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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING, BUREAU
OF COMPLIANCE, INVESTIGATION
AND LICENSING

DOCKET No. 08 0082 (CO)

v.

FIRST JERSEY MORTGAGE
SERVICES, INC.

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Examinations, has conducted an examination of First Jersey Mortgage Services, Inc. ("First Jersey"), and its officers, employees and directors. Based on the results of the examination, the Bureau of Compliance, Investigation and Licensing (the "Bureau") believes that First Jersey is in violation of the Mortgage Bankers and Brokers & Consumer Equity Protection Act (the "MBBCEPA"), 63 P.S. § 456.101 *et seq.*, the Mortgage Bankers and Brokers & Consumer Equity Protection Act Regulations (the "MBBCEPA Regs"), 10 Pa. Code § 44.1 *et seq.*, and the Secondary Mortgage Loan Act (the "SMLA"), 7 P.S. § 6601 *et seq.* The parties to the above captioned matter, in lieu of litigation, hereby stipulate that the following statements are true and correct in the settlement of the above-captioned matter and, intending to be legally bound, hereby agree to the terms of this Consent Agreement and Order (the "Order").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the MBBCEPA, MBBCEPA Regs and the SMLA.

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2. The Bureau is primarily responsible for administering and enforcing the MBBCEPA, MBBCEPA Regs and the SMLA for the Department.

3. Effective August 30, 2007, First Jersey became licensed as a First Mortgage Broker, license no. 18513, and as a Secondary Mortgage Broker, license no. 18514.

4. Prior to August 30, 2007, First Jersey was licensed as a First Mortgage Banker, license no. 14567, and as a Secondary Mortgage Lender, license no. 14568.

5. Effective November 11, 2007, First Jersey's principal place of business in Pennsylvania is located at 105 State Court, Milford, PA 18337 (the "Principal Place").

6. First Jersey previously had its principal place of business located at the following addresses:

- a. 149 Sawkill Ave, Milford, PA 18337-1112 (the "Former Principal Place") from February 1, 2007 to November 11, 2007; and
- b. 22 Broad Street, Delaware Water Gap, PA 18327 (the "Del. Water Gap Location") from July 1, 2004 through February 1, 2007.

7. First Jersey has a licensed branch location at 4003 Bergenline Ave., Union City, NJ (the "Union City Branch") and formerly had branch locations in Pearl River, NY, Laurel Springs, NJ, Monroe Township, NJ and Cedar Grove, NJ.

8. The branches listed in Paragraph 7 are, and were, the only licensed branch locations for First Jersey.

9. On May 5, 2007, an examination of First Jersey was initiated by the Department at First Jersey's Former Principal Place (the "Examination").

Prior Attempted Examinations and Staffing

10. On September 5, 2006, an examiner from the Department attempted to conduct an examination of First Jersey at the Del. Water Gap Location.

11. The examiner noted that the Del. Water Gap Location was vacant and a “for sale” sign was in the front yard.

12. On April 6, 2007, an examiner from the Department attempted to conduct an examination of First Jersey at the Former Principal Place.

13. The Former Principal Place was closed and various telephone numbers for the Former Principal Place were incorrect and/or provided incorrect information.

14. Section 302 of the MBBCEPA defines a principal place of business as “[t]he primary office of the licensee located in this Commonwealth which is staffed on a full-time basis and at which books, records, accounts and documents are to be maintained.” 63 P.S. § 456.302.

15. Section 308(a)(4) of the MBBCEPA provides in relevant part that a licensee shall “[b]e subject to examination by the department or commission at which time the department or commission shall have free access, during regular business hours, to the licensee’s place or places of business in this Commonwealth. . .” 63 P.S. § 456.308(a)(4).

16. Section 10(a)(4) of the SMLA provides in relevant part that a licensee shall “[b]e subject to an examination by the secretary at least once every two calendar years, at which time the secretary shall have free access, during regular business hours, to the licensee’s place or places of business in this Commonwealth and to all instruments, documents, accounts, books and records which pertain to the licensee’s secondary mortgage loan business. . .” 7 P.S. § 6610(a)(4).

17. The examinations could not be conducted because the examiner was unable to gain access to First Jersey's Pennsylvania first and secondary mortgage records because no employees were present at either the Del. Water Gap Location or the Former Principal Place.

Unlicensed Loan Originators

18. During the Examination, the examiner noted that all of First Jersey's mortgage loan originators (the "Loan Originators") were being paid on a 1099 basis and not as W-2 employees.

19. The Loan Originators brokered fifty (50) first mortgage loans on behalf of First Jersey.

20. Because First Jersey paid the Loan Originators on a 1099 basis, the Loan Originators were required to be individually licensed under the MBBCEPA as mortgage brokers.

21. The Loan Originators did not have their own mortgage broker licenses under the MBBCEPA.

22. Section 303(a) of the MBBCEPA provides, in relevant part, that "no person shall act as a mortgage banker, loan correspondent, mortgage broker or limited mortgage broker in this Commonwealth without a license. . ." 63 P.S. § 456.303(a).

23. Since the Loan Originators did not have their own mortgage licenses under the MBBCEPA, the Loan Originators were engaged in unlicensed activity.

24. Section 314(c) of the MBBCEPA permits the Department to issue a fine to any licensee who violates the MBBCEPA or consents to a violation of the MBBCEPA. 63 P.S. § 456.314(c).

25. By processing first mortgage loans from unlicensed brokers, First Jersey is consenting to violations of the MBBCEPA.

26. The Loan Originators brokered seven (7) secondary mortgage loans on behalf of First Jersey.

27. Because First Jersey paid the Loan Originators on a 1099 basis, the Loan Originators were required to be individually licensed under the SMLA as mortgage brokers.

28. The Loan Originators did not have their own mortgage broker licenses under the SMLA.

29. Section 3(a)(1) of the SMLA provides, in relevant part, that “[n]o person shall engage in the business of making secondary mortgage loans in this Commonwealth. . .after first obtaining a license from the secretary in accordance with the provisions of this act.” 7 P.S. 6603(a)(1).

30. Since the Loan Originators did not have their own mortgage licenses under the SMLA, the Loan Originators were engaged in unlicensed activity.

31. Section 22(b) of the SMLA permits the Department to issue a fine to any licensee who violates the SMLA or consents to a violation of the SMLA. 7 P.S. § 6622(b).

32. By processing secondary mortgage loans from unlicensed brokers, First Jersey is consenting to violations of the SMLA.

Unlicensed Locations

33. The Examination revealed that from November 2004, First Jersey originated at least nine (9) Pennsylvania first and secondary mortgage loans from the following unlicensed locations:

- a. 6707 Kennedy Blvd., North Bergen, NJ 07047;
- b. 42 Reads Way, New Castle, DE 19720;
- c. 3600 Bergenline Ave., Union City, NJ 07087;

- d. 4003 Bergenline Ave., Union City, NJ 07087¹;
- e. 2001 Market St., Philadelphia, PA 19103;
- f. 244 Bridge St., Metuchen, NJ 08840;
- g. 505 48th St., Union City, NJ 07087;
- h. 1400 Chews Landing Rd., Laurel Springs, NJ 08021; and
- i. 1139 Elizabeth Ave., Elizabeth, NJ 07201.

34. Specifically, the Examination revealed that:

a. the Mortgage Loan Origination Applications (Form 1003) list an address from Paragraph 33a-i as the address where the first and secondary mortgage loans were originated or have a telephone number associated with one of the addresses in Paragraph 33a-i; and

b. a loan officer list provided by a representative of First Jersey lists one of the addresses in Paragraph 33a-i as the location at which those loan officers worked from.

35. A “branch” is defined in Section 302 of the MBBCEPA as “[a]n office or other place of business located in this Commonwealth *or any other state*, other than the principal place of business, *where a person engages in the first mortgage loan business which falls under the scope of this chapter.*” 63 P.S. § 456.302 (emphasis added).

36. Section 304(a) of the MBBCEPA provides, in relevant part, that “[e]ach application shall include the address *or addresses* where business is to be conducted . . .” 63 P.S. § 456.304(a) (emphasis added).

37. Section 305(a) of the MBBCEPA provides, in relevant part, that “[a] mortgage banker, mortgage broker or applicant shall pay to the department at the time an application is

¹ The Union City Branch became licensed effective 12/14/05. All unlicensed activity subject to this Order from the Union City Branch occurred prior to 12/14/05.

filed an initial license fee for the principal place of business and *an additional license fee for each branch office . . .*” 63 P.S. § 456.305(a) (emphasis added). Additionally, Section 305(a) of the MBBCEPA provides, in relevant part, that “. . . a licensee shall pay a license renewal fee for the principal place of business and an additional license renewal fee *for each branch office . . .*” 63 P.S. § 456.305(a) (emphasis added).

38. Based upon the foregoing, any office of a licensee where first mortgage loan business is conducted under the MBBCEPA must be licensed as a branch under Sections 304(a) and 305(a) of the MBBCEPA.

39. Section 4(a)(5) of the SMLA requires an application to contain “[t]he address or addresses where the secondary mortgage loan business is to be conducted.” 7 P.S. § 6604(a)(5).

40. Thus, any of a licensee’s branch offices where business under the SMLA is conducted must be licensed as branch offices under the SMLA.

Continuing Education Requirements

41. The Examination revealed that First Jersey did not complete the required continuing education credits for the July 1, 2005 through June 30, 2006, renewal period for the Del. Water Gap Location or the former branch location in Pearl River, NY.

42. Section 44.2(a)(1) of the MBBCEPA Regs provides, in relevant part, that a licensee must maintain at least one individual from each licensed office who has successfully completed the required continuing education credits. 10 Pa. Code § 44.2(a)(1).

Record Keeping

43. The Examination revealed that First Jersey was maintaining records of its Pennsylvania first and secondary mortgage business at the Union City Branch.

44. Section 308(a)(2) of the MBBCEPA requires a licensee to maintain records at its

principal place of business in Pennsylvania unless the Department provides the licensee authorization to maintain those records elsewhere. 63 P.S. § 456.308(a)(2).

45. Section 10(a)(2) of the SMLA requires a licensee to maintain records at its principal place of business in Pennsylvania unless the Department provides the licensee authorization to maintain those records elsewhere. 7 P.S. § 6610(a)(2).

46. First Jersey does not have authorization to maintain records at any alternative location.

Secondary Mortgage Note Headings

47. The Examination also revealed that First Jersey did not have the verbiage “Secondary Mortgage Loan” and “This agreement is subject to the Secondary Mortgage Loan Act” printed on First Jersey’s Pennsylvania Secondary Mortgage Notes.

48. Section 13 of the SMLA provides, in relevant part, that “[a]ny loan agreement or promissory note evidencing a secondary mortgage loan shall be identified by the use of the words ‘Secondary Mortgage Loan’ printed at the top of the loan agreement or promissory note and the statement ‘This agreement is subject to the provisions of the Secondary Mortgage Loan Act.’” 7 P.S. § 6613.

Fine Authority

49. Section 314(c) of the MBBCEPA provides, in relevant part, that “[a]ny person licensed under the provisions of this chapter or any director, officer, employee or agent of a licensee who shall violate the provisions of this chapter or shall direct or consent to such violations shall be subject shall be subject to a fine levied by the department of up to \$2,000 for each offense.” 63 P.S. § 456.314(c).

50. Section 22(b) of the SMLA provides, in relevant part, that “a corporation licensed

under the provisions of this act or any director, officer, employee or agent who shall violate any provision of this act or shall direct or consent to such violations, shall be subject to a fine of \$2,000 for the first offense, and for each subsequent offense a like fine and/or suspension of license.” 7 P.S. § 6622(b).

VIOLATIONS

51. First Jersey is in violation of the following sections of the MBBCEPA;
 - a. Sections 304(a) and 305(a) by originating first mortgage loans from unlicensed branch locations;
 - b. Section 308(a)(2) by not maintaining Pennsylvania first mortgage records at First Jersey’s principal place of business in Pennsylvania when First Jersey did not have authorization to maintain the records elsewhere; and
 - c. Section 308(a)(4) by not providing the Department free access to First Jersey’s Pennsylvania first mortgage records during two attempted examinations.
52. First Jersey is in violation of Section 44.2(a)(1) of the MBBCEPA Regs by not completing the continuing education credits for the 2005-06 renewal period for the Del. Water Gap Location or the former branch location in Pearl River, NY.
53. First Jersey is in violation of the following sections of the SMLA;
 - a. Section 4(a)(5) by originating secondary mortgage loans from unlicensed branch locations;
 - b. Section 10(a)(2) by not maintaining Pennsylvania secondary mortgage records at First Jersey’s principal place of business in Pennsylvania when First Jersey did not have authorization to maintain the records elsewhere;

c. Section 10(a)(4) by not providing the Department free access to First Jersey's Pennsylvania secondary mortgage records during two attempted examinations; and

d. Section 13 by not including the required language on Secondary Mortgage Notes.

RELIEF

54. Fine. Within thirty (30) days of the Effective Date of this Order, First Jersey agrees to pay the Department a fine in the amount of \$25,000. The fine shall be payable in twenty-five payments of \$1,000. The first payment shall be due and payable within thirty (30) days of the Effective Date of this Order and the remaining twenty-four payments shall be due by the first day of the following month thereafter. Payments shall be remitted by certified check or money order made payable to the Department of Banking, and will be sent to the Attention of the Non-Depository Institutions, Compliance Division, 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

55. Corrective Action.

a. Staffing. Within forty-five (45) days of the Effective Date of this Order, First Jersey shall staff its principal place of business on a full-time basis, i.e. First Jersey shall have a knowledgeable W-2 employee who meets the continuing education requirements of the MBBCEPA and the SMLA and who is physically located at the principal place of business during regular business hours. Knowledgeable is defined as having the capability to conduct the business of First Jersey, including being able to directly contact consumers to present, negotiate or provide advice regarding loan terms.

b. Unlicensed Individuals. First Jersey shall cease and desist from accepting applications from unlicensed persons and that it shall compensate all employees on a W-2 basis.

c. Unlicensed Activity. First Jersey shall cease and desist from originating loans from unlicensed locations.

d. Continuing Education. First Jersey shall comply with the continuing education requirements as set forth in the MBBCEPA Continuing Education Regulations.

e. Recordkeeping. First Jersey shall maintain all required records at its principal place of business in Pennsylvania unless the Department otherwise authorizes.

f. Note Headings. First Jersey shall include the proper heading(s) on all secondary mortgage notes.

FURTHER PROVISIONS

56. Consent. First Jersey hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the MBBCEPA and SMLA and agrees that it understands all of the terms and conditions contained herein. First Jersey, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

57. Publication and Release. First Jersey consents to the publication and release of this Order.

58. Entire Agreement. This Order contains the whole agreement between the parties. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the Bureau and First Jersey.

59. Binding Nature. The Bureau, First Jersey, and all officers, owners, directors, employees, heirs and assigns of First Jersey intend to be and are legally bound by the terms of this Order.

60. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

61. Effectiveness. First Jersey hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

62. Other Enforcement Action.

a. The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against First Jersey in the future regarding all matters not resolved by this Order.

b. First Jersey acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

63. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

64. Counterparts. This Order may be executed in separate counterparts.

65. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Bureau and First Jersey intending to be legally bound, do hereby execute this Consent Agreement and Order.

FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING, BUREAU OF
COMPLIANCE, INVESTIGATION AND LICENSING

Ryan M. Walsh, Administrator
Bureau of Compliance,
Investigation and Licensing
Department of Banking

Date: May 20, 2008

FOR FIRST JERSEY MORTGAGE SERVICES, INC.

(Officer Signature)

(Print Officer Name)

President

(Title)

Date: 5/19/08