BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of the Accusation of:	)	
	)	
THE CALIFORNIA CORPORATIONS COMMISSIONER	)	Case Nos. 603-6147
	)	603-6148
	)	603-5658
Complainant,	)	605-1436
	)	
v.	)	OAH No. N2003020658
	)	
Wells Fargo Home Mortgage, Inc.	)	
	)	
Respondent.	)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Corporations Commissioner as his Decision in the above-entitled matter.

This Decision shall become effective May 1, 2003

IT IS SO ORDERED May 1, 2003

CALIFORNIA CORPORATIONS COMMISSIONER

By _____
DEMETRIOS A. BOUTRIS

BEFORE THE
DEPARTMENT OF CORPORATIONS
STATE OF CALIFORNIA

In the Matter of: WELLS FARGO HOME MORTGAGE, INC., Respondent.	CASE Nos. 603-6147 603-6148 603-5658 605-1436 OAH No. N2003020658

PROPOSED DECISION

On March 10, 2003, the matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings, State of California, in Sacramento, California.

Complainant appeared by and through Judy L. Hartley, Senior Corporations Counsel, and Linda Stella, Corporations Counsel.

Respondent Wells Fargo Home Mortgage, Inc., appeared by and through Severson & Werson, Attorneys at Law, by William L. Stern, Esq., and Michael J. Steiner, Esq.

Evidence having been received, the matter was submitted on March 11, 2003.

FACTUAL FINDINGS

1. On February 4, 2003, Complainant, Demetrios A. Boutris, California Corporations Commissioner, filed, by and through Judy L. Hartley, Senior Corporations Counsel, an Accusation and Notice of Intention to Issue Order Revoking Finance Lenders Licenses against respondent Wells Fargo Home Mortgage, Inc. ("respondent"), solely in his official capacity.

2. Respondent, on February 18, 2003, filed a timely Notice of Defense[1] and Request for Hearing.

3. Respondent is a wholly owned operating subsidiary[2] of Wells Fargo Bank, N.A., a federal national bank organized under the National Bank Act.[3] Respondent has been

[1] The Notice of Defense included Special Defenses pursuant to Government Code §§11506(a)(2), 11506(a)(3) and 11506(a)(5).

issued Finance Lender and Broker licenses (File Nos. 603 6147, 603 6148, 603 5658, and 605 1436) by the Commissioner of Corporations ("the Commissioner"), State of California. Each license is in full force and effect.

4. On January 27, 2003, respondent filed a civil lawsuit in the United States District Court, Eastern District of California, entitled Wells Fargo Bank, N.A., and Wells Fargo Home Mortgage, Inc. v. Demetrios A. Boutris, CIV. No. S-03-0157 GEB JFM, seeking injunctive and declaratory relief against the Commissioner alleging, inter alia, that federal law preempted the Commissioner's jurisdiction and, consequently, the Commissioner lacked authority to regulate, supervise, examine or enforce the California Finance Lenders Law against respondent.[4]

5. On March 10, 2003, the United States District Court issued an Order stating, "...the Commissioner is preliminary enjoined from exercising visitorial powers over Plaintiffs [including respondent] or from otherwise preventing [respondent] from operating in California; however, the portion of [respondent's] motion seeking to preliminarily enjoin the Commissioner from revoking [respondent's] California issued license is denied."

LEGAL CONCLUSIONS

1. Respondent filed a timely Notice of Defense that included several Special Defenses. Submitting that jurisdiction is appropriately vested in a federal tribunal, no evidence has been presented with respect to several discrete issues raised by its Special Defenses. Cause, accordingly, does not exist to find that:

A. The Commissioner lacks jurisdiction to proceed on the Accusation.

B. The Accusation and proceedings thereunder violate respondent's right to petition the government.

C. The Accusation and proceedings thereunder were filed in retaliation to respondent's exercise of constitutional, statutory, or regulatory protected rights.

D. The Commissioner is violating federal-state comity.

E. Revocation is an excessive penalty.

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

[3] 12 U.S.C. §§21, et seq.

[4] Respondent readily submits that the Commissioner, as a result of respondent's suit and federal preemption, possesses cause sufficient to revoke its license.

F. Respondent has substantially complied with pertinent provisions of the Financial Code.

G. The Commissioner's concern for compliance places an impossible burden on respondent.

H. The acts attributed to respondent were performed by third parties.

I. Respondent is being deprived of contractual and property rights with respect to its permissible commencement period for charging interest.

J. Respondent is entitled to offset and recoupment from borrowers.

K. The action is barred by consent and ratification.

2. Respondent, at the conclusion of the evidentiary submission, and consistent with its submission that jurisdiction over the Commissioner lies exclusively in a federal tribunal, moved to dismiss the Accusation in whole or in part. Mindful of respondent's express admission with respect to its civil lawsuit and assertions relative to preemption, and concomitant effect on its licensure status, it is evident that its motion to dismiss the Accusation lacks merit and, accordingly, is denied pursuant to Financial Code §§22100, 22101, 22109 and 22714, in conjunction with Title 10, California Code of Regulations, §1422, and as set forth in Findings 1 – 5.

3. Cause exists to revoke or suspend the finance lender licenses of respondent for a fact or condition that, if extant at the time of original application, would have reasonably warranted the Commissioner's refusal to issue the license pursuant to Financial Code §§22100, 22101, 22109 and 22714, in conjunction with Title 10, California Code of Regulations, §1422, and as set forth in Findings 1 – 5.

ORDER

The Finance Lender Licenses of Wells Fargo Home Mortgage, Inc., issued by the California Corporations Commissioner are revoked.

Dated: 3/13/03

JAIME RENÉ ROMÁN
Presiding Administrative Law Judge
Office of Administrative Hearings