

STATE OF SOUTH CAROLINA)	BEFORE THE ADMINISTRATOR
)	SOUTH CAROLINA DEPARTMENT
COUNTY OF RICHLAND)	OF CONSUMER AFFAIRS
THE SOUTH CAROLINA DEPARTMENT OF)	
CONSUMER AFFAIRS,)	
)	
PETITIONER,)	DOCKET NO. 9901
)	
VS.)	ORDER
)	
RONNIE GOSSETT, INDIVIDUALLY,)	
AND DBA SUNBELT HOME MORTGAGE,)	
FKA AMERICAN HOME MORTGAGE,)	
)	
RESPONDENTS.)	
_____)	

This matter came before me for hearing on March 15, 1999. Appearing for the Petitioner was Danny Collins, its attorney. Respondents did not appear at the hearing.

This matter began with service of a Notice of Second Amended Notice of Hearing and Petition on Ronnie Gossett February 3, 1999, as shown by the Affidavit of Service by Barbara Childress dated February 3, 1999, and the Certified Mail Receipt which indicates Respondent Gossett received the Notice on February 4, 1999. The gist of the Petition is that Respondents Ronnie Gossett ("Gossett"), Individually, and DBA Sunbelt Home Mortgage ("Sunbelt") f/k/a American Home Mortgage ("American"), violated numerous provisions of the Mortgage Loan Broker Act, ranging from taking excess advance fees, failing to use due diligence to process a mortgage loan application, to unconscionable conduct as a mortgage loan broker, as well as engaging in brokering activity prior to licensing as a mortgage loan broker, including taking an advance fee in violation of the Loan Broker's Act. Stemming from these violations, the Staff asked me to issue an Order requiring Respondents to cease and desist the enumerated violations, revoke or suspend permanently or temporarily Respondent Sunbelt's license,

impose administrative fines, refund advance fees, and increase Respondent Sunbelt's bond to \$25,000.

STATEMENT OF CASE

In support of its allegations, Petitioner called eight witnesses and introduced numerous exhibits. At the outset, Petitioner submitted into evidence the Second Amended Notice of Hearing, Second Amended Petition, Affidavit of Service, and Certified Mail Receipt (Exhibit No. 1). Petitioner then called Abby Barlet to testify. Ms. Barlet testified that her mother-in-law saw Mr. Gossett's advertisement in the Iawanna paper in September 1998 concerning mortgage loans and she (Ms. Barlet) went to him in October 1998. She testified that Mr. Gossett represented he could give her an 8% loan and that she would not need a credit report. She also testified that Gossett informed her that he would lend her money to purchase land and to buy a doublewide mobile home. She further testified that Gossett informed her that she would need to give him a \$7,000.00 downpayment for a doublewide in order to lower her payments to \$300.00. According to Ms. Barlet's testimony she gave Gossett a \$7,000.00 downpayment on October 13, 1998, in the form of a check and he provided her with a receipt on behalf of Sunbelt. (Exhibit No. 2). She testified that Gossett told her to go to Foxwood Mobile Homes to select a doublewide which she did. She testified that Gossett made up a Real Estate Purchase and Sales Agreement for her to finance the land in the amount of \$18,000.00 as well as provided her with a Truth-in-Lending Disclosure and Good Faith Estimate on October 14, 1998. (Exhibit No. 3). She then testified that she called Gossett and told him that they did not want the doublewide and she wanted to refinance her singlewide with the land that they were going to buy. According to Ms. Barlet's testimony Gossett said that the trailer could be moved in and set up on the land in November. She testified that the contract for the sale of the land stated that the closing would be at the end of November. She further testified that Gossett stated that the closing would need to occur in December because he was having

problems with his "help." She testified that Gossett would not return her telephone calls so she cashed a Certificate of Deposit in order to pay cash for the land.

According to Ms. Barlet's testimony at the end of November or first week in December, she went to Gossett's office on the second floor NationsBank Building in Greenville to meet with him and request her money back. She testified that Gossett informed her that she would receive her money but that it would take 14 days. Barlet testified that two weeks later she called Gossett and he said that her money had been sent out. She also testified that she requested he put a trace on her money but he refused to do so. She testified that she filed a complaint with Consumer Affairs on January 8, 1999. (Exhibit No. 4). She subsequently hired an attorney who did an asset check on Gossett and it revealed no assets. She testified she is still waiting to file a lawsuit. Ms. Barlet testified that to date she has not received her \$7,000.00 downpayment back from Gossett nor has she received a loan.

Petitioner then called Mae Frances Thomas to testify. She testified that she became familiar with Gossett on September 10, 1998, because her daughter worked with a man who knew Gossett. She testified that Gossett informed her that he could obtain a 100% loan for her when everyone else told her that they could only obtain an 80% loan. She testified that she filled out a loan application on September 10, 1998, and gave him a check payable to American Home Mortgage in the amount of \$350.00 for an application fee on September 14, 1998 (Exhibit No. 5). Ms. Thomas testified that she waited three weeks for Mr. Gossett to call about her loan. She testified she would call him and leave a message or the answering machine would be full of messages. Ms. Thomas testified that when she finally reached Mr. Gossett he said to go ahead and find a house and as a result she obtained a real estate agent who found her a house. She testified that a closing was scheduled but Mr. Gossett did not show up for the closing and Gossett asked her to find another home.

Ms. Thomas also testified that she gave Gossett a \$5,000.00 down payment for a house on October 15, 1998, and he gave her a receipt in the name of Sunbelt for her down payment. (Exhibit No. 6). She testified that she did not close her loan in November. She further testified that she continued to try and contact Gossett by phone, but he would not return her calls. Ms. Thomas testified that she did not receive her downpayment back and she borrowed it from her 401K account. She testified that she then filed a complaint with Consumer Affairs on November 20, 1998, against Gossett. (Exhibit No. 7).

Cheryl Tumblin next testified that she saw an advertisement by American in the Alternative paper on September 17, 1998, (Exhibit No. 8). She testified that Gossett had the lowest rates and she made an appointment to talk with him on October 2, 1998. Ms. Tumblin testified that she talked with Robyn Aponté, the manager at Sunbelt who informed her she would close before the end of December. At that time she paid a \$350.00 upfront fee as well as signed the Good Faith Estimate and Truth-in-Lending Disclosure (Exhibit No. 9). She also testified that she received a letter dated November 7, 1998, from Kathy West, a customer service representative with Sunbelt, asking her to complete the enclosed Attorney/Insurance Preference Form. (Exhibit No. 10). Ms. Tumblin testified that the letter requested that she sign the form and date it as of October 2, 1998.

According to Ms. Tumblin's testimony, she tried calling Gossett many times but he never returned her calls. On December 17, 1998, a Derrick Stuart with the company called her and asked that she return his call which she did. She testified that he told her that Sunbelt had moved to a new location and he needed her employment verification, pay stubs and bank statements. Ms. Tumblin testified that on December 22, 1998, she sent him all the documents he requested except her husband's Verification of Employment which his employer was to mail directly to Sunbelt. (Exhibit No. 11). She testified that after Christmas she called once or twice a week. She testified that in January 1999, a "Niki" with Sunbelt answered the phone and she asked Niki to

request that Mr. Gossett call her as well as return her money. She also testified that on January 13, 1999, she called Niki again and Niki informed her Mr. Gossett had "cleared out" of the office. Ms. Tumblin testified that she then complained to Foothills Better Business Bureau and filed a complaint with the Consumer Affairs on January 29, 1999 (Exhibit No. 12). Ms. Tumblin testified that a lady appraised her house but she never received a copy of the appraisal nor does she know if her credit report was ever pulled. She testified that her \$350.00 was not returned by Gossett.

Petitioner also offered the testimony of Darrell Smith. He testified that he saw Gossett's advertisement in the Alternative paper at the end of September 1998. He testified that he called Gossett who informed him he could give him a 6.75% interest rate when he consolidated Smith's bills and refinanced his home. According to Mr. Smith's testimony, on October 14, 1998, he met with Gossett and received a Good Faith Estimate, Truth-in-Lending disclosure as well as provided Gossett with \$350.00 for the appraisal and credit check (Exhibit No. 13). Gossett provided him with a receipt in the name of American-Sunbelt Home Mortgage. (Exhibit No. 13). Mr. Smith testified that a month passed and a lady completed an appraisal but he never received a copy of the appraisal. He testified that he made many calls to Gossett during that month and after the appraisal was completed but either the phone would not be answered, there would be a new secretary or voice mail would come on. He testified that when hereceived a response from Gossett the terms did not include all his bills he needed to consolidate but Gossett requested that Smith let him check for better terms. Mr. Smith testified that he called Gossett after December and was informed that Sunbelt had moved out of its office. Mr. Smith testified that he then called the Better Business Bureau in Greenville who directed him to Consumer Affairs. Mr. Smith testified he subsequently filed a complaint with Consumer Affairs (Exhibit No. 14). He testified that he never received a copy of the appraisal nor does he know if a credit check was ever completed.

Starlet Morrison testified on behalf of Petitioner. She testified that in March 1998, she saw an ad in the Iwana paper for RIC Mortgage. She testified that she spoke to Bob Smith, the manager, who turned them over to Gossett. She also testified that Gossett asked for all their papers including the bankruptcy as well as \$350.00 for an appraisal. She testified that they then picked out a manufactured home with Ron Cooley Homes. According to Ms. Morrison's testimony at the end of April, Ron Cooley Homes told them that they were not approved for the loan and as a result Gossett referred them to the Greenville Housing Center. She testified that he informed them that they were approved by Chase Lenders and would close at the end of May but she could not get Gossett to close their loan. She testified that the subsequently went to another broker, Presidential Mortgage, who informed them to use Jane Shuler's name to obtain the return of their appraisal fee of \$350.00. Ms. Morrison testified that as a result of using Ms. Shuler's name Gossett refunded her \$350.00 at the end of June. She testified that she filed her complaint with Consumer Affairs on July 10, 1998. (Exhibit No. 15).

Thalia Farley, the head of the Services Department, testified as to the form letters sent to Gossett to address the outstanding complaints against his company and the fact that no response was received (Exhibit No. 16).

The Petitioner also called the Department's Investigator Barbara Morris to testify. She testified that Attorney Shuler requested that she conduct a compliance review of Gossett due to his conditional license and as a result she conducted that review on October 15, 1998. She testified that she then sent him a letter on October 30, 1998, concerning the deficiencies she found during her random compliance review of five in-process files (Exhibit No. 17). Ms. Morris testified that Gossett had no closed loans as of that date. She testified that she also sent him an informational letter concerning general compliance issues on the same date (Exhibit No. 18). She testified that when

she did not receive a response to her letters she sent him a follow-up letter, certified mail, on December 3, 1998, and the return receipt was signed by a Jennifer Weber (Exhibit No. 19). Ms. Morris testified that on January 11, 1999, Ms. Shuler set up a date for her to review Gossett's records as a result of consumer complaints but she was unable to make contact with Gossett as he failed to appear as scheduled. She testified that she also went to his office at the NationsBank building on the same day but he was not there. She testified that he never answered her letters.

The last witness for Petitioner was Jane Shuler, a Staff Attorney with the Department in charge of licensing mortgage loan brokers. She testified that she received an out-of-date application package from Ronnie Gossett, d/b/a American Home Mortgage, on September 8, 1998. She testified that part of that package included his Supplemental Form A, employee form with a Manufactured Housing Board Certificate (Exhibit No. 20). Ms. Shuler testified that she subsequently informed Gossett there was a broker licensed with a similar company name and Gossett submitted a revised package in the name of National Home Mortgage. She testified that she informed him the second name violated a federal law and he submitted the name of Sunbelt Home Mortgage on September 11, 1998. Ms. Shuler testified that Gossett submitted a Surety Bond from Massachusetts Bay Insurance Company ("Massachusetts Bay") in the amount of \$10,000.00 on September 30, 1998 (Exhibit No. 21). She testified that she agreed to conditionally issue a Certificate of Registration to Gossett d/b/a Sunbelt Home Mortgage on September 30, 1998, due to her concern about his qualifications because the Mortgage Loan Broker Amendment was to take effect October 1, 1998, requiring stricter requirements to become a mortgage loan broker as well as the Morrisons' outstanding consumer complaint.

According to Ms. Shuler's testimony she received a cancellation notice on November 25, 1998, from Massachusetts

Bay with an indication for the cancellation as "NSF Check". She testified that she then sent Gossett a form bond cancellation letter informing him that his bond would expire on December 23, 1998 (Exhibit No. 24). She also testified that she wrote to William Cahill, with the Legal Department at Massachusetts Bay informing the company on January 20, 1999, that the Department was noticing Gossett for a hearing, that the Department did not receive 45 days notice prior to cancellation of the bond and placed the company on notice that the Department planned to look to it for reimbursement if Gossett refused to comply with the terms of any Order entered obtained against him (Exhibit No. 25). She further testified that on March 4, 1999, she received a letter from Hanover Insurance Company's attorney Paula Lee Chambers, Bond Claim Counsel, indicating that the bond was in effect at the time of the hearing and any judgement rendered against Gossett would be compensable up to the limit of the liability of the bond, that is, \$10,000.

FINDINGS OF FACT

Based on evidence by the Staff at the hearing, I make the following Findings of Fact.

1. The Respondents were served with the Second Amended Notice of Hearing and Second Amended Petition by certified mail at 15 Danchrist Court, Taylors, S.C., return receipt signed by Sandra Gossett on February 4, 1999. (Exhibit No. 1).

2. Respondents, in addition to receiving the Second Amended Notice of Hearing and Second Amended Petition, were given notice and opportunity to respond to the five consumer complaints through the Consumer Services Division but failed or declined to respond to all of the complaints except the Morrison complaint. (Testimony of Ms. Morrison and Ms. Farley).

3. Respondent Gossett obtained a Conditional Certificate of Registration to do business as a mortgage loan broker in the name of Sunbelt Home Mortgage on

September 30, 1998. (Testimony of Ms. Shuler, Exhibit No. 22).

4. The evidence has established that Respondent Gossett f/k/a American Home Loans engaged in loan brokering activity and solicited an advance fee of \$350.00 in violation of S.C. Code Ann. § 34-36-20 from Ms. Thomas prior to the registration as a mortgage loan broker. (Testimony of Ms. Thomas, Ms. Shuler, Exhibit No. 5).

5. The evidence further established that Respondent Gossett d/b/a Sunbelt after registration as a mortgage loan broker solicited advance fees of \$7,000.00 from Ms. Barlett, \$5,00.00 from Ms. Thomas, \$350.00 from Ms. Tumblin, and \$350.00 from Mr. Smith, in excess of that permitted by S.C. Code Ann. § 40-58-70(5). (Testimony of Ms. Barlet, Ms. Thomas, Ms. Tumblin, and Mr. Smith, Exhibits 2, 5, 9, 13).

6. The evidence also establishes that the surety bond issued by Massachusetts Bay in the amount of \$10,000, provided by Respondents was cancelled on November 23, 1998, and the Staff's Attorney advised Respondents of the cancellation and Gossett failed to obtain the necessary financial responsibility required by S.C. Code Ann. § 40-58-40. (Testimony of Ms. Shuler, Exhibits 23, 24).

CONCLUSIONS OF LAW

Based on evidence by the Staff at the hearing, I make the following conclusions of law:

1. The Second Amended Notice of Hearing and Second Amended Petition was timely and sufficient to put Respondents on notice that at the hearing I would consider whether pursuant to S.C. Code Ann. § 40-58-10 et seq. a Cease and Desist Order should be issued against Respondents restraining them from soliciting, processing, placing or negotiating residential mortgage loans for others or offering to process, place or negotiate residential mortgage loans for others, and/or to show cause pursuant to S.C. Code Ann. § 34-36-10 et seq., why a Cease and Desist Order should not be issued against Respondents restraining them from

assessing or collecting an advance fee from a borrower to provide services as a loan broker, and/or to show cause why Respondent's mortgage loan broker registration should not be temporarily or permanently revoked, and/or to show cause why an administrative fine of not more than five hundred dollars for each offense and not more than five thousand dollars for the same set of transactions or occurrence for each offense should not be imposed, and/or show cause why Respondent, Sunbelt Home Mortgage's bond should not be increased up to \$25,000, and/or such other relief as the Administrator deemed appropriate. (Exhibit No. 1).

2. The Department has jurisdiction over this matter pursuant to the Licensing Requirements Act of Certain Loan Brokers of Mortgages on Residential Real Property, S.C. Code Ann. §§ 40-38-10 et seq. and the S.C. Loan Broker's Act, S.C. Code Ann. § 34-36-10 et seq.

3. The evidence has established that Respondent Gossett f/k/a as American Home Loans engaged in loan brokering activity and solicited an advance fee of \$350.00 in violation of S.C. Code Ann. § 34-36-20 from Ms. Thomas prior to the registration as a mortgage loan broker. (Testimony of Ms. Thomas, Exhibit No. 5).

4. The evidence further established that Respondent Gossett d/b/a Sunbelt after registration as a mortgage loan broker solicited advance fees of \$7,000.00 from Ms. Barlet, \$5,000.00 from Ms. Thomas, \$350.00 from Ms. Tumblin, and \$350.00 from Mr. Smith, in excess of that permitted by S.C. Code Ann. § 40-58-70(5), and, thus also considered a violation of S.C. Code Ann. § 34-36-20.

5. The testimony in the record indicates that Respondent Gossett failed to use due diligence to make reasonable efforts to procure a loan on behalf of borrower Ms. Morrison while employed by RIC Mortgage and on behalf of borrowers Ms. Barlet, Ms. Thomas, Ms. Tumblin, and Mr. Smith while doing business as Sunbelt. (Testimony of Morrison, Barlet, Thomas, Tumblin and Smith).

6. The testimony on the record establishes that the excessive advance fees taken by Respondent exceed the permissible amount by a broker for third party charges such as credit report and appraisal and, thus, constitutes violations of a transaction, practice, or course of business which is unconscionable in light of the regular practices of a mortgage loan broker in violation of S.C. Code Ann. § 40-58-70(3). (Testimony of Morrison, Barlet, Thomas, Tumblin and Smith).

7. Moreover, the testimony on the record establishes that Respondents conduct concerning the lack of due diligence in procuring the borrower's loans as evidenced by Gossett's failure to respond to the borrowers repeated phone messages concerning the status of their mortgage loans constitutes violations of a transaction, practice, or course of business which is unconscionable in light of the regular practices of a mortgage loan broker in violation of S.C. Code Ann. §40-58-70(3). (Testimony of Morrison, Barlet, Thomas, Tumblin and Smith).

8. The evidence establishes that Respondents failed to respond to the Department Investigator's compliance review letters as requested and failed to apprise the Department of its change in office location in violation of S.C. Code Ann § 40-58-60,-65, (Testimony of Ms. Morris and Ms. Shuler).

9. The repeated failure to a) use due diligence; b) apprise the Department of its change in location; and c) to maintain a bond, as well as charging of illegal advance fees, constitutes well more than ten separate violations of the Mortgage Loan Broker Act. IT IS THEREFORE ORDERED that Respondents:

1. Cease and desist brokering residential mortgage loans pursuant to § 40-58-80(A);

2. Broker registration is permanently revoked pursuant to § 40-58-80;

3. Pay a fine of \$5,000.00 for multiple violations of §§ 40-58-60, -65, -70 and -80;

4. Reimburse Ms. Thomas \$350.00 as provided for pursuant to § 34-36-40(C);

5. Reimburse Ms. Thomas \$5,000.00, Ms. Barlet \$7,000.00, Ms. Tumblin \$350.00 pursuant to § 34-36-40 and Respondent Gossett will not be reissued a mortgage loan broker license until each borrower is fully reimbursed, including the legal rate of interest for an account stated pursuant to S.C. Code Ann. § 34-31-20(A) commencing from the date this Order is signed and shall be included up until the actual date each borrower is reimbursed;

6. If Respondent Gossett fails to fully reimburse the borrowers Thomas, Barlet, Tumblin and Smith, his bond with Massachusetts Bay shall be taken to satisfy their unpaid claims first and then the Department's fine;

7. This Order shall be placed on the Department's website at <http://www.state.sc.us/consumer> after the time for appeal has expired.

AND IT IS SO ORDERED.

(signed by Administrator)

Philip S. Porter
Administrator
S.C. Department of Consumer
Affairs
2801 Devine Street
Columbia, SC 29205

Columbia, South Carolina
March 25, 1999