

1 PRESTON DUFAUCHARD
California Corporations Commissioner
2 ALAN S. WEINGER
Acting Deputy Commissioner
3 BRENT S.B. LINDGREN (BAR NO. 170360)
Senior Corporations Counsel
4 1515 K Street, Suite 200
Sacramento, California 95814
5 Telephone: (916) 322-8778 Fax: (916) 445-6985

6 Attorneys for Complainant

7

8 BEFORE THE DEPARTMENT OF CORPORATIONS
9 OF THE STATE OF CALIFORNIA

10

In the Matter of the Accusation of THE) File No.: 413-0468
11 CALIFORNIA CORPORATIONS)
COMMISSIONER,)

12

) **ACCUSATION**

13

Complainant,

14

v.

15

SOUTHSTAR FUNDING, LLC,

16

Respondent.

17

18 The Complainant is informed and believes, and based upon such information and belief,
19 alleges and charges Respondent as follows:

20

I

21

Respondent Southstar Funding, LLC ("Southstar Funding") is a residential mortgage lender
22 and mortgage loan servicer licensed by the California Corporations Commissioner ("Commissioner")
23 pursuant to the California Residential Mortgage Lending Act (California Financial Code, § 50000 et
24 seq.) ("CRMLA"). Southstar Funding has its principal place of business located at 400 Northridge
25 Road, Suite 1000, Atlanta, Georgia 30350.

26

27

28

II

Pursuant to California Financial Code sections 50307 and 50401 and California Code of Regulations, title 10, section 1950.314.8, all licensees under the CRMLA are required to file an annual (1) Report of Principal Amount of Loans and Aggregate Amount of Loans Serviced ("Activity Report"), (2) Report on Non-traditional, Adjustable Rate and Mortgage Loan Products ("Non-traditional Report"), and (3) Non-traditional, Adjustable Rate and Mortgage Loan Survey ("Survey") on or before March 1st of each year for the preceding 12-month period ended December 31.

On or about February 1, 2008, an Activity Report form, Non-traditional Report form and Survey were sent to all CRMLA licensees with a notice that they were due on or before March 1, 2008. Southstar Funding has not yet submitted the Activity Report, the Non-traditional Report or the Survey to the Commissioner.

III

Pursuant to California Financial Code section 50200, Southstar Funding was required to submit its audited financial statement for its fiscal year ended November 30, 2007 ("Audit Report") to the Commissioner on or before March 15, 2008, including a reconciliation of its trust accounts and an Independent Auditor's Report on Internal Controls ("Report on Internal Controls") pursuant to the California Code of Regulations, title 10, section 1950.200. Southstar Funding has yet to file its Audit Report, trust account reconciliation, or Report on Internal Controls with the Commissioner despite having been sent numerous reminder letters.

On or about November 5, 2007, the Department notified Southstar Funding in writing that its Audit Report, trust account reconciliation, and Report on Internal Controls were due on or before March 15, 2008.

On or about March 14, 2008, a reminder letter was sent to Southstar Funding demanding that it file the Audit Report, trust account reconciliation, and Report on Internal Controls "within ten (10) days of the date of this letter." Southstar Funding was notified in the letter that failure to file the above reports would result in the referral of this matter to the Special Administrator for administrative action that may result in a fine pursuant to Financial Code section 50326. Southstar

1 Funding failed to submit the Audit Report, trust account reconciliation, and Report on Internal
2 Controls or respond to the letter.

3 Southstar Funding has yet to file its Audit Report, trust account reconciliation, or Report on
4 Internal Controls as required by Financial Code sections 50200, 50326, and California Code of
5 Regulations, Title 10, section 1950.200.

6
7 **IV**

8 California Financial Code section 50205(a) states that “[a] licensee shall maintain a surety
9 bond in accordance with this subdivision.” Southstar Funding has failed to maintain its surety bond
10 as required by that section. On April 16, 2007, the Department received a Notice of Cancellation of
11 Southstar Funding’s surety bond from Fidelity and Deposit Company of Maryland. The date of
12 cancellation stated on the Notice of Cancellation was April 23, 2007.

13 California Financial Code section 50319 provides in pertinent part:

14 (a) If the commissioner, as a result of any examination or from any report made to him or
15 her, shall find that any person subject to this division... has failed to comply with the
16 bonding requirements of Section 50205, the commissioner may, by an order addressed to
17 and served by registered or certified mail, or by personal service on that person...., direct
18 discontinuance of the disbursement, in whole or in part, of trust funds held by the
19 licensee and order the establishment of a separate trust account for all subsequent trust
20 funds received by the licensee.

21 On May 23, 2007, an order was issued pursuant to section 50319. To date, the surety bond
22 has not been reinstated or replaced, and the order remains in effect.

23 **V**

24 California Financial Code section 50327 provides in pertinent part:

25 (a) The commissioner may, after notice and a reasonable opportunity to be
26 heard, suspend or revoke any license if the commissioner finds that: (1) the
27 licensee has violated any provision of this division or any rule or order of the
28 commissioner thereunder; or (2) any fact or condition exists that, if it had
existed at the time of the original application for the license, reasonably would
have warranted the commissioner in refusing to issue the license originally.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VI

The Commissioner finds that, by reason of the foregoing, Southstar Funding has violated California Financial Code sections 50200, 50205, 50307, 50326, 50401 and California Code of Regulations, title 10, sections 1950.200 and 1950.314.8, and based thereon, grounds exist to revoke Southstar Funding’s license as a residential mortgage lender and mortgage loan servicer.

WHEREFORE, IT IS PRAYED that Southstar Funding’s license as a residential mortgage lender and a mortgage loan servicer be revoked and pursuant to California Financial Code section 50311, Southstar Funding be given a transition period of sixty (60) days within which to complete any loans for which it had commitments.

DATED: September 16, 2008
Sacramento, CA

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
Brent S.B. Lindgren
Senior Corporations Counsel