

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN A MATTER  
BEFORE THE COMMISSIONER OF BANKS  
DOCKET NO. 07:003:MBB

IN RE: )  
)  
GENER M. VALDEZ ) **VOLUNTARY SURRENDER**  
License No. I-102088 ) **AND**  
) **ORDER**  
)  
\_\_\_\_\_)

This matter coming before the Commissioner of Banks (“Commissioner”), after an investigation was commenced and during an interview with Gener M. Valdez (“Respondent”) during which it became clear that Respondent had violated the Mortgage Lending Act (MLA), Respondent has elected to surrender his license in lieu of proceeding through a revocation proceeding.

Based upon documents in the OCOB file on Respondent, and upon representations of counsel for OCOB, the Commissioner makes the following Findings of Fact, Conclusions of Law, and Order.

**I. FINDINGS OF FACT**

1. Respondent obtained a license as a mortgage loan officer under Section 5a. of Senate Bill 904, Session Law 2001-393, of the Mortgage Lending Act (the “MLA”), on or about October 3, 2002, and was given license No. I-102088. That license has been renewed annually for the license years ending June 30, 2004, 2005, 2006, and 2007; thus, at all times referred to herein, Respondent has been licensed to act as residential mortgage loan officer under the provisions of the MLA.
2. The Office of the Commissioner of Banks (the “OCOB”) received a complaint from Alice Vanterpool (“Vanterpool”) on or about July 12, 2006, alleging that Respondent owed her the sum of \$9,919.25 (“Vanterpool complaint”).

4005 O’Briant Place, Greensboro, NC

3. The Vanterpool complaint alleged that Respondent accepted funds totaling \$13,800 as a down payment for the purchase of a home located at 4005 O’Briant Place in Greensboro, North Carolina (“O’Briant property”). The funds were paid directly to Respondent by Vanterpool’s daughter, Krystle Horne.

4. Respondent told Vanterpool that she did not qualify for a loan because of her credit and suggested that an investor purchase the O'Briant property. Vanterpool could then rent the property and when her credit improved she could purchase the property from the investor.
5. Baby Girl Corcuera, now known as Sheryll Ann C. Zarate (hereinafter "Zarate"), purchased the O'Briant property. The Uniform Residential Loan Application ("Form 1003"), dated January 27, 2004, and signed by both Zarate and Respondent, indicated that the O'Briant property would be Zarate's primary residence.
6. Zarate obtained a second mortgage on the O'Briant property. Form 1003 for this mortgage, also dated January 27, 2004, and signed by both Zarate and Respondent, also indicated that this property would be Zarate's primary residence.
7. Respondent knew that the O'Briant property was not going to be occupied by Zarate as her primary residence. Thus, Respondent made a material misrepresentation on both Forms 1003 signed by him and Zarate on January 27, 2004.
8. Upon information and belief, Respondent was compensated for both of these transactions.
9. Although Vanterpool occupied and rented the O'Briant property from Zarate for some period of time, she does not currently rent the property and no longer resides there. In addition, Vanterpool never purchased the O'Briant property from Zarate.
10. Zarate refinanced the first and second mortgages on the O'Briant property on or about October 27, 2006. Form 1003 for this loan, signed by Zarate, correctly indicated that this property was investment property. Respondent was the loan officer for this transaction while employed by Family First as a branch manager.

2703 Saint Andrews Court, Jamestown, NC

11. Krystle Horne ("Horne") paid directly to Respondent the sum of \$34,400 as a down payment for the purchase of a home located at 2703 Saint Andrews Court in Jamestown, North Carolina ("Andrews property").
12. Horne paid the foregoing sum plus \$13,800, on behalf of her mother, Alice Vanterpool (see ¶ 3 above), in two checks payable to Respondent in the amounts of \$18,450 (Check No. 5002) and \$29,750 (Check No. 5004), or a total of \$48,200, on January 19, 2004 and February 6, 2004, respectively.
13. Respondent told Horne that she did not qualify for a loan because of her credit and suggested that an investor purchase the Andrews property. Horne could then rent the property, and when her credit improved, she could purchase the property from the investor.

14. Dexter and Marjorie Capawa purchased the Andrews property. Form 1003 dated January 27, 2004, and signed by both the Capawas and Respondent, indicated that the Andrews property would be the Capawas' primary residence. In addition, the Uniform Underwriting and Transmittal Summary (Form 1008) also indicates that the Andrews property would be the Capawas' primary residence.
15. Respondent knew that the Andrews property was not going to be occupied by the Capawas as their primary residence. Thus, Respondent made a material misrepresentation on Form 1003 signed by him and the Capawas on January 27, 2004.
16. Upon information and belief, Respondent was compensated for this transaction.
17. Although Horne occupied and rented the Andrews property from the Capawas for some period of time, she does not currently rent the property and no longer resides there. In addition, Horne never purchased the Andrews property from the Capawas.

#### Funds Paid to Respondent

18. Respondent contends that the monies paid to him by Vanterpool and Horne were used as a rental deposit and to make the rent payments in the event Vanterpool and Horne were unable to do so. Vanterpool and Horne contend that approximately \$8,000 of the funds were used for closing costs on these transactions, and \$2,000 was paid to each investor for their services (for a total of \$4,000). Respondent has since reimbursed Vanterpool the sum of \$9,800, in response to her complaint. Therefore, \$26,400 of the monies paid to Respondent by Horne and Vanterpool remain unaccounted for.
19. Respondent did not maintain a trust account as required by G.S. § 53-243.13.
20. Respondent admitted to OCOB Financial Crimes Investigator Richard L. Hendricks that he accepted the funds from Horne and Vanterpool, recruited the investors, and processed the loans as primary residences knowing that the properties were investment properties. Thus, the Vanterpool complaint is meritorious, and Respondent has violated the terms and conditions placed upon him by the Commissioner's Order.
21. Respondent's actions do not meet the requirements of character, fitness, and financial responsibility for licensure as a mortgage loan officer and are prohibited activities under the Mortgage Lending Act, G.S. §§ 53-243.11(1), (3), (4), (7), and (8) states that:

In addition to the activities prohibited under other provisions of this Article, it shall be unlawful for any person in the course of any mortgage loan transaction:

- (1) To misrepresent or conceal the material facts or make false promises likely to influence, persuade, or induce an applicant for a mortgage loan or a mortgagor to take a mortgage loan, or to pursue a course of misrepresentation through agents or otherwise.

- (3) To fail to account for or to deliver to any person any funds, documents, or other thing of value obtained in connection with a mortgage loan, including money provided by a borrower for a real estate appraisal or a credit report, which the mortgage banker, broker, or loan officer is not entitled to retain under the circumstances.
  - (4) To pay, receive, or collect in whole or in part any commission, fee, or other compensation for brokering a mortgage loan in violation of this Article . . .
  - (7) To fail to disburse funds in accordance with a written commitment or agreement to make a mortgage loan.
  - (8) To engage in any transaction, practice, or course of business that is not in good faith or fair dealing or that constitutes a fraud upon any person, in connection with the brokering or making of, or purchase or sale of, any mortgage loan.
22. In an interview with Rick Hendricks on November 2, 2006, Respondent admitted to participating in the transactions described above and on January 19, 2007 in a meeting with Mr. Hendricks and David Worth, admitted and signed a license surrender statement attached hereto and incorporated herein.

## **II. CONCLUSIONS OF LAW**

1. The Commissioner, in his capacity as hearing officer under the provisions of N. C. Gen. Stat. § 53-243.12 and Chapter 150B, may dispose of cases without the necessity of a formal hearing if facts and circumstances warrant, provided that can be done consistent with the applicable standards for affording the parties due process of law.
2. There is no need for a formal hearing in this matter, since the OCOB staff has received and accepted as valid an offer to surrender Respondent's license.
3. Rather the goal of judicial economy would be better served by a summary disposition of this matter without the necessity of a formal evidentiary hearing, based on the withdrawal of Respondent from the mortgage business and surrender of his license.
4. Surrender of a license in lieu of disciplinary action is permitted under N. C. Gen. Stat. § 53-243.12(f), if the Commissioner consents thereto.

## **III. ORDER**

1. The staff's notice of intent to commence a revocation proceeding as stated in interview with Respondent is hereby vacated.

2. The tender of surrender of Respondent's mortgage loan officer license in lieu of a revocation proceeding is granted.
3. No re-application for licensure as a mortgage broker, lender or loan officer will be considered.
4. Respondent is permanently barred from engaging in the mortgage lending business in North Carolina in any capacity.

This the 30th day of January, 2007.



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Joseph A. Smith, Jr.  
Commissioner of Banks

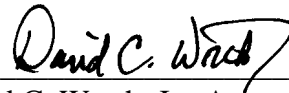
## CERTIFICATE OF SERVICE

THE UNDERSIGNED hereby certifies that he has this day served a copy of the foregoing Final Decision and Order by personal delivery or by faxing a copy to the persons and fax numbers shown below or by placing a copy of the same in the mail, at Raleigh, first class mail, postage prepaid and addressed to the persons below:

Gener M. Valdez  
815 Old Winston Road  
Kernersville, North Carolina 27284

L. McNeil Chestnut  
North Carolina Department of Justice  
Office of the Attorney General  
9001 Mail Service Center  
Raleigh, North Carolina 27699-9001  
Phone: (919) 716-6800  
Fax: (919) 716-6755

This the 30th day of January, 2007.



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David C. Worth, Jr., Attorney  
Office of the Commissioner of Banks  
316 W. Edenton Street  
4309 Mail Service Center  
Raleigh, North Carolina 27699-4309  
Phone: (919) 733-3016  
Fax: (919) 733-6918

NORTH CAROLINA OFFICE OF THE COMMISSIONER OF BANKS  
VOLUNTARY SURRENDER STATEMENT

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OCOB CASE # 2006-0070

Form of Identification: NCDL 29573370

Name: Gener Macareg Valdez

Address: 4911 Kacey Elaine Court, High Point, NC 27265-8216

Date of Birth: March 11, 1968

Phone: (336) 782-1352

Place of Employment: Family First Mortgage Corporation

Employment Address: 815 Old Winston Road, Kenersville, NC 27284

Phone: (336) 993-5033

1. I, the undersigned, currently have a Loan Officer license Numbered I-102088 issued by the Office of the Commissioner of Banks (OCOB).
2. I understand that the OCOB has evidence and information which if presented at a revocation hearing would likely result in the revocation of my license and could result in my being liable for investigative fees and civil money penalties.
3. I know that upon the Commissioner's acceptance of the surrender of my license, I will no longer be able to work as or hold myself out to be a mortgage loan officer in the state of North Carolina.
4. I understand that if the Commissioner decides to accept the surrender of my license, a final non-appealable order will be entered by the Commissioner banning me from working in the mortgage industry in any capacity.
5. For the surrender to be effective, I understand that the Commissioner must agree to this surrender. I understand that if the Commissioner does not accept this surrender, the OCOB may proceed with a revocation hearing on any and all issues within the jurisdiction of the OCOB.
6. This surrender does not prevent the OCOB from proceeding with a revocation hearing if the Commissioner so decides.
7. I agree to pay the OCOB \$N/A to offset the costs incurred by the OCOB staff in investigating this matter.
8. This action is being taken of my own free will without coercion, promise, or hope of reward, fear or threat of physical harm, favor or offer of favor, leniency or offer of leniency by any person or persons whomsoever.
9. I wish to surrender my loan officer license and request that the Commissioner accept this surrender.

I have read this statement consisting of one page(s) and I affirm to the truth and accuracy of the facts contained herein. This statement was completed at 2:00pm on the 19 day of January 2007.

Witness: [Signature]

Witness: David C. Ward

Gener M. Valdez  
Signature of Applicant