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PA DEPT. OF BANKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF BANKING, BUREAU	:	Docket No. 100296 (ENF-CO)
OF COMPLIANCE, INVESTIGATION	:	
AND LICENSING	:	
	:	
	:	
v.	:	
	:	
PAYLESS MORTGAGE CORPORATION	:	
	:	

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Examinations, conducted an examination of Payless Mortgage Corporation ("Payless"), and its officers, employees and directors. Based on the results of the examination, the Bureau of Compliance, Investigation and Licensing ("Bureau") believes that Payless operated in violation of 7 Pa. C. S. § 6101 *et seq.* (the "Mortgage Licensing Act") and the regulation promulgated under the Mortgage Licensing Act known as the Proper Conduct of Lending and Brokering in the Mortgage Loan Business ("Proper Conduct Regulation"), 10 Pa. Code § 46.1 *et seq.* Payless states that, at all times, it operated with the belief that it was in compliance with the Mortgage Licensing Act, and all other relevant statutes and regulations. Payless enters into this agreement and order to resolve this matter without litigation, but without admitting guilt or wrongdoing. 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 ("Order").

Background

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Mortgage Licensing Act and the Proper Conduct Regulation.

2. The Bureau is primarily responsible for administering and enforcing the Mortgage Licensing Act and the Proper Conduct Regulation for the Department.

3. Payless's principal place of business is located at 838 Green Street, Iselin, New Jersey, with office(s) located at 742 Washington Street, Easton, Pennsylvania, and 730 Milford Road, East Stroudsburg, Pennsylvania.

4. Payless is currently licensed under the Mortgage Licensing Act as a mortgage broker, license number 20840, with the Nationwide Mortgage Licensing System ("NMLS") identification number of 67196.

Unlicensed Mortgage Loan Originators

5. The Mortgage Licensing Act provides, in relevant part, that "...on and after the effective date of this section [November 5, 2008], no person shall engage in the mortgage loan business in this Commonwealth without being licensed as a ... 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).

6. Beginning on February 8, 2010 the Bureau conducted an examination that revealed Payless had originated mortgages through two employees unlicensed to perform such services.

7. The Bureau reviewed loan documents pursuant to its examination for the period beginning November 5, 2008 through February 8, 2010.

8. The loan documents show that four mortgage loan applications were originated between November 5, 2008 and February 8, 2010 by the unlicensed loan originators.

9. It is the Department's position that the mortgage loan applications originated by Payless subsequent to November 5, 2008, through the unlicensed individuals were in violation of the Mortgage Licensing Act.

10. Payless is required to directly supervise, control and maintain responsibility for the acts and omissions of the mortgage originators it employs. 7 Pa. C.S. § 6131(f)(1).

11. By failing to ensure that Payless employed only licensed mortgage loan originators, Payless failed to directly supervise, control and maintain responsibility for the acts and omissions of the mortgage originators it employed as required by the Mortgage Licensing Act.

Failure To Provide Completed Pennsylvania Consumer Disclosure

12. The Proper Conduct Regulation requires a licensee to disclose escrow, lock-in and interest rate information to the consumer on a prescribed form which is to be signed and dated, and delivered or placed in the mail within 3 business days after the application is received or prepared by the licensee. 10 Pa. Code § 46.2(b) and (c).

13. The examination revealed that Payless failed routinely to provide consumers with the disclosure on escrow, lock-in and interest rates on the prescribed form. 10 Pa. Code § 46.2(b).

14. By failing to provide disclosure of escrow, lock-in and interest rates on the prescribed form, Payless failed to comply with the Proper Conduct Regulation.

Mortgage Originators Licenses Not Prominently Displayed

15. The Mortgage Licensing Act states that “[a] licensee who is a 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)

16. The examination revealed that Payless was not conspicuously displaying, at the Easton, Pennsylvania location, copies of its mortgage originators’ licenses.

17. By failing to display copies of its mortgage originators’ licenses, Payless violated the Mortgage Licensing Act.

Mortgage Originators Not Disclosing Unique Identifier On Mortgage Applications

18. The Mortgage Licensing Act states that “[i]n the case of a mortgage originator, clearly display the mortgage originator’s unique identifier on all mortgage loan application forms and personal solicitations or advertisements, including business cards. 7 Pa. C.S. § 6121(14).

19. The examination revealed that mortgage originators employed by Payless were not disclosing the mortgage originator’s Nationwide Mortgage Licensing System unique identifier on the mortgage loan application forms as required.

Violations of Federal Law

20. The Mortgage Licensing Act states that a licensee shall do all of the following: “[c]omply with all applicable Federal law, including the Real Estate Settlement Procedures Act (88 Stat. 1724, 12 U.S.C. §§ 2601 et seq.), the Truth in Lending Act (82 Stat. 146, 15 U.S.C. §§ 1601 et seq.) and the Equal Credit Opportunity Act (88 Stat. 1521, 15 U.S. C. §§ 1691 et seq.).” 7 Pa. C.S. § 6121(3).

21. The examination revealed that the Annual Percentage Rate disclosed to consumers by Payless did not include all prepaid finance charges as required by the Truth in Lending Act. 12 CFR § 226.18(e).

22. The examination revealed that Payless failed to maintain a comprehensive written information security plan outlining the policies and procedures utilized to ensure the safeguarding of personal consumer information. 15 U.S.C. § 6801(b); 16 CFR Part 314.

23. It is Payless's position that at all times it was properly originating and processing mortgage loans in accordance with the Mortgage Licensing Act.

Authority of the Department

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

25. Section 6139 of the Mortgage Licensing Act provides that the Department may suspend, revoke or refuse to renew a license issued under the Mortgage Licensing Act if an owner has "failed to comply with or violated any provision of this chapter..." and if "a mortgage broker, mortgage lender or mortgage loan correspondent, conducted *the mortgage loan business through an unlicensed mortgage originator.*" (*emphasis added*) 7 Pa. C.S. § 6139(a)(2) and (a)(14).

26. Section 6140(b) of the Mortgage Licensing Act 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." 7 Pa. C.S. § 6140(b).

Violations

27. Payless is in violation of Section 6139(a)(14) of the Mortgage Licensing Act by accepting mortgage loan applications from an unlicensed loan originator. 7 Pa. C.S. § 6139(a)(14).

28. Payless is in violation of Section 46.2(c) of the Proper Conduct Regulation by not consistently providing the applicant with a fully completed Pennsylvania Consumer Disclosure. 10 Pa. Code § 46.2.

29. Payless is in violation of Section 6135(a)(1) of the Mortgage Licensing Act by failing to conspicuously display copies of licenses of all mortgage originators assigned to the Easton location. 7 Pa. C.S. § 6135(a)(1).

30. Payless is in violation of Section 6121(14) of the Mortgage Licensing Act by failing to have the mortgage originators employed by Payless disclose their NMLSR unique identifier on their respective 1003 mortgage loan applications. 7 Pa. C.S. § 6121(14).

31. Payless is in violation of Section 6121(3) of the Mortgage Licensing Act by failing to comply with all applicable Federal laws, including the Real Estate Settlement Procedures Act (88 Stat. 1724, 12 U.S.C. §§ 2601 et seq.), the Truth in Lending Act (82 Stat. 146, 15 U.S.C. §§ 1601 et seq.) and the Equal Credit Opportunity Act (88 Stat. 1521, 15 U.S.C. §§ 1691 et seq.) as outlined in paragraph 24.

32. Payless denies that it committed any violations or committed any wrongdoing.

Relief

33. Fine. Payless agrees to pay a fine of one thousand five hundred dollars (\$1,500) which shall be due and payable to the Department within thirty (30) days of the effective date of this Order as defined in paragraph 38 below. The fine payment shall be remitted by a company

check, certified check or money order made payable to the Pennsylvania Department of Banking and sent to the attention of: Pennsylvania Department of Banking, Bureau of Compliance, Investigation and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

34. Corrective Measures. Upon the effective date of the Order, Payless shall immediately cease and desist from:

- a. conducting the mortgage loan business through mortgage originators who are not licensed under the Mortgage Licensing Act;
- b. failing to supervise and control its mortgage originators;
- c. failing to provide the required disclosures on the proper form under Section 46.2(b) of the Proper Conduct Regulation;
- d. failing to conspicuously display copies of licenses of all mortgage originators assigned to each location of Payless licensed to conduct Pennsylvania mortgage business;
- e. failing to have the mortgage originators employed by Payless disclose their NMLSR unique identifier on their respective 1003 mortgage loan applications;
- f. failing to comply with all applicable Federal law, including the including the Real Estate Settlement Procedures Act (88 Stat. 1724, 12 U.S.C. §§ 2601 et seq.), the Truth in Lending Act (82 Stat. 146, 15 U.S.C. §§ 1601 et seq.) and the Equal Credit Opportunity Act (88 Stat. 1521, 15 U.S. C. §§ 1691 et seq.) as outlined in paragraph 24.

Further Provisions

35. Consent. Payless 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. Payless, 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.

36. 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).

37. 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 Payless.

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

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

40. Effectiveness. Payless hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order.

41. 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 Payless in the future regarding all matters not resolved by this Order.

b. Payless 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.

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

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

44. 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 Payless 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
Bureau of Compliance, Investigation and Licensing
Department of Banking

Date: December 17, 2010

FOR PAYLESS MORTGAGE CORP.

(Officer)

(Print Officer Name)

(Title)

Date: 12/17/2010