

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

No. 09F-BD073-BNK

3 **DEL OESTE FINANCIAL, INC. DBA VALLEY**  
4 **MORTGAGE CONSULTANTS AND NICHOLAS**  
5 **P. SILVERSTRI, PRESIDENT**  
6 27204 N. 96<sup>th</sup> Lane  
Peoria, AZ 85383

**SUPERINTENDENT'S FINAL  
DECISION AND ORDER OF  
REVOCATION**

7 Respondents.

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

12 ORDER

13 IT IS ORDERED that Respondent's Mortgage Broker License Number MB 0906071 is  
14 revoked effective as of the date of this Order.

15 NOTICE

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

20 DATED this 17th day of August, 2009.

21   
22 Felecia Rotellini  
23 Superintendent of Financial Institutions

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26  
27 ...  
28 ...

1 ORIGINAL filed this 19<sup>th</sup> day of August, 2009 in the office of:

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

5 COPY of the foregoing mailed/hand delivered  
6 This same date to:

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

9  
10 Craig Raby, Assistant Attorney General  
Office of the Attorney General  
11 1275 West Washington  
Phoenix, AZ 85007

12 Richard Fergus, Licensing Division Manager  
13 Robert Charlton, Assistant Superintendent  
Arizona Department of Financial Institutions  
14 2910 N. 44th Street, Suite 310  
Phoenix, AZ 85018

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

16 Nicholas P. Silvestri, Owner & Statutory Agent  
17 Del Oeste Financial, Inc.  
DBA Valley Mortgage Consultants  
18 Attention: 27204 N. 96<sup>th</sup> Lane  
Peoria, AZ 85383

19  
20  
21 BY: June Beckwith

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter of the Mortgage Broker License of:

No. 09F-BD073-BNK

DEL OESTE FINANCIAL, INC. DBA VALLEY MORTGAGE CONSULTANTS AND NICHOLAS P. SILVESTRI, PRESIDENT 27204 N. 96th Lane Peoria, AZ 85383

AMENDED ADMINISTRATIVE LAW JUDGE DECISION (Rearranged Paragraphs in Findings of Fact)

HEARING: July 17, 2009

APPEARANCES: Assistant Attorney General Craig Raby on behalf of the Arizona Department of Financial Institutions; Neither Del Oeste Financial, Inc. nor Lawrence V. Jackson appeared at the hearing.

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

- 1. Del Oeste Financial Inc. (Del Oeste) is a corporation authorized to transact business in Arizona as a mortgage broker, license number MB-0906071.
2. At all times material to this matter, Nicholas P. Silvestri (Mr. Silvestri) was the President of Del Oeste.
3. On January 2, 2009, the Arizona Department of Financial Institutions (Department) was notified by North American Specialty Insurance Company that Del Oeste's surety bond in the amount of \$10,000.00 was being canceled.
4. On January 6, 2009, the Department sent a letter to Del Oeste informing it that the Department had received a Notice of Bond Cancellation regarding Del Oeste's surety bond and requested that documentation showing a reinstatement bond or a new original surety bond be provided to the Department. The letter also notified Del Oeste that a lapse in bond coverage is a serious violation and that administrative enforcement action will ensue if the requested information is not provided within five business days of receipt of the letter.

Office of Administrative Hearings
1400 West Washington, Suite 101
Phoenix, Arizona 85007
(602) 542-9826

1 5. On February 10, 2009, the Department sent an email to Del Oeste informing it  
2 that the Department had not received a response to the above-mentioned letter.

3 6. On May 20, 2009, the Superintendent of the Department issued an Order of  
4 Summary Suspension and Notice of Hearing to Revoke (Order) immediately  
5 suspending Del Oeste's mortgage broker's license based on its failure to maintain the  
6 required surety bond.

7 7. The Order was sent to Del Oeste by certified mail, return receipt requested. The  
8 Department received a signed green card evidencing receipt of the Order. The  
9 Department also sent a copy of the Order to Mr. Silvestri, Del Oeste's statutory agent  
10 on file with the Arizona Corporation Commission.

11 8. Richard Fergus ("Mr. Fergus"), who is in charge of supervising the Financial  
12 Services Division of the Department, testified that the Department's records reflect that  
13 Del Oeste's canceled bond has not been replaced. Mr. Fergus further testified that,  
14 prior to the hearing date, the Department had not received information that showed that  
15 Del Oeste had obtained a replacement surety bond or that the bond had been renewed.

16 9 Mr. Fergus testified as to the legal requirement for a mortgage broker to maintain  
17 a surety bond and the necessity for the issuance of a summary suspension of the  
18 license for the public's protection.

#### 19 CONCLUSIONS OF LAW

20 1. The Superintendent of the Department is vested with the authority to regulate  
21 persons engaged in the mortgage broker business and has the duty to enforce statutes  
22 and rules relating to mortgage brokers. See A.R.S. § 6-901 *et seq.*

23 2. The Department bears the burden to prove by a preponderance of the evidence  
24 that Del Oeste has violated State laws pertaining to mortgage brokers. See A.A.C. R2-  
25 19-119. A preponderance of the evidence is "such proof as convinces the trier of fact  
26 that the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF  
27 EVIDENCE § 5 (1960).

28 3. Credible evidence established that Del Oeste failed to maintain a surety bond in  
29 as required by A.R.S. § 6-903(G) in the amount required pursuant to A.R.S. § 6-903(H).

30 4. By failing to maintain the required surety bond, Del Oeste failed to conduct its  
mortgage broker business in accordance with the law and violated the provisions of

1 Title 6, Chapter 9 and rules relating thereto, which constitute grounds for revocation of  
2 the license pursuant to A.R.S. § 6-905(A)(3).

3 5. Pursuant to A.R.S. § 41-1092.11, the Superintendent has the authority to  
4 suspend Del Oeste's mortgage broker's license if emergency action is required to  
5 protect the health, safety and welfare of the public.

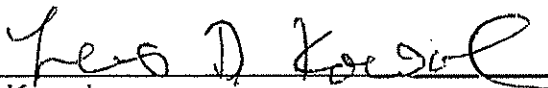
6 6. Based on the above, grounds existed for the issuance of the Order of Summary  
7 Suspension of Del Oeste's mortgage broker's license.

8 7. Based on the above, grounds exist for the revocation of Del Oeste's mortgage  
9 broker's license pursuant to A.R.S. § 6-905.

10 ORDER

11 Del Oeste's mortgage broker's license summary suspension is upheld and, on  
12 the effective date of the Order entered in this matter, Del Oeste's mortgage broker's  
13 license shall be revoked.

14 Done this day, August 7, 2009.

15   
16 \_\_\_\_\_  
17 Lewis D. Kowal  
18 Administrative Law Judge

19 Original transmitted by mail this  
20 7 day of August, 2009, to:

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

26 By   
27 \_\_\_\_\_