

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	
Smart Enterprises, LLC,)	
d/b/a HomeSmarz Your Mortgage Solution,)	
11640 Arbor Street, Suite 201,)	
Omaha, Nebraska)	FINDINGS OF FACT
)	
Smart Enterprises, LLC,)	CONCLUSIONS OF LAW
d/b/a American Eagle Mortgage,)	
815 3 rd Street,)	AND
Hastings, Nebraska)	
)	CONSENT AGREEMENT
Smart Enterprises, LLC,)	
d/b/a Mortgage Centers of America,)	
2819 South 125 th Street, Suite 362)	
Omaha, Nebraska)	

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 45-721 (Reissue 2004) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-710 (Reissue 2004), the DEPARTMENT has investigated the acts of Smart Enterprises, LLC, 11640 Arbor Street, Suite 201, Omaha, Douglas County, Nebraska (“SMART”). SMART operates under multiple doing business as designations: Smart Enterprises, LLC, d/b/a HomeSmarz Your Mortgage Solution (“HOMESMARTZ”), which previously had also operated under the d/b/a Masterpiece Mortgage (“MASTERPIECE”), 11640 Arbor Street, Suite 201,

Omaha, Douglas County, Nebraska; Smart Enterprises, LLC, d/b/a American Eagle Mortgage, 815 3rd Street, Hastings, Adams County, Nebraska (“AMERICAN”); and Smart Enterprises, LLC, d/b/a Mortgage Centers of America, 2819 South 125th Street, Suite 362, Omaha, Douglas County, Nebraska (“MCA”). As a result of such investigation, and being duly advised and informed in the matter, the Director and SMART, under its d/b/a’s of HOMESMARTZ, AMERICAN, and MCA, enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

SMART D/B/A HOMESMARTZ YOUR MORTGAGE SOLUTION D/B/A MASTERPIECE MORTGAGE

1. A license was issued January 22, 2001, for Smart Enterprises, LLC, d/b/a HomeSmartz Your Mortgage Solution, d/b/a Masterpiece Mortgage, pursuant to Neb. Rev. Stat. § 45-705 (Reissue 2004), and has been renewed annually on March 1st since that time, pursuant to Neb. Rev. Stat. § 45-706(3) (Reissue 2004). The DEPARTMENT issued SMART d/b/a HOMESMARTZ a provisional license, effective from March 1, 2005 to June 1, 2005, pending resolution of this inquiry regarding SMART’s business. A second provisional license was issued by the DEPARTMENT, effective from June 1, 2005 to August 1, 2005, as the inquiry had not been completed.

2. Neb. Rev. Stat. § 45-705(2) (Reissue 2004) 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) (Reissue 2004) 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 22, 2004, SMART submitted its 2004 Mortgage Banker License Renewal Application ("2004 Renewal Application") to the DEPARTMENT to do business as HOMESMARTZ/MASTERPIECE.

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 transacted in Nebraska." A grid for filling in the information is included on the application form.

5. SMART responded to Question #2 by providing information for two additional locations: 9805 Giles Road, Omaha, Nebraska, and 314 North 5th, Norfolk, Nebraska. Contact persons and telephone numbers were provided for both of these locations.

6. The 2004 Renewal Application was followed by the issuance of an Order of Renewal for SMART d/b/a HOMESMARTZ d/b/a MASTERPIECE, effective March 1, 2004.

SMART D/B/A AMERICAN EAGLE MORTGAGE

7. In correspondence received June 14, 2004, SMART informed the DEPARTMENT that it wanted to add additional d/b/a's for AMERICAN and "Mortgage Centers of America," in addition to the existing d/b/a's for HOMESMARTZ and MASTERPIECE.

8. By letter dated June 21, 2004, the DEPARTMENT informed all mortgage bankers licensed under the Act that,

Effective immediately, Mortgage Banker License Applications with more than one trade name (d/b/a designation) will no longer be accepted for filing by the Nebraska Department of Banking and Finance. Applicants will be permitted to designate a corporate name and one trade name only. If an applicant wants to conduct business under multiple trade names, it must submit a separate application, filing fee, and surety bond for each additional trade name.

Licensees that were currently operating under multiple names were allowed to continue to do so until February 28, 2005, at which time a separate application for each trade name would need to be filed with the DEPARTMENT, and a separate license obtained.

9. On August 9, 2004, SMART submitted a Mortgage Banker License Application ("Application") to do business as AMERICAN to the DEPARTMENT.

10. Question #2 of the Application requires the "Address, contact person, and phone number of all other offices (whether or not in Nebraska) at which mortgage banking business will be transacted." A grid for filling in the information is included on the application form.

11. SMART did not respond to Question #2 on the Application. On August 20, 2004, the DEPARTMENT contacted AMERICAN for additional information and requested, in part, “. . . an amended page one which contains this [referring to Question #2] information. The amended page should also include the applicant’s web site address, if applicable.” (Bracketed information added.)

12. On August 19, 2004, the DEPARTMENT contacted American Eagle Mortgage, 3011 West Broadway, Council Bluffs, Iowa (“AMERICAN IOWA”), by certified mail because AMERICAN IOWA was operating a web site which indicated the company was registered in Nebraska. The web site, www.ae-mortgage.com, listed what appeared to be a main office in Council Bluffs, Iowa, and contact telephone numbers for Des Moines, Iowa, and Omaha, Fremont, Hastings, Grand Island, and Kearney, Nebraska. The DEPARTMENT had no record of a current licensee doing business under the name or address given for AMERICAN IOWA, and, since SMART’s application to do business as AMERICAN did not list any additional locations, the DEPARTMENT believed that AMERICAN IOWA was operating as an unlicensed separate entity.

13. On August 24, 2004, the DEPARTMENT received a response from SMART in response to the DEPARTMENT’s request set forth in Finding of Fact #11, above. SMART provided an amended page one to the Application for AMERICAN which indicated “N/A” in response to Question #2.

14. In reliance upon this information, the DEPARTMENT granted SMART a mortgage banker license under the Act on August 24, 2004, pursuant to Neb. Rev. Stat. § 45-705 (Reissue 2004) to do business as AMERICAN.

15. On September 1, 2004, the DEPARTMENT received a letter via facsimile transmission from SMART, signed by Kally J. Williams, Controller (“Williams”). This letter indicated that SMART wished to add three locations as branches to SMART’s license to do business as AMERICAN. One of these locations was 3011 West Broadway, Council Bluffs, Iowa, the address of AMERICAN IOWA previously referenced in Finding of Fact #12, above. The other branches listed were 815 3rd Street, Hastings, Nebraska, and 4780 South 131st Street, Suite B, Omaha, Nebraska.

16. On September 7, 2004, the DEPARTMENT received a letter from Williams in response to the DEPARTMENT’s inquiry to AMERICAN IOWA. This correspondence stated that:

The office referenced in your letter is actually a branch location of Smart Enterprises, LLC d/b/a HomeSmartz Your Mortgage Solution. Smart Enterprises, LLC originally applied for the additional d/b/a to be added to our current NE license. That request was declined by your office due to the change in the NE Mortgage Banking regulations of only one d/b/a per license. Smart Enterprises, LLC then filed the necessary paperwork to license the d/b/a American Eagle Mortgage.

The loan personnel at the office in Council Bluffs unfortunately misunderstood that the certification we received from the Nebraska Secretary of State office approving the use of the d/b/a American Eagle Mortgage was sufficient approval to process loans under that d/b/a. As soon as the error was detected by our main office, it was corrected.

17. On September 14, 2004, the DEPARTMENT requested information from SMART as to when the language concerning AMERICAN IOWA first appeared on the web site. As indicated above, no web site address was disclosed on either the original application, the amended application or in any

correspondence included with either application. The DEPARTMENT further informed SMART that,

The applicant failed to disclose American Eagle Mortgage's web site and the Council Bluff (sic) branch office. The Department views nondisclosure as a significant issue. As such, the Department requires a written explanation as to why the applicant filed documents which contained false and misleading information.

18. On October 5, 2004, the DEPARTMENT received correspondence from Williams at SMART which stated that,

In your letter dated August 20, 2004, you addressed Question 2 of our application . . . In addition, your letter requested information regarding our President, Joseph Frost. In my haste to address what I felt was the more serious matter of a potential Cease and Desist Order regarding Mr. Frost, I mistakenly answered "Non-Applicable" to Question 2 . . . On August 24th, I called to check on the status of our application and spoke with Bobbi in your office. While talking with Bobbi, I noticed on the application that I had inadvertently answered N/A to Question 2 and asked her how I could correct it. . . . On September 1st, I faxed a letter asking to add the three branch offices to our license . . . however, and unfortunately, that even though we intended to correct our answer to Question 2, we again unintentionally failed to include the website information. . . . Under our investigation of the website content, we determined that American Eagle created the website information during the time that they operated under Probity's Nebraska license as a d/b/a. It appears that after American Eagle disengaged with Probity, they inadvertently failed to update their website content. It is our understanding that American Eagle Mortgage added the license reference to its webpage on or about August 2003.

The correspondence included another amended page one of the application which indicated a web site address of www.ae-mortgage.com.

19. SMART's failure to list the Council Bluffs, Iowa; Hastings, Nebraska, and the additional Omaha, Nebraska, office on the Application for AMERICAN represents a violation of Neb. Rev. Stat. § 45-705(2)(a) (Reissue 2004), as SMART failed to provide all addresses at which business was proposed to be conducted.

20. On November 19, 2004, the DEPARTMENT received a facsimile transmission from SMART which included a letter from AMERICAN which verified that, on August 22, 2003, it had added a statement to its web site that it was licensed in Nebraska. This letter also stated that AMERICAN had operated under a contract with Probity National Mortgage, 1501 42nd Street, Suite 445, West Des Moines, Iowa ("PROBITY"), between August 13, 2003 and May 7, 2004. Since that time, AMERICAN had been processing loans as a d/b/a of SMART, as referenced in Finding of Fact #16.

21. SMART's failure to timely notify the DEPARTMENT that it was allowing AMERICAN to operate under its license from the time that AMERICAN's contract with PROBITY ended on May 7, 2004, represents a violation of Neb. Rev. Stat. § 45-705(1) (Reissue 2004), as AMERICAN was acting as a mortgage banker and using the title of a mortgage banker in Nebraska without first being licensed with the DEPARTMENT.

22. The information regarding the alleged affiliation between AMERICAN IOWA and PROBITY led to further correspondence between the DEPARTMENT, SMART, and PROBITY between October 2004 and January

2005, which is unrelated to the Findings of Fact for purposes of this Consent Agreement.

23. SMART's failure to list its web site address and its failure to list the Council Bluffs, Iowa; Hastings, Nebraska, and the additional Omaha, Nebraska, office on its amended page one of the Application for AMERICAN, as noted in Finding of Fact #13, above, represents a violation of Neb. Rev. Stat. § 45-707(1)(d) (Reissue 2004), as SMART provided false and misleading information to the DEPARTMENT regarding AMERICAN.

24. On February 24, 2005, SMART submitted its 2005 Mortgage Banker License Renewal Application ("2005 Renewal Application") to the DEPARTMENT to do business as AMERICAN. The main office address for AMERICAN was listed as 815 3rd Street, Hastings, Nebraska. The web site address for AMERICAN was given as www.ae-mortgage.com. No additional offices were listed on the 2005 Renewal Application and by letter dated March 1, 2005, AMERICAN verified that, ". . . there are no other offices conducting business under the name of American Eagle Mortgage."

25. SMART's failure to notify the DEPARTMENT of the apparent change in office locations of AMERICAN as noted in Finding of Fact #24, above, represents a violation of Neb. Rev. Stat. § 45-711(9) (Reissue 2004), as SMART failed to notify the DEPARTMENT within thirty days of any material development. A change in offices that do business with Nebraska residents, either through addition or deletion of offices, is a material development requiring notification to the DEPARTMENT.

26. In response to the 2005 Renewal Application, the DEPARTMENT issued SMART d/b/a AMERICAN a provisional license, effective from March 1, 2005 to June 1, 2005, pending resolution of this inquiry regarding SMART's business. A second provisional license was issued by the DEPARTMENT, effective from June 1, 2005 to August 1, 2005, as the inquiry had not been completed.

SMART D/B/A MORTGAGE CENTERS OF AMERICA

27. SMART had not notified the DEPARTMENT of any additions or deletions to the listing of branches on its 2004 Renewal Application to do business as HOMESMARTZ and MASTERPIECE, as noted in Finding of Fact #5, above. However, on January 21, 2005, the DEPARTMENT received a telephone call from a representative of MCRR, LLC d/b/a Mortgage Centers of America, Omaha, Nebraska ("MCA"). This representative indicated that MCA was operating as a branch of SMART at that time. While the name "Mortgage Centers of America" had appeared in previous SMART correspondence to the DEPARTMENT (see Finding of Fact #7, above), an actual application for SMART to do business as MCA had never been submitted to the DEPARTMENT as of the date of that inquiry.

28. By letter dated January 25, 2005, the DEPARTMENT contacted SMART about the MCA office. Correspondence received February 18, 2005, signed by Joseph Frost ("Frost"), President of SMART, indicated that MCA had not been given authority to operate under that name, but rather, two individuals

in that office were operating as authorized agents of SMART. According to Frost, one of those individuals, Margo Cuneo ("Cuneo"), had leased the office at "2819 SW 125th Avenue, Suite 362 [Omaha, Nebraska]. . . . independently of HomeSmartz, in January 2004." (Bracketed information added.) Frost's letter included a copy of a contract with Cuneo which was dated November 30, 2002. Frost further represented that,

Originally, our intent was to operate this office as a branch of HomeSmartz under the dba of Mortgage Centers of America. But, after becoming aware of the change of Nebraska State Banking and Finance licensing regulations, we instructed the independent contractors to operate as exclusive HomeSmartz agents under our license unless a new Mortgage Centers of America license was applied for and issued to Margo Cuneo.

It was my understanding that this office was listed as a branch office of HomeSmartz in our previous renewal application. In our last conversation, I found out this not to be the case. But, I still think we may have updated your office since then during our correspondence with you regarding our American Eagle branch. However, we have had turnover in our licensing department recently and I am not able to locate documentation showing that we did list this office as a branch of HomeSmartz.

29. In fact, Cuneo had been listed as a contact person for an office at 9001 Arbor Street, Suite 106, Omaha, Nebraska, on SMART's 2003 Mortgage Banker License Renewal Application ("2003 Renewal Application"). Neither this address, nor Cuneo, appeared on SMART's subsequent 2004 Renewal Application or in any subsequent correspondence with the DEPARTMENT.

30. SMART's failure to notify the DEPARTMENT of the apparent change in office locations where Cuneo was doing business under SMART's license represents a violation of Neb. Rev. Stat. § 45-711(9) (Reissue 2004), as SMART

failed to notify the DEPARTMENT within thirty days of any material development. A change in offices that do business with Nebraska residents, either through addition or deletion of offices, is a material development requiring notification to the DEPARTMENT.

31. SMART's failure to list the MCA office location on its 2004 Renewal Application constitutes a violation of Neb. Rev. Stat. § 45-706(3) (Reissue 2004), as SMART failed to materially update its existing license information. 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.

32. SMART's inaccurate representation to the DEPARTMENT of its offices doing business with Nebraska residents, in its 2004 Renewal Application, represents a violation of Neb. Rev. Stat. § 45-707(1)(d) (Reissue 2004), as SMART provided false and misleading information to the DEPARTMENT.

33. SMART's failure to timely notify the DEPARTMENT that it was allowing MCA to operate under its license from at least the time that Cuneo leased an office, "independently of HomeSmartz" in January 2004, represents a violation of Neb. Rev. Stat. § 45-705(1) (Reissue 2004), as MCA appeared to be acting as a mortgage banker and using the title of a mortgage banker in Nebraska without first being licensed with the DEPARTMENT.

34. On February 24, 2005, a Mortgage Banker License Application was submitted by SMART to the DEPARTMENT to do business as MCA. The

address given for MCA was 2819 South 125th Street, Suite 362, Omaha, Nebraska.

HERITAGE MORTGAGE

35. SMART's 2003 Renewal Application listed another branch in addition to the MCA branch referenced in Finding of Fact # 33. This branch address was given as 312 North 5th Street, Norfolk, Nebraska, with Lynn Nelson as the contact person. SMART's 2004 Renewal Application also lists Lynn Nelson as the contact person for a branch location given as 314 North 5th Street, Norfolk, Nebraska.

36. By letter dated February 2, 2004, the DEPARTMENT contacted SMART regarding Lynn Nelson and the Norfolk, Nebraska, branch location as it appeared that Lynn Nelson was also working for Heritage Mortgage, LLC, ("HERITAGE"), and thus would not qualify for the agent exemption found in Neb. Rev. Stat. § 45-703(1)(g) (Reissue 2004).

37. No evidence of a reply from SMART to the DEPARTMENT's February 2, 2004 letter was found in DEPARTMENT records. In apparent response to this letter, HERITAGE submitted a separate application to the DEPARTMENT on February 23, 2004. This application listed Lynn Nelson and Daniel Nelson as the owners. No mention was made on the application of any continuing relationship with SMART.

38. A license was issued March 1, 2004, for Heritage Mortgage, LLC, pursuant to Neb. Rev. Stat. § 45-705 (Reissue 2004). No evidence was found in

DEPARTMENT records that SMART ever removed the 314 North 5th Street, Norfolk, Nebraska, address from its listing of branch locations.

39. On February 15, 2005, HERITAGE submitted its 2005 Renewal Application to the DEPARTMENT. The main office address for HERITAGE was listed at 314 North 5th Street, Norfolk, Nebraska. No web site address for HERITAGE was listed and no additional branch locations were given. The renewal application again listed Lynn Nelson and Daniel Nelson as the owners. No mention was made on the application of any affiliation with SMART.

40. SMART's failure to formally notify the DEPARTMENT that the Norfolk location was no longer acting as a branch of SMART represents a violation of Neb. Rev. Stat. § 45-711(9) (Reissue 2004), as SMART failed to notify the DEPARTMENT within thirty days of any material development. A change in offices that do business with Nebraska residents, either through addition or deletion of offices, is a material development requiring notification to the DEPARTMENT.

SMART D/B/A HOMESMARTZ

41. On February 24, 2005, SMART submitted its 2005 Renewal Application to the DEPARTMENT to do business as HOMESMARTZ. The main office address for HOMESMARTZ was listed as 11640 Arbor Street, Suite 201, Omaha, Nebraska. The web site address for HOMESMARTZ was given as www.homesmartz.com. SMART did not elect to continue to use the d/b/a of MASTERPIECE in Nebraska.

42. Question #2 of the 2005 Renewal Application requires the “Address, contact person, and telephone number of all other offices from which mortgage banking business will be transacted in Nebraska.” A grid for filling in the information is included on the application form.

43. SMART responded to Question #2 by providing information for three offices: (1) Mortgage Centers of America – Margo Cuneo, 402-932-2880, 2819 Southwest 125th Avenue, Suite 362, Omaha, Nebraska, (2) American Eagle Mortgage – Joe Frost, 402-934-9272, 815 3rd Street, Hastings, Nebraska, (3) Heritage Mortgage – Joe Frost, 402-934-9272, 314 North 5th Street, Norfolk, Nebraska.

44. In a facsimile transmission received by the DEPARTMENT March 1, 2005, SMART provided an amended page 1 of the 2005 Renewal Application which indicated, “None” in response to Question #2. SMART further indicated that, “It was initially our understanding that we should include them because of their affiliation with Smart Enterprises.”

45. A review of the web site address on February 24, 2005, indicated that HOMESMARTZ had five addresses listed as branch locations making loans in Nebraska. They were identified as: Homesmartz – Omaha, 11640 Arbor Street, Suite 201, Omaha, Nebraska; Mortgage Centers of America, 2819 SW 125th Avenue, Suite 362, Omaha, Nebraska; American Eagle Mortgage, 3011 West Broadway, Council Bluffs, Iowa; Homeland Title & Escrow (“HOMELAND”), 14301 First National Bank Parkway, Suite 207, Omaha, Nebraska; and Heritage Mortgage, LLC, 314 North 5th Street, Norfolk, Nebraska. A license application

for SMART to do business as MCA, although the address given is different than that listed on this web site, is currently pending before the DEPARTMENT, as noted in Finding of Fact #34. The DEPARTMENT has no record of HOMELAND. A subsequent review of the web site address on March 18, 2005, indicated that HOMESMARTZ had three cities listed as "branch locations" in Nebraska: Norfolk, Omaha, and Hastings; and one in Iowa: Council Bluffs. By link, the web site directed to a page indicating a list of agents for each city of a state. The link for "Norfolk" identifies "Heritage Mortgage", 314 North 5th Street, Norfolk, Nebraska. The link for "Omaha" identifies contact information for twenty-three different agents at twenty-two different telephone numbers but no physical address. The link for "Hastings" identifies "American Eagle," 815 3rd Street, Hastings, Nebraska, and lists two agents' email addresses, both which have the suffix of "@aem.omhcoxmail.com". The link for "Council Bluffs, Iowa" also identifies "American Eagle" with an address of Council Bluffs, Iowa, and lists five different agents' email addresses, all of which also have the suffix of "@aem.omhcoxmail.com." This information appears to be misleading as neither HERITAGE, nor AMERICAN are technically "branches" of HOMESMARTZ. While AMERICAN is licensed as a d/b/a of SMART as noted in Finding of Fact #14, the sole address that SMART has given as currently operating as AMERICAN, as noted in Finding of Fact #24, is in Hastings, Nebraska. From this information, contrary to the information found in AMERICAN's 2005 Renewal Application, it appears that AMERICAN is still operating a branch location in Council Bluffs, Iowa. HERITAGE is licensed independently of SMART, as noted

in Finding of Fact #38. From this information, contrary to the information found in HERITAGE's application, it appears that HERITAGE is also operating as a d/b/a of SMART.

46. SMART's misleading statements with respect to HOMESMARTZ "Nebraska branches" on its web site which is publicly available to all Nebraska residents and residents of other states with Internet access represents a violation of Neb. Rev. Stat. § 45-714(1)(c) (Reissue 2004), as SMART's web site misrepresents or conceals material facts from potential applicants concerning the relationship between SMART, HOMESMARTZ, AMERICAN, HERITAGE, MCA, and HOMELAND.

47. SMART's continued inaccurate representation to the DEPARTMENT of its offices doing business with Nebraska residents in its applications, in its renewal applications, and in subsequent correspondence with the DEPARTMENT represents a violation of Neb. Rev. Stat. § 45-707(1)(d) (Reissue 2004), as SMART provided false and misleading information to the DEPARTMENT.

48. The review of the web site address on March 18, 2005, also indicated a link labeled "Net Branch Opportunity." This link directs to a page with the heading, "Your World. Your Way!" which provides information about the company and how an individual can become associated with HOMESMARTZ. This page also lists contact information for HOMESMARTZ, which in part lists "Clint Garner" as "President" and "Joe Frost" as "Marketing Director". SMART has continually represented to the DEPARTMENT in its initial 2001 Application,

its 2002 Renewal Application, 2003 Renewal Application, 2004 Renewal Application, 2005 Renewal Application, and through continued correspondence with the DEPARTMENT that Frost is its President. No mention is made on any of these documents of "Clint Garner" in any capacity.

49. SMART's apparent inaccurate representation to the DEPARTMENT of its officers in its applications, in its renewal applications, and in subsequent correspondence with the DEPARTMENT represents a violation of Neb. Rev. Stat. § 45-707(1)(d) (Reissue 2004), as SMART provided false and misleading information to the DEPARTMENT.

50. Based on the foregoing pattern of violations, the DEPARTMENT could conclude that the actions of SMART warrant the commencement of administrative proceedings to determine whether it should suspend or revoke SMART's mortgage bankers licenses pursuant to Neb. Rev. Stat. § 45-707 (Reissue 2004), or whether it should impose 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 (Reissue 2004).

51. The DEPARTMENT incurred a minimum of two thousand dollars (\$2,000.00) in investigation costs in this matter.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-705 (Reissue 2004) provides, in part, 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 registered with the DEPARTMENT. The

statute further 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 and the names and titles of each director and principal officer of the applicant.

2. Neb. Rev. Stat. § 45-706(1) (Reissue 2004) 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.

3. Neb. Rev. Stat. § 45-706(3) (Reissue 2004) 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.

4. 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) (Reissue 2004).

5. Neb. Rev. Stat. § 45-707(1)(d) (Reissue 2004) 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 or suppressed or withheld from the Director any information which, if submitted by the licensee, would have resulted in denial of the license

application, the Director may suspend or revoke the license, or issue an administrative fine not exceeding one thousand dollars (\$1,000.00) for each violation of the Act.

6. Neb. Rev. Stat. § 45-711(9) (Reissue 2004) provides that the licensee shall notify the Director in writing within thirty days after the occurrence of any material development. Any change in the locations at which a mortgage banker conducts business with Nebraska residents constitutes a material change.

7. Neb. Rev. Stat. § 45-714(1)(c) (Reissue 2004) provides that a licensee, an officer, an employee, or an agent of the licensee shall not misrepresent or conceal material facts or make false promises intended to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or cause or contribute to such misrepresentation by any person acting on a licensee's or any other lender's behalf.

8. Neb. Rev. Stat. § 45-717.01(2) (Reissue 2004) provides that if the Director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has knowingly committed any act prohibited by Section 45-707 or otherwise violated the Act, the Director may order such person to pay an administrative fine not exceeding one thousand dollars (\$1,000.00) for each separate violation plus the costs of investigation.

9. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that SMART has violated the Act and that proceedings could be commenced to revoke or suspend SMART's license and/or 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. § 45-717.01(2) (Reissue 2004).

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

11. It is in the best interest of SMART under its d/b/a's of HOMESMARTZ, AMERICAN, and MCA, and it is in the best interest of the public for SMART under its d/b/a's of HOMESMARTZ, AMERICAN, and MCA, and the DEPARTMENT to resolve the issues included herein.

CONSENT AGREEMENT

The DEPARTMENT and SMART under its d/b/a's of HOMESMARTZ, AMERICAN, and MCA, agree as follows:

Stipulations: In connection with this Consent Agreement, SMART under its d/b/a's of HOMESMARTZ, AMERICAN, and MCA, 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 between the DEPARTMENT and SMART under its d/b/a's of HOMESMARTZ, AMERICAN, and MCA, in connection with the Findings of Fact listed above. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the DEPARTMENT.
3. This Consent Agreement shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Agreement.

SMART under its d/b/a's of HOMESMARTZ, AMERICAN, and MCA, further represents as follows:

1. SMART 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. SMART 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, SMART shall pay a fine of five hundred dollars (\$500.00) for each of the two violations of Neb. Rev. Stat. § 45-705(1) (Reissue 2004), in which SMART knowingly allowed AMERICAN and MCA to act as a mortgage banker and/or use the title of a mortgage banker in Nebraska without first being licensed with the DEPARTMENT.

2. Within ten (10) days after the effective date of this Consent Agreement, SMART shall pay a fine of two hundred dollars (\$200.00) for the violation of Neb. Rev. Stat. § 45-705(2)(a) (Reissue 2004), in which SMART failed to provide required information on DEPARTMENT applications for AMERICAN.

3. Within ten (10) days after the effective date of this Consent Agreement, SMART shall pay a fine of two hundred dollars (\$200.00) for the violation of Neb. Rev. Stat. § 45-706(3) (Reissue 2004), in which SMART failed to materially update its existing license information with respect to its 2004 Renewal Application to do business as HOMESMARTZ and MASTERPIECE.

4. Within ten (10) days after the effective date of this Consent Agreement, SMART shall pay a fine of one thousand dollars (\$1,000.00) for each of the four violations of Neb. Rev. Stat. § 45-707(1)(d) (Reissue 2004), in which SMART provided false and misleading information to the DEPARTMENT on AMERICAN's amended Application, on AMERICAN's 2005 Renewal Application, on SMART's 2004 Renewal Application, on MCA's Application, and in subsequent correspondence with the DEPARTMENT.

5. Within ten (10) days after the effective date of this Consent Agreement, SMART shall pay a fine of two hundred dollars (\$200.00) for each of the three violations of Neb. Rev. Stat. § 45-711(9) (Reissue 2004), in which SMART failed to notify the DEPARTMENT within thirty days of any material development with respect to its d/b/a's of AMERICAN, MCA, and HOMESMARTZ. A change in offices that do business with Nebraska residents, either through addition or deletion of offices, is a material development requiring notification to the DEPARTMENT.

6. Within ten (10) days after the effective date of this Consent Agreement, SMART shall pay a fine of five hundred dollars (\$500.00) for the violation of Neb. Rev. Stat. § 45-714 (1)(c) (Reissue 2004), in which SMART's

web site misrepresents or conceals material facts from potential applicants concerning the relationship between SMART, HOMESMARTZ, AMERICAN, HERITAGE, MCA, and HOMELAND.

7. Within ten (10) days after the effective date of this Consent Agreement, SMART shall pay the investigative costs of the DEPARTMENT in the amount of two thousand dollars (\$2,000.00).

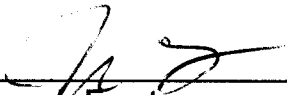
8. The total amount of the fine, six thousand, five hundred dollars (\$6,500.00), plus the total amount of investigation costs, two thousand dollars (\$2,000.00) shall be payable in one check or money order in the amount of eight thousand, five hundred dollars (\$8,500.00) to the DEPARTMENT.

9. Within ten (10) days after the effective date of this Consent Agreement, SMART shall provide proof to the DEPARTMENT that it has either removed language from the web site, www.homesmartz.com, which relates to any offices that are not actually branches of HOMESMARTZ or that it has clearly indicated on such web site that these offices are affiliates of HOMESMARTZ's parent company. In addition, SMART shall provide an explanation regarding the discrepancy relating to its President to the DEPARTMENT and update its materials on its web site and with the DEPARTMENT to show an accurate listing of its officers.

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

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

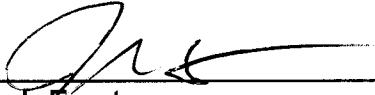
**Smart Enterprises, LLC
d/b/a HomeSartz Your Mortgage
Solution**
11640 Arbor Street, Suite 201
Omaha, Nebraska 68144
(402) 934-9272



Joseph Frost
President

Dated: 6/8/05

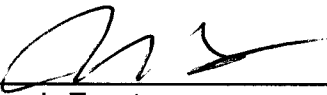
**Smart Enterprises, LLC
d/b/a American Eagle Mortgage**
815 3rd Street
Hastings, Nebraska 68901
(402) 463-3311



Joseph Frost
President

Dated: 6/8/05

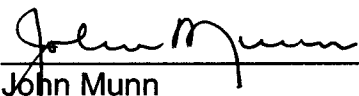
**Smart Enterprises, LLC
d/b/a Mortgage Centers of America**
2819 South 125th Street, Suite 362
Omaha, Nebraska 68114
(402) 932-2880



Joseph Frost
President

Dated: 6/8/05

**Nebraska Department of Banking
and Finance**
Commerce Court
1230 "O" Street, Suite 400
Lincoln, Nebraska 68508
(402) 471-2171



John Munn
Director

Dated: 6-14-2005