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2009 DEC 16 PM 1:42

PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

COMMONWEALTH OF PENNSYLVANIA	:
DEPARTMENT OF BANKING, BUREAU	:
OF COMPLIANCE, INVESTIGATION	:
AND LICENSING	: Docket No. 09 <u>0234</u> (ENF-CO)
	:
v.	:
	:
COLONIAL MORTGAGE SERVICE	:
COMPANY OF AMERICA	:

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Compliance, Investigation and Licensing ("Bureau"), has reviewed Colonial Mortgage Service Company of America ("Colonial Mortgage"), and its officers, employees and directors. Based on the results of the review, the Bureau believes that Colonial Mortgage operated in violation of the Mortgage Licensing Act ("MLA"), 7 Pa. C.S. § 6101 et. seq. and the regulations promulgated under the MLA known as the Proper Conduct of Lending and Brokering in the Mortgage Loan Buisness ("Proper Conduct Regulations"), 10 Pa. Code § 46.1 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 ("Order").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the MLA and the Proper Conduct Regulations.

2. The Bureau is primarily responsible for administering and enforcing the MLA and the Proper Conduct Regulations for the Department.

3. Colonial Mortgage is currently licensed as a Mortgage Lender, license no. 22633 under the MLA.

4. Colonial Mortgage maintains its principal place of business in Pennsylvania at 100 Tournament Dr, Ste 220, Horsham, PA 19044-3602 ("Principal Place").

5. In October 2009, the Bureau became aware that Colonial Mortgage was airing a radio advertisement in the Philadelphia, Pennsylvania market that was advertising "stated" income mortgage products.

6. The advertisement included the following language:

Colonial Mortgage is also offering home equity loans, jumbo mortgages up to 10 million dollars, and 'stated loans' for qualified self-employed borrowers. That's right 'stated loans' for 'self-employed' borrowers.

7. A stated loan is a loan that allows an applicant to merely state their monthly income when applying for a loan without having to verify their income by furnishing documentation, such as tax returns and pay stubs, and other information.

8. Colonial contends that it was requesting documentation from the applicants relating to their ability to repay to comply with the Proper Conduct Regulations although it was not apparent based on its radio advertisement.

Authority of the Department

9. Section 6138(a) of the MLA provides that, "The department shall have the authority to: (4) Issue regulations, statements of policy or orders as may be necessary for the proper conduct of the mortgage loan business by licensees" 7 Pa. C.S. § 6138(a)(4).

10. Section 6102 of the MLA defines the “mortgage loan business” as the “*business of advertising, causing to be advertised, soliciting, negotiating or arranging in the ordinary course of business or offering to make or making mortgage loans.*” 7 Pa. C.S. § 6102 (emphasis added).

11. In accordance with the authority under Section 6138(a) of the MLA, the Department issued the Proper Conduct Regulations which became effective on March 20, 2009.

12. Specifically, Section 46.2(g)(1)-(2) of the Proper Conduct Regulations provides that:

Evaluation of applicant ability to repay.

(1) A licensee may not offer a loan without having reasonably determined, based on the documents and information provided under this subsection, that the applicant will have the ability to repay the loan in accordance with the loan terms and conditions by final maturity at the fully indexed rate, assuming a fully amortized repayment schedule.

(2) In performing an analysis to determine whether an applicant will have the ability to repay an offered loan, a licensee *shall consider, verify and document the:*

- (i) Income of the applicant.
- (ii) Fixed expenses of the applicant.

See 10 Pa. Code § 46.2(g)(1)-(2) (emphasis added).

13. Further, Section 46.2(g) provides that a licensee must only “verify the income that the applicant chooses to rely upon to repay the offered loan” and sets forth other criteria to guide a licensee when engaging in an ability to repay analysis for a loan applicant. *See* 10 Pa. Code §§ 46.2(g)(3)-(9).

14. In addition, Section 6123(3) of the MLA provides that “[a] licensee engaging in the mortgage loan business shall not: (3) Advertise, cause to be advertised or otherwise solicit

whether orally, in writing, by telecast, by broadcast or in any other manner any statement or representation which is false, misleading or deceptive.” See 7 Pa. C.S. § 6123(3); see also 10 Pa. Code §46.2(a).

15. Section 6140(b) of the MLA 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.

See 7 Pa. C.S. § 6140(b).

VIOLATIONS

16. Colonial Mortgage violated Sections 6138(a) and 6123(3) of the MLA and Section 46.2 of the Proper Conduct Regulations by advertising and offering mortgage loans to applicants which did not require Colonial Mortgage to verify and document the applicants' ability to repay the mortgage loans.

RELIEF

17. Fine. Colonial Mortgage agrees to pay a fine of \$1,000 which shall be due and payable to the Department within 30 days of the Effective Date of this Order. The fine payment shall be remitted by a company check, certified check or money order made payable to the Pennsylvania Department of Banking and sent to the attention of Compliance Division, Bureau of Compliance, Investigation and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

18. Corrective Measures. Upon the Effective Date of this Order, Colonial Mortgage agrees not to advertise, cause to be advertised, solicit, negotiate or arrange in the ordinary course of business or offer to make or make “stated” mortgage loans or any other mortgage loans that

do not require verification of the applicant's income through documents and information as required by the Proper Conduct Regulations and the MLA.

FURTHER PROVISIONS

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

20. 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).

21. 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 Colonial Mortgage.

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

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

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

25. 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 Colonial Mortgage in the future regarding all matters not resolved by this Order.

b. Colonial 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.

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

27. Counterparts. This Order may be executed in separate counterparts and by facsimile or by email.

28. 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 Colonial 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**

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

Date: December 11, 2009

FOR COLONIAL MORTGAGE SERVICE COMPANY OF AMERICA

(Officer Signature)

(Print Officer Name)

PRESIDENT

(Title)

Date: 12/10/09