

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

No. 09F-BD035-BNK

3 **SUNRISE FINANCIAL, INC.**
4 3050 North Navajo Drive, Suite 101
5 Prescott Valley, AZ 86314

**SUPERINTENDENT'S FINAL
DECISION AND ORDER**

6 Petitioner.

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

11 ORDER

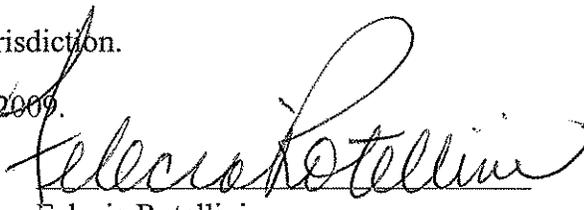
12 IT IS ORDERED that Respondent's Mortgage Broker License Number MB 0014336 is
13 revoked effective as of the date of this Order.

14 IT IS FURTHER ORDERED that the civil money penalty in the amount of three thousand
15 dollars (\$3,000.00), the examination fee in the amount of nine hundred twenty-five dollars
16 (\$925.00) and the late penalty of nine hundred twenty-five dollars (\$925.00) is affirmed.

17 NOTICE

18 The parties are advised that this Order becomes effective immediately and the provisions of
19 this Order shall remain effective and enforceable except to the extent that, and until such time as,
20 any provision of this Order shall have been modified, terminated, suspended, or set aside by the
21 Superintendent or a court of competent jurisdiction.

22 DATED this 5th day of February, 2009.

23 
24 Felecia Rotellini
25 Superintendent of Financial Institutions

26 ...

27 ...

1 ORIGINAL filed this 5th day of
February, 2009 in the office of:

2 Felecia Rotellini
3 Superintendent of Financial Institutions
4 Arizona Department of Financial Institutions
5 ATTN: June Beckwith
6 2910 North 44th Street, Suite 310
7 Phoenix, Arizona 85018

8 COPY of the foregoing mailed/hand delivered
9 This same date to:

10 Michael G. Wales, Administrative Law Judge
11 Office of Administrative Hearings
12 1400 West Washington, Suite 101
13 Phoenix, AZ 85007

14 Craig Raby, Assistant Attorney General
15 Office of the Attorney General
16 1275 West Washington
17 Phoenix, AZ 85007

18 Robert D. Charlton, Assistant Superintendent
19 Chris Dunshee, Senior Examiner
20 Arizona Department of Financial Institutions
21 2910 N. 44th Street, Suite 310
22 Phoenix, AZ 85018

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

25 James R. Tift
26 1809 N. Moonstone Lane
27 Prescott, AZ 86301

28 James R. Tift
Responsible Individual
Sunrise Financial, Inc.
3050 North Navajo Drive, Suite 101
Prescott Valley, AZ 86314

BY: June Beckwith

1 4. On October 22, 2007, the Arizona Department of Financial Institutions
2 ("Department") commenced an examination of Sunrise's business activities pursuant to
3 A.R.S. § 6-122(B)(3).¹ The examination concluded on October 23, 2007. As a result of
4 the examination, the Department discovered the following activities or failures which
5 occurred on multiple dates in 2006 and 2007:

6 a. Sunrise and Mr. Tift failed to conduct the minimum statutorily required
7 elements of employee investigations before hiring, and failed to maintain required
8 records of current and former employees, including failure to maintain records of
9 previous employer consults, records of qualification inquiries and records of either credit
10 reports or derogatory credit explanations for seven employees;

11 b. Sunrise and Mr. Tift failed to provide the examiner with documentation
12 that its general ledger and check register have been reconciled and updated on a
13 monthly basis, specifically its September, 2007 ledger;

14 c. Sunrise and Mr. Tift permitted parties to mortgage loan transactions to
15 sign blank space authorizations without indicating what blank spaces are to be
16 completed;

17 d. Sunrise and Mr. Tift failed to comply with the real estate lending
18 disclosure requirements of Title I of the Consumer Credit Protection Act ("CCPA") (15
19 United States Code §§ 1601 through 1666j), the Real Estate Settlement Procedures
20 Act ("RESPA") (12 United States Code §§ 2601 through 2617), and the federal
21 regulations promulgated under those Acts. Specifically, Sunrise and Mr. Tift failed to
22 disclose the Yield Spread Premium on the Good Faith Estimate in one instance, used
23 an outdated Servicing Transfer Disclosure in another instance, and in one other
24 instance, failed to provide a Good Faith Estimate, Truth In Lending Disclosure and
25 Service Transfer Disclosure to the borrower within 3 business days;

26 e. Sunrise and Mr. Tift failed to use an independent source when providing a
27 value opinion to private investors. Specifically the file for one investor failed to contain
28 the Note, Deed of trust and Value Opinion and a second file failed to contain the Value
29 Opinion;

30 ¹ A.R.S. § 6-122(B)(3) which requires an examination of the business and affairs of each such financial institution at least once in a five year period.

1 f. In regards to the two aforementioned private investor files, Sunrise and
2 Mr. Tift failed to provide the examiner with a statement attesting to the validity of
3 information provided by Mr. Tift, and failed to provide an acknowledgement from the
4 lender of the receipt of said information;

5 g. Sunrise and Mr. Tift failed to maintain a positive net worth for the business
6 and, as such is insolvent as defined in A.R.S. § 47-1201;

7 h. Sunrise and Mr. Tift failed to update, verify and reconcile its Trust
8 Subsidiary Ledger for each borrower; and

9 i. Sunrise and Mr. Tift failed to use a statutorily correct written fee/document
10 agreement signed by all parties, specifically, the examiner found two files in which the
11 borrowers had not signed the fee agreements.

12 5. Based on the above findings, on March 10, 2008, the Department served
13 upon Respondents a Notice of Assessment of a civil penalty in the amount of
14 \$3,000.00, a copy of the Department's Report of Examination, an invoice for the
15 examination fee in the amount of \$925.00, and a cover letter. Respondents were
16 required to advise the Department of the actions taken to correct the noted violations
17 within 30 days of the date of the cover letter. The Respondents' deadline for filing a
18 response with the Department, payment of the examination fee and payment of the civil
19 penalty, including 5 days for mailing, was April 15, 2008.

20 6. As of the date of hearing in the instant matter, the Department still has not
21 received a response from Sunrise or Mr. Tift, nor has the Department received payment
22 of the civil money penalty in the amount of \$3,000.00 and examination fee in the
23 amount of \$925.00 and the applicable late fee, now totaling \$925.00.

24 7. As a result of its examination, and Sunrise's and Mr. Tift's failure to timely
25 respond to the Superintendent request for information, on October 20, 2008, the
26 Department issued and served upon Sunrise and Mr. Tift a Notice of Hearing and
27 Complaint which included the allegations above and an additional allegation, i.e, that
28 Sunrise and Mr. Tift failed to timely respond to the Superintendent's request for
29 information, in violation of A.R.S. §§ 6-123(3) and 6-124.

30 8. The matter was not resolved informally, and was subsequently referred for
an administrative hearing. The Department's October 20, 2008 Notice of Hearing set

1 the matter for hearing on December 2, 2008 before the Office of Administrative
2 Hearings, an independent state agency. The Department's Notice of Hearing set forth
3 the allegations for which the Department maintained that Sunrise, and Mr. Tift, were in
4 violation of certain banking statutes and rules.

5 9. At hearing, the Department's examiner Christopher Dunshee² testified at
6 length with regard to his examination, as was reflected in his examination report, and
7 indicated the existence of the violations as alleged. See Exhibit 1.

8 10. Robert Charleton, Assistant Superintendent for the Arizona Department of
9 Financial Institutions, testified that the Department had not received a response from
10 Sunrise or Mr. Tift to the examination report and had not received payment of the civil
11 penalty and examination fee. The Department indicated that it sought a revocation of
12 the license, a civil penalty in the amount of \$3,000.00, payment of the \$925.00
13 examination fee; and a \$50.00 per day late fee pursuant to A.R.S § 6-125(D) for every
14 day after April 15, 2008 that the examination fee had not been paid, capped at \$925.00.

15 11. Mr. Tift testified that he had intended to hire a former Department
16 employee to assist him in obtaining full compliance with the Department, but he never
17 got around to it. Mr. Tift also testified that the violations were simple non-technical
18 errors or misunderstandings. Regarding the claim that Sunrise records provided to the
19 examiner showed Sunrise to have a negative net worth as of December 31, 2006, Mr.
20 Tift explained that Sunrise is a sub-chapter S corporation and, for tax purposes, a
21 negative net worth is preferable. Mr. Tift testified that Sunrise can pay its bills. This
22 tribunal noted, however, that Sunrise has not yet paid the examination fee, late fee, and
23 civil penalty.

24 CONCLUSIONS OF LAW

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

28
29 ² Christopher Dunshee is a mortgage broker and banker examiner with the Arizona Department of
30 Financial Institutions. He has been conducting mortgage broker compliance examinations for the

1 2. A.R.S. § 6-132 provides that the Superintendent of the Department may
2 assess a monetary civil penalty of not more than \$5,000.00 against a person for a
3 knowing violation of applicable statute or rule or order adopted or issued under state
4 banking laws. The law specifically provides that “[e]ach day of violation constitutes a
5 separate offense.”

6 3. The Department adopted administrative rules further defining or setting
7 forth practice and procedure applicable to licenses which were granted under the
8 Department’s authority. See A.A.C. R20-4-101 *et. seq.* and R20-4-901 *et. seq.*

9 4. As a result of Mr. Dunshee’s investigation, the Department charged that
10 Sunrise’s actions and failures, as well as those of its principal, owner, and Responsible
11 Individual, Mr. Tift, were violations of Arizona statutes and rules as follows:

12 a. A violation of A.R.S. § 6-903(N) and A.A.C. R20-4-102 by failing to
13 conduct the minimum statutorily required elements of employee investigations before
14 hiring, and failed to maintain required records of current and former employees;

15 b. A violation of A.A.C. R20-4-917(C) by failing to provide the examiner with
16 documentation that its bank accounts have been reconciled and updated on a monthly
17 basis;

18 c. A violation of A.R.S. § 6-909(A) and A.A.C. R20-4-921 by permitting
19 parties to mortgage loan transactions to sign regulated documents containing blank
20 spaces without benefit of properly completed written authorizations to complete blank
21 spaces;

22 d. A violation of A.R.S. § 6-909(D) and A.A.C. R20-4-917(B)(6)(e) by failing
23 to comply with the real estate lending disclosure requirements of Title I of the
24 Consumer Credit Protection Act (“CCPA”) (15 United States Code §§ 1601 through
25 1666j), the Real Estate Settlement Procedures Act (“RESPA”) (12 United States Code
26 §§ 2601 through 2617), and the federal regulations promulgated under those Acts;

27 e. A violation of A.R.S. § 6-907(A) and A.A.C. R20-4-917(B)(6) by failing to
28 use an independent source when providing a value opinion to private investors;

29
30 Department for two years. Prior to joining the Department, Mr. Dunshee was a mortgage underwriter with Wells Fargo for eight years and was First Interstate Bank’s compliance officer as well.

1 f. A violation of A.R.S. § 6-907(B) by failing to provide a statement attesting
2 to the validity of information provided and failed to receive acknowledgement from
3 lenders of the receipt of said information;

4 g. A violation of A.R.S. § 6-905(A) by failing to maintain a positive net worth
5 for the business;

6 h. A violation of A.A.C. R20-4-917(B)(5) and A.A.C. R20-4-917(C) by failing
7 to update, verify and reconcile trust ledger records;

8 i. A violation of A.R.S. § 6-906(C) by failing to use a statutorily correct
9 written fee/document agreement signed by all parties; and

10 j. A violation of A.R.S. §§ 6-123(3) and 6-124 by failing to timely respond to
11 the Superintendent's request for information.

12 5. The Department bears the burden to prove each of those charges by a
13 preponderance of the evidence. See Arizona Administrative Code R2-19-119. A
14 preponderance of the evidence is "such proof as convinces the trier of fact that the
15 contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF EVIDENCE §
16 5 (1960).

17 6. With regard to the Department's allegations, the Department provided
18 credible and reliable evidence of the alleged violations stated herein in Findings of Fact
19 No. 4 (a)-(f), (h) and (i) and Conclusions of Law No. 4 (a)-(f), (h), (i) and (j) with its
20 thorough examination and the testimony of Messrs. Dunshee and Charleton.
21 Additionally, of great weight was the examiner's testimony regarding the thoroughness
22 of his examination, the presentation of exhibits documenting his findings; and his
23 testimony that Mr. Tift admitted many of the violations to Mr. Dunshee when questioned
24 about the acts and omissions described above.

25 7. The Administrative Law Judge concludes, based on the hearing evidence,
26 that the Department has met its burden to show that Sunrise and Mr. Tift violated
27 applicable statutes and rules as alleged in the Notice of Hearing, and as stated herein in
28 Findings of Fact No. 4 (a)-(f), (h) and (i) and Conclusions of Law No. 4 (a)-(f), (h), (i)
29 and (j). Therefore, the Administrative Law Judge concludes that the determined acts,
30 practices and transactions of Sunrise and Mr. Tift violated the stated applicable Arizona
statutes and rules: A.R.S. §§ 6-123(3), 6-124, 6-903(N), 6-906(C), 6-906(D), 6-907(A),

1 6-907(B), 6-909(A) and A.A.C. R20-4-102, R20-4-917(B)(5), R20-4-917(B)(6), R20-4-
2 917(B)(6)(e), R20-4-917(C) and R20-4-921.

3 8. In regards to the allegation of insolvency set forth in Findings of Fact 4(g)
4 and Conclusions of Law 4(g), A.R.S. § 6-905(A)(1) states that the Superintendent may
5 suspend or revoke a license if the Superintendent finds the licensee is "insolvent within
6 the meaning of A.R.S § 47-1201".

7 9. A.R.S § 47-1201(23) defines insolvency as follows:

8 23. "Insolvent" means:

- 9 (a) Having generally ceased to pay debts in the ordinary course of business other than
10 as a result of bona fide dispute;
11 (b) Being unable to pay debts as they become due; or
12 (c) Being insolvent within the meaning of federal bankruptcy law.

13 10. The Administrative Law Judge concludes and determines that Sunrise
14 and Mr. Tift did not violate A.R.S. § 6-905(A), specifically the allegation set forth in
15 Findings of Fact 4(g) and Conclusions of Law 4 (g), as the Department did not prove,
16 by a preponderance of the evidence, that Sunrise is insolvent within the meaning of
17 A.R.S 47-1201.

18 11. Taking all of the foregoing into consideration, the Administrative Law
19 Judge concludes that, pursuant to A.R.S. § 6-905(A)(3) and (4), the requested license
20 revocation by the Superintendent of the Department is clearly appropriate and,
21 pursuant to A.R.S. § 6-132, the imposition of a monetary civil penalty is equally
22 appropriate.

23 12. In regards to the examination fee, pursuant to A.R.S. § 6-125(D)
24 Respondents shall pay a late payment penalty of 50.00 per day for every day the
25 examination fee has not been paid beginning 30 days after the notice of examination
26 assessment has been mailed. The late payment penalty is capped at the examination
27 fee amount.

28 **RECOMMENDED ORDER**

29 Based on the foregoing, the Administrative Law Judge recommends that the
30 Superintendent of the Department find that the acts, practices and transactions (as
were examined and as were determined herein) to be violations of A.R.S. §§ 6-123(3),

1 6-124, 6-903(N), 6-905(A)(3) 6-905(A)(4), 6-906(C), 6-906(D), 6-907(A), 6-907(B), 6-
2 909(A) and A.A.C. R20-4-102, R20-4-917(B)(5), R20-4-917(B)(6), R20-4-917(B)(6)(e),
3 R20-4-917(C) and R20-4-921.

4 Based on the above, the Administrative Law Judge further recommends that
5 the Superintendent issue the following Order:

6 On the effective date of the Order entered in this matter, Respondents' Arizona
7 mortgage broker's license shall be revoked;

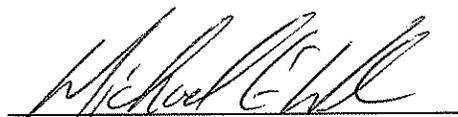
8 Pursuant to A.R.S. § 6-132, a civil penalty shall be imposed upon Respondents
9 in the amount of \$3,000.00 for the violations of A.R.S. §§ 6-903, 6-906, 6-909 and
10 A.A.C. R20-4-102, R20-4-917 and R20-4-921;

11 Pursuant to A.R.S. § 6-125, Respondents shall reimburse the Department in the
12 amount of the exam fee of \$925.00;

13 Furthermore, as A.R.S. § 6-125(D) requires Respondents to pay a late payment
14 penalty of \$50.00 per day for every day the examination fee has not been paid
15 beginning 30 days, plus 5 for mailing, after the notice of examination assessment has
16 been mailed, and the evidence of record indicates that the Cover Letter, Examination
17 Fee Invoice and Examination Report were mailed to Respondents on March 10, 2008,
18 Respondents shall pay a late fee of \$50.00 per day beginning April 15, 2008, not to
19 exceed \$925.00.

20 Done this day, January 7, 2009.

21 Office of Administrative Hearings

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25 Michael G. Wales
26 Administrative Law Judge
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Original transmitted by mail this
8 day of Jan., 2009, to:

Arizona Department of Financial Institutions
Felecia A. Rotellini
ATTN: Susan Longo
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

By Chris Fisher