

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 12F-BD016-SBD

3 **SELL WHOLESALE FUNDING, LLC AND**
4 **CHRISTOPHER E. EYMANN, MANAGING**
5 **MEMBER**

1649 E. Bethany Home Road
Phoenix, AZ 85016

**ORDER TO CEASE AND DESIST;
NOTICE OF OPPORTUNITY FOR
HEARING; CONSENT TO ENTRY OF
ORDER**

6 Respondents.

7
8 The Superintendent of Financial Institutions for the State of Arizona (the "Superintendent"),
9 makes the following Findings of Fact and Conclusions of Law and enters the following Order
10 pursuant to Arizona Revised Statutes ("A.R.S.") § 6-137.

11 Pursuant to Titles 6 and 41 of the Arizona Revised Statutes and Title 20, Chapter 4 of the
12 Arizona Administrative Code ("A.A.C."), Respondents are hereby notified that they are entitled to a
13 hearing to contest the allegations set forth in this Order. The Request for Hearing shall be filed with
14 the Arizona Department of Financial Institutions (the "Department") pursuant to A.R.S. § 6-137(D)
15 within **thirty (30) days** of service of this Order and shall identify with specificity the action or order
16 for which review is sought in accordance with A.R.S. § 41-1092.03(B).

17 Pursuant to A.R.S. §§ 41-1092.01(D) and 41-1092.03(B), any person may appear on his or
18 her own behalf or by counsel. If Respondents are represented by counsel, the information required
19 by A.R.S. § 41-1092.03(B) shall be included in the Request for Hearing. Upon the filing of a
20 Request for Hearing, the Department shall issue a Notice of Hearing scheduling the matter for
21 hearing in accordance with A.R.S. § 41-1092.05. **Persons with disabilities may request**
22 **reasonable accommodations such as interpreters, alternative formats, or assistance with**
23 **physical accessibility.** Requests for special accommodations must be made as early as possible to
24 allow time to arrange the accommodations. If accommodations are required, call the Office of
25 Administrative Hearings at (602) 542-9826.

26 Respondents have the right to request an Informal Settlement Conference, pursuant to A.R.S.

1 § 41-1092.06, by filing a written request no later than **twenty (20) days** before the scheduled
2 hearing. The conference will be held within **fifteen (15) days** after receipt of your request. If an
3 Informal Settlement Conference is requested, a person with the authority to act on behalf of the
4 Department will be present (the "Department Representative"). Please note that in requesting an
5 Informal Settlement Conference, Respondents waive any right to object to the participation of the
6 Department Representative in the final administrative decision of this matter, if it is not settled. In
7 addition, any written or oral statement made by Respondents at such informal settlement conference,
8 including written documentation created or expressed solely for purposes of settlement negotiations,
9 is inadmissible in any subsequent administrative hearing. (See A.R.S. § 41-1092.06 for rules
10 regarding informal settlement conferences.) Conversely, any written or oral statement made by
11 Respondents outside an Informal Settlement Conference is not barred from being admitted by the
12 Department in any subsequent hearing.

13 If Respondents do not request a hearing, this Order shall become final. If Respondents
14 request a hearing, the purpose of the hearing shall be to determine if grounds exist for: (1) the
15 issuance of an order pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the
16 violative conduct and to take the appropriate affirmative actions, within a reasonable period of time
17 prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts,
18 practices, and transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S.
19 § 6-132; (3) an order to pay restitution of any fees earned in violation of A.R.S. §§ 6-941, *et seq.*,
20 pursuant to A.R.S. §§ 6-131(A)(3) and 6-137; and (4) an order or any other remedy necessary or
21 proper for the enforcement of statutes and rules regulating mortgage bankers pursuant to A.R.S.
22 §§ 6-123 and 6-131.

23 **FINDINGS OF FACT**

24 1. Respondent Sell Wholesale Funding, Inc. ("SWF") is an Arizona limited liability
25 company that is not and was not, at any time material herein, authorized to transact business in
26 Arizona as a mortgage banker within the meaning of A.R.S. §§ 6-941, *et seq.* The nature of SWF's

1 business is that of making, negotiating, or offering to make or negotiate a mortgage loan secured by
2 Arizona real property within the meaning of A.R.S. § 6-941(5).

3 2. Christopher E. Eymann (“Mr. Eymann”) is the Managing Member of SWF and is not
4 and was not, at any time material herein, authorized to transact business in Arizona as a mortgage
5 banker within the meaning of A.R.S. §§ 6-941, *et seq.*

6 3. SWF and Mr. Eymann are not exempt from licensure as a mortgage banker within the
7 meaning of A.R.S. § 6-942.

8 4. On or about March 31, 2011, the Department issued a letter to Respondents,
9 requesting information and a response regarding possible unlicensed mortgage lending activity in the
10 state of Arizona. The letter requested that Respondents provide the information to the Department
11 by April 14, 2011.

12 5. On or about April 20, 2011, the Department received a letter from Mr. Eymann, dated
13 April 14, 2011, informing the Department that SWF was set up to “lend Hard Money to people
14 buying at trustee sale and REOs.” The letter stated that SWF made one loan in 2011, and further
15 stated, “We plan to lend on single family, multi family, and commercial. The loans will be 6 month
16 notes to non owner occupied borrowers.” Copies of the 2011 loan documents were provided, which
17 listed SWF as the Lender.

18 6. On or about June 17, 2011, the Department sent an email message to Mr. Eymann,
19 requesting that Respondents provide to the Department copies of “any and all information regarding
20 any and all Arizona loans, including HUD-1 Settlements for any and all other Arizona activity.”

21 7. On or about June 21, 2011, the Department sent an email message to Mr. Eymann,
22 requesting again the documents requested in its June 17, 2011 email, and stating that the request was
23 based upon a review of Maricopa County records. The message requested that the documents be
24 provided by 5:00 p.m. on that date, June 21, 2011.

25 8. On or about June 21, 2011, the Department received the requested loan documents
26 from Respondents for loans made by SWF in 2010. A review of the documents revealed that SWF

1 was listed as the lender. Among the documents reviewed were documents for three (3) loans where
2 the HUD-1 Settlement Statements (“HUD-1s”) list SWF as the Lender, and indicate that lender fees
3 were paid to SWF, totaling three thousand seven hundred eight dollars (\$3,708.00).

4 9. On or around August 10, 2011, the Department sent an email to Mr. Eymann,
5 requesting copies of further documents, based upon the appearance of a number of SWF loan
6 documents on the Maricopa County Recorder’s docket, recorded during June and July, 2011, not
7 previously disclosed.

8 10. On or around August 22, 2011, the Department received the copies of additional
9 SWF loan documents from Respondents as requested. The Department’s review of said documents,
10 dated from May 20, 2011 through August 2, 2011, revealed that SWF was listed as the lender, and
11 that the HUD-1 for one (1) loan showed SWF received an adjusted origination charge totaling
12 \$1,000.00.

13 11. These Findings of Fact shall also serve as Conclusions of Law.

14 **CONCLUSIONS OF LAW**

15 1. Pursuant to A.R.S. §§ 6-941, *et seq.*, the Superintendent has the authority and duty to
16 regulate all persons engaged in the mortgage banker business and with the enforcement of statutes,
17 rules, and regulations relating to mortgage bankers.

18 2. By the conduct set forth above, SWF and Mr. Eymann have violated the following:

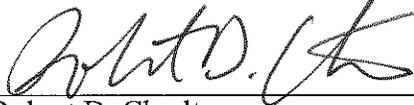
- 19 a. A.R.S. § 6-943(A) by acting in the capacity of a mortgage banker in the state
20 of Arizona, as defined by A.R.S. § 6-941(5), without having first applied for
21 and obtained a mortgage banker license from the Superintendent pursuant to
22 A.R.S. Title 6, Chapter 9; and
- 23 b. A.R.S. § 6-947(B) by accepting compensation, as defined by A.R.S.
24 § 6-941(2), for arranging for or negotiating a mortgage banking loan or
25 mortgage loan when not licensed pursuant to A.R.S. Title 6, Chapter 9.

26 ...

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SO ORDERED this 14th day of September, 2011.

Lauren Kingry
Superintendent of Financial Institutions

By: 
Robert D. Charlton
Assistant Superintendent of Financial Institutions

CONSENT TO ENTRY OF ORDER

1. Respondents acknowledge that they have been served with a copy of the foregoing Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the same, are aware of their right to an administrative hearing in this matter, and have waived the same.

2. Respondents admit the jurisdiction of the Superintendent and consent to the entry of the foregoing Findings of Fact, Conclusions of Law, and Order.

3. Respondents state that no promise of any kind or nature has been made to induce them to consent to the entry of this Order, and that they have done so voluntarily.

4. Respondents agree to immediately cease from engaging in the violative conduct set forth in the Findings of Fact and Conclusions of Law.

5. Respondents acknowledge that the acceptance of this Agreement by the Superintendent is solely to settle this matter and does not preclude this Department, any other agency or officer of this state or subdivision thereof from instituting other proceedings as may be appropriate now or in the future.

6. Christopher E. Eymann, on behalf of Sell Wholesale Funding, LLC and himself, represents that he is the Managing Member and that, as such, has been authorized by Sell Wholesale Funding, Inc. to consent to the entry of this Order on its behalf.

7. Respondents waive all rights to seek judicial review or otherwise to challenge or contest the validity of this Cease and Desist Order.

1 DATED this _____ day of _____, 2011.

2
3 By: _____
4 Christopher E. Eymann, Managing Member
Sell Wholesale Funding, LLC

5 ORIGINAL of the foregoing filed this 14th
6 day of September, 2011, in the office of:

7 Lauren Kingry
8 Superintendent of Financial Institutions
9 Arizona Department of Financial Institutions
ATTN: Sabrina Hampton
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

10 COPY mailed/delivered same date to:

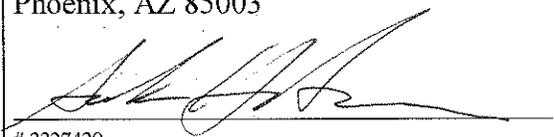
11 Craig A. Raby
12 Assistant Attorney General
13 Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

14 Robert D. Charlton, Assistant Superintendent
15 Lori Mann, Senior Examiner
16 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

17 AND COPY MAILED SAME DATE by
18 Certified Mail, Return Receipt Requested, to:

19 Christopher E. Eymann, Managing Member
20 Sell Wholesale Funding, LLC
1649 E. Bethany Home Road
Phoenix, AZ 85016
21 Respondents

22 National Registered Agents, Inc.
23 Statutory Agent for Sell Wholesale Funding, LLC
638 N. 5th Avenue
Phoenix, AZ 85003

24 
25 # 2227429
26