

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Unlicensed Activity of:

No. 10F-BD048-BNK

3 **THE GUARDIAN GROUP LLC, AKA THE**
4 **GUARDIAN GROUP FUND, AKA GUARDIAN**
5 **GROUP N.A. AND LUIS BELEVAN AND BRYAN**
6 **PREHODA**

SUPERINTENDENT'S FINAL
DECISION AND ORDER

7 7150 East Camelback Road, Suite 444
8 Scottsdale, Arizona 85251

9 Respondents.

10 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the
11 record in this matter, including the Administrative Law Judge Decision attached and incorporated
12 herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of
13 Law and recommended decision as follows:

14 ORDER

15 **IT IS ORDERED** affirming the Cease and Desist Order Number 10F-BD146-SBD issued
16 on May 5, 2010 except to the provisions within the Order that addresses restitution.

17 **IT IS FURTHER ORDERED** that Respondents shall pay a civil money penalty in the
18 amount of \$100,000.00 within forty-five (40) days of the effective date of this Order.

19 NOTICE

20 The parties are advised that this Order becomes effective immediately and the provisions of
21 this Order shall remain effective and enforceable except to the extent that, and until such time as,
22 any provision of this Order shall have been modified, terminated, suspended, or set aside by the
23 Superintendent or a court of competent jurisdiction.

24 DATED this 23rd day of February, 2011.

25 

26 Lauren W. Kingry
27 Superintendent of Financial Institutions
28

1 ORIGINAL filed this 23rd day of February, 2011 in the office of:

2 Lauren W. Kingry, Superintendent of Financial Institutions
3 Arizona Department of Financial Institutions
4 ATTN: June Beckwith
5 2910 North 44th Street, Suite 310
6 Phoenix, Arizona 85018

7 COPY mailed same date to:

8 Lewis Kowal, Administrative Law Judge
9 Office of the Administrative Hearings
10 1400 West Washington, Suite 101
11 Phoenix, AZ 85007

12 Natalia Garrett, Assistant Attorney General
13 Office of the Attorney General
14 1275 West Washington
15 Phoenix, AZ 85007

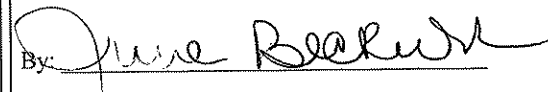
16 Robert D. Charlton, Assistant Superintendent
17 Arizona Department of Financial Institutions
18 2910 N. 44th Street, Suite 310
19 Phoenix, AZ 85018

20 AND COPY MAILED SAME DATE by
21 Certified Mail, Return Receipt Requested, to:

22 The Guardian Group, LLC
23 Luis Belevan, Member
24 7150 E. Camelback Road, Suite 444
25 Scottsdale, Arizona 85251
26 & 15020 N. 48th Place
27 Scottsdale, AZ 85254

28 The Guardian Group, LLC
29 Bryan Prehoda, CFO
30 3324 W. Morse Dr.
31 Anthem, AZ 85086
32 & as Statutory Agent
33 3240 E. Union Hills Drive #121
34 Phoenix, AZ 85050

35 The Guardian Group LLC
36 Attn: Jose Carreon, Member
37 9313 E. Hobart Street
38 Mesa, AZ 85207

By: 

1 (Collectively referred to herein as "Petitioners"), ordering Petitioners to refrain from the
2 activities they had been conducting in Arizona that constituted the business of a
3 mortgage broker without being licensed. In the Cease and Desist Order, the
4 Department also imposed civil penalties and restitution for monies received from
5 Petitioners' unlicensed activities in Arizona.¹ This was appealed, which brought the
6 matter before the Office of Administrative Hearings, an independent State agency.

7 6. In February 2010, the Consumer Fraud Division of the Arizona Attorney
8 General's Office received a complaint filed against Guardian Group. Frank Curatola
9 ("Mr. Curatola"), Special Agent with the Arizona Attorney General's Office, conducted
10 an investigation of the complaint and testified at hearing on behalf of the Department.

11 7. Mr. Curatola interviewed the consumer who filed the complaint and then
12 conducted research as to the background and principals of Guardian Group.
13 Subsequently, more consumers filed complaints against Guardian Group, and he
14 interviewed some of those consumers.

15 8. Mr. Curatola's research revealed that Mr. Prehoda and Mr. Belevan were the
16 main principals of Guardian Group. During the course of his investigation, Mr. Curatola
17 spoke with Mr. Prehoda and some affiliates of Guardian Group. Mr. Curatola explained
18 that associates were businesses that provided outreach for Guardian Group in the
19 mortgage and real estate business in Arizona and other states.

20 9. On May 25, 2010, the Arizona Attorney General's Office conducted an
21 examination under oath of Mr. Prehoda.

22 10. Mr. Curatola testified that as of January 15, 2011, the Arizona Attorney
23 General's Office had received 705 complaints against Guardian Group. Subsequently,
24 the Arizona Attorney General's filed a consumer fraud action against Guardian Group.

25 11. According to Mr. Curatola, all of the complaints that the Arizona Attorney
26 General's Office received regarding Guardian Group contained similar allegations,
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29 ¹ The Department represented that while it is seeking to have the Cease and Desist Order upheld, it is
30 not seeking to have that portion of the Order that addresses restitution upheld because there is a
consumer fraud action that has been instituted by the Arizona Attorney General's Office that addresses
restitution.

1 namely, that Guardian Group offered a principal reduction program to consumers that
2 would place consumers with a new note for a fee of \$1,595.00.

3 12. Mr. Curatola contacted the Department regarding the activities of Guardian
4 Group and inquired as to its licensure status with the Department.

5 13. During the course of his investigation, Mr. Curatola learned that Guardian Group
6 held the note on a certain property owned by Mr. and Mrs. Ruiz. In early 2010, Mr.
7 Curatola contacted Mr. and Mrs. Ruiz about Guardian Group's purchase of the note on
8 their property that had a principal balance of approximately \$211,000.00. Mr. Curatola
9 learned that Guardian Group was able to convert the note into a new note in the
10 principal amount of \$54,000.00. Mr. Curatola learned that they were paying their
11 monthly mortgage bill directly through Guardian Group by visiting Guardian Group's
12 office.

13 14. Mr. Curatola obtained evidence that there were a total of five instances,
14 inclusive of the Ruiz transaction, where Guardian Group was able to obtain a
15 consumer's note secured by real property and convert it to a new note with a lower
16 principal through a contract with the Guardian Group. Mr. Curatola testified that the
17 documents presented into evidence regarding the Ruiz transactions with Guardian
18 Group were similar to documents the Arizona Attorney General's Office had obtained
19 for the other four transactions. See Exhibit 5.

20 15. Exhibits 6-9 were complaints from consumers received by the Arizona Attorney
21 General's Office and investigated by Mr. Curatola. Mr. Curatola testified that those
22 complaints were consistent with the 705 complaints filed with the Arizona Attorney
23 General's Office. The consumers complained that they paid Guardian Group
24 \$1,595.00 for the principal reduction program and did not receive the services that
25 Guardian Group represented would be provided. It is unclear whether any consumers
26 received full or partial refunds from Guardian Group.

27 16. Robert Charlton ("Mr. Charlton"), Assistant Superintendent with the Department,
28 testified that in April 2010, he was contacted by a Channel 5 news reporter regarding
29 Guardian Group. Subsequently, he made inquiries within the Department as to
30 information the Department had regarding Guardian Group.

1 17. Mr. Charlton learned that in October 2009, the Department received a complaint
2 that was entered into the Department's database. The Deputy Superintendent of the
3 Department at that time had referred the complaint to an employee within the
4 Department's consumer's affairs section to handle.

5 18. In a letter dated January 21, 2010, (Exhibit 13) the Department sent a letter to
6 Mr. Prehoda regarding the complaint it received in October 2009. Mr. Prehoda, on
7 behalf of Guardian Group, responded to the January 21, 2010 letter. In his letter, Mr.
8 Prehoda asserted that Guardian Group's activities do not require it to be licensed as a
9 mortgage broker.

10 19. Mr. Charlton testified that as recently as two days before the hearing, the
11 Department had received 94 complaints about Guardian Group. All complaints were
12 consistent with each other in that consumers had requested refunds of monies paid to
13 Guardian Group because that they did not receive the refinancing of their existing
14 mortgage.

15 20. Mr. Charlton testified as to his understanding of Guardian Group's program.
16 According to Mr. Charlton, the first step of the Guardian Group's program was for
17 Guardian Group to negotiate with the banks to buy the notes and convert them to new
18 notes at a lower principal and at a reduced rate. Mr. Charlton testified that the second
19 step was for Guardian Group to solicit a new loan for consumers from a new lender to
20 replace the prior loan that had been purchased. The Department learned that Guardian
21 Group solicited homeowners and claimed that through its program they could obtain a
22 new mortgage that was also referred to as a refinance. Guardian Group received a fee
23 of approximately \$1,595.00 from over 2,500 consumers and could only deliver a new
24 note to five consumers.

25 21. Mr. Charlton opined that the first step of Guardian Group's program of
26 negotiating a new loan did not require licensure so long as Guardian Group did not
27 receive compensation. However, Mr. Charlton testified that the second step of the
28 program, obtaining a new loan and receiving compensation, does require licensure.
29 According to Mr. Charlton, processing, such as typing of documents, does not require
30 licensure. However, interaction with consumers and processors, calls to borrowers to

1 obtain information, and sending off verifications of employment or deposits to different
2 parties to whom borrowers have a relationship would require the entity or person who
3 conducted such activities to be licensed.

4 22. Mr. Charlton testified that a mortgage broker is a person who offers to make or
5 negotiate, or who actually makes and negotiates, a loan on Arizona real estate for
6 compensation.

7 23. According to Mr. Charlton, whether a mortgage broker is compensated prior to
8 closing, at closing, or after closing is irrelevant.

9 24. Mr. Charlton reviewed Guardian Group's website to see what was being
10 advertised regarding the services offered to consumers. He also looked at documents
11 consumers received from Guardian Group, read the complaints that were filed with the
12 Department, and discussed the matter with Mr. Curatola.

13 25. From the information the Department obtained, it appeared that Mr. Belevan
14 and Mr. Prehoda were actively engaged in the business activities of Guardian Group at
15 issue.

16 26. Mr. Charlton testified that the language used by Guardian Group on its website
17 and in documents provided to or made available to consumers indicates that it was
18 involved in refinancing. Mr. Charlton further testified that the offering of refinancing and
19 receiving monies from consumers required Guardian Group to be licensed as a
20 mortgage broker.

21 27. The Department's review of Guardian Group's activities revealed that some of
22 the \$1,595.00 it received from each consumer was paid to third party fees and some
23 amount was retained by Guardian Group, compensation that required Guardian Group
24 to be licensed as a mortgage broker.

25 28. Mr. Charlton testified that there were more than 2,500 consumers who engaged
26 the services of Guardian Group, and the Department was only made aware of 5
27 consumers that received the services that Guardian Group was paid for.

28 29. Mr. Charlton's testimony is supported by the transcript of the May 25, 2010
29 Examination Under Oath (Examination) of Mr. Prehoda. Statements made by Mr.
30 Prehoda at the Examination indicate that there were slightly more than 2,500

1 consumers who dealt with Guardian Group and that Guardian Group was only able to
2 deliver new notes at 90% of the current loan to value for 5 consumers. See Exhibit 10
3 at p.29, lines 26-32. This indicates that Guardian Group charged consumers for
4 services that constitute the business of a mortgage broker, that Guardian Group
5 retained some funds after paying third party fees, and that the Guardian Group's
6 contracted for services were not provided to at least 2,495 consumers.

7 CONCLUSIONS OF LAW

8 1. The Superintendent of the Department is vested with the authority to regulate
9 persons engaged in the mortgage broker business and has the duty to enforce statutes
10 and rules relating to mortgage brokers. See A.R.S. § 6-901 *et seq.*

11 2. The Department bears the burden to prove by a preponderance of the evidence
12 that Guardian Group, Mr. Belevan, and Mr. Prehoda have violated State laws
13 pertaining to mortgage brokers. See A.A.C. R2-19-119.

14 3. A preponderance of the evidence is "such proof as convinces the trier of fact
15 that the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF
16 EVIDENCE § 5 (1960).

17 4. The Department proved by a preponderance of the evidence that Guardian
18 Group, Mr. Belevan and Mr. Prehoda violated A.R.S. § 6-903(A) by acting as mortgage
19 brokers in Arizona, within the meaning of A.R.S. § 6-901(11), without having obtained
20 mortgage broker licenses from the Department.

21 5. The Department proved by a preponderance of the evidence that Guardian
22 Group, Mr. Belevan, and Mr. Prehoda violated A.R.S. § 6-909(B) by receiving
23 compensation, within the meaning of A.R.S. § 6-901(5), when arranging for or
24 negotiating mortgage loans while not licensed by the Department as mortgage brokers.

25 6. The Department proved by a preponderance of the evidence that Guardian
26 Group, Mr. Belevan, and Mr. Prehoda violated A.R.S. § 6-909(C) by knowingly
27 advertising, displaying, distributing, broadcasting or televising or causing or permitting
28 to be advertised, displayed, distributed, broadcasted or televised a misleading or
29 deceptive statement or representation with regard to rates, terms, or conditions for a
30 mortgage loan.

1 7. The weight of the evidence of record established that grounds exist that support
2 the issuance of the above-mentioned Cease and Desist Order. See A.R.S. § 6-13.7

3 8. The Department proved by reliable evidence that there were at least 2,495
4 consumers that were harmed by the actions of Guardian Group (2,495 violations). The
5 Department also proved by reliable evidence that there were at least 5 transactions
6 where Guardian Group provided services to consumers that benefitted them and that
7 Guardian Group's activities constituted the business of a mortgage broker (5
8 violations). Therefore, grounds exist to impose a civil monetary penalty in the amount of
9 \$5,000.00 for each violation established by the Department where Guardian Group, Mr.
10 Belevan, and Mr. Prehoda were engaged in the business of a mortgage broker without
11 being licensed (2,500 violations). See A.R.S. § 6-132.

12 9. Based on the above-found violations, grounds exist for the Superintendent of the
13 Department to issue any other order or remedy necessary or proper for the
14 enforcement of the statutes and rules regulating mortgage brokers. See A.R.S. §§ 6-
15 123 and 6-131.

16 **ORDER**

17 **IT IS ORDERED** upholding the above-mentioned Cease and Desist Order
18 except as to the provisions within the Order that addressed restitution.

19 **IT IS FURTHER ORDERED** that within 40 days of the effective date of the
20 Order entered in this matter, a civil monetary penalty of \$100,000.00 shall be paid to
21 the Department. Petitioners are jointly and severally liable for payment of such civil
22 monetary penalty.

23 *In the event of certification of the Administrative Law Judge Decision by the*
24 *Director of the Office of Administrative Hearings, the effective date of the Order will be 5*
25 *days from the date of that certification*

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27 Done this day, February 8, 2011.

28 /s/ Lewis D. Kowal
29 Administrative Law Judge

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Transmitted electronically to:
Lauren Kingry, Superintendent
Arizona Department of Financial Institutions