

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Banker License of: No. 10F-BD023-SBD

3 **MERCHANTS FUNDING, LLC, formerly**
4 **identified as MERCHANTS FUNDING, LLC**
5 **(FN), AND GARY LEVINE , MANAGING**
6 **MEMBER**
7 2999 North 44th Street, Suite 520
8 Phoenix, Arizona 85018

CONSENT ORDER

Respondents.

9 On September 2, 2009, the Arizona Department of Financial Institutions ("Department")
10 issued an Order to Cease and Desist; Notice of Opportunity for Hearing; Consent to Entry of Order
11 ("Cease and Desist Order") alleging that Respondents had violated Arizona law. Wishing to resolve
12 this matter in lieu of an administrative hearing, Respondents do not contest the following Findings of
13 Fact and Conclusions of Law, and consent to the entry of the following Order.

14 **FINDINGS OF FACT**

15 1. Respondent Merchants Funding, LLC, formerly identified in the Cease and Desist Order
16 as Merchants Funding, LLC (FN), ("Merchants"), is a Colorado limited liability company authorized
17 to transact business in Arizona as a mortgage banker, license number BK 0904640, within the
18 meaning of A.R.S. §§ 6-941, *et seq.* The nature of Merchants' business is that of making,
19 negotiating, or offering to make or negotiate a mortgage banking loan or a mortgage loan secured by
20 Arizona real property within the meaning of A.R.S. § 6-941(5).

21 2. Respondent Gary Levine ("Mr. Levine") is an owner and Managing Member of
22 Merchants and is authorized to transact business in Arizona as a mortgage banker within the
23 meaning of A.R.S. § 6-941(5), as outlined within A.R.S. § 6-943(F).

24 3. Merchants and Mr. Levine are not exempt from licensure as mortgage bankers within the
25 meaning of A.R.S. §§ 6-942 and 6-941(5).

26 4. An examination of Merchants conducted by the Department, beginning February 4, 2009
and concluding February 5, 2009, revealed that Respondents:

- 1 a. Failed to obtain a branch office license from the Superintendent and designate a
2 person from each branch to oversee the operations of that office, specifically:
- 3 i. Respondents processed their loans from the corporate headquarters located at
4 7400 East Crestline Circle, Suite 250, Greenwood Village, Colorado; and
5 ii. The examiner found one (1) loan that was originated from the Colorado site:
6 loan number 54755;
- 7 b. Failed to conduct the minimum elements of reasonable employee investigations prior
8 to hiring employees, specifically:
- 9 i. Failed to obtain a completed Employment Eligibility Verification (Form I-9)
10 prior to hiring at least two (2) employees;
11 ii. Failed to obtain a completed and signed employment application prior to
12 hiring at least one (1) employee;
13 iii. The signed statements attesting to all of an applicant's felony convictions,
14 including detailed information regarding each conviction was either missing
15 or limited to five years for at least four (4) employees;
16 iv. Failed to consult with the applicant's most recent or next most recent
17 employer, if any, prior to hiring at least three (3) employees;
18 v. Failed to inquire regarding the applicant's qualifications and competence for
19 the position prior to hiring at least four (4) employees;
20 vi. Failed to obtain a current credit report from a credit reporting agency prior to
21 hiring at least one (1) employee; and
22 vii. Respondents failed to correct this violation from their previous examination;
- 23 c. Failed to maintain a complete loan application listing, specifically:
- 24 i. The final disposition date is missing on cancelled/denied/withdrawn loans;
25 and
26 ii. Respondents failed to correct this violation from their previous examination;

1 and

2 d. Failed to maintain correct and complete originals or copies of loan transactions,
3 specifically:

4 i. Final HUD-1 Settlement Statements were missing for at least two (2)
5 borrowers;

6 ii. An Adverse Action Notice is missing for at least one (1) borrower; and

7 iii. Respondents failed to correct this violation from their previous examination.

8 5. Based upon the above findings, the Department issued and served upon Merchants and
9 Mr. Levine the Cease and Desist Order on September 2, 2009. The Cease and Desist Order included
10 the assessment of a civil money penalty in the amount of thirty thousand dollars (\$5,000.00) against
11 Respondents, as well as the examination fee of eight hundred seventy seven dollars and fifty cents
12 (\$877.50).

13 **CONCLUSIONS OF LAW**

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

17 2. By the conduct set forth in the Findings of Fact, Merchants Funding, LLC and Mr.
18 Levine violated the following:

19 a. A.R.S. § 6-944(E), by failing to obtain a branch office license from the
20 Superintendent and designate a person from each branch to oversee the operations of
21 that office;

22 b. A.R.S. § 6-943(O) and A.A.C. R20-4-102, by failing to conduct the minimum
23 elements of reasonable employee investigations prior to hiring employees;

24 c. A.A.C. R20-4-1806(B)(1), by failing to maintain a complete loan application listing;
25 and

26 d. A.R.S. § 6-946(A) and A.A.C. R20-4-1806(B)(6), by failing to maintain correct and

1 complete originals or copies of loan transactions.

2 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order
3 pursuant to A.R.S. § 6-137 directing Respondents to cease and desist from the violative conduct and
4 to take the appropriate affirmative actions, within a reasonable period of time prescribed by the
5 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
6 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
7 suspension or revocation of Respondents' license pursuant to A.R.S. § 6-945; (4) an order to pay
8 restitution of any fees earned on loans made in violation of A.R.S. § 6-941, *et seq.*, pursuant to
9 A.R.S. §§ 6-131(A)(3) and 6-137; and (5) an order or any other remedy necessary or proper for the
10 enforcement of statutes and rules regulating mortgage bankers pursuant to A.R.S. §§ 6-123 and 6-
11 131.

12 **ORDER**

13 1. Merchants Funding, LLC and Mr. Levine shall immediately stop the violations set forth
14 in the Findings of Fact and Conclusions of Law. Merchants Funding, LLC and Mr. Levine:

- 15 a. Shall obtain a branch office license from the Superintendent and designate a person
16 from each branch to oversee the operations of that office;
- 17 b. Shall conduct the minimum elements of reasonable employee investigations prior to
18 hiring employees;
- 19 c. Shall maintain a complete loan application listing; and
- 20 d. Shall maintain correct and complete originals or copies of loan transactions.

21 2. Merchants Funding, LLC and Mr. Levine shall immediately pay to the Department a civil
22 money penalty in the amount of **five thousand dollars (\$5,000.00)**. Respondents are jointly and
23 severally liable for payment of the civil money penalty.

24 3. Respondents shall immediately pay to the Department the examination fee of **eight**
25 **hundred seventy seven dollars and fifty cents (\$877.50)**, pursuant to A.R.S. § 6-125.

26 4. Mr. Levine shall comply with all Arizona statutes and rules regulating Arizona mortgage

1 bankers, A.R.S. §§ 6-941, *et seq.*

2 5. The provisions of this Order shall be binding upon Merchants Funding, LLC and Mr.
3 Levine, their employees, agents, and other persons participating in the conduct of the affairs of
4 Merchants Funding, LLC.

5 6. The provisions of this Order shall be binding upon Respondents, and resolves the Cease
6 and Desist Order, subject to Respondents' compliance with the requirements of this Order.

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

10 SO ORDERED this 28 day of September, 2009.

11 Thomas L. Wood
12 Acting Superintendent of Financial Institutions

13
14 By 
15 Robert D. Charlton
16 Assistant Superintendent of Financial Institutions

17 **CONSENT TO ENTRY OF ORDER**

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

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

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

25 4. Respondents acknowledge that the acceptance of this Agreement by the
26 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

1 appropriate now or in the future.

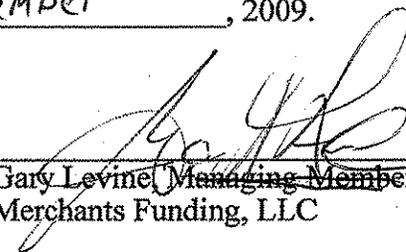
2 5. Gary Levine, on behalf of Merchants Funding, LLC and himself, represents that he is
3 an owner and Managing Member, and that, as such, has been authorized by Merchants Funding,
4 LLC to consent to the entry of this Order on its behalf.

5 6. Respondents waive all rights to seek judicial review or otherwise to challenge or
6 contest the validity of this Consent Order.

7 DATED this 22nd day of September, 2009.

8

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By 
Gary Levine, ~~Managing Member~~ CEO
Merchants Funding, LLC

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ORIGINAL of the foregoing filed this 28th
day of September, 2009, in the office of:

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Thomas L. Wood
Acting Superintendent of Financial Institutions
Arizona Department of Financial Institutions
ATTN: June Beckwith
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

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COPY mailed/delivered same date to:

20

Erin O. Gallagher
Assistant Attorney General
Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

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22

23

Robert D. Charlton, Assistant Superintendent
Chris Dunshee, Senior Examiner
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

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1 AND COPY MAILED SAME DATE by
2 Certified Mail, Return Receipt Requested, to:

3 Ephraim A. Bulow, Esq.
4 Shimel & Bulow, LLC
5 7400 E. Crestline Circle, Ste. 250
6 Greenwood Village, CO 80111
7 Attorney for Respondents

8 
9 _____
10 #560232