

**FINAL ORDER**  
DATE 7/23/14

IN THE MATTER OF:

WASHINGTON NATIONWIDE  
MORTGAGE CORPORATION

and

ALAMEZIE E. OJIAKU

Respondents.

BEFORE THE MARYLAND

COMMISSIONER OF

FINANCIAL REGULATION

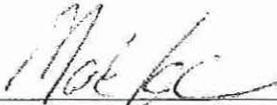
Case No.: CFR-FY2013-007

**PROPOSED ORDER**

The Proposed Decision of the Administrative Law Judge (the "ALJ"), issued on June 16, 2014 in the above captioned case, having been considered in its entirety, it is **ORDERED** by the Commissioner of Financial Regulation (the "Commissioner") this 30<sup>th</sup> of June, 2014 that the Proposed Decision shall be and hereby is adopted as a Proposed Order.

Pursuant to COMAR 09.01.03.09, Respondent has the right to file exceptions to the Proposed Order and present arguments to the Commissioner. Respondent has twenty (20) days from the postmark date of this Proposed Order to file exceptions with the Commissioner. COMAR 09.01.03.09A(1). The date of filing exceptions with the Commissioner is the date of personal delivery to the Commissioner or the postmark date on mailed exceptions. COMAR 09.01.03.09A(2).

Unless written exceptions are filed within the twenty (20)-day deadline noted above, this Order shall be deemed to be the final decision of the Commissioner.

  
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Mark Kaufman  
Commissioner of Financial Regulation

MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION  
v.  
WASHINGTON NATIONWIDE  
MORTGAGES CORPORATION

and  
ALAMEZIE E. OJIAKU,  
RESPONDENTS

\* BEFORE MICHAEL D. CARLIS,  
\* AN ADMINISTRATIVE LAW JUDGE  
\* OF THE MARYLAND OFFICE OF  
\* ADMINISTRATIVE HEARINGS  
\*  
\*  
\* OAH No.: DLR-CFR-76A-13-45728  
\* CFR No.: CFR-FY2013-007

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On October 25, 2013, and January 13, 2014, the Office of the Commissioner of Financial Regulation (Commissioner)<sup>1</sup> issued a Charge Letter to Alamezie E. Ojiaku and his company, Washington Nationwide Mortgages Corporation (Nationwide Mortgages) (collectively, Respondents). The Charge Letter charges the Respondents with violations of sections 11-517(a)(4), 11-517(a)(5), 11-615(a)(4), and 11-615(a)(5) of the Financial Institutions Article of the Annotated Code of Maryland.<sup>2</sup> It also identifies FI sections 2-114 and 11-602, sections

<sup>1</sup> The Office of the Commissioner is part of the Department of Labor, Licensing, and Regulation (Department). Md. Code Ann., Fin. Inst. § 2-101 (2011).

<sup>2</sup> All subsequent references to the Financial Institutions Article are written as “FI section [number]” and are to the statute as it appeared in 2008.

12-805(d)(1) and (2) and 12-807 of the Commercial Law Article of the Maryland Annotated Code,<sup>3</sup> and Code of Maryland Regulations (COMAR) 09.03.06.03<sup>4</sup> and COMAR 09.03.06.07 as “[a]pplicable statutes and regulations.”

In the Charge Letter, the Commissioner alleges that Nationwide Mortgages “allowed Kelly Rivas to act as a loan originator<sup>5</sup> even though she was not properly licensed in Maryland” and that the Respondents used broker agreements “that were signed in blank” to secure loans for [REDACTED] and [REDACTED]

At the hearing, the Commissioner requested the following sanctions: (1) revocations of both Mr. Ojiaku’s license to operate as a mortgage originator and Nationwide Mortgages’ license to operate as a mortgage lender,<sup>6</sup> (2) civil penalties of \$1,000.00 against the Respondents for the Lyles Loan and \$2,000.00 against Nationwide Mortgages for the [REDACTED] Loan, and (3) restitution of \$6,693.40 from the Respondents for the [REDACTED] Loan and \$33,300.00 from Nationwide Mortgages for the [REDACTED] Loan.

On October 25, 2013, the Commissioner delegated authority to the Office of Administrative Hearings (OAH) to conduct a hearing and to issue proposed findings of fact, proposed conclusions of law, and a recommended order.

On December 6, 2013, the OAH notified the parties that a hearing was scheduled for January 24, 2014. The United States Postal Services (Postal Service) returned the notices that were sent to the Respondents because, as listed on the envelopes, “not known” and “unable to forward.” On February 4, 2014, the OAH notified the parties that a hearing was rescheduled for

<sup>3</sup> All subsequent references to the Commercial Law Article are written as “CL section [number]” and are to the statute as it appeared in 2008.

<sup>4</sup> The Commissioner mistakenly listed this regulation as COMAR 09.03.06.07 in the Charge Letter. It was amended at the hearing to COMAR 09.03.06.03 without objection from the Respondents.

<sup>5</sup> A “mortgage loan originator” is “an individual who for compensation or gain, or in the expectation of compensation or gain: (i) Takes a loan application; or (2) Offers or negotiates terms of a mortgage loan.” FI section 11-601(q).

<sup>6</sup> A “mortgage lender” is “any person who: (i) Is a mortgage broker; (ii) Makes a mortgage loan to any person; or (iii) Is a mortgage servicer.” FI section 11-501(j).

March 20, 2014. The notices to the Respondents were sent to a different address, and they were not returned by the Postal Service.

On March 20, 2014, I convened a hearing at the OAH in Hunt Valley, Maryland. Rebecca J. Coleman, Assistant Attorney General, and the Office of the Attorney General, represented the Commissioner. Curtis B. Cooper, Esquire, represented the Respondents.

The contested case provisions of the Administrative Procedure Act, the hearing regulations of the Department, and the OAH Rules of Procedure govern the procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2009 & Supp. 2013); COMAR 09.01.03; COMAR 28.02.01.

### ISSUES

The issues are:

1. Whether Nationwide Mortgages allowed Kelly Rivas to act as a loan originator even though she was not properly licensed in Maryland;
2. Whether the Respondents obtained borrowers' signatures on finder's fee agreements that contained blanks; and
3. If the Respondents violated any relevant statute or regulation in the course of providing mortgage brokerage services, what are the appropriate sanctions?

### SUMMARY OF THE EVIDENCE

#### Exhibits

The following were admitted for the Commissioner:

Commissioner #2(A-G),<sup>7</sup> including copies of relevant statutes and regulations in effect in January 2010; Mr. Ojiaku's responses to the Commissioner's findings, dated October 25, 2010; the Commissioner's response to Mr. Ojiaku, dated November 17, 2010; the Commissioner's statement of remaining unresolved matters, dated November 17, 2010; Mr. Ojiaku's response to the unresolved matters, dated January 7, 2011; the Commissioner's statement in response to Mr.

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<sup>7</sup> Commissioner #1 was not offered.

Ojiaku, dated April 15, 2011; and Mr. Ojiaku's response to the Commissioner, dated May 2, 2011;

Commissioner #3(A-D), including Mortgage Brokerage Business Contract, dated May 29, 2008; Agreement for Mortgage Brokerage Services for the [REDACTED] Loan; Financing Agreement for the [REDACTED] Loan; and Settlement Statement, dated July 30, 2008;

Commissioner #4(A-D), including Mortgage Brokerage Business Contract for the [REDACTED] Loan, dated April 9, 2008; Agreement for Mortgage Brokerage Services for the [REDACTED] Loan, dated April 9, 2008; Mortgage Loan Origination Agreement for the [REDACTED] Loan, dated April 9, 2008; and Settlement Statement, dated May 21, 2008;

Commissioner #5(A-C), including licensing inquiry for K. Rivas; Employment Statement regarding Kelly Rivas-Lipscomb, signed on January 1, 2006; and letter from Kelly Rivas, dated February 17, 2011; and

Commissioner #6, including information about Luz M. Libscomb.

The following was admitted for the Respondents:<sup>8</sup>

Respondents #1: Credit request for [REDACTED]<sup>9</sup>

#### Testimony

John Thomas Lochary, Financial Regulation Examiner, testified for the Commissioner.

Mr. Ojiaku testified for himself and Nationwide.

#### FINDINGS OF FACT

The parties stipulated to the following:

1. During all times relevant to the charges contained in the Charge Letter, Nationwide Mortgages was licensed as a mortgage lender pursuant to the Maryland Mortgage Lender Law.
2. During all times relevant to the charges contained in the Charge Letter, Mr. Ojiaku was licensed as a mortgage originator pursuant to the Maryland Mortgage Originator's Law.

<sup>8</sup> At the hearing, I referred to the exhibits as "Licensee" exhibits.

<sup>9</sup> Respondents #2 was labelled but not offered.

I find the following by a preponderance of the evidence:

3. In April 2010, the Commissioner completed a routine compliance examination of Nationwide Mortgages' business transactions in 2008. Numerous violations were discovered, and the parties successfully resolved all but the violations related to the [REDACTED] and the [REDACTED]

4. In regard to the [REDACTED] Loan, Nationwide Mortgages, by Mr. Ojiaku, and [REDACTED] signed a finder's fee agreement on May 29, 2008, with a blank left to be filled in for the amount of the brokerage fee. The parties also signed a different finder's fee agreement on May 17, 2008, with two percent of the loan amount as the brokerage fee.

5. In regard to the [REDACTED] Loan, Nationwide Mortgages accepted a loan referral from Kelly Rivas, a person it knew not to be licensed by the Commissioner.

6. In regard to the [REDACTED] Loan, Nationwide Mortgages, by Ms. Rivas, signed a finder's fee agreement on April 9, 2008, with a blank left to be filled in for the amount of the brokerage fee. [REDACTED] also signed a different finder's fee agreement on April 9, 2008, with three percent of the loan amount as the brokerage fee.

7. At the settlement of the [REDACTED] Loan on July 30, 2008, Nationwide Mortgages was paid a broker fee of \$4,369.31 and a total finder's fee (including the broker's fee) of \$6,693.40. The loan amount was \$377,431.00.

8. At the settlement of the [REDACTED] Loan on May 21, 2008, Nationwide Mortgages was paid a broker's fee of \$5,459.10 and a total finder's fee (including the broker's fee) of \$11,100.00. The loan amount was \$521,801.00.

## DISCUSSION

### *Legal Context*

The Maryland Mortgage Lender Law is codified at Title 11, Subtitle 5, of the Financial Institutions Article. FI section 11-504 requires, with some exceptions that are not applicable to

this case, a person<sup>10</sup> who acts as a mortgage lender to be licensed by the Commissioner. Under FI section 11-517(a)(4) and (5); the Commissioner may suspend or revoke the license of any licensee who:

(4) [v]iolates any provision of this subtitle or any rule or regulation adopted under it or any other law regulating mortgage loan lending in the State; or (5) [o]therwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently.

Furthermore, under FI section 11-517(c), the Commissioner may order restitution and a civil penalty of up to \$5,000.00 for each violation of subtitle 5, regulations adopted under the authority of subtitle 5, and applicable provisions of Title 12 of the Commercial Law Article.

The Maryland Mortgage Originator's Law is codified at Title 11, Subtitle 6 of the Financial Institutions Article. Under FI section 11-602, a person who engages in loan origination services, with some inapplicable exceptions, must be licensed by the Commissioner. Under FI section 11-615(a), the Commissioner may suspend or revoke a licensee if the licensee:

“(4) [v]iolates any provision of this subtitle, any regulation adopted under this subtitle, or any other law regulating mortgage lending or mortgage origination in the State; or (5) [o]therwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly.

Moreover, under FI section 11-615(c), the Commissioner may order restitution and impose a civil penalty of up to \$5,000.00 for each violation of subtitle 6, regulations adopted under subtitle 6, or applicable provisions of Title 12 of the Commercial Law Article.

CL section 12-805 addresses payment of a finder's fee. CL section 12-805(d) prohibits a mortgage broker from charging a finder's fee unless certain conditions are met. The conditions

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<sup>10</sup> A “person” is “a natural person, corporation, limited liability company, partnership, business trust, statutory trust, or association.” FI section 11-501(p).

include a signed and dated agreement between the broker and borrower that is separate and distinct from any other document and that contains the amount of the fee and the terms of the agreement, which must be disclosed to the borrower before the broker undertakes to assist the borrower to find a loan. Under CL section 12-807, "any mortgage broker who violates any provision of [ ] subtitle [8] shall forfeit to the borrower the greater of (1) [t]hree times the amount of the finder's fee collected; or (2) [t]he sum of \$500.00."

COMAR 09.03.06 regulates the conduct of any person engaged in mortgage brokering. Regulation .03B provides: "A licensee may not broker a loan to, or accept a loan referral from, a person the licensee knows is not licensed by the Commissioner, unless the licensee reasonably and in good faith believes that the person is properly licensed or exempt from the licensing requirement." Regulation .07B states in relevant part as follows: "(1) A person may not obtain a borrower's or guarantor's signature on any of the following documents if blanks remain to be filled in after execution by the borrower: . . . (h) A finder's fee agreement required under Commercial Law Article, § 12-805, Annotated Code of Maryland[.]"

*Summary of the Commissioner's Evidence*

The Commissioner's only witness was Mr. Lochary. His job duties include examining the business practices of licensed loan originators and lenders to determine compliance with applicable law. In April 2010, Mr. Lochary examined Nationwide Mortgages' records related to loan transactions in 2008.

Mr. Lochary testified that his examination of Nationwide Mortgages identified noncompliance with mortgage lending laws in a number of areas, including (i) missing documents, (ii) documents with missing signatures, (iii) signed documents that contained blank spaces, and (iv) loans originated by an unlicensed person. According to Mr. Lochary, "most of the issues were resolved," but not the issues related to the [REDACTED] and [REDACTED] Loans.

Commissioner #3A-D contains four documents related to the [REDACTED] Loan: (i) a Mortgage Brokerage Business Contract (Brokerage Contract), (ii) an Agreement for Mortgage Brokerage Services (Brokerage Agreement), (iii) a Financing Agreement, and (iv) a Settlement Statement. Each document relates to the same property in Upper Marlboro.

Mr. Lochary testified that the Brokerage Contract and Brokerage Agreement are "Broker Fee Agreements." According to Mr. Lochary, "Broker Fee Agreements have various titles. In this particular case, this is a Calyx Form and the title on this document is Mortgage Brokerage Business Contract but it is a Broker Fee Agreement."

Commissioner #3A shows that [REDACTED] and Mr. Ojiaku executed the Brokerage Contract on May 29, 2008. It contains a Mortgage Brokerage Fee section in which the amount of the fee has been left blank. Commissioner #3B shows that [REDACTED] and Mr. Ojiaku executed the Brokerage Agreement on May 17, 2008. It contains a "Fees Payable at Closing" section in which "2% of the loan amount" is listed as the brokerage fee. Commission #3D is a Settlement Statement that [REDACTED] signed on July 30, 2008. It lists \$4,369.31 as the brokerage fee paid to Nationwide Mortgages and \$2,324.09 as a loan origination fee paid to Nationwide Mortgages. The loan amount is \$377,475.00.

Commissioner 4A-D contains four documents related to the Timmons Loan: (i) a Mortgage Brokerage Business Contract (Brokerage Contract), (ii) an Agreement for Mortgage Brokerage Services (Brokerage Agreement), (iii) a Mortgage Loan Origination Agreement, and (iv) a Settlement Statement. Each document relates to the same property in Upper Marlboro.

Commissioner #4A shows that Kelly Rivas and [REDACTED] executed the Brokerage Contract on April 9, 2008. It contains a Mortgage Brokerage Fee section in which the amount of the brokerage fee was left blank. Commissioner #4B shows that [REDACTED] signed the Brokerage Agreement on April 9, 2008. It lists "3% of the loan amount" as a mortgage

brokerage fee. Commissioner #4D is a Settlement Statement for the [REDACTED] Loan, although it is not signed by [REDACTED]. The Settlement Statement shows that Nationwide Mortgages was paid \$5,459.10 as a brokerage fee, \$500.00 as a processing fee, and \$5,140.90 as a loan origination fee. The total loan amount was \$521,801.00.

In regard to Ms. Rivas, Mr. Lochary testified that a search of both the State's database and a national database of relevant licenses showed that Ms. Rivas was not licensed.

On January 5, 2008, Mr. Ojiaku signed and forwarded to the Commissioner a notarized Employment Statement related to Ms. Rivas. The statement is reproduced in pertinent part below.<sup>11</sup>

This is to acknowledge that the listed individual has been approved for employment effective 1-4-03 as a mortgage originator with this organization, and will be working at the following location: Washington Nationwide Mortgages Corporation, 1300 Mercantile [illegible] Largo, MD 20774.

NOTARIZATION

I CERTIFY that Kelly Raconel Rivas-Lipscomb will be employed by the above listed Mortgage Broker/Lender upon issuance of the Maryland Mortgage Originators license. I hereby swear or affirm that I have completed the foregoing Employment Statement. The information stated in this document is complete and true to my knowledge.

Commissioner #5B

Commissioner #5C is a letter that was purportedly signed by Ms. Rivas on February 17, 2011.<sup>12</sup> The letter states as follows:

This letter is to inform you [the Commissioner] that I started working as a loan officer with Washington Nationwide Mortgages [in] April of 2001.

On April 9, 2008 I originated a loan for [REDACTED]. At the time of origination, I utilized my maiden name under license MD-26-1679. I unintentionally did not send you or my broker a completed name change form. I have been in the industry for 20 years and my clients know me as Kelly Rivas and I keep it this way for business purposes. I was unaware

<sup>11</sup> The statement is on a standard form that has blanks to be filled in. Mr. Ojiaku filled in the blanks before he sent the statement to the Commissioner.

<sup>12</sup> The return address is Aliso Viejo, California.

the name change policy was necessary and apologize for any confusion this may have caused.

I hope this will clarify your concerns on this file. If you have any question please feel free to contact me. I thank you for your patience and understanding.

Mr. Lochary testified that license number MD-26-1679 was assigned to Luz M. Lipscomb. He also testified that the investigation showed "no commonality" between Ms. Lipscomb and Ms. Rivas. According to Mr. Lochary, Ms. Lipscomb and Ms. Rivas have different social security numbers.

Mr. Ojiaku sent three written statements to the Commissioner during the examination and conciliation process. On October 25, 2010, Mr. Ojiaku wrote:

██████████ One broker agreement did not state broker points, so is an irrelevant document in the file [].

██████████ One broker agreement did not state broker points (fees), so it is not a relevant document in the loan file but accounts for the file history [].

Kelly Rivas-Lipscomb if [sic] license at 4-19-08. License number MD 26-1679[.] The manager that worked with this loan officer cannot be reached. She left our company before this financial crisis.

Commissioner #2B.

On January 7, 2011, Mr. Ojiaku wrote:

██████████ ██████████ requested to review her file in the presence of [her] son and we are waiting for her to set up the appointment. The last time I spoke to her was on 1/5/2011, and she said because of the holidays, she needs time to get to it, and she hopes I will understand. She asked me not to take any action concerning her file until she is given the opportunity to review her file with her son.

██████████ You said "B/A SIGNED IN BLANK[.]"

I am forwarding to you two broker agreements in our records, none of them was signed in blank as you stated: They were executed properly filled out. Please recheck your records. ██████████ said

when his schedule clears he will go over the broker agreement he signed to see what was done wrong.

Kelley [sic] Rivers [sic]

We have contacted Ms. Rivers [sic] in California to submit change of name after she was married with different last name.

Commissioner #2E.

On May 2, 2011, Mr. Ojiaku wrote:

1) [REDACTED] file.

May you allow me the opportunity to let you know that, it is not true that the borrower's broker agreement was "signed in blank." Please note the broker agreement was not signed in blank as you have assumed. Also any changes made in her application was done by her or by her authorization. I am willing to sign a notarized statement to this, if it is okay. As in my first response, we have contacted the borrower who asked us to wait until she is able to meet with us with her son to review the file. We are still waiting for her to resolve the matter. We will appreciate it if you could give us more time and the opportunity to resolve the issues in this file. See enclosed BA.

2) [REDACTED]  
This borrower's file was not signed in blank as you assumed. [REDACTED] also has asked us to hold his file until he is able to see it. See enclosed BA.

3) Kelly Rivas.

I have enclosed a letter statement from Kelly Rivas for your examination.

Given the difficult time in the business since the financial crisis, please reconsider and review these files and allow us the opportunity to meet with our clients as they have requested so that these issues will be settled with clients' input.

Commissioner #2G.

*Summary of the Respondents' evidence*

Mr. Ojiaku testified that he is the Manager of Nationwide Mortgages and has worked there since March 1990. He testified that he met [REDACTED] through his personal trainer, who is [REDACTED] son. Mr. Ojiaku described the Brokerage Contract (Commissioner #3A) in the [REDACTED] Loan as follows: "This is not our in-house broker. It's pulled from the Calyx. The client was supplied this in addition, but she's not charged on this one. There's no fee for this one. She

asked for additional information.” Mr. Ojiaku testified that Nationwide Mortgages received a two percent broker’s fee at settlement on the [REDACTED] Loan, consistent with Brokerage Agreement (Commissioner #3B).

In regard to the [REDACTED] Loan, Mr. Ojiaku testified in response to a leading question that the Brokerage Agreement (Commissioner #4B) is Nationwide Mortgages’ “in-house fee agreement.” When asked what the Brokerage Contract (Commissioner #4A) shows, Mr. Ojiaku testified, “This is additional information. Sometimes the clients ask for additional information and then the secretary can pull it from the computer. But, this is the State-approved broker fee [a reference to Commissioner 4B].” Mr. Ojiaku agreed with his attorney’s leading question that the Settlement Statement shows the brokerage fee on the [REDACTED] Loan was three percent.

Mr. Ojiaku testified that Ms. Rivas originated the [REDACTED] Loan. He described Ms. Rivas as “one of our loan officers, part time because she was co-brokering from another company.”<sup>13</sup> When asked what his understanding was regarding the status of Ms. Rivas’s license, Mr. Ojiaku testified, “Well, um . . . she got married and she said she’s using her married name so I thought that the company that she was working for had processed her.”

#### *Analysis*

The Commissioner has the burden of proof by a preponderance of the evidence. Md. Code Ann., State Gov’t § 10-217 (2009); *See, Comm’r of Labor & Indus. v. Bethlehem Steel*, 344 Md. 17, 34 (1996).

The Commissioner did not argue that the Respondents violated any of the statutes listed as “applicable” in the Charge Letter. Nonetheless, I have briefly discussed them below.

#### **Section 11-602(b) of the Financial Institutions Article**

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<sup>13</sup> FI section 11-603(b)(2) prohibits a licensee from being employed by more than one mortgage lender.

This section provides as follows:

**§ 11-602. General consideration.**

...  
(b) *License required.* — Unless exempted from this subtitle under subsection (d) of this section, an individual may not engage in the business of a mortgage loan originator unless the individual holds a valid license issued under this subtitle.

Ms. Rivas is not a party in this case. Furthermore, neither Mr. Ojiaku nor Nationwide Mortgages was charged with a violation of this statute.

**Section 12-805(d)(1) and (2) of the Commercial Law Article**

This section provides as follows:

**§ 12-805. Payment of finder's fee.**

...  
(d) *Separate written agreement required.* — (1) A finder's fee may not be charged unless it is pursuant to a written agreement between the mortgage broker and the borrower which is separate and distinct from any other document.

(2) The terms of the proposed agreement shall be disclosed to the borrower before the mortgage broker undertakes to assist the borrower in obtaining a loan or advance of money and shall specify the amount of the finder's fee.

The Charge Letter does not charge Mr. Ojiaku or Nationwide Mortgages with a violation of CL section 12-805. Moreover, the record establishes that a separate agreement, with a specified amount for the broker's fee, existed for both the [REDACTED] Loans.

**Section 2-114(b) of the Financial Institutions Article**

This section provides as follows:

...  
(b) *Oaths and discovery.* — For the purpose of an investigation or proceeding, the Commissioner or an officer designated by the Commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the Commissioner considers relevant or material to the inquiry.

This statute is applicable only to procedural matters.

Section 12-807 of the Commercial Law Article

This section provides:

Any mortgage broker who violates any provision of this subtitle shall forfeit to the borrower the greater of:

- (1) Three times the amount of the finder's fee collected; or
- (2) The sum of \$500.

The applicability of this statute will be discussed below.

At the hearing, the Commissioner focused exclusively on the alleged violations of COMAR 09.03.06.03 and COMAR 09.03.06.07. I discuss those allegations below.

**COMAR 09.03.06.07B(1)(h)**

This regulation states as follows:

**.07 Agreements with the Borrower.**

....  
B. Written Agreements.

(1) A person may not obtain a borrower's or guarantor's signature on any of the following documents if blanks remain to be filled in after execution by the borrower:

....  
(h) A finder's fee agreement required under Commercial Law Article, § 12-805, Annotated Code of Maryland.

Under CL section 12-801(c), a "finder's fee" is "any compensation or commission directly or indirectly imposed by a broker and paid by or on behalf of the borrower for the broker's services in procuring, arranging, or otherwise assisting a borrower in obtaining a loan or advance of money."

The evidence clearly shows that, in regard to the [REDACTED] Loans, Nationwide Mortgages and/or Mr. Ojiaku obtained [REDACTED] and [REDACTED] signature on a finder's fee agreement that contained a blank that remained to be filled in after the borrower signed the agreement.

The [REDACTED] Loan

Nationwide Mortgages' file for the [REDACTED] Loan contained the Brokerage Contract, the Brokerage Agreement, and the Financing Agreement. [REDACTED] signed each document in May 2008. The Brokerage Agreement and Financing Agreement list two percent of the loan amount as the mortgage brokerage fee. However, the Brokerage Contract, also signed by Mr. Ojiaku, had a blank for the amount of the brokerage fee left to be filled after [REDACTED] signed it. This evidence was unrefuted. Accordingly, I find that the Respondents obtained [REDACTED] signature on a finder's fee agreement with a blank for the amount of the mortgage brokerage fee left to be filled in, in violation of COMAR 09.03.06.07B(1)(h).

The [REDACTED] Loan

Nationwide Mortgages' file for the [REDACTED] Loan contained a Brokerage Contract and a Brokerage Agreement. [REDACTED] signed each document in April 2008. The Brokerage Agreement lists three percent of the loan amount as the mortgage brokerage fee. However, in regard to the Brokerage Contract, also signed by Ms. Rivas for Nationwide Mortgages, a blank space remained to be filled in for the amount of the mortgage brokerage fee. Accordingly, I find that Nationwide Mortgages obtained [REDACTED] signature on a finder's fee agreement with the amount of the brokerage fee left blank, in violation of COMAR 09.03.06.07B(1)(h).

The Respondents' Argument

The Respondents argue that COMAR 09.03.06.07B(1)(h) does not apply because the blanks in the Brokerage Contracts did not "remain to be filled in." According to the Respondents:

The original agreement set forth the fee amount that was charged. The obvious concern here is that someone could write-in a fee that's very different and profit from that. That didn't happen here. I think when you look at the transaction as a whole, there was no violation and at worst a technical violation.

I am not persuaded by the Respondents' argument that there was no violation because it is completely at odds with the plain language of the regulation. Regulation .07B(1)(h) prohibits the Respondents from doing exactly what they did: obtain a borrower's signature on a finder's fee agreement before the amount of the brokerage fee was filled in. The fact that the loan files also include a different agreement with the amount of the brokerage fee listed does not expunge the brokerage contracts from the loan files.

The Respondents' argument seemingly was based on Mr. Ojiaku's testimony that the brokerage contracts were used to provide the borrowers with information they had requested, which did not include the amount of the brokerage fee; therefore, the amount of the fee did not "remain to be filled in." This argument may be germane to mitigation, but it is not relevant to whether the Respondents violated Regulation .07B(1)(h).

**COMAR 09.03.06.03B**

This regulation states: "A licensee may not broker a loan to, or accept a loan referral from, a person the licensee knows is not licensed by the Commissioner, unless the licensee reasonably and in good faith believes that the person is properly licensed or exempt from the licensing requirement."

The record is undisputed that Nationwide Mortgages accepted a loan referral from Ms. Rivas in regard to the [REDACTED] Loan. Moreover, Nationwide Mortgages conceded that Ms. Rivas "seems not to be properly licensed."

However, the Respondents argue:

Mr. Ojiaku believed she was [licensed]. He had a good faith belief and that's one of the words used in the regulation so I'd ask you to look at that carefully in weighing your determination. Perhaps he could have

followed up and made a better investigation. Sure he could have. The Commissioner could have followed up with people.<sup>14</sup> I guess this is a busy business on both sides. But the question is, did he violate the regulation? And, no, I think not.

Ms. Rivas originated the [REDACTED] Loan on April 9, 2008. Commissioner #4A. Just three months earlier, on January 5, 2008, Mr. Ojiaku had notified the Commissioner that “Kelly Raconel Rivas-Lipscomb will be employed by [Nationwide Mortgages] upon issuance of the Maryland Mortgage Originators license.” Commissioner #5B. (Emphasis supplied). Mr. Ojiaku affirmed this notice was “complete and true of my knowledge.”

The only evidence possibly relevant to what Mr. Ojiaku knew about the status of Ms. Rivas’s license between January 5, 2008, and April 9, 2008, when Nationwide Mortgages accepted Ms. Rivas’s referral, is Mr. Ojiaku’s testimony that he assumed Ms. Rivas was licensed because she was working for another company: “I thought that the company that she was working for had processed her.” However, Mr. Ojiaku did not testify when that had occurred or why Ms. Rivas wrote that she had been “working as a loan officer with Washington Nationwide Mortgages [since] April 2001.” Moreover, Mr. Ojiaku offered no evidence related to the reasonableness of such an assumption. For example, he did not identify the other company, explain his prior contacts or then-current familiarity with the company, or testify about what the other company had done to establish the status Ms. Rivas’s license. Furthermore, Mr. Ojiaku never mentioned this in any of the letters it sent to the Commissioner defending his actions during the examination and conciliation process. Therefore, based on Mr. Ojiaku’s certification to the Commissioner that Ms. Rivas would become an employee only upon the issuance of a license, and because the record contains no evidence from which to find that Mr. Ojiaku obtained

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<sup>14</sup> This seemingly is a reference to Mr. Lochary’s testimony that he did not contact [REDACTED] or Ms. Rivas during the examination of Nationwide Mortgages’ loan files.

verifiable notice before April 2008 of the issuance of such a license, I find that Mr. Ojiaku still knew Ms. Rivas was not licensed when she originated the [REDACTED] Loan in April 2008.

The Respondent's argument that Mr. Ojiaku had a good faith belief that Ms. Rivas was properly licensed is also not persuasive. That argument was, in part, predicated on Mr. Ojiaku's testimony that Ms. Rivas told him she was licensed under her maiden name (although he said married name one time and maiden name another time). However, Mr. Ojiaku did not testify when that purported conversation took place. Based on my review of the recording of the hearing, I am satisfied that he was testifying about a time after April 2008.

The only evidence relevant to Mr. Ojiaku's argument regarding good faith and reasonableness is his testimony that he assumed Ms. Rivas was licensed because she was working for another company. For some of the reasons discussed above, mentioned again below, that argument is not persuasive. First, Mr. Ojiaku did not mention that in his written statements to the Commissioner. Second, Mr. Ojiaku did not identify when that assumption was made. Third, assuming the assumption was made before April 2008, there is no evidence about the other company from which to assess the reasonableness of the assumption. Fourth, there is no evidence that Mr. Ojiaku did anything to verify Ms. Rivas's license, such as directly contacting the other company, asking Ms. Rivas to produce a copy of it, or inquiring with the Commissioner about whether Ms. Rivas had been issued a license. Merely assuming someone at a different company acted diligently in doing something is not acting in good faith or reasonably. Accordingly, even if Mr. Ojiaku had actually believed Ms. Rivas was licensed based on her employment elsewhere -- which I have not found -- I find the evidence is insufficient to establish that Mr. Ojiaku had a good faith and reasonable belief that Ms. Rivas was properly licensed at

the time of the [REDACTED] Loan. Therefore, I find that Nationwide Mortgages violated COMAR 09.03.06.03B.<sup>15</sup>

*What is an appropriate sanction?*

The Commissioner requests (i) the revocation of the Respondents' licenses, (ii) a joint and several civil penalty of \$1,000.00 against the Respondents in regard to the [REDACTED] Loan and a civil penalty of \$2,000.00 against Nationwide Mortgages for the [REDACTED] Loan, and (iii) joint and several restitution of \$6,693.40 from the Respondents for the [REDACTED] Loan and \$33,300.00 from Nationwide Mortgages for the [REDACTED] Loan.

#### **Requested civil penalty**

The Commissioner requests a joint and several penalty of \$1,000.00 against the Respondents for the violation of COMAR 09.03.06.07B(1)(h) in regard to the [REDACTED] Loan and \$1,000.00 each for the violation of COMAR 09.03.06.07B(1)(h) and COMAR 09.03.06.03B (\$2,000.00) against Nationwide Mortgages for the [REDACTED] Loan. This request is made under FI sections 11-517 and 11-617, which authorize the Commissioner to penalize a wrongdoer up to \$5,000.00 for each violation.

Under FI sections 11-517(e) and 11-615(e), the Commissioner "shall consider" the following factors in determining the amount of a civil penalty: (i) the seriousness of the violation, (ii) the good faith of the violator, (iii) the violator's history of previous violations, (iv)

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<sup>15</sup> The language of COMAR 09.03.06.03B does not make sense. It prohibits a licensee from accepting a loan referral from a person the licensee knows not to be licensed by the Commissioner, unless the licensee reasonably and in good faith believes the person is properly licensed. The regulation's only prohibition is in the first clause, i.e., do not accept a loan referral from a referrer you know not to be licensed. The second clause contains an exception, i.e., unless you have a reasonable and good faith belief that the referrer is properly licensed. But, if the second clause applies, the prohibition clause never applies; therefore, the two clauses make each separate clause meaningless. The "prohibition clause" is meaningless if the "unless clause" applies, and the "unless clause" is meaningless if the "prohibition clause" applies. It appears the intent of the regulation is to prohibit a licensee from brokering a loan to or accepting a loan referral from a person who is not licensed, unless the licensee reasonably and in good faith believes the person is properly licensed.

the deleterious effect of the violation on the public and mortgage industry, (v) the assets of the violator, and (vi) any other relevant factor.

The factor that most supports the penalties is the “seriousness of the violation.” As discussed above, the [REDACTED] and [REDACTED] Loans contained a finder’s fee agreement that is signed by the borrower, but which contains a blank where the amount of the mortgage brokerage fee should have been placed. This is a serious violation because the purpose of COMAR 09.03.06.07B(1)(h) is to protect borrowers against unscrupulous mortgage lenders. This violation exposed the borrowers to possible exploitation, the very harm the Regulation is designed to prevent.

The same is true for Nationwide Mortgages’ violation of COMAR 09.03.06.03B. Regulation .03B protects the public by requiring mortgage lenders to employ only licensed mortgage originators. The violation of this regulation also exposed [REDACTED] to exploitation from an unscrupulous individual acting as a loan originator.

In addition, the Respondents’ violations show a lack of good faith in regard to both loans. As discussed above, Mr. Ojiaku knew Ms. Rivas was not licensed in January 2008, and the record does not support finding he obtained different information about the status of her license before April 2008. Furthermore, even if Mr. Ojiaku believed Ms. Rivas was licensed because she was working at the time for another brokerage company, such an assumption was not, as discussed above, a good faith belief as that term is defined in *Black’s*.<sup>16</sup> Moreover, Mr. Ojiaku’s explanation that the Brokerage Contracts in the [REDACTED] and [REDACTED] Loans were only for informational purposes is not persuasive because it is solely based on uncorroborated, self-serving testimony and because nothing on the Brokerage Contract indicates such an intention.

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<sup>16</sup> “Good faith” is “[a] state of mind consisting of (1) honesty in belief and purpose, (2) faithfulness to one’s duty and obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek an unconscionable advantage.” BLACK’S LAW DICTIONARY 762 (9th ed. 2009).

In regard to the last two elements, the record does not contain sufficient relevant evidence to make any finding regarding the “violator’s history of previous violations,” and there is no evidence to support an actual “deleterious effect of the violation on the public and mortgage industry.” Nonetheless, based on the above discussion, and considering that \$5,000.00 is the maximum penalty for each violation, I recommend as reasonable (i) a joint and severable penalty of \$1,000.00 against Nationwide Mortgages and Mr. Ojiaku for the violation of COMAR 09.03.06.07 in the [REDACTED] Loan and (ii) a \$2,000.00 penalty against Nationwide Mortgages for the violations of COMAR 09.03.06.07 and COMAR 09.03.06.03 in the [REDACTED] Loan.

#### **Restitution**

The Commissioner requests joint and severable restitution of \$6,693.40 from the Respondents for the [REDACTED] Loan and \$33,000.00 from Nationwide Mortgages for the [REDACTED] Loan. In regard to the [REDACTED] Loan, the total amount of the finder’s fee is the sum of the origination fee (\$2,324.09) and the mortgage brokerage fee (\$4,369.31), or \$6,693.00. In regard to the [REDACTED] Loan, the total amount of the finder’s fee is the sum of the origination fee (\$5,140.90), the mortgage brokerage fee (\$5,459.10), and the processing fee (\$500.00), or \$11,100.00. In regard to the [REDACTED] Loan, the Commissioner requests, under CL section 12-807, three times the amount of the total finder’s fee, or \$33,300.00.

CL section 12-807 provides that “a mortgage broker who violates any provision of this subtitle shall forfeit to the borrower the greater of: (1) Three time the amount of the finder’s fee collected; or (2) The sum of \$500.” The Commissioner did not argue, and I have not found, that Nationwide Mortgages violated any provision of Subtitle 8 of Title 12 of the Commercial Law Article. Under CL section 12-807, “three times the amount of the total finder’s fee” is triggered only when a mortgage broker “violates any provision of this subtitle.” Accordingly, I find that

CL section 12-807 does not apply. Therefore, there is no legal authority to impose three times the amount of the collected finder's fees in the Timmons Loan.

Under FI section 11-517(c)(1)(i)2 and FI section 11-615(c)(1)(i)2, the Commissioner is authorized to issue an order "[r]equiring the violator to take affirmative action to correct the violation [of a relevant statute or regulation] including the restitution of money or property to any person aggrieved by the violation[.]" However, for the following reasons, I find that this statutory authority does not apply to this case.

MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 1062 (11th ed. 2006) defines "restitution" as "an act of restoring or a condition of being restored: as a: a restitution of something to its rightful owner b: a making good of or giving an equivalent for some injury 2: a legal action serving to cause restoration of a previous state." BLACK'S LAW DICTIONARY 1428 (9th ed. 2009) defines "restitution" as follows:

1. A body of substantive law in which liability is based not on tort or contract but on the defendant's unjust enrichment. []
2. The set of remedies associated with that body of law, in which the measure of recovery is usu. based not on the Plaintiff's loss, but on the defendant's gain. []
3. Return or restoration of some specific thing to its rightful owner or status.
4. Compensation for loss; esp. full or partial compensation paid by a criminal to a victim, not awarded in a civil trial for tort, but ordered as part of a criminal sentence or as a condition of probation.

These definitions are consonant of the language of the statutes that authorize restitution to "any person aggrieved by the violation."

The evidence in the record before me does not prove that either [REDACTED] or [REDACTED] [REDACTED] was aggrieved, injured, or unlawfully or improperly deprived of something of value or that Nationwide Mortgages or Mr. Ojiaku was unjustly enriched by either the [REDACTED] or [REDACTED] Loan. The Commissioner acknowledged that it did not contact either borrower at any time during or after the examination of the Respondents' business practices to inquire about whether they had a grievance or were injured or improperly deprived of something of value. Moreover,

the Commissioner offered no evidence to establish that the amount of finder's fees or only brokerage fees exceeded the specific amount of the brokerage fee listed on the Brokerage Agreement in either the [REDACTED] or [REDACTED] Loan.

Based on the loan amount found in the Settlement Statements for both the [REDACTED] and [REDACTED] Loans, the total amount of the finder's obtained by Nationwide Mortgages was less than the amount the parties agreed to in the Brokerage Agreements. In regard to the [REDACTED] Loan, Brokerage Agreement set the brokerage fee at two percent of the loan amount. The Settlement Sheet lists the loan amount at \$377,431.00. Two percent of \$377,431.00 is \$7,548.62. The Settlement Sheet establishes \$6,693.40 as the total finder's fee paid to Nationwide Mortgages, which is less than two percent of the loan amount.<sup>17</sup>

The same result applies to the [REDACTED] Loan. The Brokerage Agreement set the brokerage fee at three percent of the loan amount. The Settlement Sheet lists the loan amount at \$521,801.00. Three percent of \$521,801.00 is \$15,654.03. The Settlement Sheet shows \$11,100.00 in finder's fees was paid to Nationwide Mortgages, less than three percent of the loan amount.<sup>18</sup>

Based on the above discussion, I do not find that either [REDACTED] or [REDACTED] suffered any financial loss as a result of the amount of the finder's fee (or the separate brokerage fee) paid to Nationwide Mortgages for the brokering of their loans. Moreover, I do not find that either Mr. Ojiaku or Nationwide Mortgages was unjustly enriched by the [REDACTED] or [REDACTED] Loans. Additionally, I do not find that either [REDACTED] or [REDACTED] was aggrieved by the

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<sup>17</sup> There is some uncertainty in the record regarding the correct amount of the loan in the [REDACTED] Loan. The Brokerage Contract in the [REDACTED] Loan lists \$365,400.00. Two percent of \$365,400.00 is \$7,308.00, more than the total amount of the finder's fees paid to Nationwide Mortgages. The Brokerage Agreement and Financing Agreement list \$353,000.00 as the loan amount. Two percent of \$353,000.00 is \$7,060.00, also more than the total amount of the finder's fees paid to Nationwide Mortgages.

<sup>18</sup> The Brokerage Contract in the [REDACTED] Loan lists \$514,090.00 as the loan amount. Three percent of \$514,090.00 is \$15,422.70, more than the total amount of the finder's fees paid to Nationwide Mortgages.

Respondents' violations of COMAR 09.03.06. Accordingly, I conclude that the Commissioner lacks the authority to order restitution in this case. I shall not recommend it.

### Revocation

The Commissioner requested a recommended order that includes the revocation of the licenses of Mr. Ojiaku and Nationwide Mortgages. FI section 11-517(a)(4) authorizes a license suspension or revocation if a licensee “[v]iolates . . . any rule or regulation adopted under [subtitle 5] or any other law regulating mortgage loan lending in this State[.]” FI section 11-615(a)(4) authorizes suspension or revocation of a license if the licensee “[v]iolates . . . any other law regulating mortgage lending or mortgage origination in the State.” Because I have found that the Respondents violated COMAR 09.03.06, the Commissioner has authority to suspend or revoke the licenses because COMAR 09.03.06 was promulgated under the authority of Subtitle 5 and because COMAR 09.03.06.03 and .07 are laws regulating mortgage lending and origination.

In addition, FI sections 11-517(a)(5) and 11-615(a)(5) authorize the Commissioner to suspend or revoke the Respondents' licenses. Both statutes authorize suspension or revocation if a licensee “[o]therwise demonstrates unworthiness, bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly,” and FI section 11-517(a)(5) also allows for a suspension or revocation if the licensee's misconduct indicates the business of the licensee will not be conducted “fairly, equitably, and efficiently.” Based on Respondents' violations of COMAR 09.03.06.03 and .07, I also find they have demonstrated a “quality that indicates that the business of the [Respondents] has not been conducted honestly” or “fairly.” At the very least, Mr. Ojiaku was unconcerned about the status of Ms. Rivas's license, even though he knew she was required to be licensed, and unconcerned or dismissive about the correct use of finder's fee agreements. This shows that Mr. Ojiaku is

cavalier or unconcerned about his obligation to know and comply with regulations governing the practice of his business and indicates the likelihood that future transgression will likely occur.

For the following reasons, however, I do not recommend an order that includes the revocation of the Respondents' licenses. Instead, I recommend a suspension of the Respondents' licenses and the requirement of successful participation in remedial education as a condition of the reinstatement of the licenses.

First, revocation is a harsh sanction that should be reserved for the most serious types of misconduct. When the nature of the Respondents' misconduct is compared to the list of punishable transgressions found in FI section 11-517(a) and 11-615(a), the Respondents' wrongful conduct is middling. The lists include: (i) material misrepresentations on an application for a license, (ii) convictions for felonies or misdemeanors directly related to one's fitness or qualifications to engage in the business of mortgage lending, and (iii) fraud, illegal or dishonest activity, or misrepresenting or failing to disclose material information to anyone entitled to the information. Obviously, the Respondents' transgressions are serious and deserving of firm sanction. However, they are not of the nature or type of the misconducts listed above that are rise to a qualitatively different intolerable level. A revocation here, for the Respondents' relatively moderate transgressions, raises reasonable questions about proportionality.

Second, the record contains no evidence that Mr. Ojiaku is incorrigible and cannot be rehabilitated by the educational and corrective benefits of a suspension with continuing education requirements to help him understand and accept his obligations under the relevant

statutes and regulations.<sup>19</sup> Revocation of a license is most appropriate when there is demonstrable incorrigibility.

Finally, as discussed above, based on the record before me, the Respondents' wrongful conduct neither harmed [REDACTED] or [REDACTED] nor unjustly enriched the Respondents. If there were such harm or unjust enrichment, the Commissioner's obligation to protect the consuming public would dwarf any concerns for Mr. Ojiaku's interest in maintaining the source of his livelihood.

#### PROPOSED CONCLUSIONS OF LAW

I propose the adoption of the following:

- A. The Respondents violated COMAR 09.03.06.03 when they accepted a loan referral from an individual Mr. Ojiaku knew was not licensed by the Commissioner;
- B. The Respondents violated COMAR 09.03.06.07B when they obtained borrowers' signatures on finder's fee agreements with blanks where the amount of the brokerage fee remained to be filled in; and
- C. The Respondents are subject to a civil penalty and suspension or revocation of their licenses. FI sections 11-517(a) & 11-517(c)(1)(ii) and 11-615(a) & 11-615(c)(1)(ii).

#### RECOMMENDED ORDER

I RECOMMEND that the Commissioner adopt the following ORDER:

- A. The record of this case to reflect that the Respondents violated COMAR 09.03.06.03 and COMAR 09.03.06.07;
- B. The Respondents jointly and severally pay to the State of Maryland \$1,000.00 as a penalty for the violation related to the [REDACTED] Loan;

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<sup>19</sup> On January 7, 2011, without having been subject to any sanction, Mr. Ojiaku told the Commissioner, "In compliance moving forward in the future the company will only use one Broker Agreement." Commissioner #2E.

C. Nationwide Mortgages pay to the State of Maryland \$2,000.00 as a penalty for the violations related to the [REDACTED] Loan;

D. The license of Mr. Ojiaku and Nationwide Mortgages be suspended for a reasonable period of time not to exceed one year unless Mr. Ojiaku fails to successfully complete remedial education instruction selected by the Commissioner;

E. Mr. Ojiaku participate in and successfully complete continuing education related to the requirements under COMAR 09.03.06.03 and COMAR 09.03.06.07 as a condition of the restoration of the suspended licenses; and

F. That the records and publications of the Maryland Commissioner of Financial Regulation reflect this decision.

June 16, 2014  
Date Proposed Decision Issued



Michael D. Caris  
Administrative Law Judge

MDC/da  
#148395