

FILED

2010 APR -7 PM 2: 31

PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING

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

Docket No. 100003(ENF-ORD)

v.

E MORTGAGE RECOVERY, LLC  
and  
DAVID SWIRCZEWSKI, 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 of E Mortgage Recovery, LLC and its officers, employees and directors, including David Swirczewski. Based on the results of its review, the Bureau believes that E Mortgage Recovery, LLC and David Swirczewski are in violation of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 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 (the "Order").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Mortgage Licensing Act.
2. The Bureau is primarily responsible for administering and enforcing the Mortgage Licensing Act for the Department.

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Loan Act (the "SMLA"), 7 P.S. § 6601 *et seq.* On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by the Mortgage Licensing Act.

4. The Mortgage Licensing Act was amended on August 5, 2009 by Act 31 of 2009, H.B. 1654 (P.N. 2448).

#### Unlicensed Activity

5. E Mortgage Recovery, LLC ("E Mortgage Recovery") maintains a website, [www.emortgagerecovery.com](http://www.emortgagerecovery.com) (the "Website").

6. The Website advertises that E Mortgage Recovery is located at 322 Haddon Ave, Suite C, Westmont NJ, 18018, and at 548 North New Street, Bethlehem, PA 18018 and has a Pennsylvania telephone number of 610-317-1501. *See Exhibit A.*

7. The Website advertises that E Mortgage Recovery is in the mortgage loan modification business.

8. E Mortgage Recovery is not licensed to conduct the mortgage loan modification business in the Commonwealth of Pennsylvania.

9. The Mortgage Licensing Act applies to any mortgage loan that is "(i) negotiated, offered or otherwise transacted within this Commonwealth, in whole or in part, whether by the ultimate lender or any other person; (ii) made or executed within this Commonwealth; or (iii) notwithstanding the place of execution, secured by real property located in this Commonwealth." 7 Pa. C.S. § 6135(1) (emphasis added).

10. Section 6102 of the Mortgage Licensing Act defines "mortgage loan business" as "[t]he 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.

11. Section 6102 of the Mortgage Licensing Act defines a "first mortgage loan" as a loan which is "(1) made primarily for personal, family or household use; and (2) secured by any first lien mortgage, deed of trust, or equivalent consensual security interest on a dwelling or on residential real estate." 7 Pa. C.S. § 6102.

12. Section 6102 of the Mortgage Licensing Act defines a "secondary mortgage loan" as "(1) made primarily for personal, family or household use; and (2) secured by any secondary lien mortgage, deed of trust, or equivalent consensual security interest on a dwelling or on residential real estate." 7 Pa. C.S. § 6102.

13. Section 6102 of the Mortgage Licensing Act defines a "mortgage loan" as "[a] first or secondary mortgage loan, or both, as the context may require." 7 Pa. C.S. § 6102.

14. Section 6102 of the Mortgage Licensing Act defines a "mortgage originator" as "(1) [a]n individual [who] takes a mortgage loan application or offers or negotiates terms of a mortgage loan for compensation or gain." 7 Pa. C.S. § 6102.

15. Section 6111(a) of the Mortgage Licensing Act provides 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 mortgage originator as provided under this chapter. A mortgage originator may not engage in the mortgage loan business unless the mortgage originator is employed and supervised by a licensed mortgage broker, mortgage lender or mortgage loan correspondent. . ." 7 Pa. C.S. § 6111(a).

16. E Mortgage Recovery does not meet any of the exceptions to licensure in Sections 6111(b) and 6112 of the Mortgage Licensing Act. *See* 7 Pa. C.S. § 6111(b), 6112.

17. By conducting mortgage loan modifications from a Pennsylvania location and conducting Pennsylvania mortgage loan modifications from an out-of-state location, E Mortgage and David Swirczewski has engaged in the "mortgage loan business" as defined in the Mortgage Licensing Act without a license.

18. On January 8, 2010 the Bureau issued an order, Docket No. 100003 ENF-ORD, against E Mortgage Recovery to cease and desist engaging in the mortgage loan business in Pennsylvania unless and until such time as E Mortgage Recovery was properly licensed.

19. This Order resolves the January 8, 2010 order.

#### Authority of the Department

20. Section 6138(a)(4) of the Mortgage Licensing Act provides the Department with authority to issue orders as may be necessary for the proper conduct of the mortgage loan business and the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4).

21. Section 6140(a) of the Mortgage Licensing Act provides, in relevant part that "[a] person subject to the provisions of this chapter and not licensed by the department who violates any provision of this chapter or who commits any action which would subject a license to suspension, revocation or nonrenewal under section 6139 (relating to suspension, revocation or refusal) may be fined by the department up to \$10,000 for each offense." 7 Pa. C.S. § 6140(a).

#### **VIOLATIONS**

22. E Mortgage Recovery and David Swirczewski have violated the Mortgage Licensing Act by engaging in the mortgage loan business in Pennsylvania without a license.

**RELIEF**

23. Corrective Action. Upon the Effective Date of this Order:
- a. E Mortgage Recovery shall cease and desist engaging in the mortgage loan business and mortgage loan modification business in Pennsylvania unless and until such time as it is licensed to do so.
  - b. David Swirczewski shall cease and desist engaging in the mortgage loan business and mortgage loan modification business in Pennsylvania unless and until such time as David Swirczewski is licensed to do so.
  - c. E Mortgage Recovery and David Swirczewski shall cease advertising, including advertising through the website, [www.emortgagerecovery.com](http://www.emortgagerecovery.com), unless and until such time as properly licensed.

**FURTHER PROVISIONS**

24. Consent. E Mortgage Recovery and David Swirczewski hereby knowingly, willingly, voluntarily and irrevocably consent to the entry of this Order pursuant to the Bureau's order authority under the Mortgage Licensing Act and agree that they understand all of the terms and conditions contained herein. E Mortgage Recovery and David Swirczewski 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.

25. 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).

26. 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, E Mortgage Recovery and David Swirczewski.

27. Binding Nature. The Department, E Mortgage Recovery, all officers, owners, directors, employees, heirs and assigns of E Mortgage Recovery and David Swirczewski intend to be and are legally bound by the terms of this Order.

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

29. Effectiveness. E Mortgage Recovery and David Swirczewski hereby stipulate and agree that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

30. 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 E Mortgage Recovery and David Swirczewski in the future regarding all matters not resolved by this Order.

b. E Mortgage Recovery and David Swirczewski 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.

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

32. Counterparts. This Order may be executed in separate counterparts, facsimile and PDF.

