

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	FINDINGS OF FACT
American Home Financial Services, Inc.,)	CONCLUSIONS OF LAW
10555 Marty Street)	AND
Overland Park, Kansas)	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 45-721 (Reissue 2004) ("the Act"). Pursuant to Neb. Rev. Stat. § 45-710 (Reissue 2004), the DEPARTMENT has investigated the acts of American Home Financial Services, Inc., 10555 Marty Street, Overland Park, Kansas ("AHFS"). As a result of such investigation, and being duly advised and informed in the matter, the Director and AHFS enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. On February 9, 2004, the DEPARTMENT received a Mortgage Banker License Application (Application) from AHFS. The Application was signed by Michael Rosenberg ("ROSENBERG") as President of AHFS. The Application also listed Jason Tavernaro ("TAVERNARO") as the contact person regarding the mortgage banking business and the contact person for questions regarding the Application. The Application contained several deficiencies and the

DEPARTMENT contacted TAVERNARO regarding the deficiencies.

ROSENBERG supplied the DEPARTMENT with a letter dated March 9, 2004, which resolved all but one of the deficiencies. TAVERNARO and a representative of the DEPARTMENT discussed the remaining deficiency on March 29, 2004. TAVERNARO sent the DEPARTMENT a fax on May 10, 2004, which resolved the remaining deficiency.

2. A mortgage banker license was issued on May 11, 2004, for AHFS pursuant to Neb. Rev. Stat. § 45-705 (Reissue 2004).

3. The DEPARTMENT provided all licensees, including AHFS, with two notices that their licenses needed to be renewed by March 1, 2005, pursuant to Neb. Rev. Stat. § 45-706 (Reissue 2004). These notices were sent via U.S. Mail on January 3, 2005, and February 10, 2005. The February 10, 2005, notice included the following statement:

If a completed application is not received by March 1, our office will issue a notice of expiration of your license. Any mortgage banker activity in Nebraska after March 1, 2005, will be illegal if your license is not renewed.

4. Neb. Rev. Stat. § 45-706 (Reissue 2004) provides that all mortgage banker licenses automatically expire annually on March 1, unless the license has earlier been renewed.

5. On February 15, 2005, the DEPARTMENT received a notice from Hartford Fire Insurance Company that it was terminating AHFS' surety bond effective March 21, 2005.

6. In a letter dated February 16, 2005, and addressed to ROSENBERG as President of AHFS, the DEPARTMENT informed AHFS that it had received the notice of the cancellation of the surety bond and requested that AHFS supply the DEPARTMENT with a new or reinstated bond prior to March 21, 2005. The DEPARTMENT's letter also stated

Should you wish to surrender the mortgage banker license, please forward it to the Department, or a letter stating your desire to surrender the license, prior to March 21, 2005.

7. The DEPARTMENT's February 16, 2005, letter was sent to AHFS via certified mail and a representative of AHFS signed for the letter on February 18, 2005.

8. On February 24, 2005, the DEPARTMENT received a letter from AHFS that was dated February 18, 2005, and signed by TAVERNARO. The letter stated as follows:

Here is our official letter of surrender. At this time we are no longer going to pursue business in the state of Nebraska (sic). We appreciate the opportunity to conduct business in your state (sic); it was just not worth the added expense to our company. If you need any further information please feel free to contact us anytime.

9. Pursuant to the request contained in TAVERNARO's letter of February 18, 2005, the DEPARTMENT issued an Order canceling AHFS' license on February 25, 2005.

10. At no time did the DEPARTMENT receive a new or reinstated surety bond nor did the DEPARTMENT receive a 2005 Mortgage Banker License Renewal Application.

11. On July 15, 2005, the DEPARTMENT received a new Mortgage Banker License Application from AHFS. The Application was signed by ROSENBERG as President and listed Brittani Evans ("EVANS"), bookkeeper, and Craig Anderson ("ANDERSON"), General Manager, as the persons to contact regarding questions pertaining to the Application. A revised Application was submitted to the DEPARTMENT on August 4, 2005.

12. On July 21, 2005, EVANS telephoned the DEPARTMENT regarding the pending Application. EVANS described some of the circumstances leading to the cancellation of AHFS' license in February 2005. The DEPARTMENT requested that AHFS describe those circumstances in writing.

13. On July 25, 2005, the DEPARTMENT received a letter from AHFS. The letter was signed by ANDERSON as AHFS' manager. The letter informed the DEPARTMENT that TAVERNARO did not have the authority to cancel AHFS' license, that AHFS and TAVERNARO were involved in litigation, and that AFHS had received a letter in April from the State of Nebraska indicating that the company was in good standing.

14. The DEPARTMENT, however, has concluded that TAVERNARO had apparent authority, if not actual authority, to request surrender of AHFS' license. AHFS listed TAVERNARO as its contact person in its initial Application. TAVERNARO had contacted the DEPARTMENT on several occasions in connection with the initial Application. Therefore, even if TAVERNARO did not have actual authority to request the cancellation of AHFS' license, AHFS had

clothed him with the apparent authority to do so. The DEPARTMENT was therefore justified in canceling the license pursuant to the written request made by TAVERNARO on behalf of AHFS.

15. Moreover, AHFS failed to renew its license as required on March 1, 2005, and failed to replace its surety bond after it was canceled further evidencing an intent to surrender its license.

16. In addition, the DEPARTMENT did not send a letter to AHFS in April 2005 stating that the company was in good standing. While it is possible that AHFS remains in good standing with the Nebraska Secretary of State, that status is unrelated to its licensing status with the DEPARTMENT. Moreover, the list of licensed mortgage bankers on the DEPARTMENT's website does not list AHFS.

17. The DEPARTMENT in its August 4, 2005, letter requested that AHFS

(p)rovide a detailed narrative which describes the Nebraska mortgage banking/brokering activity that you engaged in from March 1, 2005 (sic) to the present. The letter should include a list of Nebraska applications that were taken or received via your website, email, telephone, facsimile and mail after the license expired.

18. In its August 4, 2005, response AHFS disclosed that it had taken mortgage loan applications from twenty-three (23) Nebraska residents since March 1, 2005. AHFS contends that it did not submit any of these applications to lenders for approval.

19. Neb. Rev. Stat. § 45-702(6) (Reissue 2004) defines the term "mortgage banker" as any person who "makes, originates, services, negotiates,

acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year."

20. AHFS' acceptance of loan applications from twenty-three (23) Nebraska residents without a mortgage banker's license constitutes twenty-three (23) separate violations of the Act.

21. The DEPARTMENT incurred a minimum of five hundred dollars (\$500.00) 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. § 45-702(6) (Reissue 2004) defines the term "mortgage banker" as any person not exempt from the Act who, for compensation or in the expectation of compensation or gain, directly or indirectly makes, originates, services, negotiates, acquires, sells, arranges for, or offers to make, originate, service, negotiate, acquire, sell, or arrange for ten or more mortgage loans in a calendar year.

3. 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.

4. Neb. Rev. Stat. § 45-706(1) (Reissue 2004) provides that the Director of the DEPARTMENT shall issue a mortgage banker license if he or she finds that the character and general fitness of the applicant are such that the business will be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Act.

5. 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 has otherwise violated the Act, the Director may order such person to pay an administrative fine not exceeding one thousand dollars for each separate violation plus the costs of investigation.

6. Apparent authority is "such authority as the agent seems to have by reason of the authority she or he actually has. A principal is bound by, and liable for, the acts which an agent does within her or his actual or apparent authority." *Department of Banking and Finance of Nebraska v. Davis*, 227 Neb. 172, 178 (1987). Apparent authority to act as an agent may be conferred if the principal affirmatively, intentionally, or by lack of ordinary care causes third persons to act upon the apparent authority. *Corman v. Mussleman*, 239 Neb. 159 (1989).

AHFS had clothed TAVERNARO with apparent authority to cancel the license when it listed TAVERNARO as its contact person for the DEPARTMENT.

7. The facts listed in the above Findings of Fact indicates that AHFS continued to act as a mortgage banker despite the fact that its license had been surrendered which could constitute a sufficient basis for the Director to have determined that AHFS lacks the general character and fitness to operate the business honestly, soundly, and efficiently in the public interest as required by Neb. Rev. Stat. § 45-706(1).

8. The facts listed in the above Findings of Fact could constitute a sufficient basis for the Director to have determined that AHFS has violated the Act and that proceedings to deny AHFS' Application should be initiated and/or that an administrative fine in an amount of not more than one thousand dollars for each of the twenty-three separate violations plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-717.01(2) (Reissue 2004).

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

10. It is in the best interest of AHFS and the DEPARTMENT to resolve the issues included herein.

CONSENT AGREEMENT

The DEPARTMENT and AHFS, agree as follows:

Stipulations: In connection with this Consent Agreement, AHFS 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 AHFS 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.

AHFS further represents as follows:

1. AHFS 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. AHFS is acting free from any duress or coercion of any kind or nature.

3. This Consent Agreement is executed to avoid further proceedings, except as specifically referenced in this Consent Agreement.

IT IS THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Agreement, AHFS shall pay a fine of two hundred fifty dollars (\$250.00) for each of the twenty-three (23) violations of Neb. Rev. Stat. § 45-705 (Reissue 2004), in which AHFS acted as a mortgage banker without the required license.

2. Within ten (10) days after the effective date of this Consent Agreement, AHFS shall pay the investigative costs of the DEPARTMENT in the amount of five hundred dollars (\$500.00).

3. The total amount of the fine and investigation costs, six thousand two hundred fifty dollars (\$6,250.00) shall be payable in one check or money order to the DEPARTMENT.

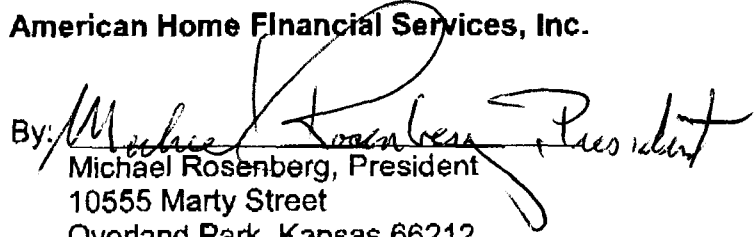
4. Within three (3) business days of receipt of the fine and investigation costs, the DEPARTMENT shall issue a Mortgage Banker License to AHFS for the current licensing period.

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

6. The effective date of this Consent Agreement shall be the date of the Director's signature.

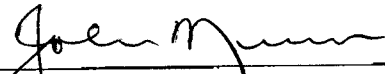
Dated this 6TH day of October, 2005.

American Home Financial Services, Inc.

By:  President
Michael Rosenberg, President
10555 Marty Street
Overland Park, Kansas 66212
(913) 383-9000

Dated this 14th day of October, 2005.

**State of Nebraska
Department of Banking and Finance**

By: 

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