inc., and Open Mortgage, Inc., both of which are
19 mortgage brokers licensed under the Act.

20 **1.2 False Statements and Omission of Material Information on License Application.**

21 Respondent Capelli submitted an application to the Department for a loan originator license, which was
22 received by the Department on or about December 10, 2006. The "Criminal Disclosure" section of the loan
23 originator license application consists of eight questions, each answered by selecting either "Yes" or "No."
24 Respondent Capelli answered "No" to the following questions on the "Criminal Disclosure" section of his loan
25 originator license application:

- 1 • 1-Have you ever been convicted of or plead guilty or nolo contendere (“no contest”) in a
- 2 domestic, foreign, or military court to any felony?
- 3 • 2-Have you ever been charged with any felony?

4 The Department investigated Respondent Capelli’s criminal history and determined that on February 11, 2005,
5 Respondent Capelli was convicted in the 6th Circuit Court of the State of Michigan of the following crimes:

6 A. Obtaining Personal Identity Information Without Authorization, a felony crime pursuant to
7 Michigan Compiled Laws 750.285, and

8 B. False Pretenses, a felony crime pursuant to Michigan Compiled Laws 750.218(4)(a).

9 Respondent Capelli was obligated by statute to answer questions on the loan originator license application
10 truthfully and to provide the Department with complete details of all events or proceedings.

11 II. GROUNDS FOR ENTRY OF ORDER

12 **2.1 Requirement of No Prior Convictions.** Based on the Factual Allegations set forth in Section
13 I above, on the date Respondent Capelli submitted his loan originator license application he failed to meet the
14 requirements of RCW 19.146.310(1)(d) and WAC 208-660-350(2)(c) by having been convicted of a felony
15 within seven years of the filing of his application.

16 **2.2 Requirement to Provide Information on License Application.** Based on the Factual
17 Allegations set forth in Section I above, on the date Respondent Capelli submitted his loan originator license
18 application he failed to meet the requirements of RCW 19.146.300(1) and (2) and RCW 19.146.310(1)(b) by
19 failing to provide an accurate and complete license application in the form prescribed by the Director.

20 **2.3 Requirement to Demonstrate Character and General Fitness.** Based on the Factual
21 Allegations set forth in Section I above, on the date Respondent Capelli submitted his loan originator license
22 application he failed to meet the requirements of RCW 19.146.310(1)(g) and WAC 208-660-350(2)(a) by
23 failing to demonstrate character and general fitness such as to command the confidence of the community and
24 to warrant a belief that the business will be operated honestly and fairly within the purposes of the Act.

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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
DIVISION OF CONSUMER SERVICES**

IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Mortgage Broker Practices Act of Washington by:

C-07-133-07-TD01

DAVID BRIAN CAPELLI,
Loan Originator

NOTICE OF OPPORTUNITY TO DEFEND
AND OPPORTUNITY FOR HEARING

Respondents.

7 THE STATE OF WASHINGTON TO: DAVID BRIAN CAPELLI

8 YOU ARE HEREBY NOTIFIED that a Temporary Order to Cease and Desist has been filed by the
9 Department of Financial Institutions, a true and correct copy of which is attached and made a part hereof.

10 YOU ARE HEREBY NOTIFIED that you may file an application for an adjudicative hearing before the
11 Washington State Department of Financial Institutions to contest the Temporary Order to Cease and Desist.

12 YOUR APPLICATION MUST BE RECEIVED BY THE DEPARTMENT OF FINANCIAL INSTITUTIONS
13 WITHIN TWENTY (20) DAYS FROM THE DATE YOU RECEIVED THIS NOTICE. Service of this notice is
14 deemed complete upon deposit in the United States mail. If you demand a hearing, you will be notified of the time
15 and place for the hearing at least seven (7) days in advance of the hearing date.

16 At the hearing, you may appear personally, and by counsel, if you desire. The hearing will be as informal
17 as is practical within the requirements of the Administrative Procedure Act (see chapter 34.05 RCW). The
18 hearing will be recorded. The primary concern will be getting to the truth of the matter insofar as the Temporary
19 Order is concerned. Technical rules of evidence will not be binding at the hearing except for the rules of privilege
20 recognized by law. You have the right to present evidence and witnesses in your own behalf, and to cross-
21 examine those witnesses presented in support of the Temporary Order to Cease and Desist. You may require the
22 attendance of witnesses by subpoena. If you are limited English-speaking or hearing impaired, you have the right
23 to have an interpreter appointed at no cost to you, as discussed below.

1 INTERPRETER AVAILABILITY. If you or a witness for you is a person who, because of non-English-
2 speaking cultural background, cannot readily speak or understand the English language, or if you or a witness for
3 you is a person who, because of a hearing impairment or speech defect, cannot readily understand or communicate
4 in spoken language, including persons who are deaf, deaf and blind, or hard of hearing, AND YOU NEED AN
5 INTERPRETER, then a qualified interpreter will be appointed at no cost to you or to the witness. You may
6 request the appointment of a qualified interpreter by indicating your request on the attached Application for
7 Adjudicative Hearing form.

8 YOU ARE FURTHER NOTIFIED that if the Department of Financial Institutions does not RECEIVE the
9 Application for Adjudicative Hearing form within twenty (20) days from the date you received this notice, this
10 will constitute a waiver of your right to a hearing and the Director will find that you do not contest the allegations
11 of the Temporary Order to Cease and Desist. Upon such a finding by the Director, a permanent Order to Cease
12 and Desist will be immediately entered disposing of this matter as described in the Temporary Order to Cease and
13 Desist. If you desire a hearing in this matter, please return the attached Application for Adjudicative Hearing to:

14 Department of Financial Institutions, Division of Consumer Services
15 Attn: Fatima Batie
16 PO Box 41200
17 Olympia, Washington 98504-1200

18 Dated this 17th day of May, 2007.



A handwritten signature in black ink, appearing to read "Deborah Bortner", written over a horizontal line.

19 DEBORAH BORTNER
20 Director
21 Division of Consumer Services
22 Department of Financial Institutions