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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. : 100173(ENF-ORD)

v.

EXECUTIVE MORTGAGE RELIEF,
E MORTGAGE RECOVERY, LLC,
PINNACLE DEBT NEGOTIATION, LLC,
JON FRITZ, ALINA JOHNSON and
DAVID SWIRCZEWSKI, individually.

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Compliance, Investigation and Licensing ("Bureau") has reviewed the business practices of Executive Mortgage Relief, E Mortgage Recovery, LLC Pinnacle Debt Negotiation, LLC and David Swirczewski. Based on the results of its review, the Bureau believes that Executive Mortgage Relief, E Mortgage Recovery, LLC Pinnacle Debt Negotiation, LLC and David Swirczewski operated 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 and conditions 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.

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

3. On August 5, 2009, 7 Pa. C.S. § 6101 et seq. was amended by Act 31 of 2009, H.B. 1654 (P.N. 2448).

4. Executive Mortgage Relief is a registered Delaware limited liability company engaged in the mortgage modification business with a purported address of 108 West 13th Street, Wilmington, DE ("the Delaware Location").

5. E Mortgage Recovery, LLC ("E Mortgage Recovery") is a Pennsylvania limited liability company.

6. Pinnacle Debt Negotiation, LLC ("Pinnacle Debt Negotiation") is a Pennsylvania limited liability company.

7. David Swirczewski is the 100% owner of Executive Mortgage Relief, E Mortgage Recovery and Pinnacle Debt Negotiation.

Previous Order

8. On January 8, 2010, the Bureau issued an order against E Mortgage Recovery for engaging in the mortgage loan modification business in Pennsylvania without a license.

9. On April 7, 2010, the Bureau entered into a consent agreement and order with E Mortgage Recovery and David Swirczewski, individually, in resolution of the January 8, 2010 Order (the "Previous Order").

10. The Previous Order provided that upon the effective date of that order (which was April 7, 2010):

- a. E Mortgage Recovery would cease and desist engaging in the mortgage loan business and mortgage loan modification business in Pennsylvania,

including all advertising and website advertising, unless and until such time as it was licensed to do so; and

- b. David Swirczewski, individually, would cease and desist from engaging in the mortgage loan business and mortgage loan modification business in Pennsylvania, including advertising and website advertising, unless and until such time as he was licensed to do so.

- 11. David Swirczewski executed the Previous Order on behalf of E Mortgage Recovery.

Pinnacle Debt Negotiation

- 12. On April 28, 2010, Swirczewski submitted an application for licensure as a mortgage broker for Pinnacle Debt Negotiation pursuant to the Mortgage Licensing Act.

- 13. On the application for Pinnacle Debt Negotiation, Swirczewski listed Executive Mortgage Relief and E Mortgage Recovery as additional businesses he owned and operated.

- 14. Based on information provided by Pinnacle Debt Negotiation, it was the Licensing Division's understanding that Executive Mortgage Relief was to market loan resolution services in all states except PA, SC, FL, MN and all other states that do not allow upfront fees or mandate representation by an attorney.

- 15. Based on information provided by Pinnacle Debt Negotiation, it was the Licensing Division's understanding that E Mortgage Recovery would only engage in back-office processing for other mortgage loan modification companies.

- 16. During the application process for Pinnacle Debt Negotiation, the Licensing Division received correspondence sent on Executive Mortgage Relief letterhead that listed 548 North New Street, Bethlehem, PA 18018 as the address for Executive Mortgage Relief.

17. Pursuant to Section 6133(a.1) of the Mortgage Licensing Act, the Licensing Division conducted an investigation into the application of Pinnacle Debt Negotiation (the "Investigation").

18. On July 29, 2010, investigators from the Licensing Division met with Swirozewski and several of his employees at 548 North New Street, Bethlehem, PA (the "Bethlehem Location").

Unlicensed Activity

a. Executive Mortgage Relief

19. The Investigation revealed that Executive Mortgage Relief was operating all of its mortgage loan modification business from the Bethlehem Location and that no one worked from the Delaware Location.

20. The Investigation revealed that Swirozewski or his employees would contact consumers from the Bethlehem Location using purchased foreclosure lists, mass mailings, telephone solicitations and word of mouth to see if a consumer was interested in a mortgage loan modification.

21. If a consumer was interested in a loan modification, an Executive Mortgage Relief agreement would be sent to the consumer to review and execute.

22. Executive Mortgage Relief contracted with consumers from the Bethlehem Location after the effective date of the Previous Order.

23. Executive Mortgage Relief charged consumers advance fees for the mortgage loan modifications.

24. Section 6131(e)(1) of the Mortgage Licensing Act requires that a mortgage broker must maintain a penal bond in order for the mortgage broker to charge advance fees. See 7 Pa. C.S. § 6131(e)(1).

25. Executive Mortgage Relief does not have a bond to collect advance fees.

26. 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).

27. Executive Mortgage Relief 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.

28. Executive Mortgage Relief, and David Swirozewski are not licensed to engage in the mortgage loan business in Pennsylvania.

b. E Mortgage Recovery

29. The Investigation revealed that E Mortgage Recovery is engaged in the mortgage loan business as defined by the Mortgage Licensing Act.

30. E Mortgage Recovery had at least two employees who would negotiate the terms of mortgage loan modifications with consumers and their third party lenders.

31. E Mortgage Recovery is not engaged in back office processing, but rather is engaging in the mortgage loan business by negotiating terms of existing mortgage loans that are held by third party lenders and interacting directly with consumers in violation of Section 6111(a) of the Mortgage Licensing Act.

32. E Mortgage Recovery and David Swirczewski do 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.

33. E Mortgage Recovery and David Swirczewski were engaged in the activities of a mortgage broker and mortgage originator when they were not licensed to do so.

Authority of the Department

34. 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).

35. Section 6138(a)(5) of the Mortgage Licensing Act provides the Department with the authority to "[p]rohibit or permanently remove a person or licensee responsible for a violation of this chapter from working in the present capacity or in any other capacity of the person or licensee related to activities regulated by the department." 7 Pa. C.S. § 6138(a)(5).

36. Section 6138(a)(6) of the Mortgage Licensing Act provides the Department with the authority to order a person or licensee to make restitution for actual damages to consumers caused by any violation of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(6).

37. 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).

38. 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. § 6151(1).

Order to Cease and Desist

39. On August 5, 2010 the Bureau issued an order against Executive Mortgage Relief, E Mortgage Recovery, LLC, Pinnacle Debt Negotiation, LLC, Jon Fritz, Alina Johnson and David Swirozewski.

40. This Order is being entered in resolution of the August 5, 2010 order as it pertains to Executive Mortgage Relief, E Mortgage Recovery, LLC, Pinnacle Debt Negotiation, LLC and David Swirozewski.

41. The application for Pinnacle Debt Negotiation was withdrawn on November 1, 2010.

VIOLATIONS

42. By conducting the mortgage loan modification business through Executive Mortgage Relief, from a Pennsylvania location, David Swirozewski and Executive Mortgage Relief have violated the Mortgage Licensing Act.

43. David Swirczewski violated the Previous Order by engaging in unlicensed activity through Executive Mortgage Relief from a Pennsylvania location.

44. E Mortgage Recovery and David Swirczewski violated the Previous Order by brokering mortgage loan modifications without a license.

45. By conducting the mortgage loan modification business through E Mortgage Recovery without a license, David Swirczewski and E Mortgage Recovery have violated the Mortgage Licensing Act.

RELIEF

46. Fine. David Swirczewski shall pay to the Department a fine in the amount of twenty thousand dollars (\$20,000) in six monthly installments. The first payment shall be \$3,500 which shall be due and payable within 30 days of the Effective Date of this Order. The remaining five payments shall be \$3,300 each and shall be due and payable each 30 days thereafter until the fine is paid. The fine shall be remitted by 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.

47. Prohibition. Upon the Effective Date of this Order, David Swirczewski, as a person or as a corporation or as any other form of organization of any kind whatsoever, shall be permanently prohibited from working in the present capacity or in any other capacity, including but not limited to, licensee, employee, independent contractor, agent or representative in any activities regulated by the Mortgage Licensing Act or any statute that may supplement or replace the Mortgage Licensing Act in the future.

48. Restitution. David Swirczewski shall make refunds to _____ in the amount of \$750 and _____ in the amount of \$2,750 ("Consumer Restitution") in two monthly installments the first of which is due 30 days from the Effective Date of this Order and the second payment within 60 days from the effective date of this Order. Within thirty (30) days of the Effective Date of the Order and every five (5) thereafter, until the Consumer Restitution has been made or until the expiration of sixty (60) days, whichever is later, David Swirczewski shall provide the Bureau with a status report relating to the Consumer Restitution which shall include: (i) the manner in which the restitution has been or will be made; (ii) the date on which

the restitution was sent to the consumer; (iii) evidence that the restitution was paid to the consumer, *i.e.* copy of a cleared check; and (iv) a list of any restitution that was returned or was not able to be delivered ("Status Report") that is forwarded to the attention of Robert Knaub, Administrator, via email to:

If after sixty (60) days from the Effective Date of the Order David Swirczewski is unable to locate or deliver the Consumer Restitution after having made diligent and reasonable efforts to do so, David Swirczewski shall hold and dispose of the funds in accordance with Pennsylvania's Disposition of Abandoned and Unclaimed Property Law, 72 P.S. § 1301.1 *et seq.*

FURTHER PROVISIONS

49. Consent. Executive Mortgage Relief, E Mortgage Recovery, LLC Pinnacle Debt Negotiation, LLC 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. Executive Mortgage Relief, E Mortgage Recovery, LLC Pinnacle Debt Negotiation, LLC 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.

50. 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).

51. 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, Executive Mortgage Relief, E Mortgage Recovery, LLC Pinnacle Debt Negotiation, LLC and David Swirczewski.

52. Binding Nature. The Department, Executive Mortgage Relief, E Mortgage Recovery, LLC Pinnacle Debt Negotiation, LLC and David Swirczewski intend to be and are legally bound by the terms of this Order.

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

54. Effectiveness. Executive Mortgage Relief, E Mortgage Recovery, LLC Pinnacle Debt Negotiation, LLC and David Swirczewski hereby stipulate and agree that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

55. 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 Executive Mortgage Relief, E Mortgage Recovery, LLC Pinnacle Debt Negotiation, LLC and David Swirczewski in the future regarding all matters not resolved by this Order.

b. Executive Mortgage Relief, E Mortgage Recovery, LLC Pinnacle Debt Negotiation, LLC 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.

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

57. Counterparts. This Order may be executed in separate counterparts, by facsimile or by PDF.

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E MORTGAGE RECOVERY

DAVID SWIRCZEWSKI

(Officer Signature)

(Signature)

(Print Officer Name)

Date: 3/17/2011

President
(Title)

Date: 3/17/2011

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