

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Broker License of: No. 07F-BD073-BNK

3 **PROFESSIONAL MORTGAGE**
4 **ASSOCIATES, LTD AND BRIAN G.**
5 **JACENKO, PRESIDENT**
6 19017 N.78th Lane
7 Glendale, AZ 85308

CONSENT ORDER

Petitioners.

8 On May 04, 2007, the Arizona Department of Financial Institutions (“Department”) issued a
9 Notice of Hearing alleging that Petitioners had violated Arizona law. Wishing to resolve this matter
10 in lieu of an administrative hearing, Petitioners do not contest the following Findings of Fact and
11 Conclusions of Law, and consent to the entry of the following Order.

12 **FINDINGS OF FACT**

13 1. Petitioner Professional Mortgage Associates, L.T.D.(hereinafter “PMA”), is an Arizona
14 corporation authorized to transact business in Arizona as a mortgage broker, license number
15 MB 0903300, within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of PMAs’ business is that
16 of making, negotiating, or offering to make or negotiate loans secured by Arizona real property,
17 within the meaning of A.R.S. § 6-901(6).

18 2. Petitioner Brian G. Jacenko (“Mr. Jacenko”) owns PMA. Mr. Jacenko is authorized to
19 transact business in Arizona as a mortgage broker within the meaning of A.R.S. § 6-903(E).

20 3. A September 11, 2006, examination of PMA, conducted by the Department, revealed that
21 PMA and Mr. Jacenko:

22 a. At the time of the examination PMA failed to provide a hard copy of every piece of
23 advertising and solicitation samples. However, PMA is approved to maintain
24 computer records; and all advertising and solicitation can be printed from computer
25 records upon request;

26 b. Petitioners failed to include their license number as issued on the mortgage broker’s

1 principal place of business license within the text of all regulated advertising or
2 business solicitations; specifically:

- 3 i. "Thanks for not doing my loan"—license number is missing; and
- 4 ii. "I want to buy a bigger home but the market scares me as I still have to
5 sell my home!"— license number is missing;

6 c. Failed to conduct the minimum elements of reasonable employee investigations
7 before hiring employees; specifically:

- 8 i. Failed to collect and review all of the documents authorized by the
9 Immigration and Control Act of 1986 for two (2) employees, three (3)
10 incomplete forms, one (1) dated after hire date, and one (1) not dated;
- 11 ii. Failed to obtain a completed and dated "I9" (Employment Eligibility
12 Verification Form) for one (1) employee;
- 13 iii. Failed to consult with the applicant's most recent or next most recent
14 employer or failed to date said inquiry for four (4) employees;
- 15 iv. Failed to inquire regarding an applicant's qualifications and competence
16 or failed to date said inquiry for the position for four (4) employees and
17 one (1) not dated;
- 18 v. Failed to obtain a signed statement attesting to all of an applicant's felony
19 convictions, including detailed information regarding each conviction
20 before hiring one (1) employee not dated, and three (3) were limited to 5
21 years;
- 22 vi. Failed to obtain a credit report for two (2) employees; and
- 23 vii. One (1) with derogatory credit history without explanation;

24 d. Allowed borrowers to sign regulated documents containing blank spaces; specifically:

- 25 i. One (1) advanced fee agreement; and
- 26 ii. Two (2) initial truth in lending disclosures contained blank spaces;

- 1 e. Failed to comply with the disclosure requirements of Title I of the Consumer Credit
2 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
3 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
4 under these acts; specifically:
- 5 i. Initial truth in lending statement involving one (1) borrower was untimely;
6 and
 - 7 ii. Mortgage servicing transfer disclosures involving two (2) borrowers were
8 untimely;
- 9 f. Made a false promise or misrepresentation or concealed an essential or material fact
10 in the course of the mortgage broker business; specifically:
- 11 i. Failed to disclose co-broker fees paid to Beazer Mortgage during 2005-
12 2006 on the final HUD-1 settlement statements involving twenty-five (25)
13 borrowers;
- 14 g. Failed to maintain their trust subsidiary ledger and failed to maintain the proper fields
15 in their subsidiary ledger; specifically:
- 16 i. The subsidiary ledger has no provision for the following fields and/or the
17 fields were not complete:
 - 18 1. Date received; and
 - 19 2. Date deposited into trust account;
 - 20 ii. Petitioners have not verified each trust balance to each trust subsidiary
21 ledger at each reconciliation;
 - 22 iii. Petitioners failed to correct this violation from its last examination; and
 - 23 iv. An acceptable trust subsidiary ledger was completed and provided to the
24 Department after the examination date;
- 25 h. Failed to use a correct written fee agreement when accepting advance fees from
26 borrowers; specifically:

- i. Petitioners' written fee agreement did not contain a signature from a representative of the company involving at least one (1) borrower; and
- ii. Petitioners failed to correct this violation from their last examination.

4. Based upon the above findings, the Department issued and served upon PMA and Mr. Jacenko an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order ("Order to Cease and Desist") on March 21, 2007.

5. On April 10, 2007, Petitioners filed a Request For Hearing to appeal the Order to Cease and Desist.

CONCLUSIONS OF LAW

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

2. By the conduct set forth in the Findings of Fact, PMA and Mr. Jacenko violated the following:

- a. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(7) by failing to provide every piece of advertising relating to Professional Mortgages' mortgage broker business;
- b. A.R.S. § 6-903(M) by failing to use their license number, as issued on their principal place of business license, within all regulated advertising;
- c. A.R.S. § 6-903(N) and A.A.C. R20-4-102 by failing to conduct the minimum elements of reasonable employee investigations before hiring employees;
- d. A.R.S. § 6-909(A) and A.A.C. R20-4-921 by allowing borrowers to sign regulated documents containing blank spaces;
- e. A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e) by failing to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these acts;

- 1 f. A.R.S. § 6-909(L) by misrepresenting or concealing an essential or material fact
2 in the course of the mortgage broker business;
- 3 g. A.A.C. R20-4-917(B)(5) and A.A.C. R20-4-917(C) by failing to maintain their
4 trust subsidiary ledger and failing to provide a current reconciliation of trust bank
5 accounts to the trust subsidiary ledgers;
- 6 h. A.R.S. § 6-906(C) by failing to use a correct written fee agreement when
7 accepting advance fees from borrowers; and

8 3. The violations of applicable laws set forth above constitute grounds for the imposition of a
9 civil penalty of not more than five thousand dollars (\$5,000.00) for each violation for each day,
10 pursuant to A.R.S. § 6-132. The violations, set forth above, constitute grounds for: (1) the issuance
11 of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative
12 conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed
13 by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
14 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
15 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-905; and (4) an order or any
16 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
17 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

18 **ORDER**

19 1. PMA and Mr. Jacenko shall immediately stop the violations set forth in the Findings
20 of Fact and Conclusions of Law. PMA and Mr. Jacenko:

- 21 a. Shall provide every piece of advertising relating to PMAs' mortgage broker
22 business;
- 23 b. Shall use license number, as issued on their principal place of business license,
24 within all regulated advertising;
- 25 c. Shall conduct the minimum elements of reasonable employee investigations
26 before hiring employees;

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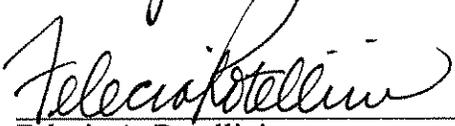
- d. Shall not allow parties to mortgage loan transactions to sign regulated documents containing blank spaces with out prior written authorization;
- e. Shall issue Federal Disclosure forms as required by law;
- f. Shall not make a false promise or misrepresentation or conceal an essential or material fact;
- g. Shall maintain appropriate trust subsidiary ledger;
- h. Shall use a correct written fee agreement when accepting advance fees from borrowers; and
- i. Shall maintain correct and complete records and notify the superintendent in writing as prescribed.

2. PMA and Mr. Jacenko shall immediately pay no later than July 07, 2007, to the Department a civil money penalty in the amount of **five thousand dollars (\$5,000.00)**. PMA and Mr. Jacenko are jointly and severally liable for payment of the civil money penalty.

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

4. This Order shall become 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 3rd day of July, 2007.


 Felecia A. Rotellini
 Superintendent of Financial Institutions

CONSENT TO ENTRY OF ORDER

1. Petitioners 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.

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

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

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

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

11 6. Mr. Jacenko, President, PMA, on behalf of PMA and himself represents that he is the
12 President, and that, as such, has been authorized by PMA to consent to the entry of this Order on its
13 behalf.

14 7. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest
15 the validity of this Consent Order.

16 DATED this 1 day of JUNE, 2007.

17
18 By: 

 Brian G. Jacenko, President
 Professional Mortgage Associates, LTD.

19
20 ORIGINAL of the foregoing filed this 3
21 day of July, 2007, in the office of:

22 Felecia A. Rotellini
23 Superintendent of Financial Institutions
24 Arizona Department of Financial Institutions
25 ATTN: June Beckwith
26 2910 N. 44th Street, Suite 310
 Phoenix, AZ 85018

1 COPY mailed/delivered same date to:

2 Robert D. Charlton, Assistant Superintendent
3 Gabriela Macias, Senior Examiner
4 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

5 Daniel Martin, Administrative Law Judge
6 Office of the Administrative Hearings
7 1400 West Washington, Suite 101
Phoenix, AZ 85007

8 Craig A. Raby
9 Assistant Attorney General
10 Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

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

13 Brian G. Jacenko, President
14 Professional Mortgage Associates, LTD.
19017 N. 78th Lane
Glendale, AZ 85308

15
16 By: 

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