

BEFORE THE  
DEPARTMENT OF CORPORATIONS  
STATE OF CALIFORNIA

|                                     |   |                     |
|-------------------------------------|---|---------------------|
| In the Matter of the Accusation of: | ) |                     |
|                                     | ) |                     |
| THE CALIFORNIA CORPORATIONS         | ) |                     |
| COMMISSIONER                        | ) |                     |
|                                     | ) | OAH No. N2003050833 |
| Complainant,                        | ) |                     |
|                                     | ) |                     |
| v.                                  | ) |                     |
|                                     | ) |                     |
| National City Mortgage Company,     | ) |                     |
|                                     | ) |                     |
| Respondent.)                        | ) |                     |

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DECISION

The attached Proposed Decision of the Administrative Law Judge of the Office of Administrative Hearings, dated October 31, 2003, is hereby adopted by the California Corporations Commissioner as his Decision in the above-entitled matter with the following technical and clarifying changes pursuant to Section 11517(c)(2)(C) of the Government Code. The clarifying changes conform the decision to Article III, Section 3.5 of the California Constitution and do not change the factual or legal basis of the proposed decision.

- (1) In the third line of Paragraph No. 7 of Factual Findings on page 2 of the proposed decision, "Bank" is substituted for the first usage of the word "Mortgage."
- (2) At the end of footnote 9 on page 2 of the proposed decision, "(Citations from Advisory Letter.)" is added.
- (3) At the end of footnote 10 on page 2 of the proposed decision, "(Citations from Advisory Letter.)" is added.
- (4) At the end of footnote 11 on page 3 of the proposed decision, "over national banks." is substituted for the period.
- (5) In the second line of the first paragraph on page 6 of the proposed decision, "been alleged" is substituted for the word "existed."

(6) In the eighth and ninth lines of the first paragraph on page 6 of the proposed decision, "for the Commissioner's action" is substituted for "for Commissioner action."

(7) In the second line of the second paragraph on page 6 of the proposed decision, "federal laws that function" is substituted for "a federal statute that functions."

(8) In the second line of the third paragraph on page 6 of the proposed decision, "the Commissioner's visitorial power" is substituted for "Commissioner visitorial power."

(9) In the eighth line of the third paragraph on page 6 of the proposed decision, "his" is substituted for the second usage of "its."

(10) In the first line of the fourth paragraph on page 6 of the proposed decision, "the District Court ruled the Commissioner" is substituted for the words "the Commissioner."

(11) In the sixth line of the first paragraph on page 7 of the proposed decision, "by federal law (subject to federal appellate court resolution)" is substituted for "by federal law."

(12) In the ninth line of the first paragraph on page 7 of the proposed decision, "unnecessary (subject to appellate court resolution)" is substituted for "unnecessary."

(13) In the eleventh line of the first paragraph on page 7 of the proposed decision, "gained (subject to appellate court resolution)" is substituted for "gained."

(14) In the eleventh line of the first paragraph on page 7 of the proposed decision, "function" is substituted for "functioned."

This Decision shall become effective on February 10, 2004

IT IS SO ORDERED February 10, 2004

CALIFORNIA CORPORATIONS COMMISSIONER

By WILLIAM P. WOOD

BEFORE THE  
DEPARTMENT OF CORPORATIONS  
STATE OF CALIFORNIA

In the Matter of the Accusation of:

THE CALIFORNIA CORPORATIONS  
COMMISSIONER,

Complainant,

v.

NATIONAL CITY MORTGAGE  
COMPANY,

Respondent.

OAH No. N2003050833

**PROPOSED DECISION**

On August 1, 2003, and October 3, 2003, the matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings,<sup>1</sup> State of California, in Sacramento, California.

Complainant appeared by and through Donald A. Newbold, Corporations Counsel.

Respondent National City Mortgage Company appeared by and through Kirkpatrick & Lockhart, LLP, Attorneys at Law, by Edward P. Sangster, Esq., and Jon Jaffe, Esq.

Evidence, in the form of a stipulation<sup>2</sup> and documentary submissions having been received; following written and oral argument, and a post-hearing opportunity for review by respondent of a complainant submission until October 10, 2003; the matter was submitted on October 10, 2003.

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<sup>1</sup> The Office of Administrative Hearings, extant in the executive branch of the State of California, provides a forum independent of the Department of Corporations to fully effectuate the State's interest in providing due process with an independent and neutral adjudicative body. See *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017.

<sup>2</sup> Exhibit 1.

## FACTUAL FINDINGS

1. On April 21, 2003, Complainant, Demetrios A. Boutris, California Corporations Commissioner (“the Commissioner”), filed, by and through Donald A. Newbold, Corporations Counsel, an Accusation against respondent National City Mortgage Company (“NCMC”), solely in his official capacity.
2. On May 7, 2003, NCMC filed a timely Notice of Defense.<sup>3</sup>
3. The Commissioner issues licenses to qualified applicants who engage in the business of lending and/or servicing of loans under the California Residential Mortgage Lending Act.<sup>4</sup>
4. NCMC has been licensed (by the Commissioner) since 1997 under the California Residential Mortgage Lending Act as a mortgage lender and servicer.<sup>5</sup>
5. NCMC agreed to comply with the requirements of the California Residential Mortgage Lending Act and rules adopted, and orders issued, by the Commissioner.
6. On November 25, 2002, the U.S. Comptroller of the Currency issued an OCC [Office of the Comptroller of the Currency]<sup>6</sup> Advisory Letter, AL 2002-9, addressed to Chief Executive Officers of all National Banks, Department and Division Heads, and All Examining Personnel. The Advisory Letter stated, in pertinent part, that the OCC retains exclusive “visitorial power”<sup>7</sup> over national banks<sup>8</sup> or their operating subsidiaries,<sup>9</sup> including compliance review with applicable state laws.<sup>10</sup>
7. On January 27, 2003, Julie L. Williams, OCC First Senior Deputy Comptroller and Chief Counsel, addressed a letter to National City Corporation addressing federal and state regulation of National City Mortgage and its operating subsidiary, National City Mortgage

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<sup>3</sup> The Notice of Defense included special defenses pursuant to Government Code §§ 11506(a)(2), 11506(a)(3) and 11506(a)(5).

<sup>4</sup> Financial Code §50000, et seq.

<sup>5</sup> Financial Code §50002.

<sup>6</sup> 12 C.F.R. §5.34(e). The National Bank Act charges the OCC with the supervision of the Act and primary responsibility for surveillance of “the business of banking.” See *Nationsbank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.* (1995) 513 U.S. 251, 256; *Burke, supra* at p. 137; and also 12 U.S.C. §§ 1, 26 – 27, and 481.

<sup>7</sup> Visitorial powers include examination of a bank, inspection of a bank’s books and records, regulation and supervision of activities authorized or permitted pursuant to federal banking law, and enforcing compliance with any applicable federal or state laws concerning those activities. 12 C.F.R. §7.4000(a)(2). See also *Guthrie v. Harkness* (1905) 199 U.S. 148, 158.

<sup>8</sup> 12 U.S.C. §21, et seq.

<sup>9</sup> See 12 C.F.R. §5.34, 12 U.S.C. §24 (Seventh), and *Bank of America v. City and County of San Francisco* (9<sup>th</sup> Cir. 2002) 309, F.3d 551, 562.

<sup>10</sup> *National State Bank v. Long* (3<sup>rd</sup> Cir. 1980) 630 F.2d 981, 989. See also 12 C.F.R. §7.4000.













