

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 10F-BD146-SBD

3 **THE GUARDIAN GROUP LLC, AKA THE**
4 **GUARDIAN GROUP FUND, AKA**
5 **GUARDIAN GROUP N.A. AND LUIS**
6 **BELEVAN AND BRYAN PREHODA**
7 7150 East Camelback Road, Suite 444
8 Scottsdale, Arizona 85251

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

Respondents.

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

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

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

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 are 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 Respondent 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. § 6-
19 132; (3) an order to pay restitution of any fees earned in violation of A.R.S. § 6-901, *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 brokers pursuant to A.R.S. §§
22 6-123 and 6-131.

23 FINDINGS OF FACT

24 1. Respondent The Guardian Group LLC, aka The Guardian Group Fund, aka Guardian Group
25 N.A. ("Guardian"), is an Arizona limited liability company that is not and was not, at any time
26 material herein, authorized to transact business in Arizona as a mortgage broker within the meaning

1 of A.R.S. §§ 6-901, *et seq.* The nature of Guardian's business is that of a mortgage broker, within
2 the meaning of A.R.S. § 6-901(11) and A.A.C. R20-4-102.

3 2. Respondent Luis Belevan ("Mr. Belevan") is a Member of Guardian and is not and was not,
4 at any time material herein, authorized to transact business in Arizona as a mortgage broker within
5 the meaning of A.R.S. §§ 6-901, *et seq.*

6 3. Respondent Bryan Prehoda ("Mr. Prehoda") is the Chief Financial Officer ("CFO") of
7 Guardian and is not and was not, at any time material herein, authorized to transact business in
8 Arizona as a mortgage broker within the meaning of A.R.S. §§ 6-901, *et seq.*

9 4. Guardian, Mr. Belevan and Mr. Prehoda are not exempt from licensure as mortgage brokers
10 within the meaning of A.R.S. § 6-902.

11 5. On October 29, 2009 the Department received an e-mail informing the Department that
12 Guardian was advertising mortgage loan services, but was not licensed by the Department as a
13 mortgage broker or mortgage banker.

14 6. On January 21, 2010, the Department sent a letter to Guardian, stating that the Department
15 had reason to believe that Guardian may be operating in Arizona without the benefit of a mortgage
16 broker or mortgage banker license, and gave Guardian an opportunity to respond by February 1,
17 2010.

18 7. The Department received a response from Guardian dated February 2, 2010 that stated
19 Guardian did not require any license from the Department.

20 8. Guardian's website, www.guardiangroupfund.com, was still active as of May 4, 2010 and
21 advertises Guardian's "Principal Reduction Program." Guardian claims their Principal Reduction
22 Program will assist homeowners in obtaining a new mortgage with a reduction of the principal
23 amount of the note to ninety percent (90%) of the current market value.

24 9. Guardian's website further states in its "Principal Reduction vs. Loan Modification" section
25 that Guardian "will refinance" homeowners' current notes.

26 10. On February 12, 2010, the Department received a second e-mail from an agent for Guardian,

1 including a number of attachments. The attachments are documents that Guardian provides to its
2 agents and include the following:

- 3 a. A copy of Frequently Asked Questions (“FAQ”), which state the following:
 - 4 i. The fees associated with Guardian’s program include a one thousand, five
5 hundred ninety five dollar (\$1,595.00) non-refundable application fee payable
6 to Guardian;
 - 7 ii. Guardian brokers the borrower a new loan; and
 - 8 iii. The “new servicer” buys the borrower’s note from the lender, which indicates
9 Guardian will service the new mortgage loans;
- 10 b. A copy of a Referral Agreement Guardian uses for its agents, which states, “IF
11 Referring Agent advises client NOT to pay The Guardian Group LLC, [Guardian]
12 will fine the Agent \$5,000.00 plus any additional costs that may occur from the
13 collection of the debt for damages and liabilities”; and
- 14 c. A copy of Consulting and Processing Fee Agreement (Note), whereby the
15 borrower agrees to engage Guardian as a “consultant” regarding the “current or
16 prospective mortgage” of the borrower’s property and pay Guardian \$1,595.00
17 “as compensation for services performed.”

18 11. Guardian also brokered a mortgage loan for borrowers A.R. A.R.’s Note states that the
19 lender is “The Guardian Group, LLC” and that all payments pursuant to the note are payable to
20 Guardian.

21 12. A Settlement Statement for A.R.’s mortgage loan shows that Guardian collected the
22 “Consulting and Processing Fee” of one thousand, five hundred ninety five dollars (\$1,595.00).

23 13. Four (4) consumer complaints were also referred to the Department, as follows:

- 24 a. In a complaint dated February 10, 2010, the complainant stated that she signed
25 documents for Guardian to refinance her home on October 25, 2009. The
26 complainant further stated that she was advised the “entire process was no longer

1 than 90 days” ;

2 b. In a complaint dated February 16, 2010, the complainant stated that she paid
3 Guardian the one thousand, five hundred ninety five dollars with her application
4 on December 10, 2009 in order to stop the sale of her home. The complainant
5 stated that Guardian informed her that if she “did not qualify they would not cash
6 the check” and return it to the complainant. The complainant further stated that
7 the check was cashed on December 14, 2009, and that she followed up with both
8 Guardian weekly and was told that Guardian “had everything...taken care of”
9 and “were working with Wells Fargo.” The complainant also called Wells Fargo
10 every week and was informed each time that her home would still be sold on
11 January 12, 2010. According to the complainant, her house was sold on January
12 12, 2010, and Wells Fargo claimed that no one besides herself had ever contacted
13 them regarding her home. The complainant further stated that she was told on
14 three different occasions that Guardian had mailed her refund, but every time she
15 spoke to a different person who had no idea of what events had previously
16 transpired;

17 c. In a complaint dated March 11, 2010, the complainant stated he was referred to
18 Guardian by R.H. The complainant claimed he provided requested
19 documentation and “signed up” for Guardian’s Principal Reduction Program on or
20 about October 23, 2009 and was told that he would be informed of his pre-
21 qualification within forty eight (48) hours. The complainant stated he never
22 received any further information from Guardian regarding his pre-qualification or
23 the process, that they continually referred him back to R.H., who would inform
24 him that it was “in process.” According to the complainant, R.H. eventually
25 advised him to get his money back because “they are fraud.” The complainant
26 did state that he received a partial refund from Guardian; and

1 d. In a complaint dated March 24, 2010, the complainant stated C.R. promised the
2 complainant that she could get a loan refinance with Guardian. The complainant
3 stated that the transactions where she paid seven hundred fifty dollars (\$750.00)
4 and six hundred ninety five dollars (\$695.00) transpired over a year prior to the
5 complaint, and she had been told the whole process should take sixty (60) to
6 ninety (90) days.

7 14. These Findings of Fact shall also serve as Conclusions of Law.

8 **CONCLUSIONS OF LAW**

9 1. Pursuant to A.R.S. §§ 6-901, *et seq.*, the Superintendent has the authority and duty to
10 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,
11 rules and regulations relating to mortgage brokers.

12 2. By the conduct set forth in the Findings of Fact, The Guardian Group LLC, Mr. Belevan
13 and Mr. Prehoda have violated the following:

- 14 a. A.R.S. § 6-903(A), by acting as a mortgage broker in Arizona without having first
15 applied for and obtained a mortgage broker license;
- 16 b. A.R.S. § 6-909(B), by receiving compensation in connection with arranging for or
17 negotiating a mortgage loan when not licensed pursuant to this article; and
- 18 c. A.R.S. § 6-909(C), by knowingly advertising, displaying, distributing, broadcasting
19 or televising or causing or permitting to be advertised, displayed, distributed,
20 broadcast or televised false, misleading or deceptive statements or representations
21 with regard to the rates, terms or conditions of a mortgage loan.

22 3. The violations set forth above constitute grounds for: (1) the issuance of an order
23 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and
24 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the
25 Superintendent to correct the conditions resulting from the unlawful acts, practices, and transactions;
26 (2) the imposition of a monetary civil penalty pursuant to A.R.S. § 6-132; (3) an order to pay

1 restitution of any fees earned in violation of A.R.S. § 6-901, *et seq.*, pursuant to A.R.S. §§ 6-
2 131(A)(3) and 6-137; and (4) an order or any other remedy necessary or proper for the enforcement
3 of statutes and rules regulating mortgage brokers pursuant to A.R.S. §§ 6-123 and 6-131.

4 **ORDER**

5 1. Respondents shall immediately stop the violations set forth in the Findings of Fact
6 and Conclusions of Law. Respondents shall immediately cease all mortgage broker business in
7 Arizona until such time as they have obtained a mortgage broker license from the Superintendent as
8 prescribed by A.R.S. § 6-903.

9 2. The Guardian Group LLC, Mr. Belevan and Mr. Prehoda shall immediately pay to the
10 Department a civil money penalty in the amount of **one hundred thousand dollars (\$100,000.00)**.
11 Respondents are jointly and severally liable for payment of the civil money penalty.

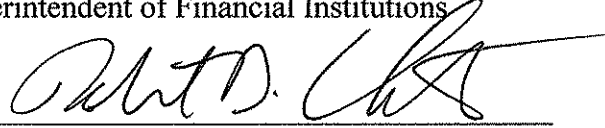
12 3. Respondents shall immediately refund all compensation they received while
13 unlicensed.

14 4. The provisions of this Order shall be binding upon Respondents, their employees,
15 agents and other persons participating in the conduct of the affairs of Respondents.

16 5. This Order shall become effective upon service, and shall remain effective and
17 enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated
18 or set aside.

19 SO ORDERED this 5 day of May, 2010.

20 Lauren W. Kingry
21 Superintendent of Financial Institutions

22 By: 
23 Robert D. Charlton
24 Assistant Superintendent

25 **CONSENT TO ENTRY OF ORDER**

26 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

1 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

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

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

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

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

12 6. Luis Belevan, on behalf The Guardian Group LLC and himself, represents that he is a
13 Member and that, as such, has been authorized by Guardian to consent to the entry of this Order on
14 its behalf.

15 7. Respondent waives all rights to seek judicial review or otherwise to challenge or
16 contest the validity of this Cease and Desist Order.

17 DATED this ____ day of _____, 2010.

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19 By: _____
Luis Belevan, Member, individually and on behalf of
The Guardian Group LLC

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22 By: _____
Bryan Prehoda, Chief Financial Officer
The Guardian Group LLC

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1 ORIGINAL of the foregoing filed this 5th
day of May, 2010, in the office of:

2 Lauren W. Kingry
3 Superintendent of Financial Institutions
4 Arizona Department of Financial Institutions
5 ATTN: Susan Longo
6 2910 N. 44th Street, Suite 310
7 Phoenix, AZ 85018

8 COPY mailed/delivered same date to:

9 Erin O. Gallagher
10 Assistant Attorney General
11 Office of the Attorney General
12 1275 West Washington
13 Phoenix, AZ 85007

14 Robert D. Charlton, Assistant Superintendent
15 Richard Fergus, Licensing Division Manager
16 Arizona Department of Financial Institutions
17 2910 North 44th Street, Suite 310
18 Phoenix, AZ 85018

19 AND COPY MAILED SAME DATE by
20 Certified Mail, Return Receipt Requested, to:

21 The Guardian Group LLC
22 Luis Belevan, Member
23 7150 E. Camelback Rd., Ste. 444
24 Scottsdale, AZ 85251
25 Respondent

26 The Guardian Group LLC
Luis Belevan, Member
8300 E. Raintree, Ste. 100
Scottsdale, AZ 85260
Respondent

The Guardian Group LLC
Luis Belevan, Member
8300 E. Raintree, Ste. 105
Scottsdale, AZ 85260
Respondent

The Guardian Group LLC
Bryan Prehoda, CFO
3324 W. Morse Dr.
Anthem, AZ 85086
Respondent

1 The Guardian Group LLC
Attn: Luis Belevan, Member
2 15020 N. 48th Pl.
Scottsdale, AZ 85254
3 Respondent

4 The Guardian Group LLC
Attn: Jose Carreon, Member
5 9313 E. Hobart St.
Mesa, AZ 85207
6 Respondent

7 Bryan Prehoda, Statutory Agent for:
The Guardian Group LLC
8 3240 E. Union Hills Dr., #121
Phoenix, AZ 85050
9

10 By: *Susan Lingo*
817650

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