

BEFORE THE GEORGIA DEPARTMENT OF BANKING AND FINANCE
STATE OF GEORGIA

ACADEMY MORTGAGE CORPORATION,

Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,

Respondent.

FILED

NOV 08 2011

GEORGIA DEPARTMENT OF
BANKING AND FINANCE

ADAM MICHAEL KESSLER

Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,

Respondent.

DOCKET NO. DBF-MBL-11-013

JOHN DUANE SHAW,

Petitioner,

v.

GEORGIA DEPARTMENT OF
BANKING AND FINANCE,

Respondent.

CONSENT ORDER

On July 27, 2011, the Georgia Department of Banking and Finance (“Department”) issued a Notice of Intent to Revoke Annual License to Academy Mortgage Corporation (“Academy Mortgage”), Georgia Lender License Number 20505 and Nationwide Mortgage Licensing System and Registry Number 3113, alleging that Academy Mortgage purposely withheld information requested by an examiner and made false statements or material

misrepresentations to the Department in connection with an investigation conducted by this agency in violation of O.C.G.A. § 7-1-1013(11); misrepresented material facts likely to induce a mortgagee to make a mortgage loan in violation of O.C.G.A. § 7-1-1013(1); misrepresented or concealed information concerning mortgage transactions in violation of O.C.G.A. § 7-1-1013(2); engaged in a course of business not in good faith in violation of O.C.G.A. § 7-1-1013(6); failed to report in writing to the Department within ten days after obtaining knowledge of the initiation by any governmental entity of any administrative, civil, or criminal action against Academy Mortgage in violation of O.C.G.A. § 7-1-1007(d); and in violation of O.C.G.A. §§ 7-1-1001.1 and 7-1-1002(a) and (b), transacted business with persons who are unlicensed and unregistered and not exempt from licensing and registration requirements. Further, in violation of O.C.G.A. § 7-1-1002(c), Academy Mortgage directly or indirectly controlled persons who violated O.C.G.A. § 7-1-1002(a) and (b).

On this same day, the Department issued proposed Orders to Cease and Desist to Adam Michael Kessler and John Duane Shaw, owners of Academy Mortgage, alleging that they violated the same laws set forth in the Notice of Intent to Revoke Annual License issued to their company.

On or about August 4, 2011, hearings were timely requested to appeal the Notice of Intent to Revoke Annual License issued to Academy Mortgage as well as the proposed Orders to Cease and Desist issued to Adam Michael Kessler and John Duane Shaw.

The parties have discussed settlement of the issues raised by the Notice of Intent to Revoke Annual License and the proposed Orders to Cease and Desist and have agreed to a resolution of those matters in their entirety. By entering into this Consent Order, Academy Mortgage, Adam Michael Kessler and John Duane Shaw (collectively "Petitioners") neither admit nor deny the allegations set forth in the Notice of Intent to Revoke Annual License or the proposed Orders to Cease and Desist. Except as provided in Paragraph 16 of this Consent Order,

the Department and Petitioners agree that this Consent Order shall not be used as evidence of wrongdoing by Academy Mortgage or Messrs. Kessler and Shaw. It is hereby ORDERED as follows:

1. Within thirty days of the date on which this Consent Order is signed by the Commissioner (the “entry date”), Academy Mortgage shall submit to the Department proposed written policies and procedures for the operation of the Georgia offices of Academy Mortgage pertaining to the hiring of employees, the identification of positions within its Georgia office(s) for which no license is required and the duties attendant thereto, and the terms and conditions of employment of unlicensed persons by Academy Mortgage. Included therein shall be a “Zero Tolerance” policy that provides, on a going forward basis, for the immediate termination of any unlicensed employee Academy Mortgage determines has engaged in mortgage loan originator activities for which a current, active license issued by the Department is required. This policy also shall include a provision calling for the immediate discharge of any licensed mortgage loan originator who assists an unlicensed person in engaging in mortgage loan originator activity that is regulated by the Department. Should any employee be terminated by Academy Mortgage for violating the Department-approved policy, he or she shall not be eligible for rehire. In the event the proposed written policies and procedures are not acceptable to the Department, Academy Mortgage will submit revised written policies and procedures addressing the Department’s stated concerns within fifteen days of receipt of notification of same, which process shall continue until Academy Mortgage submits written policies and procedures

2. Within forty-five days of the entry date of this Consent Order, Academy Mortgage shall accept the resignation of Gina W. Spearman, the branch manager currently approved for the Academy Mortgage office located at 5565 Glenridge Connector Northeast, Suite 400, Atlanta, Georgia 30342 (“Atlanta location”), or otherwise replace her in this position. Academy Mortgage may, in its discretion, employ Ms. Spearman as a sales manager or in

another position within the Atlanta location in a non-managerial, non-supervisory position. Nothing in this Consent Order shall limit or otherwise prohibit Ms. Spearman from reapplying to become a branch manager for Academy Mortgage five years after the entry date of this Consent Order or from holding managerial and/or supervisory positions at Academy Mortgage if doing so is in compliance with the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 *et seq.* and Department Rules.

(a) Within forty-five days of the entry date of this Consent Order, Academy Mortgage shall submit to the Department for its approval a complete application of a qualified individual designated to serve as the new branch manager for the Atlanta location as contemplated by Department Rule 80-11-1-.04. Any applicant proposed by Academy Mortgage to serve in the position as the new branch manager for the Atlanta location shall not be a past or existing employee or agent of Academy Mortgage. The Department, in its sole discretion, shall determine whether an applicant proposed by Academy Mortgage to fill this branch manager position shall be approved, which approval will not be unreasonably held if the applicant demonstrates that he or she has an excellent credit history, has not been convicted of a felony, and does not have a past history of administrative actions with regulatory agencies. In the event that Academy Mortgage is notified by the Department that its branch manager applicant has not been found to be qualified to hold the position of branch manager for the Atlanta location, Academy Mortgage shall submit to the Department for its approval within ten days the application of a different candidate for branch manager, which process shall continue until Academy Mortgage submits the application of an individual for branch manager that is approved by the Department. It is the intent of Academy Mortgage to replace Ms. Spearman as the branch manager within forty-five days of the entry of this Consent Order. However, in the event Ms. Spearman vacates the branch manager position before her successor is approved, or the individual whose application is submitted to the Department to serve as the new branch manager

is not approved before she concludes her duties in this role, Academy Regional Manager Jerry Devlin shall serve as the acting branch manager for the Atlanta location for a period of time not to exceed fifteen days. While serving as acting branch manager, Mr. Devlin work full time and be physically present at the Atlanta location of Academy Mortgage during the business hours that this branch location is open. If Academy Mortgage does not have in place a new branch manager approved by the Department within sixty days of the entry date of this Consent Order, it shall close its Atlanta location until such time a new Department-approved branch manager is in place.

(b) Within sixty days of the entry date of this Consent Order, Academy Mortgage shall submit a written plan to the Department detailing how the Georgia branch manager for its Atlanta location will carry out his or her supervision of employees to ensure that only licensed individuals serve as mortgage loan originators. In the event the written plan is not acceptable to the Department, Academy Mortgage will submit a revised written plan addressing the Department's stated concerns within fifteen days of receipt of notification from the Department regarding same, which process shall continue until Academy Mortgage submits a written plan that fully addresses the Department's reasonable concerns. For the purposes of this Consent Order, "supervision" shall mean daily management and oversight that is reasonably designed to result in compliance with the Georgia Residential Mortgage Act, O.C.G.A. § 7-1-1000 *et seq.*, and the rules of the Department, including, but not limited to, the limitations on the duties that can be performed by employees of Academy Mortgage that are not licensed as Georgia mortgage loan originators.

3. Within forty-five days of the entry date of this Consent Order, Academy Mortgage shall provide the Department with written confirmation that none of its unlicensed employees are soliciting Georgia residential mortgage loans in person or through Academy Mortgage's commercial website. Within this same timeframe, Academy Mortgage shall notify

the Department that it has provided written direction to all of its employees that they may not represent or create the misimpression in any advertisement, including business cards; websites, including social and professional networking sites; or e-mail communications with borrowers, consumers or business partners that they are licensed Georgia mortgage loan originators when they are not.

4. Academy Mortgage shall ensure that each person it employs to engage in Georgia mortgage loan originator activities holds a current, valid license issued by the Department. A mortgage loan originator whose Georgia license has been revoked, has been surrendered, or has expired shall not be permitted to work for Academy Mortgage as a licensed mortgage loan originator as of the date the revocation, surrender or expiration of license takes effect.

5. Academy Mortgage shall not permit its employees to sign any Georgia residential mortgage loan documents to be provided to lenders or borrowers unless that person is a mortgage loan originator licensed by the Department executing them in his or her own name. In the event that Academy Mortgage becomes aware that any employee has signed the name of a Georgia licensed mortgage loan originator on any residential mortgage loan documents, Academy Mortgage shall inform the Department in writing of the facts and circumstances surrounding each occurrence within five business days of its discovery.

6. Academy Mortgage shall, within ten (10) days after knowledge of the event, report in writing to the Department:

- (a) any knowledge or discovery of an act prohibited by O.C.G.A. § 7-1-1013;
- (b) the discharge of any employee for dishonest, fraudulent or unlawful acts, including, but not limited to, engaging in any activity for which a Georgia mortgage loan originator's license is required but is not held by the party engaging in it, and/or aiding, abetting, and/or facilitating the commission of such activity; and
- (c) any administrative, civil, or criminal action initiated against Academy

Mortgage or any of its control persons by any government or regulatory entity.

7. In addition to the \$10,000 in fines that Academy Mortgage already has remitted to the Department in this matter, Academy Mortgage agrees to pay the Department fines totaling \$103,000, which shall be paid in certified funds by Academy Mortgage, be made payable to the Department, and shall be remitted to the Department contemporaneously with the execution of this Consent Order.

8. Academy Mortgage shall contribute \$5,000.00 to the State Regulatory Registry, LLC, a wholly-owned subsidiary of the Conference of State Bank Supervisors ("CSBS") to support the Nationwide Mortgage Licensing System and Registry, jointly sponsored by CSBS and the American Association of Residential Mortgage Regulators. This contribution shall be paid in certified funds, be made payable to the State Regulatory Registry, LLC, and shall be remitted to the Department contemporaneously with the execution of this Consent Order.

9. Within ten business days of the entry date of this Consent Order, Petitioners shall update their responses to Disclosure Questions on their respective Nationwide Mortgage Licensing System and Registry filings to reflect the existence of this final administrative action against them. In addition, written notification shall be given to each state in which Academy Mortgage holds a mortgage license or registration disclosing the existence of this Consent Order and providing a copy of it where such notification is required by state law.

10. Petitioners shall cooperate with the Department in any investigation or administrative or civil action initiated against any current or former employees of Academy Mortgage. The cooperation of Petitioners shall include, but not be limited to, providing the Department with requested documents, being interviewed by employees of the Department, and providing sworn written and verbal testimony about current or former employees of Academy Mortgage. This paragraph has been included in this Consent Order at the Department's request; the Petitioners have not made representations that they can provide any specific information to

the Department, nor have Petitioners offered to provide any specific information to the Department as an inducement to obtain this Consent Order.

11. Academy Mortgage withdraws the request for a hearing that was filed after receiving the Notice of Intent to Revoke Annual License issued by the Department.

12. Adam Michael Kessler and John Duane Shaw withdraw their requests for hearings that were filed after receiving the proposed Orders to Cease and Desist issued to them by the Department.

13. Contemporaneous with the acceptance of this Consent Order, the Department shall withdraw the Notice of Intent to Revoke Annual License issued to Academy Mortgage and the proposed Orders to Cease and Desist issued to Adam Michael Kessler and John Duane Shaw.

14. The entry of this Consent Order shall resolve all issues set forth in the Report of Examination that resulted in the Notice of Intent to Revoke Annual License being issued to Academy Mortgage as well as the proposed Orders to Cease and Desist that were issued to Adam Michael Kessler, and John Duane Shaw.

15. All written notifications and requests for approval required by this Consent Order shall be mailed to:

Georgia Department of Banking and Finance
Attention: Director of Mortgage Supervision
2990 Brandywine Road, Suite 200
Atlanta, Georgia 30341

16. Petitioners shall strictly comply with the terms of this Consent Order, the Georgia Fair Lending Act, O.C.G.A. § 7-6A-1 *et seq.*, the Georgia Residential Mortgage Act, as well as the rules and regulations enacted pursuant thereto.

(a) In the event any terms of this Consent Order are violated, the Department may initiate further administrative proceedings against Academy Mortgage, Adam Michael Kessler, and/or John Duane Shaw for such violations. If the Department initiates any administrative

proceedings, then violation of this Consent Order, if established by the Department, shall be available for consideration as grounds to support the Department's administrative actions.

(b) The terms of this Consent Order may be enforced by the Department pursuant to O.C.G.A. §§ 7-1-1017(g) and 7-1-1018(b).

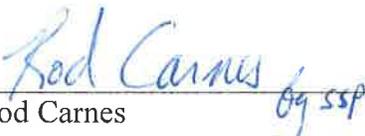
17. This Consent Order shall be regarded as a public document that the Department may publish in the same manner as a final order of the agency.

SO ORDERED, this 8th day of November, 2011.



ROBERT M. BRASWELL
Commissioner
Georgia Department of Banking and Finance

Consented to by:



Rod Carnes
Deputy Commissioner
Non-Depository Financial Institutions
Georgia Department of Banking and Finance
2990 Brandywine Road, Suite 200
Atlanta, Georgia 30341



Adam Michael Kessler
In his individual capacity and as an owner of
Academy Mortgage Corporation
1218 East 7800 South, Suite 100
Sandy, Utah 84094



John Duane Shaw
In his individual capacity and as an owner of
Academy Mortgage Corporation
1218 East 7800 South, Suite 100
Sandy, Utah 84094