

FILED

2011 FEB 25 PM 1:03

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

PAID BY BANK

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

v.

Docket No. 11 0039 (ENF-CO)

AFC FIRST FINANCIAL CORPORATION
d/b/a AFC FIRST CONSUMER
DISCOUNT COMPANY

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, through the Department of Banking's (the "Department") Bureau of Compliance, Investigation and Licensing (the "Bureau"), based on information obtained through its investigation, believes that AFC First Financial Corporation d/b/a AFC First Consumer Discount Company, ("AFC"), operated in violation of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 *et seq.* It is AFC's position 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. AFC enters into this agreement and order to resolve this matter without litigation, but without admitting guilt or wrongdoing. Accordingly, the parties, 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. AFC is licensed as a Mortgage Discount Company under the Mortgage Licensing Act with license number 21837 and a National Mortgage Licensing System (NMLS) identification number of 138968.

4. AFC maintains its principal place of business at 1005 Brookside Road, P.O. Box 3558 Allentown, Pennsylvania 18106.

5. AFC cooperated fully with the investigation and provided all the necessary information requested in a timely fashion to the Department.

Unlicensed Mortgage Originators

6. 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).

7. Beginning on January 13, 2011 the Bureau conducted an investigation leading it to conclude that AFC had originated home improvement mortgage loans through employees unlicensed to perform such services.

8. The Bureau believes that AFC originated 784 home improvement mortgage loans through unlicensed loan originators for the period beginning November 5, 2008 through December 7, 2009 based on a loan log obtained from AFC pursuant to the Bureau's investigation.

9. It is the conclusion of the Bureau that the home improvement mortgage loan applications originated by AFC subsequent to November 5, 2008 through unlicensed individuals are in violation of the Mortgage Licensing Act.

10. AFC 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. It is the conclusion of the Bureau that AFC failed to employ only licensed mortgage loan originators, and failed to directly supervise, control and maintain responsibility for the acts and omission of the mortgage originators it employed as required by the Mortgage Licensing Act.

12. AFC stated that at all times it believed it was properly originating and processing mortgage loans.

13. AFC has informed the Department that it has instituted internal control measures which will ensure that all mortgage originators are properly licensed and will also prohibit unlicensed individuals from engaging in the mortgage business in Pennsylvania.

14. AFC as of January 31, 2011 is in full compliance with section 7 Pa. C.S. § 6111(a) of the Mortgage Licensing Act.

Authority of the Department

15. Section 6138(a)(4) of the Mortgage Licensing Act grants the Department broad authority to issue orders for the proper conduct of the mortgage licensing business and the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4).

16. 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." 7 Pa. C.S. § 6139(a)(2) and (a)(14).

17. 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).

ALLEGED VIOLATIONS

18. The Bureau believes AFC violated the Mortgage Licensing Act when it continued to conduct the mortgage loan business through unlicensed mortgage originators after November 5, 2008, and when it failed to properly control and supervise its employees in accordance with the requirements of the Mortgage Licensing Act. 7 Pa. C.S. § 6111(a); 7 Pa. C.S. § 6131(f)(1).

19. AFC denies any wrongdoing.

RELIEF

20. Fine. AFC, to avoid litigation and without admitting wrongdoing, agrees to pay a fine of \$39,200.00 which shall be due and payable to the Department in twelve installments. The first installment of \$6,200.00 shall be due and payable on or before March 1, 2011. Installments two thru twelve for \$3,000.00 each shall be due and payable on or before the 1st of each month starting in April 2011 and ending February 2012. 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 Licensing Division, Bureau of Compliance, Investigation and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

21. Corrective Measures. Upon the effective date of this Order, AFC shall cease and desist from conducting the mortgage loan business through unlicensed mortgage originators and from failing to properly control and supervise its employees in accordance with the requirements of the Mortgage Licensing Act.

FURTHER PROVISIONS

22. Consent. AFC hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order issued 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. AFC, 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 AFC.

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

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

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

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 AFC, in the future regarding all matters not resolved by this Order.

b. AFC acknowledges and agrees that this Order is only binding upon the Department and not 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 and by facsimile or electronic mail in portable document format "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 AFC 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**

Robert E. Knaub, Enforcement Administrator
Bureau of Compliance, Investigation and Licensing
Department of Banking

Date: 2/25/11

**FOR AFC FIRST FINANCIAL CORPORATION d/b/a AFC FIRST CONSUMER
DISCOUNT COMPANY**

(Officer Signature)

(Print Officer Name)

President & COO

(Title)

Date: February 25, 2011