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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. 100009(ENF-ORD)

v.

FRANSEN & MOLINARO LAW FIRM.

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 reviewed the business practices of Fransen & Molinaro Law Firm ("Fransen & Molinaro") and its officers, employees and directors. Based on the results of its review, the Bureau alleges that Fransen & Molinaro is 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 was amended on August 5, 2009 by Act 31 of 2009, H.B. 1654 (P.N. 2448).

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4. On January 29, 2010, the Bureau issued an order, docket no. 100009 ENF-ORD, against Fransen & Molinaro Law Firm ("Fransen & Molinaro") because it believed that Fransen & Molinaro was operating a website www.modifyloan.net (the "Website") in violation of the Mortgage Licensing Act.

5. The website advertised that Fransen & Molinaro was in the mortgage loan modification business.

6. Pennsylvania was included in the dropdown menu under *Free Consultations*.

7. 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).

8. 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.

9. 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.

10. 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.

11. 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.

12. 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).

13. Section 6112(2) of the Mortgage Licensing Act provides an exception to licensure for attorneys at law "not otherwise engaged in or holding himself for herself out to the public as being engaged in the mortgage loan business who acts as a mortgage broker or a mortgage originator in negotiating or placing a mortgage loan in the normal course of legal practice." 7 Pa. C.S. § 6112(2).

14. Fransen & Molinaro does not meet the exception to licensure in Section 6112(2) of the Mortgage Licensing Act.

15. Fransen & Molinaro does not meet any of the other exceptions to licensure in Sections 6111(b) and 6112 of the Mortgage Licensing Act. See 7 Pa. C.S. § 6111(b), 6112.

16. Fransen & Molinaro is not licensed to engage in the mortgage loan business in Pennsylvania.

17. On February 12, 2010, Fransen & Molinaro timely filed an appeal of the January 29, 2010 order.

18. The Website no longer contains Pennsylvania in its dropdown menu.

19. This Order is being entered in resolution of the January 29, 2010 order, without Fransen & Molinaro admitting to any wrongdoing.

Authority of the Department

18. Section 6138(a)(4) of the Mortgage Licensing Act grants the Department broad authority to issue orders for the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4).

19. 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).

ALLEGED VIOLATIONS

20. The Bureau alleges that Fransen & Molinaro is in violation of Sections 6131(a)(1)(ii) and 6132(b)(2) of the Mortgage Licensing Act by advertising that it was engaged in the mortgage loan business in Pennsylvania when it was not licensed to do so.

RELIEF

21. Corrective Action. Upon the Effective Date of this Order, Fransen & Molinaro shall cease and desist from advertising or originating mortgage loans to Pennsylvania consumers unless and until such time as it is licensed by the Department.

FURTHER PROVISIONS

22. Consent. Fransen & Molinaro hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau’s order authority under the Mortgage Licensing Act and agrees that it understands all of the terms and conditions contained

herein. Fransen & Molinaro 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 Fransen & Molinaro.

25. Binding Nature. The Department, Fransen & Molinaro, and all officers, owners, directors, employees, heirs and assigns of Fransen & Molinaro 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. Fransen & Molinaro hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("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 Fransen & Molinaro in the future regarding all matters not resolved by this Order.
- b. Fransen & Molinaro 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, by facsimile or by PDF.

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 Fransen & Molinaro 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

John Palalal Administrator
Bureau of Compliance, Investigation and Licensing
Department of Banking

Date: 4-8-2010

FOR FRANSEN & MOLINARO LAW FIRM

[Signature]
(Officer Signature)

Jonathan Fransen
(Print Officer Name)

Partner
(Title)

Date: 4-7-2010