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NO. 73424-5-I

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

PORTER LAW CENTER, LLC d/b/a PORTER LAW CENTER
and DEAN DOUGLAS PORTER, Owner,

Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF FINANCIAL INSTITUTIONS,

Respondent.

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STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS

BRIEF OF RESPONDENT

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I. INTRODUCTION

The Director of Department of Financial Institutions issued an order holding Appellants Porter Law Center (PLC) and Dean Douglas Porter accountable for disregarding the licensing requirements of the Mortgage Brokers Practices Act (MBPA), RCW 19.146, by performing loan modifications for Washington consumers. PLC and Porter were not Washington-licensed mortgage brokers or loan originators, did not qualify for any exemption from licensure, unlawfully engaged in loan modification work for Washington consumers, and failed to disclose to those consumers that they were not licensed in Washington.

Notwithstanding the array of legal errors PLC and Porter assign to the Director's Final Order, this case requires little more than a straightforward application of law to the facts. The MBPA requires a license for a person acting as a mortgage broker in Washington. PLC and Porter were not licensed in Washington, either as mortgage brokers or as attorneys. They hope to avoid responsibility for their unlicensed activities by claiming a working relationship with a Washington attorney. In fact, the record shows no actual legal service performed by the Washington attorney for PLC's Washington clients; rather, it shows that the primary purpose of PLC and Porter's relationship with Washington consumers was to provide loan modification services, not legal services, and PLC staff

performed the loan modification work. PLC and Porter cannot claim an attorney exemption under the MBPA.

PLC and Porter's challenge to the constitutionality of the statute as violating the separation of powers doctrine also lacks merit. The Director's statutory authority over residential loan modification services does not conflict with the overlapping authority of the judicial branch to regulate the practice of law, and it does not impermissibly infringe on the inherent authority of the judicial branch to determine who may practice law.

This Court should affirm the Department's Final Order in all respects.

II. COUNTERSTATEMENT OF THE ISSUES

1. Is the Director's Final Order based on substantial evidence?
2. Did the Director properly uphold the evidentiary rulings and credibility determinations contained in the Initial Order?
3. Did the Director properly conclude that PLC and Porter's activities did not fall within the MBPA's attorney exemption?
4. Did the Director follow prescribed procedures in the imposition of a fine, restitution, and investigative fees? Was the Director's exercise of discretion not arbitrary and capricious?
5. Is the MBPA's exemption of Washington attorneys from its licensing requirement consistent with the separation of powers doctrine?

III. COUNTERSTATEMENT OF THE CASE

A. Statement Of Facts

1. PLC and Porter

Dean Douglas Porter owns the Porter Law Center, LLC which he formed as an Ohio limited liability company in February 2011. AR 56-59, AR 795. Neither PLC nor Porter are Washington-licensed mortgage brokers or loan originators. PLC and Porter concede that Porter is not licensed to practice law in Washington. *See* AR 93; AR 788, ln. 7-14. PLC solicits clients through a website available throughout the United States that invites consumers to call the law firm to talk to an attorney about residential real estate foreclosure law. AR 48-49. During the relevant time period, PLC had approximately 250 clients nationwide, at least eight of whom were located in Washington. AR 97-98, 783, 797.

PLC and Porter solicited consumers located in states in which PLC and Porter retained attorneys to act as “of counsel” to PLC to address the legal needs of clients located in other states. AR 796. PLC employed at least three paralegals and an administrator in South Carolina, while claiming to maintain an independent contractor relationship with 24 “co-counsel,” including Christopher Mercado, an attorney licensed to practice law in Washington. AR 100-01, 104. Porter testified that PLC paralegals located in South Carolina assisted Washington consumers in

preparing loan modification applications. AR 787. Porter also testified at the hearing he had “no idea” when Mercado would have performed work for which he billed PLC, adding only that Mercado “should have been providing legal services.” AR 785-86, ln. 2-12.

2. The Department’s investigation of PLC and Porter

In October 2012, the Department received an anonymous complaint that a company was engaging in unlicensed loan modification services. AR 682. The complainant provided the Department with a copy of a flyer which encouraged the recipient to call a 1-866 number for assistance in qualifying for mortgage relief. AR 338 (Financial Legal Examiner (FLE) Brigitte Smith entry on 10/10/2012), 363 (same), 682. The flyer provided no company name or address other than the website, www.helpmod.com, and a post office box in Spanish Fork, Utah. AR 65.

A Department investigator called the number on the flyer on October 5, 2012, and the representative indicated that the company was “Porter Law Firm representing Jefferson Consumer Law PLLC.” AR 338 (FLE Brigitte Smith entry on 10/10/2012), 363 (same), 682. As a result of this conversation, on October 10, 2012, the Department provided a copy of the consumer complaint and the flyer to PLC and Porter and directed them to provide documents and answer questions regarding the firm’s loan modification activities in Washington, as authorized in RCW 19.146.235.

AR 41-43, 685, 690. PLC and Porter did not immediately respond. The Department then issued PLC and Porter a subpoena on October 29, 2012, again as authorized in RCW 19.146.235. AR 89-90, 686. The Department received, in belated response to its original directive, a statement, apparently signed by Dean Porter, on November 14, 2012, the following:

The Porter Law Center offers legal services related to residential mortgages. These services include modification applications because it is often our professional legal opinion that a loan modification is in the best interests of our clients. In such cases, it would be unethical not to assist clients with these services.

AR 92-102, 687.

The response further stated that: “The mailer received with the complaint is the only solicitations [sic] used by PLC in WA.” AR 92, ln. 21. At hearing, Porter disavowed this response as well as his production of the flyer in response to the Department’s request for production of all solicitations sent to Washington consumers. AR 779-80, 114 (Discovery Response 3.8, referencing Dept. Ex. 24). Porter also testified that an attorney who represented him prior to the hearing penned the statement and sent it to the Department without Porter reviewing it for accuracy. AR 779-80. Although the PLC and Porter responses purported to bear Dean Porter’s signature, Porter testified that his attorney had signed Porter’s name to the document. *Id.*

PLC and Porter were unable to explain how the eight Washington clients came to enter into agreements with PLC. AR 395. The borrowers' loan agreements were later produced in discovery. AR 114-19; 120-290. PLC and Porter claimed not to have inquired into where their leads originated. *Id.* Porter also specifically denied having any connection to the flyer, to Jefferson Law Center, or to the website www.helpmod.com despite the fact that a Department investigator had called the telephone number and been informed she had reached PLC. AR 782, 365; *see also* AR 709. The Department's investigator also spoke with Robert Olacio, a PLC customer in Washington, who stated he had received a flyer from PLC. AR 365.

James Adney, one of PLC's Washington clients, testified at hearing that he received an unsolicited call from someone identifying himself as a PLC representative who had noticed Adney had fallen behind on his mortgage payments. AR 639-40, 649. The caller offered to help him obtain a loan modification. *Id.* Subsequently, another PLC employee sent Adney a "Limited Services Retainer Agreement" which he signed and returned to PLC on September 28, 2012. AR 642, 67-87.

PLC's "Limited Services Retainer Agreement" provided that Adney was hiring PLC to act as his agent "to analyze the case, prepare documents and negotiate with the lender, servicer and/or other investor of

the first mortgage loan attached [to] Borrower's residential property"

AR 78. PLC's scope of services, under Paragraph 9, was limited to "attempts to qualify Borrower's first mortgage for work-out programs that are available." The loan modification services included "preliminary legal review of the file," "ongoing legal consultation," "review and analysis of possible predatory lending issues," and "attorney review for alternative legal options." AR 80. Paragraph 6 provided:

Use of Local Co-Counsel and Third Parties: The Firm *may* contract or affiliate with co-counsel attorneys in the course of representation of Borrower. ... Borrower understands and agrees that co-counsel may charge fees in addition to the Firm for services not covered in the scope of this agreement, particularly if litigation is required.

AR 79 (emphasis added). Addendum A to the Agreement also indicated that an attorney would review his file "for basic program guidelines" and assess "predatory lending issues if applicable." AR 85.

Adney had six or seven contacts with a PLC paralegal but never spoke to or heard from the Washington attorney, Mercado. AR 650-51. Adney was unaware of any legal work Mercado had performed for him, and testified unequivocally at hearing, "[T]hat name, I have never even heard of" when asked whether he recognized the name Christopher Mercado. AR 642-43. The record contains no evidence that Mercado provided any legal advice to Adney or any other consumer, on a

temporary or ongoing basis. The record also includes no billing records submitted by PLC to Washington borrowers which would have itemized Mercado's activities. Similarly, the record lacks any evidence that Mercado performed a review or analysis of possible predatory lending issues, or alternative legal options to a loan modification. Adney testified that he communicated exclusively with out-of-state paralegals. AR 641-43. Porter could not say whether the \$50 charged by Mercado was a typical fee for an attorney's active representation of a client for whom he is performing loan modification services. AR 790-91. Nor was Porter able to identify the precise work Mercado would have performed in exchange for \$50 compensation. *See* AR 786, ln. 2-12.

Conflicting evidence concerning fees PLC charged to its Washington clientele was presented at hearing. None of the client retainer agreements contained any indication that PLC had been engaged for any legal service beyond residential loan modification services. *See* AR 69-87, 119-290. A PLC letter to Adney identified PLC's fee structure to include a flat fee of \$3,200 (four monthly payments of \$800) plus a monthly "maintenance fee" of \$69 each month. AR 69. But Addendum A to PLC's retainer agreement itemizes a flat fee structure which would total a minimum of \$3,997 for all six phases, not including any of the "optional legal services." *See* AR 83-86, 87. Porter stated that

Adney had paid the law firm a total of \$3,407. AR 108. Adney testified that PLC charged him \$3,200 and five monthly maintenance fees. AR 644, 658-59, 668-69. PLC continued to debit Adney's bank account even after he had obtained a loan modification. AR 670. Unable to get an adequate explanation for the continued charges, Adney closed the account to prevent PLC from continuing its unauthorized debits. AR 644.

PLC admitted charging its clients according to the terms of its "Limited Service Retainer Agreement." AR 108. Mercado billed \$50 to PLC for each of PLC's Washington clients for work, presumably performed in October and November of 2012. AR 326-27. PLC and Porter submitted what appeared to be billing records and case notes, but these records do not show any legal work Mercado performed for any PLC client or that he had direct contact with any client or PLC paralegal. AR 326-36.

B. The Director's Authority Pursuant To The MBPA

The Director of Financial Institutions is responsible for the enforcement, administration and interpretation of the MBPA. RCW 19.146.220; RCW 19.146.223. A person may not engage in the business of a mortgage broker or loan originator without first obtaining and maintaining a license unless a specific exemption applies. RCW 19.146.200; WAC 208-660-155(3). At the time of the conduct at

issue here, the law exempted from this prohibition attorneys (1) who were licensed to practice law in Washington and (2) who performed mortgage broker or loan originator services “in the course of [their] practice as an attorney,” so long as the attorney was “not principally engaged in the business of negotiating residential mortgage loans.”¹ RCW 19.146.020(1)(c). WAC 208-660-008 elaborates on the requirements of the attorney exemption from mortgage broker/loan originator licensing.

The MBPA defines “residential mortgage loan modification services” to include negotiating, attempting to negotiate, arranging, attempting to arrange, or otherwise offering to perform a residential mortgage loan modification. RCW 19.146.010(21); WAC 208-660-105. Residential mortgage loan modification services also include the

¹ At the time of the conduct at issue here, RCW 19.46.146.020(1)(c) exempted from the mortgage broker licensing requirement “[a]n attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney.” RCW 19.146.020(c) was amended in 2013 to exempt “[a]n attorney licensed to practice law in this state,” but for the exemption to apply the following conditions must be satisfied:

- (i) all mortgage broker or loan originator services must be performed by the attorney while engaged in the practice of law; (ii) all mortgage broker or loan originator services must be performed under a business that is publicly identified and operated as a law practice; and (iii) all funds associated with the transaction and received by the attorney must be deposited in, maintained in, and disbursed from a trust account to the extent required by rules enacted by the Washington supreme court regulating the conduct of attorneys.

This brief cites the pre-2013 version of RCW 19.146.020(1)(c).

collection of data for submission to any entity performing mortgage loan modification services. RCW 19.146.010(21).

C. Procedural History

On March 25, 2013, the Director charged PLC and Porter with violating the MBPA, specifically RCW 19.146.200 and 19.146.0201(2) and (3). The Director alleged PLC and Porter acted as mortgage brokers in Washington without a license, and also failed to disclose to consumers that they were not licensed to provide residential mortgage loan modification services in this state. AR 1-5. In response, PLC and Porter claimed the attorney exemption to the MBPA licensing requirements. AR 424-25. After a hearing on March 10, 2014, the administrative law judge (ALJ) issued Findings of Fact, Conclusions of Law, and an Initial Order (Initial Order) on June 6, 2014. The ALJ did not find Porter's testimony credible. AR 476 (FF 4.29, 4.30). The ALJ found that PLC and Porter violated the MBPA by offering and providing eight Washington consumers residential loan modification services without possessing the requisite license. AR 478. The ALJ specifically rejected the claim to the attorney exemption and the claim that Mercado provided legal services to PLC's Washington clients, finding that PLC staff outside of Washington performed most, if not all, of the loan modification work for the eight Washington consumers at issue. AR 479. The ALJ also rejected the claim

that PLC's residential loan modification services were not incidental to legal representation, but were instead the primary purpose of the representation. *Id.*

The ALJ also concluded that PLC and Porter violated the MBPA by advertising loan modification services to Washington consumers via mailer, telephone, and the Internet without disclosing to these consumers that PLC was unlicensed in Washington or accurately representing that Mercado—and not PLC—would provide these services. AR 480. The ALJ ordered restitution to all eight Washington consumers totaling \$28,886.87, and imposed a fine of \$24,000, attributing at least one month of work to PLC and Porter for each of the Washington consumers. AR 482. Finally, the ALJ imposed investigation fees of \$648. AR 483.

PLC and Porter did not seek review of the Initial Order with the Director. Therefore, as authorized in WAC 10-08-211, the Director adopted the Initial Order in its Final Order, dated July 16, 2014.² PLC and Porter then petitioned for judicial review, timely filed on August 12, 2014 in King County Superior Court. The court affirmed the Director's decision in its entirety.

² The Director's Final Order appears in the record at Clerk's Papers No. 22, Exhibit B to PLC's and Porter's King County Superior Court trial brief. The Director adopted the model rules of procedure in WAC 10-08 as the rules governing the Department's adjudicative procedures. *See* WAC 208-08-020.

IV. STANDARD OF REVIEW

The evidentiary standard under the MBPA is “If the person subject to the action consents, or if after hearing the director finds by the preponderance of the evidence that any grounds for sanctions under this chapter exist, then the director may impose any sanction authorized by this chapter.” RCW 19.146.221; *see also* AR 469, n. 2. The Administrative Procedure Act (APA) governs judicial review of final orders issued by the Director. RCW 34.05.570(3). PLC and Porter bear the burden of demonstrating the invalidity of the agency’s action. RCW 34.05.570(1)(a). PLC and Porter contend the Final Order should be reversed on six grounds: (a) the statute or rule on which the order is based is in violation of constitutional provisions on its face or as applied; (b) the order is outside the statutory authority or jurisdiction of the Department; (c) the Department has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure; (d) the agency has erroneously interpreted or applied the law; (e) the order is not supported by substantial evidence; (i) and, that the decision is arbitrary and capricious. RCW 34.05.570(3)(a). *See* Op. Br. at 5.

The court conducts a *de novo* review of an agency’s legal conclusions, *Franklin Cy. Sheriff v. Sellers*, 97 Wn.2d 317, 646 P.2d 113 (1982), giving substantial weight to the agency’s interpretation of a law it

administers. *Tapper v. Empl. Sec. Dep't*, 122 Wn.2d 397, 403, 858 P.2d 494 (1993). Substantial weight is also given to an agency's decision when it has expertise in a particular area. *Kraft v. Dep't of Soc. & Health Serv's.*, 145 Wn. App. 708, 717, 187 P.3d 798 (2008); *Markam Group, Inc. v. Dep't of Emp't Sec.*, 148 Wn. App. 555, 561, 200 P.3d 748 (2009).

The court reviews findings of fact to which error has been assigned under the "substantial evidence" standard. RCW 34.05.570(3)(e); *Terry v. DES*, 82 Wn. App. 745, 748, 919 P.2d 111 (1996). Evidence may be substantial even if the evidence is conflicting and would lead to other reasonable interpretations. *Fred Hutchinson Cancer Research Ctr. v. Holman*, 107 Wn.2d 693, 713, 732 P.2d 974 (1987). The testimony of one witness, if believed, constitutes substantial evidence, even if contradicted by other witnesses. See *Vermette v. Andersen*, 16 Wn. App. 466, 558 P.2d 258 (1976). An agency's finding is therefore upheld if there are sufficient facts in the entire record from which a reasonable person could make the same finding as the agency, even if the reviewing court would make a different finding. *Callecod v. WSP*, 84 Wn. App. 663, 929 P.2d 510 (1997). The court does not substitute its judgment for that of the final decision-maker on the credibility of witnesses or the weight to be given to conflicting evidence. *Id.* Moreover, on a sufficiency challenge, the Department's evidence is taken as true, and all

inferences are drawn in the Department's favor. *Ancier v. State, Dep't of Health*, 140 Wn. App. 564, 572-73, 166 P.3d 829 (2007). In evaluating whether findings and conclusions satisfy the APA, "adequacy, not eloquence, is the test." *US West Commc'ns, Inc. v. Wash. Utils. & Transp. Comm'n*, 86 Wn. App. 719, 731, 937 P.2d 1326 (1997) ("the statute does not require that findings and conclusions contain an extensive analysis").

Appellants describe their constitutional argument as a facial challenge (Op. Br. at 45), but they argue it primarily as an applied challenge to the Department's actions in this case (Op. Br. at 47-48). In order for a statute to violate the constitution on its face, there must be "no set of circumstances in which the statute can constitutionally be applied." *Tunstall v. Bergeson*, 141 Wn.2d 201, 220-21, 5 P.3d 691 (2000). Under an as-applied challenge, the party to whom the law was applied bears the burden of providing specific facts demonstrating that the State's application of the statute violates the constitution, which it must establish beyond a reasonable doubt. *Id.* at 223.

The arbitrary and capricious test in RCW 34.05.570(3)(i) does not apply to review of findings of fact. *Hensel v. Dep't of Fisheries*, 82 Wn. App. 521, 919 P.2d 102 (1996). To be overturned, a discretionary decision must be manifestly unreasonable.

ITT Rayonier, Inc. v. Dalmon, 67 Wn. App. 504, 837 P.2d 647, *aff'd*, 122 Wn.2d 801, 863 P.2d 64 (1992). “Where there is room for two opinions, action is not arbitrary or capricious when exercised honestly upon due consideration, even though one may believe the conclusion was erroneous.” *Heinmiller v. Dep’t of Health*, 127 Wn.2d 595, 903 P.2d 1294, *cert. denied*, 518 U.S. 1006 (1995).

V. ARGUMENT

A. **When PLC And Porter Engaged In Mortgage Broker Activity In Washington Without A License, They Committed Multiple Violations Of The Mortgage Brokers Practices Act**

1. **PLC and Porter admit to activities that constitute mortgage broker activities and thus, when they engaged in them without a license, they violated RCW 19.146.200(1)**

The record shows all the facts necessary to demonstrate liability under the MBPA.

First, state law requires a person or entity to have a license before it can engage in mortgage broker activities in Washington. RCW 19.146.200. The Department never issued PLC and Porter a mortgage broker license to practice in Washington. AR 695. PLC and Porter candidly stated they are not licensed under the MBPA, and that they offered to assist persons in obtaining or applying for residential loan modification for property located in Washington State. *See* AR 473 (FF 4.20), 92. PLC and Porter also admitted in their response to the

Department's initial Directive to assisting clients with applications for loan modifications (AR 96), although PLC and Porter now argue that their own statements should be given little weight. Op. Br. at 12-13.

Second, PLC and Porter admitted on multiple occasions that they represented eight Washington consumers and provided the names of these consumers. AR 92, 97-98, 108. The fact of the loan modification agreements with Washington consumers is buttressed by the Department's independent verification. The Department reviewed contract documentation produced by Adney. *See* AR 470-73 (FF 4.7-4.20), 67-87. PLC and Porter further acknowledged that these services were performed in the expectation of direct or indirect compensation. AR 472 (FF 4.15), 474 (FF 4.21), 69, 97-98, 108. Adney paid PLC and Porter at least \$3,407 over the course of many months before requesting a refund and ultimately being forced to close his bank account. AR 472 (FF 4.15), 69. Based on the entire factual record, including PLC and Porter's statements against interest, PLC and Porter violated the MBPA when they acted in the capacities of a mortgage broker and loan originator without a license and in the absence of an exemption to the MBPA.

2. PLC and Porter engaged in unfair or deceptive practices in violation of RCW 19.146.0201(2)

An unfair or deceptive act or practice is one that has a capacity to deceive a substantial portion of the public. *Sing v. John L. Scott, Inc.*, 134 Wn.2d 24, 30, 948 P.2d 816 (1997). The Department's evidence demonstrated that Washington consumers were not provided with information about PLC and Porter's lack of a mortgage broker or loan originator's license. PLC and Porter's direct mail solicitation to Washington consumers did not disclose whether they were licensed to provide these services in Washington. PLC and Porter's website did not disclose to Washington consumers that they were not licensed as a mortgage broker or loan originator in Washington. PLC and Porter did not disclose to Washington consumers that they were not licensed to practice law in Washington. *See AR 65; see also AR 48-49.* The lack of disclosure confirms that PLC and Porter engaged in unfair or deceptive practices in violation of RCW 19.146.0201(2) by failing to disclose their unlicensed status under the MBPA to consumers from whom they accepted payment.

3. PLC and Porter obtained money from Washington consumers by fraud or misrepresentation in violation of RCW 19.146.0201(3)

RCW 19.146.0201(3) prohibits a person or entity from obtaining property by fraud or misrepresentation. Here, PLC and Porter

misrepresented, either by act or omission, their lawful authority to assist the Washington consumers with residential mortgage loan modifications. PLC and Porter admittedly took at least \$31,976 (calculated as eight Washington consumers at \$3,997 each), plus monthly maintenance fees from these same consumers (AR 92), all while not licensed. PLC and Porter collected those fees by performing unlawful activity. RCW 19.146.220(2)(e) permits the imposition of restitution for any violation of the MBPA.

PLC and Porter contend that the Director's sanctions should be based on the results actually obtained for consumers (Op. Br. at 44), but it is axiomatic that they cannot be allowed to be compensated for services as if they were licensed to provide such services. Accordingly, the Department properly determined that PLC and Porter obtained property totaling, at a minimum, \$28,840, as admitted by PLC and Porter, AR 97-98 and AR 108, from Washington consumers, all of which was obtained based on unlicensed conduct and misrepresentations, and all of which was therefore ordered to be returned to the Washington consumers.

B. Substantial Evidence Supports The Findings And Conclusions

1. PLC and Porter failed to assign error to specific findings of fact

PLC and Porter contend that the Department erred in both fact and law, but fail to assign error to any of the Order's findings of fact. Op. Br. at 3-4. Unchallenged findings of fact are treated as verities on appeal. *In re Disciplinary Proceeding Against King*, 168 Wn.2d 888, 898, 232 P.3d 1095 (2010). If this Court nonetheless addresses PLC and Porter's factual arguments, the findings of fact are supported by substantial evidence.

2. PLC and Porter performed loan modifications in Washington

PLC and Porter repeatedly contend that the Department ignored a wide variety of evidence, Op. Br. at 13-21, but these contentions are meritless. In reaching the conclusion that the PLC and Porter performed loan modification services in Washington State, the ALJ relied on evidence presented at hearing originating from an assortment of sources. The finding regarding PLC's solicitation of Washington consumers is amply supported. PLC maintained a website, accessible to Washington residents, which provided a 1-800 number for consumers and invited viewers to contact PLC directly. AR 470; the Department presented exhibits of the website accessible from Washington State (AR 48-50); the

copy of the flyer received by an anonymous complainant (AR 65); Adney's testimony that he was contacted by PLC (AR 639, ln. 18-20); and the consumer agreements with Washington residents turned over by PLC and Porter in discovery (AR 119-283). PLC and Porter expressly acknowledged the flyer as their own marketing material in their initial response to a Department directive (AR 92, ln. 21; AR 99) and then again after being compelled in discovery by the ALJ to produce copies of marketing materials (AR 114, Discovery Response 3.8).

The record also supports the finding that PLC telephoned Adney and offered to work with his lender to modify the mortgage loan. AR 470; AR 639, ln. 18-20. The application e-mailed to Adney was titled "Limited Services Retainer Agreement" and stated that Adney appointed PLC "as Borrower's agent to analyze the case, prepare documents and negotiate with the lender, servicer and/or investor of the mortgage loan attached Borrower's [sic] residential property or other person/entity servicing Borrower's account...." AR 471 (FF 4.9), 67-87.

The record also supports the finding that the primary purpose of PLC and Porter's relationship with Washington consumers was to provide residential loan modification services, as defined in the MBPA. The Limited Services Retainer Agreement included multiple provisions that sought to limit the legal obligations of PLC's contract with Adney, as a

Washington consumer, to loan modification services. AR 67-87. For example, Paragraph 7 of the Agreement provided in part, “[t]his Agreement does not cover other related claims that may arise and may require legal services (e.g. lender lawsuits, insurance disputes, etc.)” AR 471 (FF 4.10), 79, 129. Paragraph 9 of the Agreement entitled, “Limited Scope of Services” stated, “[t]he scope of representation provided for by this Agreement is limited to attempts to qualify Borrower’s first mortgage for work-out programs that are available.” AR 471 (FF 4.11), 80, 130. The final paragraph of the Agreement entitled, “Optional Legal Services” provided a list of legal services that may be available to Borrower if recommended by PLC and if Borrower chose to retain PLC to perform them. AR 471 (FF 4.12), 87, 137. PLC would charge additional fees for these services, and require a separate agreement between PLC and Borrower to perform them. *Id.* Such “optional” services included foreclosure defense, bankruptcy representation, real estate litigation, debt consolidation/negotiation, and foreclosure mediation. *Id.* The Department’s evidence on this point was not limited to Adney’s testimony and his documents. In response to the Department’s subpoena, PLC and Porter provided nearly identical agreements for each of the consumers, all containing the same limitations. AR 119-283.

PLC and Porter responded to the Directive to Provide Documents and Explanation on November 13, 2012, which independently corroborated a complainant's accusation that PLC was advertising and holding themselves out as being able to perform loan modifications in Washington. *See* AR 473 (FF 4.18-4.20), AR 92-102. In answer to the question, "Are you currently or have you ever provided or offered to provide loan modification services, including short sale negotiation services, for properties or consumers located in the state of Washington?" an "X" was entered in the box next to the word, "Yes". AR 92. In response to the directive to "Please explain the service provided or offered and the time period provided or offered," PLC and Porter answered: "The Porter Law Center offers legal services relating to residential mortgages. These services include modification applications because it is often our professional legal opinion that a loan modification is in the best interests of our clients. In such cases, it would be unethical not to assist clients with these services." AR 473 (FF 4.20), 92. PLC and Porter have repeatedly admitted charging fees to each of the Washington residents. AR 474 (FF 4.21); 92, ln. 19; 97-98; 108. They provided the Department with the list of the Washington consumers they had assisted with residential loan modifications. AR 474 (FF 4.23), 97-98, 108. The Department's prima

facie showing of violations of the MBPA is amply supported by the record.

3. PLC and Porter's purported "association" with a Washington attorney does not entitle them to the MBPA's attorney exemption

Generally, a party claiming exemption from a legal requirement bears the burden of proving the exemption. *See All-State Constr. Co. v. Gordon*, 70 Wn.2d 657, 665, 425 P.2d 16 (1967) (claiming a tax exemption); *In re Sehome Park Care Center, Inc.*, 127 Wn.2d 774, 778, 903 P.2d 443 (1995) (same); *Stahl v. Delicor of Puget Sound, Inc.*, 148 Wn.2d 876, 881, 64 P.3d 10 (2003) (claiming exemption from Minimum Wage Act). By attempting to claim the Washington-licensed attorney exemption as an affirmative defense to the general licensure requirement, PLC and Porter must prove their relationship with a Washington attorney and that attorney's work on behalf of their Washington clientele. PLC and Porter fail to meet this burden.

Porter testified that PLC paralegals located in South Carolina assisted Washington consumers in preparing loan modification applications. AR 787. Adney testified that his contacts with PLC were solely through these out-of-state paralegals. AR 650-51. Porter also testified that he had "no idea" when Mercado would have done the work for PLC's Washington clients, but said Mercado "should have been

providing legal services.” AR 785-86. Billing records submitted by PLC and Porter show no communications between Mercado and any Washington consumers. AR 326-36. Further, the record contains no evidence that Mercado performed any supervisory activities over PLC paralegals. The ALJ properly concluded that: “[h]ad Appellants established the work, if any, that Mercado did for Appellants’ Washington clients, Appellants’ comparison may have been compelling...the weight of evidence establishes that Appellants, not Mercado, performed these services for the eight Washington consumers at issue”); *see also* AR 472 (FF 4.13-.16) (findings regarding Adney’s relationship with PLC, not Mercado).

Even if Mercado had performed the services, PLC and Porter still did not meet the requirements of the MBPA because an “association of counsel” exemption is not available to out-of-state attorneys.³ PLC and Porter failed to put forward any evidence that there was an “association of counsel”-type arrangement anticipated by Washington Rules of Professional Conduct (RPC) 5.5. *See* AR 479 (CL 5.10). Further, PLC and Porters’ offer to perform the loan modification tasks that required their licensure coupled with the evidence and testimony produced at the

³ The ALJ found no factual basis for addressing whether an out-of-state attorney may assert the Washington-licensed attorney exemption by associating with an in-state attorney. AR 479.

hearing establishes that, to the extent any services were provided at all, PLC and Porter provided such services, not Mercado. AR 78-87, 119-283, 299, 368, 642-43, 652-54. Adney testified that he had never met nor heard of Mercado. AR 472 (FF 4.16), 642-43. None of the Washington residents responding to the Department's requests for information reported any contact with Mercado or his law firm in relation to loan modification services. AR 343 (database entry – 2/19/13). And it was PLC, not Mercado, who accepted direct payments from Washington homeowners in exchange for residential loan modification services. AR 471 (FF 4.12), 69, 97-98, 108. The ALJ had sufficient evidence supporting her findings that PLC, not Mercado, held itself out as the entity able to perform loan modification services; that the retainer agreement with Washington consumers was executed by PLC, not Mercado; and that PLC did most, if not all, of the work that was performed. Based on those findings, the ALJ properly concluded that PLC and Porter were ineligible for the in-state attorney exemption. AR 479.

C. The ALJ's Evidentiary Rulings And Credibility Determinations Do Not Constitute Errors Of Law

PLC and Porter allege the Director's decision is largely based on undependable statements made by Department investigators, not all of whom testified at hearing. Op. Br. at 22. They allege that the Director's

decision should not have excluded “all evidence regarding the six other Washington consumers.” *Id.* PLC and Porter further contend that the Director failed to consider Porter’s testimony about who provided the legal services to eight Washington consumers. Op. Br. at 17-20. These contentions are meritless.

1. The ALJ properly admitted evidence as to the transactions involving the PLC and Porter and each Washington consumer

Discretionary evidentiary rulings are subject to the arbitrary and capricious standard of RCW 34.05.570(3)(i). Under that standard of review, a court will not set aside a discretionary decision unless manifestly unreasonable. *ITT Rayonier, Inc. v. Dalmon*, 67 Wn. App. 504, 510, 837 P.2d 647 (1992), *aff’d*, 122 Wn.2d 801, 863 P.2d 64 (1993). PLC and Porter contend that the Department impermissibly relied on untrustworthy hearsay evidence. However, the APA expressly permits the admission of hearsay evidence if it is the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. RCW 34.05.452(1); *see also Nationscapital Mortgage Corp. v. Dep’t of Financial Institutions*, 133 Wn. App. 723, 750, 137 P.3d 78, 92 (2006). The admission of evidence at hearing relating to each Washington consumer was proper.

The vast majority of evidence submitted at hearing by the Department was neither hearsay nor objectionable on grounds of relevance. Admissions from a party opponent, under ER 801(d)(2), are not hearsay. The identity of PLC and Porter's Washington consumers was disclosed by PLC and Porter in response to the Department's request for information. AR 97-98. Porter's own communications to the Department included an admission as to the amounts PLC had charged each consumer. *Id.* PLC's flyer and the agreements between PLC and Washington consumers were produced by PLC and Porter in discovery. AR 119-283, 296. In addition, PLC and Porter's own statements, particularly when against their own interest, are precisely the kind of information on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Indeed, it is not clear on what basis a reasonably prudent person could conclude that there were *not* at least eight Washington clients of PLC and Porter given the existence in the record of the agreements with these consumers.

PLC and Porter assert that one of the Washington consumers (Olacio) submitted a letter after the hearing in which he sought to withdraw his complaint. AR 464-65. But Olacio's letter confirms that he did file a complaint; otherwise, he would not have submitted a declaration requesting it be withdrawn. Moreover, his letter (like his complaint)

contains no indication that there was any relationship between himself and Mercado. *Id.*

PLC and Porter take issue with Adney's testimony, which was based on his personal interactions with PLC and Porter. Adney's statements under oath are clearly not hearsay, as they are statements made while testifying in hearing. ER 801(c). The fact that Adney was not asked to produce his phone records to corroborate his testimony concerning receipt of a telephone call from PLC is a red herring and does not change the admissibility of his testimony. Op. Br. at 10. PLC and Porter had every opportunity to explore this issue during the discovery process and did not.

Contrary to their assertion, the arguments PLC and Porter now assert were ignored by the ALJ were considered and rejected based on the testimony and evidence presented at the hearing. AR 475 (FF 4.26), 481-82 (CL 5.18, 5.19). The Department's investigator testified about attempts to reach each of the consumers listed by Porter in his response to the directive. AR 365; *see also* AR 709. PLC and Porter's own statements against interest describe the relationship they formed with each Washington consumer. *See* AR 92, ln. 21; *see also* AR 108. PLC and Porter's discovery production of the contracts executed with Washington consumers leaves no room for doubt that they entered into an agreement to

perform loan modification services. As explained above, the “Limited Services Retainer Agreements” executed with Washington consumers contain terms limiting the scope of services, the exclusion of other “optional legal services,” and are silent as to any mention of Mercado or any attorney from Washington State. AR 67-87. The ALJ reasonably concluded that there was sufficient evidence that PLC and Porter contracted with eight Washington consumers and that the in-state attorney exemption did not apply to PLC and Porter for any of them.

The Department properly exercised its authority to assess a penalty for unlicensed activity for each Washington consumer known to have done business with PLC and Porter, although only one Washington consumer testified at hearing. Given the record evidence, it was not necessary to hear testimony from each affected consumer. Indeed, PLC and Porter’s contention that each affected consumer must testify already has been rejected; such a limitation on the Department’s enforcement authority has been determined not to give effect to the Legislature’s intent of promoting honesty, fair dealing, and public confidence in the industry. *Nationscapital Mortgage Corp.*, 133 Wn. App. at 740-741.

2. The credibility findings as to Porter were proper

A court will accept the fact finder’s determinations of witness credibility and the weight to be given to reasonable but competing

inferences. *City of Univ. Place v. McGuire*, 144 Wn.2d 640, 652, 30 P.3d 453 (2001); *Washington State Dept. of Health Unlicensed Practice Program v. Yow*, 147 Wn. App. 807, 820, 199 P.3d 417 (2008).

PLC and Porter contend that the Department ignored Porter's testimony regarding the legal services PLC provided to eight Washington consumers. Op. Br. at 17-20. Again, their contention lacks merit. The ALJ considered the substance of Porter's testimony and found that Porter lacked credibility. AR 476 (FF 4.29-4.30). The findings do not purport to have been based on inferences the ALJ made from Porter's demeanor, but rest on his testimony's substantive shortcomings. For example, Porter claimed not to know whether Washington consumers could view his website. AR 783, ln. 13. Porter could not recall how his firm came to represent eight Washington consumers. AR 783-84. Porter could not recall the terms of the agreement with Mercado or whether it was oral or in writing, and he could not explain whether \$50 was a reasonable amount for an attorney to charge for his active involvement in the provision of legal services. AR 790-91. Porter denied knowledge about the services Mercado provided to PLC's clients. AR 786, ln. 2-18. Porter attempted to disavow the flyer he had previously and repeatedly admitted to using in

Washington State. AR 798; 92, ln. 21; 108. As the finder of fact, the ALJ's credibility determinations are entitled to deference in the absence of a manifestly unreasonable decision. *Callegod*, 84 Wn. App. 663 at 676, n 9. PLC and Porter completely fail to meet their burden here.

D. The Washington-Licensed Attorney Exemption Did Not Apply To PLC And Porter's Washington Activities

PLC and Porter argue that they were entitled to claim the Washington-licensed attorney exemption contained in the MBPA. The evidence in this administrative record does not support the contention that PLC and Porter qualified as Washington-licensed attorneys or that the loan modification services were incidental to other legal services provided, pursuant to WAC 208-660-008(5).⁴ PLC's and Porter's claim were properly rejected in the Final Order and should be rejected by this Court.

1. PLC and Porter did not qualify for the attorney exemption

The exemption from licensure applies only to Washington-licensed attorneys. RCW 19.146.020(1)(c). Because PLC and Porter performed loan modifications in Washington, and were not Washington-licensed attorneys, that exemption did not apply to them. As described above, PLC and Porter failed to produce any evidence that Mercado, or any

⁴ In addition to other requirements, the rule provides: "(a) If you are an attorney licensed in Washington and if the mortgage broker activities are incidental to your professional duties as an attorney, you are exempt from the MBPA under RCW 19.146.020(1)(c)." WAC 208-660-008(5)(a).

Washington attorney, participated in PLC and Porter's loan modification activities for Washington consumers. AR 470.

That Mercado did not meaningfully participate in any Washington consumer loan modification is amply supported in the record. PLC acknowledged having charged Washington clients thousands of dollars each, according to the terms of their agreements. AR 108. But PLC only produced evidence of one billing of \$50 to PLC by Mercado for each of PLC's Washington clients. AR 326-36. According to the record, the \$50 entries were billed to PLC by Mercado on November 15, 2012, after the great majority of the total fees for the loan modification services had been charged to the Washington consumers. *Cf.* AR 326-36, 97-98, 108. The October payment records produced by PLC appear to be Mercado's billing records for other, unrelated out-of-state firms, "WTL" and "J Mark". AR 327. PLC and Porter produced no itemized billing records or case notes showing that Mercado ever performed any legal work on behalf of any PLC client or that he had direct contact with any client or PLC paralegal. Adney testified that he communicated exclusively with out-of-state paralegals. AR 641-43. The Department produced the only statement received from Mercado, a letter sent to the Department in response to an inquiry concerning an unrelated out-of-state loan modification company. AR 104-106.

Porter could not testify with any specificity about what Mercado did for the \$50. AR 476, ln. 4-12. On cross examination, he could not say whether \$50 was a typical fee for an attorney's active representation of a client for whom he is performing loan modification services. AR 790-91. Porter was also unable to identify the precise work Mercado would have performed in exchange for the \$50 compensation, AR 786, even though PLC and Porters' discovery responses stated that the specific assistance provided was limited to "Review files for compliance with state and local laws." AR 299. In any event, the evidence is hardly indicative of an attorney actively engaged in providing legal services. Thus, to the extent PLC and Porter rely on Mercado's relationship to the Washington consumers as shielding them from the requirements of the MBPA, the record does not support this argument.

2. Even if PLC and Porter could show that Mercado performed legal services for PLC's Washington clients, PLC and Porter are not insulated from the MBPA's requirements

Contrary to the post-hoc rationalization offered by PLC and Porter, their residential loan modification services were not merely incidental to their professional duties. In fact, as discussed above, the retainer agreement between PLC and Washington consumers expressly limited the scope of services to "attempts to qualify Borrower's first mortgage for

work-out programs that are available,” followed by a list of qualifying activities, including sub-part (i) “Preparation and submittal of modification package [...].” *See generally* AR 78-87. The contract required the Washington homeowners to agree that the contract is limited to PLC’s attempts to qualify borrower’s mortgages for work-out programs and excluded optional legal services. AR 80, 87, 130, 137. PLC and Porter, therefore, held themselves out publicly as being able to perform loan modification services. This action alone made them ineligible for the exemption in WAC 208-660-008(5)(b). The Department correctly concluded that the prima facie violations had been proven, and that PLC and Porter had not asserted any valid exemption to the application of the MBPA. Nothing more is required for this Court to uphold the Director’s Final Order.

Based on the above evidence, the ALJ did not deem it necessary to reach the issue of whether an out-of-state law firm may associate with a Washington-licensed attorney to shield itself vicariously from application of the MBPA, since there was no evidence of an actual association. It is nonetheless clear the MBPA does not provide such a shield. The specific language of the exemption in former RCW 19.146.020(1)(c) limited its application to “[a]n attorney licensed to practice law *in this state* (emphasis added).” RCW 19.146.020(1)(c). The MBPA does not provide

an exemption to an out-of-state attorney engaged in loan modifications based simply on associating with a Washington attorney. If the Legislature had intended to exempt an out-of-state attorney from licensure as a mortgage broker simply through an association with an in-state attorney, it could have done so. To offer loan modification services in Washington, PLC and Porter had the option to either become licensed as Washington attorneys, or to apply for mortgage broker and loan originator licenses. They did neither, and must be held accountable for their failure to do so.

E. The MBPA's Exemption For Washington-Licensed Attorneys Is Consistent With The Separation Of Powers Doctrine

PLC and Porter suggest the MBPA impermissibly threatens the institutional integrity of the judicial branch of Washington state government and facially violates the separation of powers doctrine. Op. Br. at 45-51. For a statute to violate the constitution on its face, there must be "no set of circumstances in which the statute can constitutionally be applied." *Tunstall v. Bergeson*, 141 Wn.2d 201, 220-21, 5 P.3d 691 (2000). The Court must determine what the statute requires, and then determine whether it is convinced beyond a reasonable doubt that there is no set of circumstances in which the statute could satisfy the relevant article of the constitution. *Id.* at 221.

Although PLC and Porter claim a facial constitutional violation, their actual argument suggests an as-applied challenge, since they focus so narrowly on their factual dispute in this case. Under an as-applied challenge, the party to whom the law was applied bears the burden of providing specific facts demonstrating that the State's application of the statute violates the constitution, which it must establish beyond a reasonable doubt. *Id.* at 223.

Their challenge fails regardless of whether it is facial or applied. Separation of powers principles are not implicated here, because the separation of powers doctrine "serves mainly to ensure that the fundamental functions of each branch remain inviolate." *Brown v. Owen*, 165 Wn.2d 706, 718, 206 P.3d 310 (2009). The MBPA presents no danger of invading the institutional integrity of the judicial branch because it does not seek to regulate the Washington Supreme Court's fundamental authority to determine who may be admitted to practice law and who may be suspended or disbarred from practice. *Short v. Demopolis*, 103 Wn.2d 52, 63, 691 P.2d 163 (1984) (holding that application of the Consumer Protection Act to attorneys' legal services does not violate the separation of powers doctrine).

In *Demopolis*, the Supreme Court addressed a nearly identical issue in the context of another consumer protection statute. The Court

affirmed that the separation of powers doctrine “does not create an impenetrable barrier through which the legislature may not venture.” *Id.* at 63. The Department’s legislative authorization ensures that there is no enforcement gap between the two branches of government. The fact that the MBPA expressly exempts Washington-licensed attorneys from its application, subject to reasonable limitations, is itself evidence that the Washington Legislature has made a considered judgment as to how best to harmonize regulation of the practice of law and the provision of mortgage broker/loan originator services. That judgment reflects appropriate deference to the Washington Supreme Court’s authority to establish what constitutes the practice of law by attorneys licensed in Washington. To the extent an attorney is conducting the business of a mortgage broker/loan originator, and does not meet the requirements of the attorney exemption—including the requirement that an attorney seeking the exemption be licensed in Washington—the attorney is subject to the MBPA’s licensing requirements and the Department’s regulatory authority.

PLC and Porter argue that the separation of powers doctrine requires the State of Washington to limit its own police and regulatory powers by exempting out-of-state attorneys from compliance with lawful regulatory statutes and regulations intended to protect Washington

consumers. Op. Br. at 45-51. PLC and Porter would have this Court reach an absurd result. They offer no authority or persuasive reading of the MBPA in support of their position that the Department overstepped a meaningful jurisdictional boundary between two branches of state government, both of which aim to protect Washington consumers. The argument should be rejected.

F. The Imposition Of A Fine, Restitution, And Investigative Fees Is Authorized By Law; They Were Not Imposed Arbitrarily Or Capriciously Here

A court will not set aside a discretionary decision of an agency absent a clear showing of abuse. *ARCO Prods. Co. v. Wash. Utils. and Transp. Com'n*, 125 Wn.2d 805, 888 P.2d 728 (1995); *ITT Rayonier, Inc. v. Dalmon*, 67 Wn. App. 504, 510, 837 P.2d 647 (1992), *aff'd*, 122 Wn.2d 801, 863 P.2d 64 (1993) (a court will not set aside a discretionary decision unless manifestly unreasonable). When finding a violation of RCW 19.146, the Director has specific statutorily-granted discretion as to the appropriate remedy:

(2) The director may impose fines or order restitution against licensees or other persons subject to this chapter, or deny, suspend, decline to renew, or revoke licenses for:

(a) Violations of orders, including cease and desist orders;

(b) False statements or omission of material information on the application that, if known, would have allowed the director to deny the application for the original license;

(c) Failure to pay a fee required by the director or maintain the required bond;

(d) Failure to comply with any directive, order, or subpoena of the director; or

(e) Any violation of this chapter.

RCW 19.146.220 (in relevant part).

The Director properly exercised his authority to assess a penalty for unlicensed activity for each Washington consumer known to have done business with PLC and Porter. *Nationscapital Mortgage Corp*, 133 Wn. App. at 740-741. Porter was held jointly and severally liable for the fine based on his status as the owner of PLC. RCW 19.146.200(3); WAC 208-660-530(7), (8).

The Final Order properly sets forth the statutory basis for an imposition of fines and restitution, RCW 19.146.220(2). The Director properly exercised his discretion in capping the fine per Washington consumer at \$3,000 (calculated as \$100 per day, capped after 30 days). AR 474 (CL 5.21); *see also* AR 770-71. The finding that the loan modification services were ongoing for a period greater than 30 days is supported by Porter's communications and the Washington consumer's retainer agreements, which show charges over a period of at least four months. *See generally* AR 199-266; *see also* AR 108.

Ignoring the reasonable manner in which the fine was calculated, PLC and Porter argue that the fine itself was somehow arbitrary because

the Director did not utilize a fine matrix. Op. Br. at 42-44. A matrix is a tool, not a statutory or regulatory mandate. The Director's sound exercise of discretion was based on his judgment as to the equities of the case. AR 767-68. The MBPA authorizes a fine up to one hundred dollars per day, per violation. RCW 19.146.220(2); *see also* AR 771, ln. 11-15; 775. It provides no other structure for assessing the fine. There is therefore no "prescribed procedure" which the Department was required to follow but did not.

Financial Legal Examiner Supervisor Steven Sherman testified at the hearing that the fine assessed was capped for each violation after 30 days because a loan modification generally takes several months to complete, and fines for this type of case could result in fines significantly larger than might otherwise be warranted:

Q: And it [the fine] is based on that previous \$100/day figure that you used?

A: It is. When we looked at the – what the fine was – what the fine should be, one of the things that we took into consideration was what in our experience as an agency we note to be a general amount of time it takes to do a loan modification, which is generally months. And in this particular case, we determined to cap it at 30 days when we decided on the \$3,000 figure.

AR 767-68.

Sherman further testified as to the specific factors considered in arriving at the \$3,000 fine per violation generally assessed in unlicensed loan modification cases, and specifically in this case:

Q: Can you just tell me specifically a couple of factors that went into that \$3,000 figure generally?

A: Well, for example, the four violations are each what we would call a level 4, that's the highest level unlicensed activity, either for a loan originator, a (indiscernible) or a mortgage broker. And any violation of 2021(2) or 3 [RCW 19.146.2021(2) or (3)], each of those are level 4s. So that's – you know, on the matrix we generally use for this on multiplier. So there would be like, for example, a five-point multiplier for the seriousness level. So a level 4 level would get 20 points. And eventually our matrix goes down to add up to a number of points. And if it exceeds 76, then it's a hundred dollars a day. If it's a certain other range, it's 75. So it's actually quite detailed. So those are all things that we took into consideration when we were deciding, okay, \$3,000 was the appropriate amount. Gain to the respondents, one of the considerations; loss to consumers was one of the things we took into consideration.

AR 775.

In exercising its discretion, the Department reasonably decided to limit the fines imposed to *less* than it was statutorily authorized to impose. Additionally, while the fine totals \$3,000 per consumer, the Department could have imposed a \$3,000 fine for each of the three violations of the MBPA per consumer. Because PLC and Porter fail to make a clear showing of abuse as to the Department's imposition of fines and restitution, this Court should affirm the Final Order.

VI. CONCLUSION

For all of the foregoing reasons, the Department respectfully requests that the Court affirm the Final Order in its entirety, including the fines, restitution, and investigative fees ordered therein.

RESPECTFULLY SUBMITTED this 23rd day of November, 2015.

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