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COMMONWEALTH OF PENNSYLVANIA

DEPARTMENT OF BANKING

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

PA DEPT OF BANKING

v.

Docket No. 09 0111 (ENF-CO)

BEST INTEREST RATE MORTGAGE
COMPANY, LLC

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Examinations, has conducted an examination of Best Interest Rate Mortgage Company, LLC, ("BIRMCO"), and its officers, employees and directors. Based on the results of the examination, the Bureau of Compliance, Investigation and Licensing (the "Bureau") believes that BIRMCO is in violation of 7 Pa. C.S. § 6101 et seq. (the "Mortgage Act"). BIRMCO, while neither agreeing nor disagreeing with the facts, beliefs and allegations of the Department as herein contained of this Order, in lieu of litigation, agrees to hereby be legally bound 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 Mortgage Act.
2. The Bureau is primarily responsible for administering and enforcing the Mortgage Act for the Department.
3. The Mortgage Act is the successor statute to Chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (the "MBBCEPA"), 63 P.S. § 456.301 et seq., and

the Secondary Mortgage Loan Act (the "SMLA"), 7 P.S. § 6601 et seq. On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by the Mortgage Act.

4. BIRMCO was formerly licensed as a Loan Correspondent, license no. 14186, pursuant to the MBBCEPA.

5. BIRMCO was granted a Mortgage Loan Correspondent license, no. 21211, pursuant to the Mortgage Act on January 3, 2009.

6. On March 9, 2009, an examiner from the Department began an examination of the principal place of business (the "March Exam") which was located at 642 Welsh Road, Huntingdon Valley, PA 19006.

7. During the March Exam, the examiner noted that BIRMCO was engaged in the mortgage loan modification business.

8. Michael John DiPlacido, President of BIRMCO, told the examiner that BIRMCO had entered the mortgage loan modification business on or around November 1, 2008.

Advertising

9. As a result of the March Exam, the Bureau alleges that BIRMCO utilized misleading advertising, appearing to come from a government entity, to solicit Pennsylvania consumers for mortgage loan modifications.

10. BIRMCO's company name did not appear *anywhere* on the advertisement.

11. The advertisement contained a heading that read, "Form 009 Payment Reduction Notification Stimulus Act 2008" as if it were part of a government program.

12. The Bureau believes that issuing such an advertisement is a dishonest business practice, and the Bureau further believes that BIRMCO has violated the Mortgage Act, specifically

section 6139(a)(3) which requires that a licensee shall not engage in a dishonest business practice in the mortgage business or in a non-mortgage-related business, 7 Pa C.S. § 6139(a)(3).

Material Misstatement

13. During the March Exam, the examiner reviewed BIRMCO's application for licensure submitted to the Department on January 3, 2009 through the Nationwide Mortgage Loan System.

14. The application for licensure was filed by BIRMCO under oath and affirmation and stated that BIRMCO would not be engaging in any non-mortgage-related business, and that BIRMCO would not share space with any person engaged in financial-services-related activity.

15. By not stating that BIRMCO was engaged in the mortgage loan modification business a non-mortgage-related business on the January 3, 2009 application for licensure, the Bureau believes that BIRMCO is in violation of section 6139(a)(1) of the Mortgage Act for what the Department alleges to be a material misstatement of fact.

Authority of the Department

16. Section 6138(a)(4) of the Mortgage Act (corresponding to Sections 310(a) of the MBBCEPA and 16(1) of the SMLA) grants the Department broad authority to issue orders for the enforcement of the Mortgage Act. 7 Pa. C.S. § 6138(a)(4) (corresponding to 63 P.S. § 456.310(a) and 7 P.S. § 6616(1)).

Alleged Violations

17. The Bureau alleges that BIRMCO is in violation of Sections 6139(a)(1) and 6139(a)(3) of the Mortgage Act for what the Bureau believes is the dishonest practice of supplying misleading mortgage loan modification advertisements to consumers, and for what the Bureau alleges were material misstatements of fact on a mortgage correspondent licensing application.

Relief

18. BIRMCO, without admitting to wrongdoing, consents to the entry of this Order to resolve the issues contained herein.

19. BIRMCO shall cease and desist from engaging in any and all Pennsylvania mortgage loan modification business.

20. BIRMCO agrees under oath and affirmation to provide to the Department an accounting of all six-hundred-and-eighty-four (684) loan modifications and to detail what type of mortgage loan modification was negotiated in each instance.

a. The sworn accounting shall be submitted to the Department at the following address:

Pennsylvania Department of Banking
Compliance Division
Attn: John Talalai
17 N 2nd Street, Suite 1300,
Harrisburg, PA 17101

Further Provisions

21. Consent. BIRMCO hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the Mortgage Act and agrees that it understands all of the terms and conditions contained herein. BIRMCO 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.

22. Publication. The Department will publish this Order pursuant to its authority in Section 302.A.(5) of the Department of Banking Code. 71 P.S. § 733-302.A.(5).

23. 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 BIRMCO.

24. Binding Nature. The Department, BIRMCO, and all officers, owners, directors, employees, heirs and assigns of BIRMCO intend to be and are legally bound by the terms of this Order.

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

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

27. 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 BIRMCO in the future regarding all matters not resolved by this Order.

b. BIRMCO 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.

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

29. Counterparts. This Order may be executed in separate counterparts and by facsimile.

30. 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 Department and BIRMCO 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**

~~ADMINISTRATOR~~, ADMINISTRATOR
Bureau of Compliance, Investigation and Licensing
Department of Banking

Date: 6-11-2009

FOR BEST INTEREST RATE MORTGAGE COMPANY, LLC

(Officer Signature)

Michael DiPlacido

(Print Officer Name)

President

(Title)

Date: 06/10/09