

1 **ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS**

2 In the Matter of the Mortgage Banker License of: No. 08F-BD034-BNK

3 **FIRST CAPITAL MORTGAGE CORP.**
4 10575 North 114th Street, Suite 113
5 Scottsdale, Arizona 85259

CONSENT ORDER

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Petitioner.

On February 11, 2008, the Arizona Department of Financial Institutions ("Department") issued a Notice of Hearing, alleging that Petitioner had violated Arizona law. Wishing to resolve this matter in lieu of an administrative hearing, and without admitting liability, Petitioner consents to the following Findings of Fact and Conclusions of Law, and consents to the entry of the following Order.

FINDINGS OF FACT

1. Petitioner First Capital Mortgage Corp. (hereinafter "First Capital") is an Illinois corporation authorized to transact business in Arizona as a mortgage banker, license number BK 0905768, within the meaning of A.R.S. §§ 6-941, *et seq.* The nature of First Capital's business is that of making, negotiating, or offering to make or negotiate a mortgage banking loan or a mortgage loan secured by Arizona real property within the meaning of A.R.S. § 6-941(5).

2. David S. Goldhirsh ("Mr. Goldhirsh") is the President of First Capital.

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

4. A July 9, 2007 through October 17, 2007 examination of First Capital, conducted by the Department, revealed that First Capital:

- a. Failed to ensure that the responsible individual maintained a position of active management; failed to ensure that the responsible individual was knowledgeable about all Arizona activities; and failed to direct Petitioner's activities in compliance with A.R.S. Title 6, Chapter 9 and related applicable rules as evidenced by the

1 following:

- 2 i. The responsible individual, David Fowler, was not available at the
3 examination site, nor has he made any attempt to contact the Department
4 to explain the landlord's Notification of Lien on the door of Petitioner's
5 Arizona principal address; and
- 6 ii. The responsible individual has not maintained adequate records to allow
7 the Department to maintain contact with him;
- 8 b. Failed to prominently display its mortgage banker license in the office of the
9 mortgage banker, specifically:
- 10 i. There was no mortgage banker license prominently displayed at the
11 vacated principal office located at 10575 North 114th Street, Suite 113,
12 Scottsdale, Arizona 85259; and
- 13 ii. There was no evidence of a mortgage banker license or copy of a
14 mortgage banker license at Petitioner's new address located at 7600 East
15 Doubletree Ranch Road, Suite 130, Scottsdale, Arizona 85258;
- 16 c. Failed to maintain a principal place of business, specifically:
- 17 i. Petitioner's domestic place of business located at 10575 North 114th
18 Street, Suite 113, Scottsdale, Arizona 85259 was unoccupied at the date
19 of the examination on July 9, 2007; and
- 20 ii. Petitioner has failed to maintain a principal place of business in the state
21 of Arizona;
- 22 d. Failed to notify the Department prior to relocating its Arizona office, specifically:
- 23 i. Petitioner did not know that its responsible individual, David Fowler,
24 had moved Petitioner's location of record. To date, Petitioner has not
25 notified the Department of its changed Arizona location;
- 26 e. Failed to use Petitioner's name and license number, as issued on its principal place of

1 business license, within the text of all regulated advertising or business solicitations,
2 specifically:

- 3 i. First Capital's website at www.fcmdirect.com does not have its
4 mortgage banker license number listed anywhere at said website;
- 5 f. Failed to conduct the minimum elements of reasonable employee investigations
6 before hiring employees, specifically:
 - 7 i. Failed to collect and review all of the documents authorized by the
8 Immigration and Control Act of 1986 for twelve (12) employees;
 - 9 ii. Failed to obtain a completed "I9" (Employment Eligibility Verification
10 Form) for twelve (12) employees;
 - 11 iii. Failed to consult with the applicants' most recent or next most recent
12 employer for twelve (12) employees;
 - 13 i. Failed to inquire regarding an applicant's qualifications and competence
14 for the position for twelve (12) employees;
 - 15 iv. Failed to obtain a current credit report from a credit reporting agency
16 for twelve (12) employees;
 - 17 v. Failed to obtain a signed statement attesting to all of an applicant's
18 felony convictions, including information regarding each conviction for
19 eight (8) employees; and
 - 20 vi. Limited the signed statement attesting to all of applicant's felony
21 convictions, including information regarding each conviction to ten years
22 for four (4) employees;
- 23 g. Originated loans from unlicensed branch offices, specifically:
 - 24 i. 1303 West Main Street, 2nd Floor, St. Charles, Illinois 60174;
 - 25 ii. 2115 Livernois, Suite 200, Troy, Michigan 48083;
 - 26 iii. 1000 N. Halsted #202, Chicago, Illinois 60622;

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- iv. 2064 S. River Road, Des Plaines, Illinois 60018; and
- v. 7277 W. Madison Street, Forest Park, Illinois 60610;
- h. Failed to have complete loan applications listings, specifically:
 - i. There is no provision for final disposition date;
 - i. Failed to comply with the disclosure requirements of Title 1 of the Consumer Credit 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, specifically:
 - i. The Good Faith Estimate and Truth In Lending disclosures were not presented to the borrower within the required three day disclosure period; and
 - ii. The closing instructions, final Truth In Lending disclosures, Right of Rescission, Deed of Trust, and Promissory Note are all missing from one file;
 - j. Allowed borrowers to sign regulated documents containing blank spaces, specifically:
 - i. Petitioner is using a statutorily correct form. However, it is being inappropriately used. Petitioner must complete the document name and spaces to be completed when using this form and obtaining the borrower's signature. Petitioner must not have the borrower sign this form if this information is not complete, or if there are no documents which contain blank spaces to be completed at a later date;
 - k. Failed to use proper appraisal disclosures; specifically:
 - i. Used unlawful appraisal disclosures limiting a borrower to 90 days in which the borrower may request a copy of an appraisal for which the borrower has paid; and
 - l. Failed to obtain the prior written approval from all concurrent employing mortgage

1 banker licensees before an employee's concurrent employment in the capacity of a
2 mortgage banker with another licensee; specifically:

- 3 i. Petitioner's responsible individual was concurrently employed as a loan
4 officer by another licensee without first obtaining prior written approval
5 of all such concurrently employing licensees.

6 5. Based upon the above findings, the Department issued and served upon First Capital an
7 Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order ("Cease
8 and Desist Order") on December 19, 2007.

9 6. On January 18, 2008, Petitioner filed a Request For Hearing to appeal the Cease and Desist
10 Order.

11 CONCLUSIONS OF LAW

12 1. Pursuant to A.R.S. §§ 6-941, *et seq.*, the Superintendent has the authority and duty to
13 regulate all persons engaged in the mortgage banker business and with the enforcement of statutes,
14 rules, and regulations relating to mortgage bankers.

15 2. By the conduct set forth in the Findings of Fact, First Capital violated the following:

- 16 a. A.R.S. § 6-943(F) and A.A.C. R20-4-102 by failing to ensure that the responsible
17 individual maintained a position of active management; by failing to ensure that the
18 responsible individual was knowledgeable about all Arizona activities; and by failing
19 to direct Petitioner's activities in compliance with A.R.S. Title 6, Chapter 9 and
20 related applicable rules;
- 21 b. A.R.S. § 6-944(C) and A.A.C. R20-4-1805 by failing to prominently display its
22 mortgage banker license at its vacated office location and at its new address;
- 23 c. A.R.S. § 6-944(D) by failing to maintain a principal place of business in the state of
24 Arizona;
- 25 d. A.R.S. § 6-944(D) and A.A.C. R20-4-1805 by failing to notify the Superintendent of
26 a change of address of its Arizona location at least five business days before the

1 address change;

- 2 e. A.R.S. § 6-943(N) and A.R.S. § 6-946(E) by failing to use its license number as
3 issued on its principal place of business, within the context of all regulated
4 advertising or business solicitations;
- 5 f. A.R.S. § 6-943(O) and A.A.C. R20-4-102 by failing to conduct the minimum
6 elements of reasonable employee investigations before hiring employees;
- 7 g. A.R.S. § 6-944(D) by originating loans at various locations without first obtaining a
8 branch office license, from the Superintendent, for each location;
- 9 h. A.A.C. R20-4-1806(B)(1) by failing to have a final disposition date contained within
10 its loan application listing;
- 11 i. A.R.S. § 6-946(E) and A.A.C. R20-4-1806(B)(6)(e) by failing to comply with the
12 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.
13 §§ 1601-1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601-
14 2617), and the regulations promulgated under these acts;
- 15 j. A.R.S. § 6-947(A) and A.A.C. R20-4-1808 by allowing borrowers to sign regulated
16 documents containing blank spaces;
- 17 k. A.R.S. § 6-946(C) by using unlawful appraisal disclosures limiting a borrower to 90
18 days in which the borrower may request a copy of an appraisal the borrower has paid
19 for; and
- 20 l. A.R.S. § 6-947(H) by failing to obtain the prior written approval from all concurrent
21 employing mortgage banker licensees before an employee's concurrent employment
22 in the capacity of a mortgage banker with another licensee.

23 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order
24 pursuant to A.R.S. § 6-137 directing Petitioner to cease and desist from the violative conduct and to
25 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
26 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and

1 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
2 suspension or revocation of Petitioner's license pursuant to A.R.S. § 6-945; and (4) an order or any
3 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
4 bankers pursuant to A.R.S. §§ 6-123 and 6-131.

5 **ORDER**

6 1. First Capital Mortgage Corp. shall immediately, upon execution of this Consent Order,
7 voluntarily surrender to the Department its Mortgage Banker License, Number MB BK 0905768,
8 issued in the name of First Capital Mortgage Corp.

9 2. At the time of execution of this Order, Petitioner shall:

- 10 a. Submit a report of the winding down and closure of all loan files showing that all files
11 have been closed or transferred to a mortgage broker or mortgage banker licensed by
12 the Department or exempt from licensure; and
13 b. Provide to the Department a report of the arrangements made for storage of the closed
14 loan files, including a list of all files placed in storage, the location of the files, and
15 the name of the person to contact for retrieval.

16 3. First Capital shall immediately pay to the Department a civil money penalty in the amount
17 of **ten thousand dollars (\$10,000.00)**.

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

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

22 SO ORDERED this 13 day of March, 2008.

23
24 By: Robert D. Charlton
25 Robert D. Charlton
26 Assistant Superintendent of Financial Institutions

CONSENT TO ENTRY OF ORDER

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2 1. Petitioner acknowledges that it has been served with a copy of the foregoing Findings of
3 Fact, Conclusions of Law, and Order in the above-referenced matter, has read the same, is aware of
4 its right to an administrative hearing in this matter, and has waived the same.

5 2. Petitioner admits the jurisdiction of the Superintendent and consents to the entry of the
6 foregoing Findings of Fact, Conclusions of Law, and Order.

7 3. Petitioner states that no promise of any kind or nature has been made to induce it to
8 consent to the entry of this Order, and that it has done so voluntarily.

9 4. Petitioner agrees to cease from engaging in the violative conduct set forth above in the
10 Findings of Fact and Conclusions of Law.

11 5. Petitioner acknowledges that the acceptance of this Agreement by the Superintendent is
12 solely to settle this matter and does not preclude this Department, any other agency or officer of this
13 state or subdivision thereof from instituting other proceedings as may be appropriate now or in the
14 future.

15 6. Mr. Goldhirsh, on behalf of First Capital Mortgage Corp., represents that he is the
16 President, and that, as such, has been authorized by First Capital Mortgage Corp. to consent to the
17 entry of this Order on its behalf.

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

20 DATED this 7 day of March, 2008.

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22 By: _____

David S. Goldhirsh, President
First Capital Mortgage Corp.

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1 ORIGINAL of the foregoing filed this 13th
day of March, 2008, in the office of:

2 Felecia A. Rotellini
3 Superintendent of Financial Institutions
4 Arizona Department of Financial Institutions
5 ATTN: Susan L. Longo
6 2910 N. 44th Street, Suite 310
7 Phoenix, AZ 85018

8 COPY mailed same date to:

9 Diane Mihalsky, Administrative Law Judge
10 Office of the Administrative Hearings
11 1400 West Washington, Suite 101
12 Phoenix, AZ 85007

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

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

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

24 First Capital Mortgage Corp.
25 c/o David S. Goldhirsh, President
26 10575 North 114th Street, Suite 113
Scottsdale, AZ 85259
Petitioner

First Capital Mortgage Corp.
c/o David S. Goldhirsh, President
7600 E. Doubletree Ranch Road, Suite 130
Scottsdale, AZ 85258
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