DOCKET NO. HHB-CV-21-6066325	:	**SUPERIOR COURT**
1st ALLIANCE LENDING LLC	:	**JUDICIAL DISTRICT OF NEW BRITAIN**
VS.	:	**ADMINISTRATIVE APPEALS**
DEPARTMENT OF BANKING, ET AL	:	**APRIL 19, 2023**

MEMORANDUM OF DECISION

INTRODUCTION:

This matter is an administrative appeal by 1st Alliance Lending LLC (plaintiff) of a final decision of the Connecticut Department of Banking (DOB) dated April 16, 2021 as further supplemented by a supplemental decision and order dated April 5, 2022 (Final Decision). The Commissioner of the Connecticut Department of Banking (Commissioner) is also a defendant in this action.

FACTS AND PROCEDURAL HISTORY:

The following facts are relevant to a decision in this appeal and are contained in the record. The plaintiff is a Connecticut limited liability company which was licensed by the DOB to engage in business as a mortgage lender in Connecticut. The plaintiff's corporate headquarters was located in East Hartford, Connecticut. In connection with its license from the DOB, the plaintiff was subject to review and audit by the DOB to ensure that the plaintiff complied with its license and with applicable statutes and regulations.

Electronic notice sent to attys for Pl.: S. Klein, R. Garber, and attys for Def.: P. Ring + J. Langmaid. A. Irdamoprios, 4-19-23

In 2018, the DOB conducted a compliance audit of the plaintiff. The audit included written questions, employee interviews, and a records review. Among the records reviewed were internal self-audit reports and associated documents. Various employees were interviewed. As a result of the compliance audit, the DOB issued a notice to the plaintiff indicating that the DOB intended to take administrative enforcement action [1] against the plaintiff and detailing the compliance issues supporting the foregoing action. [2] The DOB held an administrative hearing on the foregoing notice on multiple days starting in September of 2019 and ending in February 2020. After reviewing a decision recommended by the hearing officer, the Commissioner issued a final decision dated April 16, 2021. The Commissioner's final decision, inter alia, revoked the plaintiff's license and applied a $750,000 civil penalty to the plaintiff.

The plaintiff appealed the foregoing final decision to this court. On a motion by the plaintiff, this court remanded, in accordance with General Statutes § 4-183(h), the appeal back to

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[1] The DOB had previously taken enforcement action against the plaintiff, entering into a settlement agreement with the plaintiff on December 1, 2008. The 2008 enforcement action involved the plaintiff's improper use of unlicensed mortgage loan originators.

[2] The effective notice was an amended notice issued by the Commissioner dated December 5, 2018 pursuant to his authority under General Statutes §§ 36a-50; 36a-51; 36a-52 and 36a-494. The notice asserted that the plaintiff had violated various Connecticut statutes, regulations of Connecticut state agencies and associated federal law. Primarily, the asserted violations can be grouped into the following categories: (i) allowing unlicensed employees to engage in activities that required licensed mortgage loan originators, associated misrepresentations to customers, and related violations (ii) failure to provide adverse action notices in violation of the Fair Credit Reporting Act and failure to timely provide loan estimates without requiring verification documentation, (iii) failure to cooperate in the DOB's audit and investigation and making misleading statements to the DOB in connection with the audit and investigation.

the DOB to consider additional evidence called Byte logs. The DOB considered the additional evidence and issued a supplemental decision dated April 5, 2022. The supplemental decision declined to make any changes in the Commissioner's final decision. The plaintiff has now appealed the Final Decision to this court pursuant to § 4-183.

In general, the plaintiff employed two relevant classes of employees who assisted customers in applying for and obtaining mortgage loans. The first class were referred to as Submission Coordinators or Home Loan Consultants (collectively, "HLCs"). HLCs were not licensed as mortgage loan originators and accordingly were not authorized by the state to take residential mortgage loan applications or to offer and negotiate terms of residential mortgage loans. The second class of employees were licensed Mortgage Loan Originators (MLOs) who were authorized to engage in the foregoing activities. The foregoing licenses were required by the Connecticut SAFE Act (CSA), General Statutes § 36a-485 et seq., in order to conduct the foregoing activities.

A significant portion of the evidence concerning the plaintiff's violations arose from the plaintiff's own internal audit conducted for 2017. [3] The 2017 internal compliance audit was

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[3] This audit reviewed and covered the period from November 1, 2016 through October 31, 2017. The most prevalent issues found in the internal audit were impermissible credit inquiries, impermissible credit repair advice, impermissible discussion of rates and terms, impermissible taking of mortgage applications, impermissible credit decisions and communications, and late loan estimate and adverse action notices. The plaintiff proposes a different interpretation of the audit and its report than that of the Commissioner and attempts to use subsequent testimony to explain away or minimize the audit's findings. However, the DOB/Commissioner was the finder of fact here and the facts so found must be assessed in accordance with the applicable deferential standard of review.

conducted by the plaintiff's Vice President of Compliance who produced a report concerning the audit findings. The audit found the following. "Submission Coordinators were at times engaging in what may constitute as licensed activity under the SAFE Act. Further, instances of Submission Coordinators failing to meet the requirements of the ECOA permissible credit [inquires] (sic) were found." "The transaction testing found instances where Loan Estimates were not sent to applicants pursuant to TILA disclosure requirements." "Submission Coordinators (SCs) were found to present an unacceptable amount of risk. [4] The issues found were systemic and required immediate attention." [5] "While there are sufficient reporting tools available in Byte to track and monitor TRID compliance, 2017 saw an unusual increase in violations with loan estimates sent out late or not sent out at all." In an internal email, the Vice President of Compliance stated: "After a random selection of calls were pulled for the purpose of the Internal Audit, it was found that Submission Coordinators were partaking in licensed activity in direct violation of the SAFE Act. Further, instances of Submission Coordinators failing to meet the requirements of the ECOA permissible credit inquiries were found. These findings, in conjunction with the continued mistreatment of files ending in credit denial or borrower withdrawal, require immediate attention

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[4] The audit ranked specific Submission Coordinators (Home Loan Consultants) by likelihood or proclivity of engaging in violations.

[5] Systemic compliance issues which require immediate attention and present the risks detailed by the Vice President of Compliance certainly call into question the suitability of the management and supervision provided by the plaintiff.

... Considering the amount of Submission Coordinators who are new to the company there must be a reinvestment in proper compliance training in Production." The plaintiff's internal compliance also found that Submission Coordinators placed posts on social media representing or strongly implying that they were engaging in actions that required licensure that they did not have.

The plaintiff maintained a database called the BYTE database which recorded many of the important interactions between the plaintiff's employees and their customers, inter-employee interactions concerning customers, and actions in processing mortgage applications and loans. However, the BYTE database did not capture all interactions or actions. For instance, interactions and actions taken in person, on the telephone and via email are not necessarily recorded in the BYTE database, and the majority of interactions between HLCs and customers appear to have occurred via telephone and e-mail. Further, the DOB determined that it was possible to delete entries in this BYTE database and that entries had been deleted in 2016 and 2017. [6]

HLCs were paid a base salary plus commissions based on the number of mortgage loans closed. Accordingly, the commissions incentivized the HLCs to close as many loans as possible.

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[6] Accordingly, in view of all of the foregoing, the timeline action summaries attached to the plaintiff's brief, which summarize Byte Log entries for certain customers, do not necessarily present a complete picture of the interactions between these customers and the plaintiff's employees. The plaintiff admitted this in its oral argument on this appeal.

Some HLCs earned more in commissions than they did in salary. HLCs were also incentivized to close loans with contests and prizes. HLCs believed that they had the primary relationship with, and were the primary contact between, customers and the company. The plaintiff's business model fostered the foregoing belief.

Although there was a disagreement between the DOB and the plaintiff concerning relevance and reasonableness, it is clear that the plaintiff did not provide the DOB with a significant portion of the documents that DOB requested in its investigation of the plaintiff.[7] It is also clear that the plaintiff failed to comply with, and did not effectively challenge, a subpoena issued by the DOB. Finally, there is also evidence in the record that the plaintiff provided certain answers to DOB investigative questions which answers could reasonably be interpreted as misleading. [8]

The court remanded this matter to the DOB for the DOB to consider additional BYTE database evidence as requested by the plaintiff. Upon consideration of the additional evidence, the DOB issued a supplemental decision dated April 5, 2022. The DOB determined that the

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[7] These records included requested emails of specific employees.

[8] The potentially misleading answers involved representations concerning how certain employees' employments were terminated and whether certain documents existed concerning the terminations.

additional BYTE database evidence did not give it cause to alter its final decision, which it simply re-affirmed.

The plaintiff is classically aggrieved because it appeals from a final administrative decision which revoked the plaintiff's license[9] and applied a $750,000 civil penalty to the plaintiff.

STANDARD OF REVIEW:

This appeal is brought pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-183. [10] Judicial review of an administrative decision in an appeal under the UAPA is limited. *Murphy* v. *Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000). "[R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's

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[9] The plaintiff's license was separately revoked in another concurrent administrative proceeding concerning the plaintiff's failure to maintain its statutorily required bond. The foregoing separate administrative action was upheld by this court and by our Supreme Court.

[10] Section 4-183 (j) provides in relevant part: "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law: (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings."

findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither [the Supreme Court] nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) Id. In this administrative matter, the DOB/Commissioner was the finder of fact. It is the province of the finder of fact to determine credibility, crediting all, some or none of particular testimony or evidence. See *Goldstar Medical Services, Inc.* v. *Dept. of Social Services*, 288 Conn. 790, 830, 955 A.2d 15 (2008).

Although the courts ordinarily afford deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes, "[c]ases that present pure questions of law . . . invoke a broader standard of review than is . . . involved in deciding whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) *Dept. of Public Safety* v. *Freedom of Information Commission*, 298 Conn. 703, 716, 6 A.3d 763 (2010).

ANALYSIS:

Although this matter involves other issues, a primary issue is whether the plaintiff's HLCs engaged in activities which required a license to engage in but for which they had no such license. All parties agree that an individual needs a license under the CSA in order to engage in

the following activities: (i) taking a residential mortgage loan application, or (ii) offering, or negotiating the terms of, a residential mortgage loan. The parties also agree that the relevant HLCs did not possess the necessary license.

The record indicates that the plaintiff designed its business operation to attempt to avoid violations of the CSA by its HLCs in relevant part through two instructions to the HLCs. First, the plaintiff instructed the HLCs to avoid taking a residential mortgage application by purposefully avoiding taking the address of the property in question or a copy of a purchase agreement. In this regard the plaintiff reasoned that the address of the property was a necessary element of a mortgage application and by avoiding taking this element, the HLCs would not be taking residential mortgage applications. Second, the plaintiff instructed HLCs not to negotiate or set interest rates or down payment requirements with customers. [11] The plaintiff reasoned that this instruction would avoid the negotiation of terms. The DOB disagreed with the plaintiff's statutory interpretation and disagreed that the foregoing instructions would avoid non-compliance. However, even if we accept the plaintiff's statutory interpretation, for argument sake, the record here contains substantial evidence that violations occurred because the HLC's repeatedly violated the plaintiff's instructions and did both acquire property addresses and negotiate loan terms.

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[11] The plaintiff did allow HLC's to discuss interest rate and down payment ranges.

As is readily perceived from the record, and from the foregoing description, when the real world is taken into account, the plaintiff's system presents a high risk of non-compliance[12] from several perspectives. First, relying on relatively low-level employees such as HLCs to purposefully avoid collecting basic information such as a property address for a mortgage loan appears unreliable, particularly when the HLCs are incentivized to close loans by commissions and prizes. [13] Second, even if HLCs avoid asking for the address, there is no assurance that the customer will not spontaneously provide such information given its readily discernable importance. [14] Third, instructing HLCs to avoid discussing interest rates and down payments with customers, who will be particularly focused on these terms as the essence of the deal, is clearly unreliable, again particularly with the incentives that the HLCs had. In this regard, the court notes that the plaintiff increased the risk of non-compliance by allowing the HLCs to discuss interest rates and down payments in ranges. Fourth, the risk of non-compliance was further increased by setting up the HLCs as the primary interface between the plaintiff and the

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[12] This high risk of non-compliance was discerned by the plaintiff's Vice President of Compliance and forewarned to the plaintiff in the 2017 internal audit and related internal correspondence. The audit and the internal compliance concerns were communicated to the plaintiff's management. See AR 3162-3168 and 3192-3219.

[13] Social media posts, as well as self-acquired business titles, clearly indicated that HLCs saw themselves as much more than limited submission facilitators. These social media posts and self-acquired titles would also be misleading to the public and any customers who experienced them. On page 29 of the plaintiff's brief, the plaintiff admits that HLC Ballinger discussed "licensable activities on his LinkedIn page".

[14] The court notes that the plaintiff and the HLCs typically started with information preloaded by the consumer in internet real estate search sites such as Zillow or Realtor.com. This information was provided to the plaintiff by these sites along with the leads that were purchased by the plaintiff from these sites.

customers. [15] As can be easily seen, the foregoing practices push the employees to the very brink of non-compliance by design. Unsurprisingly, the record reveals that the foregoing risks manifested into actual violations. [16]

The record indicates that the plaintiff purposefully set up its operations in the foregoing manner for two reasons, and a third reason may be inferred. First, the plaintiff lowered its expenses by using lower cost unlicensed individuals for a large portion of the work instead of higher cost licensed mortgage loan originators (MLOs). The court notes further that the commissions paid to HLCs tied expenses directly to production of closed loans. Second, using lower cost HLCs, the plaintiff was able to field a significantly larger salesforce than it would have been able to deploy if it used MLOs instead. Further, it may be inferred that the lesser trained[17] and less professional HLCs would be more aggressive sales people than MLOs who are naturally more concerned with avoiding loss of their license.

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[15] See AR 5376. The majority of the HLCs contact with customers appears to have been through telephone and e-mail.

[16] Previous inspections had also led to similar compliance risks and violations. See AR 53-54; 3324-26; 3481-83; 1083-84.

[17] The lack of experience and training of the HLCs, as well as the consequent compliance risk, was pointed out by the plaintiff's Vice President of Compliance in the audit and related internal correspondence.

A. Taking Residential Mortgage Loan Applications

As noted, the plaintiff's business organization set up its HLCs as primary contacts between the plaintiff and its customers. [18] HLCs collected a substantial amount of information from the plaintiff's customers but were specifically instructed by the plaintiff to purposefully avoid collecting the property address from the customer in order to avoid being found to have taken a mortgage loan application without being licensed to do so. The plaintiff now goes to great lengths to explain why this instruction by the plaintiff to the HLCs avoided violations of the law. The plaintiff's contention is incorrect or insufficient for several reasons.

First, the record contains evidence that HLCs collected property addresses as well as purchase agreements from customers. Several HLCs clearly testified that they received property addresses when collecting other relevant information from customers. In particular, Martin Murdock testified that he asked customers for addresses or identification of the property they

[18] See the record at AR 3341 to 3343 and 5376. The plaintiff admitted this during oral argument on this appeal. Accordingly, unlicensed staff were intentionally made the front line in dealing with the plaintiff's customers.

were interested in. Alexander Cottone testified similarly. Seth Tostevin testified that he received at least one purchase and sale agreement. [19]

The CSA does not itself explicitly define what activities are required to determine that someone is taking a residential mortgage loan application. However, the regulations associated with the Federal Truth in Lending Act provide that a mortgage application consists of (i) consumer's name, (ii) consumer's income, (iii) consumer's social security number, (iv) the property address, (v) an estimate of the value of the property, and (vi) the amount of the loan sought. See 12 C.F.R. 1026.2(a)(3)(ii). The Federal SAFE Act defines a mortgage application more broadly as "a request in any form, for an offer (or a response to a solicitation of an offer) of residential mortgage loan terms, and the information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer". See 12 C.F.R. 1008.23. [20] Finally, Federal Regulation H defines "taking an application" as when an "individual receives a residential mortgage loan application for the purpose of facilitating a decision whether

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[19] See testimony of Martin Murdock at AR 1955 to 1961. See testimony of Sara Jenkins at AR 2016 to 2025. See testimony of Alexander Cottone at AR 2083 to 2094. See testimony of Steven Cavanaugh at AR 2167 to 2177. During oral argument on this appeal the plaintiff admitted that Murdock and Cottone were not exemplary employees. However, the record appears to indicate that they were very productive employees.

[20] At oral argument, the plaintiff took a very restrictive view of "customary and necessary" by attempting to interpret the phrase as requiring the full completion of the Uniform Residential Loan Application provided by the Federal Department of Housing and Urban Development and the Federal Housing Finance Authority. This restrictive view is unsupported by the broad wording of the statute and the associated regulations and is therefore misplaced.

to extend an offer of residential mortgage loan terms to a borrower or prospective borrower". See 12 C.F.R. 1008.103(c)(1). The Appendix to Regulation H goes on to indicate that a person takes a residential mortgage loan application when they receive information about the borrower or prospective borrower that is customary or necessary in a decision whether to make an offer of loan terms. See 12 C.F.R Part 1008, Appendix A(a). [21]

Even with the plaintiff's restrictive statutory interpretation in mind, the record contains substantial evidence that HLCs took residential mortgage loan applications. Further, the court finds that the applicable statute does not require the address of a specific property to constitute taking a residential mortgage loan application. Instead, the court defers to, and agrees with, the DOB's more flexible interpretation as "a request in any form, for an offer (or a response to a solicitation of an offer) of residential loan terms, and the information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer". The DOB's interpretation is consistent with the statute, the Federal SAFE Act, and

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[21] The plaintiff has argued that Federal Regulation H is not directly enforceable in Connecticut by the DOB because it has not been implemented in Connecticut. However, the DOB, and the court here in its analysis, are not attempting to directly impose Regulation H on the plaintiff but are instead merely looking to portions of Regulation H as a data point in discerning what "taking residential mortgage loan applications" and "offering or negotiating terms" require and mean. However, the use of Regulations H is not actually necessary in review of this appeal, because even with the plaintiff's restrictive view of the foregoing phrases, the record contains substantial evidence of violations of both prohibitions. The plaintiff itself, through its internal audit function, concluded that it was violating the foregoing two prohibitions. The plaintiff in oral argument and in its brief understands that the Federal SAFE Act creates a regulatory floor for all states.

Federal Regulation H. The DOB's interpretation is also consistent with normal real life circumstances such as negotiating mortgage terms based on a hypothetical property of specified appraised value. [22] In any regard, under either interpretation, the record contains substantial evidence of violations.

B. Offering or Negotiating Terms

The record contains substantial evidence that unlicensed employees of the plaintiff offered or negotiated terms of residential mortgages. [23] For instance, HLC Joseph Ballinger posted the following on his social media: "with 1st Alliance Lending's FHA loan program, we are able to get clients prequalified and into a home with credit scores as low as 500! With a credit score of 500-579, there is a down payment requirement of 10%. ... P.S. 580+ FICO is 3.5% down....". Marketing letters from the plaintiff directed customers to contact HCLs. HLCs regularly relayed prequalification letters to customers, and the prequalification letters instructed customers to contact HLCs. HLC Cottone was reprimanded by the plaintiff in November 2017 for "discussing loan terms with a borrower without being licensed to do so". HCLs ran credit reports on

[22] This very circumstance is contained in the record where HLC Cottone provided a letter to a customer for a loan of up to $180,000 on a purchase price of up to $200,000 where the customer had not specified a specific property.

[23] See the record at AR 3322; 3464; 3600; 3685; 3689; 3706; 3976-77; 4934.

customers and used the credit information to advise the customer on terms such as down payment required or whether the customer would qualify for certain loan programs. HLC Feliciano, in June of 2017, negotiated a down payment amount with a customer. On June 28, 2017, HLC Cottone provided a letter to a customer for a loan of up to $180,000 on a purchase price of up to $200,000 where the customer had not specified a particular property.[24] In fact, in the plaintiff's brief at the bottom of page 28 and top of page 29, the plaintiff admits that HLC Cottone violated these SAFE Act provisions by "discussing loan terms with a borrower without being licensed to do so". Accordingly, the record contains substantial evidence of unlicensed HLC's negotiating the terms of residential mortgage loans.

C. Failure to Timely Provide Adverse Action Notices

The Fair Credit Reporting Act, which has been implemented in Connecticut, requires that a consumer be provided with an adverse action notice if the lender denies credit to the consumer or refuses to grant credit in the amount or on the terms requested. The record contains substantial evidence of violations of the foregoing obligations by the plaintiff. [25] The plaintiff has admitted

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[24] This instance obviously undercuts the plaintiff's argument that a specific property address was required to take a loan application or to negotiate terms. Here, without a specific property identified, a customer was prequalified for a $180,000 loan on a hypothetical $200,000 property. See further examples at AR 1383-94; 3162-67; 1397-98.

[25] See AR 3317; 4428-35; 6976; 3966.

that it violated the foregoing statutory obligations on numerous occasions. Accordingly, it is clear that violations occurred in this regard.

D. Truth in Lending

The Truth in Lending Act in Connecticut indirectly provides that creditors shall not require a consumer to submit documents verifying information related to the consumer's application before providing certain disclosures to the consumer. [26] The record is replete with examples of the plaintiff prematurely requiring verification from consumers prior to the provision of the required disclosures, namely loan estimates. See AR 3966. The record contains substantial evidence that it was the plaintiff's practice or policy to require a purchase and sale agreement before the plaintiff would provide a loan estimate, thereby requiring consumers to commit to the purchase of property before coming to an understanding of the loan costs. The foregoing procedure violates federal regulations as well as the Connecticut Truth in Lending Act. The plaintiff's procedures in this regard appear to undermine the very purpose of this statute which is to provide consumers with data concerning the expected costs at an early point in the process so

[26] The Truth in Lending Act prohibits requiring a purchase and sale agreement as a condition to providing the early disclosures required by the act.

that the consumers can more effectively shop for the best loan terms and so that consumers will have necessary cost data before locking into a purchase agreement.

E. Cooperation with DOB Investigators

It is undisputed that DOB investigators requested the e-mails of specific employees over a specified period of time but that the plaintiff did not provide the requested e-mails. While it is true that the plaintiff attempted to negotiate the scope of the request, it is clear that, although the investigators agreed to some requested limitations, compliance with the request was not achieved by the plaintiff. It is also clear that the plaintiff failed to comply with, or effectively challenge, a subpoena issued by the DOB. [27] Although the plaintiff had the right to resist the subpoena, it did not appropriately do so, and instead merely failed or refused to comply. It is also clear that in response to the investigators' request for documentation concerning the termination of employment of certain employees, the plaintiff responded in a manner that could reasonably be found to be a misleading attempt to avoid producing the requested documents.

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[27] See AR 3176 – 3191.

F. Magnitude of the Penalties

The plaintiff challenges the magnitude of the penalties. [28] However, a challenge of this type is difficult under the circumstances here for three reasons. First, as here, if the penalty imposed is explicitly authorized by the statutes in question, then generally it is within the agency's discretion to impose the authorized penalty. See *Gibson* v. *Connecticut Medical Examining Board*, 141 Conn. 218, 230, 104 A.2d 890 (1954). Second, even in the plaintiff's brief on appeal, the plaintiff admits that violations occurred. Further, the plaintiff's own internal audit reports and communications from its compliance officer found that violations occurred and that the violations arose from systemic issues. [29] Beyond this, the record contains substantial evidence that violations occurred. Third, as noted infra, the plaintiff purposefully designed its business operations in a manner that increased the likelihood of violations, and communications from the plaintiff's own compliance officer confirmed that the plaintiff understood this. In view of the foregoing, it is clear that the penalties imposed did not arise to an abuse of the DOB's discretion, but instead were supported by the record and within the reasonable statutory discretion of the agency under the circumstances of this matter.

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[28] The court notes that the plaintiff's license was revoked for failure to maintain a necessary surety bond by the DOB in a separate proceeding.

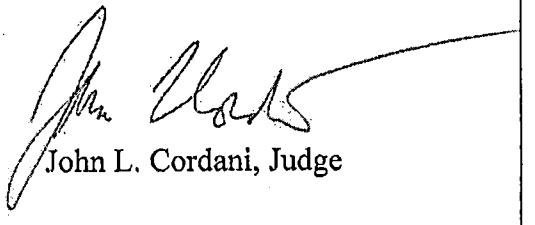
[29] The internal audit went so far as to rank employees in terms of the level of risk of non-compliance that they presented.

G. Conclusion

In view of the foregoing, the court finds that on appeal, the plaintiff has failed to establish that the Final Decision was : (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law: (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. Accordingly, the court must respectfully dismiss the appeal.

ORDER:

The appeal is dismissed.



John L. Cordani, Judge