

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

No. 09F-BD061-BNK

3 **SMART MORTGAGE, LLC DBA SMART**
4 **MORTGAGE AND CATHERINE ZEBARTH,**
5 **PRESIDENT/RESPONSIBLE INDIVIDUAL**
8277 East San Salvador Drive
Scottsdale, Arizona 85258

CONSENT ORDER

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MAY 6 - 2009

DEPT. OF FINANCIAL
INSTITUTIONS

6 Respondents.

7 On March 31, 2009, the Arizona Department of Financial Institutions ("Department") issued
8 an Order of Summary Suspension and Notice of Hearing, alleging that Respondent Catherine
9 Zebarth had been indicted in United States District Court, District of Arizona. Wishing to resolve
10 this matter in lieu of an administrative hearing, Respondents consent to the following Findings of
11 Fact and Conclusions of Law, and consent to the entry of the following Order.

12 FINDINGS OF FACT

13 1. Respondent Smart Mortgage, LLC dba Smart Mortgage ("Smart Mortgage") is an
14 Arizona limited liability company authorized to transact business in Arizona as a mortgage broker,
15 license number MB 0905498, within the meaning of A.R.S. §§ 6-901, *et seq.* The nature of Smart
16 Mortgage's business is that of making, negotiating, or offering to make or negotiate loans secured by
17 Arizona real property, within the meaning of A.R.S. § 6-901(6).

18 2. Respondent Catherine Zebarth ("Ms. Zebarth") is the President, Responsible Individual
19 and forty five percent (45%) owner of Smart Mortgage. Ms. Zebarth is authorized to transact
20 business in Arizona as a mortgage broker within the meaning of A.R.S. § 6-903(E).

21 3. Smart Mortgage's principal place of business is located at 8277 East San Salvador Drive,
22 Scottsdale, Arizona 85258.

23 4. On or about September 24, 2008, the Department learned that an Indictment had been
24 filed against Ms. Zebarth in June 2008 by the Federal Grand Jury for the District of Arizona
25 regarding a "cash back" scheme that included wire fraud, conspiracy to commit wire fraud,
26 transactional money laundering, and conspiracy to commit money laundering involving Ms. Zebarth

1 and others.

2 5. The Department received a Certified Copy of the Indictment *U.S. v. Daniel Morar, et al.*,
3 No. CR 08-0612-PHX-NVW-8, filed on June 18, 2008, in the United States District Court, District
4 of Arizona, charging Ms. Zearth with six (6) counts of Wire Fraud, one (1) count of Conspiracy,
5 ten (10) counts of Money Laundering, one (1) count of Conspiracy to Commit Money Laundering,
6 and eighteen (18) counts of Aiding and Abetting.

7 6. The conduct described above constitutes an immediate threat to the public health, safety,
8 and welfare warranting immediate suspension of Respondents' mortgage broker license.

9 7. The conduct described above constitutes grounds for the suspension of Respondents'
10 mortgage broker license.

11 **CONCLUSIONS OF LAW**

12 1. Pursuant to A.R.S. Title 6, Chapter 9, the Superintendent has the authority and duty to
13 regulate all persons engaged in the mortgage broker business and with the enforcement of statutes,
14 rules, and regulations relating to mortgage brokers.

15 2. Ms. Zearth has been charged with six (6) counts of Wire Fraud, one (1) count of
16 Conspiracy, ten (10) counts of Money Laundering, one (1) count of Conspiracy to Commit Money
17 Laundering, and eighteen (18) counts of Aiding and Abetting, and a Certified Copy of the
18 Indictment has been filed with the Superintendent, which is grounds for suspension of Respondents'
19 mortgage broker license, pursuant to A.R.S. § 6-905(B) and (C), pending trial of the criminal
20 charges currently filed against Ms. Zearth in the United States District Court, District of Arizona.

21 3. Pursuant to A.R.S. §§ 6-905(B) and (C) and 41-1092.11(B), the conduct described
22 above constitutes an immediate threat to the public health, safety and welfare warranting immediate
23 suspension of Respondents' mortgage broker license.

24 **ORDER**

25 1. Mortgage Broker License, Number MB 0905498 is hereby summarily suspended.

26 2. The provisions of this Order shall be binding upon Smart Mortgage, LLC dba Smart


1 Mortgage and Catherine Zearth, and resolves the Notice of Hearing, subject to Respondents'
2 compliance with the requirements of this Order; specifically, Respondents shall not conduct
3 mortgage broker business while the license is suspended. Should Respondents fail to comply with
4 this Order, the Superintendent shall initiate further disciplinary proceedings.

5 3. The provisions of this Order shall be binding upon Respondents, their employees, agents,
6 and other persons participating in the conduct of the affairs of Smart Mortgage, LLC dba Smart
7 Mortgage.

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

11 SO ORDERED this 6 day of May, 2009.

12 Felecia A. Rotellini
13 Superintendent of Financial Institutions

14 By 
15 Robert D. Charlton
16 Assistant Superintendent of Financial Institutions

17 **CONSENT TO ENTRY OF ORDER**

18 1. Respondents 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. Respondents 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. Respondents 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. Respondents agree to cease from engaging in the mortgage broker business while the
26 license is suspended.

5. Respondents acknowledge that the acceptance of this Agreement by the Superintendent is

1 solely to settle this matter and does not preclude this Department, any other agency or officer of this
2 state or subdivision thereof from instituting other proceedings as may be appropriate now or in the
3 future.

4 6. Catherine Zebarth, on behalf of Smart Mortgage, LLC dba Smart Mortgage and herself,
5 represents that she is the President and Responsible Individual, and that, as such, has been authorized
6 by Smart Mortgage, LLC dba Smart Mortgage to consent to the entry of this Order on its behalf.

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

9 DATED this 6 day of May, 2009.

10
11 By Catherine Zebarth
12 Catherine Zebarth, President
13 Smart Mortgage, LLC dba Smart Mortgage
14

15 ORIGINAL of the foregoing filed this 7th
16 day of May, 2009, in the office of:

17 Felecia A. Rotellini
18 Superintendent of Financial Institutions
19 Arizona Department of Financial Institutions
20 ATTN: Susan L. Longo
21 2910 N. 44th Street, Suite 310
22 Phoenix, AZ 85018

23 COPY mailed same date to:

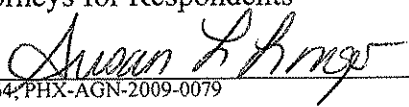
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