STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

IN THE MATTER OF DETERMINING Whether there has been a violation of the Consumer Loan Act of Washington by: CBSK FINANCIAL GROUP, INC., dba AMERICAN HOME LOANS, CHARLES "BRENT" MCELWEE, President and 50% Owner, and CYNTHIA ROSE MCELWEE, Secretary and 50% Owner, Respondents.	NO. C-08-009-09-FO01 FINAL ORDER

I. DIRECTOR'S CONSIDERATION

A. Default. This matter has come before the Director of the Department of Financial Institutions of the State of Washington (Director) pursuant to RCW 34.05.440(2). On November 17, 2008, the Director, through Consumer Services Division Director Deborah Bortner, entered a Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry, Order Restitution, Impose Fine, Collect Unpaid Annual Assessment Fees, and Collect Investigation Fee (Statement of Charges). A copy of the Statement of Charges is attached and incorporated into this order by this reference. The Statement of Charges was accompanied by a cover letter dated November 18, 2008, a Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee. The Department served the Statement of Charges, cover letter dated November 18, 2008, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee on Respondents on November 18, 2008, by First-Class mail and Federal Express overnight

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delivery. On November 19, 2008, the documents sent via Federal Express overnight delivery were delivered and signed for by C. McElwee. The documents sent via First-Class mail were not returned to the Department by the United States Post Office as undeliverable.

On November 20, 2008, the Department received signed Applications for Adjudicative hearing from Respondent CBSK Financial Group, Inc., and Respondent Charles "Brent" McElwee. To date, the Department has not received a signed Application for Adjudicative hearing from Respondent Cynthia Rose McElwee.

On February 13, 2009, the Department made a request to the Office of Administrative Hearings (OAH) to assign an Administrative Law Judge (ALJ) to schedule and conduct a hearing on the Statement of Charges. On February 27, 2009, OAH issued a Notice of Prehearing Conference scheduling a prehearing conference on Wednesday, March 18, 2009, at 8:15 a.m. That Order contained the following instruction to the parties: "The prehearing conference will be conducted by telephone conference call. Please call ten (10) minutes prior to the above-scheduled time locally at 360- 690-7189 or toll free 1-800-243-3451." That Order also noted "Parties who fail to attend or participate in the hearing or other stage of an adjudicative proceeding may be held in default in accordance with chapter 34.05 RCW, RCW 34.05.440."

On March 18, 2009, the prehearing conference was convened by ALJ Gina L. Hale at 8:15 a.m. Respondents failed to appear and the Department moved for an order of default based on Respondents' failure to appear. On March 18, 2009, ALJ Hale issued an Order of Default dismissing the Respondents' appeal, and sent the Order of Default to the address in Respondents' Applications for Adjudicative Hearing.

Pursuant to RCW 34.05.440(3), Respondents had seven days from the date of service of the Order of Default to file a written motion with OAH requesting that the Order of Default be vacated

and stating the grounds relied upon. Respondents did not make a request to vacate during the statutory period. Pursuant to RCW 34.05.464 and WAC 10-08-211, Respondents had 20 days from the date of service of the Order of Default to file a Petition for Review of the Order of Default with the Director. Respondents did not file a Petition for Review during the statutory period.

B. Record Presented. The record presented to the Director for review and for entry of a final decision included the following:

1. Statement of Charges, cover letter dated November 18, 2008, Notice of Opportunity to Defend and Opportunity for Hearing, and blank Applications for Adjudicative Hearing for CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee, with documentation of service;

2. Applications for Adjudicative Hearing for CBSK Financial Group, Inc., and Charles "Brent" McElwee;

3. Request to OAH for Assignment of Administrative Law Judge;

4. Notice of Prehearing Conference dated February 27, 2009, with documentation of service;

5. Order of Default dated March 18, 2009, with documentation of service;

6. Respondents' request to reschedule pre-hearing conference, dated March 30, 2009;

7. Initial Order on Petition to Reinstate dated October 22, 2009, with documentation of service.

C. Factual Findings and Grounds For Order. Pursuant to RCW 34.05.440(1) and RCW 34.05.440(2), the Director hereby adopts the Statement of Charges, which is attached hereto.

II. FINAL ORDER

Based upon the foregoing, and the Director having considered the record and being otherwise fully advised, NOW, THEREFORE:

DEPARTMENT OF FINANCIAL INSTITUTIONS
150 Israel Rd SW
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Olympia, WA 98504-1200
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A. IT IS HEREBY ORDERED, that:

1. Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee are prohibited from participating in the conduct of the affairs of any consumer loan company licensed or required to be licensed by the Department, in any manner, for a period of five years; and

2. Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee shall jointly and severally pay restitution to injured borrower B.A in the amount of $5,433 for disclosure violations in loan number 9739432 (application number 041206008)[1]; and

3. Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee shall jointly and severally pay a fine of $10,000; and

4. Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee shall jointly and severally pay the unpaid 2005 and 2007 annual assessment fees of $3,000, and annual assessment late penalties which continue to accrue at the rate of $100 per day; and

5. Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee shall jointly and severally pay an investigation fee of $2,553.37, calculated at $69.01 per hour for thirty-seven staff hours devoted to the investigation; and

6. Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee shall maintain records in compliance with the Act and provide the Director with the location of the books, records and other information relating to Respondent s' consumer loan company business, and the name, address, and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

B. Reconsideration. Pursuant to RCW 34.05.470, Respondents have the right to file a Petition for Reconsideration stating the specific grounds upon which relief is requested. The Petition must be filed in the Office of the Director of the Department of Financial Institutions by courier at 150 Israel Road SW, Tumwater, Washington 98501, or by U.S. Mail at P.O. Box 41200, Olympia, Washington 98504-1200, within ten days of service of the Final Order upon Respondents. The Petition

[1] The loan number is from the Final HUD-1. The application number is from Respondents' loan documents.

or Reconsideration shall not stay the effectiveness of this order nor is a Petition for Reconsideration a prerequisite for seeking judicial review in this matter.

A timely Petition for Reconsideration is deemed denied if, within 20 days from the date 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.

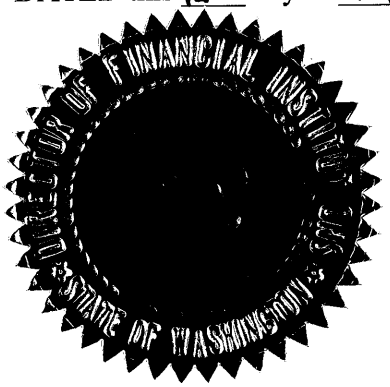
C. Stay of Order. The Director has determined not to consider a Petition to Stay the effectiveness of this order. Any such requests should be made in connection with a Petition for Judicial Review made under chapter 34.05 RCW and RCW 34.05.550.

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

E. Non-compliance with Order. If you do not comply with the terms of this order within thirty days of receipt, the Department may seek its enforcement by the Office of Attorney General to include the collection of the fines, fees, and restitution imposed herein.

F. Service. For purposes of filing a Petition for Reconsideration or a Petition for Judicial Review, service is effective upon deposit of this order in the U.S. mail, declaration of service attached hereto.

DATED this 16th day of December 2009.



STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

SCOTT JARVIS
DIRECTOR

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MAILED

OCT 22 2009

VANCOUVER OFFICE OF ADMINISTRATIVE HEARINGS

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS

In Re: CBSK Financial Group, Inc. dba American Home Loans Charles "Brent" McElwee, President Cynthia Rose McElwee, Secretary, Respondents.	Docket No. 2009-DFI-0006 DFI No. C-08-009-08-SC01 **INITIAL ORDER ON PETITION TO REINSTATE** Consumer Loan Act

Gina L. Hale, Administrative Law Judge (ALJ), conducted a prehearing conference by telephone conference call on May 22, 2009. The Respondents, Charles "Brent" McElwee, dba CBSK Financial Group, Inc., dba American Home Loans, and Cynthia Rose McElwee, appeared and represented themselves. Kate Reynolds, Assistant Attorney General, represented the Department of Financial Institutions (Department).

STATEMENT OF THE CASE

Whether the Respondents' request to vacate the Order of Default entered March 18, 2009, should be granted.

FINDINGS OF FACT

1. On November 17, 2008, the Department of Financial Institutions (Department) issued a Statement of Charges and Notice of Intention to Enter an Order to Prohibit form Industry, Order Restitution, Impose fine, Collect Unpaid Annual Assessment Fees, and Collect Investigation Fee against the Respondents, Charles "Brent" McElwee as President and 50% Owner, dba CBSK Financial Group, Inc., dba American Home Loans, and Cynthia Rose McElwee, as 50% Owner and Secretary.

2. The Statement of Charges informed the Respondents of their right to request an administrative hearing. To facilitate the hearing process, the Department provided the Respondents with copies of the Application for Adjudicative Hearing.

3. Mr. McElwee submitted a request on behalf of himself as President and in the name of the businesses, CBSK Financial Group, Inc. and American Home Loans. No Application for Adjudicative Hearing was submitted on behalf of Respondent, Cynthia Rose McElwee, Secretary.

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Vancouver, Washington 98661
(360) 690-7189 or 800-243-3451

4. The requests for hearing were forwarded to the Office of Administrative Hearings (OAH), and received on February 17, 2009.

5. On February 27, 2009, a Notice of Prehearing Conference was mailed to the parties. It scheduled a telephonic prehearing for March 18, 2009, at 8:15 a.m. At the appointed time, the Department representative appeared, but the Respondents did not.

6. Based on the non-appearance of the Respondents, the case was dismissed and an Order of Default was entered on March 18, 2009. The Order gave the Respondents seven (7) calendar days to request that the Order of Default be vacated as provided for in Revised Code of Washington (RCW) 34.05.440(3).

7. The request to vacate was due by March 25, 2009, if based on seven calendar days and March 27, 2009, if based on business days.

8. At approximately 8:50 a.m. on March 18, 2009, Mr. McElwee called in to the Office of Administrative Hearings stating that he did not know what the hearing was about. Staff members informed him that the case had been dismissed and that he could appeal the dismissal order.

9. On March 30, 2009, Mr. McElwee sent in a request to vacate which was received in the Vancouver OAH office on April 6, 2009.

CONCLUSIONS OF LAW

1. The undersigned Administrative Law Judge has jurisdiction to hear this matter pursuant to Revised Code of Washington (RCW) 31.04, Chapter 34.05 RCW, and Washington Administrative Code (WAC) 208-620.

2. Under the provisions of RCW 34.05.440(3), a party is given seven (7) days to request that a dismissal be vacated. The rule does not state whether these are calendar days or business days. There is no exception stated for good cause.

3. In counting the time line based on calendar days, the request to vacate would have been due on March 25, 2009. If based on seven business days, it would have been due on March 27, 2009. The Respondents' request was untimely under both forms of calculation.

4. The Respondents' request is dated March 30, 2009, as the date it was drafted. It is stamped as received by OAH on April 6, 2009.

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5. There is no provision for any good cause exception to meeting the seven-day time line.

6. Therefore, the Respondents' request to vacate shall be dismissed as untimely and the Order of Default entered March 18, 2009, remains in effect.

DECISION

The Respondents' request to vacate the Order of Default entered March 18, 2009, should be **DENIED**.

Served on the date of mailing.

GINA L. HALE
Assistant Deputy Cheif

cc: CBSK Financial Group, Inc.
dba American Home Loans
Kate Reynolds, AAG
James R. Brusselback
Barb Cleveland, OAH

NOTICE TO THE PARTIES

Pursuant to RCW 34.05.464 and WAC 10-08-211, any party to this proceeding may file a petition for review of this initial order. You must file your petition for review with the Director of the Department of Financial Institutions, PO Box 41200, Olympia, WA 98504-1200 [mailing address] or Department of Financial Institutions, 150 Israel Rd. S.W., Tumwater, WA 98501 [physical address]. The petition for review must be filed within twenty (20) days from the date this initial order was mailed to you. A copy of the petition for review must be sent to all parties of record. Your petition for review must specify the portions of the initial order with which you disagree, and must refer to the evidence in the record which supports your position.

Any party to this proceeding may file a reply to a petition for review. The reply must be filed with the Director of the Department of Financial Institutions at the address above within ten (10) days from the date the petition for review was mailed.

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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 Consumer Loan Act of Washington by: CBSK FINANCIAL GROUP, INC., dba AMERICAN HOME LOANS, CHARLES "BRENT" MCELWEE, President and 50% Owner, and CYNTHIA ROSE MCELWEE, Secretary and 50% Owner, Respondents.	NO. C-08-009-08-SC01 STATEMENT OF CHARGES AND NOTICE OF INTENTION TO ENTER AN ORDER TO PROHIBIT FROM INDUSTRY, ORDER RESTITUTION, IMPOSE FINE, COLLECT UNPAID ANNUAL ASSESSMENT FEES, AND COLLECT INVESTIGATION FEE

INTRODUCTION

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director, by and through his designee Division of Consumer Services Director Deborah Bortner institutes this proceeding and finds as follows:

I. FACTUAL ALLEGATIONS

1.1 Respondents.

A. CBSK Financial Group, Inc., dba American Services (Respondent CBSK) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on or about July 1, 1997. Respondent CBSK surrendered its license on December 18, 2007, and noted an effective date of October 24, 2007.

DEPARTMENT OF FINANCIAL INSTITUTIONS
Division of Consumer Services
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PO Box 41200
Olympia, WA 98504-1200
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B. Charles "Brent" McElwee (Respondent B. McElwee) is known to be the President and 50% owner of Respondent CBSK.

C. Cynthia Rose McElwee (Respondent C. McElwee) is known to be Secretary and 50% owner of Respondent CBSK.

1.2 Prohibited Practices. In early December 2004, borrower B.A. applied with Respondents for a residential mortgage loan. Respondents pulled the borrower's credit report on December 7, 2004, but Respondents did not provide the borrower with mandatory disclosures until December 19, 2004. At that time, Respondents sent disclosures accompanied by a cover letter instructing the borrower to "sign in the highlighted areas" and "date all documents 12-8-04."

1.3 Failure to Submit 2005 Consolidated Annual Report and Worksheet and Pay Annual Assessment Fee. Respondents were required to submit their 2005 Consolidated Annual Report and worksheet and pay any resulting annual assessment fee to the Department by March 1, 2006. To date, Respondents have not submitted the report or worksheet or paid an annual assessment for 2005.

1.4 Failure to Submit Completed 2007 Consolidated Annual Report and Worksheet and Pay Annual Assessment Fee. On December 18, 2007, the Department received a notice from Respondents surrendering Respondents' consumer loan license effective October 24, 2007. Based upon the closure, Respondents were required to submit their 2007 Consolidated Annual Report and worksheet and pay any resulting annual assessment fee to the Department by November 23, 2007. The notice of closure received December 18, 2007, was accompanied by a Consolidated Annual Report signed and dated by Respondent B. McElwee, but the loan analysis section was not completed. Additionally, no worksheet for the annual assessment was submitted and no annual assessment was paid. Respondents have not submitted a completed report or worksheet or paid an annual assessment for 2007.

1.5 On-Going Investigation. The Department's investigation into the alleged violations of the Act by Respondents continues to date.

II. GROUNDS FOR ENTRY OF ORDER

2.1 Requirement to Provide Timely Disclosures. Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of former RCW 31.04.027(2), (6), and (10) (1991) and former RCW 31.04.102(2) and (3) (1991) for failing to make mandatory disclosures within three business days of receiving a borrower's application and for asking a borrower to back-date disclosures.

2.2 Requirement to Submit 2005 Consolidated Annual Reports and Worksheets and Pay Annual Assessment Fees. Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of former RCW 31.04.085 (1991), former RCW 31.04.155 (1991), former WAC 208-620-190 (1992) and former WAC 208-620-220 (1996) for failing to submit their 2005 Consolidated Annual Reports and worksheets and pay the associated annual assessment fees.

2.3 Requirement to Submit Complete 2007 Consolidated Annual Reports and Worksheets and Pay Annual Assessment Fees. Based on the Factual Allegations set forth in Section I above, Respondents are in apparent violation of RCW 31.04.085, RCW 31.04.155, WAC 208-620-430, WAC 208-620-440, and WAC 208-620-460 for failing to properly submit their completed 2007 Consolidated Annual Report and worksheet and pay the associated annual assessment fee.

III. AUTHORITY TO IMPOSE SANCTIONS

3.1 Liability for Conduct of Employees. Pursuant to former WAC 208-620-170 (1992), each licensee is responsible for assuring that any person making loans on behalf of the licensee has sufficient understanding of the statutes and regulations so as to insure compliance with the Act.

3.2 Authority to Prohibit from the Industry. Pursuant to former RCW 31.04.093(6)(e) (2001), the Director may issue an order removing from office or prohibiting from participation in the affairs of any licensee, or both, any officer, principal, employee, or loan originator, or any person subject to the Act, for any violation of RCW 31.04.027.

3.3 Authority to Impose Fine. Pursuant to former RCW 31.04.093(4) (2001), the Director may impose fines of up to one hundred dollars per day upon the licensee for any violation of the Act.

3.4 Authority to Order Restitution. Pursuant to former RCW 31.04.093(5) (2001), the Director may issue an order directing a licensee, its employee or loan originator, or other person subject to the Act to make restitution to a borrower who is damaged as a result of a violation of the Act.

3.5 Authority to Collect Annual Assessment Fees. Pursuant to RCW 31.04.085, WAC 208-620-430, WAC 208-620-440, and WAC 208-620-460, the Director may collect an annual assessment fee from all licensees and an annual assessment late fee of $100 per day for late annual assessments.

3.6 Authority to Charge Investigation Fees. Pursuant to RCW 31.04.145(3) and WAC 208-620-590, every licensee investigated by the Director or the Director's designee shall pay for the cost of the investigation, calculated at the rate of $69.01 per staff hour for time incurred, plus expenses.

IV. NOTICE OF INTENTION TO ENTER ORDER

Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, and RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

4.1 Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee be prohibited from participating in the conduct of the affairs of any consumer loan company licensed or required to be licensed by the Department, in any manner, for a period of five years; and

4.2 Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee jointly and severally pay restitution to injured borrower B.A in the amount of $5,433 for disclosure violations in loan number 9739432 (application number 041206008)[1]; and

4.3 Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee jointly and severally pay a fine which as of the date of these charges totals $10,000; and

4.4 Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee jointly and severally pay the unpaid 2005 and 2007 annual assessment fees of $3,000, and annual assessment late penalties which continue to accrue at the rate of $100 per day; and

4.5 Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee jointly and severally pay an investigation fee which as of the date of these charges totals $2,553.37 calculated at $69.01 per hour for thirty-seven staff hours devoted to the investigation to date; and

4.6 Respondents CBSK Financial Group, Inc., Charles "Brent" McElwee, and Cynthia Rose McElwee maintain records in compliance with the Act and provide the Director with the location of the books, records and other information relating to Respondent s' consumer loan company business, and the name, address, and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

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[1] The loan number is from the Final HUD-1. The application number is from Respondents' loan documents.

V. AUTHORITY AND PROCEDURE

This Statement of Charges and Notice of Intention to Enter an Order to Prohibit from Industry, Order Restitution, Impose Fines, Collect Unpaid Annual Assessment Fees, and Collect Investigation Fee is entered pursuant to the provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202, and RCW 31.04.205, and is subject to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Statement of Charges.

Dated this 17th day of November, 2008.

DEBORAH BORTNER
Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

STEVEN C. SHERMAN
Financial Legal Examiner

Approved by:

JAMES R. BRUSSELBACK
Enforcement Chief