

**STATE OF NEBRASKA**  
**Department of Banking & Finance**

IN THE MATTER OF:	)	
	)	
Victory Mortgage, LLC,	)	ORDER TO
d/b/a United Mortgage Services,	)	
104 Northeast 72 <sup>nd</sup> Street, Suite A,	)	SHOW CAUSE
Gladstone, Missouri,	)	
and Michael P. Moriarty,	)	
President Thereof.	)	

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Mortgage Bankers Registration and Licensing Act, Neb. Rev. Stat. §§ 45-701 to 45-721 (Reissue 2004; Supp. 2005) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-710 (Reissue 2004), the DEPARTMENT hereby orders that Victory Mortgage, LLC, d/b/a United Mortgage Services, 104 Northeast 72<sup>nd</sup> Street, Suite A, Gladstone, Missouri (“VICTORY”) and Michael P. Moriarty, President thereof (“MORIARTY”), show cause as to why its mortgage banker license should not be suspended or revoked and/or a fine and costs should not be imposed upon them.

In support of this Order, the Director makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. VICTORY submitted a Mortgage Banker License Application (“Application”) to the DEPARTMENT on March 11, 2005, and an amended Application on April 26,

2005. According to the Application, MORIARTY was listed as the “President” of VICTORY.

2. The Application was signed by MORIARTY as President of VICTORY. Immediately prior to the signature line, the Application states “I represent that the information contained herein is true and complete, to the best of my knowledge and belief.” By signing the Application, MORIARTY represented to the DEPARTMENT that all of the information contained therein was correct.

3. Based upon the information contained in VICTORY’s Application, the DEPARTMENT approved VICTORY’s Application, and Mortgage Banker License #1532 was issued to VICTORY on May 11, 2005.

4. According to the DEPARTMENT’s records, MORIARTY is also the “Managing Partner” of American Lenders Mortgage, LLC (“ALM”) which submitted a Mortgage Banker License Application to the DEPARTMENT on October 19, 2005. On February 8, 2006, the DEPARTMENT issued an Order of Denial of Mortgage Banker License of ALM’s Application. The Findings of Fact and Conclusions of Law therein are incorporated herein by reference.

5. Question #10 of the Application states: “Has applicant, or any director, shareholder or principal officer or partner or member of applicant, ever been subject to a federal or state administrative investigation or order?” In response to this question, VICTORY answered “No”.

6. During its evaluation of ALM’s Application, the DEPARTMENT discovered that the Kansas Commissioner of Insurance had issued an Order (“Kansas Order”) against MORIARTY and Northland Title Services, L.L.C. (“Northland”).

7. According to the Kansas Order, MORIARTY was issued a nonresident insurance agent license to transact the business of title insurance in Kansas on October 17, 2003. At the time the license was issued, the Kansas Insurance Department (“KID”) mailed MORIARTY information regarding bond and filing requirements for title insurance agencies. Findings of Fact #s7-9 in the Kansas Order describe what happened next:

7. When Respondents (MORIARTY and Northland) had not filed the requested information by June 21, 2004, KID mailed a demand for compliance.
8. In response, Respondent Moriarty telephoned KID policy examiner Marty Hazen and indicated that he was unaware of the requirements but had not sold title policies in Kansas.
9. According to Stewart Title Guaranty Company, Respondents have placed a total of eight Kansas policies, of which two have been issued and six are pending.

8. The Kansas Order assessed a two thousand five hundred dollar (\$2,500.00) fine against MORIARTY and Northland. The Kansas Order became a Final Order on July 26, 2004.

9. The Kansas Order constituted a state administrative order against an officer and member of VICTORY. Therefore, VICTORY should have answered “Yes” to Question #10 on the Application and disclosed the Kansas Order. By failing to do so, VICTORY violated Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2005), as VICTORY made or caused to be made, in a document filed with the Director, a statement which was, at the time and in light of the circumstances under which it was made, false or misleading.

10. On January 23, 2006, VICTORY submitted its 2006 Mortgage Banker License Renewal Application (“Renewal Application”).

11. Question #8 of the Renewal Application states: "Has applicant, or any director, shareholder or principal officer or partner or member of applicant, ever been subject to a federal or state administrative investigation or order, if not previously disclosed?" In response to this question, VICTORY answered "No".

12. The Kansas Order constituted a state administrative order against an officer and member of VICTORY. Therefore, since VICTORY had not disclosed the action in its Application, it should have answered "Yes" to Question #8 in the Renewal Application and disclosed the Kansas Order. By failing to do so, VICTORY violated Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2005), as VICTORY made or caused to be made, in a document filed with the Director, a statement which was, at the time and in light of the circumstances under which it was made, false or misleading.

13. Question #1 of the Application requires the applicant to submit information about itself. As part of this question, an applicant is asked to provide both the name under which the business will be conducted, and the legal name of the applicant, if different. VICTORY listed its name as the name under which it would be doing business and did not list a different legal name. VICTORY therefore represented to the DEPARTMENT that it was conducting business only under the name VICTORY.

14. VICTORY's Application also disclosed a website with the address [www.victorymortgage1.com](http://www.victorymortgage1.com). The DEPARTMENT reviewed this website in conjunction with ALM's Mortgage Banker License Application. At the time the DEPARTMENT reviewed the website, it stated that the name of the company was "United Mortgage Services" ("UMS"). The address for UMS is the same as the address that VICTORY had disclosed to the DEPARTMENT in its Application.

15. At no time subsequent to submitting the Application had VICTORY notified the DEPARTMENT that it was operating under the name UMS.

16. On November 30, 2005, the DEPARTMENT faxed a letter to MORIARTY asking him to explain why he did not notify the DEPARTMENT of the trade name.

17. On December 20, 2005, MORIARTY responded on behalf of VICTORY. In his letter, MORIARTY states:

Since that application, Victory Mortgage, LLC has started utilizing the name of United Mortgage Services, which is a dba. Since then, we have filed the required paperwork with the Nebraska Secretary of State, as well as the required publishing in a Nebraska newspaper, The Daily Record (sic).

18. According to the records of the Nebraska Secretary of State (“Secretary of State”), VICTORY filed an “Application for Registration of Trade Name” (“Trade Name Application”) for the trade name UMS on November 30, 2005, approximately two hours after the DEPARTMENT faxed its letter to VICTORY. The Secretary of State’s records also show that a notice was published in The Daily Record on December 13, 2005, and a proof of publication was filed with the Secretary of State on December 15, 2005.

19. According to the Trade Name Application, VICTORY began using the trade name UMS in Nebraska on February 8, 2005. According to the records of the Secretary of State, February 8, 2005, was the date that VICTORY submitted its application for a Certificate of Authority to the Secretary of State.

20. Since VICTORY was using the trade name UMS when it submitted its Application on March 11, 2005, it should have disclosed the trade name in Question #1 of the Application.

21. Neb. Rev. Stat. § 45-705(2) (Supp. 2005) provides that an applicant for a Mortgage Banker License shall submit an application on forms provided by the DEPARTMENT. The DEPARTMENT forms provide that an applicant must disclose any trade name under which it will conduct business. VICTORY therefore violated Neb. Rev. Stat. § 45-702 by not including the trade name on the Application.

22. VICTORY's failure to list its trade name, UMS, on its Application represents a violation of Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2005), as VICTORY made or caused to be made, in a document filed with the Director, a statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect.

23. Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2005) provides that the Director may, following a hearing under the Nebraska Administrative Procedure Act, suspend or revoke a license and/or impose an administrative fine if a licensee has made or caused to be made, in any document filed with the DEPARTMENT or in any proceeding under the Mortgage Bankers Registration and Licensing Act, any statement which was, at the time and in light of the circumstances under which it was made, were false or misleading in any material respect or suppressed or withheld from the Director any information which, if submitted by the licensee, would have resulted in denial of the license application.

24. VICTORY and MORIARTY made false statements on VICTORY's Application when they failed to disclose the Kansas Order against MORIARTY and when they failed to disclose the trade name, UMS. Had MORIARTY disclosed the Kansas Order, the Director may have denied the license application.

25. Neb. Rev. Stat. § 45-717.01(1) (Reissue 2004) provides that the Director may, following a hearing under the Nebraska Administrative Procedure Act, impose an administrative fine of not more than one thousand dollars (\$1,000.00) per violation against any officer, director, shareholder, partner, or member of a licensee, if the Director finds the licensee or any other such person participated in or had knowledge of any act prohibited by Sections 45-707, 45-711 and 45-714 or otherwise violated the Mortgage Bankers Registration and Licensing Act. Such administrative fine shall be in addition to or separate from any fine imposed against a licensee pursuant to Section 45-707.

26. MORIARTY, the President of VICTORY, provided false and misleading information in violation of Section 45-707(d) on multiple occasions. Specifically, (a) MORIARTY failed to disclose the Kansas Order on VICTORY's Application; (b) MORIARTY did not disclose the d/b/a on VICTORY's Application; (c) MORIARTY did not disclose the Kansas Order on VICTORY's Renewal Application; (d) MORIARTY did not disclose the Kansas Order on ALM's Application; (e) MORIARTY failed to disclose the Kansas Order in his December 19, 2005, letter and stated that ALM's information was correct.

27. The DEPARTMENT incurred a minimum of five hundred dollars (\$500.00) in investigation costs in this matter.

### **CONCLUSIONS OF LAW**

1. Neb. Rev. Stat. § 45-705(1) (Supp. 2005) provides, in pertinent part, that no person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed or has registered with the DEPARTMENT.

2. Neb. Rev. Stat. § 45-705(2) (Supp. 2005) provides that an applicant for a mortgage banker license shall submit an application on forms provided by the DEPARTMENT.

3. Neb. Rev. Stat. § 45-707(1)(d) (Supp. 2005) provides that if the Director, following an administrative hearing, finds that a licensee has made or caused to be made, in any document filed with the Director or in any proceeding under the Act, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading in any material respect or suppressed or withheld from the Director any information which, if submitted by the licensee, would have resulted in denial of the license application, the Director may suspend or revoke the license, or issue an administrative fine for each violation of the Act.

4. Neb. Rev. Stat. § 45-717.01(1) (Reissue 2004) provides that the Director may, following a hearing under the Nebraska Administrative Procedure Act, impose an administrative fine of not more than one thousand dollars (\$1,000.00) per violation against any officer, director, shareholder, partner, or member of a licensee, if the Director finds the licensee or any other such person participated in or had knowledge of any act prohibited by Sections 45-707, 45-711 and 45-714 or otherwise violated the Mortgage Bankers Registration and Licensing Act. Such administrative fine shall be in addition to or separate from any fine imposed against a licensee pursuant to Section 45-707.

5. Neb. Rev. Stat. § 45-719 (Reissue 2004) provides that the Act shall be construed liberally so as to effectuate its purposes.

6. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that VICTORY has materially violated the Act and that its license

should be suspended or revoked and/or an administrative fine in an amount of not more than one thousand dollars (\$1,000.00) for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-707(d) (Supp. 2005).

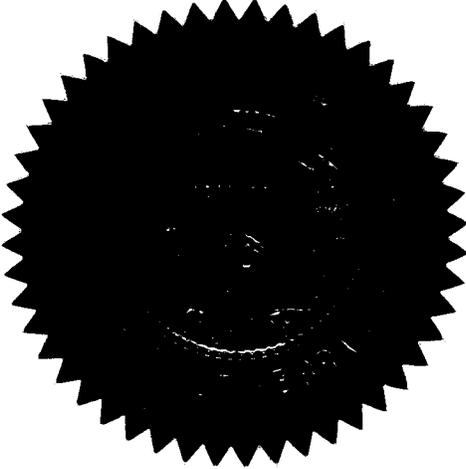
7. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that MORIARTY, the President of VICTORY, has materially violated the Act and that an administrative fine in an amount of not more than one thousand dollars (\$1,000.00) for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-717.01(1) (Reissue 2004).

8. This Order to Show Cause is necessary and appropriate in the public interest for the protection of Nebraska residents and is consistent with the purposes fairly intended by the policy and provisions of the Mortgage Bankers Registration and Licensing Act.

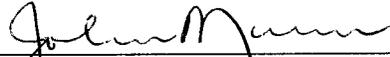
### **ORDER**

IT IS, THEREFORE ORDERED that Victory Mortgage, LLC, d/b/a United Mortgage Services, 104 Northeast 72<sup>nd</sup> Street, Suite A, Gladstone, Missouri, and Michael P. Moriarty, President thereof, shall appear before the Director to show cause as to why its mortgage banker license should not be suspended or revoked and/or why they should not be fined and costs should not be imposed upon them. A hearing on this matter will be held at the Wells Fargo Center, 1248 "O" Street, Suite 571, Lincoln, Nebraska, on the 30<sup>th</sup> day of March, 2006 at 9:30 a.m., unless the parties consent to a later date or the hearing officer sets a later date for good cause. Failure to appear at such time and place may result in a final Order suspending or revoking the license and/or imposing a fine and costs.

DATED this 8th day of February, 2006.



STATE OF NEBRASKA  
DEPARTMENT OF BANKING AND FINANCE

By:   
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