

**STATE OF NEBRASKA**  
Department of Banking & Finance

IN THE MATTER OF:	)	
	)	FINDINGS OF FACT
Advantage Mortgage Service, Inc.	)	CONCLUSIONS OF LAW
12046 Pacific Street	)	AND
Omaha, Nebraska	)	CONSENT AGREEMENT

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Mortgage Bankers Registration and Licensing Act, Neb. Rev. Stat. §§ 45-701 to 45-722 (Reissue 1998; Cum. Supp. 2002; Supp. 2003) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-710 (Supp. 2003), the DEPARTMENT has investigated the acts of Advantage Mortgage Service, Inc., 12046 Pacific Street, Omaha, Douglas County, Nebraska (“ADVANTAGE”). As a result of such investigation, and being duly advised and informed in the matter, the Director and ADVANTAGE enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

**FINDINGS OF FACT**

1. ADVANTAGE holds a mortgage banker license under the Act. The license was originally granted April 15, 1996, pursuant to Neb. Rev. Stat. § 45-705 (Supp. 2003), and has been renewed annually on March 1<sup>st</sup> since that time, pursuant to Neb. Rev. Stat. § 45-706(3) (Supp. 2003).
2. Neb. Rev. Stat. § 45-705(2) (Supp. 2003) provides that an applicant for a mortgage banker license shall submit an application on forms provided by the

DEPARTMENT, and the form shall contain, among other items, all addresses at which business is to be conducted. Neb. Rev. Stat. § 45-706(3) (Supp. 2003) provides that mortgage banker licenses may be renewed annually by filing an application for renewal containing such information as the Director may require to indicate any material change in the original application or succeeding renewal applications. Any change in the addresses at which a licensee conducts business would be considered a material change in the information contained in the licensee's original or succeeding renewal applications.

3. On January 13, 2004, ADVANTAGE submitted its 2004 Mortgage Banker License Renewal Application ("2004 Renewal Application") to the DEPARTMENT.

4. Question #2 of the 2004 Renewal Application requires the "Address, contact person, and phone number of all other offices at which mortgage banking business will be conducted in Nebraska." A grid for filling in the information is included on the application form. The DEPARTMENT's 2003 Mortgage Banker License Renewal Application ("2003 Renewal Application") and 2002 Mortgage Banker License Renewal Application ("2002 Renewal Application") forms contained the same question.

5. ADVANTAGE did not respond to Question #2 on the 2004 Renewal Application.

6. ADVANTAGE's filing of an incomplete 2004 Renewal Application constitutes a violation of Neb. Rev. Stat. § 45-706(3) (Supp. 2003), as ADVANTAGE failed to materially update its existing license information.

7. The DEPARTMENT contacted ADVANTAGE by e-mail dated January 13, 2003, and informed ADVANTAGE that it needed to file an amended Renewal Application as ADVANTAGE did not respond to Question #2.

8. Scott Levine ("Levine"), President of ADVANTAGE, responded by e-mail dated January 13, 2004. Levine stated that "question #2 is my net branch in lincoln [sic]." Levine indicated he had completed the application "early in the morning" and "was not really awake." Levine indicated an amended application would be mailed.

9. Amended pages to the 2004 Renewal Application were submitted to the DEPARTMENT on January 15, 2004. In response to Question #2, the amended application listed an office at 770 North Cotner Boulevard, Suite 404, Lincoln, Nebraska ("Lincoln Office") as a "net branch," with the contact person there being Linda Law.

10. The DEPARTMENT contacted ADVANTAGE by e-mail dated January 15, 2004, regarding the amended Renewal Application. The DEPARTMENT asked for more information regarding the Lincoln Office, and its designation as a net branch. The DEPARTMENT, having reviewed ADVANTAGE's website on January 15, 2004, also noted that the website listed an office in Kearney, Nebraska, and asked the status of that office.

11. Levine responded by e-mail dated January 15, 2004. Levine stated that he guessed he had not answered the questions correctly. The e-mail stated "Nothing has changed Lincoln and Kearney are ours and Kearney is open" [*Spacing and punctuation in original*]. Levine then listed 4009 6<sup>th</sup> Avenue, #28, Kearney,

Nebraska (“Kearney Office”) and the Lincoln Office as its response to Question #2 of the Renewal Application.

12. ADVANTAGE’s filing of an erroneous amended 2004 Renewal Application constitutes a violation of Neb. Rev. Stat. § 45-706(3) (Supp. 2003), as ADVANTAGE failed to materially update its existing license information, and a violation of Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2003), as it provided false and misleading information in response to Question #2 of the 2004 Renewal Application.

13. ADVANTAGE had listed the Lincoln Office on its 2002 Renewal Application and on its 2003 Renewal Application. While ADVANTAGE had listed the Kearney Office on its 2002 Renewal Application, it failed to do so on its 2003 Renewal Application.

14. ADVANTAGE’s failure to list its Kearney Office on its 2003 Renewal Application represents a violation of Neb. Rev. Stat. § 45-706(3) (Supp. 2003), as ADVANTAGE failed to materially update its existing license information, and a violation of Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2003), as ADVANTAGE provided false and misleading information in response to Question #2 of the 2003 Renewal Application.

15. In response to the e-mail discussed in Finding of Fact #11, the DEPARTMENT contacted ADVANTAGE a second time on January 15, 2004, by e-mail. With this e-mail, ADVANTAGE was asked to confirm that it had only three offices physically located in Nebraska. ADVANTAGE was asked whether any of its out-of-state offices conducted mortgage banking/brokerage activities on Nebraska

real property. ADVANTAGE was asked to confirm that every individual in each office that conducted mortgage banking activities related to Nebraska real property was an employee of ADVANTAGE.

16. Levine responded to the DEPARTMENT's second January 15, 2004 e-mail with a January 16, 2004 e-mail. He confirmed that he had three Nebraska offices and those were located in Omaha, Lincoln, and Kearney, Nebraska. Levine further stated that ADVANTAGE operated an office in Council Bluffs, Iowa ("Iowa Office"), and that "nothing has changed everything is the same as it has been for the last 8 years" [*Spacing, punctuation and capitalization in original*]. Levine did not respond to the DEPARTMENT's questions relating to Nebraska mortgage banking/brokerage activities at the Iowa Office or the questions relating to persons working at ADVANTAGE's branch offices.

17. By e-mail dated January 16, 2004, the DEPARTMENT again asked Levine whether the Iowa Office conducted activities relating to Nebraska real property and to confirm the employee status of persons working in ADVANTAGE's branch offices.

18. Levine responded to the DEPARTMENT's January 16, 2004 e-mail with an e-mail that same day. To the first question, Levine stated that "sure in the bluffs they do Nebraska loans as we do loans in ia" [*Spacing and capitalization in original*]. To the DEPARTMENT's second question, he replied, "all of them are employee's [sic]." Levine also stated "looking back at all of my applications and the renewal applications i have never written down the bluffs address i have always just sent a copy of the license for ia and for whatever reason that question has never come up" [*Spacing and capitalization in original*].

19. ADVANTAGE's failure to list its Iowa Office on its 2004 Renewal Application, when the Iowa Office, by Levine's admission, conducted mortgage banking business in Nebraska, represents a violation of Neb. Rev. Stat. § 45-706(3) (Supp. 2003), as ADVANTAGE failed to materially update its existing license information, and a violation of Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2003), as ADVANTAGE provided false and misleading information in response to Question #2 of the 2004 Renewal Application.

20. On January 22, 2004, the DEPARTMENT received a complaint against ADVANTAGE. The complaint alleged that ADVANTAGE had failed to pay for an appraisal which ADVANTAGE had ordered, and provided proof that a small claims court judgment had been obtained against ADVANTAGE in January 2004. ADVANTAGE had failed to appear at the small claims court hearing. The complaint stated that the activities complained of occurred at a business office of ADVANTAGE located at 15934 Frances Street, Suite 110, Omaha, Nebraska ("Frances Street Office").

21. The Frances Street Office was not listed on ADVANTAGE's original mortgage banker license application, and had never been listed on succeeding ADVANTAGE mortgage banker license renewal applications.

22. On January 29, 2004, the DEPARTMENT forwarded ADVANTAGE a notice of investigation and inquiry request for information ("Notice I") regarding the complaint and the non-disclosure of the Frances Street Office address, pursuant to Neb. Rev. Stat. § 45-710 (Supp. 2003).

23. On February 4, 2004, ADVANTAGE responded to Notice I. With respect to the complaint, the response stated that ADVANTAGE had just been made aware of the complaint and that the Complainant had been paid in full. The response also indicated that a copy of the check paying Complainant was enclosed, although it was not. With respect to the Frances Street Office, ADVANTAGE stated that the office the Complainant “had been dealing with is not associated with us anymore.”

24. On February 6, 2004, the DEPARTMENT forwarded ADVANTAGE a second notice of investigation and inquiry request for information (“Notice II”). Notice II requested a copy of the check paying Complainant which had not been enclosed with ADVANTAGE’s February 4, 2004 response. Notice II requested details regarding the non-disclosure of the Frances Street Office address and persons associated with that office, pursuant to Neb. Rev. Stat. § 45-710 (Supp. 2003).

25. On February 9, 2004, the Complainant referenced in Finding of Fact #20 notified the DEPARTMENT that payment had been received from ADVANTAGE on February 5, 2004.

26. On February 19, 2004, ADVANTAGE responded to Notice II. With respect to the complaint, ADVANTAGE enclosed a copy of the check paying Complainant.

27. Although the complaint was resolved to the satisfaction of the Complainant, ADVANTAGE’s response that it learned of the complaint from the DEPARTMENT, as set forth in Finding of Fact # 23, if true, indicates that the

Frances Street Office failed to inform Levine or ADVANTAGE's main office of the complaint, the small claims court action, the date of the small claims court hearing, or the small claims court judgment.

28. The facts set forth in Findings of Fact #s 20, 23, and 27 demonstrate the failure of ADVANTAGE to reasonably supervise an agent to assure compliance with the Act. Such failure is a violation of Neb. Rev. Stat. § 45-707(1)(k) (Supp. 2003).

29. With respect to the Frances Street Office inquiry, ADVANTAGE, in its February 19, 2004 response to Notice II, stated that the Frances Street Office was the result of an "Agent Agreement" with "Debra J. Berry a Net Branch, Advantage Mortgage Service-West, a DJLB, Inc. Company, 13520 Discovery Drive, Suite 219, Omaha, Nebraska" ("Discovery Drive Office"), dated December 17, 2001. The Discovery Drive Office was a predecessor location to the Frances Street Office. ADVANTAGE admitted that neither office was listed on ADVANTAGE's 2002 Renewal Application or its 2003 Renewal Application. ADVANTAGE informed the DEPARTMENT that the Agent Agreement was terminated effective December 17, 2003. A copy of the expired Agent Agreement was included with the response.

30. ADVANTAGE's failure to list the Discovery Drive Office or the Frances Street Office, as applicable, on its 2002 and 2003 Renewal Applications represents two separate violations of Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2003), as ADVANTAGE provided false and misleading information in response to Question #2 on these Renewal Applications.



31. ADVANTAGE had numerous opportunities prior to the Notice to inform the DEPARTMENT of the Discovery Drive Office and the Frances Street Office, and to correct the omissions in its 2002 and 2003 Renewal License Applications. Levine's January 16, 2004 e-mail claimed that he had reviewed previous renewal applications, yet he made no mention of the Omaha branch which ADVANTAGE had operated for two years, and had closed only one month before.

32. ADVANTAGE's failure to inform the DEPARTMENT of its prior operation of the Discovery Drive Office and the Frances Street Office as successive branch offices during a series of DEPARTMENTAL requests specifically seeking information on ADVANTAGE's offices represents a violation of Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2003), as ADVANTAGE provided false and misleading information to the DEPARTMENT during the 2004 renewal application process.

33. ADVANTAGE's February 19, 2004 response also informed the DEPARTMENT that Debra J. Berry, the Agent at the Discovery Drive Office and the Frances Street Office, was an independent contractor. Five other persons were listed as working at those offices but their status with respect to ADVANTAGE was not specifically discussed.

34. On February 25, 2004, ADVANTAGE sent a second response to Notice II which included an "updated" 2004 Renewal Application. The response stated that ADVANTAGE failed to include Agent Agreements for ADVANTAGE's Lincoln Office and Kearney Office in its previous renewal applications, and included copies of its current Agent Agreements for the Lincoln Office and Kearney Office.

35. The Agent Agreements for the Lincoln Office and the Kearney Office, as well as the expired Agent Agreement for the Frances Street Office, contain standard language in the "Operative Provisions" clause which provides that the agent has a Nebraska corporation, and that the agent's corporation will pay all of the employees as well as certain business liabilities.

36. Based on the Agent Agreements, it is clear that the staff members at the respective ADVANTAGE branch offices are not employees of ADVANTAGE.

37. As set forth in Finding of Fact #18, Levine represented in a January 16, 2004 e-mail to the DEPARTMENT that all persons working at all of ADVANTAGE's offices were employees. This representation was false and constitutes a violation of Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2003).

38. ADVANTAGE's agents do not qualify for the exemption from licensing with the DEPARTMENT under Neb. Rev. Stat. § 45-703(1)(g) (Cum. Supp. 2002), as they are not individuals, and the persons working for the corporate agents do not qualify for an exemption from licensing with the DEPARTMENT under either Neb. Rev. Stat. § 45-703(1)(f) or Neb. Rev. Stat. § 45-703(1)(g) (Cum. Supp. 2002). As such, ADVANTAGE has been utilizing unlicensed and non-exempt persons in the conduct of its mortgage banker business in Nebraska, which constitutes a dishonest business practice in violation of Neb. Rev. Stat. § 45-706(1) (Supp. 2003).

39. Based on the foregoing violations, the DEPARTMENT could conclude that the actions of ADVANTAGE warrant imposition of an administrative fine in

an amount not more than \$1,000 for each separate violation, plus investigative costs, pursuant to Neb. Rev. Stat. § 45-717.01 (Supp. 2003).

40. The DEPARTMENT has incurred investigative costs of at least one thousand four hundred and seventy-five dollars (\$1,475.00) in this matter.

### **CONCLUSIONS OF LAW**

1. Neb. Rev. Stat. § 45-705 (Supp. 2003) provides that an applicant for a mortgage banker license shall submit an application on forms provided by the DEPARTMENT, and the form shall contain, among other items, all addresses at which the applicant will conduct its business.

2. Neb. Rev. Stat. § 45-706(3) (Supp. 2003) provides that mortgage banker licenses may be renewed annually by filing an application for renewal containing such information as the Director may require to indicate any material change in the original application or succeeding renewal applications.

3. Any change in the addresses at which a mortgage banker conducts business constitutes a material change in the original or succeeding renewal applications, and must therefore be disclosed to the DEPARTMENT pursuant to Neb. Rev. Stat. § 45-706(3) (Supp. 2003).

4. Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2003) provides that if the Director, following an administrative hearing, finds that a licensee has made or caused to be made, in any document filed with the Director or in any proceeding under the Act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect, the Director may suspend or revoke the license, or issue an

administrative fine not exceeding one thousand dollars for each violation of the Act.

5. Neb. Rev. Stat. § 45-707(1)(k) (Supp. 2003) provides that if the Director, following an administrative hearing, finds that a licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the Act or with any state or federal law applicable to the mortgage banking business, the Director may suspend or revoke the license, or issue an administrative fine not exceeding one thousand dollars for each violation of the Act.

6. Neb. Rev. Stat. § 45-706(1) (Supp. 2003) provides that the business of a mortgage banker shall be operated honestly, soundly and efficiently in the public interest consistent with the purposes of the Act.

7. Neb. Rev. Stat. § 45-703(1)(g) (Cum. Supp. 2002) provides an exemption from the licensing requirements of the Act for any individual acting solely as an agent of a mortgage banker licensed or registered pursuant to the act or exempt from the act, if there is a written agency contract between the individual and the licensee which provides that, with respect to the mortgage banking business, the individual acts exclusively for the licensee as an agent. The exemption is available only to natural persons.

8. Neb. Rev. Stat. § 45-703(1)(f) (Cum. Supp. 2002) provides an exemption from the licensing requirements of the Act for any individual acting solely as an employee of a mortgage banker licensed or registered pursuant to

the act or exempt from the act. The exemption is available only to natural persons.

9. Neb. Rev. Stat. § 45-705 (Supp. 2003) provides that no person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed or has registered with the DEPARTMENT as provided in the Act.

10. A licensee's use of unlicensed and non-exempt persons in the conduct of its mortgage banker business in Nebraska constitutes a dishonest business practice in violation of Neb. Rev. Stat. § 45-706 (Supp. 2003).

11. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that ADVANTAGE has violated the Act and that an administrative fine in an amount of not more than one thousand dollars (\$1,000.00) for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-707 (Supp. 2003).

12. Under the Act's statutory framework, the Director has the legal and equitable authority to fashion significant remedies.

13. It is in the best interest of ADVANTAGE, and it is in the best interest of the public for ADVANTAGE and the DEPARTMENT to resolve the issues included herein.

### **CONSENT AGREEMENT**

The DEPARTMENT and ADVANTAGE agree as follows:

Stipulations: In connection with this Consent Agreement, ADVANTAGE and the DEPARTMENT stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.
2. This Consent Agreement shall resolve all matters related to the existing violations of the Act.
3. This Consent Agreement shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Agreement.

ADVANTAGE further represents as follows:

1. ADVANTAGE is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.
2. ADVANTAGE is acting free from any duress or coercion of any kind or nature.
3. This Consent Agreement is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for the purpose of this Consent Agreement and for no other purpose.

IT IS THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Agreement, ADVANTAGE shall pay a fine of two hundred dollars (\$200.00) for each of the four separate violations of Neb. Rev. Stat. § 45-706(3) (Supp. 2003), where ADVANTAGE failed to update material information to its Renewal Applications.
2. Within ten (10) days after the effective date of this Consent Agreement, ADVANTAGE shall pay a fine of five hundred dollars (\$500.00) for each of the

seven separate violations of Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2003), where ADVANTAGE provided false and misleading information to the DEPARTMENT.

3. Within ten (10) days after the effective date of this Consent Agreement, ADVANTAGE shall pay a fine of five hundred dollars (\$500.00) for the violation of Neb. Rev. Stat. § 45-707(1)(k) (Supp. 2003), where ADVANTAGE failed to reasonably supervise its Frances Street Office.

4. Within ten (10) days after the effective date of this Consent Agreement, ADVANTAGE shall pay a fine of five hundred dollars (\$500.00) for its violation of Neb. Rev. Stat. § 45-705(1) (Supp. 2003), by using persons who were not licensed or registered under the Act to conduct its business.

5. Within ten (10) days after the effective date of this Consent Agreement, ADVANTAGE shall pay the investigative costs of the DEPARTMENT in the amount of one thousand four hundred seventy-five dollars (\$1,475.00).

6. The total amount of the fines, five thousand three hundred dollars (\$5,300.00), plus the investigative costs of one thousand four hundred seventy-five dollars (\$1,475.00), shall be payable in one check or money order to the DEPARTMENT.

7. Within thirty (30) days of the effective date of this Consent Agreement ADVANTAGE shall either (a) cease doing business with all individuals working at the Lincoln Office, Kearney Office, and Iowa Office; (b) hire such individuals as exclusive employees of ADVANTAGE; or (c) enter into exclusive written independent contractor agreements with each of such individuals. ADVANTAGE shall notify the DEPARTMENT in writing of the option chosen and provide proof

of such compliance to the DEPARTMENT within forty (40) days of the effective date of this Consent Agreement.

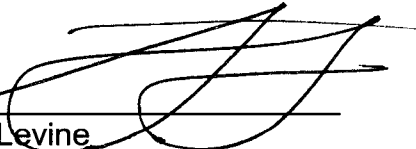
8. ADVANTAGE shall establish no branch offices or enter into written agreements with agents in the future without a minimum of ten (10) days prior notice to the DEPARTMENT. This condition shall apply until March 1, 2009.


9. In the event ADVANTAGE fails to comply with any of the provisions of this Consent Agreement, the DEPARTMENT may commence such action regarding ADVANTAGE as it deems necessary and appropriate in the public interest.

10. The effective date of this Consent Agreement will be the date of the Director's signature.

**Advantage Mortgage Service, Inc.**  
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(402) 330-0770

**Nebraska Department of Banking and Finance**  
311 The Atrium, 1200 "N" Street  
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\_\_\_\_\_  
Scott Levine  
President

  
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Samuel P. Baird  
Director

Dated: 5-25-04

Dated: 6-7-04