
 *
IN THE MATTER OF: *
 *
1st ALLIANCE LENDING, LLC *
 *
NMLS # 2819 *
 *
(“Respondent”) *
 *

**SUPPLEMENTAL DECISION
 AND ORDER**

Background

On April 16, 2021, the Banking Commissioner (“Commissioner”) issued [Findings of Fact, Conclusions of Law and an Order](#) (“Final Decision”) in the Matter of 1st Alliance Lending LLC (“Respondent”). Respondent appealed the Final Decision to the Superior Court ([1st Alliance Lending LLC v. State of Connecticut Department of Banking et al., Docket No.: HHBCV216066325S](#)), and that appeal is currently pending. On [January 12, 2022](#), responding to a [September 16, 2021 Motion by the Respondent](#), the Court entered an [Order](#) remanding the matter to the Commissioner pursuant to Section 4-183(h) of the Connecticut General Statutes (Supp. Exhibit 1). The Order included an instruction to receive additional “Byte Data Log” evidence from Respondent and to provide appropriate consideration of that evidence. In its September 16, 2021 Motion, the Respondent specifically sought to admit Byte Data Logs pertaining to borrowers B.T., C.B., J.L., J.P. and R.C. (the “Five Byte Logs”). The Court noted that, while other Byte Data Log evidence had been introduced in the hearing, the additional logs were material.¹ The Court ordered that: “The hearing officer and/or the Commissioner shall then issue a supplemental decision stating that the additional evidence has been considered and providing for any change, if any, to the Commissioner’s appealed final decision. If the evidence causes no change in the appealed final decision, the Commissioner may state that he has considered the additional evidence and

¹ In its Order the Court noted that “Byte Data Logs are not, however, a comprehensive compilation of all employee activity, but only activity within the electronic system. So, for instance, the Byte Data Logs do not necessarily contain evidence of employee activity on the separate email system, through phone calls, through non-electronic paper documents, or through personal interactions with customers.”

that he has decided that no changes to the final appealed decision is appropriate.” The Court directed the Commissioner to issue the Supplemental Decision on or before April 14, 2022, and stayed the appeal until that date.

On January 25, 2022, the Commissioner designated Cynthia Antanaitis as Hearing Officer for purposes of the remanded matter (Supp. Exhibit 2).

On January 26, 2022, the Hearing Officer emailed Respondent and the Department advising each that, with respect to the Five Byte Logs, under the Uniform Administrative Procedure Act, each side was entitled to 1) present witness testimony (subject to cross-examination by the other side); 2) provide affidavits (subject to rebuttal by the other side); and/or 3) brief the importance of the Five Byte Logs and how their content should impact the previously rendered final decision (subject to the other side being given an opportunity to file a reply brief) (Supp. Exhibit 3). The Hearing Officer requested that, if either side wished to proceed with any of the three courses of action, they should advise the Hearing Officer via e-mail by February 2, 2022. The Hearing Officer added that affidavits and/or briefs should be filed no later than February 18, 2022, and that, if witness testimony were required, a scheduling conference would ensue to make arrangements. The Hearing Officer also noted that, if both sides believed that additional witness testimony, affidavits and/or briefs were unnecessary, they should forward the Hearing Officer an e-mail consenting to Hearing Officer review of the Byte logs absent testimony, affidavits and/or briefs.

On January 28, 2022, Respondent’s counsel e-mailed the Hearing Officer that counsel to Respondent and counsel to the Department had conferred (Supp. Exhibit 4). As a result, 1) Respondent would file a foundational affidavit for the Five Byte Logs by the following week; 2) Respondent would submit a brief by February 18, 2022; and 3) the Department would have two weeks thereafter to submit a reply brief. On January 28, 2022, Respondent’s counsel confirmed in a separate e-mail to the Hearing Officer (Supp. Exhibit 5) that Respondent was consenting to the Hearing Officer reviewing the Byte logs without additional witness testimony. The Hearing Officer followed up in a January 28, 2022 e-mail (Supp. Exhibit 6) setting a February 4, 2022 deadline for the Respondent’s foundational Affidavit; a February 18, 2022 deadline for Respondent’s submission of its brief; and a March 4, 2022 deadline for the Department to submit a reply brief if it opted to do so. By January 31, 2022, the Respondent had provided the Five Byte Logs to the Hearing Officer for consideration (Supp. Exhibit 14). On February 4, 2022, not having received the foundational Affidavit, the Hearing Officer contacted Respondent’s counsel by e-mail (Supp. Exhibit 7). Respondent’s counsel replied that it had slipped through the cracks and requested an extension until the following Friday (Supp. Exhibit 8). By e-mail dated February 4, 2022, the Hearing Officer granted an extension to February 11, 2022 for Respondent to submit its foundational Affidavit (Supp. Exhibit 9). On February 11, 2022, the Respondent filed foundational Affidavits for Richard Bartholomew and John DiIorio (Supp. Exhibit 10). Respondent submitted its brief on February 18, 2022. The Department submitted its reply brief on March 4, 2022. In its brief, the Department contended that certain loan transactions reflected in the Five Byte Logs did not correspond to loan transactions in the Final Decision record.

On March 10, 2022, Respondent’s counsel sent an e-mail to the Hearing Officer and the Department (Ex. 11). In that e-mail, Respondent’s counsel stated that, to avoid Respondent’s submission being misconstrued as inaccurate and contrary to the terms of the Court’s remand, counsel wished to clarify that: 1) “it was not unusual for a record of related transactions by a single borrower to be included in multiple Byte logs”; and 2) “1st Alliance submitted appropriate logs to discuss the transactions and exhibits at issue.” The Department responded in a March 11, 2022 e-mail to the Hearing Officer and the Respondent (Exhibit 12). In its e-mail, the Department objected to the Respondent’s March 10, 2022 e-mail as beyond the parameters of the remand or the Hearing Officer’s procedural instructions, and that Respondent’s attaching to that email an Affidavit of one Heather Sanchez without the Department’s consent was “fundamentally unfair” since the Department did not have an opportunity to cross-examine

Sanchez at the hearing or post-hearing or to advance the Department's position on the issue. The Department also requested that, if Respondent sought to admit the Sanchez Affidavit, that the Sanchez Affidavit be stricken from the record. Respondent's counsel replied via a March 11, 2022 e-mail that the logs themselves covered the relevant transactions and exhibits "regardless of 1st Alliance's explanatory submission", and that Respondent's earlier e-mail "merely addressed a question raised by the Department concerning whether it complied with the terms of the remand." (Ex. 13)

The Byte Logs

According to Richard Bartholomew, former Chief Technology Officer of Respondent, the Byte system was a computerized loan origination system provided by Byte Software out of Seattle, Washington, and that "it is a system of record for the 1003, all the stored docks, the processing, and the closing of loan files." (Supp. Ex. 10; 1/8/2020 tr. 9-10) Essentially, the Byte Software system was an automated means of managing workflow designed for mortgage industry users. During the hearing, Bartholomew explained that a Byte Data Log was a chronological history of all changes and activity incurred on a loan file, "whether it be data modification, credit reports, AUS or document uploads." (Supp. Ex. 10; 1/8/2020 tr. 7) Bartholomew stated that his job focused on the back end and security components of the Byte system (Supp. Ex. 10 [Ex. A to Bartholomew Affidavit]; 1/8/2020 tr. 11) and that another individual managed user facing business processes and business workflow. (Supp. Ex. 10; 1/8/2020 tr. 10-11)

Bartholomew's February 11, 2022 Affidavit was purportedly submitted to show that, from a security standpoint, the computer entries made in the Byte system could not be modified.²

The Five Byte Logs filed post-hearing in this case were in pdf format (Supp. Ex. 14). Bartholomew's Affidavit (Supp. Ex. 10) indicated that he downloaded the Byte Data Logs in pdf format in June and July of 2020 and that John DiIorio subsequently requested that he download different transactional data for borrower C.B. which he did, in pdf form, in January 2022. Bartholomew's Affidavit and testimony explained how he had exported data from the Byte system using the Byte auto log, a "tool that was provided natively by the software vendor to export these." (Supp. Ex. 10; 1/8/2020 tr. 12) Bartholomew indicated that, once the files were exported, he named them by borrower (Supp. Ex. 10; 1/8/2020 tr. 12)

Bartholomew also explained that the logs were in two parts:

The first set of information is simply a list of who created the file and who has gone in the file and opened it, as well as who may have modified the file. So that's why you have the date and time column of the event, the name of the user, the event, when the loan was created, when it was modified, et cetera, and then the actual loan number in question when that event occurs . . . And then there's a second component to this . . . This is the transactional history of every data modified -- piece of data modified on the loan chronologically and who did it . . . it's managed entirely by the Byte Software. (Supp. Ex. 10; 1/8/2020 tr. 15-16)

Significance of the Byte Logs to This Case

² While it is possible that the data logs themselves could not be altered, the records they reflect indicate that record deletions were made in 2016 and primarily 2017 for each of the five borrowers (*e.g.* 4 record deletions on the C.B. log; over 30 record deletions on the R.C. log; over 50 record deletions on the J.L. log; over 30 record deletions on the J.N. log; and over 50 record deletions on the J.P. log). The nature of these deletions is not clear from the Byte logs.

It is undisputed that Home Loan Consultants (“HLCs”, formerly known as Submission Coordinators) and licensed Mortgage Loan Originators (“MLOs”) made computer entries in the Byte system. Similarly, it is undisputed that HLCs and MLOs interfaced using the software program and that transactional parallels occurred. This makes sense because the Byte computer program is how the company kept track of its loan transactions – and the purpose for which Byte Software designed the program. The Byte program was a work process program, not a licensing compliance program.³ By the same token, there is no issue that MLOs signed prequalification letters.

Respondent argues in its brief that, because the Byte computer program details the step-by-step process by which a loan moves from initial inquiry to funding, this means that HLCs were properly supervised – and presumably did not perform any activity requiring licensing – and that Respondent had “a proper system of controls in place.” (Respondent’s Brief, p. 2) Respondent also argues that the logs demonstrate that licensed personnel monitored and reviewed “every action that an HLC took.” (Respondent’s Brief, p. 2) (Emphasis supplied). Respondent adds that this was true in each and every case.⁴

However, Respondent does not say how the computerized Byte Data entry system monitored the HLCs’ critical interactions with consumers - holding out, social media, e-mails and phone calls – which played an important role in the Final Decision (and which were not logged into the system) or how an automated computer system could enforce supervisory requirements. Moreover, even if MLOs did communicate with prospective borrowers, that contact was minimal since the record amply demonstrates that the HLCs were the primary point of contact.⁵ In addition, as the Final Decision record indicates, the HLCs were supervised by Respondent’s sales personnel, not by MLOs or compliance staff. That was a flaw in Respondent’s supervisory structure. (See, e.g. Findings of Fact para. 38 [Assistant Vice President of Sales responsible for managing the senior home loan consultants and the home loan consultants]; Final Decision p. 40 [citing the assignment of call center employees to sales as a supervisory concern])

Other factors entering into the Final Decision included, without limitation, Respondent’s own Internal Audit from 2017 citing concerns with unlicensed activity by Submission Coordinators (later HLCs); inconsistent use of the inquiry screen on Byte (*see, e.g.* testimony of Martin Murdock (2/6/2020 tr. 23-24); HLC testimony on judgment exercised when communicating with prospective borrowers; and Respondent’s own admission during an October 9, 2018 Executive Meeting that “byte is not being utilized correctly” ((DOB Ex. 315). In sum, the Five Byte Logs do not alter the findings and conclusions in the Final Decision, in particular that HLCs engaged in unlicensed activity and that supervisory deficiencies existed in Respondent’s operations.

As indicated previously, the Department contends in its brief that certain loan transactions reflected in the Five Byte Logs did not correspond to loan transactions in the Final Decision record. In reviewing the March 10, 2022 e-mail sent by Respondent’s counsel, the Hearing Officer believes that the

³ Also see DOB Ex. 347 [Byte program used in gift card contest as source for soliciting withdrawn files]

⁴ Since a portion of the Byte logs were introduced into evidence and considered in the hearing, this begs the question of whether Respondent’s post-hearing submission is redundant.

⁵ See, e.g. December 2016 Internal Audit, stating that Submission Coordinators (later HLCs) “are the main point of contact for all potential borrowers . . . they provide a necessary buffer between the MLO and the customer allowing serious candidates to pass through to the Mortgage Loan Originator.” (emphasis supplied)

text of that e-mail is consistent with Respondent's prior position that its arguments extend to all transactions. Therefore, Respondent's March 10, 2022 rearticulation of its position does not alter the fact that the additional loan transactions were considered and given appropriate weight in the rendering of this Supplemental Decision.⁶

ORDER

In sum, because the Five Byte Logs do not refute the relevant facts upon which the Final Decision was based, no changes to the Final Decision's Findings of Fact or Conclusions of Law are appropriate or justified. Having considered the evidence presented in the form of the additional Five Byte Logs and the arguments of Respondent and the Department, the Commissioner therefore Orders that the Final Decision should stand as written.

So ordered this 5th day of April , 2022.

_____/s/_____
Jorge L. Perez
Banking Commissioner

⁶ Insofar as the Heather Sanchez Affidavit is concerned, it is not necessary to consider that Affidavit in understanding Respondent's rearticulation of its position, and the Department's motion to strike the Sanchez Affidavit is denied as moot.

CERTIFICATION

I certify that on this 5th day of April 2022, a copy of the foregoing Supplemental Decision and Order was sent by email and by certified mail, return receipt requested, to Respondent, Respondent's counsel and counsel to the Consumer Credit Division of the State of Connecticut Department of Banking as indicated below.

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