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**BEFORE THE ARKANSAS SECURITIES COMMISSIONER**

**CASE NO. C-11-0291**

**ORDER NO. C-11-0291-11-0R01**

ARKANSAS SECURITIES DEPT.

**IN THE MATTER OF:  
JAMES B. NUTTER & COMPANY  
NMLS&R NO. 2067**

**RESPONDENT**

**CONSENT ORDER**

This Consent Order is entered pursuant to the Arkansas Fair Mortgage Lending Act ("FMLA"), codified at Ark. Code Ann. §§ 23-39-501 through 23-39-518, the Rules of the Arkansas Fair Mortgage Lending Act ("Rules") and the Arkansas Administrative Procedures Act, codified at Ark. Code Ann. §§ 25-15-101 through 25-15-219, in accordance with an agreement by and between the Staff of the Arkansas Securities Department ("Staff") and the Respondent, James B. Nutter & Company, in full and final settlement of all claims that could be brought against James B. Nutter & Company by the Staff on the basis of the facts set forth herein.

James B. Nutter & Company admits the jurisdiction of the FMLA and the Arkansas Securities Commissioner ("Commissioner"), waives its right to a formal hearing and appeal, and without admitting or denying the findings of fact made herein, consents to the entry of this Order, and agrees to abide by its terms.

**FINDINGS OF FACT**

From the pleadings, documentary evidence, and all other matters properly before the Commissioner, the Commissioner does make the following findings of fact:

1. James B. Nutter & Company ("Nutter") is a corporation organized and operating under the laws of the State of Missouri. Nutter is licensed under the FMLA as a mortgage broker, banker and servicer, NMLS&R number 2067.

2. The Staff has determined that in 2008 and 2009, Nutter employed 13 individuals as loan officers, and these loan officers solicited and accepted 37 mortgage loan applications from Arkansas residents without being licensed under the FMLA.

3. The Staff has determined that Nutter failed to include 23 mortgage loans for Arkansas residents with a total value in the amount of \$6,300,153.00 on its 2010 Mortgage Activity Annual Report. Nutter filed this 2010 Mortgage Activity Annual Report on or about March 25, 2010. However, Nutter did not submit an amended and corrected 2010 Mortgage Activity Annual Report to the Staff until February 14, 2011.

4. Until February 16, 2011, Nutter maintained a surety bond in the amount of \$100,000. Based on the amended and corrected 2010 Mortgage Activity Annual Report, Nutter should have maintained a surety bond in the amount of \$125,000. Therefore, Nutter maintained an inadequate surety bond in violation of the FMLA and the Rules.

5. Nutter fully cooperated with the Staff during the Staff's investigation of this matter. In addition, Nutter has assured the Staff that it has instituted significant internal controls and supervisory changes in order to ensure that the above detailed violations will not occur in the future.

#### **Legal Authority and Conclusions of Law**

6. Ark. Code Ann. § 23-39-503(c) states that it is unlawful for any person other than an exempt person to employ, to compensate, or appoint as its agent any person to act as a loan officer unless the loan officer is licensed as a loan officer under the Arkansas FMLA. The unlicensed mortgage loan officer activity by 13 employees of Nutter as detailed in paragraph two constitutes 37 violations of Ark. Code Ann. § 23-39-503(c) by Nutter in 2008 and 2009.

7. Ark. Code Ann. § 23-39-506(a)(2)(A) states that each licensed mortgage broker wishing to renew a license shall provide the commissioner with an annual report of mortgage activity.

8. Ark. Code Ann. § 23-39-511(d) states that if the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall file a correcting amendment to the information contained in the document within thirty (30) days from the date on which the change takes place. The failure of Nutter to correct its inaccurate 2010 Mortgage Activity Annual Report within 30 days of its filing as detailed in paragraph three constitutes a violation of Ark. Code Ann. § 23-39-511(d).

9. Ark. Code Ann. § 23-39-505(f)(1)(A) states that each mortgage broker, mortgage banker, and mortgage servicer shall post a surety bond in the amount prescribed by rule or order of the commissioner. Rule 5005-8(d)(1)(B) states that if the aggregate amount of originated or funded mortgage loans which are secured by Arkansas residential real property was greater than \$5,000,000, but not more than \$10,000,000, during the prior calendar year, mortgage broker or banker licensees shall post a surety bond in the amount of \$125,000. The failure of Nutter to maintain the correct amount of its surety bond as detailed in paragraph four constitutes a violation of Ark. Code Ann. § 23-39-505(f)(1)(A) and Rule 5005-8(d)(1)(B).

10. Ark. Code Ann. §§ 23-39-514(b)(1) and (2) states that the Commissioner by order may impose a civil penalty that shall not exceed \$10,000.00 for each violation by a mortgage broker upon a licensee or any partner, officer, director, member, manager, or other person occupying a similar status or performing a similar function on behalf of a licensee for any violation of the FMLA. The acts and violations of the FMLA and the Rules by Nutter, as

detailed in paragraphs two through four, warrant the entry of appropriate civil penalty against Nutter.

**ORDER**

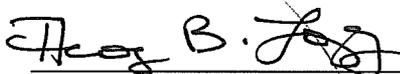
By agreement and with the consent of the Staff and the duly authorized representative of Nutter it is hereby ordered that Nutter shall be responsible for the payment of a civil penalty in the amount of \$10,000.00 to the Arkansas Securities Department within ten days of the entry of this Consent Order.



A. Heath Abshure  
Arkansas Securities Commissioner

July 25, 2011  
Date

Approved as to Content and Form:



George B. Lopez, Executive Vice President  
J. B. Nutter & Company, the Respondent

7-19-2011

Date



Doug Buford, Attorney for the Respondent  
J. B. Nutter & Company

7/22/2011  
Date



Scott Freydl, Staff Attorney  
Arkansas Securities Department

7/25/11  
Date