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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING

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COMMONWEALTH OF PENNSYLVANIA	:	DOCKET No. 09	PA DEPT OF BANKING
DEPARTMENT OF BANKING, BUREAU	:	0072	(ENF-CO)
OF COMPLIANCE, INVESTIGATION	:		
AND LICENSING	:		
	:		
v.	:		
	:		
CAPITAL LENDING SERVICE,	:		
INCORPORATED	:		
D/B/A CAPITAL MORTGAGE	:		

**CONSENT AGREEMENT AND ORDER**

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Examinations, has conducted an examination of Capital Lending Service, Incorporated d/b/a Capital Mortgage ("Capital Mortgage"), and its officers, employees and directors. Based on the results of the examination, the Bureau of Compliance, Investigation and Licensing (the "Bureau") believes that Capital Mortgage is in violation of 7 Pa. C. S. § 6101 et seq. (the "Mortgage Act"). 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 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 On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by the Mortgage Act.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. Capital Mortgage was formerly licensed as a First Mortgage Broker, license no. 18337, pursuant to the MBBCEPA and as a Secondary Mortgage Broker, license no. 18338, pursuant to the SMLA.

5. Capital Mortgage was granted a conditional license pursuant to the Mortgage Act on November 5, 2008.

6. Capital Mortgage has its principal place of business located at 99 W. Eisenhower Drive, Ste D, Hanover, PA 17331-1153 (the "Principal Place").

7. On January 9, 2008, an examination of Capital Mortgage was initiated at the Principal Place (the "Examination").

#### Unlicensed Loan Originators

8. During the Examination, the examiner noted that two (2) of Capital Mortgage's loan originators (the "Loan Originators") were being paid via IRS form 1099 and not as W-2 employees.

9. The Loan Originators brokered three (3) first mortgage loans on behalf of Capital Mortgage.

10. Because the Loan Officers were paid as 1099 independent contractors, they were not W-2 employees of Capital Mortgage.

11. Section 6111(a) of the Mortgage Act (corresponding to Section 303(a) of the MBBCEPA and Section 3(a)(1) of the SMLA) provides, in relevant part, that “no person shall engage in the mortgage loan business in this Commonwealth without being licensed as a mortgage broker, mortgage lender, mortgage loan correspondent or mortgagee originator as provided under this chapter. . . .” 7 Pa. C.S. § 6111(a) (corresponding to 63 P.S. § 456.303(a) and 7 P.S. §6603(a)(1)).

12. Section 6136(a)(1) of the Mortgage Act (corresponding to Section 309(a)(1) of the MBBCEPA and Section 11(1) of the SMLA) provides, in relevant part, that “[a] licensee cannot transact any business under this chapter under any other name or names except those names designated in its license. . . .” 7 Pa. C.S. § 6136(a)(1) (corresponding to 63 P.S. § 456.309(a)(1), 7 P.S. § 6611(1)).

13. The Loan Officers that closed the loans for Capital Mortgage were not W-2 employees of Capital Mortgage or individually licensed pursuant to the MBBCEPA and/or the SMLA as was previously required.<sup>1</sup>

14. By accepting the mortgage loans from the Loan Officers who were not licensed to engage in the mortgage business in Pennsylvania, Capital Mortgage violated the Mortgage Act.

15. Subsequent to the Examination, Capital Mortgage converted the Loan Originators to W-2 pay status, making them employees of Capital Mortgage.

#### 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

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<sup>1</sup> At the time of the violations, employees of a mortgage broker were not required to be individually licensed. See 63 P.S. § 456.303(b)(11).

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)).

17. Section 6140(b) of the Mortgage Act (corresponding to Section 314(c) of the MBBCEPA and Section 22(b) of the SMLA) provides, in relevant part, that “[a] person licensed under this chapter or director, officer, owner, partner, employee or agent of a licensee who violates a provision of this chapter or who commits any action which would subject the licensee to suspension, revocation or nonrenewal under section 6139 may be fined by the department up to \$10,000 for each offense.” 7 Pa C.S. § 6140(b) (corresponding to 63 P.S. § 456.314(c) and 7 P.S. § 6622(b)).

#### **VIOLATIONS**

18. Capital Mortgage violated Section 6111(a) and Section 6136(a)(1) of the Mortgage Act (corresponding to Section 303(a) and Section 309(a)(1) of the MBBCEPA and Section 3(a)(1) and Section 11(1) of the SMLA) by accepting the mortgage loans involving Pennsylvania property closed by loan officers who were not licensed to do business in Pennsylvania.

19. Capital Mortgage does not admit to wrongdoing, but consents to this Order as a compromise of disputed claims.

#### **RELIEF**

20. Fine. Within thirty (30) days of the Effective Date of this Order, Capital Mortgage shall pay a fine in the amount of \$1,500 to the Department. The fine shall be remitted by a certified check or money order made payable to the Department of Banking and directed to the attention of Non-Depository Institutions, Bureau of Compliance, Investigation and Licensing located at 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

21. Corrective Action.

- a. Capital Mortgage shall cease and desist from accepting mortgage loan applications from unlicensed persons.
- b. Capital Mortgage shall retain any loan officers or persons engaging in the mortgage loan business on its behalf in Pennsylvania and for loans involving Pennsylvania property and/or Pennsylvania consumers as W-2 employees.

**FURTHER PROVISIONS**

22. Consent. Capital Mortgage 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. Capital Mortgage, 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.

23. 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).

24. 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 Capital Mortgage.

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

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

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

28. 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 Capital Mortgage in the future regarding all matters not resolved by this Order.

b. Capital Mortgage 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.

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

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

31. 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 Capital Mortgage 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**

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

Date: January 17, 2009

**FOR CAPITAL LENDING SERVICE, INCORPORATED  
D/B/A CAPITAL MORTGAGE**

\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Print Officer Name)

President  
(Title)

Date: 13 Jan 2009