

COMMONWEALTH OF PENNSYLVANIA **FILED**  
DEPARTMENT OF BANKING

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

Docket No. 09-0008 (ENF-CO)  
~~TRADE FINANCING~~

v. :

FORT MCINTOSH MORTGAGE COMPANY, :  
EUGENE D. MILEY, JR., individually and :  
MELISSA A. MILEY, individually :

**CONSENT AGREEMENT AND ORDER**

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Compliance, Investigation and Licensing (the "Bureau"), has conducted an investigation into the business practices of Fort McIntosh Mortgage Company, Eugene D. Miley, Jr. and Melissa A. Miley. Based on the results of the investigation, the Bureau believes that Fort McIntosh Mortgage 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.

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Mortgage Loan Act (the "SMLA"), 7 P.S. § 6601 *et seq.* On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by the Mortgage Act.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. Fort McIntosh Mortgage was originally licensed as a First Mortgage Broker, license no. 5124, pursuant to the MBBCEPA on April 24, 2001.

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

6. Fort McIntosh Mortgage is currently licensed as a Mortgage Broker, license no. 21865, pursuant to the Mortgage Act and has a principal place of business in Pennsylvania located at 639 Third Street, Suite 1, Beaver, PA 15009-2175 (the "Principal Place").

7. According to current Departmental records, Eugene D. Miley, Jr. is listed as President and 50% owner of Fort McIntosh Mortgage and Melissa A. Miley is listed as Vice-President and 50% owner of Fort McIntosh Mortgage.

#### Unauthorized Securities Brokering

8. On February 13, 2009, the Pennsylvania Securities Commission issued a Cease and Desist Order (Docket Number 2009-02-05) against Miley Financial Services and the owner, Eugene D. Miley, Jr., for the sale of unregistered securities in violation of Section 201 of the Pennsylvania Securities Act of 1972, 70 P.S. § 1-201. (See attachment number 1).

9. The Cease and Desist Order alleges that Miley Financial Services and Eugene D. Miley, Jr. have been selling unregistered securities since 1993.

10. Section 6139(a)(3) of the Mortgage Act allows the Department to suspend, revoke or refuse to renew a mortgage license if the licensee or director, officer, partner, employee or owner of a licensee has “engaged in dishonest, fraudulent or illegal practices or conduct in a business or unfair or unethical practices or conduct in connection with the mortgage loan business. 7 P.S. § 6139(a)(3).

#### Material Misstatements

11. On April 4, 2001 the Department received a first mortgage broker application from Fort McIntosh Mortgage Company (the “2001 Application”).

12. Question number 7 on the 2001 Application asked if there were “any additional businesses, not regulated under the Mortgage Bankers and Brokers Act, that will be operating from the location of the proposed first mortgage broker business?”

13. Fort McIntosh Mortgage Company answered “No” to Question 7 of the 2001 Application.

14. The 2001 Application was signed by President Eugene D. Miley, Jr. swearing in front of a notary that the contents of the application were true and correct.

15. Mr. Miley did not disclose in response to Question 7 that Miley Financial Services was located at the same location as Fort McIntosh Mortgage.

16. Effective January 1, 2009, Fort McIntosh Mortgage was required to be registered, and licensed, through the Nationwide Mortgage Licensing System (“NMLS”) in order to conduct business in Pennsylvania.

17. Melissa Miley submitted an application for licensure as a first mortgage broker through the NMLS system (the “NMLS Application”).

18. The NMLS Application contained two questions relating to other business

- a. Will the entity engage in any non-mortgage-related business? and
- b. Will the entity occupy or share space with any person(s) engaged in financial services-related activity?

19. Fort McIntosh Mortgage answered no to the questions listed in Paragraph 17.

20. Melissa Miley completed the oath on the NMLS Application attesting that the information contained therein was true and correct.

21. Section 6136(b) of the Mortgage Act (corresponding to Section 309(a)(2) of the MBBCEPA) provides that “[a] licensee cannot conduct a business other than the mortgage loan business licensed by the department under this chapter without at least 30 days’ prior written notification to the department.” 7 Pa. C.S. § 6136(b) (corresponding to 63 P.S. § 456.309(a)(2)).

22. Section 6139(a)(1) of the Mortgage Act allows the Department to suspend, revoke or refuse to renew a mortgage license if the licensee or director, officer, partner, employee or *owner* of a licensee has “[m]ade a material misstatement in an application or any report or submission required by this chapter or any department regulation, statement of policy or order.” 7 P.S. § 6139(a)(1).

23. On March 12, 2008, Melissa Miley submitted a sworn affidavit to the Pennsylvania Securities Commission that she had no knowledge of the business activities of Miley Financial Services.

#### Authority of the Department

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

25. Section 6138(a)(5) of the Mortgage Act allows the Department to “[p]rohibit or permanently remove a person or licensee responsible for a violation of this chapter from working in the present capacity or in any other capacity of the person or licensee related to activities regulated by the department.” 7 Pa. C.S. § 6138(a)(5).

26. Section 6137 of the Mortgage Act allows a licensee to voluntarily surrender its license upon satisfying the Department that all creditors have been paid. 7 P.S. § 6137.

### VIOLATIONS

27. Eugene Miley engaged in dishonest, fraudulent and/or illegal practices by selling securities without a license.

28. Fort McIntosh Mortgage violated the Mortgage Act by failing to disclose an additional business not regulated by the Department on its license application.

29. Eugene Miley made material misstatements on a license application by not disclosing another business operating out of the licensed mortgage location for Fort McIntosh Mortgage.

### RELIEF

30. License Surrender. Upon the Effective Date of this Order, Fort McIntosh Mortgage, Eugene <sup>D. Miley, Jr.</sup> Miley, Jr. and Melissa A. Miley agree to surrender mortgage broker license no. 21865.

31. Eugene D. Miley, Jr. Prohibition. Upon the Effective Date of this Order, Eugene <sup>D. Miley, Jr.</sup> Miley, Jr. as a natural person or as a corporation or as any other form of organization of any kind whatsoever, consents to a lifetime prohibition from working in the mortgage loan business as defined and regulated by the Mortgage Act.

32. Melissa A. Miley Prohibition. Upon the Effective Date of this Order, Melissa A. Miley as a natural person or as a corporation or as any other form of organization of any kind whatsoever, consents to a three (3) year prohibition from working as a Mortgage Broker, Mortgage Lender, Mortgage Loan Correspondent and/or a Mortgage Originator as defined and regulated by the Mortgage Act.

33. Abeysance. Should the Bureau find that Melissa A. Miley has violated this order in whole or in part, the Bureau may choose to prohibit Melissa A. Miley from engaging in the mortgage business as defined by the Mortgage Act for the remainder of her natural life.

#### FURTHER PROVISIONS

34. Consent. Fort McIntosh Mortgage, Eugene D. Miley, Jr. and Melissa A. Miley hereby knowingly, willingly, voluntarily and irrevocably consent to the entry of this Order pursuant to the Bureau's order authority under the Mortgage Act and agree that they understand all of the terms and conditions contained therein. Fort McIntosh Mortgage, Eugene D. Miley, Jr. and Melissa A. Miley, by voluntarily entering into this Order, waive 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, Fort McIntosh Mortgage, Eugene D. Miley, Jr. and Melissa A. Miley.

37. Binding Nature. The Department, Fort McIntosh Mortgage, Eugene D. Miley, Jr. and Melissa A. Miley 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. Fort McIntosh Mortgage, Eugene D. Miley and Melissa A. Miley hereby stipulate and agree 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 Fort McIntosh Mortgage, Eugene D. Miley and Melissa A. Miley in the future regarding all matters not resolved by this Order.

b. Fort McIntosh Mortgage, Eugene D. Miley and Melissa A. Miley acknowledge and agree 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, Fort McIntosh Mortgage, Eugene D. Miley, Jr. and Melissa A. Miley 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  
Compliance Division

Date: April 24, 2009

FOR FORT MCINTOSH MORTGAGE COMPANY

\_\_\_\_\_  
(Officer Signature)  
EUGENE D. MILEY, JR.  
(Print Name)  
PRESIDENT  
(Title)

Date: 4/17/09

\_\_\_\_\_  
(Officer Signature)  
Melissa A. Miley  
(Print Name)  
Secretary  
(Title)

Date: 4/14/09

FOR EUGENE D. MILEY, JR.

\_\_\_\_\_  
(Signature)  
EUGENE D. MILEY, JR.  
(Print Name)

Date: 4/17/09

FOR MELISSA A. MILEY

\_\_\_\_\_  
(Signature)  
Melissa A. Miley  
(Print Name)

Date: 4/14/09