

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of: No. 07F-BD078-BNK

3 **MORTGAGE PRO U.S.A., L.L.C. AND**
4 **JASON R. BRACKLEY, PRESIDENT**

4 13323 West Alvarado Drive
5 Goodyear, AZ 85338

CONSENT ORDER

6 Petitioners.

7
8 On May 17, 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 consent to 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 Mortgage Pro U.S.A., L.L.C. ("Mortgage Pro") is an Arizona limited liability
14 company, authorized to transact business in Arizona as a mortgage broker, license number
15 MB 0905899, within the meaning of A.R.S. § 6-901, *et seq.*. The nature of Mortgage Pro's business
16 is that of making, negotiating, or offering to make or negotiate a loans secured by Arizona real
17 property within the meaning of A.R.S. § 6-901(6).

18 2. Petitioner Jason R. Brackley ("Mr. Brackley") is the President of Mortgage Pro. Mr.
19 Brackley is authorized to transact business in Arizona as a mortgage broker within the meaning of
20 A.R.S. § 6-903(E).

21 3. An August 25, 2006 examination of Mortgage Pro, conducted by the Department,
22 revealed that Mortgage Pro and Mr. Brackley:

23 a. Failed to obtain a license before acting as a mortgage broker; specifically:

24 i. Petitioners conducted unlicensed activity by originating or processing
25 mortgage loans before obtaining a mortgage broker branch office license from
26 the Department;

- 1 1. The branch office located at 1600 W. Camelback Road, Suite 2-G,
2 Phoenix, AZ 85015 ("Suite 2-G"), was licensed on October 24, 2005;
- 3 2. Manuel Sandoval originated mortgage loan number 89528038 at Suite
4 2-G on September 5, 2005;
- 5 3. Maria E. Rodriguez originated mortgage loan number 5002003125 at
6 Suite 2-G on September 16, 2005;
- 7 4. According to the employee list provided by the Licensee to the examiner,
8 Maria E. Rodriguez is not an employee of Mortgage Pro;
- 9 ii. Petitioners conducted unlicensed activity by originating or processing
10 mortgage loans at a former branch office location after the branch office
11 license was surrendered;
 - 12 1. On April 28, 2006, the Licensee surrendered branch license number
13 0110056, for the its branch located at 525 West Southern Avenue, Suite
14 101, Mesa, AZ 85210 ("525 West Southern");
 - 15 2. As of October 16, 2006, an interactive website continues to originate
16 Arizona mortgage loans out of the 525 West Southern;
- 17 b. Transferred or assigned their mortgage broker license without prior written consent of
18 the Superintendent; specifically: Petitioners failed to assume responsibility and
19 liability for branch office leases and branch expenses, by reimbursing their branch
20 managers for branch rent and branch expenses at the following branch locations:
 - 21 i. 4560 North 19th Avenue, Phoenix, AZ 85015;
 - 22 ii. 3003 West Northern Avenue, Suite 3, Phoenix, AZ 85051;
 - 23 iii. 3030 North Central, Suite 1402, Phoenix, AZ 85012;
 - 24 iv. 2020 West Indian School, Suite F-2, Phoenix, AZ 85-04; and
 - 25 v. 4620 North 16th Street, Suite C116, Phoenix, AZ 85016;

26 ...

- 1 c. Failed to maintain a sample of every piece of advertising relating to Mortgage Pro's
2 mortgage business in Arizona, specifically:
- 3 i. The Licensee's advertising file failed to include samples of advertising located
4 at Mortgage Pro's interactive website, www.mortgageprofessionalusa.com,
5 which allows consumers to view loan programs and complete loan
6 applications in Adobe PDF format;
- 7 ii. The Licensee's advertising file failed to include a sample of an electronically
8 circulated advertisement offering a five hundred dollar (\$500.0) gift certificate
9 to "your choice of any one of the Cycleries[.com] advertisers": with the
10 funding of a mortgage loan originated by Mortgage Pro. Cycleries is a
11 motorcycle interest website;
- 12 d. Failed to use their name and license number, as issued on their principal place of
13 business license, within all regulated advertising; specifically:
- 14 i. "*No espere mas para refinancier ó comprar su casa hoy!*" – license number is
15 missing;
- 16 ii. "*Why Rent?*" – license number is missing;
- 17 iii. "*Porque Rentar?*" – license number is missing;
- 18 iv. "*Time to Refinance or Buy a Home*" – license number is missing;
- 19 v. "*Quieres comprar casa? Quieres refinancier to casa?*" – license number is
20 missing;
- 21 vi. "*¿Porque Esperar?*" – license number is missing;
- 22 vii. "*No hay problema!*" – license number is missing;
- 23 viii. "*www.mortgageprofessionalusa.com*" – license number is missing;
- 24 ix. "*Notification of Escrow Refund*" – license number is missing, and the
25 solicitation implies a misleading sense of urgency by stating, "This will be
26 your last notice of this benefit."

- 1 e. Failed to include the required disclosures within regulated advertising, specifically:
- 2 i. The Licensee's advertisement entitled, "*Re: No house payment until 3/2007*"
- 3 advertises a 1.99% fixed rate without including the 7.625% APR in the
- 4 equivalent font size. Additionally, the Licensee misrepresents the 1.99% rate
- 5 as fixed, when it is an ARM program. Finally, the Licensee fails to state the
- 6 "Exclusive Payment Reduction Program" is a solicitation for a refinance;
- 7 f. Failed to conduct the minimum elements of reasonable employee investigations
- 8 before hiring employees, specifically:
- 9 i. Failed to collect and review all of the documents authorized by the
- 10 Immigration and Control Act of 1986 for one (1) employee;
- 11 ii. Failed to obtain a completed "I9" (Employment Eligibility Verification Form)
- 12 for one (1) employee;
- 13 iii. Failed to consult with the applicant's most recent or next most recent
- 14 employer for three (3) employees;
- 15 iv. Failed to inquire regarding an applicant's qualifications and competence for
- 16 the position for one (1) employee; and
- 17 v. Failed to conduct further investigation of seven (7) employees with derogatory
- 18 credit reports;
- 19 g. Failed to maintain correct and complete records, specifically:
- 20 i. The Licensee was unable to locate and provide for examination a record of all
- 21 money received in connection with a mortgage loan;
- 22 ii. Failed to maintain bank account activity source documents; and
- 23 iii. Failed to maintain a record of samples of every piece of advertising;
- 24 h. Allowed borrowers to sign regulated documents containing blank spaces, specifically:
- 25 i. Eleven (11) preliminary truth in lending disclosures were signed in blank;
- 26 ii. Six (6) affiliated business disclosures were signed in blank;

- 1 iii. Three (3) good faith estimates were signed in blank; and
- 2 iv. Five (5) servicing disclosure statements were signed in blank;
- 3 i. Failed to comply with the disclosure requirements of Title I of the Consumer Credit
- 4 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
- 5 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
- 6 under these acts, specifically:
- 7 i. Yield spread premiums were not disclosed within good faith estimates to five
- 8 (5) borrowers;
- 9 ii. Duplicate processing fees were collected from three (3) borrowers,
- 10 specifically: Licensee collected a \$695.00 Processing Fee when the lender
- 11 collected a \$350.00 Processing Fee; and
- 12 iii. Servicing transfer disclosures for two (2) borrowers incorrectly stated that
- 13 Licensee will service the mortgage loan, which it is not licensed to do;
- 14 j. Failed to use a correct written document agreement when accepting documents from
- 15 borrowers;
- 16 k. Failed to ensure that the Responsible Individual, Mr. Brackley, maintained a position
- 17 of active management, specifically:
- 18 i. The Licensee operates two unlicensed locations;
- 19 ii. The Licensee circulates numerous non-compliant mortgage loan solicitations;
- 20 iii. The Licensee fails to maintain correct and complete records of its mortgage
- 21 broker business;
- 22 iv. The Licensee fails to conduct a reasonable investigation of its employee's
- 23 background, a violation cited on its prior exam;
- 24 v. The Licensee permits documents containing blank spaces to be signed by
- 25 borrowers;
- 26 vi. The Licensee permits Federal Disclosures required under Title I of the Consumer

1 Credit Protection Act, (15 United States Code sections 1601 through 1666J), the
2 Real Estate Settlement Procedures Act, (12 United States Code sections 2601
3 through 2617) to be issued in improper form, a violation cited on its prior exam;
4 and

5 vii. An employee of the Licensee issued an Arizona Preliminary Twenty Day Lien
6 Notice without the Responsible Individual's approval;

7 l. Used unlawful appraisal disclosures that limit a borrower to 90 days in which the
8 borrower may request a copy of an appraisal for which the borrower has paid;

9 m. Engaged in illegal or improper business practices by preparing an ungrounded and
10 false lien against a former client's property, specifically:

11 i. Chris Branicz, a loan officer employed by the Licensee, delivered an 'Arizona
12 Preliminary Twenty Day Lien Notice' ("Notice") to a former client. The
13 Notice of the lien claimed the client owed fourteen-thousand, five-hundred
14 dollars (\$14,500.00) for unpaid fees and services related to the Licensee's
15 mortgage broker business;

16 ii. The Department inquired as to what services were provided to the client to
17 total the fourteen-thousand, five-hundred dollar (\$14,500.00) lien and the
18 Licensee failed to provide a description of those services;

19 iii. Although no lien was recorded against the client's property, the Arizona
20 Preliminary Twenty Day Lien Notice was ungrounded and false as illustrated
21 by the Licensee's inability to demonstrate the means used to arrive at the
22 fourteen-thousand, five-hundred dollar (\$14,500.00) lien figure;

23 n. Misrepresented or concealed an essential or material fact in the course of the
24 mortgage broker business, specifically:

25 i. An employee of the Licensee misled a former client to believe a lien would be
26 placed against their property for failure to pay mortgage fees:

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1. Chris Branicz, a loan officer employed by the Licensee, delivered an 'Arizona Preliminary Twenty Day Lien Notice' ("Notice") to a former client. The Notice of the lien claimed the client owed fourteen-thousand, five-hundred dollars (\$14,500.00) for unpaid fees and services related to the Licensee's mortgage broker business;
 2. The Department inquired as to what services were provided to the client to total the fourteen-thousand, five-hundred dollar (\$14,500.00) lien and the Licensee failed to provide a description of those services;
 3. Although no lien was recorded against the client's property, the Arizona Preliminary Twenty Day Lien Notice was ungrounded and false as illustrated by the Licensee's inability to demonstrate the means used to arrive at the fourteen-thousand, five-hundred dollar (\$14,500.00) lien figure;
- ii. Misrepresented property occupancy and concealed existing lien amounts listed on the loan application, Fannie Mae form 1003:
1. Occupancy misrepresentation:
 - a. The Licensee originated four (4) mortgage loans on two (2) properties for Daniel Ekabutr. Both properties were refinanced using an eighty percent (80%) loan-to-value first lien and a twenty percent (20%) loan-to-value second lien. All four (4) mortgage loans were originated by loan officer Chris Loera;
 - b. The Licensee originated the initial Ekabutr mortgage loan refinance of 15524 West Central Street, Phoenix, AZ 85374 (herein known as 'Central') in February 2006. The Schedule of Real Estate Owned (REO) section of the loan application lists Central as the primary residence and another property, 2216 North

1 7th Avenue, Phoenix, AZ 85015 (herein known as '7th Avenue')

2 as a rental property. This transaction closed on March 29, 2006;

3 c. Around June 2006, the Licensee originated the Ekabutr mortgage
4 loan refinance of the 7th Avenue property. The REO section of the
5 loan application states the 7th Avenue property was the primary
6 residence and the Central property was the rental property. This
7 transaction closed on July 27, 2006; and

8 d. On the loan application for the 7th Avenue mortgage refinance, the
9 Licensee misrepresented the Central property as the rental
10 property. Furthermore, the Licensee allowed the 7th Avenue
11 mortgage refinance to close as a primary residence even though
12 they had stated it was a rental property on the mortgage refinance
13 they brokered and closed on the Central property;

14 2. Concealment of existing lien amounts:

15 a. The 'Amount of Mortgages and Liens' section of the REO on the
16 Central property loan application states the existing lien on the 7th
17 Avenue property is one-hundred fifty-three thousand dollars
18 (\$153,000.00). A recorded Deed of Trust, dated July 11, 2005,
19 states the principal amount on the 7th Avenue property is five-
20 hundred forty-three thousand seven-hundred fifty dollars
21 (\$543,750.00). A second recorded Deed of Trust, dated July 11,
22 2006, displays a second principal amount of one-hundred eighty-
23 one thousand two-hundred fifty dollars (\$181,250.00) also secured
24 by the 7th Avenue property; and

25 b. The Licensee concealed five-hundred seventy-two thousand dollars
26 (\$572,000.00) in existing liens secured by the 7th Avenue property

1 on the loan application for the Central property refinance
2 transaction.

3 4. Based upon the above findings, the Department issued and served upon Mortgage Pro
4 and Mr. Brackley an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to
5 Entry of Order (“Cease and Desist Order”) on April 3, 2007.

6 5. On April 23, 2007, Petitioners filed a Request For Hearing to appeal the Cease and Desist
7 Order.

8 CONCLUSIONS OF LAW

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

12 2. By the conduct set forth in the Findings of Fact, Mortgage Pro and Mr. Brackley violated
13 the following:

- 14 a. A.R.S. §§ 6-903(A) and 6-904(F) by originating or processing mortgage loans at
15 unlicensed branch office locations;
- 16 b. A.R.S. § 6-903(O) by transferring or assigning their mortgage broker license without
17 prior written consent of the Superintendent;
- 18 c. A.A.C. R20-4-917(B)(7) by failing to maintain a sample of every piece of advertising
19 relating to Mortgage Pro’s mortgage business in Arizona;
- 20 d. A.R.S. § 6-903(M) by failing to use their name and license number as issued on their
21 principal place of business license within all regulated advertising;
- 22 e. A.R.S. § 6-906(D) by failing to include the required disclosures within regulated
23 advertising;
- 24 f. A.R.S. § by failing to conduct the minimum elements of reasonable employee
25 investigations before hiring employees;

26 ...

- 1 g. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B) by failing to maintain correct and
2 complete records;
- 3 h. A.R.S. § 6-909(A) and A.A.C. R20-4-921 by allowing borrowers to sign regulated
4 documents containing blank spaces;
- 5 i. A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e) by failing to comply with the
6 disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.
7 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§
8 2601 through 2617), and the regulations promulgated under these acts;
- 9 j. A.R.S. § 6-906(C) by failing to use a correct written document agreement when
10 accepting documents from borrowers;
- 11 k. A.R.S. § 6-903(E) and A.A.C. R20-4-102 by failing to ensure that the responsible
12 individual maintains a position of active management;
- 13 l. A.R.S. § 6-906(C) by using unlawful appraisal disclosures that limit a borrower to 90
14 days in which the borrower may request a copy of an appraisal for which the
15 borrower has paid;
- 16 m. A.R.S. § 6-909(N) by engaging in illegal or improper business practices; and
- 17 n. A.R.S. § 6-909(L) by misrepresenting or concealing an essential or material fact in
18 the course of the mortgage broker business.

19 3. The violations, set forth above, constitute grounds for: (1) the issuance of an order
20 pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to
21 take the appropriate affirmative actions, within a reasonable period of time prescribed by the
22 Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
23 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
24 suspension or revocation of Petitioners' license pursuant to A.R.S. § 6-905; and (4) an order or any
25 other remedy necessary or proper for the enforcement of statutes and rules regulating mortgage
26 brokers pursuant to A.R.S. §§ 6-123 and 6-131.

ORDER

1
2 1. Mortgage Pro and Mr. Brackley shall immediately stop the violations set forth in the
3 Findings of Fact and Conclusions of Law. Mortgage Pro and Mr. Brackley:

- 4 a. Shall obtain branch office licenses from the superintendent before originating
5 mortgage loans on Arizona real property at unlicensed locations;;
- 6 b. Shall not transfer or assign their mortgage broker license without prior written
7 consent of the Superintendent;
- 8 c. Shall maintain a sample of every piece of advertising relating to Mortgage Pro's
9 mortgage business in Arizona;
- 10 d. Shall use their name and license number as issued on their principal place of business
11 license within all regulated advertising;
- 12 e. Shall include the required disclosures within regulated advertising;
- 13 f. Shall conduct the minimum elements of reasonable employee investigations before
14 hiring employees;
- 15 g. Shall maintain correct and complete records;
- 16 h. Shall not allow borrowers to sign regulated documents containing blank spaces;
- 17 i. Shall comply with the disclosure requirements of Title I of the Consumer Credit
18 Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement
19 Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated
20 under these acts;
- 21 j. Shall use a correct written document agreement when accepting documents from
22 borrowers;
- 23 k. Shall ensure that the responsible individual maintains a position of active
24 management;
- 25 l. Shall not use unlawful appraisal disclosures that limit a borrower to 90 days in which
26 the borrower may request a copy of an appraisal for which the borrower has paid;

1 m. Shall not engage in illegal or improper business practices; and

2 n. Shall not misrepresent or conceal an essential or material fact in the course of the
3 mortgage broker business.

4 2. Mortgage Pro and Mr. Brackley shall pay to the Department a civil money penalty in the
5 amount of **twenty thousand dollars (\$20,000.00)**. The \$20,000.00 shall be paid on July 6, 2007.

6 Mortgage Pro and Mr. Brackley are jointly and severally liable for payment of the civil money
7 penalty.

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

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

13 SO ORDERED this 3rd day of July, 2007.

14
15 By: Felecia Rotellini
16 Felecia A. Rotellini
Superintendent of Financial Institutions

17 **CONSENT TO ENTRY OF ORDER**

18 1. Petitioners acknowledge that they have been served with a copy of the foregoing
19 Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the
20 same, are aware of their right to an administrative hearing in this matter, and have waived the same.

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

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

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

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

5 6. Jason R. Brackley, on behalf of Mortgage Pro U.S.A., L.L.C. and himself represents that
6 he is the President, and that, as such, has been authorized by Mortgage Pro U.S.A., L.L.C. to
7 consent to the entry of this Order on its behalf.

8 7. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest the
9 validity of this Order.

10 DATED this 18 day of June, 2007.

11
12 By Jason R Brackley
13 Jason R. Brackley, President
Mortgage Pro U.S.A., L.L.C.

14
15 ORIGINAL of the foregoing filed this ~~18~~ 3
16 day of July, 2007, in the office of: JR

17 Felecia A. Rotellini
18 Superintendent of Financial Institutions
19 Arizona Department of Financial Institutions
ATTN: June Beckwith
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

20 COPY mailed same date to:

21 Allen Reed, Administrative Law Judge
22 Office of the Administrative Hearings
1400 West Washington, Suite 101
23 Phoenix, AZ 85007

24 Craig A. Raby, Assistant Attorney General
25 Office of the Attorney General
1275 West Washington
26 Phoenix, AZ 85007

1 Robert D. Charlton, Assistant Superintendent
J.P. Ciudad, Senior Examiner
2 Arizona Department of Financial Institutions
2910 N. 44th Street, Suite 310
3 Phoenix, AZ 85018

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

5
6 Jason R. Brackley, President
Mortgage Pro U.S.A., L.L.C.
13323 West Alvarado Drive
7 Goodyear, AZ 85338
Petitioners

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