

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Banker License of:

No. 06F-BD041-BNK

3 **MORGAN CAPITAL OF ARIZONA,**
4 **INC. (FN) FKA MORGAN FINANCIAL,**
5 **INC. (TN)**
127 S. WEBER DRIVE
CHANDLER, AZ 85226

CONSENT ORDER

6 Petitioner.

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8 On April 4, 2006, the Arizona Department of Financial Institutions ("Department") issued a
9 Notice of Hearing alleging that Petitioner had violated Arizona law. Wishing to resolve this matter
10 in lieu of an administrative hearing, and without admitting liability Petitioner does not contest the
11 following Findings of Fact and Conclusions of Law, and consent to the entry of the following Order.

12 FINDINGS OF FACT

13 1. Petitioner Morgan Capital of Arizona, Inc. (FN) ("MCA") is an Oregon corporation
14 authorized to transact business in Arizona as a mortgage banker, license number BK 0903998,
15 within the meaning of A.R.S. §§ 6-941, *et seq.* The nature of MCA's business is that of making,
16 negotiating, or offering to make or negotiate a mortgage banking loan or a mortgage loan secured by
17 Arizona real property within the meaning of A.R.S. § 6-941(5).

18 2. Morgan W. Smith ("Mr. Smith") is the President of MCA.

19 3. MCA is not exempt from licensure as a mortgage banker within the meaning of
20 A.R.S. §§ 6-942 and 6-941(5).

21 4. A September 8, 2005 examination of MCA, conducted by the Department, revealed
22 that MCA:

- 23 a. Failed to use its name and license number, as issued on the its principal place of
24 business license, within all regulated advertising in eight (8) advertisements or
25 solicitations and failed to display annual percentage rates as prominent as the interest
26 rate in all regulated advertising in two (2) advertisements or solicitations, specifically:

- 1 i. "Market Stats Sunrise Canyon"; "MCA Mortgage Alexandria Hundreds of
2 Programs"; "Townhome For Sale Allegiance Realty Fred Weaver"; "The
3 Holidays Are On The Way"; "Sunset Trails Incentive Loan Programs";
4 "Morgan Capital of AZ, Inc. (FN)"; "Get The Payment Options You Want";
5 and the "Michelle Collard Ads";
- 6 b. Failed to conduct the minimum elements of reasonable employee investigations
7 before hiring employees, specifically:
- 8 i. Failed to consult with the applicant's most recent or next most recent
9 employer for twenty (20) employees;
- 10 ii. Failed to inquire regarding an applicant's qualifications and competence for
11 the position before hiring twenty (20) employees;
- 12 iii. Failed to obtain a credit report before hiring one (1) employee;
- 13 iv. Failed to obtain a completed employment application before hiring two (2)
14 employees; and
- 15 v. Failed to correct this violation from their most previous examination;
- 16 c. Failed to keep and maintain at all times correct and complete records clearly
17 reflecting the financial condition of the business that will enable the Superintendent to
18 determine whether the licensee is conducting business in accordance with Title 6,
19 Chapter 9, Article 2;

20 **1. Michelle Reyes/Tempe branch:**

- 21 i. Petitioner failed to provide detailed documentation when requested. Branch
22 Manager Michelle Reyes and her husband, Carlos Reyes, are members of
23 CAMI, L.L.C. A \$50,000.00 check (number 13319) was issued to CAMI,
24 L.L.C. from Petitioners' operating account for April and May of 2005
25 marketing and advertising expenses; however, the check description was
26 labeled "Payroll". Petitioner did not provide a detailed description of this

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invoice; therefore, it is unclear what specific services were performed;

- ii. Petitioner paid \$157,000.00 of unexplained marketing and advertising expenses to the branch manager's business, CAMI, L.L.C.;
- iii. Petitioner failed to provide a detailed invoice description for "Reimbursement of Fees" involving Cindy Cobb in the amount of \$2,000.00 (check number 9262);

2. Morgan Smith/Chandler branch:

- iv. Morgan Smith is the branch manager. The branch paid a \$90.00 invoice for "web hosting for www.emorgancapital.com and ebrokerelite.com." The examiner accessed both websites and discovered that they advertise, among other things, "how to start a 'net branch'" to Arizona viewers and others;
- v. Petitioner is unable to separate the costs of setting up these websites for Arizona loans from that of other states' costs;

3. Van Trojan/Quadalupe branch:

- vi. Aaron Van Trojan is the branch manager; he is the owner of AMV Holdings, L.L.C; and a partner with Morgan Smith of Hacienda Tres Amigos, L.L.C. Aaron Van Trojan and Warren Myllion (another MCA branch manager) also own Westside Funding, L.L.C; and
- vii. Petitioner paid numerous Aetna medical insurance invoices for AMV Holdings, L.L.C. Check number 14250 in the amount of \$3,356.00 and check number 13737 in the amount of \$3,297.00 were paid by Petitioner for the branch manger's business medical premiums;

- d. Failed to comply with the disclosure requirements of Title I of the Consumer Protection Act (15 U.S.C. §§ 1601-1666j); the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601-2617); and the regulations promulgated under these acts;

- 1 i. Failed to issue a preliminary good faith estimate (GFE) disclosure to three (3)
2 borrowers;
- 3 ii. Failed to disclose the yield spread premium to three (3) borrowers;
- 4 iii. Gave an inappropriate 1977 Fair Lending Notice to thirteen (13) borrowers;
- 5 iv. Failed to issue a timely servicing transfer disclosure to one (1) borrower; and
- 6 v. Failed to issue a preliminary truth in lending (TIL) disclosure to two (2)
7 borrowers;
- 8 vi. Failed to correct this violation from their most previous examination
- 9 e. Paid an unlawful referral fee and contracted with or paid compensation to unlicensed,
10 independent contractors, specifically:
- 11 i. Petitioner paid at least \$157,000.00 in unexplained marketing and advertising
12 expenses to CAMI, L.L.C., which is owned by a branch manager, Michelle
13 Reyes;
- 14 ii. Petitioner paid at least \$4,538.76 in "Bonuses" to Hacienda Dos Amigos,
15 L.L.C., which is owned by branch manager, and Petitioner, Morgan Smith;
- 16 iii. Petitioner paid \$20.00 for a "mortgage verification" to Regions Mortgage;
- 17 iv. Petitioner paid \$4,200.00 in "Finder's Fees" to Brenda Marucha; and;
- 18 v. Petitioner paid \$2,000.00 in "Reimbursement Fees" to Cindy Cobb;
- 19 f. Used a trust account for purposes other than advances or fees collected from
20 borrowers, specifically:
- 21 i. Petitioner used its trust account to pay for its operations manager's health
22 insurance premium;
- 23 ii. Failed to correct this violation from their most previous examination
- 24 g. Commingled trust funds;
- 25 i. Petitioner accepted and deposited borrowers' advance appraisal fees into its
26 corporate account;

- e. A.R.S. § 6-947(B) and A.A.C. R20-4-102 by paying compensation to unlicensed, independent contractors;
- f. A.R.S. § 6-946(C) by using a trust account for purposes other than advances or fees collected from borrowers;
- g. A.R.S. §§ 6-946(C) and 6-947(C) by commingling trust funds; and
- h. A.R.S. § 6-946(C) by using unlawful appraisal disclosures that limit a borrower to 90 days in which the borrower may request a copy of an appraisal for which the borrower has paid.

3. The violations set forth above constitute grounds for the issuance of an order directing Petitioner to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions, pursuant to A.R.S. § 6-137.

4. The violations set forth above constitute grounds for the imposition of a civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for each day, pursuant to A.R.S. § 6-132.

ORDER

1. MCA shall immediately stop the violations set forth in the Findings of Fact and Conclusions of Law. MCA shall:
 - a. use its name and license number, as issued on the its principal place of business license, within all regulated advertising and failing to display annual percentage rates as prominent as the interest rate in all regulated advertising or solicitations;
 - b. conduct the minimum elements of reasonable employee investigations before hiring employees;
 - c. maintain correct and complete records of the mortgage banking business;
 - d. issue proper federal disclosures;

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- e. not pay compensation to unlicensed, independent contractors;
- f. not use a trust account for purposes other than advances or fees collected from borrowers;
- g. not commingle trust funds; and
- h. not use unlawful appraisal disclosures that limit a borrower to 90 days in which the borrower may request a copy of an appraisal for which the borrower has paid.

2. Morgan Capital of Arizona, Inc. (FN) shall immediately pay to the Department a civil money penalty in the amount of fifteen thousand dollars (\$15,000.00).

3. The provisions of this Order shall be binding upon Petitioner, its employees, agents, and other persons participating in the conduct of the affairs of Petitioner.

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

SO ORDERED this 19th day of June, 2006.



 Felecia A. Rotellini
 Superintendent of Financial Institutions

CONSENT TO ENTRY OF ORDER

1. Petitioner acknowledges that it has 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. Petitioner admits the jurisdiction of the Superintendent and consent to the entry of the foregoing Findings of Fact, Conclusions of Law, and Order.

3. Petitioner acknowledges 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

1 this state or subdivision thereof from instituting other proceedings as may be appropriate now or in
2 the future.

3 4. Morgan W. Smith on behalf of Morgan Capital of Arizona, Inc. (FN), represents that
4 he is the President, and that as such has been authorized by Morgan Capital of Arizona, Inc. (FN) to
5 consent to the entry of this Order on its behalf.

6 5. Petitioner waives all rights to seek judicial review or otherwise to challenge or contest
7 the validity of this Order.

8 DATED this 12 day of JUNE, 2006.

9 
10 _____
11 Morgan W. Smith, President
Morgan Capital of Arizona, Inc. (FN)

12 ORIGINAL of the foregoing filed this 21st
13 day of June, 2006, in the office of:

14 Felecia A. Rotellini, Superintendent of Financial Institutions
15 Arizona Department of Financial Institutions
16 ATTN: June Beckwith
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

17 COPY mailed same date to:

18 Allen Reed, Administrative Law Judge
19 Office of the Administrative Hearings
1400 West Washington, Suite 101
20 Phoenix, AZ 85007

21 Craig A. Raby, Assistant Attorney General
22 Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

23 Robert D. Charlton, Assistant Superintendent
24 Brenda Fung, Senior Examiner
25 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
26 Phoenix, AZ 85018

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

2 Morgan W. Smith, President
3 Morgan Capital of Arizona, Inc. (FN)
127 S. Weber Drive
4 Chandler, AZ 85226
Petitioner

5 Morgan W. Smith, Owner
6 Morgan Capital of Arizona, Inc. (FN)
935 NW 19th Avenue
7 Portland, OR 97209
Petitioner

8 Brian J. Schulman, Esq.
9 Julie Rystad, Esq.
GREENBERG TRAURIG, LLP
10 2375 E. Camelback Road, Suite 700
Phoenix, AZ 85016
11 Attorneys for Petitioner

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