

Index: OFR2018-470

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION



IN RE:

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION,

Petitioner,

vs.

PMF, INC., d/b/a PIONEER MORTGAGE
FUNDING, and SCOTT CUGNO,

Respondents.

Administrative Proceeding Docket
Number: 65883

(Former DOAH Case No.: 17-5444)

DIVISION OF ADMINISTRATIVE HEARINGS
FILED
DATE 11/20/2018

FINAL ORDER

This cause came on for consideration and final agency action. Upon review of the complete record in this case, including the Recommended Order (“RO”) issued pursuant to a hearing held before the Division of Administrative Hearings in accordance with section 120.57(1), Florida Statutes, as well as all pleadings, motions, exceptions, responses, memoranda, and other documents filed in the case, and being otherwise fully advised in the premises, the Interim Commissioner hereby makes the following findings and conclusions.

PROCEDURAL HISTORY

PMF was licensed as a mortgage lender on January 25, 2012, and maintained its mortgage lender license until January 1, 2015. On December 30, 2014, PMF became licensed as a mortgage broker, which is the license it currently maintains. Scott Cugno (“Cugno”) is the sole owner, President, and principal loan originator of PMF. The Office conducted an examination of PMF’s business records and activities for the period of July 1, 2014 through April 30, 2015. PMF was

examined as a mortgage lender for the period of July 1, 2014 through December 30, 2014, and as a mortgage broker for the period of January 1, 2015, through April 30, 2015.

On January 18, 2017, the Office issued an Administrative Complaint seeking disciplinary action against PMF's mortgage broker license. Respondents timely submitted an election of proceeding form, admitting to the factual allegations in the Complaint and requesting a hearing pursuant to section 120.57(2), Florida Statutes. The hearing was set for October 6, 2017.

On September 28, 2017, Respondents submitted a revised election of proceeding and requested a hearing pursuant to section 120.57(1), Florida Statutes. The case was referred to the Division of Administrative Hearings on September 29, 2017, and thereafter a final hearing was held in Tampa on March 30, 2018. Prior to the hearing, the Office filed Petitioner's Motion for Findings of Fact on February 1, 2018, which requested the Administrative Law Judge ("ALJ") to issue an Order finding that each of the facts admitted to by Respondents in their response to Petitioner's Request for Admissions, be "determined for the purposes of this litigation." On February 9, 2018, Petitioner's Motion for Findings of Fact ("FFO") was granted. Parties submitted Proposed Recommended Orders ("PRO") post-hearing, and a Recommended Order ("RO") was issued June 29, 2018. Respondents timely filed their "Objections to the Proposed Recommended Order" on July 14, 2018. The Office filed its Response to PMF and Scott Cugno's Objections to the Recommended Order on August 2, 2018; Respondents filed their "Respondent's (sic) Reply to the Office of Financial Regulation's August 2, 2018 Objections to the Recommended Order of June 29, 2018; The Office filed its Motion to Strike Respondents' Reply on August 17, 2018; and the Respondents filed Respondent's (sic) Response In Opposition to the Office of Financial Regulation's Motion to Strike with Incorporated Memorandum of Law on August 24, 2018. On

September 7, 2018, Pamela P. Epting, Interim Commissioner, entered the Agency's Order Denying Petitioner's Motion to Strike Respondents' Reply.

STANDARD OF REVIEW OF RECOMMENDED ORDER AND EXCEPTIONS

The actions that the Office may take in response to a Recommended Order are set forth in section 120.57(1)(1), Florida Statutes. With respect to the findings of fact in a Recommended Order, the Office has limited authority:

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 requirements of law.

"Competent, substantial evidence" is defined in *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957), as "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred" or such evidence as is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." An agency may reject the hearing officer's findings where there is no competent, substantial evidence from which the finding could reasonably be inferred. *Heifetz v. Dep't of Bus. Reg.*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985).

When determining whether to reject or modify findings of fact in a recommended order, the agency is not permitted to reweigh the evidence, judge the credibility of the witnesses, resolve conflicts in the evidence, or otherwise interpret the evidence anew. *Heifetz*, 475 So. 2d at 1281; *Brown v. Criminal Justice Standards and Training Comm'n*, 667 So. 2d 977, 979 (Fla. 4th DCA 1996). However, pursuant to section 120.57(1)(1), Florida Statutes, an agency may in its final order reject or modify the conclusions of law over which it has substantive jurisdiction, as well as the interpretation of administrative rules over which it has substantive jurisdiction. In so doing, the

agency must: (1) state with particularity its reasons for rejecting or modifying such conclusions of law or interpretation of administrative rule; and (2) make a finding that the substituted conclusion of law or interpretation of administrative rule is as or more reasonable than that which was rejected or modified.

Following a hearing pursuant to section 120.57(1), Florida Statutes, and receipt of the recommended order, an agency's duty and obligation is to conduct a procedural review of the case. *Venetian Shores Home and Property Owners v. Ruzakawski*, 336 So.2d 399, 401 (Fla. 3rd DCA 1976). That the essential requirements of law are satisfied is evident from a review of the record which discloses proper notices, opportunities to be heard, and full participation by Respondents in the process.

References to the transcript are signified as "Tr.", followed by the page number.

RULINGS ON EXCEPTIONS

Section 120.57(1)(k), Florida Statutes, and Rule 28-106.217, Florida Administrative Code, require that each exception "shall identify the disputed portion of the recommended order by page number or paragraph, shall identify the legal basis for the exception, and shall include any appropriate and specific citations to the record." *See Boundy v. Miami-Dade County School Board*, 994 So. 2d 433 (Fla. 3d DCA 2008). The Final Order shall include an explicit ruling on each exception, except that an agency need not rule on any exception not in conformance with the law or the rule. *Agency for Health Care Administration v. Kenneth Harden d/b/a Ken Care, Inc.*, 12-2868MPI (DOAH 2013).

In violation of both the statute and the rule, Respondents' Objections to the Proposed Recommended Order submittal fails to identify, or to appropriately identify, the disputed portions of the Recommended Order by page number or paragraph, fails to identify the legal basis for the

exception, and in many cases, fails to include specific citations to the record. To the extent that an “objection” or purported exception fails to conform to the requirements of the statute and rule, the “objection” or purported exception shall be denied.

An agency may not reweigh evidence introduced at hearing, resolve conflicts in the evidence, judge the credibility of witnesses or otherwise interpret the evidence anew. *Brown v. Criminal Justice Stds. & Training Comm'n*, 667 So. 2d 977, 979 (Fla. 4th DCA 1996) (citing *Heifetz v. Department of Business Regulation*, 475 So. 2d 1277, 1281 (Fla. 1st DCA 1985)). To the extent that Respondents’ “objections” or purported exceptions introduce new arguments, or attempt to reargue issues raised at hearing or in its post-hearing submittal, and which were previously rejected by the ALJ or otherwise found to be without merit, shall be denied.

In their “objections” or purported exceptions to the Recommended Order, Respondents essentially assert the following arguments:

Pages 1, 2, 3 of the Recommended Order

Respondents raise objections to the administrative process, and not to any specified portion of the Recommended Order. They claim the proceeding was fundamentally unfair because Respondents were not represented by an attorney or Qualified Representative. They further argue that because PMF is a corporate entity, it must be represented by an attorney or Qualified Representative. Respondents’ objection includes information outside of the record of the proceedings, and alleges that Mr. Cugno was “under duress” because a family member had just passed away. This factual representation contradicts the record. During the presentation of his case, Mr. Cugno does not say his grandmother was deceased, but instead commented that “...my grandmother is passing away and it’s not a good time for me right now. But that doesn’t matter. I’m here and I’m doing what I need to do.” Mr. Cugno failed to raise this issue at the beginning of

the hearing, the record further demonstrates Respondents did not request a continuance, and did not object to proceeding with the hearing as scheduled.

Respondents' Objections to the Proposed Recommended Order mainly sets forth an argument that the proceedings were fundamentally unfair both as to Mr. Cugno and PMF because Respondents were not represented by counsel or Qualified Representative. A review of the record demonstrates neither the presence of any irregularities nor any unfairness towards Respondents during these administrative proceedings. An adverse outcome against Respondents does not provide a reasonable basis to generally conclude that Respondents were treated unfairly during the administrative hearing. To the contrary, the Office finds the proceedings comported with the essential requirements of law.

Further, to the extent Respondents are attempting to raise a new issue; are re-arguing issues raised in their post-hearing submittal; or requesting the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, Respondents objection or purported exception is rejected pursuant to *Brown, supra*, and is therefore DENIED.

“1. Objections - Statement of the Issues”

Respondents argue that, as a threshold matter, Mr. Cugno, a non-attorney, was not qualified to represent either himself or PMF, and therefore the ALJ erred by failing to conduct a “mandatory” review of Mr. Cugno’s qualifications, and to grant Respondents’ request to reopen this case for a new hearing. Respondents previously raised these issues in their post-hearing submittal, and they were considered and rejected by the ALJ in his Recommended Order. Mr. Cugno was specifically questioned by the ALJ about his readiness to go forward, and he raised no objection (Tr. 5)

The ALJ previously rejected these same arguments in his Recommended Order (RO, para. 66-68). At the hearing, the ALJ asked, and Mr. Cugno affirmed, that he was representing himself individually, as well as PMF, as its president and sole corporate officer. This was also Mr. Cugno's position throughout the course of the proceedings. (RO, para. 68). It wasn't until post-hearing submittals were due that Mr. Cugno chose to retain counsel, and the issue of Respondents' lack of legal representation was raised for the first time.

The ALJ considered the objection made in Respondents' PRO, reviewed the record and, relying on *Magnolias Nursing & Convalescent Center v. Dep't of Health & Rehabilitation Services*, 428 So.2d 256, 257 (Fla. 1st DCA 1982) (for the proposition that self-representation by corporations is permissible in administrative hearings), determined Cugno as sole owner and officer of the corporation could represent his company in this case. (RO, para 66) He also found that Rule 28-106.106, Florida Administrative Code, does not require that a preliminary determination be made that an individual, acting *pro se*, is qualified to represent himself. (RO, para. 66)

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised in their post-hearing submittal; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED, as it fails to demonstrate how Respondents' conclusions are as or more reasonable than those contained in the Recommended Order.

"3. Preliminary Statement"

Respondents "reject" the ALJ's reliance on the Office's exhibits (1, 2, 4-13, 15-18, 20, and 22-24) on the grounds that such exhibits were not reviewed and analyzed by counsel for

Respondents. Again, Respondents argue the proceedings were unfair because they were not represented by counsel. This argument was previously made in Respondents' post-hearing submittals and the argument was considered and rejected by the ALJ.

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised in their post-hearing submittal; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings.

“4. Findings of Fact 1.”

Respondents object to: (a) the ALJ framing the Recommended Order as “simply based on the product of a periodic audit”; (b) admission into evidence the Office's Exhibit 2, a letter from PMF's independent consultant, and (c) the ALJ's reliance on that exhibit in making findings of fact in his Recommended Order.

Respondents argue that the ALJ erroneously admitted into evidence the Office's Exhibit 2, a letter written by PMF's consultant in response to the Office's Report of Examination. The record demonstrates that no objection was made to admission either before, or at the time, the letter was offered into evidence. Further, Respondents failed to provide a valid legal basis to support the document's alleged inadmissibility. Competent substantial evidence exists to support the admissibility of the letter.

The ALJ found that the letter essentially admits all the violations alleged in the Administrative Complaint, and it outlines the proposed corrective action PMF intended to implement. Respondents appear to misunderstand the use of the consultant's letter – it was not

offered by the Office for the purpose of making findings in the examination, but rather to establish Respondents' admissions to those findings underpinning the violations identified by the Office during the examination.

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittal; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings.

"4. Findings of Fact 2."

Respondents argue that the Office is estopped from proceeding against them in the instant case because of an earlier action against PMF's mortgage lender license that was resolved by agreement. In that case, PMF relinquished its mortgage lender license and paid a fine.

The evidence admitted at hearing related to a prior matter for the following violations, (which were not cited in the examination at issue in the instant case): the failure to file audited financial statements for years 2012 and 2013. The Administrative Complaint in the instant matter was issued regarding violations that were found to exist during the examination period of July 1, 2014 through April 30, 2015 – clearly distinct time periods, and clearly different violations.

The elements of equitable estoppel are: 1) a representation as to a material fact that is contrary to a later-asserted position; 2) reliance on that representation; and 3) a change in position detrimental to the party claiming estoppel, caused by the representation and reliance thereon. *Kuge v. State, Dep't of Admin., Div. of Retirement*, 449 So. 2d 389, 391 (Fla. 3d DCA 1984). Although Mr. Cugno testified that he believed the prior disciplinary action resolved all issues, the record

evidence provides no basis in fact or law to support Respondents' estoppel argument. Further, the Office can only change conclusions of law relating to statutes and rules over which it has substantive jurisdiction. 120.57(1)(1), Florida Statutes. "[The] 1999 amendment to section 120.57(1)(1), Florida Statutes circumscribed an agency head's authority to review only those legal rulings that are within the agency's "substantive jurisdiction. . . Although the Secretary possesses many powers in conjunction with the exercise of the Department's substantive jurisdiction, the power to reverse the ALJ's decision not to apply collateral estoppel is not one of them." *Deep Lagoon Boat Club, Ltd. v. Sheridan*, 784 So.2d 1140, 1142 (Fla. 2nd DCA 2001); *see also Barfield v. Dep't of Health, Bd. of Dentistry*, 805 So. 2d 1008, 1011 (Fla. 1st DCA 2001) (an agency has discretion to reject an ALJ's interpretation of statutes over which the agency has substantive jurisdiction, but not general law). Since the Office has no authority over matters of general law such as equitable estoppel, it may not change or alter the findings or conclusions by the ALJ in the Recommended Order that this affirmative defense is inapplicable in the instant matter.

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings.

"4. Findings of Fact 4., 5., 6., 7."

Respondents object to the ALJ's statements in paragraph 4 of the Recommended Order as being "overly general"; to the admission of the PMF consultant's letter into evidence; and to the ALJ's reliance on the Office's Report of Examination as evidence of the violations.

The ALJ found that Mr. Cugno is the sole owner of PMF and its principal loan originator. (RO, para. 4) Because he is the control person of PMF, he is subject to administrative penalties for the unlawful actions of the business. (RO para. 4).

Further, Respondents deny that Mr. Cugno ever admitted any of the violations alleged in the Administrative Complaint. Notwithstanding this denial, the record shows that an Order on Motion for Findings of Fact was entered on February 9, 2018, stating, “Pursuant to Florida Rule of Civil Procedure 1.370(b), the admitted facts are conclusively established...” based on Respondents’ Response to the Office’s Request for Admissions. This Order had not been subsequently withdrawn or amended by the close of the proceedings.

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents’ objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ’s findings.

“4. B. The Charges: i. Count I”

Respondents assert there are infirmities in the Office’s evidence for Count I of the Administrative Complaint, which alleges Respondents operated an unlicensed branch office in Delray Beach. Specifically, they object to the ALJ’s admission of and reliance on Exhibits 2, 8, 10, 11, and 13, and “any analysis flowing from those exhibits.” Respondents reject the ALJ’s findings of fact that there were clear indicia that the Delray Beach location was operated as a branch office of PMF, arguing that the loan originator staffing that location was an attorney who was required pursuant to Florida Bar rules to display the Delray location on all documents and

business cards. The ALJ considered and rejected each of Respondents' arguments. (RO, para. 11-15)

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings. Further, to the extent applicable, Respondents' purported objection or exception is DENIED as it fails to demonstrate how Respondents' conclusions are as or more reasonable than those contained in the Recommended Order.

“4. B. The Charges: ii. Count II”

Respondents object to the ALJ's findings of fact that PMF violated requirements to maintain a Mortgage Brokerage and Lending Transaction Journal. Respondents argue both that there was no violation at all, and that there was no willful violation of this record-keeping requirement. The Office notes the Administrative Complaint does not allege a “willful violation.”

The ALJ considered and rejected each of Respondents' arguments, finding clear and convincing evidence to support Count II. (RO, para. 17, 18)

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings. Further, to the extent applicable, Respondents' objection or purported exception

is DENIED as it fails to demonstrate how Respondents' conclusions are as or more reasonable than those contained in the Recommended Order.

“4. B. The Charges: iii. Count III”

Respondents object to the ALJ's findings of fact that Respondents failed to maintain at their principal place of business in Tampa, Florida, complete documentation of each mortgage loan transaction/application for 3 years as required by law. Respondents object to the ALJ's admission of and reliance on the Office's evidence, arguing the evidence is spurious and the testimony incomplete; therefore, it was error and prejudicial to admit such evidence.

The ALJ found by clear and convincing evidence Mr. Cugno admitted that certain documentation for loan applications was kept at locations other than the Tampa office, and that PMF's consultant acknowledged in a letter that PMF failed to comply with the law but would correct the problem with a new email policy. (RO, para. 20-22)

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings. Further, to the extent applicable, Respondents' purported exception is DENIED as it fails to demonstrate how Respondents' conclusions are as or more reasonable than those contained in the Recommended Order.

“4. B. The Charges: iv. Count IV”

Respondents object to the ALJ's finding that there was clear and convincing evidence Respondents failed to maintain copies of each advertisement in a central file for two years, as

required by law. Respondents argue that all advertisements were provided to the Office, and objected to the ALJ's admission of and reliance on the Office's evidence, arguing that the ALJ relied significantly on a "controversial hearsay document" that should not have been considered, i.e., the letter from PMF's independent consultant in response to the Report of Examination.

The ALJ found that after PMF advised the Office there was no corporate advertising (and therefore no samples on file), an audit revealed that business cards, flyers, placards, posters, and the internet were used to advertise the business, as well as entries in PMF's books reflecting advertising expenses of more than \$200,000 during the audit period. (RO, para. 24). At hearing and in their PRO, Respondents argued that: it was technically impossible to provide the auditor with every single copy of material that could be characterized as a marketing activity; the \$200,000.00 advertising expense on their books was a "coding error"; and during the audit period, Respondents misunderstood what OFR considers to be advertising, and once this misconception was cleared up, they submitted "a more fulsome response." (RO, para. 26) The ALJ considered and rejected these arguments as being contrary to the clear and convincing evidence. (RO, para.27)

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings. Further, to the extent applicable, Respondents' purported exception is DENIED as it fails to demonstrate how Respondents' conclusions are as or more reasonable than those contained in the Recommended Order.

“4. B. The Charges: v. Count V”

Respondents object to the ALJ’s finding by clear and convincing evidence that PMF continued to advertise itself as a mortgage lender after surrendering its mortgage lending license, thereby implying to consumers that it could originate mortgage loans, negotiate the terms of those loans, and determine fees to be charged. (RO, para. 30).

Respondents re-raise their argument that resolution of the issues in the previous mortgage lending matter also resolved the issues in the instant case. Respondents misapprehend the applicable facts and law. The prior matter specifically involved Respondents’ failure to submit audited annual financial statements for the years 2012 and 2013, a requirement for a mortgage lender, but not for a mortgage broker. In December 2014, PMF surrendered its mortgage lender license. Thereafter, PMF engaged in false advertising by representing in advertisements that it was a “full correspondent lender” when it no longer held a mortgage lender license. Prior to the surrender of its lender license, PMF could truthfully describe itself as a “full correspondent lender.” However, the violation charged in Count V did not occur until after the lender license was surrendered. The Office commenced a routine examination of PMF on June 3, 2015, which concluded on February 25, 2016, for the period July 1, 2014 through April 30, 2015. The false advertising violation was only discovered during the relevant examination period.

Again, Respondents assert an affirmative defense of estoppel; object on the grounds that Respondents were not represented by legal counsel; and object to the admission of and reliance on the Office’s evidence, arguing that the ALJ relied significantly on a “controversial hearsay document” that should not have been considered, i.e., the PMF consultant’s letter. The ALJ considered and rejected these arguments. (RO, para. 32)

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings. Further, to the extent applicable, Respondents' purported exception is DENIED as it fails to demonstrate how Respondents' conclusions are as or more reasonable than those contained in the Recommended Order.

“4. B. The Charges: vi. Count VI”

Respondents object to the ALJ's finding by clear and convincing evidence that PMF paid fees and commissions to unlicensed entities, in violation of the law. Respondents assert the law is ambiguous and subject to different interpretations. The ALJ made a finding that, “Section 494.0025(7) provides that a licensee cannot ‘pay a fee or commission in any mortgage loan transaction to any person or entity other than a licensed mortgage broker or mortgage lender, or a person exempt from licensure under this chapter.’” (RO, para. 33) The ALJ further found that Respondents made such admissions in the Office's Request for Admissions, and that in his hearing testimony Mr. Cugno admitted to paying unlicensed entities. (RO, para. 34)

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings.

“4. B. The Charges: vii. Count VII”

Respondents argue that Count VII penalizes Respondents for conduct that occurred during a time for which PMF was not licensed as a mortgage broker, and that Respondents offered fact based, legal defenses to the allegations.

Respondents misunderstand the facts and allegations of Count VII. The ALJ found that during the first six months of the audit period, July 1, 2014, through December 30, 2014, PMF was a mortgage lender, Mr. Cugno was PMF’s principal loan originator, and the violations alleged in Count VII were either admitted or found to have occurred during that time frame. (RO, para. 37-41) Respondents renew the same objections previously raised, i.e., estoppel, lack of legal counsel, failure to reopen hearing, and reliance on inadmissible evidence.

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents’ objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ’s findings.

“4. B. The Charges: viii. Count VIII”

Respondents object to the ALJ’s finding that the Office established by clear and convincing evidence that Mr. Cugno, as a licensed mortgage broker, failed to exercise full control over the operations of PMF. (RO, paras. 45, 46) Respondents argue that the count was incorrectly pled, and make the same arguments as those previously raised that were considered and rejected by the ALJ.

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve

conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings.

C. Disciplinary Guidelines

Paragraphs 47 – 49, and 51¹: Respondents objections or purported exceptions re-raise the arguments as to lack of counsel and failure to re-open the hearing. To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, these objections or purported exceptions are rejected pursuant to *Brown, supra*. Respondents' exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings.

Paragraphs 52-63: Respondents appear to object to the Office's proposed penalties for each violation pursuant to the published set of guidelines. The basis for the objections includes lack of counsel, failure to re-open the hearing, unconstitutionality, and a claim that Respondents' alleged conduct did not rise "to the level of a violation." Respondents' further argue that any penalties should be mitigated due to Respondents' lack of willful misconduct, lack of intent to mislead the Office or impede the investigation, and lack of harm to any consumer.

The argument that Respondents' misconduct did not endanger consumers (and therefore the penalty should be reduced) ignores the fact that there are reasons why mortgage brokers, mortgage lenders, and loan originators are required to be licensed; among those are to discourage predatory acts against consumers, many of whom are making the largest single purchase of their

¹ Respondents omit any reference to paragraph 50.

lives, i.e., a house. By falsely advertising itself as “a full correspondent lender” when it had no mortgage lender license, Respondents misled consumers, thereby increasing the potential for harm, as was pointed out by the ALJ. (RO, para. 62) The record is silent as to whether or not there was consumer harm in this case. In fact, neither the Respondents nor the Office presented any evidence on the issue of consumer harm. Therefore, there is no competent substantial evidence supporting mitigation of the proposed penalty.

Similarly unpersuasive are the arguments that the proposed penalty should be mitigated because Respondents’ misconduct was not willful (or reckless), or there was no intent to mislead or deceive the Office. Operating within the law is not cause for mitigating a proposed penalty; it is what is expected and required of a licensee. Therefore, a licensee’s claim of entitlement to a reduced penalty because the licensee’s misconduct may not have been “willful” or “reckless,” or because the licensee did not conceal unlawful acts or deceive the Office, misapprehends the purpose of mitigation and aggravation of penalties.

A lack of consumer harm is not a mitigating circumstance. Licensees are expected not to engage in conduct that harms consumers; in fact, such conduct is considered the norm. When customer harm is proven, it is an aggravating circumstance, thus meriting an increased penalty. Likewise, a finding that a licensee’s conduct was not reckless or willful, or that the licensee did not deceive the Office, does not warrant mitigation of the penalty for the underlying unlawful conduct. A licensee should not be rewarded for refraining from acting recklessly or deceptively, or for not harming the public. The statutes regulating mortgage brokers, mortgage lenders, and loan originators do not require an intention to violate those statutes and/or rules in order to impose a penalty. Licensees are required to strictly comply with the law. In this case, the ALJ found the Respondents’ violations to be serious. (RO, para. 62)

To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings.

Paragraph 64: The ALJ recommends the imposition of a 6-month suspension of license and a \$20,000 administrative fine. Respondents object to the ALJ's recommended penalty on the basis of lack of counsel and error by the ALJ in his findings related to Respondents' mortgage lending license. To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge the credibility of witnesses, or otherwise interpret the evidence anew, this objection or purported exception is rejected pursuant to *Brown, supra*. Respondents' exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings.

"D. Procedural Issues"

Paragraphs 65-68: The ALJ directly addresses Respondents' repeated assertions of unfairness in the process based on Respondents' lack of counsel throughout the proceedings, and the ALJ's failure to re-open the case to allow Respondents, now with the assistance of counsel, to relitigate the case. Respondents' objections to the ALJ's findings were previously addressed in the Statement of the Issues section on page 6 of this Final Order. To the extent Respondents are attempting to raise a new issue; are re-arguing issues raised at hearing or in their post-hearing submittals; or are asking the Office to reweigh evidence, resolve conflicts in the evidence, judge

the credibility of witnesses, or otherwise interpret the evidence anew, this objection or purported exception is rejected pursuant to *Brown, supra*. Respondents' objection or purported exception is DENIED because there is competent, substantial evidence in the record to support the ALJ's findings.

Paragraphs 71-75²: Respondents object to the ALJ's conclusions that the Office carried its burden of proving Counts I through VIII as alleged in the Administrative Complaint by clear and convincing evidence, and object to the suspension of Respondents' mortgage broker license and imposition of administrative fine. As grounds, Respondents cite to lack of fairness in the proceedings, failure of the ALJ to allow Respondents to relitigate the case, and evidentiary infirmities. Respondents' objection or purported exception is DENIED as it fails to demonstrate how Respondents' conclusions are as or more reasonable than those contained in the Recommended Order.

Recommendation

Respondents object to the fine and suspension for all of the same reasons stated above, and further request a meeting with the Office "to discuss these objections to and other relief sought." Respondents' objection or purported exception is DENIED as it fails to demonstrate how Respondents' conclusions are as or more reasonable than those contained in the Recommended Order. Further, Respondents' request for a meeting to discuss its objections or purported exceptions to the Recommended Order is not an exception to any conclusion of law made by the ALJ in the Recommended Order, and the request is therefore DENIED.

IT IS ACCORDINGLY ORDERED:

² Respondents omit any reference to paragraph 73.


A. The attached Recommended Order is adopted by the Office and incorporated by reference as if fully stated herein.

B. PMF Inc.'s mortgage broker license is hereby suspended for a period of six (6) months, commencing upon the 31st day following entry of this Final Order.

C. Scott Cugno shall pay an administrative fine in the amount of Twenty Thousand Dollars (\$20,000.00) within thirty (30) days of the entry of this Final Order. Payment shall be in the form of a money order or cashier's check made payable to Department of Financial Services and shall be sent to the attention of Agency Clerk – c/o Scott R. Fransen, Post Office Box 8050, Tallahassee, Florida 32314-8050.

DONE and ORDERED this 25th day of September 2018,

in Tallahassee, Leon County, Florida.



PAMELA P. EPTING, Interim 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 FOR THE OFFICE OF FINANCIAL REGULATION AS FOLLOWS:

By Mail or Facsimile

OR

By Hand Delivery

Agency Clerk
Office of Financial Regulation
P.O. Box 8050
Tallahassee, Florida 32314-8050
Phone: (850) 410-9889
Fax: (850) 410-9663

Agency Clerk
Office of Financial Regulation
General Counsel's Office
The Fletcher Building, Suite 118
101 East Gaines Street
Tallahassee, Florida 32399-0379
Phone: (850) 410-9889

A COPY OF THE NOTICE OF APPEAL, ACCOMPANIED BY THE FILING FEES AS REQUIRED BY LAW, MUST ALSO BE FILED 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 WITH BOTH THE AGENCY CLERK FOR THE OFFICE OF FINANCIAL REGULATION AND THE DISTRICT COURT OF APPEAL WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been furnished by electronic mail to **PMF, Inc. and Scott Cugno c/o Jo Ann Palchak, Esq.** at jpalchak@palchaklaw.com this 25th day of September, 2018.



Agency Clerk
Florida Office of Financial Regulation
Tallahassee, FL 32314-8050
Post Office Box 8050
Email: Agency.Clerk@flofr.com
Tel: (850) 410-9889
Fax: (850) 410-9663