ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

In the Matter of the Unlicensed Activity of: **BELLA FUNDING, LLC AND DONALD A. TOMASIAN, MANAGING MEMBER** 16375 N. 99th Place Scottsdale, AZ 85260 Petitioners.	**No. 12F-BD007-BNK** **SUPERINTENDENT'S FINAL DECISION AND ORDER**

The Superintendent of Financial Institutions (the "Superintendent") having reviewed the record in this matter, including the Administrative Law Judge Decision attached and incorporated herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of Law and Order as follows:

ORDER

IT IS ORDERED affirming the Cease and Desist Order and civil money penalty issued on October 3, 2011 Docket Number 12F-BD024-SBD. Petitioners shall jointly and severally pay the civil monetary penalty in the amount of $25,000.00 within thirty (30) days of the effective date of this Order.

NOTICE

The parties are advised that, pursuant to A.R.S. § 41-1092.09, this Order shall be final unless Petitioners submit a written motion for rehearing no later than thirty (30) days after service of this decision. The motion for rehearing or review must specify the particular grounds upon which it is based as set forth in A.A.C. R20-4-1219. A copy shall be served upon all other parties to the hearing, including the Attorney General, if the Attorney General is not the party filing the claim of error. In the alternative, the parties may seek judicial review of this decision pursuant to A.R.S. § 41-1092.08(H).

DATED this 25th day of June, 2012.

Lauren W. Kingry
Superintendent of Financial Institutions

ORIGINAL filed this 25th day of June, 2012 in the office of:

Lauren W. Kingry, Superintendent of Financial Institutions
Arizona Department of Financial Institutions
ATTN: June Beckwith
2910 North 44th Street, Suite 310
Phoenix, Arizona 85018

COPY mailed same date to:

Lewis D. Kowal, Administrative Law Judge
Office of the Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

Craig Raby, Assistant Attorney General
Office of the Attorney General
1275 West Washington
Phoenix, AZ 85007

Robert D. Charlton, Assistant Superintendent
Tammy Seto, Financial Institutions Examiner Sr.
Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

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

Donald Tomasian
16375 N. 99th Place
Scottsdale, AZ 85260

By: June Beckwith

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Unlicensed Activity of:	**No. 12F-BD007-BNK**
BELLA FUNDING, LLC AND DONALD A. TOMASIAN, MANAGING MEMBER 16375 N. 99th Place Scottsdale, AZ 85260 Petitioners.	**ADMINISTRATIVE LAW JUDGE DECISION**

HEARING: May 23, 2012

APPEARANCES: Assistant Attorney General Craig Raby for the Arizona Department of Financial Institutions; Bella Funding LLC and Donald A. Tomasian did not appear at the hearing

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

1. At all times material to this matter, Bella Funding, LLC ("Bella Funding") was an Arizona limited liability company that conducted business in the state of Arizona.

2. At all times material to this matter, Donald A. Tomasian ("Mr. Tomasian") was the managing member of Bella Funding.

3. At all times material to this matter, neither Bella Funding nor Mr. Tomasian ("Collectively referred to herein as "Respondents") were licensed by the Arizona Department of Financial Institutions ("Department") as a mortgage banker.

4. The following was established through the testimony of Tammy Seto ("Ms. Seto"), a Senior Examiner with the Department:

   a. The Department received a complaint alleging that Bella Funding was holding itself out as a mortgage lender.

   b. As part of the complaint, the Department received a copy of a LinkedIn web page showing that Mr. Tomasian was the founder and Chief of Executive Officer of Bella Funding, and that Bella Funding was a

private lender of money in Arizona specializing in "tough to do" transactions involving real property. *See* Exhibit 4.

c. LinkedIn is a business sharing website that lists resumes and contains other information about businesses.

d. Ms. Seto was able to access Bella Funding's LinkedIn webpage, which indicated that the page is accessible to the public.

e. The information contained on the LinkedIn web page established that Bella Funding, through Mr. Tomasian, was offering to make or negotiate a mortgage loan or mortgage banking loan. A mortgage loan involves the entity directly funding the loan while a mortgage banking loan involves the entity brokering the loan but the funding is derived from a third party.

f. On March 16, 2011, Ms. Seto sent a letter to Bella Funding asking for information about the lending activities of Bella Funding in the state of Arizona. *See* Exhibit 5. Bella Funding did not respond to that letter.

g. The Department obtained information that First American Title Insurance Company ("First American") was involved in closing loans for Bella Funding.

h. On August 12, 2011, the Department sent a letter to First American requesting a list of transactions and documents involving Bella Funding as a broker or lender in transactions. *See* Exhibit 6.

i. In response to the above-mentioned letter, First American sent the Department Final Settlement Statements. *See* Exhibits 8, 9, and 10.

j. Upon review of the documents the Department received from First American and other information and documentation obtained during the course of her investigation of Bella Funding, Ms. Seto determined that for compensation, Respondents were arranging or negotiating mortgage loans or mortgage banking loans regarding Arizona real property, secured by deeds of trust on those properties. Ms. Seto determined that by

Respondents engaging in such activities, a mortgage banker license was required.

5. On October 3, 2011, the Department issued a Cease and Desist Order requiring Respondents to cease and desist from all mortgage banker activity in the state of Arizona until they have obtained a mortgage banker license from the Department, pay a civil monetary penalty of $25,000.00 to the Department, and comply with all statutes and rules regulating Arizona mortgage bankers. *See* Exhibit 1.

6. First American provided to the Department documents that showed with respect to a new loan on the property located at 3865 Highway 68, Golden Valley, Arizona, (File # 291-4762004) Bella Funding charged and received a loan origination fee of $40,000.00, a document preparation fee of $500.00, an underwriting fee of $500.00, and a processing fee of $995.00. *See* Exhibit 8. Further, the loan amount of $800,000.00 was directly funded by Bella Funding. *Id.*

7. A Deed of Trust was recorded in the Maricopa County Recorder's Office regarding the property that was the subject of the loan in File # 291-4762004. *See* Exhibit 14.

8. First American provided documents to the Department that showed with respect to a loan on the properties located at 2201 East McDowell Road, 2211 East McDowell Road, and 14833 North 12th Street, Phoenix, Arizona, (File # 443-526337) Bella Funding brokered funding of loans, and Mr. Tomasian c/o Bella Funding charged and received loan discount points of $5,600.00, a loan processing fee of $1,250.00, a loan set up fee of $500.00, a site inspection fee of $750.00, and a document preparation fee of $500.00. *See* Exhibit 9.

9. A Deed of Trust was recorded in the Maricopa County Recorder's Office regarding the properties that were the subject of the loan in File # 443-526337. *See* Exhibit 12.

10. First American provided documents to the Department that showed with respect to a loan on a property located at 4150 North 35th Avenue, Phoenix, Arizona, Lot 2, (File # 443-5298165) Bella Funding brokered funding of a loan, and Bella Funding/Mr. Tomasian charged and received a loan origination fee of $9,000.00, a loan discount fee

of $51,000.00, a loan document fee of $1,500.00, a loan processing fee of $1,450.00, and a site inspection fee of $750.00. *See* Exhibit 10.

11. A Deed of Trust was recorded in the Maricopa County Recorder's Office regarding the properties that were the subject of the loan in File # 443-5298165. *See* Exhibit 13.

12. Robert Charlton ("Mr. Charlton"), Assistant Superintendent of the Department, testified that he is Ms. Seto's supervisor and that Ms. Seto discussed this matter with him and provided him with documents she obtained regarding the business activities of Respondents in the state of Arizona.

13. Mr. Charlton, who is familiar with the Department's statutes and rules and oversees the Department's regulation of mortgage bankers, testified that based on the information the Department compiled regarding Respondents, they were both acting as a mortgage banker and received compensation for such activities without being licensed by the Department. Mr. Charlton further testified that such activities warranted the issuance of a cease and desist order.

14. Mr. Charlton testified that the Department arrived at the $25,000.00 civil penalty by looking at the particular activities of Respondents, and he considered what the Department has historically imposed as a civil penalty.

15. Mr. Charlton also testified that there were at least eight acts established by the documents the Department obtained during the course of its investigation of Bella Funding that showed that Bella Funding, through its managing member, Mr. Tomasian, engaged in the offering or negotiating, or actually made or negotiated mortgage loans or mortgage banking loans. According to Mr. Charlton, such acts are violations of law that support a civil penalty in excess of $25,000.00.

16. In its closing argument, the Department requested that the Cease and Desist Order be upheld and that a civil monetary penalty in the amount of $25,000.00 be imposed against Bella Funding and Mr. Tomasian, jointly and severally.

17. No evidence or argument was presented by Respondents to refute or rebut the evidence and arguments presented by the Department.

CONCLUSIONS OF LAW

1. The Superintendent of the Department has the authority to regulate all persons engaged in the mortgage banker business and enforce the applicable statutes and rules. *See* A.R.S. Title 6, Chapter 9, Article 2.

2. This matter concerns disciplinary action that the Department seeks to take against Bella Funding and Mr. Tomasian. Therefore, the Department has the burden of proving by a preponderance of the evidence that the allegations set forth in the Notice of Hearing issued in this matter constitute violations of the State's laws regulating mortgage bankers. *See* A.R.S. § 41-1092.07(G) and A.A.C R2-19-119.

3. A "preponderance of the evidence is such proof as convinces the trier of fact that the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960). It is "[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not." BLACK'S LAW DICTIONARY 1182 (6th ed. 1990)

4. A mortgage banker is defined in A.R.S. § 6-941(5) as "a person who is not exempt under section 6-942 and who for compensation or in the expectation of compensation either directly or indirectly makes, negotiates or offers to make or negotiate a mortgage banking loan or a mortgage loan."

5. A mortgage loan is defined as "any loan, other than a mortgage banking loan, secured by a mortgage or deed of trust or any lien interest on real estate located in this state and created with the consent of the owner of the real estate." A.R.S. § 6-941(8).

6. A mortgage banking loan is defined as "a loan which is funded exclusively from the mortgage banker's own resources, which is directly or indirectly secured by a mortgage or deed of trust or any lien interest on real estate located in this state and which is created with the consent of the owner of the real property. . . ." A.R.S. § 6-941(6).

7. Compensation is defined in A.R.S. § 6-941(2) as "anything of value or any benefit including points, commissions, bonuses, referral fees, loan origination fees and other similar fees but excluding periodic interest resulting from the application of the

note rate of interest to the outstanding principal balance remaining unpaid from time to time."

8. A person is not entitled to receive compensation for arranging or negotiating a mortgage loan or mortgage banking loan for compensation without being licensed as a mortgage banker. *See* A.R.S. § 6-947(B).

9. The weight of the evidence of record established that Bella Funding and Mr. Tomasian violated the provisions of A.R.S. § 6-943(A) by acting as a mortgage banker in the state of Arizona without obtaining a mortgage banker's license from the Department. There was no evidence presented that Respondents met any of the exceptions from licensure that are set forth in A.R.S. § 6-942.

10. The weight of the evidence of record established that Bella Funding and Mr. Tomasian violated the provisions of A.R.S. § 6-947(B) by accepting compensation for arranging for or negotiating mortgage banking loans or mortgage loans without having obtained a mortgage banker's license from the Department.

11. The Department proved by a preponderance of the evidence that grounds exist for the Department for the issuance of the Cease and Desist Order pursuant to A.R.S. § 6-137.

12. Grounds exist, based on the above-found violations, for the imposition of a civil monetary penalty. *See* A.R.S. § 6-132.

13. The weight of the evidence of record established that the civil penalty of $25,000.00 sought by the Department is reasonable and appropriate under the circumstances.

ORDER

Based on the above, the Cease and Desist Order is upheld and, within 30 days of the effective date of the Order entered in this matter, Bella Funding and Mr. Tomasian shall jointly and severally pay to the Department a civil monetary penalty in the amount of $25,000.00.

In the event of certification of the Administrative Law Judge Decision by the Director of the Office of Administrative Hearings, the effective date of the Order will be 5 days from the date of that certification.

Done this day, June 12, 2012.

/s/ Lewis D. Kowal
Administrative Law Judge

Transmitted electronically to:

Lauren Kingry, Superintendent
Arizona Department of Financial Institutions