

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

OFFICE OF FINANCIAL REGULATION,

Petitioner,

vs.

Case No. 17-5444

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

Respondents.

\_\_\_\_\_ /

RECOMMENDED ORDER

Administrative Law Judge D. R. Alexander conducted a hearing in this case by video teleconferencing at sites in Tampa and Tallahassee, Florida, on March 30, 2018.

APPEARANCES

For Petitioner: Scott R. Fransen, Esquire  
Office of Financial Regulation  
Suite 615  
1313 North Tampa Street  
Tampa, Florida 33602-3328

For Respondent: Scott Cugno, pro se  
PMF, Inc., d/b/a Pioneer Mortgage Funding  
Suite 118  
142 West Platt Street  
Tampa, Florida 33606-2315

STATEMENT OF THE ISSUE

The issue is whether PMF, Inc.'s (PMF), mortgage broker license should be revoked and an administrative fine imposed on PMF's principal loan originator, Scott Cugno, for the reasons

stated in an Administrative Complaint (Complaint) issued by the Office of Financial Regulation (OFR) on January 18, 2017.

PRELIMINARY STATEMENT

In an eight-count Complaint, OFR proposes to revoke the mortgage broker license of PMF for the violation of various statutes and rules observed during an audit of its operations. OFR also proposes to assess a \$53,300.00 administrative fine on Mr. Cugno, who is the sole owner, president, and principal loan originator of PMF. Respondents initially asked that the dispute be resolved by an informal hearing, but later requested a formal hearing. The matter was then referred by OFR to the Division of Administrative Hearings requesting that a formal hearing be conducted.

At the final hearing, OFR presented the testimony of three witnesses. OFR Exhibits 1, 2, 4 through 13, 15 through 18, 20, and 22 through 24 were accepted in evidence. Until May 2, 2018, Respondents were represented by Mr. Cugno, who testified on their behalf. Respondents' Exhibit 1 was accepted in evidence.<sup>1/</sup> Also, official recognition was taken of chapter 494, Florida Statutes; Florida Administrative Code Chapter 69V-40; Form OFR-494-14; and the number of days (304) in the audit period, July 1, 2014, to April 30, 2015. More than a month after the hearing, counsel entered an appearance on behalf of Respondents.

A one-volume Transcript of the hearing has been prepared. The parties submitted proposed recommended orders (PROs), which have been considered.<sup>2/</sup>

#### FINDINGS OF FACT

##### A. Background

1. OFR is the state agency charged with administering and enforcing the provisions of chapter 494, which regulates loan originators, mortgage lenders, and mortgage brokers. Rules implementing the statutory law are found in chapter 69V-40. To ensure compliance with the law, OFR conducts periodic audits of the records and activities of all licensees.

2. In early 2012, Mr. Cugno assumed ownership of PMF. From January 25, 2012, until January 1, 2015, PMF was a licensed mortgage lender with its principal office located at 142 West Platt Street, Suite 118, Tampa. Besides the principal office, PMF operated five branch offices. As a mortgage lender, PMF could offer credit to an applicant, make the mortgage loan, and close the loan in its own name. § 494.001(23), Fla. Stat. To settle an earlier disciplinary action, PMF surrendered its lender license in December 2014. Pet'r Ex. 5.

3. On December 30, 2014, PMF was issued mortgage broker license number MBR 1689, which still remains active. A mortgage broker conducts loan originator activities through one or more licensed loan originators employed by the broker. § 494.001(22),

Fla. Stat. A broker shops an applicant's credit and loan application to different lenders, but unlike a mortgage lender, it cannot close loans in its own name. § 494.001(17), Fla. Stat.

4. Mr. Cugno is the sole owner of PMF and its principal loan originator. By definition, he is the control person of PMF. § 494.001(6)(a), (b), and (f), Fla. Stat. A control person is subject to administrative penalties if the broker or lender engages in prohibited acts set forth in section 494.00255(2).

5. An audit of PMF's business records and activities was conducted by OFR for the period July 1, 2014, through April 30, 2015. After the audit was concluded, a formal Report of Examination (Report) was forwarded to Mr. Cugno on February 25, 2016. Pet'r Ex. 1. The Report stated that it contained a series of findings "that may be violations of Chapter 494, Florida Statutes." Therefore, it recommended that management thoroughly review the matter and promptly respond in writing stating any exceptions or disagreements it had, any action taken to correct the possible violations, and any mitigating evidence. A written response was filed by Mr. Edgar, PMF's independent consultant, who interacted with the auditors on behalf of PMF during the examination and responded to document requests. Pet'r Ex. 2. After receiving Mr. Edgar's response, the Complaint was issued by OFR on January 18, 2017.

6. Although the Report contains 13 findings that may be violations of chapter 494, the Complaint relies on only eight. Based upon the scope and nature of the violations, the charging document seeks to revoke PMF's mortgage broker license and to impose a \$53,300.00 administrative fine on Mr. Cugno, as the control person of the lender and broker. No action is proposed regarding Mr. Cugno's loan originator license. The thrust of the Report is the failure of Mr. Cugno to have complete control over the operations of the business.

7. In determining the merits of the charges, the undersigned has considered: a) Mr. Cugno's responses to OFR's Requests for Admissions, which admit the allegations in five Counts<sup>3/</sup>; b) Mr. Edgar's written response to the Report, which essentially admits all of the violations and outlines the proposed corrective action that PMF intends to implement; and c) the evidence in the record.

## B. The Charges

### i. Count I

8. Count I alleges that during the audit period, PMF operated a branch office in Delray Beach, Florida, without a license. Each branch office is required to be separately licensed. § 494.0011(2), Fla. Stat.; Fla. Admin. Code R. 69V-40.036.

9. A branch office is defined in section 494.001(3) as a location, other than a mortgage lender's or mortgage broker's principal place of business, where business is conducted under chapter 494, and one of the following is true:

a) Business cards, stationery, or advertising references a licensee's name associated with a location that is other than the licensee's principal place of business;

b) Advertising, promotional materials, or signage using a licensee's name suggests that mortgage loans are originated, negotiated, funded, or serviced at a location that is other than the licensee's principal place of business; or

c) Mortgage loans are originated, negotiated, funded or serviced by the licensee at a location that is other than its principal place of business.

10. The Delray Beach location was not licensed as a branch office. Without a license, PMF was not authorized to use the Delray Beach address on any materials used in its mortgage business or to originate loans from that location.

11. During the audit period, a PMF employee, Bryan J. Mittler, then a recently admitted attorney who had worked for PMF since around 2012, was using business stationery and business cards under the name of PMF that referenced his name and the Delray Beach location, 2236 Bloods Grove Circle. Pet'r Ex. 10. The printed material contained statements such as "We're your key to financing your new home" and "For a free no-obligation

consultation and instant pre-approval call us anytime!" Id. Another business card identifies Mr. Mittler as an attorney and branch manager of PMF. Id. None of these materials mention the address of the principal office in Tampa. They support a finding that Mr. Mittler was using promotional materials to originate, negotiate, fund, or service mortgage loans at the Delray Beach location.

12. Other indicia of operating a branch office are found in Mr. Mittler's response to a written inquiry by the auditor in September 2015, in which he signed the letter as "Branch Manager." Pet'r Ex. 8. Mr. Mittler's letter states in part that "[w]e became a branch in November 2012 with the first loan disposition in December 2012." Id. He also acknowledges that "[o]ur branch's loan files are maintained at 2236 Bloods Grove Circle, Delray Beach, FL." Id. In yet another letter to the auditor, Mr. Mittler identifies himself as Branch Manager. Pet'r Ex. 10. The Delray Beach office also maintained its own bank account and identified it as a branch bank account. Pet'r Ex. 11. Finally, internet advertising by PMF during the audit period states that Mr. Mittler "was chosen to head our new, Delray Beach branch office." Pet'r Ex. 13.

13. In response to a request by the auditor that PMF provide a list of all PMF employees, on September 29, 2015, Mr. Edgar submitted a list of employees as of that date, which

identifies Mr. Mittler as the branch manager of the Delray Beach office. It describes his duties as "manag[ing] all operations of branch office [and] Originating Mortgages." Pet'r Ex. 7.

14. Finally, Mr. Edgar's response to the Report states that "I am surprised to find that the Delray Beach office was not licensed as a branch." Pet'r Ex. 2. He characterizes this as "negligence" on the part of PMF and represents that PMF intends "to license this branch and be in full compliance." Id. PMF was eventually issued a branch license for the Delray Beach office in March 2016.

15. At hearing, Mr. Cugno denied that PMF was operating a branch office in Delray Beach. He testified that even though there was no branch office, Mr. Mittler was allowed to use the title of branch manager because Mr. Mittler did not want to be given a less important title. Mr. Cugno also explained that a "statute" or "regulation," later identified in Respondents' PRO as Rule 1-3.3, The Rules Regulating the Florida Bar, required Mr. Mittler to provide his Delray Beach address on all documents and materials that he prepared or was using. While the rule requires that an attorney's official bar name "be used in the course of a member's practice of law," it does not specifically require that a member's address be reflected on all documents prepared. Assuming that the rule imposes this requirement, nothing in the record suggests, much less proves, that



Mr. Mittler's activities on behalf of PMR were part of his practice of law, he was employed as an attorney for PMF, or a law office was even located at the Delray Beach address. The PRO contends the Delray Beach location "may" have been a law office which caused confusion in PMF's "paperwork." These arguments have been rejected.

16. By clear and convincing evidence, OFR has established that during the audit period, the Delray Beach location was a branch office within the meaning of section 493.001(3), and it operated without a license.

ii. Count II

17. Each mortgage broker and lender must maintain a Mortgage Brokerage and Lending Transaction Journal (Journal) which, at a minimum, contains the name of the mortgage loan applicant, date of the application, disposition of the application, and the name of the lender, if applicable.

§ 494.0016(1), Fla. Stat.; Fla. Admin. Code R. 69V-40.265(1).

Count II alleges that during the audit period, PMF violated the statute and rule by failing to maintain a complete and accurate Journal of all transactions at its Tampa office.

18. PMF's response to the Report states that, to correct the deficiency described in Count II, the firm would begin "implementing controls" and making "periodic audits" to ensure that a current Journal would be maintained in the future. Pet'r

Ex. 2. Also, in its response to the Requests for Admissions, PMF admits that it maintained separate Journals for each of the branch offices, and the principal office Journal was incomplete or inaccurate. Finally, unrefuted testimony by the auditor at hearing established that an examination of PMF's Journal revealed that certain loans were not listed and "entries that were part of the requirements of the loan journal were not made." Notably, out of more than 470 transactions identified in PMF's mortgage loan report (a quarterly report that must be filed by licensed companies indicating their loan activity), the Journal listed only 182 loans. Pet'r Ex. 20. At hearing, Mr. Cugno testified that PMF did not know how to fill out a journal, and efforts by his former compliance manager to get instructions from OFR were unsuccessful. However, this does not excuse the violation.

19. By clear and convincing evidence, the charge in Count II is sustained.

iii. Count III

20. A mortgage broker is required to maintain at its principal place of business the complete documentation of each mortgage loan transaction/application for three years from the date of the original entry. § 494.0016(1), Fla. Stat.; Fla. Admin. Code R. 69V-40.175(8). The Complaint alleges that PMF violated this requirement by failing to maintain at its principal

office all records of email and electronic communications between PMF and its borrowers.

21. The evidence shows that during the audit period, complete documentation of every application/transaction was not maintained at the Tampa office. For example, some loan originators at branch offices had individual email accounts through which they were communicating and transmitting documents for loan files, but they did not copy those email communications to the principal office. Pet'r Ex. 23 and 24. In his response to the Requests for Admissions, Mr. Cugno admitted that certain documentation for loan applications was kept at locations other than their Tampa office. In his response, Mr. Edgar also acknowledged that PMF did not comply with the statute and rule and represented that PMF would utilize a new "email usage policy and procedure" to correct the problem. While Respondents allege the information from the Tampa and branch offices was available on-line, this does not satisfy the requirement that complete documentation be maintained at the principal office.

22. By clear and convincing evidence, the allegations in Count III have been established.

iv. Count IV

23. Section 494.00165(2) requires that a licensee maintain a record of samples of each of its advertisements for examination by OFR for two years after the date of publication or broadcast.

The purpose of this requirement is to enable the auditor to verify that the licensee's advertisements are not deceptive or misleading. To comply with the statute, PMF was required to maintain for two years in a central file a copy of each advertisement.

24. During the examination, the auditor requested that PMF provide its complete file of advertisements during the audit period. PMF initially responded that there was no corporate advertising and therefore no samples were kept on file. Pet'r Ex. 12. A subsequent audit of the branch offices revealed that business cards, flyers, placards, posters, and internet were used by the branch offices for advertising purposes. Pet'r Ex. 10, 11, 13, 15, and 17. The auditor also found entries on PMF's books reflecting advertising expenses of over \$200,000.00 during the audit period.

25. In his response to the Report, Mr. Edgar admitted that due to operating the business as a "decentralized model," PMF did not have proper supervision of the marketing activities of loan officers. Mr. Edgar went on to state that he was "surprised" to learn that "several Loan Officers appear to have engaged in either limited advertising campaigns or hosting their own independent activities." He promised that PMF would "begin to exercise more control over the marketing activities of all employees" and to ensure that all documentation related to

advertising would be sent to the Tampa office for centralized storage.

26. At hearing and in their PRO, Respondents took a different tack and argued that: it is 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." These arguments have been considered and rejected as being contrary to the clear and convincing evidence.

27. By clear and convincing evidence, the charge has been sustained.

v. Count V

28. Section 494.00165(1)(e) prohibits licensees from engaging in misleading advertisements regarding mortgage loans, brokering services, or lending services. Count V alleges that after January 1, 2015, PMF continued to advertise itself as a lender even though its lender license had been surrendered.<sup>4/</sup>

29. As of January 1, 2015, PMF was a licensed mortgage broker and no longer held a mortgage lender license.

30. Advertising by the Fort Myers branch office after January 1, 2015, identified PMF as a "full correspondent lender"

and listed the old mortgage lender license number. Pet'r Ex. 15. Also, as late as February 2016, advertising posters were on the windows at the Tampa office, visible to the public, reflecting that PMF was an approved VA lender. Pet'r Ex. 17. Finally, OFR witness Slisz testified that as of March 30, 2018, the Fort Myers branch office still was advertising itself as a full correspondent lender. By advertising in this manner, PMF implied to consumers that it would originate the loan, negotiate the terms of the loan, and determine the fees that would be charged, things it could not do as a broker.

31. In his response to the Report, Mr. Edgar admitted that PMF did not comply with the statute "due entirely to [its] negligence in updating PMF's logo and promotional materials after the change in licensing that occurred [on January 1, 2015]." Pet'r Ex. 2. However, he asserted there was no intent to deceive or mislead customers. In their PRO, Respondents also concede "there were a few months where this advertisement occurred," but maintain there is no evidence that any consumer had been impacted. Finally, in their response to the Requests for Admissions, Respondents admit that after January 1, 2015, PMF continued to represent itself as a licensed mortgage lender. In mitigation, Mr. Cugno pointed out that no customer was harmed. Also, he blamed the advertising signs in the windows at PMF's Tampa office on the building manager, who he says put the signs

up for a few days to block the sun while new blinds were being installed.

32. By clear and convincing evidence, OFR has established that the charges in Count V are true.

vi. Count VI

33. 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." The statute is designed to ensure that every person receiving fees in a transaction is licensed. Count VI alleges that during the audit period, Respondents paid commissions or fees from mortgage loan transactions to entities that were not licensed brokers or lenders.

34. During the audit period, several loan originators established separate entities that were not licensed but were paid fees or commissions for various transactions. Pet'r Ex. 18. In its response to the Report, Mr. Edgar conceded that such fees were paid incorrectly because PMF "mistakenly believed" that its practice of paying a loan officer's separate business entity was equivalent to paying the loan officer personally. The response added that in the future, "only licensed individuals will be paid commissions on mortgage loan transactions" and "no separate loan entities will be compensated any amount for any work performed on

mortgage loan transactions.” Pet’r Ex. 2. Respondents also acknowledge in their response to the Requests for Admissions that they paid fees, costs, and expenses to persons or entities that did not hold loan originator licenses. Finally, at hearing, Mr. Cugno admitted that unlicensed entities were “definitely” paid, but there was no intent to deceive customers.

35. By clear and convincing evidence, OFR has established that the allegation in Count VI is true.

vii. Count VII

36. Section 494.00665(1) requires each mortgage lender business to be operated by a principal loan originator who is to have full charge, control, and supervision of the business. The Complaint alleges that Mr. Cugno was not in full charge, control, and supervision of PMF when it held a mortgage lender license.

37. PMF was a licensed mortgage lender during the first six months of the audit period, July 1, 2014, through December 30, 2014. During that time, Mr. Cugno was PMR’s principal loan originator.

38. The Complaint alleges that while Mr. Cugno was the control person in 2014, PMF engaged in two or more of the following acts:

- a) Operated a branch office without a license;
- b) Failed to maintain complete and accurate Mortgage Lending Transaction Journal;



- c) Failed to maintain complete documentation at its principal place of business; and
- d) Advertised without maintaining a record of samples of each advertisement.

39. The significance of having committed "two or more" violations was not explained. As previously found, however, all of these charges have been established by clear and convincing evidence. Respondents contend they did not have proper notice as to which of the four acts OFR relies upon to prove this charge. But items (a) through (d) simply track Counts I through IV in the Complaint.

40. In his response to the Requests for Admissions, except for the branch office allegation, Mr. Cugno admitted that the other allegations are true. The response to the Report states that Respondents are "embarrassed" by the auditor's findings and that new policies and procedures will be implemented to address the deficiencies. The response acknowledges that PMF "has been without a committed and proactive compliance professional in a full time capacity for some time," and represents that Mr. Edgar will become PMF's Vice President of Compliance and Human Resources and apply for a license as a loan originator. Pet'r Ex. 2. At hearing, Mr. Cugno did not directly respond to the charges. Instead, he testified that he would defer to the undersigned's judgment in deciding whether the charges are true.

41. By clear and convincing evidence, the allegations in Count VII have been proven.

viii. Count VIII

42. Section 494.0035(1) requires each mortgage broker business to be operated by a principal loan originator who is to have full charge, control, and supervision of the mortgage broker.

43. PMF was a licensed mortgage broker during the last four months of the audit, January 1, 2015, through April 30, 2015. During this same time period, Mr. Cugno was the principal loan originator.

44. The Complaint alleges that Mr. Cugno was not in full charge, control, and supervision of PMF when it engaged in two or more of the following acts:

- a) Operated a branch location without a license;
- b) Failed to maintain complete and accurate Mortgage Brokerage Transaction Journals;
- c) Failed to maintain complete documentation at its principal place of business;
- d) Advertised without maintaining a record of samples of each advertisement;
- e) Inaccurately advertised themselves as a lender; and
- f) Paid fees or commission from mortgage loan transactions to entities that were not licensed mortgage brokers or mortgage lenders.

45. Items (a) through (f) are the six violations described in Counts I through VI of the Complaint. Although the significance of having committed "two or more" violations was not explained, each of these allegations has been proven by clear and convincing evidence. Even the response to the Report admits that Mr. Cugno did not exercise full control over the operations of the business during the audit period.

46. By clear and convincing evidence, the allegations in Count VIII have been proven.

#### C. Disciplinary Guidelines

47. Rule 69V-40.111 adopts by reference a range of penalties that may be imposed on a mortgage loan originator and mortgage entity for violating each of the 102 statutory provisions that OFR enforces. See Form OFR-494-14. Depending on the nature of the violation, the administrative fines are categorized as Level A (\$1,000.00 to \$3,500.00), B (\$3,500.00 to \$7,500.00), and C (\$7,500.00 to \$10,000.00).

48. In determining an appropriate penalty that falls within the penalty guidelines, OFR must consider the mitigating and aggravating factors set forth in subsection (3) of the rule. Mitigating factors to be considered are as follows:

1. If the violation rate is less than 5% when compared to the overall sample size reviewed;

2. No prior administrative actions by the Office against the licensee or control person within the past 10 years;
3. If the licensee detected and voluntarily instituted corrective responses or measures to avoid the recurrence of a violation prior to detection and intervention by the Office;
4. If the violation is attributable to a single control person or employee, and if the licensee removed or otherwise disciplined the individual prior to detection or intervention by the Office;
5. If the licensee is responsive to the Office's requests or inquiries or made no attempt to impede or delay the Office in its examination or investigation of the underlying misconduct; or
6. Other control, case-specific circumstances.

49. Aggravating factors to be considered in assessing a penalty are as follows:

1. If the violation rate is more than 95% when compared to the overall sample size reviewed (sample size must be equal to or greater than 25 transactions and cover a date range of at least 6 months);
2. The potential for harm to the customers or the public is significant;
3. Prior administrative action by the Office against the licensee or an affiliated party of the licensee within the past 5 years;
4. If the licensee's violation was the result of willful misconduct or recklessness;
5. The licensee attempted to conceal the violation or mislead or deceive the Office;  
or

6. Other control relevant, case-specific circumstances.

50. In its PRO, OFR maintains that PMF's broker license should be revoked, and an administrative fine in the amount of \$53,300.00 should be imposed on Mr. Cugno. On the other hand, Respondents' PRO contends that revocation of the broker license is not warranted, and "a fine of no more than \$10,000.00 total for all matters in the Administrative Complaint is a fair outcome."

51. The worksheet used by OFR in determining the proposed penalties would be helpful, but it is not in the record. Also, at hearing, neither party addressed in detail the mitigating and aggravating factors. However, testimony by OFR's Director of the Division of Consumer Finance, Mr. Oaks, briefly explained the rationale for OFR's proposed disciplinary action.

52. For operating a branch office without a license, the rule calls for a penalty of \$1,000.00 per day, with a maximum penalty of \$25,000.00. Because this violation occurred every day during the 304-day audit period, Mr. Oaks explained that OFR is proposing the maximum penalty of \$25,000.00.

53. For failing to maintain a complete and accurate Journal at the principal office, the guidelines call for a penalty ranging from \$1,000.00 to \$3,500.00 and suspension or revocation of the license. Mr. Oaks testified that after reviewing all

mitigating and aggravating circumstances, the maximum penalty of \$3,500.00, and license revocation, are appropriate for the violations described in Count II.

54. For failing to maintain at its principal place of business the complete documentation of each mortgage loan transaction/application for three years from the date of original entry, the disciplinary guidelines call for a fine ranging from \$1,000.00 to \$3,500.00 and suspension or revocation of the license. Mr. Oaks testified that OFR is extremely dependent on records when conducting a compliance examination. If complete and accurate records are not kept at the principal place of business, OFR cannot ensure that the business is operating in a lawful manner. Where there is an absence of records, there is potential for great consumer harm. Given the circumstances presented here, he proposes a \$2,700.00 penalty and revocation of the license.

55. For failing to maintain a record of samples of each advertisement for a period of two years, the disciplinary guidelines call for a fine ranging from \$1,000.00 to \$3,500.00 and suspension or revocation of the license. In this case, PMF had no samples of advertisements at its principal office. When no samples are maintained, OFR is unable to determine whether a licensee is engaging in misleading or deceptive advertising. For

this reason, Mr. Oaks proposes a fine of \$3,500.00 and revocation of the license.

56. For engaging in misleading advertising, the disciplinary guidelines call for a fine ranging from \$3,500.00 to \$7,500.00 and suspension or revocation of the license. Mr. Oaks characterized PMF's advertising after January 1, 2015, as "completely misleading" because it erroneously represented to the public that PMF was a correspondent lender. For this reason, he proposes the maximum penalty of \$7,500.00 and revocation of the license.

57. For paying a fee or commission in any transaction to a person or entity other than a lender or broker, the disciplinary guidelines call for a fine ranging from \$3,500.00 to \$7,500.00 and suspension or revocation of a broker's license.

58. Mr. Oaks explained that the licensing process is designed to protect consumers from unlicensed individuals and to ensure that only licensed individuals will be involved in the transaction. For violating the statute, Mr. Oaks proposes a fine of \$4,100.00 and revocation of the license.

59. If a principal loan originator fails to have complete control over the operations of a mortgage lender, the disciplinary guidelines call for a penalty ranging from \$1,000.00 to \$3,500.00. Because of the number and nature of violations, Mr. Oaks concluded that Mr. Cugno did not have control of his

business and did not take adequate steps to ensure that the business was "being run lawfully."

60. Besides Mr. Oaks' testimony, OFR witness Slisz, the Tampa area financial manager, also concluded there was a lack of complete control by Mr. Cugno based on loan originators "using emails not on the company server"; an "unlicensed location"; "loan originators taking freedom to advertise on their own without approval"; and PMF's inability "to produce a log of the loans that the company received applications for." OFR seeks the maximum penalty of \$3,500.00.

61. If a principal loan originator fails to have complete control over the operations of a broker, the disciplinary guidelines call for a penalty ranging from \$1,000.00 to \$3,500.00. For the reasons enunciated by Mr. Oaks and witness Slisz, OFR seeks the maximum penalty of \$3,500.00.

62. Besides the foregoing testimony, the evidence shows that there was a potential for harm to customers or the public; most of the violations proven were "serious"; PMF has one prior disciplinary action in December 2014, which was resolved by PMF surrendering its lender license and paying a \$2,500.00 fine; and PMF was issued a notice of non-compliance regarding its late filing of quarterly reports for the year 2012. Pet'r Ex. 4.

63. In mitigation, there is no evidence that any specific customer was harmed or misled. There is no evidence that the



violations were the result of willful misconduct or recklessness on the part of Respondents, or that they attempted to conceal a violation or mislead or deceive OFR. The violations cited by the auditor appear to be due to a lack of oversight by management, neglect, or a failure to understand OFR regulations. Although Respondents did not detect or voluntarily institute corrective action or measures prior to the audit, there is evidence that beginning with his assumption of control of the business in 2012, and during the audit, Mr. Cugno occasionally contacted the Tampa district office seeking advice on how to comply with OFR statutes and rules. Finally, there is no evidence that PMF attempted to impede or delay the examination or investigation of the underlying misconduct, or that any customer was harmed.

64. Considering the aggravating and mitigating factors on which the parties presented evidence, the undersigned determines that the mortgage broker license should be suspended for six months and a \$20,000.00 administrative fine imposed on Mr. Cugno.

D. Procedural Issues

65. In their PRO, Respondents focus largely on the argument that Mr. Cugno was not qualified to represent himself or PMF, and therefore the case should be reopened to allow Respondents, with the assistance of counsel, "to make [their] record and better present the facts and the circumstances." PRO at 16.

66. Mr. Cugno is the owner and president of the corporation. As such, he may represent the corporation in an administrative proceeding, even though he is not an attorney. See The Magnolias Nursing & Convalescent Ctr. v. Dep't of Health & Rehab. Servs., 428 So. 2d. 256, 257 (Fla. 1st DCA 1982) ("it is clear that self-representation by corporations is permissible in administrative hearings"). Because Mr. Cugno is not a "qualified representative" under rule 28-106.106, there is no requirement that a preliminary determination be made that he is "qualified" to represent his corporation. Likewise, the rule does not require that a preliminary determination be made that an individual, acting pro se, is qualified to represent himself.

67. Mr. Cugno is an experienced operator of a mortgage business, having been in that field for 22 years. Besides PMF's operations in Florida, Mr. Cugno testified that he operates "businesses" in Alabama, Tennessee, Kentucky, Minnesota, and Georgia. Mr. Cugno acknowledged receipt of the Complaint on February 6, 2017. After initially requesting that an informal telephonic hearing under section 120.57(2) be conducted to contest the application of the law, on September 28, 2017, he asked that he be given a formal hearing under section 120.57(1) to contest the factual findings in the Complaint.

68. During the seven-month informal phase of this proceeding, Mr. Cugno elected to represent himself and the

corporation. After the proceeding was converted to a formal proceeding, an Initial Order was issued on September 29, 2017, which informed Mr. Cugno that a "party may appear personally or be represented by an attorney or other qualified representative." Notwithstanding this information, Mr. Cugno voluntarily decided to continue to represent himself and the corporation. Prior to the hearing, he participated in three depositions taken by OFR; he deposed OFR witness Quaid; he responded to discovery requests; and he served discovery on OFR. At hearing, he engaged in extensive cross-examination of the OFR auditor. Finally, in a letter to OFR dated August 19, 2015, Mr. Cugno stated that PMF has its own "legal department," see Petitioner's Exhibit 12; and, at hearing, he testified that PMF employed three attorneys, on at least a part-time basis, as loan originators. If these representations are true, legal advice was not far away. In any event, Respondents are not entitled to a second hearing.

#### CONCLUSIONS OF LAW

69. OFR is charged with administering and enforcing the provisions of chapter 494, and conducting examinations and investigations to determine whether any provision in chapter 494 has been violated. §§ 494.0011(1) and 404.0012(3), Fla. Stat.

70. Section 494.00255(1)(u) provides that a "failure to comply with, or violations of, any provision of this chapter" is a ground for disciplinary action.

71. Because OFR seeks to revoke the license of PMR and impose an administrative fine on Mr. Cugno, it has the burden to prove, by clear and convincing evidence, that Respondents committed the violations alleged in the Complaint and the penalty sought to be imposed is appropriate. See, e.g., Dep't of Banking & Fin. v. Osborne Stern & Co., 670 So. 2d 932, 935 (Fla. 1996).

72. As previously found, by clear and convincing evidence, OFR has proven the allegations in Counts I through VIII.

73. Pursuant to rule 69V-40.111(2), depending on the severity and repetition of the specific violations, OFR may impose a fine, a suspension, or revocation of a license; impose a cease and desist order, a suspension, or both; or impose a more severe penalty after considering a person's disciplinary history for the past five years.

74. Based on the evidence in the record, the undersigned concludes that PMF's mortgage broker license should be suspended for six months and an administrative fine of \$20,000.00 be imposed on Mr. Cugno.

75. Respondents' Motion to Reopen Proceeding is denied. As previously found, from February 7, 2017, until May 2, 2018, Mr. Cugno voluntarily chose to represent himself and his corporation rather than engaging the services of an attorney. Even after participating in a six-month run-up to the final hearing that involved multiple depositions and written discovery,

he still elected not to hire an attorney. Apparently dissatisfied with the record in this case, he now requests a second evidentiary hearing, this time with counsel, to shore up any evidentiary shortcomings caused by his representation. He argues that under rule 28-106.106(4), the undersigned was required to conduct a preliminary inquiry to determine if he was "qualified and capable" to represent himself or PMF. But Mr. Cugno is not, and has not requested to be, a qualified representative; rather, he is appearing pro se on his own behalf and as the owner and president of his corporation. Despite what counsel characterizes as his "total lack of legal acumen," he is not entitled to a second bite at the apple.

#### RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Office of Financial Regulation enter a final order sustaining the charges in Counts I through VIII; suspending PMF's mortgage broker license for six months; and imposing an administrative fine on Mr. Cugno in the amount of \$20,000.00.

DONE AND ENTERED this 29th day of June, 2018, in  
Tallahassee, Leon County, Florida.



---

D. R. ALEXANDER  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of June, 2018.

ENDNOTES

<sup>1/</sup> Respondents' Exhibit 1 consists of two emails dated February 26 and 29, 2016, from Mr. Edgar, PMF's independent consultant, to the auditor. Because they were not pre-filed with the undersigned, Mr. Cugno was instructed to late-file a copy. Tr. at 134. However, a copy was never filed. During his case-in-chief, Mr. Cugno also offered into evidence a letter dated March 5, 2017, authored by Mr. Edgar. OFR's objection was sustained on the ground the letter was not submitted to counsel or the undersigned prior to hearing, as required by the Order of Pre-hearing Instructions and instructions in the Notice of Hearing by Video Teleconference. However, it turns out that, with no accompanying explanation, a copy of the letter was previously filed by Respondents on February 12, 2018, and was treated as an ex parte communication. See Order, Feb. 20, 2018. The thrust of the letter is that after he became aware that a Complaint had been filed against Respondents, Mr. Edgar regrets admitting that all of the findings in the audit were true. He goes on to state that these admissions were made only to establish "a good working relationship" with OFR. The letter has been considered by the undersigned but does not change any finding or conclusion in this Recommended Order.

<sup>2/</sup> PROs were originally due 14 days after the Transcript was filed, or by May 4, 2018. Counsel for Respondents filed her Notice of Appearance on May 2, 2018. Counsel requested that she be given a "brief stay," or in the alternative, 45 to 60 days to "evaluate" the record and for "the parties to speak to one another," and the right to reopen the record "to address the matter of pro se representation at the final hearing." Except for a one-week extension of time to file PROs, OFR opposed the requested relief. The due date for filing PROs was initially extended to May 11, and then to May 18, 2018, but all other relief was denied. See Orders, May 4 and 15, 2018. Both parties filed a PRO on May 18, 2018. Respondents also filed an amended PRO on May 21, 2018. Incorporated into the amended PRO is a Motion to Reopen Evidence, which again argues that the case should be reopened.

<sup>3/</sup> Respondents correctly argue that admissions can be withdrawn. However, Mr. Cugno never requested that his responses to the Requests for Admissions be withdrawn or amended. Even if they were, there is clear and convincing evidence that Respondents are guilty of the allegations in Counts I through VIII.

<sup>4/</sup> At hearing, Mr. Cugno contended that Count V duplicates the charges in the prior disciplinary action, in which PMF surrendered its lender's license and paid a \$2,500.00 fine. However, the earlier action was based on PMF's failure to fulfill statutory requirements for audited financial statements and minimum net worth. It did not relate to misleading advertising. Pet'r Ex. 5; Tr. at 184.

COPIES FURNISHED:

Scott R. Fransen, Esquire  
Office of Financial Regulation  
Suite 615  
1313 North Tampa Street  
Tampa, Florida 33602-3328  
(eServed)

Jo Ann Palchak, Esquire  
The Law Office of Jo Ann Palchak  
1725 1/2 East 7th Avenue  
Tampa, Florida 33605  
(eServed)

Miriam S. Wilkinson, Esquire  
Office of Financial Regulation  
Fletcher Building, Suite 550  
101 East Gaines Street  
Tallahassee, Florida 32399  
(eServed)

Scott Cugno  
PMF, Inc., d/b/a Pioneer Mortgage Funding  
Suite 118  
142 West Platt Street  
Tampa, Florida 33606-2315  
(eServed)

Drew J. Breakspear, Commissioner  
Office of Financial Regulation  
200 East Gaines Street  
Tallahassee, Florida 32399-0350  
(eServed)

Anthony Cammarata, General Counsel  
Office of Financial Regulation  
The Fletcher Building, Suite 118  
200 East Gaines Street  
Tallahassee, Florida 32399-0370  
(eServed)

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.