

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Banker License of: No. 09F-BD058-BNK

3 **MORTGAGES LTD.**
4 4455 E. Camelback Road
Phoenix, AZ 85018

CONSENT ORDER

5 Respondent.

6
7 On February 27, 2009, the Arizona Department of Financial Institutions ("Department")
8 issued a Notice of Hearing to Revoke alleging that Respondent Mortgages Ltd. had violated Arizona
9 law. Wishing to resolve this matter in lieu of an administrative hearing, and without admitting
10 liability, fault, responsibility or guilt, ML Servicing Co., ("ML Servicing") an entity created pursuant
11 to the Confirmation Order of the United States Bankruptcy Court for the District of Arizona as to act
12 as the reorganized entity for Mortgages, Ltd., ML Servicing does not contest the entry of an Order
13 with the following Findings of Fact and Conclusions of Law, and consents to the entry of the
14 following Order.

15 **FINDINGS OF FACT**

16 1. Respondent Mortgages Ltd. was at all relevant times an Arizona corporation authorized
17 to transact business in Arizona as a mortgage banker, license number BK-0007577, within the
18 meaning of A.R.S. §§ 6-941, *et seq.* The nature of Mortgages Ltd.'s business was at all relevant
19 times that of making, negotiating, or offering to make or negotiate loans secured by Arizona real
20 property, within the meaning of A.R.S. § 6-941(5).

21 2. On June 23, 2008 an involuntary petition for relief was filed against Mortgages Ltd
22 under title 11 the United States Code (the "Bankruptcy Code"), under case No.2:08-bk-07465-RJH.
23 On June 24, 2008, the United States Bankruptcy Court for the District of Arizona (the "Court")
24 entered an order converting the case to a case under Chapter 11 of the Bankruptcy Code.

25 3. On May 20, 2009, the Court entered an Order Confirming the Investors Committee's
26 First Amended Plan of Reorganization Dated March 12, 2009 for Mortgages, Ltd. (the

1 "Confirmation Order"). Under the Confirmation Order, Mortgages Ltd was reorganized and
2 renamed to ML Servicing. None of the officers or directors of ML Servicing were involved with the
3 operations of Mortgages Ltd. as set forth herein. Based on the Confirmation Order, ML Servicing
4 does not and will not engage in activities that requires a license within the meaning of A.R.S. §§ 6-
5 941, *et seq.*

6 4. As used herein, "Respondent" refers to the actions of Mortgages Ltd. prior to the
7 Confirmation Order.

8 5. Respondent failed to maintain a surety bond, as required by A.R.S. § 6-943(H), while
9 conducting business as a mortgage banker, which is grounds for denial, suspension or revocation
10 pursuant to A.R.S. § 6-945(A)(7); specifically:

11 a. On or about December 15, 2008, the Department received a Notice of Cancellation or
12 Nonrenewal from Great American Insurance Company advising the Department that
13 Mortgages Ltd.'s Bond, Number 3373981, was cancelled effective January 9, 2009;

14 b. On December 17, 2008, the Department sent a letter via certified mail to Respondent
15 informing it of the bond cancellation and of its statutory obligation as a mortgage
16 banker licensee to replace the cancelled bond. The letter was received and signed for
17 on December 18, 2008;

18 c. On January 15, 2009, the Department received a letter from Respondent, stating that
19 the bond had been canceled in error, it was working on getting its bond reinstated, and
20 asked for a one week extension; and

21 d. The Department still has not received an original bond.

22 e. Respondents deposited cash in lieu of a bond on March 25, 2009.

23 6. Beginning on June 4, 2008, through January 30, 2009, the Department conducted an
24 examination of the mortgage banker business of Mortgages Ltd. and found that Respondent:

25 a. Failed to prominently display its mortgage banker license in the office of the mortgage
26 banker as required; specifically:

- 1 i. The examiners were informed that the mortgage banker license was in one of the
2 second floor offices, and had never been on display in the main lobby of
3 Respondent's building;
- 4 b. Failed to notify the Superintendent before changing the address of the principal place
5 of business; specifically:
- 6 i. Respondent changed the address of its principal place of business in March
7 2008. The Department was not notified of the address change until April 17,
8 2008. In addition, the incorrect original license was received with the
9 application for the address change;
- 10 ii. On December 15, 1999, Respondent informed the Department that it lost its
11 original license during its move from 2833 North Third Street, Phoenix, AZ
12 85004 to 55 East Thomas Road, Phoenix, AZ 85012; and
- 13 iii. On April 17, 2008, the Department received the original license from the Third
14 Street address that was reported "lost" in 1999 for Respondent's move to 4455
15 East Camelback Road, Phoenix, AZ 85018, instead of the correct 55 E. Thomas
16 Road original license;
- 17 c. Failed to obtain the Superintendent's prior written consent before control of the
18 mortgage banker license was acquired through a stock purchase or other device;
19 specifically:
- 20 i. Prior to the Confirmation Order, the sole owner of Respondent was the SMC
21 Revocable Trust U/T/A dated December 22, 1994, as amended ("SMC Trust").
22 Scott M. Coles ("Coles") was the sole trustee of the SMC Trust. Coles passed
23 away on June 2, 2008 and, according to the terms of the SMC Trust, Tom Hirsch
24 ("Hirsch") automatically became the successor trustee; and
- 25 ii. Respondent's attorney filed articles of organization for NMLC, LLC, a limited
26 liability company organized under the laws of Arizona, on June 9, 2008. On the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

same day, Hirsch executed a proxy granting NMLC, LLC the power to vote all shares of the capital stock of NMLC, LLC. This action was a 100% (one hundred percent) change of control of the voting shares of Respondent;

- d. Failed to use its license number within regulated advertising in at least four (4) advertisements and/or solicitations;
- e. Failed to conduct the minimum elements of reasonable employee investigations prior to hiring at least fifteen (15) employees; specifically:
 - i. The Employment Eligibility Verification (Form I-9) was incomplete for at least one (1) employee;
 - ii. Obtained an Employment Eligibility Verification (Form I-9) after the hire date of at least six (6) employees;
 - iii. A completed and signed employment application was incomplete for at least one (1) employee;
 - iv. The signed statement attesting to all of an applicant's felony convictions, including detailed information regarding each conviction, was incomplete for at least one (1) employee;
 - v. Conducted an incorrect felony inquiry (ten year limit on convictions) for at least one (1) employee;
 - vi. Failed to consult with the applicant's most recent or next most recent employer or failed to date said inquiry for nine (9) employees;
 - vii. Failed to inquire regarding an applicant's qualifications and competence for the position or failed to date said inquiry for nine (9) employees;
 - viii. Failed to obtain a current credit report from a crediting reporting agency prior to hiring at least six (6) employees;
 - ix. Failed to investigate further after at least three employees' credit report contained derogatory information; and

- 1 x. Failed to correct this violation from their previous examination;
- 2 f. Failed to keep and maintain at all times correct and complete records clearly reflecting
3 the financial condition of Mortgages Ltd.; specifically:
- 4 i. Since Respondent did not record a reserve for loan impairment, owned real
5 estate, a doubtful loan receivable and a demand for payment under a guarantee
6 of another's debt, its financial statements do not accurately reflect the financial
7 condition of the business. Had Respondent recorded such a reserve and/or
8 liability, its equity would have been negatively affected and would have been
9 stated at negative <\$47.7 million> in its unaudited financial statements dated
10 May 31, 2008;
- 11 g. Failed to update and reconcile, on a monthly basis, records having more than ten (10)
12 transactions in a calendar quarter; specifically:
- 13 i. Since Respondent's bank accounts incur more than ten transactions during a
14 calendar quarter, Respondent must reconcile its accounts monthly.
15 Respondent's Tax Impound Account and Collection Trust Account have not
16 been reconciled, per Respondent's own admission;
- 17 h. Failed to maintain a complete corporate organizational file; specifically:
- 18 i. The stock ledger and stock certificates maintained by Respondent have not been
19 updated as required;
- 20 ii. The last issuance date for a new stock certificate for the non voting shares is
21 November 1, 1995. The last issuance date for a new stock certificate for the
22 common voting shares is November 1, 1995, as well. These stock certificates
23 were issued in the name of the SMC-FLC Revocable Trust dated 12/22/94; and
- 24 iii. Before his death, the sole trustee amended/restated the trust documents at least
25 three times. At least one amendment/restatement was a name change to the
26 Trust, yet the stock transfer ledger does not indicate that a new stock certificate

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

was issued;

i. Made a false promise or misrepresentation or concealed an essential or material fact in the course of the mortgage banking business; specifically:

i. The May 31, 2008 financial statements misrepresented the true financial condition of Respondent because Respondent failed to accrue and record various items. Respondent did not record reserves for loan impairment or the decline in value of its owned real estate portfolio;

ii. Respondent did not accrue a reserve for a \$6 million loan to the SMC Revocable Trust, whose collectibility is uncertain and did not disclose that it had guaranteed a \$12 million loan taken out by SM Coles LLC; and

iii. The recordation of all relevant adjustments would have had a negative impact of \$57.5 million on Respondent's balance sheet. Respondent's equity at May 31, 2008 would have gone from \$9.8 million dollars to a negative equity of <\$47.7 million>;

j. Failed to meet at all times its statutorily required minimum net worth of not less than two hundred fifty thousand dollars (\$250,000.00); specifically:

i. Respondent's net worth, after all required adjustments as described in the "Generally Accepted Accounting Principles" violation set forth below would have been stated at negative <\$47.7 million> as of May 31, 2008;

k. Respondent is insolvent as defined in A.R.S. § 47-1201(23), which is grounds for denial, suspension or revocation pursuant to A.R.S. § 6-945(A)(1); specifically:

i. On June 23, 2008, Respondent filed a motion in the United States Bankruptcy Court to convert an involuntary petition for a Chapter 7 bankruptcy to a case under Chapter 11. The Chapter 7 proceeding was brought by certain borrowers of Respondent;

ii. On June 24, 2008, the Bankruptcy Court approved Respondent's motion and

1 Respondent became the debtor-in-possession with respect to the Chapter 11
2 proceeding, *In Re Mortgages Ltd.*, U.S. Bankruptcy Court, District of Arizona,
3 No. 2:08-bk-07465-RJH; and

4 iii. Respondent is insolvent; specifically:

- 5 1. Respondent was unable to pay interest in the amount of \$1.165 million on
6 \$197 million of Notes Payable due to its primary lender in June 2008; and
- 7 2. Unrecorded reductions in assets or increases in liabilities, amounting to \$57.5
8 million, would have caused Respondent's May 31, 2008, unaudited financial
9 statements to disclose a negative equity of <\$47.7 million.>

10 l. Failed to furnish information to the Superintendent within a reasonable time, which is
11 grounds for denial, suspension or revocation pursuant to A.R.S. § 6-945(A)(3);
12 specifically:

- 13 i. During the course of the examination, Respondent was asked to provide
14 financial statement information on the SMC Revocable Trust and SM Coles
15 LLC. Respondent made a loan to the SMC Revocable Trust in the amount of
16 \$6 million, and the collectibility of the note was in question. Numerous
17 transactions occurred between Respondent and SM Coles LLC. An
18 understanding of these transactions was sought to determine what effect they
19 might have on the company; and
- 20 ii. Respondent was asked to provide the aforementioned information, but the
21 information was never provided;

22 m. Failed to maintain a statutorily correct trust subsidiary ledger and failed to verify each
23 trust balance to each trust subsidiary ledger at reconciliation; specifically:

- 24 i. Failed to include in Respondent's trust subsidiary ledger for the tax impound
25 account provisions for:
 - 26 1. Amount received;

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

- 2. Date received;
- 3. Date deposited into the trust account;
- 4. Amount disbursed;
- 5. Date disbursed; and
- 6. Disbursement's payee and purpose;
- ii. Failed to reconcile each trust balance to each trust subsidiary ledger at each reconciliation; and
- iii. Failed to correct this violation from its previous examination;
- n. Failed to observe Generally Accepted Accounting Principles ("GAAP") in preparation of its financial statements; specifically:
 - i. In its May 31, 2008 unaudited financial statements, Respondent:
 - 1. Failed to record mortgages held for investment and sale at the lower of cost or fair market value;
 - 2. Failed to recognize that the cost of their mortgages held as security for RevOp investors exceeded their fair market value;
 - 3. Failed to recognize the decline in fair market value of its real estate investments held for sale;
 - 4. Failed to assess the collectibility of a \$6 million note receivable from a related party, and failed to record an allowance against such note; and
 - 5. Failed to record a \$0.9 million dollar demand made for a \$12 million dollar loan guaranteed by Respondent for another party (related); and
 - ii. Based upon the instances listed above, Respondent would have \$57.5 million in adjustments as either a reduction in assets or an increase in liability.
- 7. The conduct described above constitutes grounds for revocation of Respondent's mortgage banker license.

CONCLUSIONS OF LAW

1 1. Pursuant to A.R.S. Title 6, Chapter 9, the Superintendent has the authority and duty to
2 regulate all persons engaged in the mortgage banker business and with the enforcement of statutes,
3 rules, and regulations relating to mortgage bankers.

4 2. By the conduct set forth above in the Complaint, Respondent Mortgages Ltd. violated the
5 following:

- 6 a. A.R.S. § 6-943(H) by failing to maintain the required surety bond, which is grounds
7 for denial, suspension or revocation pursuant to A.R.S. § 6-945(A)(7);
- 8 b. A.R.S. § 6-944(D) and A.A.C. R20-4-1805 by failing to prominently display its
9 mortgage banker license in the office of the mortgage banker as required;
- 10 c. A.R.S. § 6-944(E) by failing to notify the Superintendent before changing the address
11 of the principal place of business;
- 12 d. A.R.S. § 6-944(A) by failing to obtain the Superintendent's prior written consent
13 before control of the mortgage banker license was acquired through a stock purchase
14 or other device;
- 15 e. A.R.S. §§ 6-943(N) and 6-946(E) by failing to use its license number within regulated
16 advertising in at least four (4) advertisements and/or solicitations;
- 17 f. A.R.S. § 6-943(O) and A.A.C. R20-4-102 by failing to conduct the minimum elements
18 of reasonable employee investigations prior to hiring at least fifteen (15) employees;
- 19 g. A.R.S. § 6-946(A) by failing to keep and maintain at all times correct and complete
20 records clearly reflecting the financial condition of Mortgages Ltd.;
- 21 h. A.A.C. R20-4-1806(C) by failing to update and reconcile, on a monthly basis, records
22 having more than ten (10) transactions in a calendar quarter;
- 23 i. A.A.C. R20-4-1806(B)(9) by failing to maintain a complete corporate organizational
24 file;
- 25 j. A.R.S. § 6-947(L) by making a false promise or misrepresentation or concealing an
26 essential or material fact in the course of the mortgage banking business;

- 1 k. A.R.S. § 6-943(C)(3)(b) by failing to meet at all times its statutorily required
- 2 minimum net worth of not less than two hundred fifty thousand dollars (\$250,000.00);
- 3 l. A.R.S. § 6-945(A)(1) by its insolvency as defined in A.R.S. § 47-1201(23);
- 4 m. A.R.S. § 6-945(A)(3) by failing to furnish information to the Superintendent within a
- 5 reasonable time, which is grounds for denial, suspension or revocation;
- 6 n. A.A.C. R20-4-1806(B)(5), by failing to maintain a trust subsidiary ledger and failing
- 7 to verify each trust balance to each trust subsidiary ledger at reconciliation; and
- 8 o. A.R.S. § 6-946(B) and A.A.C. R20-4-102 by failing to observe generally accepted
- 9 accounting principles in preparation of its financial statements.

10 3. Respondent is insolvent within the meaning of A.R.S. § 47-1201(23), which is grounds
11 for the suspension or revocation of Respondent's mortgage banker license, pursuant to A.R.S.
12 § 6-945(A)(1).

13 4. Respondent failed, within the reasonable time, to furnish any information or make any
14 report as required by the Superintendent, which is grounds for the suspension or revocation of
15 Respondent's mortgage banker license, pursuant to A.R.S. § 6-945(A)(3).

16 5. Respondent failed to maintain the required surety bond, a violation of A.R.S. § 6-943(H),
17 thereby failing to conduct business in accordance with the law and violating A.R.S. Title 6, Chapter
18 9 and the rules related to Chapter 9, which is grounds for the suspension or revocation of
19 Respondent's mortgage banker license, pursuant to A.R.S. § 6-945(A)(7).

20 6. The violations, set forth above, constitute grounds for the pursuit of any other remedy
21 necessary or proper for the enforcement of statutes and rules regulating mortgage bankers in Arizona
22 pursuant to A.R.S. §§ 6-123 and 6-131.

23 7. Pursuant to A.R.S. § 6-132, Respondent's violations of the aforementioned statutes are
24 grounds for a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for
25 each day.

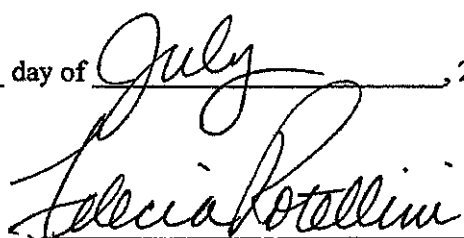
26 **ORDER**
10

1 1. Mortgage Banker License, Number BK-0007577, issued in the name of Respondent
2 Mortgages Ltd. is hereby immediately revoked, and shall immediately be surrendered to the
3 Department upon execution of this Consent Order.

4 2. The provisions of this Order shall be binding upon Respondent, and resolves the Notice
5 of Hearing, subject to Respondent's compliance with the requirements of this Order, as well as all
6 other statutes and rules regulating mortgage bankers.

7 3. This Order shall become effective upon service, and shall remain effective and
8 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated,
9 or set aside.

10 SO ORDERED this 28th day of July, 2009.

11
12 

13 Felecia A. Rotellini
14 Superintendent of Financial Institutions

15 **CONSENT TO ENTRY OF ORDER**

16 1. ML Servicing, as the reorganized entity formerly known as Mortgages, Ltd. pursuant
17 to the Confirmation Order, acknowledges that it has been served with a copy of the foregoing
18 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, has read the same,
19 is aware of its right to an administrative hearing in this matter, and has waived the same.

20 2. ML Servicing admits the jurisdiction of the Superintendent and consents to the entry
21 of the Order.

22 3. ML Servicing states that no promise of any kind or nature has been made to induce it
23 to consent to the entry of this Order, and that it has done so voluntarily.

24 4. ML Servicing acknowledges that the acceptance of this Order by the Superintendent
25 is solely to settle this matter and does not preclude this Department, any other agency or officer of
26 this state or subdivision thereof from instituting other proceedings as may be appropriate now or in

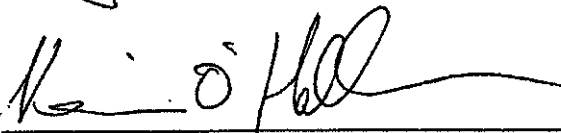
1 the future.

2 5. Kevin O'Halloran, as the President of ML Servicing, the reorganized entity pursuant
3 to the Confirmation Order has been authorized by virtue of the Confirmation Order to execute
4 appropriate documents to implement the Plan and Confirmation Order on behalf of ML Servicing.

5 6. ML Servicing waives all rights to seek judicial review or otherwise to challenge or
6 contest the validity of this Consent Order.

7 7. Nothing in this Order, nor any act of ML Servicing (including, but not limited to, the
8 execution of this Order) shall be treated, construed, or deemed as an admission by ML Servicing or
9 any of its affiliates, including, without limitation, ML Liquidating Trust, or ML Manager LLC ("ML
10 Manager") or any entity in which ML Manager is a member, manager, or principal (collectively, the
11 "ML Reorganized Entities"), shall be treated, construed, or deemed as an admission by the ML
12 Reorganized Entities of the validity of the findings of fact or conclusions of law contained in this
13 Order, or of any liability, fault, responsibility, or guilt of any kind in this or any other matter, all such
14 findings, conclusions, liability, fault, responsibility, and guilt of any kind being expressly denied.

15 DATED this 27th day of July, 2009.

16
17 By 
18 Kevin O'Halloran
President, ML Servicing Co.

19 ORIGINAL of the foregoing filed this 28th
20 day of July, 2009, in the office of:

21 Felecia A. Rotellini
22 Superintendent of Financial Institutions
23 Arizona Department of Financial Institutions
24 ATTN: Susan Longo
25 2910 N. 44th Street, Suite 310
26 Phoenix, AZ 85018

COPY mailed/delivered same date to:

Brian B. Tully, Administrative Law Judge
Office of the Administrative Hearings

1 1400 West Washington, Suite 101
Phoenix, AZ 85007

2
3 Craig A. Raby
4 Assistant Attorney General
5 Attorney General's Office
6 1275 West Washington
7 Phoenix, AZ 85007

8 Robert D. Charlton, Assistant Superintendent
9 Richard Fergus, Licensing Division Manager
10 Joan Doran, Senior Examiner
11 Arizona Department of Financial Institutions
12 2910 N. 44th Street, Suite 310
13 Phoenix, AZ 85018

14 AND COPY MAILED SAME DATE, by
15 Certified Mail, Return Receipt Requested to:

16 ML Servicing Co..

17 c/o Kevin O'Halloran, President

18 ~~4455 E. Camelback Road~~
19 Phoenix, AZ 85018

14050 NORTH 83rd AVE, SUITE 180
PEORIA, AZ 85381

20 Cathy L. Reece, Esq.
21 Keith L. Hendricks, Esq.
22 FENNEMORE CRAIG, P.C.
23 3003 N. Central Avenue, Suite 2600
24 Phoenix, AZ 85012
25 Attorneys for Official Committee of
26 Investors in the Mortgages Ltd. Bankruptcy

A Susan Longo

516923; PHX-AGN-2009-0205