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2	California Corporations Commissioner
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8	
	BEFORE THE DEPARTMENT OF CORPORATIONS
9	OF THE STATE OF CALIFORNIA
10	In the Matter of the Statement of Issues of Case No.: 605-2672
11	THE CALIFORNIA CORPORATIONS) Case No.: 003-2072
11	COMMISSIONER,) STATEMENT OF ISSUES
12)
13	Complainant,)
	vs.
14	ACCESS AMERICA, INC.,
15	ACCESS AWERICA, INC.,
16	Respondent.
)
17	
18	Complainant, the California Corporations Commissioner ("Commissioner"), is informed
19	and believes, and based upon information and belief, alleges and charges Respondent as follows:
20	I
21	<u>INTRODUCTION</u>
22	The Commissioner seeks to deny the issuance of a finance lender license to Access
23	America, Inc., pursuant to section 22109 of the California Finance Lenders Law (California
24	Financial Code § 22000 et seq.) ¹ for violation of section 22100 by engaging in the business of a
25	finance lender or broker without obtaining a license from the Commissioner, and for violation of
26	section 22161 by making false statements with regard to the business subject to the provisions of
27	the California Finance Lenders Law.

¹ All further statutory references are to the Financial Code unless otherwise indicated.

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II

RESPONDENT'S APPLICATION

Section 22101 provides in pertinent part as follows:

(a) An application for a license under this division shall be in the form and contain the information that the commissioner may by rule require . . .

California Code of Regulations, title 10, section 1422, in relevant part, states:

- (a) The application for a license as a finance lender or broker pursuant to Financial Code Section 22100 shall be filed upon the form set forth in subdivision (c) of this section.
- (c) An application for a license as a finance lender or broker shall be submitted to the Commissioner on the following form: [FLL 839 rev 01/03]

On November 21, 2003, Access America, Inc., filed an application for a finance lender license with the Commissioner (File No. 605-2762) pursuant to pursuant to section 22101 and California Code of Regulation, title 10, section 1422. Magda Gonzalez Aguilar verified the application as President/Chief Executive Officer of Access America, Inc., and listed Ricardo Diaz as its Secretary.

Access America, Inc., a Nevada corporation, first filed to do business in California with the California Secretary of State's Office on July 30, 2003, stating its mailing address was at 870 Market Street, Suite 922, San Francisco, California 94102.

The application for a finance lender license filed by Access America, Inc., omits material information and contains contradictory statements. For example, the applicant did not indicate on page 1 whether an application is being filed to obtain a license to conduct business as a lender, broker or both. Thus, it is unclear what type of license is sought and what type of license may be issued by the Commissioner pursuant to section 22106, subdivision (a). The applicant failed to include in section 6 of the application the names of any officers, other than Magda Gonzalez Aguilar and Richardo Diaz, even though Edwin Omar Campos is listed as the COO, Chief Operations Officer. The applicant also failed to include the names of any directors, managers, trustees, control persons or others described in section 6 of the application.

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Additionally, the Statement of Identity Questionnaires filed with the application for Magda Gonzalez Aguilar, M. Antonieta Parada and Edwin Omar Campos failed to include their respective employment for the last 10 years. Thus, the Commissioner is unable to investigate the officers, directors and persons owning or controlling, directly or indirectly, 10% or more of the outstanding equity securities pursuant to section 22105.

The applicant identifies only one business location, which it identified shall be at 870 Market Street, Suite 922, San Francisco, California. However, Access America, Inc., submitted a Fictitious Business Name Statement for San Mateo County listing its business as located at 276 Avenue Alhambra, El Granada, California 94018, which is the same address for Access America, Inc.'s President, Magda Gonzalez Aguilar, who is also known as Magda S. Gonzalez.

Additionally, Access America, Inc., filed a Fictitious Business Name Statement in San Francisco County, California, stating that its address is at 711 S. Carson Blvd. #4, Carson City, Nevada. Thus, the applicant's failure to properly identify its business locations precludes the Commissioner from approving and issuing an original license endorsed to show the address of the authorized location pursuant to section 22106.

The applicant did not state whether the company has been subject to any administrative action in another state or whether the company will be conducting other businesses on the applicant's premises as required in sections 7 and 8, respectively, of the application. The applicant did not provide a certificate indicating the original date of incorporation and failed to include an affidavit regarding the applicant's knowledge of the California Finance Lenders Law and Rules as required to be submitted as in Exhibit I and Exhibit L, respectively, to its application.

III

RESPONDENT'S FAILURE TO COMPLY WITH THE COMMISSIONER'S REQUEST

Section 22150 provides:

The commissioner may make general rules and regulations and specific rulings, demands, and findings for the enforcement of this division, in addition to, and within the general purposes of, this division.

The Commissioner made a demand for additional information required to process Access America, Inc.'s application and identified the numerous material omissions in its application and exhibits thereto. On February 9, 2004, the Commissioner's representative, Examiner Angelito V. Salandanan wrote to Henry Aguilar, who designated himself as attorney-in-fact for Access America, Inc. Henry Aguilar, husband of Magda Gonzalez Aguilar, stated in Access America, Inc.'s application he was the person the Department of Corporations should contact for additional information needed for review of Access America, Inc.'s application and its employees. Neither Henry Aguilar nor Access America, Inc., responded to the February 9, 2004, letter or filed the requested information with the Department.

IV

RESPONDENT'S UNLICENSED ACTIVITY, MISAPPROPRIATION AND ACTS INVOLVING DISHONESTY, FRAUD OR DECEIT

On February 4, 2004, the Commissioner's agent visited Access America, Inc.'s San Francisco office to determine if they were conducting unlicensed activities. Access America, Inc.'s application states its office is in Suite 922, at 870 Market Street, San Francisco, California; however, the building lobby directory and the building manager there indicated that its office is in Suite 928, a fact never disclosed to the Commissioner.

Access America, Inc., does business under the name "Access America" and its entry door located at Suite 928 lists their phone numbers and their business hours. Access America, Inc., was open for business during its stated hours and was operating as described below.

Access America, Inc.'s receptionist, M. Antonieta Parada, and one of its loan officers, Edwin Campos, provided information about Access America, Inc.'s services which include seeking and securing financing for real estate purchases for investors, property owners and persons seeking to buy residential dwellings. When questions were posed to Edwin Campos that he was unable to answer, he stated that he would need to check with the head of operations, Henry Aguilar. Henry Aguilar is not listed anywhere in Access America Inc.'s application as an officer, director, manager, trustee, or person with direct responsibility of applicant's lending activity within the state.

All of Access America, Inc.'s business cards for it employees state that they are a "FINANCIAL LENDER" and include their toll free phone number, (877) 777-7520.

Access America Inc.'s employees provide consumers with copies of a Uniform Residential Loan Application. In addition, they provided specific information about its procedure for obtaining a loan and the terms of a loan that Access America, Inc., represented it could arrange for those consumers seeking funding to purchase property.

In February 2004 persons at New Century Mortgage Corporation stated that Access America, Inc., had solicited them to be able to broker loans and provided them with documents. These documents provided by Respondent were furnished to further its activities as a financial lender and broker. One document purports to be a license from the Commissioner.

But what Access America, Inc., provided was a counterfeit license, which falsely states:

Access America Inc. dba Access Mortgage & Financial has been issued a Finance Lenders License Number 603-8359 by the Department of Corporations, CALIFORNIA, to operate the business of Financial Lender in the State of CALIFORNIA, at a place of business located at 870 Market Street Ste 922 San Francisco, CA 94102 CALIFORNIA, This date of 23 August 2003. [sic]

The Department of Corporations issued a California Finance Lenders license to Access Mortgage & Financial Corporation, and the file number associated with that license is 603-8359. Access Mortgage & Financial Corporation, which is unaffiliated with Respondent, have never granted Access America, Inc., the right to use their name or license number. Access Mortgage & Financial Corporation, upon discovering the misappropriation of their name and license number, requested that Access America, Inc., cease using their name and license number.

The counterfeit license copied and distributed by Respondent appears to include the letterhead used by the California Office of the California Secretary of State but contains the street address for the Department of Corporations' Office in Los Angeles, and bears the seal of the State of California in the lower left corner. These false, misleading and deceptive statements are in violation of section 22161.

The Department of Real Estate has not licensed Respondent to conduct real estate related activities. Respondent lacks any exemption from the license requirement found in section

22100. Consequently, on February 11, 2004, the Commissioner issued to Respondent and its agents a Desist and Refrain Order pursuant to section 22712 to prohibit unlicensed activities in violation of section 22100. None of the recipients of the Order have requested a hearing concerning the Desist and Refrain Order.

Previously, in November 2003 Access America, Inc.'s President and Chief Executive Officer, Magda Gonzalez Aguilar, filed with the Commissioner a letter representing, in part, that:

[T]he company depends of [sic] the approval of the license from your department, we are just in standby testing the market and hiring employees. . .

Yet, Edwin Campos, Respondent's COO informed the public that Access America, Inc., has many programs for a borrower, including 100% financing, and claimed it successfully arranged for financing and real property loans for consumers. Access America, Inc., represented that they were offering either fixed or adjustable rate mortgage ("ARM") loans, the latter ARM loans having an adjustable rate term of between two and five years, at a borrower's option. Access America, Inc.'s employees stated that they are currently able to obtain 80% loan-to-value loans at interest rates ranging from 5.99% to 6.75%.

In addition, Access America Inc.'s employees told consumers that they can arrange for an appraisal of the real property for which a consumer is seeking financing and stated that Access America, Inc., will arrange for a credit report for the borrower and send it and the borrower's loan application to companies that they deal with including, but not limited to, CMG Mortgage Inc., and Delta Funding Corporation, and WMC.

In exchange for the above described services, Access America, Inc., will receive compensation consisting of various fees for the specific services they render and represented that they have in the past completed the entire loan process in as few as four or five days.

Access America, Inc., falsely represented itself as properly licensed to act as a broker for real estate loans by offering its services as brokers to several bona fide licensed California Financial Lenders and Brokers including, but not limited to, Argent Mortgage Company, LLC

and New Century Mortgage Company. To arrange for the above-described loans and financing arrangements, Access America, Inc., falsely stated that they are licensed as a California Finance Lender and Broker. To support these false statements it copied, printed, displayed and/or distributed the above-described counterfeit license.

Access America, Inc., made statements about their business and the conditions for making or negotiating loans that were false, deceptive and misleading in violation of section 22161 of the California Financial Code. Misleading statements include the following: (1) Access America, Inc., was licensed by the Department of Corporations to act as a California Finance Lender and Broker; (2) Access America, Inc.'s license number was 603-8359, and was affiliated with Access Mortgage & Financial Corporation, and (3) License issued containing the letterhead and seal used by the California Office of Secretary of State.

Access America, Inc., made material omissions of fact in violation of section 22161 of the California Financial Code including: (1) they did not possess a license to act as a finance lender or broker; (2) they were using the license number and business name of another California Finance Lender and Broker without its permission; and (3) they had a pending incomplete application for a California Finance Lender and Broker license that had not been approved by the Department of Corporations.

\mathbf{V}

GROUNDS FOR DENIAL OF RESPONDENT'S APPLICATION

Section 22109 of the California Financial Code provides in pertinent part:

- (a) Upon reasonable notice and opportunity to be heard, the commissioner may deny the application for any of the following reasons:
 - (1) A false statement of a material fact has been made in the application.
- (2) Any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the applicant has, within the last ten years . . . (B) committed any act involving dishonesty, fraud, or deceit, if the . . . act is substantially related to the qualifications, functions, or duties of a person engaged in business in accordance with this division.
- (3) The applicant or any officer, director, general partner, or person owning or controlling, directly or indirectly, 10 percent or more of the

outstanding interests or equity securities of the applicant has violated any provision of this division or the rules thereunder . . .

V

CONCLUSION

Complainant finds, by reason of the foregoing, that:

- (1) Access America, Inc., has violated section 22100 by engaging in the business of a financial lender or broker without obtaining a license from the Commissioner;
- (2) Access America, Inc., has violated section 22161 by printing, displaying, publishing or distributing statements or representations with regard to its business and licensing status that are false, misleading or deceptive or that omits material information that is necessary to make the statements not false, misleading or deceptive;
- (3) Access America, Inc., has failed to comply with a demand of the Commissioner to furnish further information to process its application in violation of section 22150; and
- (4) Access America, Inc., is incapable of operating its finance lenders business in accordance with the California Finance Lenders Law as demonstrated by Access America, Inc.'s dishonest and illegal activities described herein.

The findings set forth above constitute grounds under California Financial Code section 22109 to deny the issuance of a finance lender license to Access America, Inc.

THEREFORE, the Commissioner asserts that he is justified under section 22109 in denying the issuance of a finance lender license to Access America, Inc.

WHEREFORE, the Commissioner prays that the application for a finance lender license filed by Access America, Inc., on November 21, 2003, be denied.

Dated: July 2, 2004

San Francisco, California

WLLIAM P. WOOD California Corporations Commissioner

Joan E. Kerst
Senior Corporations Counsel