

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

OFFICE OF FINANCIAL REGULATION,

Petitioner,

vs.

Case No. 15-4335

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

Respondents.  
\_\_\_\_\_ /

RECOMMENDED ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings ("DOAH") for final hearing by video teleconference on October 14 and 15, 2015, at sites in Tallahassee and Lauderdale Lakes, Florida.

APPEARANCES

For Petitioner: Melinda Hilton Butler, Esquire  
Office of Financial Regulation  
The Fletcher Building, Suite 550  
101 East Gaines Street  
Tallahassee, Florida 32399-2202

For Respondent: William G. McCormick, Esquire  
Gray Robinson, P.A.  
Suite 1000  
401 East Las Olas Boulevard  
Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUES

Whether Respondents acted as a loan broker by assessing or collecting advance fee payments from borrowers in violation of

sections 687.14(4) (a) and (b) and 687.141(1), Florida Statutes, and, if so, the appropriate penalty to be imposed against Respondents.

PRELIMINARY STATEMENT

On March 6, 2015, Petitioner, Office of Financial Regulation ("OFR"), issued an Administrative Complaint and Notice of Intent to Issue Cease & Desist Final Order against Respondents, First Solutions, Inc., d/b/a Credit One, and Andrew Mangini ("Respondents"). The Administrative Complaint alleged that "[b]etween September 2011 and July 2014, in more than 140 instances, Respondents assessed and/or collected up-front fee payments (of approximately \$499) from consumers." By engaging in such conduct, OFR alleged that Respondents conducted themselves as a loan broker in violation of sections 687.14(4) (a) and (b) and 687.141(1). OFR seeks to impose an administrative fine against Respondents in the amount of \$700,000 (140 alleged violations times \$5,000 per violation) and a cease and desist order.

On March 26, 2015, Respondents timely filed a Request for Formal Hearing. On July 30, 2015, OFR referred the matter to DOAH to assign an Administrative Law Judge to conduct the final hearing. On August 6, 2015, the undersigned set the final hearing for October 14 and 15, 2015. On October 9, 2015, the

parties timely filed their Joint Pre-hearing Stipulation, in which they stipulated to certain issues of law and exhibits.

On September 23, 2015, OFR filed a motion to relinquish jurisdiction. On September 29, 2015, OFR filed a Motion to Issue Order of Confidentiality. On September 30, 2015, Respondents filed Respondents' Response in Opposition to Petitioner's Motion to Relinquish Jurisdiction; Motion for Leave to File Amended Request for Administrative Hearing; and Motion to Stay Proceeding.

On October 7, 2015, OFR filed a response to Respondents' Response in Opposition to Petitioner's Motion to Relinquish Jurisdiction; the Motion for Leave to File Amended Request for Administrative Hearing; and Motion to Stay. A telephonic hearing was held on October 9, 2015, at which counsel for the parties appeared and presented argument on the motions.

On October 9, 2015, OFR filed an unopposed motion to allow two out-of-state witnesses to testify at the hearing by telephone. On October 9, 2015, the undersigned entered an Order granting OFR's motion to allow the two out-of-state witnesses to testify at the hearing by telephone.

On October 12, 2015, the undersigned entered Orders denying OFR's motions to relinquish jurisdiction and to issue order of confidentiality; granting Respondents' Motion for Leave to File Amended Request for Administrative Hearing; and denying

Respondents' Motion to Stay. Respondents' Amended Request for Administrative Hearing was deemed filed on October 12, 2015.

On October 12, 2015, OFR filed a Motion to Enter Deposition Into Evidence as Testimony. On October 13, 2015, Respondents filed Respondents' Motion in Limine Seeking to Exclude TD Bank Records.

The final hearing was held on October 14 and 15, 2015, as scheduled. At hearing, a representative of OFR appeared along with its counsel. Respondents did not appear at the final hearing, but they were represented at the hearing through their counsel.

At the commencement of the hearing, the undersigned granted the unopposed Motion to Enter Deposition into Evidence as Testimony and the deposition of Nicole Gentry, who was unavailable for the hearing, was received into evidence as OFR's Exhibit 18. After hearing argument from counsel for the parties on the Motion in Limine, the undersigned denied the motion.

At hearing, OFR presented the live testimony of Alex Toledo and Brandon Slisz, and Rosa Saenz by telephone. OFR's Exhibits 1A, 1B, 2 through 5, 6A, 6B, 7, 8, 9 (pages 3 through 10 only), 10 (pages 3 through 11 only), 11 (pages 3 through 11 only), 13 (pages 3 through 11 only), 14 (pages 7 through 14 only), 16, 17B, 18, and 19 were received into evidence.<sup>1/</sup> Respondents did not present any witness testimony, and they did not offer any exhibits into evidence.

At the conclusion of the hearing, Respondents' counsel requested that the parties' proposed recommended orders be filed 45 days after the filing of the final hearing transcript at DOAH. OFR did not oppose this request and the undersigned granted the request. The three-volume final hearing Transcript was filed at DOAH on November 5, 2015. The parties timely filed proposed recommended orders, which were considered in the preparation of this Recommended Order.

Unless otherwise indicated, all references to the Florida Statutes are the 2014 version.

#### FINDINGS OF FACT

1. OFR is responsible for the administration and enforcement of chapter 687, Florida Statutes.

2. On December 13, 2010, First Solutions, Inc. ("First Solutions"), was incorporated in the state of Florida. At all times material hereto, Andrew Mangini has been the sole officer/director of First Solutions. The mailing address of First Solutions and Mr. Mangini are the same: 830 Hawthorn Terrace, Weston, Florida 33327.

3. At all times material hereto, First Solutions has been the sole owner of the fictitious name, Credit One. Credit One was registered as a fictitious name with the State of Florida, Department of State, on December 22, 2010. The mailing address

for the fictitious name of Credit One is 830 Hawthorn Terrace, Weston, Florida 33327.

4. On July 20, 2010, Unsecured Loan Source II, Inc., was incorporated in the state of Florida. At all times material hereto, Michael Puglisi has been the sole officer/director of Unsecured Loan Source II, Inc. The mailing address of Unsecured Loan Source II, Inc., is 5340 North Federal Highway, Suite 201, Lighthouse Point, Florida 33064.

5. On January 22, 2009, Internet Transaction Center, Inc., was incorporated in the state of Florida. At all times material hereto, Mr. Mangini and Mr. Puglisi have been officers/directors of Internet Transaction Center, Inc. The mailing address of Internet Transaction Center, Inc., is 830 Hawthorn Terrace, Weston, Florida 33327. During the time in which Mr. Puglisi was an officer/director of Internet Transaction Center, Inc., his mailing address was 5340 North Federal Highway, Lighthouse Point, Florida 33064.

6. At all times material hereto, Respondents operated and conducted business as Unsecured Loan Source and Credit One Total.

7. On December 24, 2010, Mr. Mangini opened a business bank checking account at TD Bank, N.A., in the name of First Solutions, Inc., d/b/a Credit One.

8. In early 2012, Nicole Gentry sought to obtain an unsecured personal loan over the internet.

9. Ms. Gentry's internet search led her to Unsecured Loan Source.

10. Ms. Gentry contacted Unsecured Loan Source by telephone and spoke with a representative named "Ed" about securing an unsecured personal loan. Ms. Gentry provided "Ed" with certain personal, credit, and bank account information to withdraw a loan fee of \$499.00. Ms. Gentry paid the \$499.00 loan fee in order to obtain a personal loan from Unsecured Loan Source.

11. The \$499.00 fee was debited from Ms. Gentry's bank account shortly after she submitted her online application for the loan, and the fee was deposited directly into the TD business bank checking account of First Solutions, Inc., d/b/a Credit One. Subsequently, Ms. Gentry received an email requesting additional information, and she provided the information requested. However, Ms. Gentry never received a loan.

12. In August 2011, Rosa Saenz of Taft, California, attempted to obtain an unsecured personal loan.

13. Ms. Saenz's internet search led her to Credit One Total.

14. Ms. Saenz contacted Credit One Total and spoke with a representative named "Nick" about securing an unsecured personal loan in the amount of \$5,000. Ms. Saenz completed a form titled "Credit One Total Payment by Check Authorization Form" and faxed it to Credit One Total. The form reflects that Credit One Total

is located at "5340 North Federal Hwy #201 Lighthouse Point, FL 333064 Ph. 312-554-5980 Fax 954-531-1440."

15. In the form, Ms. Saenz provided Credit One Total with certain personal, credit, and bank account information, so that Credit One Total could withdraw an initial installment loan fee of \$267.00. Ms. Saenz made the initial installment fee payment of \$267.00, and, within a couple of weeks, she made a second installment fee payment to Credit One Total. Ms. Saenz did not specify the amount of the second installment.

16. No direct evidence was presented that the two payments made by Ms. Saenz were, in fact, deposited into the First Solutions business bank checking account at TD bank. The bank records received in evidence do not include records from the year 2011, and begin with the year 2012.

17. However, the business checking account of First Solutions was utilized by Credit One Total. The TD bank records reflect that checks made payable to Credit One Total were deposited directly into the business bank checking account of First Solutions, Inc., d/b/a Credit One.

18. Both payments were made by Ms. Saenz as an advance fee in order that she would obtain the loan from Credit One Total, and so that Credit One would repair her credit report. The credit repair, however, was ancillary to Ms. Saenz's principal



reason for making the advance fee payments--to obtain a personal loan.

19. Although Ms. Saenz paid the two installment fee payments to Credit One Total for a loan, she never received a loan.

20. The persuasive and credible evidence adduced at hearing clearly and convincingly establishes that Respondents assessed or collected advance fee payments from two borrowers, Ms. Gentry and Ms. Saenz.

21. The clear and convincing evidence adduced at hearing establishes that Respondents acted as a loan broker by assessing or collecting advance fee payments from Ms. Gentry and Ms. Saenz. Respondents did not have an exemption from section 687.14 in order to be considered a loan broker.

22. OFR failed to prove by persuasive, credible, and clear and convincing evidence that Respondents acted as a loan broker with regard to anyone other than Ms. Gentry and Ms. Saenz.<sup>2/</sup>

#### CONCLUSIONS OF LAW

23. DOAH has jurisdiction over the parties and subject matter of this proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes (2015).

24. Section 687.141 provides in pertinent part as follows:

**687.141 Loan brokers; prohibited acts.**—No loan broker shall:

(1) Assess or collect an advance fee from a borrower to provide services as a loan broker.

25. "Loan broker" is defined in section 687.14(4) as follows:

(4) "Loan broker" means any person, except any bank or savings and loan association, trust company, building and loan association, credit union, consumer finance company, retail installment sales company, securities broker-dealer, real estate broker or sale associate, attorney, federal Housing Administration or United States Department of Veterans Affairs approved lender, credit card company, installment loan licensee, mortgage broker or lender, or insurance company, provided that the person excepted is licensed by and subject to regulation or supervision of any agency of the United States or this state and is acting within the scope of the license; and also excepting subsidiaries of licensed or chartered consumer finance companies, banks, or savings and loan associations; who:

(a) For or in expectation of consideration arranges or attempt to arrange or offers to fund a loan of money, a credit card, or line of credit;

(b) For or in expectation of consideration assists or advises a borrower in obtaining or attempting to obtain a loan of money, a credit card, a line of credit, or related guarantee, enhancement, or collateral of any kind or nature;

(c) Acts for or on behalf of a loan broker for the purpose of soliciting borrowers; or

(d) Holds herself or himself out as a loan broker.

26. "Advance fee" is defined in section 687.14(1) to mean "any consideration which is assessed or collected, prior to the closing of a loan, by a loan broker."

27. "Borrower" is defined in section 687.14(2) to mean "a person obtaining or desiring to obtain a loan of money, a credit card, or a line of credit."

28. Section 687.142 provides as follows:

**687.142 Responsibility of principals.**—Each principal of a loan broker may be sanctioned for the actions of the loan broker, including its agents or employees, in the course of business of the loan broker.

29. "Principal" is defined in section 687.14(5) to mean "any officer, director, partner, joint venture, branch manager, or other person with similar managerial or supervisory responsibilities for a loan broker."

30. OFR has the burden of proving its allegations by clear and convincing evidence. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987). The "clear and convincing evidence" standard requires that the evidence be found credible, the facts to which the witnesses testify must be distinctly remembered, the testimony must be precise and explicit, and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of

fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established. In re Davey, 645 So. 2d 398, 404 (Fla. 1994); Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

31. As detailed above, OFR proved, by clear and convincing evidence, that Respondents acted as a loan broker by assessing or collecting advance fee payments from two borrowers, Ms. Gentry and Ms. Saenz. OFR failed to prove, however, by clear and convincing evidence, that Respondents acted as a loan broker by assessing or collecting advance fee payments from any other persons.<sup>3/</sup>

32. Pursuant to section 687.143(2), OFR may impose and collect an administrative fine of up to \$5,000 for each violation against any person found to have violated any provision of this act, any rule of the commission, order of the office, or written agreement entered into with the office.

33. Pursuant to section 687.143(2), OFR may also order a loan broker to cease and desist whenever the office determines that the loan broker has violated or is violating or will violate any provision of this act, any rule of the commission, order of the office, or written agreement entered into with the office.

34. At \$5,000 per instance, the two proven instances equal a total administrative fine of \$10,000.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that Petitioner, Office of Financial Regulation, enter a final order finding Respondents operated as a "loan broker" by assessing or collecting advance fees in two instances in violation of section 687.141(1), Florida Statutes; imposing a total fine not to exceed \$10,000; and ordering Respondents to cease and desist from all such activity.

DONE AND ENTERED this 15th day of February, 2016, in Tallahassee, Leon County, Florida.



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DARREN A. SCHWARTZ  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 15th day of February, 2016.

ENDNOTES

<sup>1/</sup> At the hearing, counsel for OFR provided the undersigned with a DVD-R containing most of its proposed hearing exhibits. Some of the proposed exhibits on the DVD-R, however, were not received into evidence at the hearing. Following the hearing, the undersigned transferred onto a TDK CD those exhibits from the DVD-R that were received into evidence at the final hearing.

With the exception of Exhibits 18 and 19, the TDK CD contains all of the exhibits received into evidence at the final hearing.

<sup>2/</sup> In an effort to prove additional instances of Respondents acting as a loan broker, OFR attempted to solicit testimony regarding various purported complaints by 44 other alleged borrowers who did not testify. In preparation for the hearing, Mr. Slisz reviewed documents contained in OFR's investigative file collected or compiled by others. The investigative file purportedly contained individual consumer complaints that were either lodged with OFR or with law enforcement agencies that also received complaints from citizens of various states.

Mr. Slisz testified at length regarding his review and analysis of the TD bank records and the bank records show that there were, in fact, a large number of deposits made into the TD bank account maintained by First Solutions in the approximate amount of \$499.00, plus change. However, the fact that numerous deposits were made into the account does not prove by clear and convincing evidence that the monies were assessed or collected from a borrower as an advance fee for a loan. Mr. Slisz lacks personal knowledge with respect to what the deposits were given in exchange for.

In an attempt to connect his review of the bank records to a particular borrower, Mr. Slisz testified he reviewed information from the complaints and tied the information from the complaints back to the TD bank records. By OFR's own admission, the complaints were a key part of the chain of evidence necessary to "follow the money" and prove the significant number of instances alleged in the Administrative Complaint.

However, none of the purported complaints were offered into evidence at the hearing, and no purported borrowers other than Ms. Gentry and Ms. Saenz testified at the hearing.

The undersigned rejects Mr. Slisz's testimony with regard to the complaints as unpersuasive and makes no factual findings regarding the contents of any such alleged complaints.

<sup>3/</sup> Notably, even if the complaints were offered and received into evidence at the hearing, however, that does not mean the undersigned would have been required to use the complaints in resolving a factual issue. As conceded by OFR in its proposed recommended order, any reference to the complaints is hearsay. Therefore, the complaints themselves, or any reference to the complaints, cannot be used as the sole basis to support a finding

of fact, because the complaints do not fall within an exception to the hearsay rule. See § 120.57(1)(c), Fla. Stat. ("Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.").

Contrary to OFR's position, the complaints do not supplement or explain other non-hearsay evidence. Rather, the complaints are a substantial missing link to the agency's chain of evidence upon which it seeks to prove the additional violations.

Finally, even if the testimony regarding the complaints could be used by the undersigned, however, for the reasons stated above, the undersigned would not find any additional violations based on the testimony because it is not credited or persuasive.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.