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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. 070051 (OSC)

v.

DANA H. SMITH

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Compliance, Investigation and Licensing (the "Bureau")¹, has conducted an investigation into the business practices of Dana H. Smith. Based on the results of the investigation, the Bureau believes that Dana H. Smith operated 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 agreed 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.

¹ Due to a reorganization within the Department, the Non-Depository Division of the Bureau of Supervision and Enforcement is now part of the Bureau of Compliance, Investigation and Licensing. This action initiated under the former Bureau of Supervision and Enforcement.

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 On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by the Mortgage Act.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. Dana Capital Group, Inc. ("Dana Capital") was a corporation incorporated in California and licensed in Pennsylvania as a First Mortgage Banker, license no. 1631, pursuant to the MBBCEPA and as a Secondary Mortgage Lender, license no. 1932 pursuant to the SMLA.

5. Dana Capital had its principal place of business in Pennsylvania located at RR 1 Box 1359A, Gouldsboro, PA 18424 (the "Principal Place") and a branch location at Dana Capital's corporate headquarters located at 8001 Irvine Center Dr., Suite 1200, Irvine, CA 92618 (the "California Office").

6. The Principal Place and the California Office were the only Pennsylvania licensed locations of Dana Capital.

7. Dana H. Smith was the President and Secretary of Dana Capital and, upon information and belief, was the sole shareholder and owner of the company.

The 2006 Consent Agreement and Order

8. On or about March 24, 2005, an examination was conducted of Dana Capital by the Department (the "2005 Exam").

9. Based upon documents provided by Dana Capital as a result of the 2005 Exam, the Department discovered that Dana Capital was originating first and secondary mortgage loans from unlicensed office locations in violation of the MBBCEPA and SMLA.

10. Subsequently, the Department and Dana Capital entered into a Consent Agreement and Order (the "2006 Order") whereby Dana Capital was ordered to pay a \$50,000 fine and to cease and desist originating loans from unlicensed locations which was paid in full on or around January 30, 2006.

11. Dana H. Smith executed the 2006 Order on behalf of Dana Capital.

12. Dana H. Smith as signatory of the 2006 Order was therefore aware of the unlicensed location violations and agreed not to consent to those violations going forward.

Unlicensed Activity

13. Between September 28, 2006, and October 17, 2006, an examiner from the Department and examiners from several other states conducted an examination of Dana Capital at the California Office (the "2006 Exam").

14. The 2006 Exam revealed that Dana Capital had originated at least 131 Pennsylvania residential mortgage loan from unlicensed locations.

15. Specifically, although Dana Capital would list either the Principal Place or the California Office as the location of the loan origination on the Uniform Residential Loan Applications, all other contact information, such as the telephone numbers and/or fax numbers for the loan originators, were not for either of the two licensed locations.

16. In addition, Dana Capital provided a list of loan originators and the actual offices the loan originators worked from that corresponded to the telephone numbers and/or fax numbers on the Uniform Residential Loan Applications.

17. The 2006 Exam also revealed that Dana H. Smith had executed employment contracts on behalf of Dana Capital after the effective date of the 2006 Order whereby Dana Capital employees would work out of unlicensed office locations.

18. On May 21, 2007, the Department participated in a conference call with several other states and representatives of Dana Capital regarding the business activities of Dana Capital (the "May 21st Call").

19. During the May 21st Call, Dana Capital admitted that it was operating through unlicensed locations.

20. Dana H. Smith knowingly, willfully, and repeatedly violated, or consented to the violation of the 2006 Order by entering into agreements to have employees conduct Pennsylvania residential mortgage business from unlicensed offices and by using the unlicensed office branching structure after being ordered by the Department to cease and desist conducting any unlicensed activity.

21. As president, secretary, sole shareholder and owner of Dana Capital, Dana H. Smith consented to Dana Capital's violation of the 2006 Order and the then MBBCEPA and SMLA by allowing Dana Capital to originate Pennsylvania mortgage loans from unlicensed locations.

22. The Mortgage Act applies to, *inter alia*, "[a]ny mortgage loan which is . . . notwithstanding the place of execution, secured by real property located in this Commonwealth." 7 Pa. C.S. § 6151(1)(iii) (emphasis added) (corresponding to 63 P.S. § 456.318(1)(iii) and 7 P.S. § 6620(a)(3)).

23. The Mortgage Act defines a "branch" as "[a]n office or other place of business, other than the principal place of business, located in this Commonwealth or any other state, where a person engages in the mortgage loan business subject to this chapter." 7 Pa. C.S. § 6102 (corresponding to 63 P.S. § 456.302).

24. Section 6131(a)(1)(ii) of the Mortgage Act (corresponding to Section 304(a) of the MBBCEPA) provides, in relevant part, that an application for licensure shall include "the address or addresses where the applicant's mortgage loan business is to be conducted." 7 Pa. C.S. § 6131(a)(1)(ii) (emphasis added) (corresponding to 63 P.S. § 456.304(a)).

25. Section 6132(b)(2) of the Mortgage Act (corresponding to Section 305(a) of the MBBCEPA) provides that a licensee must pay a renewal fee for each branch office. 7 Pa. C.S. § 6132(b)(2) (corresponding to 63 P.S. § 456.305(a)).

26. Thus, based on the foregoing, any office of a licensee where mortgage loan business is conducted under the Mortgage Act must be licensed as a branch pursuant to the Mortgage Act.

27. On June 15, 2007, the Bureau issued an Order To Show Cause against Dana Capital and Dana H. Smith requesting fines and license revocation for violating the 2006 Order and engaging in unlicensed activity.

28. On June 26, 2007, Dana Capital filed Chapter 7 bankruptcy in the Central District of California.

29. On October 31, 2007, Dana H. Smith filed Chapter 7 bankruptcy in the Central District of California.

30. This order resolves the outstanding Order to Show Cause in Paragraph 27.

Authority of the Department

31. Section 6138(a)(4) of the Mortgage Act (corresponding to Section 310(a) of the MBBCEPA and Section 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)).

RELIEF

32. Prohibition. Upon the Effective Date of this Order, Dana H. Smith as a natural person or as a corporation or as any other form of organization of any kind whatsoever, and subject to the provisions of Paragraph 33 below, consents to a lifetime prohibition from working in the mortgage loan business as regulated by the Mortgage Act as a licensee, employee, independent contractor, agent, representative, or in any other capacity of any kind whatsoever, in any way whatsoever.

33. Reapplication. Within five (5) years of the Effective Date of this Order, Dana H. Smith may petition the Department to permit Mr. Smith to engage in the mortgage loan business as regulated by the Mortgage Act in Pennsylvania subject to the following conditions:

- a. the condition(s) which warranted the original action has been corrected to the Bureau's satisfaction;
- b. the Bureau has reason to believe that the condition is not likely to occur again; and
- c. Dana Smith satisfies all other requirements of the Mortgage Act. See 7 Pa.C.S. § 6139(b).

If Mr. Smith applies with the Department as set forth above and his reapplication is denied, Mr. Smith may again petition the Department to permit him to engage in the mortgage loan business as regulated by the Mortgage Act in Pennsylvania within three (3) years of such denial and may continue to do so within three (3) years of each denial subject to the conditions listed above.

By agreeing to the above provision, the Bureau is under no obligation to grant Mr. Smith's license application but the Bureau agrees to not unreasonably deny Mr. Smith's reapplication(s).

FURTHER PROVISIONS

34. Consent. Dana H. Smith 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 he understands all of the terms and conditions contained therein. Dana H. Smith, 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.

35. 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).

36. 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 Dana H. Smith.

37. Binding Nature. The Department and Dana H. Smith intend to be and are legally bound by the terms of this Order.

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

39. Effectiveness. Dana H. Smith hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

40. 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 Dana H. Smith in the future regarding all matters not resolved by this Order.

b. Dana H. Smith 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.

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

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

43. 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 Dana H. Smith 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

Brian Crossland, Chief
Compliance Division
Bureau of Compliance, Investigation
And Licensing

Date: 2/18/09

DANA H. SMITH

(Signature)

(Print Name)

Date: 2-9-09