

STATE OF NEBRASKA
Department of Banking & Finance

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|---------------------------------|---|--------------------|
| IN THE MATTER OF: |) | |
| |) | FINDINGS OF FACT |
| Dunnington Rowe, Inc., |) | CONCLUSIONS OF LAW |
| d/b/a Omaha Financial Services, |) | AND |
| 11217 Wright Circle, Suite A, |) | CONSENT AGREEMENT |
| 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 45-723 (Reissue 2004; Cum. Supp. 2006; Supp. 2007) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-710 (Supp. 2007), the DEPARTMENT has investigated the acts of Dunnington Rowe, Inc., d/b/a Omaha Financial Services, 11217 Wright Circle, Suite A, Omaha, Nebraska (“OFS”). As a result of such investigation, and being duly advised and informed in the matter, the Director and OFS enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. OFS held a mortgage banker license issued pursuant to the Act. On March 11, 2002, the DEPARTMENT issued a license to OFS. OFS renewed the license annually on March 1st through March 1st 2007, as required by Neb. Rev. Stat. § 45-706 (Supp. 2007). On July 13, 2007, OFS notified the DEPARTMENT that it was surrendering its license.
2. References to customers of OFS will be by way of initials in order to protect the privacy of such individual customers. OFS should be aware of the identity of such

individuals. The DEPARTMENT will provide a listing of such individuals to OFS upon receipt of a written request.

3. On May 30, 2007, the DEPARTMENT received a complaint from an appraiser alleging that OFS had not paid for three (3) appraisals that it had ordered. These appraisals were for customers MA, LO, and MS.

4. In a letter dated May 31, 2007, but apparently sent on May 30, 2007, the DEPARTMENT forwarded the complaint to OFS. The letter forwarding the complaint stated in part:

You may regard this letter as notice of investigation and inquiry for information. According to the Mortgage Bankers Registration and Licensing Act ("Act"), you have 21 calendar days to respond. Please respond in writing on or before June 21, 2007. Each day you fail to respond constitutes a separate violation of the Act.

5. The DEPARTMENT's letter was sent to OFS via certified mail. The return receipt was signed by Kevin Dunning ("DUNNING") on May 31, 2007.

6. OFS failed to respond to the DEPARTMENT's notice of investigation. On June 26, 2007, the DEPARTMENT sent a second letter to DUNNING at OFS demanding an immediate response to the complaint and informing DUNNING and OFS that each day that it failed to respond was a separate violation of the Act.

7. The DEPARTMENT's June 26, 2007 letter was sent via certified mail. It was ultimately returned to the DEPARTMENT as DUNNING and OFS failed to claim the letter.

8. On or about July 11, 2007, DUNNING called the DEPARTMENT and informed a DEPARTMENT employee that he had closed OFS. The DEPARTMENT employee informed DUNNING that he needed to respond to the complaint and surrender his license.

9. On July 13, 2007, the DEPARTMENT received a letter from DUNNING on behalf of OFS which stated that he wished to surrender OFS' license.

10. Neb. Rev. Stat. § 45-707(3) (Cum. Supp. 2006) provides that a licensee may voluntarily surrender a license by delivering to the Director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to Section 45-717.01 for acts committed before the surrender.

11. On July 13, 2007, the DEPARTMENT also received a response to the complaint. DUNNING stated as follows in his response:

The complaint states that there are three unpaid appraisals. The [LO] appraisal fee was paid directly to us instead of the appraisal company. It has always been my policy to pay the appraisers direct, however that did not happen. The appraisal request for [MS] on 5905 Northwest Dr, (sic) Omaha, NE; I refuse to take responsibility for. The request form shows that it did not come from my fax number. The form used had my company's name hand written in, which is not how appraisals were ordered from my office. This appraisal, a physical file, and a credit report for this customer were never in my company's system. The last name of the customer [S] is the same name of the loan officer [WS], whom I did not trust and couldn't fire quick enough. I think this file needs to be addressed with him. The [MA] appraisal on [address redacted], I do not recall, other than that loan officer was fired three months after he started.

12. According to the information provided by the appraiser, the MA appraisal had been performed on April 17, 2006; the LO appraisal had been performed on May 1, 2006; and the MS appraisal had been performed on August 8, 2006. The appraiser also reports that he had many discussions with DUNNING concerning the unpaid bills for these appraisals.

13. The appraiser also contacted the title company which handled the closing for LO's loan. The title company furnished the appraiser with documents which he forwarded to the DEPARTMENT. The HUD-1 for customer LO indicated that funds were withheld at

closing for the payment of the appraisal fees and that the funds were forwarded to OFS on May 24, 2006. DUNNING, in his letter, admits that OFS did receive the funds for the appraisal bill from the customer but failed to pay the appraiser.

14. Neb. Rev. Stat. § 45-714(1)(j) (Supp. 2007) provides that a licensee shall not fail to disburse, without just cause, any funds in accordance with any agreement connected with the mortgage banking business.

15. OFS was clearly not entitled to retain the funds that it collected from the consumer at closing to pay the appraiser's bill and had agreed to use a portion of the proceeds that it received to pay the appraiser bill. OFS' failure to deliver the funds to the appraiser constitutes a violation of Neb. Rev. Stat. § 45-714(1)(j) (Supp. 2007).

16. The appraiser also submitted information to the DEPARTMENT which showed that OFS employees had ordered the appraisals for MA and for MS. OFS was therefore responsible to pay such appraiser fees and then collect from the borrowers if necessary. OFS' failure to pay for appraisals that it ordered is a violation of Neb. Rev. Stat. § 45-706(1) (Supp. 2007) as it is not operating honestly or efficiently in the public interest consistent with the purposes of the Act.

17. OFS failed to reasonably supervise its loan originators to insure that appraisals were properly ordered and paid. DUNNING's response clearly indicates that he was unaware of the activities of his loan originators he was responsible to supervise, as he admits he has no familiarity with the loan files for MA and for MS. OFS' failure to supervise the individual loan originators represents two violations of Neb. Rev. Stat. § 45-707(1)(l) (Cum. Supp. 2006) which provides that the Director may impose an administrative fine for each separate violation of the Act if the Director finds that the 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.

18. Neb. Rev. Stat. § 45-710(2) (Supp. 2007) provides that upon receipt by a licensee of the Director's notice of investigation or inquiry request for information, the licensee shall respond within twenty-one calendar days. Each day beyond that time a licensee fails to respond as required by this subsection shall constitute a separate violation of the Act.

19. OFS' failure to respond to the DEPARTMENT's notice of investigation until July 13, 2007, constitutes twenty-two (22) separate violations of Neb. Rev. Stat. § 45-710(2) (Supp. 2007).

20. DUNNING, as President and sole officer of OFS, had knowledge of and/or participated in the violations of the Act that are set forth above.

21. The DEPARTMENT incurred a minimum of five hundred dollars in investigation costs in this matter.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-702(9) (Supp. 2007) 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.

2. Neb. Rev. Stat. § 45-706(1) (Supp. 2007) 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. § 45-714(1)(j) (Supp. 2007) provides that a licensee shall not fail to disburse, without just cause, any funds in accordance with any agreement connected with the mortgage banking business.

4. Neb. Rev. Stat. § 45-710(2) (Supp. 2007) provides that upon receipt by a licensee of the Director's notice of investigation or inquiry request for information, the licensee shall respond within twenty-one calendar days. Each day beyond that time a licensee fails to respond as required by this subsection shall constitute a separate violation of the Act.

5. Neb. Rev. Stat. § 45-707(1)(a) (Cum. Supp. 2006) provides that the Director may impose an administrative fine for each separate violation of the Act, if the Director finds that a licensee has materially violated or demonstrated a continuing pattern of violating the Mortgage Bankers Registration and Licensing Act or any other state or federal law applicable to the conduct of its business.

6. Neb. Rev. Stat. § 45-707(1)(b) (Cum. Supp. 2006) provides that the Director may impose an administrative fine for each separate violation of the Act, if the Director finds that a fact or condition exists which, if it had existed at the time of the original application for the license, would have warranted the Director to deny the application.

7. OFS' failure to operate soundly, honestly, and efficiently in the public interest as required by Neb. Rev. Stat. § 45-706(1) (Supp. 2007) constitutes a fact or condition that if it had existed at the time of original application for the license would have warranted the Director to deny the application.

8. Neb. Rev. Stat. § 45-707(1)(e) (Cum. Supp. 2006) provides that the Director may impose an administrative fine for each separate violation of the Act, if the Director finds that the licensee has refused or failed to comply with subsection (2) of Section

45-710 after written notice of the violation by the Director. Each day the licensee continues in violation of this subdivision after such written notice constitutes a separate violation.

9. Neb. Rev. Stat. § 45-707(1)(l) (Cum. Supp. 2006) provides that the Director may impose an administrative fine for each separate violation of the Act if the Director finds that the licensee has failed to reasonably supervise any officer, employee, or agent to assure his compliance with the Act or with any other state or federal law applicable to the mortgage banking business.

10. Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006) 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 five thousand dollars for each separate violation plus the costs of investigation.

11. Neb. Rev. Stat. § 45-707(3) (Cum. Supp. 2006) provides that a licensee may voluntarily surrender a license by delivering to the Director written notice of the surrender, but a surrender shall not affect civil or criminal liability for acts committed before the surrender or liability for any fines which may be levied against the licensee or any of its officers, directors, shareholders, partners, or members pursuant to Section 45-717.01 for acts committed before the surrender.

12. Neb. Rev. Stat. § 45-719 (Reissue 2004) provides that the Act shall be construed liberally so as to effectuate its purposes.

13. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that OFS has materially violated the Act and that an

administrative fine in an amount of not more than five thousand dollars for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006).

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

15. It is in the best interest of OFS, and the best interest of the public, to resolve the issues included herein.

CONSENT AGREEMENT

The DEPARTMENT and OFS agree as follows:

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

OFS further represents as follows:

1. OFS 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. OFS 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, OFS shall pay a fine of two thousand dollars (\$2,000.00) for its violation of Neb. Rev. Stat. § 45-714(1)(j) (Supp. 2007) where it failed to properly disburse funds to the appraiser as it had agreed to do.

2. Within ten (10) days after the effective date of this Consent Agreement, OFS shall pay a fine of one thousand dollars (\$1,000.00) for its violation of Neb. Rev. Stat. § 45-706(1) (Supp. 2007) where it failed to operate soundly and efficiently in the public interest by failing to pay for appraisals that it ordered.

3. Within ten (10) days after the effective date of this Consent Agreement, OFS shall pay a fine of one thousand dollars (\$1,000.00) for its violation of Neb. Rev. Stat. § 45-707(1)(l) (Cum. Supp. 2006) where it failed to reasonably supervise its employees.

4. Within ten (10) days after the effective date of this Consent Agreement, OFS shall pay a fine of five hundred dollars (\$500.00) for each of its twenty-two (22) violations of Neb. Rev. Stat. § 45-710(2) (Supp. 2007) where it failed to respond to the DEPARTMENT's notice of investigation as required by the Act.

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

6. The total amount of the fine and investigation costs, fifteen thousand five hundred dollars (\$15,500.00), shall be payable in one check or money order to the DEPARTMENT.

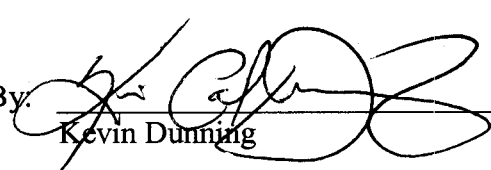
7. Within twenty (20) days after the effective date of this Consent Agreement, OFS shall deliver a check to the DEPARTMENT in the amount of one thousand one hundred dollars (\$1,100.00) payable to the appraisal company that filed the complaint. The DEPARTMENT will deliver the check to the appraisal company and obtain a receipt.

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

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

DATED this 12th day of November, 2007.

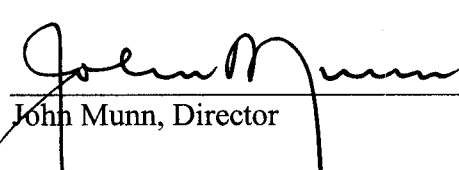
Dunnington Rowe, Inc.,
d/b/a Omaha Financial Services

By: 
Kevin Dunning

11217 Wright Circle, Suite A
Omaha, Nebraska 68144
(402) 334-2229

DATED this 15th day of November, 2007.

STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE

By: 
John Munn, Director

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