

OCCC CASE NO. L19-00181

IN THE MATTER OF:	§	BEFORE THE
	§	
	§	OFFICE OF CONSUMER
MASTER FILE NUMBER: 2368	§	
SELECT PORTFOLIO SERVICING, INC.	§	CREDIT COMMISSIONER
3217 S. DECKER LAKE DRIVE	§	
WEST VALLEY CITY, UTAH 84119	§	STATE OF TEXAS

ORDER TO MAINTAIN MINIMUM NET ASSETS NUNC PRO TUNC

The Office of Consumer Credit Commissioner (“OCCC”) issues this Order to Maintain Minimum Net Assets Nunc Pro Tunc against Select Portfolio Servicing, Inc. (“Select Portfolio”).¹

Clerical Error

This Nunc Pro Tunc Order is issued by the OCCC to correct a clerical error in the original Order to Maintain Minimum Net Assets that was served on Select Portfolio on April 8, 2019. In footnotes 4, 5 and 6, the original order cites implementing rules for a net asset violation in Title 7 Texas Administrative Code Section 89.301(1). The corrected citation for implementing rules for regulated lenders is Title 7 Texas Administrative Code Section 83.301(1). Footnotes 7, 8, and 9 now cite Title 7 Texas Administrative Code Section 83.301(1).

A Nunc Pro Tunc Order may be issued to correct a clerical error.² Although a Nunc Pro Tunc Order is signed after an original order, the effect of a Nunc Pro Tunc Order relates back to the date the original order was signed.³ Therefore, any deadlines from the original order remain in place. If you fail to request a hearing by the deadline identified in the original Order dated April 8, 2019, this Order is considered final and enforceable.⁴

¹ Tex. Fin. Code § 14.208.

² Tex. R. Civ. P. 316

³ *Daniels v. Comm'n for Lawyer Discipline*, 142 S.W.3d 565, 573 (Tex. App. – Texarkana 2004); *Gen. Elec. Co. v. Canyon City Ice & Light Co.*, 136 S.W. 78, 79 (Tex. Civ. App. 1911).

⁴ Tex. Fin. Code § 14.208(c).

Statement of Facts and Law

Select Portfolio is a regulated lender licensed by the OCCC under Chapter 342 of the Texas Finance Code. Select Portfolio operates under master file number 2368 at two licensed locations, under license numbers 10835 and 20135. Select Portfolio's compliance officer is Jeff Graham, and its designated contact address is 3217 S. Decker Lake Dr., West Valley City, Utah 84119.

A regulated lender must report its minimum net asset within its annual report with the Consumer Credit Commissioner ("Commissioner").⁵ A regulated lender must maintain for each office for which a license is held net assets of at least \$25,000 that are used or readily available for use in conducting the business of that office.⁶

Net assets are the total value of acceptable assets used or designated as readily available for use in the business, less liabilities, other than those liabilities secured by unacceptable assets.⁷ Unacceptable assets include, but are not limited to, goodwill, unpaid stock subscriptions, lines of credit, notes receivable from an owner, property subject to the claim of homestead or other property exemption and encumbered real or personal property to the extent of the encumbrance.⁸ Generally, assets are available for use if they are readily convertible to cash within 10 business days.⁹

The balance sheet submitted by Select Portfolio with its 2017 annual report shows the company has a net asset that is below the requirement. On September 5, 2018, the OCCC sent a letter to Select Portfolio instructing to either correct the balance sheet if an error was made, or to transfer enough assets to the business to meet the net assets requirement. The letter instructed Select Portfolio to submit a corrected balance sheet and documentation supporting all changes. As of the date of this Order, the OCCC has not received the requested information.

The Commissioner may issue an injunction ordering a regulated lender to report and maintain the required net asset minimum if the Commissioner has reasonable cause to believe that the regulated lender is violating Chapter 342 of

⁵ Tex. Fin. Code § 342.559.

⁶ Tex. Fin. Code § 342.153.

⁷ 7 Tex. Admin. Code § 83.301(1).

⁸ 7 Tex. Admin. Code § 83.301(1).

⁹ 7 Tex. Admin. Code § 83.301(1).

the Texas Finance Code.¹⁰ The Commissioner has reasonable cause to believe that Select Portfolio is violating Chapter 342 of the Texas Finance Code, and therefore issues this Order, because Select Portfolio failed to maintain minimum net asset requirements.

Order

IT IS ORDERED that Select Portfolio Servicing, Inc.:

1. cease and desist from violating, and comply with the requirements set forth in 342.153(a) of the Texas Finance Code;
2. submit a new balance sheet with documents supporting all changes within 30 days of service of this Order, if it has not already done so; and
3. file timely, complete, and accurate annual reports reflecting compliance with the minimum net asset requirement.

Violation of Order

You may be assessed an administrative penalty of up to \$1,000 for each day of violation of this Order.¹¹ Multiple violations may also result in the suspension or revocation of your license.¹²

Right to Request Hearing

You have the right to request a hearing regarding this Order.¹³ Your request must be made in writing and sent to the OCCC not later than 30 days after you received the Order dated April 8, 2019. You must send your request to:

Alexandra Gullett
Office of Consumer Credit Commissioner
2601 N. Lamar Blvd.
Austin, Texas 78705

¹⁰ Tex. Fin. Code § 14.208.

¹¹ Tex. Fin. Code § 14.208(c)

¹² Tex. Fin. Code § 342.156(2).

¹³ Tex. Fin. Code § 14.208(b).

If you request a hearing, a hearing on this matter will be set and conducted in accordance with Chapter 2001 of the Texas Government Code.¹⁴ If you fail to request a hearing by this deadline, this Order is considered final and enforceable.¹⁵

All communications with the OCCC concerning this matter must be through Alexandra Gullett, Assistant General Counsel, who may be contacted by mail at 2601 N. Lamar Blvd., Austin, Texas 78705, by telephone at (512) 936-7659, or by email to alexandra.gullett@occc.texas.gov.

Signed this 9th day of May, 2019.

/s/ Leslie L. Pettijohn
Leslie L. Pettijohn
Consumer Credit Commissioner
State of Texas

¹⁴ Tex. Fin. Code § 14.208(b).

¹⁵ Tex. Fin. Code § 14.208(c).

CERTIFICATE OF SERVICE

I certify that on May 9, 2019, a true and correct copy of this Order to Maintain Minimum Net Assets Nunc Pro Tunc has been sent to Select Portfolio Servicing, Inc. by regular mail and certified mail, return receipt requested, at:

CMRRR: 91 7199 9991 4758 9073

Select Portfolio Servicing, Inc.

Attn: Jeff Graham, Compliance Officer

3217 S. Decker Lake Drive

West Valley City, Utah 84119

CMRRR: 91 7199 9991 4758 9080

Select Portfolio Servicing, Inc.

Attn: Corporation Service Company, Registered Agent

701 Brazos Street Ste. 1050

Austin, Texas 78701

/s/Alexandra Gullett

Alexandra L. Gullett

Assistant General Counsel

Office of Consumer Credit Commissioner

State Bar No. 24101840

2601 North Lamar Blvd.

Austin, Texas 78705

(512) 936-7659

(512) 936-7610 (fax)

alexandra.gullett@occc.texas.gov