



**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
PROPOSAL FOR DECISION**

**INTRODUCTION**

This matter involves a contested administrative hearing on charges dated September 11, 2009, that were brought against Margaret B. Cottrell (“Respondent”) by the Banking Division (“Division”) of the Vermont Department of Banking, Insurance, Securities and Health Care (“Department”). In response, Respondent filed with the Department her Response to Administrative Charges dated October 1, 2009.

The contested hearing in this matter was scheduled for June 25 and July 1, 2010. Peter Young, Assistant General Counsel for the Department, represented the Division. Kimberly B. Cheney, Esq. represented Respondent. Christina Rouleau, Esq. was designated to serve as Hearing Officer for the hearing.

The parties presented testimony through witnesses and submitted documentary evidence through exhibits on June 25, 2010. Additionally a Stipulation of Parties to Supplement Evidentiary Record dated July 1, 2010 was filed. Parties were given until July 30, 2010 to file legal briefs and proposed findings of fact and conclusions of law, if any, for consideration. The Division filed its Legal Brief and Request for Findings of Fact and Conclusions of Law and the Respondent filed a Post Hearing Memorandum with proposed Findings of Fact, both dated July 30, 2010. Respondent also filed a Supplemental Memorandum dated August 25, 2010.

The undersigned has considered each proposed finding submitted by the parties. Any proposed finding not expressly incorporated in this Proposal for Decision has been rejected.

After consideration of all the material submitted in this matter, the Hearing Officer submits to the Commissioner the following Findings, Conclusions, and Proposal for Decision.

**INITIAL RULING ON RESPONDENT'S MOTION TO DISMISS**

In Respondent's Post Hearing Memorandum she moves for the dismissal of the Administrative Charges. For reasons set forth in this proposal Respondent's Motion to Dismiss is DENIED.

**FINDINGS OF FACT**

1. Respondent is a resident of Petersburg, New York. (Response to Administrative Charges, ¶4; Tr. p. 70)

2. Respondent was employed by CTX Mortgage Co., LLC ("CTX") in Bennington, Vermont from June of 2005 through April of 2008 and has worked in the mortgage loan industry for approximately 20 years. (Tr. pp. 70-71)
3. Respondent was hired by CTX as a branch manager to oversee and manage the Bennington office and to originate loans. (Tr. pp. 16, 71-72, 136)
4. At all relevant times Respondent was an employee authorized to act as both a mortgage broker and a licensed lender under licenses held by CTX. (Response to Administrative Charges, ¶ 4)
5. At all relevant times and until the termination of her employment, Respondent conducted business subject to Lender License #5656 and Mortgage Broker License #0645MB issued to CTX by the Department. (Response to Administrative Charges, ¶ 6)
6. Respondent's responsibilities while employed by CTX included assembling documentation required for the application process, evaluating the documentation, and then submitting that file into processing for processing and underwriting. (Tr. p. 17)
7. As part of Respondent's duty to originate loans, Respondent collected information for consumers' mortgage applications including, but not limited, to uniform residential loan applications. (Tr. p. 73)
8. Underwriters use documentation assembled by loan officers to verify that a borrower qualifies according to the investor guidelines and confirm the accuracy of the information presented in the application (Tr. pp. 19-20, 22); underwriters and investors rely on the information presented in these documents. (Tr. pp. 20-21)
9. CTX paid Respondent a commission on loans that she originated. Respondent only received a commission if the loan closed. (Tr. pp. 38, 78)
10. As part of Respondent's duties as loan officer, she was required to verify the information from loan applicants through documentation or third parties, such as by W-2 forms, pay stubs, and bank statements. (Tr. pp. 17-18, 82)
11. Respondent submitted loan documentation to processors and underwriters at CTX with knowledge that this documentation would be relied upon by others. (Tr. pp. 90-92)
12. As part of the application process, gift verification forms are required of applicants and donors, which require the signatures of both the donor(s) and persons verifying donor assets. Other forms and letters similarly require signatures from applicants or third parties. (Tr. pp. 83-85, 90)
13. Underwriters rely on the information presented by loan officers, and approvals of applications are contingent on receipt of appropriate documentation. (Tr. pp. 21-23, 92)

14. Respondent signed an agreement with CTX in June, 2007 which, among other things, prohibited the submission of false and misleading information. (Ex. 19; Tr. pp. 157-158)

15. Respondent retained altered loan documents in files she kept for her own use in her office at CTX in Bennington, Vermont. (Tr. pp. 68, 127)

16. Respondent did not anticipate the files she retained for her own use would be looked at by anyone else. (Tr. p. 127)

17. At a meeting held on April 29, 2008, Respondent's immediate supervisor asked Respondent if she was responsible for cutting and pasting signatures on documents contained in the K.S. file that was discovered in Bennington. (Tr. pp. 27, 33-34)

18. Respondent had not sought or received permission from CTX to affix a borrower's signature on documents. (Tr. pp. 100-102, 155-156)

19. Respondent accepted responsibility for the cutting and pasting of signatures in the K.S. file at the time of this April 29, 2008 meeting, and has not denied responsibility at any time since. (Tr. pp. 34, 114-115, 152)

20. Respondent was terminated by CTX for her misconduct. (Tr. p. 34)

21. Respondent admitted responsibility for altering documents other than those enumerated in Counts I-V below while employed at CTX. (Tr. p. 161)

22. At hearing Respondent testified that she is currently employed at Wells Fargo in Bennington, Vermont as a home mortgage consultant, an originator of home mortgages. (Tr. p. 70)

23. The Division alleges that Respondent's conduct as charged violates 8 V.S.A. § 2204(a)(1)(A) and 8 V.S.A. § 2241(1), (2) and (9).

### **COUNT 1 (K.S.)**

24. Respondent was the loan officer for K.S. and was responsible for taking the application and collecting the necessary documentation. (Tr. pp. 108-109)

25. The signature contained on line 17 of State's Exhibit 2, titled "Request for Verification of Gift/Gift Letter," was taped onto said document.<sup>1</sup> (State's Exhibit 2)

26. The signature contained on Line 12 of State's Exhibit 4, titled "Request for Verification of Gift/Gift Letter," was taped onto said document. (State's Exhibit 4)

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<sup>1</sup> The words "taped" and "pasted" are used interchangeably throughout this Proposal for Decision, and in all instances refer to a signature that has been affixed by some means to a document.

27. The borrower, K.S., was required to sign State's Exhibit 5, titled "Uniform Residential Loan Application," at page 3 at the time of application. (Tr. pp. 73-75)

28. The area where the borrower's signature would have been placed on State's Exhibit 5 at page 3 has been cut out of that document; it is unknown whether this cut-out was used elsewhere on documents associated with the K.S. mortgage loan. (State's Exhibit 5; Tr. p. 62)

29. Other documents contained in Respondent's copy of the K.S. file evidence altered signatures. (See Exhibits 3 & 4 – source of signature on line 17 is Exhibit A).

30. Respondent admitted responsibility for the altered documents contained in the K.S. file that she retained for this borrower (Tr. pp. 33-34, 94-95, 111-112)

### **COUNT II (R.P.)**

31. Respondent was the loan officer for R.P. and was responsible for taking the application and the collecting the necessary documentation. (Tr. p. 93)

32. The area where R.P.'s signature would appear on State's Exhibit 7 has been cut from that document. (State's Exhibit 7)

33. Addendum A to State's Exhibit 9, which is the CTX commitment letter sent to R.P. and dated September 26, 2007, at ¶ 6 requires that the borrower provide a signed statement indicating recent credit inquiries have not resulted in any undisclosed debt. (State's Exhibit 9)

34. The signature of R.P. was taped onto State's Exhibit 6, which purports to be the required verification signed by R.P. that R.P. had no undisclosed debts. (State's Exhibit 6)

35. The signature of R.P. was taped onto State's Exhibit 8 at line 8, titled "Request for Verification of Gift/Gift Letter." (State's Exhibit 8)

36. Respondent admitted responsibility for the taped signatures appearing on State's Exhibits 6 and 8. (Tr. p. 98)

### **COUNT III (D.T.)**

37. Respondent was the loan officer for D.T. and was responsible for taking the application and collecting the necessary documentation. (Tr. p. 99)

38. Respondent cut the borrower's signature from State's Exhibit 10 at page 4, titled "Uniform Residential Loan Application" and contained in the D.T. file, and pasted it to State's

Exhibit 11, which purports to be verification concerning federal withholding taxes. (State's Exhibits 10 & 11; Tr. p. 100)

#### **COUNT IV (C.H.)**

39. Respondent was the loan officer for C.H. and was responsible for taking the application and collecting the necessary documentation. (Tr. p. 103)

40. Respondent cut the borrower's signature from State's Exhibit 12, titled "SPECIAL ADDENDUM To Contract dated 6/3/06" and contained in the C.H. file, and pasted it to State's Exhibits 13 and State's Exhibit 14, the Uniform Residential Loan Application. (State's Exhibits 12, 13 & 14; Tr. p. 104)

#### **COUNT V (J.C.)**

41. Respondent was the loan officer for J.C. and was responsible for taking the application and collecting the necessary documentation. (Tr. p. 105)

42. Respondent affixed the buyer's signature to State's Exhibit 15, which purports to be a letter signed by the buyer addressing two items CTX requested clarification on. (State's Exhibit 15; Tr. p. 107)

#### **CONCLUSIONS OF LAW**

1. In this administrative hearing the Division has the burden to prove its case by a preponderance of the evidence. *In re Smith*, 169 Vt. 162, 168 (1999) ("preponderance of the evidence is the usual standard of proof in state administrative adjudications").

2. The assessment of witness credibility and the weight to be given witness testimony is a matter for the special expertise of the administrative body. *In re V.S.E.A.*, 162 Vt. 277, 280 (1994); *Cameron v. Double A. Services, Inc.*, 156 Vt. 577, 582 (1991).

3. The Commissioner has the authority, in addition to other powers conferred by statute, to issue orders as shall be authorized by or necessary to the administration of Title 8, and to carry out the purposes of such title (8 V.S.A. § 15(a)).

4. The Commissioner has the authority to deny, suspend, revoke, condition, or refuse to renew a license, or order that any person or licensee cease and desist in any specified conduct (8 V.S.A. § 2210(a)(b)), and to enjoin or prohibit any person from engaging in the financial services industry in this state (8 V.S.A. § 2210(b)(4)).

5. The Commissioner has the authority to impose an administrative penalty of not more than \$10,000.00 for each violation upon any person who violates or participates in the violation of Chapter 73 of Title 8. Each violation is a separate and distinct violation (8 V.S.A. § 2215(a)(1) and (b)).

6. 8 V.S.A. § 2241, titled "Prohibited acts and practices," prohibits a person from directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person (8 V.S.A. § 2241(1)).

7. 8 V.S.A. § 2241(2) prohibits a person or individual from engaging in any unfair or deceptive practice toward any person.

8. 8 V.S.A. § 2241(9) prohibits a person or individual from making, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a mortgage loan.

9. 8 V.S.A. § 2204(a)(1)(A) requires that an applicant seeking to obtain a license as a lender must possess the financial responsibility, experience, character and general fitness necessary to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently within the purposes of Chapter 73 of Title 8.

10. The plain language of the statute does not support Respondent's suggestion that the reference in § 2241(2) to an "unfair or deceptive practice" is imported from the Consumer Fraud Act and requires material harm. Regardless, it is duly noted that under the CFA deception is measured by an objective standard focusing on risk of consumer harm in a particular case. Actual injury need not be shown. See *Peabody v. P.J.'s Auto Village, Inc.*, 153 Vt. 55 (1989). In this matter the risk of harm resulting from the alteration of mortgage loan documents by a licensee in support of a mortgage loan cannot be understated. Such a practice undermines not only the integrity of the altered document(s) and associated mortgage loan, but also the integrity of the mortgage loan industry Respondent serves.

11. Whether or not the Respondent had permission from an individual to affix that person's name to the documents at issue in this proceeding, a conclusion unsupported by the evidence, is immaterial to a determination as to whether her actions constituted prohibited acts and practices as set forth in § 2241 of Title 8.

12. Whether or not the substance of the information set forth in the documents that contained altered signatures was accurate is not germane to a determination as to whether her conduct caused the lender to rely on the authenticity of what was in fact an altered document, in violation of 8 V.S.A. § 2241(1), (2) and (9).

13. By cutting and pasting signatures to documents associated with and necessary for a residential mortgage loan Respondent employed a scheme, device, or artifice to mislead a lender, engaged in an unfair or deceptive practice and made a false or deceptive statement or representation in connection with the mortgage loan application of K.S. as set forth in Count I above, in violation of 8 V.S.A. § 2241(1), (2) and (9).

14. By cutting and pasting signatures to documents associated with and necessary for a residential mortgage loan Respondent employed a scheme, device, or artifice to mislead a

lender, engaged in an unfair or deceptive practice and made a false or deceptive statement or representation in connection with the mortgage loan application of R.P. as set forth in Count II above, in violation of 8 V.S.A. § 2241(1), (2) and (9).

15. By cutting and pasting signatures to documents associated with and necessary for a residential mortgage loan Respondent employed a scheme, device, or artifice to mislead a lender, engaged in an unfair or deceptive practice and made a false or deceptive statement or representation in connection with the mortgage loan application of D.T. as set forth in Count III above, in violation of 8 V.S.A. § 2241(1), (2) and (9).

16. By cutting and pasting signatures to documents associated with and necessary for a residential mortgage loan Respondent employed a scheme, device, or artifice to mislead a lender, engaged in an unfair or deceptive practice and made a false or deceptive statement or representation in connection with the mortgage loan application of C.H. as set forth in Count IV above, in violation of 8 V.S.A. § 2241(1), (2) and (9).

17. By cutting and pasting signatures to documents associated with and necessary for a residential mortgage loan Respondent employed a scheme, device, or artifice to mislead a lender, engaged in an unfair or deceptive practice and made a false or deceptive statement or representation in connection with the mortgage loan application of J.C. as set forth in Count V above, in violation of 8 V.S.A. § 2241(1), (2) and (9).

18. Section 2204 of Title 8 requires the Commissioner to make certain findings regarding the financial responsibility, experience, character and general fitness of an applicant before issuing a license. Respondent's actions as set forth herein fully support a finding that she lacks the financial responsibility, experience, character and general fitness to command the confidence of the community and to warrant belief that she will operate in the mortgage lending business in an honest, fair and efficient manner as required by 8 V.S.A. § 2204(a)(1)(A). The Commissioner has the authority to ensure the integrity of the mortgage loan industry is maintained, and there is nothing in the plain language of the statute to support Respondent's assertion that he is restricted to considering only an applicant's credit and criminal histories in determining whether an applicant satisfies the statutory criteria noted above.

### **PROPOSED DECISION AND ADMINISTRATIVE SANCTIONS**

The Division has referenced in its post-hearing memorandum two cases that involved the alteration of mortgage loan documents for consideration in determining an appropriate penalty. The first such case, *Commonwealth of Pennsylvania Department of Banking, Bureau of Compliance, Investigation and Licensing v. NorthStar Mortgage, LLC, Paul Fenelle, Leonardo D'Elia, Owners, Keith Douglas Buchanan, Kimberly Friedman, Duane Beers, Michael Gilbert and Jenique Chang*, Pennsylvania Dept. of Banking, Docket Nos. 070017, 070027, 070028, 070029, 070033, 070035, resulted in the entry of a Final Order dated July 3, 2008 ("*NorthStar*"). In *NorthStar* a loan officer fabricated the substance of certain mortgage loan documents, which led to criminal charges being brought against him.<sup>2</sup> After pleading guilty to one felony count of

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<sup>2</sup> The result of these fabrications was, for example, that the lender was misled into believing that gifts were made by

forgery the loan officer's employment at NorthStar continued, and the Department of Banking subsequently moved to suspend and refuse to renew NorthStar's license pending a full hearing on a license revocation. While not minimizing in any way Respondent's conduct in this case, the egregious conduct of the loan officer employed by NorthStar is not analogous to the charged conduct in this proceeding. As such the Final Order in *NorthStar* has not been taken into consideration in the preparation of this Proposal for Decision.

A second case more closely aligned with this matter, captioned *In Re: Lowell T. Burnett*, North Carolina Commissioner of Banks, Docket No. 06:093:MMB, resulted in the entry of a Voluntary Surrender and Order dated December 11, 2006. In *Burnett* the Respondent admitted to, *inter alia*, cutting and pasting documents together in an effort to have a certain loan approved and accepted by a lender to whom he was going to broker the loan. Respondent admitted this conduct was misleading and a violation of North Carolina law. In addition to the voluntary surrender of his mortgage loan officer license, it was ordered that no re-application for licensure as a mortgage broker, lender or loan officer would be considered and Respondent was permanently barred from engaging in the mortgage loan lending business in North Carolina in any capacity.

In this case Respondent's actions were a consistent pattern of practice as evidenced by the number of altered documents associated with several mortgage loans over a period of time. An individual desirous of being candid and truthful would ensure there was an adequate disclosure that the individual whose name appeared on an altered document had not personally signed that instrument. Respondent made no such disclosure, and by her actions she instead misrepresented the authenticity of documents associated with and necessary for residential mortgage loans. In so doing Respondent personally benefited as she received a commission on mortgage loans that closed.

Respondent's assertion at hearing that she kept the cut and pasted documents in her personal mortgage files she retained in her office so that a record would exist of all alterations, and that if she truly felt her conduct was wrong she would have put the altered documents in the shredder, is not considered credible given her admission that she did not expect her personal files would be viewed by anyone else. Additionally, Respondent's retention of the altered documents does not negate the fact that her actions caused the lender to rely on her false or deceptive representations concerning the file documentation. Finally, Respondent claimed at hearing that she had the permission of the persons whose names were the subject of the charged conduct to affix their signatures to documents. As stated above such permission, had it been given, would not negate the fact that it is the lender who Respondent deceived. Regardless, Respondent's testimony that she had such permission amounts to inadmissible hearsay and no admissible evidence to this effect substantiates her claim that she believed she could affix a person's signature to a document if she had permission to do so from that individual.

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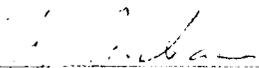
persons who it was later discovered never made such gifts, and in fact did not even know the borrower to whom the gift was supposedly made, or that the gift that was made was for a lesser amount than what had been documented in the loan files.

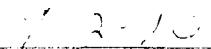
Based on the above-stated Findings of Fact and Conclusions of Law, this Hearing Officer proposes that the Commissioner impose the following administrative sanctions:

1. Respondent be assessed a monetary penalty in the amount of Two Hundred (\$200.00) Dollars for the conduct outlined in Count I above.
2. Respondent be assessed a monetary penalty in the amount of Two Hundred (\$200.00) Dollars for the conduct outlined in Count II above.
3. Respondent be assessed a monetary penalty in the amount of Two Hundred (\$200.00) Dollars for the conduct outlined in Count III above.
4. Respondent be assessed a monetary penalty in the amount of Two Hundred (\$200.00) Dollars for the conduct outlined in Count IV above.
5. Respondent be assessed a monetary penalty in the amount of Two Hundred (\$200.00) Dollars for the conduct outlined in Count V above.
6. Respondent's authority to act as a mortgage broker and/or a licensed lender be revoked.
7. Respondent be permanently enjoined and prohibited from engaging in the mortgage lending business in Vermont in any capacity.

**RIGHT TO FILE WRITTEN EXCEPTIONS**

“Any party adversely affected by the proposal of decision of the hearing officer shall have 10 days from the date of service to file written exceptions, legal briefs or request oral argument before the Commissioner.” Regulation No. 82-1 (Revised), Section 7(c). The parties, by written stipulation, may waive these opportunities. Regulation No. 82-1 (Revised), Section 7(d).

  
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Hearing Officer

  
\_\_\_\_\_  
Date

**COMMISSIONER'S FINAL DECISION**

Upon Consideration of the entire record in this matter, the Commissioner hereby ADOPTS the Hearing Officer's proposed Findings of Fact and Conclusions of Law contained in the Proposal for Decision.

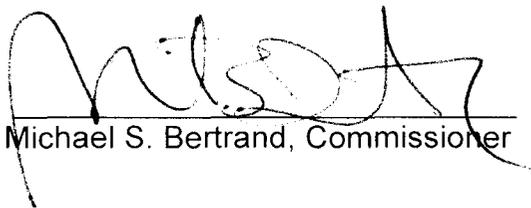
Respondent represented at oral argument that she did not have any fraudulent intent when she pasted or affixed signatures onto loan documents or allowed signatures to be pasted or affixed onto loan documents that she was responsible for. She further stated that all of the documents that the Hearing Officer found to have affixed or pasted signatures contained information and representations that were true and that her only intent was to move these loan applications along for the customers who could not come to her place of business to sign these documents. The Division argued that the applicable statute, 8 V.S.A. § 2241, prohibits Respondent from deceiving lenders and pointed out that there was no finding that Respondent disclosed that the documents submitted to lenders were not actually signed by the persons whose signatures appeared on the documents. Respondent's conduct, the Division argues, makes it impossible for lenders to trust that documents submitted by Respondent contain accurate information and therefore present a challenge to the system that the law must eliminate.

The Commissioner, upon consideration of the evidence, legal argument and analysis presented by the parties to the Hearing Officer and presented during oral argument, as well as Respondent's remarks presented at oral argument, can find no error warranting rejection of the Hearing Officer's Proposed Findings of Facts and Proposed Conclusions of Law. In accordance with the discretion granted to the Commissioner under 8 V.S.A. § 2215 and 8 V.S.A. §2210, the Commissioner accepts the proposed monetary administrative penalties and rejects the proposal to revoke Respondent's authority to act as a mortgage broker and/ or licensed lender and to permanently enjoin and prohibit Respondent from engaging in the mortgage lending business in Vermont.

Accordingly, the Commissioner issues the following **ORDER**:

1. Respondent shall pay an administrative penalty in the amount of One Thousand Dollars (\$1,000.00), payable within thirty (30) days of the date of this decision.
2. Respondent shall be enjoined or prohibited from acting as a mortgage broker, licensed lender or engaging in the financial services industry in any capacity in the State of Vermont for a period of six (6) months. The prohibition period shall begin on the date of this decision.

Dated at Montpelier, Vermont this 17<sup>th</sup> day of December, 2010.

  
Michael S. Bertrand, Commissioner