

Index: OFR 2016-264

STATE OF FLORIDA  
OFFICE OF FINANCIAL REGULATION

OFFICE OF FINANCIAL REGULATION,

Petitioner

V.

FIRST SOLUTIONS, INC., d/b/a  
CREDIT ONE, AND ANDREW MANGINI,

Respondents.

Administrative Proceeding Docket  
Number: 54637

DOAH Case Number: 15-4335



**FINAL ORDER**

The State of Florida, Office of Financial Regulation ("Office"), being authorized and directed to administer and enforce Chapter 687, Florida Statutes, hereby enters this Final Order with Notice of Rights ("Final Order") as authorized by the provisions of Chapters 120 and 687, Florida Statutes, against First Solutions, Inc., d/b/a Credit One and Andrew Mangini (collectively the "Respondents").

Darren A. Schwartz, Administrative Law Judge, entered his Recommended Order on February 15, 2016, a copy of which is attached hereto as Exhibit A. The Recommended Order advised all parties of the right to submit written exceptions to be filed with the Office within fifteen (15) days of the date of entry of the Recommended Order. Accordingly, the deadline for filing exceptions to the Recommended Order was March 1, 2016.

On February 24, 2016, Respondents filed written exceptions to the Recommended Order with the Office's Agency Clerk, a copy of which is attached hereto as Exhibit B.<sup>1</sup>

On February 29, 2016, the Office filed written exceptions to the Recommended Order with the Office's Agency Clerk. On March 3, 2016, the Office withdrew its written exceptions to the Recommended Order. As such, the Office's written exceptions will not be considered due to the Office's withdrawal of its written exceptions.

On March 4, 2016, the Office filed Petitioner's Response to Respondents' Exception to Recommended Order ("Petitioner's Response") with the Office's Agency Clerk, a copy of which is attached hereto as Exhibit C.

After having reviewed the Recommended Order and the complete record in this case, the Office hereby makes the following findings and conclusions.

#### **STANDARD OF REVIEW**

The actions an agency may take in response to a recommended order are provided in Section 120.57(1)(l), Florida Statutes:

The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law over which it has substantive jurisdiction and interpretation of administrative rules over which it has substantive jurisdiction. When rejecting or modifying such conclusion of law or interpretation of administrative rule, the agency must state with particularity its reasons for rejecting or modifying such conclusion of law or interpretation of administrative rule and must make a finding that its substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The agency may not reject or modify the findings of fact unless the agency first determines from a review of the entire record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential

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<sup>1</sup> Respondents written exceptions contains only "exception one" to paragraphs 15, 18, 19, 20 and 21 of the Recommended Order. The Office characterizes Respondents' written exceptions as five exceptions to the Recommended Order and will label these as such in this Final Order.

requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action.

The process for the presiding officer's recommended order and the manner in which an agency shall rule on exceptions are provided in Section 120.57(1)(k), Florida Statutes:

The presiding officer shall complete and submit to the agency and all parties a recommended order consisting of findings of fact, conclusions of law, and recommended disposition or penalty, if applicable, and any other information required by law to be contained in the final order. All proceedings conducted under this subsection shall be de novo. The agency shall allow each party 15 days in which to submit written exceptions to the recommended order. The final order shall include an explicit ruling on each exception, but an agency need not rule on an exception that does not clearly identify the disputed portion of the recommended order by page number or paragraph, that does not identify the legal basis for the exception, or that does not include appropriate and specific citations to the record.

### **RULING ON EXCEPTIONS**

1. Respondents' exception one regarding paragraph 15 of the Recommended Order is rejected because the Administrative Law Judge's finding was based on competent substantial evidence. As stated in Petitioner's response and the record of the case, Ms. Saenz testified that the two payments were to receive a \$5,000 loan. It is the purview of the Administrative Law Judge to weigh the evidence presented.

2. Respondents' exception two regarding paragraph 18 of the Recommended Order is rejected because the Administrative Law Judge's finding was based on competent substantial evidence. As stated in Petitioner's response and the record of the case, Ms. Saenz testified that the two payments were to receive a \$5,000 loan. It is the purview of the Administrative Law Judge to weigh the evidence presented.

3. Respondents' exception three regarding paragraph 19 of the Recommended Order is rejected because the Administrative Law Judge's finding was based on competent substantial

evidence. As stated in Petitioner's response and the record of the case, Ms. Saenz testified that the two payments were to receive a \$5,000 loan. It is the purview of the Administrative Law Judge to weigh the evidence presented.

4. Respondents' exception four regarding paragraph 20 of the Recommended Order is rejected because the Administrative Law Judge's finding was based on competent substantial evidence. It is the purview of the Administrative Law Judge to weigh the evidence presented.

5. Respondents' exception five regarding paragraph 21 of the Recommended Order is rejected because the Administrative Law Judge's finding was based on competent substantial evidence. It is the purview of the Administrative Law Judge to weigh the evidence presented.

#### **FINDINGS OF FACT**

1. The findings of fact set forth in the Recommended Order are approved and adopted and incorporated herein by reference.

2. There is competent substantial evidence to support the findings of fact.

#### **CONCLUSIONS OF LAW**

1. The Office has jurisdiction of this matter pursuant to section 120.57(1) and Chapter 687, Florida Statutes.

2. The conclusions of law set forth in the Recommended Order are approved and adopted and incorporated herein by reference.


#### **PENALTY**

Upon review and consideration of the Recommended Order and the complete record of this proceeding, it is hereby **ORDERED**:

1. Respondents shall cease and desist from violations of Chapter 687, Florida Statutes, and any rule or order promulgated pursuant thereto by the Office.

2. Respondents shall pay an administrative fine in the amount of \$10,000 within thirty (30) days of the docketing of this Final Order. This administrative fine shall be submitted in the form of a cashier's check or money order made payable to the **Department of Financial Services**. Such payment shall be sent to the attention of **Agency Clerk, Office of Financial Regulation, P.O. Box 8050, Tallahassee, Florida 32314-8050**.

DONE and ORDERED this 11<sup>th</sup> day of May 2016, in Tallahassee, Leon County, Florida.

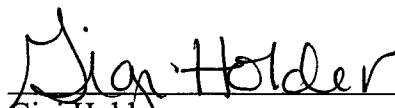
  
Drew J. Breakspear, Commissioner  
Office of Financial Regulation

**NOTICE OF RIGHTS**

**A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK, OFFICE OF FINANCIAL REGULATION, GENERAL COUNSEL'S OFFICE, POST OFFICE BOX 8050, TALLAHASSEE, FLORIDA 32314-8050, AND A COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 2000 DRAYTON DRIVE, TALLAHASSEE, FLORIDA 32399-0950, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11<sup>th</sup> day of May 2016, a true and correct copy of the foregoing Final Order has been furnished by U.S. Mail and electronic mail to Respondents' counsel, William G. McCormick, Esquire, Gray Robinson, P.A., 401 East Las Olas Boulevard, Suite 1000, Fort Lauderdale, Florida 33301 and [william.mccormick@gray-robinson.com](mailto:william.mccormick@gray-robinson.com); by U.S. Mail to Darren A. Schwartz, Administrative Law Judge, Division of Administrative Hearings, The DeSoto Building, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060; and by electronic mail to Melinda Hilton Butler, Esquire, at [Melinda.Butler@flofr.com](mailto:Melinda.Butler@flofr.com) and Miriam S. Wilkinson, Esquire, at [Miriam.Wilkinson@flofr.com](mailto:Miriam.Wilkinson@flofr.com).

  
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