

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

IN THE MATTER OF:	)	
	)	FINDINGS OF FACT
MegaStar Financial Corp.,	)	CONCLUSIONS OF LAW
3773 Cherry Creek North Drive,	)	AND
East Tower Suite 875	)	CONSENT AGREEMENT
Denver, Colorado	)	

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; Supp. 2005) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-710 (Reissue 2004), the DEPARTMENT has investigated the acts of MegaStar Financial Corp., 3773 Cherry Creek North Drive, East Tower Suite 875, Denver, Colorado (“MEGASTAR”). As a result of such investigation, and being duly advised and informed in the matter, the Director and MEGASTAR enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

**FINDINGS OF FACT**

1. A mortgage banker license was issued on April 29, 2003, for MEGASTAR pursuant to Neb. Rev. Stat. § 45-705 (Supp. 2005).
2. On February 26, 2004, the DEPARTMENT received a letter from MEGASTAR which stated as follows:

MegaStar Financial Corp. will surrender its Mortgage License upon renewal. We will re-apply at a later date.

3. On February 26, 2004, the DEPARTMENT issued an Order cancelling MEGASTAR's license pursuant to the request contained in MEGASTAR's letter.

4. On August 16, 2005, MEGASTAR submitted a Mortgage Banker License Application ("Application) to the DEPARTMENT pursuant to Neb. Rev. Stat. § 45-705 (Supp. 2005).

5. The DEPARTMENT reviewed the Application. On September 13, 2005, the DEPARTMENT sent a letter to MEGASTAR, which requested that MEGASATAR

provide a detailed narrative which describes the Nebraska mortgage banking/broker activity that the applicant and its branch offices engaged in from February 26, 2004 to the present. The letter should include a list of Nebraska applications that were taken or received after the license expired via the applicant's web site, email, mail, telephone or facsimile.

6. MEGASTAR responded in a letter received by the DEPARTMENT on September 23, 2005, in which MEGASTAR stated:

Since February 26<sup>th</sup>, 2004 MegaStar Financial has accepted fourteen loan applications. Of those three closed in 2004, nine have closed in 2005, and the remaining two did not close. We were relying on the verbiage set forth in N.R.S. §45-702(6) and as a non-mortgage banker, a person who originates, services, offers to originate, negotiate, acquire, sell or arrange for fewer than 10 mortgage loans in a calendar year we were exempt from licensure.

7. In its Application, MEGASTAR disclosed a website with an address of [www.megastarfinancial.com](http://www.megastarfinancial.com). When the DEPARTMENT reviewed the website in September 2005, it appeared that a Nebraska resident could submit an application on-line. The website did not contain any statement that MEGASTAR did not make loans in Nebraska, or a statement that it made loans in only those states in which it had licenses.

8. On November 18, 2005, the DEPARTMENT sent a letter to MEGASTAR in which it inquired:

please indicate if your web site, [www.megastarfinancial.com](http://www.megastarfinancial.com), allowed consumers, including Nebraska consumers, to submit applications electronically during 2004 and 2005.

9. MEGASTAR responded in a letter received by the DEPARTMENT on January 25, 2006. MEGASTAR explained that:

MegaStar Financial's website, [megastarfinancial.com](http://megastarfinancial.com), currently allows a customer to apply on line with MegaStar Financial. This application on the MegaStar Financial website became available to the general public, including residents of Nebraska, in August of 2005. To date no Nebraskans have used this service.

10. 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." The DEPARTMENT has determined that operating a website that is accessible to residents of Nebraska is an offer to make, originate, service, negotiate, acquire, or sell more than ten loans, unless such website specifically indicates that those services are not available to Nebraska customers. The DEPARTMENT's interpretation of this statute was set forth on the DEPARTMENT's website in the Frequently Asked Questions section at all time relevant to this Order.

11. MEGASTAR accepted nine loan applications in 2005. In addition, during August of 2005, MEGASTAR began offering to originate loans to Nebraskans via the Internet. MEGASTAR's activities in 2005 met the definition of a mortgage banker as defined by Neb. Rev. Stat. § 45-702(6) (Reissue 2004). MEGASTAR, by originating

nine loans and offering to originate loans via the Internet, committed at least nine violations of Neb. Rev. Stat. § 45-705(1) (Supp. 2005) which provides that

(n)o 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 Mortgage Bankers Registration and Licensing Act or is licensed under the Nebraska Installment Loan Act.

12. MEGASTAR does not hold, and never has held, a license issued pursuant to the Nebraska Installment Loan Act.

13. 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 (Supp. 2005) 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.

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) (Supp. 2005) 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) (Supp. 2005) 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. The above Findings of Fact contain information which indicates that MEGASTAR acted as a mortgage banker without a license. Operating without a license is, itself, a violation of the Act. Moreover, MEGASTAR was operating a website that is promoting its proposed mortgage banking business. MEGASTAR's decision to operate a mortgage banking business and to use a website to solicit business without a license raises serious questions regarding MEGASTAR's ability to operate the business soundly, efficiently, and in the public interest.

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

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

9. It is in the best interest of MEGASTAR and the best interest of the public to resolve the issues included herein.

### **CONSENT AGREEMENT**

The DEPARTMENT and MEGASTAR agree as follows:

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

MEGASTAR further represents as follows:

1. MEGASTAR 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. MEGASTAR 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, MEGASTAR shall pay a fine of one thousand dollars (\$1,000.00) for each of the nine violations of Neb. Rev. Stat. § 45-705 (Reissue 2004), in which MEGASTAR acted as a mortgage banker without the required license.

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

3. The total amount of the fine and investigation costs, nine thousand five hundred dollars (\$9,500.00), 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 MEGASTAR for the current licensing period.

5. In the event MEGASTAR fails to comply with any of the provisions of this Consent Agreement, the DEPARTMENT may commence such action regarding MEGASTAR 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 27 day of July, 2006.

**MegaStar Financial Corp.**

By: \_\_\_\_\_

Anita Radilla-Fitzgerald, President

3773 Cherry Creek North Drive  
East Tower Suite 875  
Denver, Colorado 80209  
(303) 321-8800

DATED this 2<sup>nd</sup> day of August, 2006.

**STATE OF NEBRASKA  
DEPARTMENT OF BANKING AND FINANCE**

By: John Munn  
John Munn, Director

Commerce Court, Suite 400  
1230 "O" Street  
Lincoln, Nebraska 68508  
(402) 471-2171