

BEFORE THE MARYLAND COMMISSIONER OF FINANCIAL REGULATION

**COMMISSIONER OF
FINANCIAL REGULATION**

CASE NO. CFR-FY2010-418

v.

**FRANK J. WARD, III;
THE MONEY CENTRE, LTD;
WARD CONSTRUCTION, INC.; and
ANNETTE COSTON**

OAH NO. DLR-CFR-76-11-27450

Respondents.

* * * * *

OPINION AND FINAL ORDER

This matter came before the Maryland Commissioner of Financial Regulation (“Commissioner”) on Exceptions filed by Respondents Frank J. Ward, III (“Ward”); The Money Centre, Ltd (“TMC”); Ward Construction, Inc. (“Ward Construction”); and Annette Coston (“Coston”), (collectively the “Respondents”) and by the Deputy Commissioner of Financial Regulation to the Proposed Order of April 30, 2012 as supplemented by the Proposed Order of October 31, 2012. On February 24, 2012, Administrative Law Judge Laurie Bennett (“ALJ”) filed a Proposed Decision and Recommended Order (the “February Proposed Decision”) in which she recommended the Commissioner order that (1) Respondents Ward and Coston immediately cease and desist from engaging in any further unlicensed mortgage originator activities; (2) for performing unlicensed loan originator activities, Respondent Ward pay a penalty of \$3,000 and Respondent Coston pay a penalty of \$2,250; (3) for willful unlicensed lender

activity, Respondent Ward pay a penalty of \$122,500, and, upon receipt of an itemized accounting from the CFR, return to all 2003 through 2008 borrowers all prohibited interest, costs, and other fees as set forth in Financial Institutions Article (“FI”), §11-601(b); (4) Respondent TMC pay a penalty of \$69,313.56 for having unlawfully collected finder’s fees; (5) Respondent Ward pay a penalty in the amount of \$10,000 for having committed mortgage fraud; (6) Respondents Ward, TMC, and Coston are ineligible for mortgage-related licenses until they satisfy the monetary penalties imposed. In the Proposed Order of April 30, 2012, the Commissioner modified the recommended Order to provide that (1) the Respondents permanently cease and desist from violating the Maryland Mortgage Originators Law (“MMOL”), the Maryland Mortgage Lender Law (“MMLL”), the Maryland Finder’s Fee Law (“MFFL”), and the Maryland Mortgage Fraud Protection Act (“MMFPA”); (2) for performing unlicensed mortgage originator activities, Respondent Ward pay a penalty of \$15,000 and Respondent Coston a penalty of \$2,250; (3) Respondent Ward, for willful unlicensed mortgage lending and other violations of the MMLL, pay a penalty of \$5,000 per loan, for a total penalty of \$250,000; (4) Respondent Ward, for violating the 2010 Cease and Desist Order, pay a penalty of \$5,000; (5) Respondent Ward return to the 50 borrowers to whom mortgage loans were issued by Respondent Ward during the years 2003 through 2008 all interest, costs, finder’s fees, broker fees, or other charges collected in violation of FI §11-523(b), up to and including interest, costs, finder’s fees, broker fees, and other charges from the issuance of each loan through and including the date that the Proposed Order became final. The restitution must be in the form of cash or a refund credited towards the principal balance on the applicable loan, at the borrower’s option; (6) Respondent Ward

shall cease and desist from the collection of interest, costs, finder's fees, broker fees, and other charges as set forth in FI §11-523(b) for all mortgage loans made by Respondent Ward during the years 2003 through 2008; (7) a hearing be held before an administrative law judge for the determination of the amounts due in restitution to the borrowers to whom Respondent Ward made mortgage loans during the years 2003 through 2008; (8) Respondent TMC's Maryland mortgage lender license (License No.: 06-6441) be revoked; (9) for violation of the MFFL, Respondent TMC shall forfeit to each borrower named in the Proposed Order the forfeiture penalty in accordance with Commercial Law Article ("CL") §12-807; (10) Respondent Ward pay a penalty in the amount of \$10,000 for mortgage fraud; (11) Respondents Ward and Coston pay their aggregate civil penalties to the Commission by cashier's or certified check made payable to the "Commissioner of Financial Regulation", within 15 days from the date the Proposed Order becomes final; (12) Respondent Ward pay the required monetary forfeiture under the MFFL within 30 days of the Proposed Order becoming final, and prescribing the method of payment; (13) Respondent Ward pay the required restitution under the MMLL within 30 days of the date the order determining restitution becomes final and prescribing the method of payment; (14) Respondent Ward mail to each borrower electing a reduction in principal a revised schedule of payments, sent in a prescribed manner; (15) Respondents Ward, Coston, and TMC are ineligible for mortgage-related licenses until they satisfy the penalties imposed.

The ALJ considered the issue of the amount of restitution due through review of documents submitted by the Respondents and the Deputy Commissioner and oral argument in a telephone hearing on August 2, 2012. The parties agreed to the amounts

set forth in an accounting provided by the Respondents. The restitution was based on the Respondents' violation of FI §11-523(b), which provides that an unlicensed person who makes or assists a borrower in obtaining a mortgage loan may collect only the principal amount of the loan. In addition to interest, the ALJ found that a \$10,000 cash payment made to Respondent Ward by one of the borrowers was an unlawful charge and thus subject to a restitution order.

The Commissioner adopted the second proposed decision of the ALJ, but narrowed it to apply only to Respondent Ward, since the loans in question were made by him individually.

The Respondents filed timely exceptions to the Proposed Orders. The Deputy Commissioner also filed exceptions to the Proposed Orders. The details of exceptions filed by both the Respondents and the Deputy Commissioner are discussed in Section III below.

A hearing on the Exceptions was scheduled to be held by Mark A. Kaufman, Maryland Commissioner of Financial Regulation, on a date agreed to by all the parties. Counsel for the Respondents notified the Commissioner's Office on the day prior to the hearing that his clients were waiving their right to a hearing, and agreeing that the exceptions should be ruled on based on the written submissions.

EVIDENCE

The following documents were before the Commissioner:

1. The exhibits from the Office of Administrative Hearings
2. Ex. CFR 7 - The Consent Agreement
3. Ex. CFR 7A - Civil Penalty Check
4. Ex. CFR 7B - Charge Letter (dated 10/14/2005);
5. Ex. CFR 7C - Consumer Complaint ([REDACTED])
6. Ex. CFR 7D - Investigation Report (compilation) - 2005;

7. Ex. CFR 7E -Salisbury Police Department: Incident Report – Case #200400030484 (with investigation report) dated 10/8/2004;
8. Ex. CFR 7F - Land Installment Agreement with appendices (11/12/2002);
9. Ex. CFR 7G - Residential Sales Contract (8/16/2004)
10. Ex. CFR 7H - Uniform Residential Loan Application (8/31/2004)
11. Ex. CFR 7I - Option One Mortgage Corporation (partial) Loan File
12. Ex. CFR 7J - Peninsula Bank Account Information (in re: Hammeian)
13. Ex. CFR. 7K - Correspondent from [REDACTED]
14. CFR's written Closing Argument for OAH hearing, dated December 9, 2011
15. Respondents' written Closing Argument for OAH hearing, dated December 23, 2011
16. CFR's written Reply to Respondents' Closing Argument
17. Proposed Orders of the Commissioner, including the Proposed Decisions and Recommended Orders of the Administrative Law Judge
18. Respondents' Exceptions
19. CFR's Response in Opposition to Respondents' Request for Exceptions and Request for Modification of the Proposed Order.

DISCUSSION

I. Procedural History.

On December 15, 2010, the Deputy Commissioner of Financial Regulation issued a Summary Order to Cease and Desist and Order to Produce Documents to the Respondents. On December 30, 2010, the Respondents filed with the Commissioner a timely Request for Hearing. On January 5, 2011, the Commissioner, by letter, delegated to the Office of Administrative Hearings (“OAH”) the authority to hold an evidentiary hearing, issue proposed findings of fact and conclusions of law, and issue a recommended decision.

A hearing was scheduled to be held at OAH on March 22, 2011; at that time the parties agreed to settle the matter and postpone the hearing pending final ratification of their agreement. After several months, due to unwillingness by the Respondents to finalize the proposed settlement, the Deputy Commissioner determined that Respondents had withdrawn from the settlement. Based on the inability to finalize the settlement, the

Deputy Commissioner issued an Amended Summary Order to Cease and Desist and Order to Produce Documents dated July 14, 2011. On the same day, a second letter was sent to OAH again delegating the authority to hold an evidentiary hearing, issue proposed findings of fact and conclusions of law, and issue a recommended decision.

A hearing was held at OAH over an eight-day period in October and November, 2011. The proposed decision issued by the ALJ on February 24, 2012 found that Respondents Ward and Coston operated as unlicensed mortgage originators; Respondent Ward operated as an unlicensed lender; Respondent TMC unlawfully accepted finder's fees; and Respondent Ward engaged in mortgage fraud. The proposed decision recommended that the Commissioner order the Respondents to return to all 2003 to 2008 borrowers all interest, costs, and fees collected on their mortgage loans; impose monetary penalties against the Respondents; and enter a permanent Cease and Desist Order against the Respondents. With a few modifications, the Commissioner adopted the recommendations of the ALJ in his Proposed Order issued on April 30, 2012, but sent the case back to the ALJ for a determination of the exact amount of restitution to be paid to each individual borrower.

The ALJ conducted a hearing by telephone on August 2, 2012 to hear arguments on the restitution issue, and received documents from Respondents on August 16, 2012, and the Deputy Commissioner on August 22, 2012. On October 31, 2012, the ALJ issued a proposed decision setting forth the restitution amounts. The Commissioner adopted the proposed decision in a Proposed Order dated November 26, 2012, amending it only to limit the responsibility for restitution solely to Respondent Ward as set forth in his earlier Proposed Order. The Respondents timely filed their exceptions to this Proposed Order

and requested a hearing. Counsel for the Deputy Commissioner also filed exceptions to the Proposed Order.

II. Applicable Law.

The Commissioner's General Regulatory Authority

The Commissioner has broad powers to oversee the financial and credit service industries and state chartered banking institutions in the State. FI §2-115 sets forth the Commissioner's general authority to take actions for violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction, including violations of the MMLL, MMOL, MFFL, or MMFPA (in addition to taking any other action permitted by law), providing in part as follows:

- (b) *Other authorized actions for violations.*- When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:
- (1) Issue a final cease and desist order against the person;
 - (2) Suspend or revoke the license of the person;
 - (3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of \$1,000 for a first violation and a maximum amount of \$5,000 for each subsequent violation;
- or
- (4) Take any combination of actions specified in this subsection.

The Maryland Mortgage Originator Law (MMOL)

A mortgage loan originator is an individual who "for compensation or gain, or in the expectation of compensation or gain: (i) Takes a loan application; or (ii) Offers or negotiates terms of a mortgage loan." FI §11-601(q)(1). Prior to July 1, 2009, an individual who owned a 25 percent or more interest in the mortgage lender or who was licensed as a mortgage lender was not required to hold a mortgage originator license.

The Commissioner may impose a civil penalty not exceeding \$5,000 for each violation of the law. FI §11-615(c).

The Maryland Mortgage Lender Law (MMLL)

With regard to Maryland mortgage lenders and brokers, pursuant to FI §11-504, “[a] person may not act as a mortgage lender unless the person is ... (1) [a] licensee ... or (2) [a] person exempted from licensing under this subtitle.” Further, “[a] mortgage broker may not be a director, officer, or employee of any lender where he places a loan.” CL §12-803. The Commissioner may take affirmative action to remedy any violation of law under his jurisdiction, including any conduct that is related to the underlying business of mortgage lending which is in violation of the MMLL or any other law, regulation, rule, or order under the supervision of the Commissioner. In furtherance of such remedial action, pursuant to FI §11-517(a), the Commissioner may revoke the license of any licensee if the licensee engages, in part, in the following:

- (3) In connection with any mortgage loan or application transaction:
 - (i) Commits any fraud;
 - (ii) Engages in any illegal or dishonest activities; or
 - (iii) Misrepresents or fails to disclose any material facts to anyone entitled to that information;
- (4) Violates any provision of this subtitle or any rule or regulation adopted under it or any other law regulating mortgage loan lending in the State; or
- (5) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently.

Additionally, pursuant to FI §11-517(c), the Commissioner may enforce the provisions of the MMLL, and applicable regulations by issuing an order (i) requiring a licensee to cease and desist from any violations of the MMLL and any further similar violations; and (ii) requiring a licensee to take affirmative action to correct the violation,

including the restitution of money or property to any person aggrieved by the violation. The Commissioner also may impose a civil penalty not exceeding \$5,000 for each violation, as well as \$5,000 for each subsequent violation.

FI §11-523 provides for additional penalties for unlicensed activity under the MMLL. Specifically, FI §11-523(b) states that “[a]ny unlicensed person who is not exempt from licensing under this subtitle who makes or assists a borrower in obtaining a mortgage loan in violation of this subtitle may collect only the principal amount of the loan and may not collect any interest, costs, finder’s fees, broker fees, or other charges with respect to the loan.”

The Maryland Finder’s Fee Law (MFFL)

Pursuant to CL §12-801(c), a finder’s fee is defined as “any compensation or commission directly or indirectly imposed by a broker and paid by or on behalf of the borrower for the broker’s services in procuring, arranging, or otherwise assisting a borrower in obtaining a loan or an advance of money.” CL §12-804(e) provides that, “[a] mortgage broker may not charge a finder’s fee in any transaction in which the mortgage broker or an owner, part owner, partner, director, officer, or employee of the mortgage broker is the lender or an owner, part owner, partner, director, officer, or employee of the lender.” Further, CL §12-805(d) requires a mortgage broker to provide specific disclosures to a borrower before charging a finder’s fee. Failure to fully comply with the MFFL shall result in the mortgage broker forfeiting to the borrower the greater of three times the amount of the finder’s fee collected or \$500. See CL §12-807.

The Maryland Mortgage Fraud Protection Act (MMFPA)

It is a violation of Maryland law, specifically the MMFPA, to commit mortgage

fraud in the State. *See* RP §7-402. Pursuant to RP §7-401(d), “mortgage fraud” is defined as follows:

- (c) *Mortgage Fraud.*- “Mortgage fraud” means any action by a person made with the intent to defraud that involves:
- (1) Knowingly making any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;
 - (2) Knowingly creating or producing a document for use during the mortgage lending process that contains a deliberate misstatement, misrepresentation, or omission with the intent that the document containing the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;
 - (3) Knowingly using or facilitating the use of any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;
 - (4) Receiving any proceeds or any other funds in connection with a mortgage closing that the person knows resulted from a violation of item (1), (2), or (3) of this section;
 - (5) Conspiring to violate any of the provisions of item (1), (2), (3) or (4) of this section; or
 - (6) Filing or causing to be filed in the land records in the county where a residential real property is located, any document relating to a mortgage loan that the person knows to contain a deliberate misstatement, misrepresentation, or omission.

Pursuant to RP §7-404.1, the Commissioner may enforce the provisions of the MMFPA, and applicable regulations, by issuing an order (i) requiring a licensee to cease and desist from any violations of the MMFPA and any further similar violations; and (ii) requiring a licensee to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation. Additionally, the Commissioner may impose a civil penalty not exceeding \$1,000 for each violation of the MMFPA, as well as \$5,000 for each subsequent violation.

Other Laws Regarding Mortgage Lending in the State

RP §4-106(a) provides that “[n]o mortgage or deed of trust is valid except as between the parties to it, unless there is contained in, endorsed on, or attached to it any oath or affirmation of the mortgagee or the party secured by a deed of trust that the consideration recited in the mortgage or deed of trust is true and bona fide as set forth.” Further, if that transaction involves a purchase-money mortgage or deed of trust, then “[n]o purchase-money mortgage or deed of trust involving land, any part of which is located in the State, is valid either as between the parties or as to any third party unless the mortgage or deed of trust contains or has endorsed on, or attached to it at a time prior to recordation, the oath or affirmation of the party secured by the mortgage or deed of trust stating that the actual sum of money advanced at the closing transaction by the secured party was paid over and disbursed by the party secured by the mortgage or deed of trust to either the borrower or the person responsible for disbursement of funds in the closing transaction or their respective agent at a time no later than the execution and delivery of the mortgage or deed of trust by the borrower.” RP §4-106(b). If the requirements imposed under this subsection of Maryland law are not satisfied, then the mortgage or deed of trust is invalid as to the whole mortgage loan, or the part thereof that is purchase money. *Id.*

Further, pursuant to RP §7-109, mortgage lenders are generally required to disburse purchase money loans at closing. More specifically, RP §7-109(b)(1) requires that, “[i]n any consumer loan transaction in which the loan is secured by a purchase-money mortgage or deed of trust on real property located in this State, on or before the day of settlement, the lender shall disburse the loan proceeds in accordance with the loan

documents to the agent responsible for settlement as provided in subsections (c) and (d) of this section.” Similar provisions apply to a secondary deed of trust or mortgage involving Maryland real property. *See* RP §7-109.

III. Facts.

Frank J. Ward, III (“Ward”) is the sole owner of The Money Centre, Ltd. (“TMC”) and Ward Construction Company (“Ward Construction”). (FOF 1 and 3).¹ TMC was licensed by the Commissioner of Financial Regulation as a Maryland mortgage lender from April 25, 2000 until the license expired on October 8, 2010. (FOF 1). Ward has never held a license as a Maryland mortgage lender or mortgage originator. (FOF 5). Annette Coston (“Coston”) was Ward’s assistant at TMC’s office in Salisbury, Maryland, where she performed a wide range of clerical duties related to mortgage loan applications. (FOF 6).

The Commissioner of Financial Regulation investigated Ward and TMC in 2005. The investigation resulted in a consent agreement in which the Respondents agreed that “prior to engaging in Maryland mortgage brokerage or loan transactions, they will maintain currently held licenses to conduct future business.” (FOF 2).

Loan Origination.

Ward admitted that he was the loan originator on all loans made by TMC. (ALJ decision, p. 46) Effective July 1, 2009, he was required to hold a Maryland Mortgage Originator’s license to conduct this activity. He acknowledged to the ALJ that he did not have that license when he originated three loans: for [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]. Id.

¹ References to the findings of fact (“FOF”) and the ALJ decisions are to those in the February 24, 2012 Proposed Decision.

Coston also was involved in originating mortgages, an activity that includes taking mortgage loan applications or negotiating mortgages. This included completing loan applications and brokerage compensation forms in three transactions: [REDACTED] [REDACTED] (she signed the Brokerage Compensation Disclosure form on TMC's behalf and the second purchase money mortgage) (FOF 95 and 96); [REDACTED] (she interviewed the borrower in connection with her loan application) (FOF 80); and [REDACTED] [REDACTED] (she signed the loan application on the line "Interviewer's signature" and the Brokerage Compensation Disclosure statement) (FOF 97). (ALJ Decision, p. 50). She admitted that she did not hold an originator's license when she performed these functions. (ALJ Decision, p. 47).

Mortgage Lending.

Ward admitted to the ALJ that he made forty-nine loans in the years 2003 through 2008 without holding the requisite mortgage lender license. (ALJ Decision, p. 54). He contended that he made three or fewer loans in four other years, and thus was not required to be licensed in those years. He has never held a license under either the MMLL or the MMOL. (FOF 5). In 2005, he agreed in a consent agreement with the Commissioner's office that he and TMC would "maintain currently held licenses" prior to engaging in Maryland mortgage brokerage or loan transactions. *Id.*

Validity of Mortgages.

Under the Maryland Real Property Article, lenders are required to disburse certain purchase money funds at closing and to file an affidavit with the mortgage or deed of trust stating that this money was advanced at the closing to the borrower or the settlement agent. Sections 7-109 and 4-106. FOF 19 lists the second and/or third purchase money

mortgages held by Respondent Ward that were not accompanied by the required affidavit.

The MFFL.

Under the provisions of the Commercial Law Article, a mortgage broker may not charge a finder's fee in any transaction in which the mortgage broker or an owner of the mortgage broker is the lender. Section 12-804. In ten transactions, TMC or Ward Construction acting on TMC's behalf charged a finder's fee on loans made by Ward, the sole owner of both entities. The remedy for this violation is forfeiture to the buyer by the broker of the greater of three times the finder's fee or \$500.00. (ALJ Decision, pp.59 and 60).

The MMFPA.

This law was effective on April 3, 2008, and the ALJ properly considered four transactions that took place in part or entirely after that date. The law essentially prohibits fraud in the mortgage lending process. In the [REDACTED] transaction, Ward told the [REDACTED] that the lot that they owned and where their mobile home was located was not big enough for a single family house. (FOF 27). He showed them another property that was owned by Ward Construction, and they agreed to purchase that property and retain Ward Construction to build them a house on it. Id. Ward told them that he would assume their loan on the original property, and that they would have to move the mobile home off of it. (FOF 28 and 29). He personally loaned them the money to pay for the new home, and in a separate loan, to pay the settlement charges. He subsequently built a single family house on the original property, and rented it out, without the [REDACTED] knowledge or consent. When the [REDACTED] received foreclosure notices on their

original property, they realized that Ward had not paid off their note. When they questioned Ward, he told them that they were still expected to pay the mortgage on that property. Ward ultimately paid the note for the property sometime later. (FOF 37 – 39). In her discussion, the ALJ found [REDACTED] to be a credible witness in testifying about the agreement with Ward to assume their obligations on the original property and his representation to them that the lot was too small for a single family home. (ALJ Decision, p. 62). She found that Ward's misrepresentations constituted mortgage fraud.

The [REDACTED] purchased a home from Ward and financed it with a personal loan from him. At or about the time of settlement, he verbally agreed to hold their property tax payments in escrow. (FOF 64 and 67). However, when [REDACTED] made extra payments in the amount of the monthly taxes, Ward applied the payments to the balance of the mortgage instead of holding it in escrow for taxes. (FOF 69). In March 2011 he told them in writing that he would no longer accept their tax payment. (FOF 70). The ALJ found that even though there was no document that required Ward to escrow the taxes, the conduct of the parties evidenced such an agreement. His failure to do so constituted mortgage fraud. (ALJ Decision, p. 63).

The ALJ did not find evidence of mortgage fraud in the other two transactions that postdated the effective date of the law.

Two other transactions have been cited as issues in the Commissioner's exceptions. [REDACTED] and her husband were interested in buying a home built by Ward Construction, but Ward had concerns about their credit rating. Because they did not have a bank account, he helped [REDACTED] open one at Peninsula Bank and made two initial deposits, totaling \$6,100.00. (FOF 83). He had promised to pay off two of [REDACTED]

██████ debts, and did so at the time of settlement. (FOF 84). Ward subsequently withdrew \$6,000 from ██████████ Peninsula bank account. (FOF 85). The ALJ stated that the only documentary evidence showed that only ██████████ name was on the account, and there was no documentation that Ward was a signatory on the account. She said that to believe ██████████ testimony that Ward withdrew money, she would have to believe that the bank unlawfully allowed him access to the account. (ALJ Decision at p. 76). The ALJ did not admit evidence regarding an account opened by Ward in the name of a consumer who had sought a mortgage from TMC at the same bank in 2002 without the consumer's knowledge.

The second transaction, which involved a loan to ██████████ is addressed below.

III. Exceptions.

The Commissioner's Authority to Review.

When an administrative agency has delegated authority to an ALJ to conduct a fact finding hearing and issue a proposed order, but has retained authority to make a final decision, the agency generally has the power to review the ALJ's proposed decision, and to admit additional evidence through the exceptions process. *See, e.g. Mehrling v. Nationwide Insurance Co.*, 371 Md. 40, and 60-62, (2002). Further, *Bragunier Masonry Contractors, Inc. v. Maryland Comm'r of Labor & Indus.*, 111 Md. App. 698 (1996) (hereinafter "*Bragunier*") holds that once exceptions have been filed, the Commissioner is not limited in his review to just those issues raised in the exceptions. *Bragunier*, 111 Md. App. 707-708.

Thus, while Respondents' exceptions raise only one, limited issue, the Commissioner is not restricted to a review of only that issue during the exceptions process. Rather the Commissioner may review the entire case, including all evidence presented to the ALJ, as well as additional evidence that he rules admissible, and draw his own conclusions based on all the evidence before him. As long as the Commissioner's Final Order is supported by the evidence and clearly explains the reasons why he has modified the ALJ's opinion, the Final Order will be upheld. *Bragunier*, 111 Md. App. 707-708.

Respondents' Exceptions.

Respondents take exception to the finding that Respondent Ward impermissibly collected interest from [REDACTED] in the amount of \$63,095.046. Respondents argue that the Cropper transaction involved a deferred purchase-money mortgage in connection with the sale of residential real property titled in the name of Respondent Ward and his wife, Angelique Ward. Respondents apparently argue that because the property was titled in Ward and his wife's name, Ward was not required to be licensed as a mortgage lender in order to make the loan; and Ward's failure to obtain a license should not have any effect on the [REDACTED] transaction.

Although the ALJ refused, over the Deputy Commissioner's objections, to admit a copy of a Consent Agreement between the Respondents Ward and TMC in 2005 (the "Consent Agreement") into evidence, the ALJ still found: "The CFR investigated Respondent Ward and Respondent TMC in 2005. The investigation resulted in a consent agreement in which Respondent Ward and Respondent TMC agreed that "prior to engaging in Maryland mortgage brokerage or loan transactions, they will maintain

currently held licenses to conduct future business.” Respondents do not dispute this fact. Under the plain language of the Consent Agreement, Ward was required to be properly licensed before engaging in *any* Maryland mortgage loan transactions after October 24, 2005. The [REDACTED] transaction took place in September 2008. The Consent Agreement does not provide any exceptions for deferred purchase money mortgages, nor does it provide an exception if the number of loans made in a given year is below a specific threshold. As such, the ALJ was correct in determining that the [REDACTED] loan violated the MMLL and that Ward must return all impermissible interest and fees collected on the loan to [REDACTED]

Commissioner’s Additional Issues for Review

As discussed above, when exceptions to a proposed order are filed, the Commissioner’s review is not limited to the issues presented by the respondent. See *Bragunier*, 111 Md. App. 698 (1996). Rather, the Commissioner has the authority to review the findings and conclusions of the ALJ and make changes or modifications to those findings and conclusions as long as the final decision contains an explanation. *Id.* at 708 n. 2. For this reason the Commissioner has determined that several issues in the ALJ’s Proposed Decision of February 24, 2012 and Proposed Restitution Decision of October 31, 2012 are subject to review through the exceptions process.

A. The ALJ’s refusal to admit into evidence at the initial hearing a 2005 Consent Agreement between Ward and TMC and the Commissioner, as well as documents related to that agreement.

As discussed above, the ALJ refused to admit into evidence a copy of the fully executed 2005 Consent Agreement, Ex CFR 7, and related documents. These include a copy of the cancelled check used to pay the fine associated with the settlement, Ex. CFR

7A, and copies of the Charge Letter issued by the Commissioner on October 14, 2005, Ex. CFR.7B, the original consumer complaint, Ex. CFR 7C, and all investigative documents related to that complaint, Ex. CFR 7D-7K. The ALJ stated that the documents she refused to admit were not relevant to this case.

Contrary to the ALJ's ruling, these documents are directly relevant. The Consent Agreement specifically required Ward and TMC to be licensed before engaging in any mortgage origination or lending activity in Maryland. Not only did Ward continue to engage in unlicensed lending activities, he contended at the hearing that he was exempt from licensure as to specific loans either because they were deferred purchase-money mortgages or because he did not make more than three loans in a particular year. Under the plain language of the Consent Agreement, however, any exemptions to licensure in FI §11-502 were inapplicable to Ward and TMC after the effective date of that Agreement. Thus, the Consent Agreement, and its supporting documents are directly relevant to this case and form the basis for determining whether certain loans are subject to the penalty provisions of the MMLL.

The conduct that was the subject of the 2005 investigation as set forth in the Charge Letter and the other documents was also directly relevant to show a pattern of fraudulent activity, particularly with regard to collusion between Ward and employees of the Salisbury branch of Peninsula Bank. If the evidence had been admitted by the ALJ, it would have shown that in 2002, employees at the Salisbury branch of Peninsula Bank allowed Ward and Coston to open an account in the name of a consumer who had sought a mortgage through TMC, even though the consumer was not present and had no knowledge that the account was being opened.

Similarly, in the transaction involving [REDACTED], discussed above, [REDACTED] testified that Ward helped her open an account at the Salisbury branch of Peninsula Bank in 2003, and that he made deposits in that account totaling \$6,100.00. [REDACTED] testified that on April 25, 2003, although Ward was not an authorized signatory on the account, Ward withdrew \$6,000 from that bank account without her knowledge or consent.²

In finding that the Deputy Commissioner did not prove that Respondents had not committed fraud in the [REDACTED] transaction, the ALJ did not base her decision on [REDACTED] demeanor, but instead noted that in order to believe [REDACTED] testimony that Ward withdrew the money from her account, the ALJ would “have to believe that the bank unlawfully allowed him access to her account.” (ALJ decision p. 76). The ALJ found this “too far-fetched absent some other proof that [Ward] made the withdrawal.” However, if the ALJ had admitted the excluded evidence from the 2005 case, which contributed to the conditions of the Consent Agreement, in which a consumer accused TMC, Ward and Coston of opening an account in her name, at the very same bank branch, without the consumer being present, in violation of federal law, she would not have concluded that [REDACTED] testimony was “far-fetched.” Accordingly, the Commissioner holds that the excluded evidence (Ex CFR. 7A-K) is relevant and is admitted into evidence.

The Consent Agreement is also relevant in determining that Ward was required to be licensed for four loans that he made in 2009 and 2010. The ALJ concluded “that Ward was required to hold a mortgage lenders license” for the years 2003 to 2008 because the

¹The ALJ’s decision on the issue of the withdrawal of funds is confusing. She found that Mr. Ward withdrew the funds (FOF 85). Yet on page 76 she indicates that she did not believe that he had done so,

number of loans he made met the statutory threshold in existence at the time. (ALJ Decision p. 54). Specifically, the MMLL permitted a person to make up to three loans per year without requiring a mortgage lender license. However, Ward was not entitled to rely on that exemption from licensing when he made mortgage loans to [REDACTED] [REDACTED], and [REDACTED] in 2009; or to [REDACTED] [REDACTED] in 2010. The Consent Agreement required him to be licensed, and therefore, these four loans were made in violation of the MMLL and constitute willful violations of the MMLL and are subject to civil penalties. Accordingly, pursuant to FI §11-523(b), he may only collect the principal amount of the loans and may not collect interest, costs, finder's fees, broker's fees, or other charges with respect to the loans.

B. The need for clarification of the method used for determining the monthly payment amounts on mortgages held by Respondent Ward and made in violation of the MMLL.

Under the MMLL, "any unlicensed person... may collect only the principal amount of the loan and may not collect interest, costs, finder's fees, broker's fees, or other charges with respect to the loan." FI §11-523(b). The ALJ correctly found that Ward must reimburse certain consumers the amount of any impermissible fees or interest collected in violation of the MMLL since he was not entitled to receive them, or any future fees or interest. Thus, all of the mortgages that are subject to the Final Order are now permanently interest free and collection of only the principal amount due is permitted. Respondent Ward must immediately notify each borrower that they have a choice of receiving a refund of the fees and interest paid, or of having these amounts credited against the remaining principal. If they choose a refund, Respondent Ward must pay them within 30 days of their notice to him, and provide them with a revised

"absent" some other proof." The "other proof" is found in the documents she failed to admit.

amortization that reflects principal payments for the remainder of the loan term. If the borrowers elect to have the fees and interest paid on the loan applied as a credit against principal, Respondent Ward must re-amortize the remaining principal balance of their mortgage loan, taking into account reductions in principal resulting from the application of credit for impermissible interest and fees previously paid. The new amortization must be calculated on the original term, not the remaining months until maturity, to determine the correct monthly principal payment amount due. The revised amortization must be provided to the borrowers within 30 days of their notice to him.

With respect to [REDACTED], to whom Ward unlawfully charged a finder's fee, (ALJ decision p. 59), the remedy must be somewhat different because Ward sold the loan to a third party. He cannot re-amortize it or modify the monthly payment amount. Accordingly, in order to provide appropriate relief to the [REDACTED], Ward must (i) reimburse the [REDACTED] for all impermissible interest and fees collected on the mortgage through the date of the Final Order; and (ii) calculate the total amount of impermissible interest and fees that will be paid over the remaining life of the mortgage and deposit that amount into an escrow account for the benefit of the [REDACTED], to be used to pay, on a monthly basis, the difference between the monthly principal and interest payment owed to Bank of Delmarva (or any subsequent holder of the mortgage) and the amount that would be owed based on an interest free, principal only payment calculation from loan inception to maturity.

C. A second purchase money mortgage in one transaction should have been considered an impermissible "fee" and thus declared invalid.

The claim is apparently that a second purchase money mortgage in the amount of \$15,400.67 (the [REDACTED] loan), should be ruled an impermissible fee, although it was

characterized by Respondent Ward as necessary funding to fill a gap between the first mortgage and the purchase price. Given the conflicting evidence in the record, it is not possible to determine with any certainty that the mortgage was an impermissible fee. Accordingly, the ruling in the Proposed Order will not be changed.

D. Certain mortgages containing missing or improper affidavits of consideration and disbursement should be void and unenforceable.

The claim is that certain mortgages, securing deferred purchase money, made by Respondent Ward as the mortgagee, included affidavits of consideration and disbursement that were fraudulent because Ward Construction, not Respondent Ward was the actual seller of the properties secured by the mortgages; and Ward did not provide consideration for, or make the disbursements of, the mortgage loans. Respondent Ward testified that his former accountant had told him that this was an acceptable accounting method. He also presented the testimony of his current accountant, Mr. Michalik, that, given the status of Ward Construction as an S Corporation, solely owned by Respondent Ward, "if Respondent Ward Construction held a mortgage, all income and losses of that mortgage would pass through to Respondent Ward's personal income tax forms." (ALJ decision p. 79). There was no evidence in the record refuting this testimony. Accordingly, the mortgages will not be found void and unenforceable as to the principal amount.

E. The need for the Commissioner to order Respondent Ward to dismiss all pending foreclosure actions against the borrowers from whom they have collected impermissible fees.

Respondent Ward currently has foreclosure actions pending against several consumers who have taken out purchase money mortgages with Ward. Because Respondent Ward was collecting impermissible fees on those loans (the refund of which

the borrowers may elect to have applied to their outstanding principal loan balances), it is unclear whether those borrowers are actually in default. And even if they are in default, the actual amount of the default (and thus the amount necessary to cure), is currently unknown. Therefore, Respondent Ward must dismiss all pending foreclosure actions involving consumers whose loans are involved in this matter. Once Respondent Ward has properly credited the account and re-amortized the principal balances over the original term of the loans, they will be able to accurately determine if any borrower is actually in default, and if so, what amount is necessary to cure the default. Once this is done, Respondent Ward is free to file a new foreclosure action in cases where there is an actual default. Respondent Ward cannot be allowed to pursue foreclosure actions based on improper and false affidavits, particularly when the consumer may not actually be in default.

F. The ALJ's erroneous determination that Respondent TMC rather than Respondent Ward Construction received a finder's fee in a particular transaction.

The ALJ found that Respondent TMC, or Respondent Ward Construction on Respondent TMC's behalf, accepted finders' fees in ten transactions in which Respondent Ward was the lender. (ALJ decision p. 32). The ALJ further found that Respondent TMC unlawfully accepted finders' fees and recommended that the Commissioner order Respondent TMC to pay a penalty in the amount of \$69,313.56 for having unlawfully collected finders' fees. (ALJ decision pp. 84-85). However, in addition to the other transactions, the evidence in the record clearly shows that Ward Construction was listed as the recipient of a \$3,800.00 finder's fee on the HUD 1 for [REDACTED] loan transaction. Therefore, Ward Construction is found to have violated the MFFL in

the [REDACTED] transaction, and is liable to [REDACTED] for an amount equal to three times the finder's fee, or \$11,400.00.

CONCLUSION

For the foregoing reasons, the Commissioner finds that the Exceptions filed by the Respondents is without merit, and must be denied, and that the Exceptions filed on behalf of the Deputy Commissioner are accepted in part and denied in part.

ORDER

The Commissioner of Financial Regulation orders:

- A. That exhibits labeled EX. CFR 7 through 7K are admitted into evidence;

As to Respondent Ward

B. That Ward shall pay a civil penalty of \$16,000 (which includes the penalty in connection with the Price transaction) for violation of the MMOL by engaging in unlicensed mortgage origination activities (FI §11-615(c)(ii));

C. That Ward shall pay a civil penalty of \$285,000 (representing \$270,000 penalties for willful unlicensed mortgage lending and other violations of the MMLL, including the four loans made in 2009 and 2010 (FI §11-517(c) and (e)); \$10,000 for mortgage fraud under MMFPA; and \$5,000 for violation of the 2010 Cease and Desist Order);

D. That Ward shall pay the foregoing aggregate civil penalties (in the amount of \$285,000) to the Commissioner, by cashier's or certified check made payable to the "Commissioner of Financial Regulation", within 30 days of this Final Order;

E. That Ward shall reimburse [REDACTED] the impermissible \$10,000 fee within 30 days of this Final Order and shall furnish evidence to the Commissioner within

60 days of the Final Order of having made the payment, which evidence shall consist of a copy of the front and back of the cancelled check for each payment;

F. That all mortgages made in violation of the MMLL are non-interest bearing principal payment only mortgages, and Ward may not retain or collect any interest or fees (including finders fees and broker fees) in connection with these mortgage;

G. That Ward shall pay restitution consistent with the amounts shown on the attached³ Exhibit FO1 and payable to borrowers named therein, for mortgages made in violation of the MMLL. Within 30 days of the date of this Final Order, Ward shall notify in writing, borrowers of the option of either a cash payment for all impermissible fees and interest collected consistent with the amounts shown on the attached Exhibit FO1 with the balance of the loan terms re-amortized as of the date of this Final Order (to reflect no-interest, principal payment only loans); or, in the alternative, having the aggregate of any impermissible interest and fees as shown on the attached Exhibit FO1 credited for a reduction in principal amount due on the mortgage. The notice from Ward shall be mailed by U.S. first Class Mail to the most recent address of the borrower known to Ward. If the mailed of a notice is returned as undeliverable by the U.S. Postal Service, Ward shall promptly notify the Commissioner in writing for further instruction as to the means of delivering the notice;

H. That after receiving notice of their election under Paragraph G, Ward shall make cash payments elected within 15 days of receiving notice from the borrower. As to all loans, Ward shall provide all borrowers a revised payment schedule to reflect non-interest bearing loans, in the amount necessary to repay principal only through the scheduled maturity date;

I. That Ward shall make necessary financial arrangements in connection with the [REDACTED] loan, consistent with the finding herein, to ensure the [REDACTED] receive the full benefit of their mortgage being recast as a no-interest, principal only mortgage loan. Ward shall provide the Office of Financial Regulation with evidence of arrangements satisfactory to the Commissioner within 30 days of this Final Order;

J. That Ward shall dismiss, without prejudice, all pending foreclosure actions until such time as there is a re-amortization of all affected mortgages where Ward is not entitled to charge or collect interest or fees; and Ward can file a true and accurate statement of debt with the court in connection with the foreclosure;

As to Respondent Ward Construction

K. That for violation of MFFL, Ward Construction is liable to [REDACTED] for a total of \$11,400. Ward Construction shall pay this amount, by cashier's or certified check, to [REDACTED] within 30 days of this Final Order;

L. That Ward Construction shall make payment to [REDACTED] in the amount specified above, by U.S. First Class Mail at the most recent address of [REDACTED] known to Ward Construction. If the mailing of a payment is returned as undeliverable by the U.S. Postal Service, Ward Construction shall promptly notify the Commissioner in writing for further instructions as to the means of the making of said payment. Upon making the required payments, Ward Construction shall furnish evidence to the Commissioner within 60 days of this Final Order of having made the payment, which evidence shall consist of a copy of the front and back of the cancelled check for each payment;

As to Respondent Coston

³ Exhibits FO1 and FO2 are labeled for, and attached to, the Final Order.

M. That Coston shall pay a civil penalty of \$2,250 for violation of the MMOL by engaging in unlicensed mortgage origination activities (FI §11-615(c)(ii));

N. That Coston shall pay the foregoing penalty of \$2,250 to the Commissioner, by cashier's or certified check made payable to the "Commissioner of Financial Regulation", within 30 days of this Final Order;

As to Respondent TMC

O. That TMC's mortgage broker license (License No.: 06-6441) is revoked;

P. That TMC shall forfeit to each borrower identified on Exhibit FO2 the corresponding forfeiture penalty for violations of the MFFL in accordance with CL §12-807;

Q. That TMC shall pay the required monetary forfeiture under the MFFL, by cashier's or certified check, to those borrowers described above within 30 days of the date of this Final Order; and

R. That TMC shall make payment by mailing to each borrower a check in the amount specified above, by U.S. First Class Mail at the most recent address of that borrower known to TMC. If the mailing of a payment is returned as undeliverable by the U.S. Postal Service, TMC shall promptly notify the Commissioner in writing for further instructions as to the means of the making of said payment. Upon making the required payments, TMC shall furnish evidence to the Commissioner within 60 days of this Final Order of having made the payment, which evidence shall consist of a copy of the front and back of the cancelled check for each payment;

As to all Respondents.

S. That Respondents shall permanently CEASE and DESIST from engaging in any further unlicensed originator activities and specifically CEASE and DESIST from violating the MMOL, the MMLL, the MFFL, and the MMFPA;

T. That Ward, Coston and TMC are ineligible for mortgage-related licenses until they satisfy the penalties and conditions described herein;

U. That Respondents shall send all correspondence, notices, civil penalties and other required submissions to the Commissioner at the following address: Commissioner of Financial Regulation, 500 North Calvert Street, Suite 402, Baltimore, Maryland 21202, Attn: Proceedings Administrator;

V. That the records and publications of the Commissioner of Financial Regulation reflect this Final Order.

11/26/13
Date



Mark A. Kaufman
Commissioner

Note: A judicial review of this Final Order may be sought in the Circuit Court of Maryland in which a Respondent resides or has his/her principal place of business, or in the Circuit Court for Baltimore City. A petition for judicial review must be filed with the court within 30 days after the mailing of this Order.

EXHIBIT F01

MORTGAGOR	INTEREST PAID
[REDACTED]	\$2,597.00
[REDACTED]	\$0.00
[REDACTED]	\$3,345.85
[REDACTED]	\$0.00
[REDACTED]	\$0.00
[REDACTED]	\$0.00
[REDACTED]	\$0.00
[REDACTED]	\$3,639.81
[REDACTED]	\$7,443.47
[REDACTED]	\$1,220.85
[REDACTED]	\$2,419.54
[REDACTED]	\$1,328.22
[REDACTED]	\$3,093.33
[REDACTED]	\$2,181.14
[REDACTED]	\$6,607.29
[REDACTED]	\$0.00
[REDACTED]	\$3,528.00
[REDACTED]	\$4,086.07
[REDACTED]	\$583.12
[REDACTED]	\$0.00
[REDACTED]	\$17,021.85

	\$0.00
	\$5,876.20
	\$416.40
	\$1,620.96
	\$1,215.92
	\$1,053.10
	\$547.50
	\$4,573.56
	\$2,509.08
	\$701.10
	\$1,842.17
	\$7,483.37
	\$786.00
	\$4,201.53
	\$803.84
	\$2,442.31
	\$1,211.59
	\$12,170.63
	\$6,441.97
	\$4,792.27
	\$0.00
	\$719.03

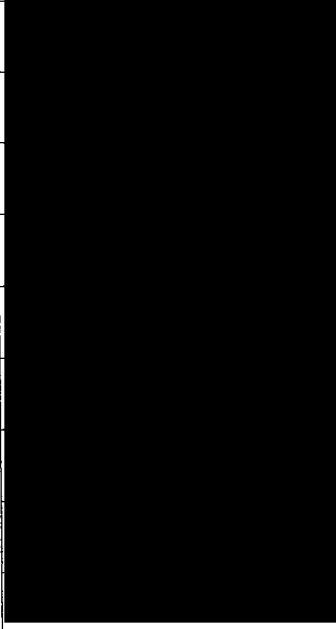










	\$894.16
	\$16,579.53
	\$13,271.59
	\$56,228.28
	\$31,688.89
	\$13,488.47
	\$41,467.90
	\$63,095.46
	\$67,734.80

Exhibit F02

BORROWER	FORFEITURE \$
	\$ 1,650.00
	\$14,746.56
	
	\$ 9,300.00
	\$ 4,500.00
	\$ 8,820.00
	\$ 4,500.00
	\$ 5,400.00
	\$ 3,000.00
	\$ 6,000.00