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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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~~PA DEPT OF BANKING~~

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

Docket No. :10 0008 (ENF-CO)

v.

GILPIN FINANCIAL SERVICES, INC. :

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Examinations, has conducted an examination of Gilpin Financial Services, Inc. and its officers, employees and directors (collectively "Gilpin Financial"). Based on the results of the examination, the Bureau of Compliance, Investigation and Licensing (the "Bureau") found that Gilpin Financial violated the Mortgage Licensing Act, 7 Pa. C.S. § 6101 et. seq. (the "MLA"). 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 MLA.
2. The Bureau is primarily responsible for administering and enforcing the MLA for the Department.

3. On November 5, 2008, the Act known as the Mortgage Act replaced 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 August 5, 2009, the Mortgage Act was amended by the MLA, which was effective immediately.

4. Gilpin Financial's corporate headquarters is located at 1400 N. Dupont Street, Wilmington, Delaware 19806-4030 ("Wilmington office").

5. Gilpin Financial was initially licensed by the Department as First Mortgage Banker, license no. 1261, pursuant to the MBBCEPA and as a Secondary Mortgage Lender, license no. 1921, pursuant to the SMLA.

6. When licensed by the Department under the MBBCEPA and SMLA, Gilpin Financial was licensed at its corporate headquarters and its principal place of business located 102 East Street Road, Willowdale, Pennsylvania 19348 ("Willowdale office").

7. As a mortgage lender, Gilpin Financial is responsible for the acts of its employees, including those that originate mortgage loans on its behalf.

8. On October 14, 2008, the Department commenced a first mortgage banker and secondary mortgage lender examination of Gilpin Financial at the Willowdale office.

9. The purpose of the examination was to ascertain, in relevant part, whether Gilpin Financial was complying with the terms of a Consent Agreement and Order entered into with the Department on April 14, 2008 ("2008 Order"). *See* 7 Pa. C.S. § 6139(a)(2) (providing that a licensee violates the MLA when it fails to comply with an order of the Department).

10. In the 2008 Order, the Department found that Gilpin Financial violated the MBBCEPA and the SMLA when it originated 68 first mortgage loans and 7 secondary mortgage loans involving property located in Pennsylvania from eight unlicensed locations in Delaware.

11. The 2008 Order required Gilpin Financial to cease and desist from originating first and secondary mortgage loans from unlicensed branch locations.

12. At the time of the examination, the Wilmington and Willowdale offices were the only locations licensed by the Department.

13. On or about December 2008, Gilpin Financial received a conditional mortgage lender license under the new MLA.

14. On or about March 17, 2009, Gilpin Financial's Wilmington office was assigned Mortgage Lender License No. 22674, and the Willowdale office was assigned Mortgage Lender License No. 22674.001.

15. On or about August 17, 2009, Gilpin Financial surrendered its Mortgage Lender license for the Willowdale office License No. 22674.001

16. Currently, Gilpin Financial is licensed by the Department as a Mortgage Lender at the Wilmington office pursuant to the MLA.

Violation of 2008 Order

17. The examination revealed that Gilpin Financial, through its employees, originated two first mortgage loans involving Pennsylvania property from two unlicensed locations in Delaware.

18. The Uniform Residential Loan Applications for the two loans indicated that the employees originated the loans from the following two unlicensed locations: 7234 Lancaster Pike, Hockessin, Delaware and 3705 Kennett Pike, Wilmington, Delaware.

19. By allowing its employees to originate loans from the unlicensed locations, Gilpin Financial violated the 2008 Order which prohibited Gilpin Financial from originating mortgage loans involving Pennsylvania property from unlicensed locations.

Unlicensed Activity

20. Further, Gilpin Financial violated the MLA by originating mortgage loans involving Pennsylvania property from unlicensed locations in Delaware.

21. The MLA provides that persons engaged in the mortgage loan business in Pennsylvania must be licensed by the Department. 7 Pa. C.S. §6111(a) (corresponding to Section 303(a) of the MBBCEPA, 63 P.S. §456.303(a)).

22. Persons engaging in the mortgage loan business in Pennsylvania must do so at an office licensed by the Department, including branch offices.

23. The MLA defines a “branch” as “[a]n office or other place of business, other than the principal place of business, where a person engages in the mortgage loan business subject to this chapter.” 7 Pa. C.S. §6102 (corresponding to Section 302 of the MBBCEPA, 63 P.S. §456.302).

24. To obtain a license, a person must complete an application and the application “shall include . . . [t]he address of the principal place of business of the applicant and the address or addresses where the applicant’s mortgage loan business is to be conducted.” 7 Pa. C.S. §6131(a)(1)(ii) (corresponding to Section 304(a) of the MBBCEPA, 63 P.S. §456.304(a) and Section 4(a)(5) of the SMLA, 7 P.S. §6604(a)(5)).

25. At the time the application is filed, the applicant shall also pay to the Department an initial nonrefundable application fee including fees for the principal places of business and for each branch office if the applicant is a mortgage lender, mortgage broker or mortgage loan

correspondent. See 7 Pa. C.S. §6132(a)(1)-(2) (corresponding to Section 305(a) of the MBBCEPA, 63 P.S. §456.305(a)).

26. Similarly, when a licensee files a renewal application, the licensee shall pay to the Department a nonrefundable license renewal fee for the principal place of business and each branch office if the applicant is a mortgage lender, mortgage broker or mortgage loan correspondent. See 7 Pa. C.S. §6132(b)(1)-(2) (corresponding to Section 305(a) of the MBBCEPA, 63 P.S. §456.305(a)).

27. Upon receipt of a license, a licensed mortgage broker, mortgage lender or mortgage loan correspondent “shall conspicuously display, at each licensed place of business, its license and copies of the licenses of all mortgage originators assigned to that location.” 7 Pa. C.S. §6135(a)(1) (corresponding to Section 308(a)(1) of the MBBCEPA, 63 P.S. §456.308(a)(1) and Section 10(a)(1) of the SMLA, 7 P.S. §6610(a)(1)).

28. Thus, the MLA requires that licensees and, persons employed by licensees, to engage in the mortgage loan business from a licensed location.

29. By originating loans from unlicensed locations, Gilpin Financial violated the MLA.

Advertising

30. Further, the examination revealed that Gilpin Financial’s advertising did not provide that Gilpin Financial was licensed by the Department.

31. Section 6135(a)(5) of the MLA provides, in relevant part, that:

Each licensee shall include in all advertisements language indicating that the licensee is licensed by the department. In the case of a mortgage originator, all advertising shall include the name of the mortgage originator’s employer and the mortgage originator’s unique identifier.

See 7 Pa. C.S. §6135(a)(5)(emphasis added) (corresponding to Section 308(a)(10) of the MBBCEPA, 63 P.S. §456.308(a)(10)).

32. By failing to provide in its advertisements that it is licensed by the Department, Gilpin Financial violated Section 6135(a)(5) of the MLA. 7 Pa. C.S. §6135(a)(5) (corresponding to Section 308(a)(10) of the MBBCEPA, 63 P.S. §456.308(a)(10)).

AUTHORITY OF THE DEPARTMENT

33. Section 6138(a)(4) of the MLA 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 MLA. 7 Pa. C.S. §6138(a)(4) (corresponding to Section 310(a) of the MBBCEPA, 63 P.S. §456.310(a), and Section 16(1) of the SMLA, 7 P.S. §6616(1)).

34. 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) (corresponding to Section 314(c) of the MBBCEPA, 63 P.S. §456.314(c), and Section 22(b) of the SMLA, 7 P.S. §6622(b)).

VIOLATIONS

35. Gilpin Financial violated the 2008 Order and the MLA by originating first mortgage loans involving Pennsylvania property, through its employees, from unlicensed locations in Delaware. 7 Pa. C.S. §6139(a)(2) (corresponding to Section 313(a)(2) of the MBBCEPA, 63 P.S. §456.313(a)(2), and Section 19(a)(2) of the SMLA, 7 P.S. §6619(a)(2)).

36. Gilpin Financial violated Section 6135(a)(5) of the MLA by failing to include language that it is licensed by the Department on advertising material. 7 Pa. C.S. §6135(a)(5) (corresponding to Section 308(a)(10) of the MBBCEPA, 63 P.S. §456.308(a)(10)).

RELIEF

37. Fine. Within 30 days of the Effective Date of this Order, Gilpin Financial agrees to pay a \$4,000 fine. The fine payment shall be remitted by a certified check or money order made payable to the "Pennsylvania Department of Banking" and sent to the attention of the Compliance Division, Bureau of Compliance, Investigation and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

38. Corrective Measures. Upon the Effective Date of this Order, Gilpin Financial shall:

- a. Cease engaging in the mortgage loan business, including originating first and secondary mortgage loans, from unlicensed branch locations; and
- b. Provide that it is licensed by the Pennsylvania Department of Banking in all advertising.

Should the Bureau find that Gilpin Financial has violated the terms of this Order, the Bureau reserves the right to initiate additional enforcement action against Gilpin Financial, including but not limited to, suspension, revocation or nonrenewal of its license and the imposition of fines or other penalties permitted by law.

FURTHER PROVISIONS

39. Consent. Gilpin Financial 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 therein. Gilpin Financial, 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.

40. 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).

41. 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 Gilpin Financial.

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

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

44. Effectiveness. Gilpin Financial hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

45. 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 Gilpin Financial in the future regarding all matters not resolved by this Order.

b. Gilpin Financial 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.

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

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

48. 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 Gilpin Financial 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 Walsh, Administrator
Bureau of Compliance,
Investigation and Licensing
Department of Banking

Date: January 22, 2010

FOR GILPIN FINANCIAL SERVICES, INC.

(Officer Signature)

(Print Officer Name)

(Title)

Date: 1/18/10