

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

3 **STANDARD FINANCIAL BROKERAGE**  
4 **SERVICES, INC. AND THOMAS M. LEWIS,**  
5 **PRESIDENT**  
6 P.O. Box 2600  
Carefree, AZ 85377

No. 09F-BD064-BNK

**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 Administrative Law Judge Decision attached and incorporated  
10 herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of  
11 Law and Recommended Order as follows:

12 ORDER

13 IT IS ORDERED that Respondents' Mortgage Broker License Number MB 0906152 is  
14 revoked effective as of the date of this Order.

15 IT IS FURTHER ORDERED that a civil money penalty in the amount of five thousand  
16 dollars (\$5,000.00) is assessed; the examination fee in the amount of seven hundred thirty-one  
17 dollars and twenty-five cents (\$731.25) and the late penalty of seven hundred thirty-one dollars and  
18 twenty-five cents (\$731.25) is affirmed.

19 NOTICE

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

24 DATED this 6th day of July, 2009.

25   
26 Felecia Rotellini  
27 Superintendent of Financial Institutions  
28

1 ORIGINAL filed this 10<sup>th</sup> day of July, 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 Diane Mihalsky, Administrative Law Judge  
8 Office of Administrative Hearings  
1400 West Washington, Suite 101  
Phoenix, AZ 85007

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

12 Robert Charlton, Assistant Superintendent  
13 Chris Dunshee, Senior Examiner  
Arizona Department of Financial Institutions  
2910 N. 44th Street, Suite 310  
14 Phoenix, AZ 85018

15 Standard Financial Brokerage Services, Inc.  
16 Thomas M. Lewis, President  
748 Easy Street, Ste. 9  
17 Carefree, AZ 85377

18 Standard Financial Brokerage Services, Inc.  
19 Thomas M. Lewis, President  
36874 N. Tom Darlington Dr.  
Cave Creek, AZ 85377

20 Standard Financial Brokerage Services, Inc.  
21 Thomas M. Lewis, President  
P.O. Box 2600  
22 Carefree, AZ 85377

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

24 Weiss Law Office PLC  
25 Howard J. Weiss, Attorney and Statutory Agent for:  
Standard Financial Brokerage Services, Inc.  
2415 E. Camelback Road, Suite 700  
26 Phoenix, AZ 85016

27 BY: June Beckwith

28

1   **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2  
3 In the Matter of the Revocation of the  
4 Mortgage Broker License:

**No. 09F-BD064-BNK**

**ADMINISTRATIVE  
LAW JUDGE DECISION**

5 **STANDARD FINANCIAL BROKERAGE**  
6 **SERVICES, INC.** and  
7 **THOMAS M. LEWIS, President**  
8 P.O. Box 2600  
9 Carefree, AZ 85377,

Respondents.

10  
11                     **HEARING:** June 3, 2009 at 9:00 a.m.

12                   **APPEARANCES:** The Arizona Department of Financial Institutions appeared  
13 through Craig A. Raby, Esq., Assistant Attorney General; Respondents Standard  
14 Financial Brokerage Services, Inc. and Thomas M. Lewis, President, did not appear.

15                   **ADMINISTRATIVE LAW JUDGE:** Diane Mihalsky

16  
17   **FINDINGS OF FACT**

18   **BACKGROUND AND PROCEDURE**

19                   1. The Arizona Department of Financial Institutions ("the Department") was  
20 created to execute the laws of Arizona relating to financial institutions and enterprises,  
21 including mortgage brokers.

22                   2. The Superintendent of the Department oversees the Department.

23                   3. The Department has authorized Respondent Standard Financial Brokerage  
24 Services, Inc. ("Standard") to transact business in Arizona as a mortgage broker by  
25 issuing license number MB 0906152, within the meaning of A.R.S. §§ 6-901 *et seq.* The  
26 nature of Standard's business is that of making, negotiating, or offering to make or  
27 negotiate loans secured by Arizona real property, within the meaning of A.R.S. § 6-  
28 901(6).

29                   4. Respondent Thomas M. Lewis is Standard's president.

30                   5. On April 29, 2009, the Department issued a Notice of Hearing to Revoke  
Standard's license, which generally alleged that Standard had failed to investigate its

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

1 employees' backgrounds or to provide to the Department evidence of its hiring practices  
2 or financial transactions. Based on these facts, the Department charged Standards with  
3 violations of applicable statutes and regulations, which provided grounds to revoke its  
4 license. The Notice of Hearing to Revoke set an administrative fair hearing on June 3,  
5 2009 at 9:00 a.m. before the Office of Administrative Hearings, an independent state  
6 agency.

7 6. The Department sent via certified mail copies of the Notice of Hearing to  
8 Revoke to Standard's statutory agent and to Standard's business addresses at 748 Easy  
9 Street, Ste. 9, Carefree, AZ 85377 ("the Easy Street address"); 2425 E. Camelback Rd.  
10 #630, Phoenix, AZ 85016 ("the E. Camelback Rd. address"); and P.O. Box 2600,  
11 Carefree, AZ 85377 ("the Post Office Box").

12 7. On May 18, 2009, the Department an Amended Notice of Hearing to Revoke.  
13 In addition to the factual allegations and charged violations in the original Notice of  
14 Hearing to Revoke, the Amended Notice of Hearing to Revoke alleged that Standard's  
15 surety bond had been canceled because Standard had failed to renew it, in violation of  
16 A.R.S. § 6-903(G). The Department sent via certified mail copies of the Amended Notice  
17 of Hearing to Revoke to the same addresses as it had sent the original Notice of Hearing  
18 to Revoke. In addition, the Department sent via certified mail a copy of the Amended  
19 Notice of Hearing to Revoke on Mr. Lewis at his residence, 36874 N. Tom Darlington Dr.,  
20 Cave Creek, AZ 85377.

21 8. A hearing was held on June 3, 2009 at 9:00 a.m. Although the beginning of  
22 the duly noticed hearing was delayed fifteen minutes to allow Standard and its  
23 president Mr. Lewis additional travel time, Standard did not appear through Mr. Lewis or  
24 an attorney, did not contact the Office of Administrative Hearings to request a  
25 continuance or that the time for the hearing be further delayed, and did not present any  
26 evidence to defend Standard's license or in mitigation of the penalty.

27 9. The Department presented the testimony of its Mortgage Broker/Banker  
28 Examiner Chris Dunshee and Assistant Superintendent Robert Charlton and submitted  
29 seven exhibits, some of which had numerous subparts.  
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## HEARING EVIDENCE

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10. Mr. Dunshee testified that he sent a Notice of Examination to Standard at its main address, which was the address on E. Camelback Rd. to which the original Notice of Intent to Revoke had been sent. The Notice of Examination provided the licensee with a list of the records that would be needed in the examination.

11. Mr. Dunshee testified that, when he went to the E. Camelback Rd. office, Standard had just moved to the Easy Street address, to which the original Notice of Intent to Revoke also had been sent. Mr. Dunshee testified that the Post Office Box to which the Notice of Intent to Revoke also had been sent was Standard's business address.

12. Mr. Dunshee testified that he went to the Easy Street address in July 2008 and reviewed five files, as well as Standard's personnel files and payroll records, advertising file, general ledger and other financial records, and the corporate records file. The Department submitted Mr. Dunshee's report of his examination, which found the deficiencies noted in the original Notice of Hearing to Revoke.

13. Mr. Dunshee testified to establish the deficiencies that he identified, which were later incorporated in the original Notice of Hearing to Revoke and Amended Notice of Hearing to Revoke, Paragraph 3, which are incorporated herein by reference.

14. The Department submitted a Notice of Assessment, which informed Standard and Mr. Lewis of the violations that Mr. Dunshee found in his report. The Notice of Assessment included a Consent to Assessment, under which Mr. Lewis could consent to the assessment. Mr. Lewis did not sign the Consent to Assessment.

15. The Department submitted a copy of an e-mail chain, which evidenced Mr. Dunshee's communications with Mr. Lewis about the matter. Mr. Dunshee testified that Mr. Lewis did not respond to his final e-mail.

16. Mr. Dunshee testified that, although Mr. Lewis did retrieve some documentation at the examination, the factual allegations in the original Notice of Intent to Revoke remained outstanding. Mr. Dunshee testified that Mr. Lewis was the only person at Standard with whom he had contact and that Mr. Lewis knew about the missing documentation and the Department's desire for additional information on Standard's mortgage brokerage business.

1           17. The Department submitted a letter dated March 6, 2009 to Standard and Mr.  
2 Lewis, to which the Department attached a Notice of Cancellation from Platte River  
3 Insurance Co., cancelling Standard's \$10,000 mortgage broker/1<sup>st</sup> and 2<sup>nd</sup> mortgages  
4 bond. Mr. Dunshee testified that he had checked the records on the day before the  
5 hearing; Standard's bond had not been reinstated.

6           18. The Department submitted an Affidavit of Service that Mr. Lewis had been  
7 served with a copy of the Amended Notice of Hearing to Revoke and the Office of  
8 Administrative Hearings Informational Pamphlet at his residence on N. Tom Darlington  
9 Dr. at 12:50 p.m. on May 19, 2009.

10           19. Mr. Charlton testified that he signed the Notice of Assessment after he  
11 reviewed Mr. Dunshee's report of his examination and spoke to Mr. Dunshee. On that  
12 same date, Mr. Charlton sent a letter to Mr. Lewis and Standard, to which was attached  
13 Mr. Dunshee's report of examination.

14           20. Mr. Charlton testified that, under A.R.S. § 6-125, licensees are liable for an  
15 examination fee. Failure to pay the fee within 30 days results in a penalty under A.R.S.  
16 § 6-125(D) of \$50.00 per day, up to the amount of the examination fee. In this case,  
17 because Standard and Mr. Lewis had not paid the examination fee or any penalty, the  
18 Department requested that the statutory examination fee of \$731.25 and a penalty of  
19 \$731.25 be assessed.

20           21. Mr. Charlton's September 29, 2008 letter also assessed a civil penalty  
21 against Standard in the amount of \$2,500.00. Mr. Charlton testified that the civil  
22 penalty had not been paid.

23           22. Mr. Charlton testified that Standard and Mr. Lewis had not provided any  
24 documentation other than what Mr. Dunshee had obtained in the original examination.  
25 Mr. Charlton testified that, after the Notice of Assessment had been issued, he had  
26 instructed Mr. Dunshee to track Mr. Lewis down and get his response to the Notice of  
27 Assessment.

28           23. After a licensee fails to respond to a Notice of Assessment, Mr. Charlton  
29 testified that he instructs his examiners to "go into collection mode." Mr. Charlton  
30 explained that he instructs his examiners to aggressively pursue licensees not to collect  
money but to ascertain the licensee's business plans because the Department has no

1 way of knowing what the licensee is doing except through the information that  
2 examinations provide.

3 24. Mr. Charlton testified that a licensee who avoids regulators commits a  
4 violation that is as serious as the misuse of trust funds because the Department has no  
5 way to gauge the danger to which the licensee's business exposes the public.

6 25. Mr. Charlton testified that he signed the original Notice of Intent to Revoke  
7 to protect the public. The statutory violations were based both on Mr. Dunshee's report  
8 of examination and Mr. Lewis' failure to respond to the Department's requests for  
9 information.

10 26. Mr. Charlton testified that the cancellation of Standard's bond is also a  
11 serious violation because the public no longer has the benefit of the statutorily required  
12 bond.

13 27. Mr. Charlton testified that, in light of Mr. Lewis continued failure to respond  
14 to the Department's requests for information and the canceled bond, the Department  
15 sought \$5,000.00 in civil penalties. The statute allows up to a \$5,000.00 penalty for  
16 each violation and for the licensee and its principal, in this case Mr. Lewis, to be jointly  
17 and severally liable for the civil penalty.

18 28. Mr. Charlton testified that, under applicable statute, Standard should be  
19 solely liable for the examination fee and the penalty for failing to pay the examination  
20 fee.

### 21 CONCLUSIONS OF LAW

22 1. This matter lies with the Department's jurisdiction.<sup>1</sup>

23 2. The copies of the notices of the hearing that the Department mailed to  
24 Standard at the business addresses of record and personally served on its president at  
25 his residence were reasonable and it appears that Respondents actually received  
26 notice of the hearing.<sup>2</sup>

27 3. The Department bears the burden of proof and must establish cause to  
28 sanction Standard's license and impose penalties against Standard and Mr. Lewis by a  
29

30 <sup>1</sup> See A.R.S. § 6-110; see also A.R.S. §§ 6-901 to 6-210

<sup>2</sup> See A.R.S. §§ 41-1092.04; 41-1092.05(D).

1 preponderance of the evidence.<sup>3</sup> “A preponderance of the evidence is such proof as  
2 convinces the trier of fact that the contention is more probably true than not.”<sup>4</sup> A  
3 preponderance of the evidence is “[t]he greater weight of the evidence, not necessarily  
4 established by the greater number of witnesses testifying to a fact but by evidence that  
5 has the most convincing force; superior evidentiary weight that, though not sufficient to  
6 free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and  
7 impartial mind to one side of the issue rather than the other.”<sup>5</sup>

8 4. The purpose of the Department “is to protect the public welfare by protecting  
9 the financial assets of the citizens of Arizona by executing the laws of this state relating  
10 to financial institutions and enterprises.”<sup>6</sup>

11 5. The Department’s evidence at the hearing established that Standard and Mr.  
12 Lewis violated the statutes and regulations charged in the Amended Notice of Hearing  
13 to Revoke, to wit:

14 5.1 A.R.S. §§ 6-903(M) and 6-906(D), by failing to comply with disclosure  
15 requirements in their advertising;

16 5.2 A.R.S. § 6-903(N) and A.A.C. R20-4-102, by failing to conduct the minimum  
17 elements of reasonable employee investigations prior to hiring employees;

18 5.3 A.R.S. § 6-906(A) and A.A.C. R20-4-917(B), by failing to maintain and keep  
19 at all times correct and complete records as prescribed by the Superintendent;

20 5.4 A.R.S. § 6-906(A), by failing to maintain and keep at all times correct and  
21 complete location of records as prescribed by the Superintendent;

22 5.5 A.A.C. R20-4-917(C) by failing to obtain approval of the Superintendent to  
23 maintain computer or mechanical records;

24 5.6 A.A.C. R20-4-917(C) by failing to update, verify and reconcile records;

25 5.7 A.A.C. R20-4-917(B)(1), by failing to prepare a complete loan application  
26 list;

27  
28 <sup>3</sup> See A.R.S. § 41-1092.07(G)(1) and (3); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz.  
29 369, 372, 249 P.2d 837 (1952).

<sup>4</sup> Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

30 <sup>5</sup> BLACK’S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

<sup>6</sup> Laws 1984, Ch. 238, § 1.



1 5.8 A.R.S. § 6-906(d) and A.A.C. R20-4-917(B)(6)(e), by failing to comply with  
2 the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C.  
3 §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§  
4 2601 through 2617), and the regulations promulgated under these acts;

5 5.9 A.A.C. R20-4-917(B)(3), by failing to maintain a complete listing of checks  
6 written;

7 5.10 A.R.S. § 6-906(C), by failing to use a statutorily correct written  
8 fee/document agreement signed by all parties;

9 5.11 A.R.S. § 6-903(E), by failing to ensure that the Responsible Individual  
10 maintained a position of active management; and

11 5.12 A.R.S. § 6-903(G), by failing to maintain the required surety bond.

12 6. The Department has also established that Standard and Mr. Lewis violated  
13 A.R.S. §§ 6-124 and 6-123(3) by failing to respond to a request for information from the  
14 Superintendent, which violation constitutes grounds to revoke the mortgage broker  
15 license of Standard pursuant to A.R.S. § 6-905(A)(3) and (4).

16 7. The violations found in the Department's examination and the subsequent  
17 discovery of the cancellation of Standard's surety bond constitute additional grounds to  
18 revoke standards license under A.R.S. § 6-905(A)(3) and (4).

19 8. Standard's and Mr. Lewis' violations, set forth above, constitute grounds for  
20 the pursuit of any other remedy necessary or proper for the enforcement of statutes and  
21 rules regulating mortgage brokers in Arizona pursuant to A.R.S. §§ 6-123 and 6-131.

22 9. Pursuant to A.R.S. § 6-132, the Department has established that Standard  
23 and Mr. Lewis should be jointly and severally liable for a civil penalty in the amount of  
24 \$5,000.00.

25 10. Pursuant to A.R.S. § 6-125(B), the Department has established that  
26 Standard is liable for an examination fee in the amount of \$731.25.

27 11. Pursuant to A.R.S. § 6-125(D), the Department has established that  
28 Standard is liable for a penalty in the amount of \$731.25.

29 12. Based on Standard's and Mr. Lewis failure to provide information to the  
30 Department, to attend the duly noticed hearing, or to present any evidence in defense  
of Standard's license, it appears that they cannot be regulated at this time.

**RECOMMENDED ORDER**

Based on the foregoing, it is recommended that, on the effective date of the Superintendent's order, the Superintendent take the following disciplinary action against the named Respondents:

(1) Revoke Mortgage Broker License Number MB 0906152 previously issued to Standard Financial Brokerage Services, Inc. and its President, Thomas M. Lewis;

(2) Impose a civil penalty in the amount of \$5,000.00 against Standard Financial Brokerage Services, Inc. and its President, Thomas M. Lewis, for which they will be jointly and severally liable;

(3) Impose an examination fee in the amount of \$731.25 against Standard Financial Brokerage Services, Inc.; and

(4) Impose a penalty in the total of amount of \$731.25 against Standard Financial Brokerage Services, Inc.

If the Director of the Office of Administrative Hearings certifies this Administrative Law Judge Decision, the effective date of the order will be forty days from the date of certification.

Done this day, June 18, 2009.

  
\_\_\_\_\_  
Diane Mihalsky  
Administrative Law Judge

Original transmitted by mail this 23 day of June, 2009, to:

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

By 