

1 MARY ANN SMITH
Deputy Commissioner
2 DOUGLAS M. GOODING
Assistant Chief Counsel
3 LINDSAY B. HERRICK (State Bar No. 224986)
Counsel
4 1515 K Street, Suite 200
Sacramento, California 95814
5 Telephone: (916) 445-3682
6 Facsimile: (916) 445-6985

7 Attorneys for Complainant

8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

11 In the Matter of:)	CRMLA License No. 413-0421
12 THE COMMISSIONER OF BUSINESS)	
13 OVERSIGHT,)	
14 Complainant,)	STATEMENT OF FACTS IN SUPPORT OF
15 v.)	ORDER TO DISCONTINUE VIOLATIONS
16 SUMMIT MORTGAGE CORPORATION,)	PURSUANT TO CALIFORNIA FINANCIAL
17 Respondent.)	CODE SECTION 50321
18)	
19)	

20 The Commissioner of Business Oversight (“Commissioner” “Complainant” or “Department”)
21 is informed and believes, and based upon such information and belief, finds, alleges and charges
22 Respondent, Summit Mortgage Corporation (“Summit”), as follows:

23 1. Summit is a residential mortgage lender and servicer licensed by the Commissioner
24 pursuant to the California Residential Mortgage Lending Act (“CRMLA”) (Cal. Fin. Code, § 50000
25 et seq.), license number 413-0421, and employs mortgage loan originators. Summit is a Minnesota
26 corporation located at 13355 10th Avenue N, Suite 100, Plymouth, Minnesota, with a registered agent
27 for service in California located at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California
28 95833.

1 2. On or about April 2, 2013, the Commissioner commenced a regulatory examination of
2 the books and records of Summit under the CRMLA (“2013 regulatory examination”). During the
3 examination it was revealed that according to Summit’s California Additional Per Diem Interest
4 Charge Disclosure, borrowers indicated that they would not pay interest on a loan more than one day
5 prior to the date that the loan proceeds are disbursed from escrow. A comparison of the interest
6 computed from the starting date per HUD-1 documentation and the disbursement date from company
7 records revealed that Summit commenced charging borrowers per diem interest several days in
8 excess of the one-day period prior to the disbursement of loan proceeds.

9 3. The per diem interest overcharges are repeat violations by Summit that were
10 discovered in a prior regulatory examination conducted on or about May 17, 2011 by the Department
11 (“2011 regulatory examination”). As a result of that examination, Summit was required to perform
12 an audit and to refund \$10,660.79 to borrowers with ten percent interest per annum.

13 4. During the 2013 regulatory examination and again on November 17, 2014 in a
14 regulatory report (“2014 regulatory report), the Department informed Summit that it would once
15 again be required to perform a third-party audit review for all mortgages made since January 3, 2012
16 and refund overcharges plus interest at the rate of ten percent per annum. On January 16, 2015,
17 Summit submitted its report on its third-party audit review covering the period January 3, 2012 to
18 December 15, 2014 (“audit report”). Based on Summit’s audit report and a review of its results by
19 the Department, Summit was required to refund a total of 16 loans plus interest for per diem
20 overcharges.

21 5. During the 2013 regulatory examination, trust account shortages were also discovered.
22 On June 5, 2013, Summit was asked for additional information relating to the shortages. Information
23 supplied thereafter to the Department however revealed instead trust overages. Summit was therefore
24 instructed in part in the Department’s 2014 regulatory report that pursuant to California Code of
25 Regulations, title 10, section 1950.314.1, it must properly reconcile its trust accounts.

26 6. In the Department’s 2014 regulatory report, and again on February 12, 2015, Summit
27 was again asked for additional information relating to its reconciliation of trust accounts. A review of
28 Summit’s responses revealed that Summit again had shortages in its trust accounts and failed to

1 properly reconcile its trust accounts. The trust reconciliation violations by Summit are repeat
2 violations involving the same trust account that were discovered back in the 2011 regulatory
3 examination.

4 7. Information supplied by Summit as of January 31, 2015 initially showed a trust
5 shortage of \$59,242.70, which the Department then asked Summit to correct. Summit provided
6 documentation and a reconciliation worksheet showing however that it had corrected a shortage it
7 calculated of \$102,717.24 as of February 2, 2015. The Department asked Summit for documentation
8 to support its figures stated in its worksheet. The supporting documentation Summit supplied,
9 however, did not support its calculation of \$102,717.24, and it informed the Department that it could
10 not provide any due to an upgrade in its software. The Department therefore could not validate
11 Summit's shortage figure due to its lack of proper record keeping.

12 8. The Commissioner finds that, by reason of the foregoing, Summit has violated
13 California Financial Code sections 50204, subdivision (o) and 50314, subdivisions (a) and (b), and
14 California Code of Regulations, title 10, sections 1950.314.1, 1950.314.2 and 1950.314.6 of the
15 CRMLA for overcharging per diem interest, failing to properly reconcile its trust account, failing to
16 properly maintain a record keeping system, and for having shortages in trust funds.

17 9. Financial Code section 50204, subdivision (o) prohibits a licensee from committing
18 "an act in violation of Section 2948.5 of the Civil Code..." which in turn states in pertinent part:

19 "(a) A borrower shall not be required to pay interest on a principal
20 obligation under a promissory note secured by a mortgage or deed
21 of trust on real property improved with between one to four
22 residential dwelling units for any period that meets any of the
23 following requirements:

24 (1) Is more than one day prior to the date that the loan proceeds are
25 disbursed from escrow..."

26 10. In addition, Summit's trust shortages and overages violate California Code of
27 Regulations, title 10, section 1950.314.1 which requires residential mortgage lenders to reconcile
28 their trust accounts and states in pertinent part:

"(a) A residential mortgage lender, residential mortgage lender and
servicer, or residential mortgage loan servicer shall establish, and

maintain current, the following books with reference to its trust accounts:

(1) A trust account ledger card for each account detailing receipts and disbursement of all funds deposited by the borrower, lender or seller with the licensee in connection with the origination, closing or servicing of any mortgage loan. The funds shall be held in accordance with the terms of a written agreement between the licensee and such borrower, lender or seller which provides that upon the occurrence of a specific condition or event, the funds or a portion thereof shall be disbursed to the borrower, lender or seller.

(2) Liability controlling account;...

(b) The records referred to in subsections (a)(1) and (2) shall be reconciled at least once each month with the bank statements of the trust account. The records referred to in subsection (a)(1) shall be reconciled at least once each week with the liability controlling account referred to in subsection (a)(2)."

11. Additionally, Summit's inability to provide documentation that could validate its trust balances violates requirements of the CRMLA that it maintain a record keeping system. Financial Code section 50314 states in pertinent part:

"(a) Every person subject to this division shall keep documents and records that will properly enable the commissioner to determine whether the residential mortgage lending or residential mortgage loan servicing functions performed by that person comply with the provisions of this division and with all the rules and orders made by the commissioner under this division...

(b) The business documents and records of every residential mortgage lender or residential mortgage loan servicer, whether required to be licensed under this division or not, are subject to inspection and examination by the commissioner at any time without prior notice...

Any person subject to this division shall, upon request and within the time specified in the request, allow inspection and copying of any documents and records by the commissioner or his or her authorized representative..."

12. Further, California Code of Regulations, title 10, section 1950.314.2 states in pertinent part:

"(a) A residential mortgage lender, residential mortgage lender and servicer, or residential mortgager loan servicer shall establish, and maintain current, the following books with reference to its general accounts:

(1) General ledger reflecting the assets, liabilities, capital, income and expense of the business, in accordance with generally accepted accounting principles;

1 (2) Cash receipt and disbursement journal.

2 The bank accounts contained in the general ledger shall be reconciled
3 at least once each month with the bank statements of the general
4 accounts.”

5 13. In addition, Summit’s trust shortages violate California Code of Regulations, title 10,
6 section 1950.314.6 prohibiting debit balances. That section states in pertinent part, “A residential
7 mortgage lender, residential mortgage lender and servicer, or residential mortgage loan servicer shall
8 not withdraw, pay out, or transfer moneys from any loan or servicing account in excess of the amount
9 to the credit of the account at the time of the withdrawal, payment, or transfer.”

10 14. Grounds exist therefore to issue an order to discontinue such violations. California
11 Financial Code section 50321 provides in pertinent part:

12 If, after investigation, the commissioner has reasonable grounds
13 to believe that any licensee has violated its articles of incorporation or
14 any law or rule binding upon it, the commissioner shall, by written order
15 addressed to the licensee, direct the discontinuance of the violation. The
16 order shall be effective immediately, but shall not become final except
17 in accordance with the provisions of Section 50323.

18 15. California Financial Code section 50323 provides:

19 (a) No order issued pursuant to Section 50321 or 50322 may become
20 final except after notice to the affected licensee of the commissioner's
21 intention to make the order final and of the reasons for the finding. The
22 commissioner shall also notify the licensee that upon receiving a
23 request the matter will be set for hearing to commence within 15 business
24 days after receipt. The licensee may consent to have the hearing
25 commenced at a later date. If no hearing is requested within 30 days
26 after the mailing or service of the required notice, and none is ordered
27 by the commissioner, the order may become final without hearing and
28 the licensee shall immediately discontinue the practices named in the
order. If a hearing is requested or ordered, it shall be held in accordance
with the provisions of the administrative Procedure Act (Chapter 5
(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of
the Government Code), and the commissioner shall have all the powers
granted under that act. If, upon the hearing, it appears to the commissioner
that the licensee is conducting business in an unsafe and injurious manner
or is violating its articles of incorporation or any law of this state, or any
rule binding upon it, the commissioner shall make the order of discontinuance
final and the licensee shall immediately discontinue the practices named

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

in the order.

(b) The licensee has 10 days after an order is made final to commence to restrain enforcement of the order. If enforcement of the order is not enjoined within 10 days by the court in which the action is brought, the licensee shall comply with the order.

WHEREFORE, good cause showing, the Commissioner is issuing an Order to Discontinue Violations Pursuant to Financial Code section 50321 and providing notice to Summit of the intention to make the order final.

Dated: January 6, 2016
Sacramento, CA

JAN LYNN OWEN
Commissioner of Business Oversight

By _____
Lindsay B. Herrick
Counsel
Enforcement Division