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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

COMMISSIONERS

FEB 23 2010

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY nr

In the matter of
SIR MORTGAGE & FINANCE OF
ARIZONA, INC., an Arizona corporation,
GREGORY M. SIR (a/k/a "GREG SIR"),
Respondents.

DOCKET NO. S-20703A-09-0461

DECISION NO. 71495

**ORDER TO CEASE AND DESIST, ORDER
FOR ADMINISTRATIVE PENALTIES AND
CONSENT TO SAME BY:**

**RESPONDENT SIR MORTGAGE &
FINANCE OF ARIZONA, INC.**

-AND-

**RESPONDENT GREGORY M. SIR (a/k/a
"GREG SIR")**

Respondents SIR MORTGAGE & FINANCE OF ARIZONA, INC. and GREGORY M. SIR (a/k/a "GREG SIR") elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order for Administrative Penalties ("Order") and Consent to Same. Respondents admit the jurisdiction of the Arizona Corporation Commission ("Commission"); neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission. This Order is entered without trial of any issue or fact and is not intended to have any collateral estoppel or res judicata effect against Respondents except for this case, and any other proceeding involving the Commission.

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I.

FINDINGS OF FACT

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3 1. Since September 4, 2002, to the present, Respondent SIR MORTGAGE &
4 FINANCE OF ARIZONA, INC. ("SMFA") has been an Arizona corporation with a principal place
5 of business in Phoenix, Arizona. SMFA is a mortgage banker licensed with the Arizona Department
6 of Financial Institutions, #0905357. At all times relevant, SMFA was not registered as a securities
7 dealer or salesman by the Commission.

8 2. Respondent GREGORY M. SIR (a/k/a "GREG SIR") ("SIR") is an Arizona
9 resident. From on or about January 7, 2000, to approximately September 4, 2002, SIR conducted
10 business within and from Arizona in his individual capacity, both in his own name and as SMFA.
11 From approximately September 4, 2002, to the present, SIR conducted business within and from
12 Arizona in his individual capacity and on behalf of SMFA as its president, secretary, treasurer and
13 director. At all times relevant, SIR was not registered as a securities dealer or salesman by the
14 Commission.

15 3. SMFA and SIR may be collectively referred to as "RESPONDENT(S)."

16 4. From on or about January 7, 2000, to September 24, 2009, RESPONDENTS
17 offered and sold securities within and from Arizona in the form of notes and investment
18 contracts.

19 5. At all times relevant, RESPONDENTS represented to offerees and investors that
20 they were engaged in the business of originating and funding real estate loans.

21 6. RESPONDENTS' website at www.sirmortgage.com ("Website") notes that SMFA
22 "provides private money lending, often referred to as hard money lending for all types of Real
23 Estate projects." RESPONDENTS' Website represents that SMFA provides borrowers with loans
24 for a variety of real estate ventures, including complex commercial, bridge, construction, vacant
25 land, subdivision development, industrial and single family home loans.

1 7. SMFA's "Articles of Incorporation" filed with the Corporations Division of the
2 Commission and signed by SIR as its incorporator state that SMFA is engaged in the "business of
3 selling of mortgages and deeds of trust, as well as other real estate investments."

4 8. The maturity dates of RESPONDENTS' loans vary and range from approximately
5 six months to ten years. Loan interest rates range from approximately eleven to fourteen percent
6 per year. RESPONDENTS also fund interest-only Loans.

7 9. Principal loan amounts vary from approximately \$100,000 to over \$4,500,000.

8 10. RESPONDENTS' loans are evidenced by promissory notes ("Notes") executed by
9 borrowers in favor of SMFA, and secured by real property and other collateral. To create and
10 perfect the security interest in the collateral, RESPONDENTS prepared deeds of trust, UCC
11 financing statements and similar documents executed by borrowers in favor of SMFA and recorded
12 in the county where the collateral is located. RESPONDENTS' various collateral securitization
13 documents may be referred to collectively as the "DOT(s)."

14 11. At all times relevant, RESPONDENTS funded loans with investor money (the
15 "Investment(s)"). RESPONDENTS also funded a loan themselves, and then sold some or all of
16 their interest in the loan to one or more investors as an Investment. Principal Investment amounts
17 varied and ranged from approximately \$40,000 to over \$250,000.

18 12. Investors provided their Investment money directly to SMFA's funding trust
19 account. Thereafter, RESPONDENTS assigned to one or more investors an interest in the original
20 loan Notes and DOTs in proportion to their principal Investment(s).

21 13. RESPONDENTS often combined investor money to fund a single loan, resulting in
22 fractionalized Notes and DOTs recorded in favor of multiple investors.

23 14. RESPONDENTS sometimes sold and assigned one hundred percent of their interest
24 in a loan to one investor as an Investment.

25 15. Oftentimes, SMFA and/or SIR, through his family trust or one of his other
26 companies, retained a significant interest in a Note and DOT associated with a loan Investment.

1 16. RESPONDENTS collected various fees from loan borrowers, including a mortgage
2 banker's discount/loan fee and a property inspection fee.

3 17. RESPONDENTS prepared and had investors execute a standard form document
4 called, "Beneficiary Instructions and Authorizations" ("Agency Agreements") that permitted
5 RESPONDENTS to perform loan related tasks on behalf of investors.

6 18. As documented, in part, by the Agency Agreements, RESPONDENTS received a
7 portion of the monthly loan interest payments made by borrowers in the form of an "interest
8 participation" fee of ".25%" up to ".30%." Investors also executed an "Irrevocable Money
9 Assignment" in favor of RESPONDENTS and/or one of SIR's other companies that allowed
10 RESPONDENTS and/or one of SIR's other companies to retain, for instance, one-half of one percent
11 (*i.e.*, ".50%") of loan interest payments made by a loan borrower under a Note.

12 19. Some loan servicing work, such as the recordation of documents with the county
13 recorder, was handled by a third-party title company selected by RESPONDENTS as provided by
14 the Agency Agreements.

15 20. RESPONDENTS and the title company managed the essential aspects of the loans
16 on behalf of investors. For instance, and without limitation, they:

- 17 A. Negotiated the terms and conditions of the loans with borrowers;
- 18 B. Prior to originating and funding loans, RESPONDENTS evaluated borrowers and
19 collateral, and obtained and reviewed borrower financial statements and balance
20 sheets, and evaluated the risk of the loans (the "Due Diligence");
- 21 C. Prepared and had borrowers execute DOTs and a myriad of related documents
22 setting forth loan terms and fees, and securing the collateral;
- 23 D. Arranged for and participated in escrow closings, including the preparation of escrow
24 instructions, recording instructions, good faith estimates and HUD-1 settlement
25 statements and loan disbursement and borrower payment instructions and statements
26 tailored to the terms and conditions of each loan; and

1 E. Evaluated and attempted to favorably resolve issues arising from non-performing
2 loans in consultation with investors.

3 The Due Diligence

4 21. The Due Diligence services performed by RESPONDENTS on behalf of investors
5 for each loan were extensive, often documented in a detailed, customized "Loan Checklist"
6 prepared by RESPONDENTS and included, without limitation, the procurement and review of: (a)
7 preliminary and final title insurance policies; (b) borrower/tenant lease agreements, a "detailed rent
8 roll," or in the case of a an apartment-to-condo conversion loan, an "affidavit of no leases" to prove
9 fee simple ownership and control; (c) construction contracts; (d) construction cost breakdowns or
10 budgets; (e) building or plat site plans, ALTA surveys, blue prints, and construction and
11 architectural plans; (f) drainage and engineering studies; (g) zoning information, and flood maps; (h)
12 environmental reports; (i) borrower financial statements, "net worth" statements and profit and loss
13 statements for self employed borrowers; (j) borrower tax returns; (k) borrower credit reports and/or
14 FICO scores; (l) detailed borrower loan applications; (m) borrower and/or collateral insurance
15 information; (n) income documentation such as W-2's and pay stubs; (o) corporate borrower
16 documents such as operating agreements, by-laws, articles of incorporation and loan related
17 resolutions; (p) purchase contracts, and previous loan settlement documents; (q) collateral appraisals,
18 and tax parcel numbers; (r) city development and tax rebate agreements; (s) project development,
19 sewer, utility and impact fee information; (t) borrower project marketing materials; (u) collateral
20 improvements and related cost breakdowns; (v) building permits or certificates of occupancy; (w)
21 property photos; (x) collateral deferred maintenance information; (y) in one example, detail regarding
22 the apartment complex serving as loan collateral, including unit count, size, bedrooms and bathrooms,
23 CCR's and HOA documents; and (z) other types of information as applicable to the often diverse
24 and/or complex loans discussed above.

1 22. RESPONDENTS also prepared and provided to investors a loan or "Property
2 Evaluation" that highlighted the results of their loan borrower and collateral Due Diligence. The
3 purpose of this evaluation was to summarize the assets available to secure a loan.

4 **The Agency Agreements**

5 23. Pursuant to the Agency Agreements, RESPONDENTS performed loan related tasks
6 on behalf of investors including, but not limited to:

- 7 A. Evaluating requests from borrowers to have others assume their loan obligations;
- 8 B. Retaining and managing borrower payments and deposits;
- 9 C. Collecting additional money from investors as necessary for the construction,
10 maintenance and general preservation of the real and personal property providing
11 collateral for the loans; and
- 12 D. Negotiating, preparing and executing, as an "agent" on behalf of, and in
13 consultation with investors, loan assumption agreements, extension letters and Note
14 modification agreements, and professional services contracts relating to, for
15 instance, foreclosure attorneys and real estate agents.

16 24. The Agency Agreements also gave the title company the authority to perform loan
17 tasks for investors. Such tasks included, but were not limited to: (a) providing notice of late
18 payments to borrowers; (b) demanding and collecting late charges from borrowers; and (c)
19 charging and collecting from borrowers a "loan administration fee" for fees and costs incurred by
20 investors in resolving loan related disputes.

21 **Summary of Loan Investment Offering**

22 25. Over the past seven years, RESPONDENTS sold the Investments to at least one-
23 hundred fifty-one widely disbursed investors residing throughout Arizona, and eight other states.

24 26. From approximately January 7, 2000, to September 24, 2009, RESPONDENTS
25 funded approximately three-hundred ninety-seven loans funded in whole or in part with Investment
26 investor funds, including: (a) sixty-one loans in 2000; (b) sixty loans in 2001; (c) forty-two loans

1 in 2002; (d) thirty-eight loans in 2003; (e) forty loans in 2004; (f) thirty-four loans in 2005; (g)
2 forty-six loans in 2006; (h) thirty-six loans in 2007; (i) twenty-seven loans in 2008; and (j) thirteen
3 loans in 2009.

4 27. According to documents provided to the Division by SMFA, from 2002 to September
5 24, 2009, RESPONDENTS closed \$413,748,735 in Loans funded in whole or in part with investor
6 money, or: (a) \$36,859,600 in 2002; (b) \$54,986,000 in 2003; (c) \$67,182,500 in 2004; (d)
7 \$95,103,722 in 2005; (e) \$69,864,500 in 2006; (f) \$58,942,500.99 in 2007; (g) \$26,468,911.59 in
8 2008; and (h) \$4,341,000 in 2009.

9 28. According to documents provided by RESPONDENTS to the Division, SMFA had
10 approximately "\$62,385,839.71 in loans outstanding and being serviced (not including loans that
11 have been foreclosed)" as of June 30, 2009.

12 II.

13 CONCLUSIONS OF LAW

14 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
15 Arizona Constitution and the Securities Act.

16 2. RESPONDENTS offered or sold securities within or from Arizona, within the
17 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

18 3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that
19 were neither registered nor exempt from registration.

20 4. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while
21 neither registered as dealers or salesmen nor exempt from registration.

22 5. The Commission has grounds for a cease and desist order pursuant to A.R.S. § 44-
23 2032.

24 6. The Commission has grounds for administrative penalties under A.R.S. § 44-2036.

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1 IT IS FURTHER ORDERED, that if any of the RESPONDENTS fail to comply with this
2 order, the Commission may bring further legal proceedings against the RESPONDENT(S),
3 including application to the superior court for an order of contempt.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

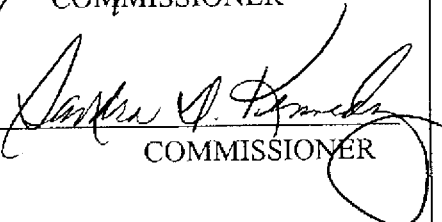
5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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8 CHAIRMAN


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10 COMMISSIONER

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15 COMMISSIONER


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17 COMMISSIONER

18 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
19 Executive Director of the Arizona Corporation
20 Commission, have hereunto set my hand and caused the
21 official seal of the Commission to be affixed at the
22 Capitol, in the City of Phoenix, this 23rd day of
February, 2010.


23
24 ERNEST G. JOHNSON
25 EXECUTIVE DIRECTOR

26 _____
DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA
Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

(MD)

CONSENT TO ENTRY OF ORDER

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2 1. Respondents GREGORY M. SIR (a/k/a "GREG SIR") ("SIR") and SIR
3 MORTGAGE & FINANCE OF ARIZONA, INC. ("SMFA"), an Arizona corporation (sometimes
4 collectively referred to as "RESPONDENTS") admit the jurisdiction of the Commission over the
5 subject matter of this proceeding. RESPONDENTS acknowledge that they have been fully
6 advised of their right to a hearing to present evidence and call witnesses and RESPONDENTS
7 knowingly and voluntarily waive any and all rights to a hearing before the Commission and all
8 other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
9 Administrative Code. RESPONDENTS acknowledge that this Order to Cease and Desist, Order
10 for Administrative Penalties ("Order") and Consent to Same constitutes a valid final order of the
11 Commission.

12 2. RESPONDENTS knowingly and voluntarily waive any right under Article 12 of the
13 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
14 resulting from the entry of this Order.

15 3. RESPONDENTS acknowledge and agree that this Order is entered into freely and
16 voluntarily and that no promise was made or coercion used to induce such entry.

17 4. RESPONDENTS acknowledge that they have been represented by an attorney in
18 this matter, that they have reviewed this Order with their attorneys, without limitation, Paul
19 Roshka, Esq. and Tim Sabo, Esq. of Roshka DeWulf & Patton, P.L.C., and RESPONDENTS
20 understand all terms it contains. RESPONDENTS acknowledge that their attorneys have apprised
21 them of their rights regarding any conflicts of interest arising from dual representation.
22 RESPONDENTS acknowledge that they have each given their informed consent to such
23 representation.

24 5. RESPONDENTS neither admit nor deny the Findings of Fact and Conclusions of
25 Law contained in this Order. This Order is entered without trial of any issue or fact and is not
26 intended to have any collateral estoppel or res judicata effect against RESPONDENTS except for

1 this case, and any other proceeding involving the Commission. RESPONDENTS agree that they
2 shall not challenge, dispute, or contest the Commission's Findings of Fact and Conclusions of Law
3 contained in this Order in any present or future proceeding before the Commission.

4 6. By consenting to the entry of this Order, RESPONDENTS agree not to take any
5 action or to make, or permit to be made, any public statement denying, directly or indirectly, any
6 Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is
7 without factual basis. RESPONDENTS will undertake steps necessary to assure that all of their
8 agents, entities and employees understand and comply with this agreement.

9 7. While this Order settles this administrative matter between RESPONDENTS and
10 the Commission, RESPONDENTS understand that this Order does not preclude the Commission
11 from instituting other administrative or civil proceedings based on violations that are not addressed
12 by this Order.

13 8. RESPONDENTS understand that this Order does not preclude the Commission
14 from referring this matter to any governmental agency for administrative, civil, or criminal
15 proceedings that may be related to the matters addressed by this Order.

16 9. RESPONDENTS understand that this Order does not preclude any other agency or
17 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
18 proceedings that may be related to matters addressed by this Order.

19 10. RESPONDENTS agree that they will not sell any securities in or from Arizona
20 without being properly registered in Arizona as a dealer or salesman, or exempt from such
21 registration; RESPONDENTS will not sell any securities in or from Arizona unless the securities
22 are registered in Arizona or exempt from registration; and RESPONDENTS will not transact
23 business in Arizona as an investment adviser or an investment adviser representative unless
24 properly licensed in Arizona or exempt from licensure.

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1 11. RESPONDENTS agree that they will continue to cooperate with the Securities
2 Division including, but not limited to, providing complete and accurate testimony at any hearing
3 involving the Commission.

4 12. RESPONDENTS consent to the entry of this Order by the Commission and agree to
5 be fully bound by all of its terms and conditions, and each and every provision of this Consent to
6 Entry of Order.

7 13. RESPONDENTS acknowledge and understand that if they fail to comply with the
8 provisions of the order and this consent, the Commission may bring further legal proceedings
9 against RESPONDENTS, including application to the superior court for an order of contempt.

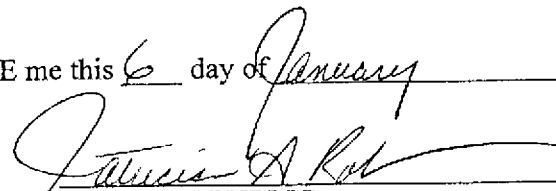
10 14. RESPONDENTS understand that violations of this Order shall render them liable to
11 the Commission for its reasonable attorneys' fees and costs incurred in enforcing the Order.

12 15. SIR represents that from September 4, 2002 to the present, he has been the
13 president, secretary, treasurer and director of SMFA and has been authorized by name of SMFA to
14 enter into this Order for and on behalf of it.

15
16 
17 GREGORY M. SIR (a/k/a "GREG SIR")

18 STATE OF ARIZONA)
19 County of Maricopa) ss)

20 SUBSCRIBED AND SWORN TO BEFORE me this 6 day of January, ²⁰¹⁰~~2009~~.

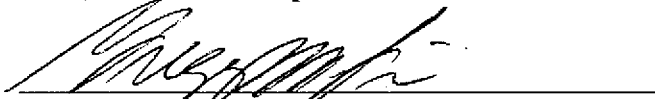
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23 NOTARY PUBLIC

24 My commission expires:
25 12/17/2012



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**SIR MORTGAGE & FINANCE OF ARIZONA,
INC., an Arizona corporation**



By: GREGORY M. SIR (a/k/a "GREG SIR")
Its: President, secretary, treasurer and Director

STATE OF ARIZONA)
) ss
County of Maricopa)

SUBSCRIBED AND SWORN TO BEFORE me this 6th day of January, 2010.


NOTARY PUBLIC

My commission expires:
12/17/2012



SERVICE LIST FOR: In re Sir Mortgage & Finance of Arizona, Inc., S-20703A-09-0461

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Tim Sabo, Esq.
Roshka DeWulf & Patten
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Suite 800
Phoenix, Arizona 85004
*Attorneys for Respondents Greg & Erin Sir, and Sir Mortgage
& Finance of Arizona, Inc.*