

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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

Petitioner,

v.

HAWTHORNE CAPITAL CORP. and
SILVANO TROPEANO,

Respondents.

Docket No.: 100178 (ENF-OSC)
DEPT OF BANKING

NOTICE OF RIGHT TO APPEAL

You, Hawthorne Capital Corp. and Silvano Tropeano are hereby notified that you have the right to appeal the attached Final Order (the "Order") issued by the Commonwealth of Pennsylvania Department of Banking.

If you wish to appeal the attached Order, you must file a petition for review with the Prothonotary of the Pennsylvania Commonwealth Court within 30 days of the date of mailing of the attached Order, in accordance with and pursuant to Title 65 P.S. § 66.4(a). If you file a petition for review with the Prothonotary of the Pennsylvania Commonwealth Court, the petition for review must comply with Pennsylvania Rules of Appellate Procedure 1511 *et seq.*

Please be advised that failure to file a petition for review with the Prothonotary of the Pennsylvania Commonwealth Court pursuant to the Pennsylvania Rules of Appellate Procedure will result in the attached Order becoming final and unappealable.

In addition, please be advised that this Notice of Right to Appeal is not intended to and does not constitute legal advice. You should consult an attorney regarding your legal rights including your right to appeal the attached Order or your right to file an application for rehearing or reconsideration.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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

Petitioner,

v.

HAWTHORNE CAPITAL CORP. and
SILVANO TROPEANO,

Respondents.

PA DEPT OF BANKING
Docket No.: 100178 (ENF-OSC)

FINAL ORDER

AND NOW, this 14th day of June, 2011, based upon the pleadings filed in this case, all matters of record, the Proposed Report and Final Order attached hereto prepared by Hearing Officer Linda Barrett, Esquire, the failure of Hawthorne Capital Corp. ("Hawthorne Capital") and Silvano Tropeano to file exceptions to or otherwise oppose the Hearing Officer's Proposed Report and Final Order and the findings and conclusions contained therein, the Hearing Officer's Proposed Report is **ADOPTED** in its entirety, and it is hereby

ORDERED and **DECREED** that

1. Hawthorne Capital is **ORDERED** to pay the Commonwealth of Pennsylvania Department of Banking's (the "Department") examination costs in the amount of **Four Thousand, Five Hundred, and Thirty-Seven Dollars and Eighty-Two Cents (\$4,537.82)**, and fines of **Forty-Four Thousand Dollars (\$44,000.00)**.

2. Within thirty days of the effective date of this order, the Mortgage Lender License, License No. 26572, and Branch Licenses held by Hawthorne Capital are **REVOKED**.

3. **EFFECTIVE IMMEDIATELY**, Hawthorne Capital shall provide the Bureau of Compliance, Investigation and Licensing with a report for the following categories of loans:

- (a) Loans that have closed, but have not yet been funded;
- (b) Loans that have been approved but not yet closed;
- (c) Applications that have been received but have not undergone a decision;
and,
- (d) Applications that are in the initial stages of review and document gathering.

The report shall include: 1) the name, address, and telephone number of the applicant; 2) the status of the loan; and 3) the purpose of the loan. The report shall be submitted to Ryan M. Walsh, Compliance Administrator via email at rywalsh@state.pa.us, and shall be updated weekly until the license is revoked.

4. Hawthorne Capital is **PROHIBITED** from advertising or accepting any new mortgage loan business after the effective date of this **ORDER** and shall have an orderly wind-down of its business.

5. Silvano Tropeano, individually, shall be fined in the amount of **Fourteen Thousand Dollars (\$14,000.00)**, and be **prohibited** as a natural person or as part of a business organization from carrying on any activity regulated by the Department of Banking in any capacity whatsoever.

By:

Redacted

VICTORIA A. REIDER
EXECUTIVE DEPUTY SECRETARY

Date of Mailing: 6/16/11

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, :

Petitioner :

v. :

Docket No. 100178 (ENF-OSC)

Hawthorne Capital Corp. and :
Silvano Tropeano, individually :
Respondents. :

PROPOSED REPORT

Hearing Officer: Linda C. Barrett, Esquire

I. PROCEDURAL HISTORY

On April 7, 2010, the Department of Banking's Bureau of Compliance, Investigation and Finance ("Bureau") commenced an investigation of Hawthorne Capital Corporation ("Hawthorne"). On August 13, 2010, the Bureau issued an Order to Show Cause ("Order") against Hawthorne and its sole owner, Silvano Tropeano ("Tropeano"), notifying them that the Pennsylvania Department of Banking ("Department") was seeking fines and penalties associated with an April 7, 2010 examination, the failure to comply with a previous Consent Agreement and Order issued on January 20, 2010, and other activities in violation of the Mortgage Licensing Act, 7 Pa.C.S. § 102, *et seq.* ("MLA").

The Order advised Hawthorne and Tropeano of their right, upon the filing of an answer, to request an administrative hearing within 30 days of the filing to show cause why action against them should not be taken. The "Notice of Right To Appeal and Hearing" attached to the Department's Order notified respondents as follows:

To file an appeal and request a hearing on the Order, you must file an answer with the Secretary of Banking within 30 days of the date of service... The answer must be in writing, specifically admit or deny the allegations in the Order, set forth the facts you rely upon and state concisely the matters of law you rely upon.

* * *

The answer must be received by the Docket Clerk within the aforementioned 30 day deadline. If the Docket Clerk does not receive your answer on time, you will waive your right to an appeal and a hearing and the Order will be deemed final.

(Order, p. 1) (emphasis added).

The Order further notified the Respondents that if they failed to file a timely answer, the Order would be deemed final and the factual allegations contained therein may be deemed admitted.

On December 29, 2010, the Department filed an Amended Motion for Default Judgment¹ against Hawthorne and Tropeano, alleging, in part, that the Order was served upon the respondents by certified mail and first-class mail, and that no answer had been filed.

This matter is now ready for appropriate disposition.

¹ A Motion for Default Judgment was originally filed by the Bureau on October 25, 2010. Due to a lack of verification regarding the facts that supported the pre-requisite of notice and service, the Motion for Default was denied on December 20, 2010, without prejudice to renew the motion with the appropriate verifications.

II. PROPOSED FINDINGS OF FACT

1. The Bureau is primarily responsible for administering and enforcing the MLA and the Proper Conduct of Lending and Brokering in the Mortgage Loan Business regulation (“Proper Conduct Regulation”), 10 Pa. Code § 46.1 *et seq.* (Order, ¶ 2)
2. At all times relevant to this proceeding, Hawthorne was licensed under the Mortgage Licensing Act as a Mortgage Lender, license no. 26572, with a Nationwide Mortgage Licensing System and Registry identification number 6107. (Order, ¶ 3)
3. At all relevant and material times, Hawthorne maintained its principal place of business at Hawthorne Capital Corp., 198 Route 9 North, Suite 100, Manalapan, NJ 07786, and had two licensed locations at 2337 Philmont Ave., Huntingdon Valley, PA 19006 (“Huntingdon Valley office”) and 12 Veterans Square, Media, PA 19063 (“Media office”). (Order, ¶ 4)
4. At all relevant and material times, Silvano Tropeano was the owner of Hawthorne Capital. (Order, ¶ 5)
5. On October 2, 2009, the Bureau issued a Suspension Order, Docket No. 090204(ENF-ORD) against Hawthorne for failure to fund loans for two Pennsylvania consumers who had closed on refinance transactions with Hawthorne. (Order, ¶ 6)
6. On January 20, 2010, the Bureau entered into a Consent Agreement and Order with Hawthorne to resolve the Suspension Order. (Order, ¶ 7, Exhibit A)
7. The terms of the January 20, 2010 Consent Agreement and Order provided that:
 - a) Hawthorne would serve a suspension, starting on January 19, 2010, and ending January 22, 2010, during which time Hawthorne could not engage in any new

- mortgage loan business, including advertising or accepting new applications. (Order, ¶ 8a, Exhibit A)
- b) On the effective date of the order, January 20, 2010, Hawthorne was to provide a listing of mortgage loan applications Hawthorne had in its pipeline (“Pipeline Report”). (Order, ¶ 8b, Exhibit A)
8. Tropeano executed the January 20, 2010 Consent Agreement and Order on behalf of Hawthorne, and was aware of its terms and conditions, including the suspension period. (Order, ¶¶ 9, 54)
9. On or around April 7, 2010, the Department began an examination Hawthorne at the Huntingdon Valley office. (Order, ¶ 10)
10. The examiner reviewed, among other things, 29 Pennsylvania consumer mortgage loan files that were created by Hawthorne after March 20, 2009. (Order, ¶ 11)
11. The examination revealed that:
- a) Hawthorne did not issue a one-page disclosure form for any of the 29 files reviewed, nor did Hawthorne know that issuing such a disclosure form was required. (Order, ¶¶ 12-13, 42)²
- b) Hawthorne closed one loan from an unlicensed office located at 200 Monument Road, Suite 5, Bala Cynwyd, PA 19004. (Order, ¶ 14)
- c) Hawthorne did not create or provide the Pipeline Report as was required by the January 20, 2010 Consent Agreement and Order. (Order, ¶¶ 15, 48)
- d) During the period in which Hawthorne’s license was suspended, Hawthorne pulled credit reports in order to initiate the application process for six Pennsylvania

² 10 Pa. Code § 46.2(b) and (c).

consumers who were not customers of Hawthorne prior to the suspension period.

(Order, ¶¶ 16-17)

12. The cost of the Department's examination was \$4,537.82. (Order, ¶ 18, Exhibit B.)
13. Neither Hawthorne nor Tropeano has paid the cost of the examination. (Order ¶ 37)
14. In or around July 2010, counsel for the Bureau spoke by telephone with Eric Salante, a licensed New Jersey Attorney, who had represented Hawthorne Capital in a previous matter with the Bureau, regarding the April 2010 examination. (Amended Motion for Default Judgment, ¶ 3)
15. During the July 2010 telephone call, Attorney Salant informed counsel for the Bureau that he would represent Hawthorne and Tropeano in connection with the April 2010 examination and violations of the Mortgage Licensing Act. (Amended Motion for Default Judgment, ¶ 4)
16. Between July 2010 and August 2010, counsel for the Bureau engaged in settlement discussions with Attorney Salant regarding the violations of the Mortgage Licensing Act. (Amended Motion for Default Judgment, ¶ 5, Attachment A)
17. The Bureau commenced the present action on August 13, 2010, by issuing an Order to Show Cause against Hawthorne, as a corporation, and against Tropeano, identified as Docket No. 10017 (ENF-OSC) for violations of the Mortgage Licensing Act. (Amended Motion for Default Judgment, ¶ 6, Attachment B)
18. The Bureau served the Order to Show Cause via certified and first class mail to:
 - a) Eric Salant, Esquire, Counsel for Hawthorne Capital Corp., 998 Holmdel Road, Holmdel, New Jersey 07733. (Amended Motion for Default Judgment, ¶ 7, Attachment B)

- b) Hawthorne Capital Corp., 198 Route 9 North, Suite 100, Manalapan, NJ 07786.
(Amended Motion for Default Judgment, ¶ 7, Attachment B)
- c) Hawthorne Capital Corp., 2337 Philmont Ave., Huntingdon Valley, PA 19006.
(Amended Motion for Default Judgment, ¶ 7, Attachment B)
- d) Hawthorne Capital Corp., 12 Veterans Square, Media, PA 19063. (Amended Motion for Default Judgment, ¶ 7, Attachment B)
- e) Silvano Tropeano, 322 77th Street, Unit B, Brooklyn, New York 11209. (Amended Motion for Default Judgment, ¶ 7, Attachment B)
19. The "Notice of Right To Appeal and Hearing" attached to the Department's Order notified Respondents of their right to appeal the Order within 30 days of being served pursuant to 1 Pa. Code §35.37, and further notified Respondents as follows:

To file an appeal and request a hearing on the Order, you must file an answer with the Secretary of Banking within 30 days of the date of service...The answer must be in writing, specifically admit or deny the allegations in the Order, set forth the facts you rely upon and state concisely the matters of law you rely upon.

* * *

The answer must be received by the Docket Clerk within the aforementioned 30 day deadline. If the Docket Clerk does not receive your answer on time, you will waive your right to an appeal and a hearing and the Order will be deemed final.

(Order, p. 1) (emphasis added).

20. The Order directed the Respondents to file an Answer within 30 days from the date of mailing of the Order, and informed the Respondents that if they fail to file an Answer within 30 days, the factual allegations contained in the Order may be deemed admitted.

(Order, p. 1)

21. On August 17, 2010, the Law Office of Eric Salant received and signed for the Order, delivered via United States Postal Service certified mail. (Amended Motion for Default Judgment, ¶ 8, Attachment C)
22. After delivery of the Order, Attorney Salant continued to communicate with the Bureau via email regarding potential settlement of the matter. (Amended Motion for Default Judgment, ¶ 9, Attachment D)
23. Attorney Salant has not entered an appearance in the above-captioned matter. (Amended Motion for Default Judgment, ¶ 10)
24. The certified mail sent to Hawthorne's corporate headquarters at 198 Route 9 North, Suite 100, Manalapan, NJ, was forwarded to Brooklyn, NY, and delivered by the United States Postal Service on August 31, 2010. (Amended Motion for Default Judgment, ¶ 12, Attachment E)
25. The certified mail sent to 2337 Philmont Ave., Huntingdon Valley, PA was delivered by the United States Postal Service on August 17, 2010. (Amended Motion for Default Judgment, ¶ 13, Attachment F)
26. Both the first-class and certified mail sent to 12 Veterans Square, Media, PA were returned to the Department as undeliverable. (Amended Motion for Default Judgment, ¶ 14, Attachment G)
27. On or around August 13, 2010, a representative of the Department spoke with the former branch manager of the 12 Veterans Square, Media, PA office, who stated to the Department representative that he was no longer accepting applications on behalf of Hawthorne Capital. (Amended Motion for Default Judgment, ¶ 15)

28. The certified mail addressed to Silvano Tropeano, 322 77th Street, Unit B, Brooklyn, New York was returned to the Department by the United States Postal Service as undeliverable, and the first-class mail sent to the same address was not returned to the Department. (Amended Motion for Default Judgment, ¶¶ 16-17, Attachment H)
29. To date, neither Hawthorne nor Mr. Tropeano has filed an answer to the Order or requested an extension. (Amended Motion for Default Judgment, ¶ 22)
30. Attorney Salant has represented to counsel for the Bureau that all offices of Hawthorne are closed and Mr. Tropeano is currently unavailable. (Amended Motion for Default Judgment, ¶ 19)
31. On October 25, 2010, the Department filed a Motion for Default Judgment against Hawthorne and Mr. Tropeano, alleging, in part, that the Order was served upon respondents by certified mail and first-class mail and that no answer has been filed. (Motion for Default Judgment)
32. The Motion for Default Judgment did not contain verification of several key alleged facts, nor did it contain any attachments or documents reflecting the representation that proper service of the Motion and Order was made. (Motion for Default Judgment)
33. By Order dated December 20, 2010, the Motion for Default Judgment was denied without prejudice to renew the motion upon the filing of the appropriate verification that proper notice was given to respondents. (Department Records, Order dated December 20, 2010)
34. On December 29, 2010, the Department filed an Amended Motion for Default Judgment against Hawthorne and Mr. Tropeano, including documentation of certified mail receipts

and returned mail and copies of relevant email correspondence with Attorney Salant.

(Amended Motion for Default Judgment, Attachments A-H)

35. Hawthorne and Tropeano did not file answers to the Motion for Default Judgment or the Amended Motion for Default Judgment. (Department Records)

III. CONCLUSIONS OF LAW

1. The Department is the state administrative agency authorized and empowered to administer and enforce the MLA, 7 Pa.C.S. §6101 *et seq.*, and the Proper Conduct Regulation, 10 Pa. Code §46.1 *et seq.*
2. The Department has jurisdiction in this matter. 7 Pa.C.S. §6110. (Findings of Fact Nos. 1-34)
3. Respondents Hawthorne and Tropeano were notified of the charges against them and were afforded an opportunity to be heard. (Findings of Fact Nos. 17-28)
4. The General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1-35.251, provide that a person upon whom an Order to Show Cause has been served under 1 Pa. Code § 35.14 shall file an answer within the specified time period, and that a respondent who fails to do so shall be deemed in default, and the relevant facts stated in the Order to Show Cause may be deemed admitted. 1 Pa. Code § 35.37:
5. Since Respondents failed to answer both the Order to Show Cause and the Motion for Default Judgment, default judgment may be entered against them and the facts in the Order to Show Cause may be deemed admitted. 1 Pa. Code § 35.37. (Findings of Fact No. 29)
6. Section 6135(a)(4) and 6138(a)(1) of the MLA gives the Department authorization to conduct examinations of any licensees and their records should the Department deem an

- examination to be necessary or desirable, and provides that the cost of any such examinations shall be borne by the licensee. 7 Pa.C.S. §§ 6135(a)(4) and 6138(a)(1).
7. Under the MLA, every location where a licensee conducts business pursuant to the MLA must be licensed. 7 Pa.C.S. §§ 6131(a)(1)(ii) and 6132(a-b).
 8. All mortgage licensees must disclose certain information to an applicant on a form prescribed by the Department within 3 (three) business days after an application is received. 10 Pa. Code § 46.2(b).
 9. Section 6139(a)(2) of the MLA authorizes the Department to suspend, revoke or refuse to renew a license if a licensee, officer, employee, or owner of a license has failed to comply with or violated any provision of the MLA or any regulation or order promulgated or issued by the Department under the MLA. 7 Pa.C.S. § 6139(a)(2).
 10. Section 6139(a)(3) of the MLA authorizes the Department to suspend, revoke or refuse to renew a license issued under the MLA if a licensee, officer, employee, or owner of a license has “[e]ngaged in dishonest, fraudulent, or illegal practices or conduct in a business or unfair or unethical practices or conduct in connection with the mortgage loan business.” 7 Pa.C.S. § 6139(a)(3).
 11. Section 6139(a)(10) authorizes the Department to suspend, revoke or refuse to renew a license under the MLA if a licensee, officer, employee, or owner of a license has “[d]emonstrated negligence or incompetence in performing an act for which the licensee is required to hold a license under this chapter.” 7 Pa.C.S. § 6139(a)(10).
 12. Section 6140(b) of the MLA authorizes the Department to levy a fine of up to \$10,000 for each offense against any licensee, employee or agent of a licensee who violates the

- provisions of the MLA or who commits any action which would subject the licensee to suspension, revocation, or nonrenewal under section 6139. 7 Pa.C.S. § 6140(b).
13. Hawthorne violated sections 6131(a)(1)(ii) and 6132(a-b) of the MLA by operating its mortgage loan business out of an unlicensed branch. 7 Pa.C.S. §§ 6131(a)(1)(ii) and 6132(a-b). (Findings of Fact No. 11(b))
 14. By engaging in the mortgage loan business from an undisclosed location, Hawthorne displayed negligence and incompetence in the mortgage loan business. 7 Pa.C.S. § 6139(a)(10).
 15. Hawthorne violated the MLA by failing to issue a one page disclosure form for all of the 29 files reviewed by the Bureau's examiner, as required by Section 46.2 of the Proper Conduct Regulation. 10 Pa. Code § 46.2(b) and (c), 7 Pa.C.S. §6139(a)(2). (Findings of Fact No. 10, 11(a))
 16. By not issuing the disclosure forms, Hawthorne Capital displayed negligence and incompetence in the mortgage loan business. 7 Pa.C.S. § 6139(a)(10).
 17. By pulling the credit reports for potential new customers, Hawthorne was engaged in the mortgage loan business during the period of its suspension, in violation of the January 20, 2010 Consent Agreement and Order. 7 Pa.C.S. § 6102. (Findings of Fact Nos. 6-8, 11(d))
 18. Hawthorne engaged in unfair business practices by violating the January 20, 2010 Consent Agreement and Order in accepting new customers during the suspension period. 7 Pa.C.S. § 6102.
 19. Hawthorne violated the January 20, 2010 Consent Agreement and Order by failing to provide the Pipeline Report. (Findings of Fact Nos. 6-8, 11(c))

20. Hawthorne violated section 6139(a)(10) of the MLA by displaying negligence and incompetence in the mortgage business by violating an order of the Department to provide the Pipeline Report. 7 Pa.C.S. § 6139(a)(10).
21. As signatory for Hawthorne, Tropeano was aware of the suspension period and other requirements included in the January 20, 2010 Consent Agreement and Order. (Findings of Fact No. 8)
22. Tropeano, individually, displayed negligence and incompetence in the mortgage business by failing to provide the Pipeline Report in violation of the January 20, 2010 Consent Agreement and Order. 7 Pa.C.S. § 6139(a)(10).
23. Tropeano, individually, engaged in unfair business practices by continuing to accept new customers during the suspension period, in violation of the January 20, 2010 Consent Agreement and Order. 7 Pa.C.S. § 6139(a)(3).
24. As a licensee under the MLA, Hawthorne is required to pay the cost of the Department's examination, \$4,537.82. 7 Pa.C.S. §§ 6135(a)(4) and 6138(a)(1). (Findings of Fact No. 12)
25. The deemed admitted facts authorize the Department to revoke Hawthorne's mortgage lender license and branch licenses and to impose a fine of up to \$10,000 for each violation of the MLA. 7 Pa.C.S. §§ 6139(a)(3) and (10), 6140(b). (Findings of Fact Nos. 1-35)
26. The deemed admitted facts authorize the Department to prohibit Tropeano, individually, as a corporation, or as any other business organization, from engaging in any activity regulated by the Department, and to impose a fine of up to \$10,000 for each violation of

the MLA. 7 Pa.C.S. §§ 6138(a)(5), 6139(a)(3) and (10), 6140(b). (Findings of Fact Nos. 1-35)

IV. DISCUSSION

This action began with the Bureau's investigation of one of its licensees, Hawthorne, which occurred on April 7th, 2010. The Bureau's examination uncovered multiple violations of the MLA and a previous Consent Agreement and Order, and now the Bureau seeks to recover costs, fines, and other penalties in connection with those violations from Hawthorne and its owner, Tropeano.

The Department's authority to take action against Respondents based upon these prohibited activities stems from the MLA. *See* 7 Pa.C.S. § 6101, *et. seq.* The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the MLA and the Proper Conduct Regulation. The pertinent provisions of the MLA provide as follows:

§ 6102. Definitions

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Branch." An 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.

"Mortgage loan business." The 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.

§ 6135. Licensee requirements

(a) Requirements of licensee.--

.....

(4) Each licensee shall be subject to examination by the department at its discretion, at which time the department shall have free access, during regular business hours, to the licensee's place or places of business and to all instruments, documents, accounts, books and records which pertain to a licensee's first or secondary mortgage loan business. The department may examine a licensee at any time if the department deems the examination to be necessary or desirable. The cost of any such examination shall be borne by the licensee.

§ 6138. Authority of department

(a) **General authority.**--The department shall have the authority to:

(1) Examine any instrument, document, account, book, record or file of a licensee or any person having a connection to the licensee or make other investigation as may be necessary to administer the provisions of this chapter. Pursuant to this authority, the department may remove any instrument, document, account, book, record or file of a licensee to a location outside of the licensee's office location. The costs of the examination shall be borne by the licensee or the entity subject to the examination.

....

(4) Issue regulations, statements of policy or orders as may be necessary for the proper conduct of the mortgage loan business by licensees, the issuance and renewal of licenses and the enforcement of this chapter.

(5) Prohibit 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.

§ 6139. Suspension, revocation or refusal

(a) **Departmental action.**--The department may suspend, revoke or refuse to renew a license issued under this chapter if any fact or condition exists or is discovered which, if it had existed or had been discovered at the time of filing of the application for the license, would have warranted the department in refusing to issue the license or if a licensee or director, officer, partner, employee or owner of a licensee has:

...

(2) Failed to comply with or violated any provision of this chapter or any regulation or order promulgated or issued by the department under this chapter.

(3) Engaged in dishonest, fraudulent or illegal practices or conduct in a business or unfair or unethical practices or conduct in connection with the mortgage loan business.

....

(10) Demonstrated negligence or incompetence in performing an act for which the licensee is required to hold a license under this chapter.

§ 6140. Penalties

(b) **Violation by licensee.**--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.

§ 46.2. Proper conduct of lending and brokering in the mortgage loan business.

....

(b) *Disclosures to applicant.* On a form prescribed by the Department, a licensee who takes an application shall disclose the following to the applicant:

- (1) If the lender providing the loan will escrow the applicable property taxes and hazard insurance.
- (2) If the licensee is a lender with the ability to directly lock-in a loan interest rate.
- (3) Whether the loan contains a variable interest rate or balloon payment feature.
- (4) Whether the loan includes a prepayment penalty.
- (5) Whether the loan has a negative amortization feature.

(c) *Timing and issuance of disclosure form.* A licensee issuing the disclosure form required by subsection (b) shall sign and date the disclosure form and deliver or place in the mail the disclosure form within 3 business days after the application is received or prepared by the licensee.

7 Pa.C.S. § 6101, *et. seq.*

As a preliminary matter, default judgment may properly be entered against Hawthorne and Tropeano. The deemed admitted facts establish that both Hawthorne and Tropeano were given notice of this action and an opportunity to respond. Those facts indicate that the Order to Show Cause was sent on August 13, 2010 via certified and first class mail to Hawthorne's corporate headquarters, Hawthorne's branch offices, to an attorney who was reasonably believed to be representing Hawthorne in this matter,³ and to Tropeano at a private address. Copies of the certified mail receipts and other attachments contained in the Motion for Default Judgment and Amended Motion for Default Judgment support a finding that proper service of the Order had been made. The General Rules of Administrative Practice and Procedure ("GRAPP"), 1 Pa. Code §§ 31.1-35.251, provide that a person upon whom an Order to Show Cause has been served under 1 Pa. Code § 35.14 shall file an answer within the specified time period, and that a respondent who fails to do so shall be deemed in default and the relevant facts stated in the Order to Show Cause may be deemed admitted. 1 Pa. Code § 35.37. GRAPP required Hawthorne and Tropeano to file an answer to the Order by September 13, 2010, lest they be deemed in default and the facts contained in the Order admitted. 1 Pa. Code § 35.37. Despite these potential consequences, which the Order clearly communicated, Respondents failed to answer the Order, the Motion for Default Judgment and the Amended Motion for Default Judgment. (Finding of Fact Nos. 29, 35). Since Respondents were notified of the charges against them, were afforded

³ In July 2010, counsel for the Bureau spoke by telephone with Eric Salant, a licensed New Jersey attorney, who had represented Hawthorne in a previous matter with the Bureau, regarding the April, 2010 examination. (Findings of Fact No. 14). During the telephone call, attorney Salant verbally agreed to represent Hawthorne in the current matter. (Findings of Fact No. 15). The Bureau further engaged in settlement discussions with Attorney Salant, although he never entered an appearance on behalf of Hawthorne. (Findings of Fact Nos. 16, 23). Based upon the settlement discussions with Attorney Salant and his verbal assent to represent Hawthorne, it was reasonable for the Bureau to believe that Attorney Salant represented Hawthorne Capital.

an opportunity to be heard, and failed to take advantage of that opportunity, default judgment may be entered against them pursuant to 1 Pa. Code § 35.37.

The deemed admitted facts reveal multiple violations of individual provisions of the MLA, as well as multiple violations of a Department order. On October 2, 2009, the Bureau issued a Suspension Order against Hawthorne for unrelated violations of the MLA. On January 20, 2010, the Bureau entered into a Consent Agreement and Order with Hawthorne to resolve the Suspension Order (Findings of Fact No. 6). The terms of the Consent Agreement and Order provided that:

- a) Hawthorne would serve a suspension, starting on January 19, 2010, and ending January 22, 2010, during which time Hawthorne could not engage in any new mortgage loan business, including advertising or accepting new applications.
- b) Hawthorne was to provide a listing of mortgage loan applications Hawthorne had in its pipeline ("Pipeline Report").

(Findings of Fact No. 7).

Tropeano executed the Consent Agreement and Order on behalf of Hawthorne, demonstrating awareness of its terms and conditions, including the suspension period (Findings of Fact No. 8). The deemed admitted facts also reveal that on April 7, 2010, the Department began an examination of Hawthorne Capital's Huntingdon Valley office (Findings of Fact No. 9). The examiner reviewed, among other things, 29 Pennsylvania consumer mortgage loan files that were created by Hawthorne after March 20, 2009 (Findings of Fact No. 10). The examination revealed that: 1) Hawthorne did not issue a one-page disclosure form for any of the 29 files reviewed; 2) Hawthorne closed one loan from an unlicensed office located at 200 Monument Road, Suite 5, Bala Cynwyd, PA 19004; 3) Hawthorne did not create or provide the

Pipeline Report as was prescribed by the Consent Agreement and Order; and 4) during the period in which Hawthorne's license was suspended, Hawthorne pulled the credit reports in order to initiate the application process for six Pennsylvania consumers who were not customers of Hawthorne prior to the suspension period (Findings of Fact No. 11). The cost of the examination was \$4,537.82 (Findings of Fact No. 12).

Based upon these deemed admitted facts, the Bureau seeks to recover from Hawthorne the cost of the Department's examination and to impose fines totaling \$41,000.00 against Hawthorne and \$10,000.00 against Tropeano, for their violations of the MLA. (Department Records; Order to Show Cause). The Department also seeks to revoke Hawthorne's License and to prohibit Tropeano from engaging in the mortgage business regulated by the Department for the remainder of his natural life. *Id.*

As a preliminary matter, the Department is entitled to recover the costs of the Department examination, \$4,537.82. The MLA states that licensee's are required to pay the costs of a Department examination. 7 Pa.C.S. §§ 6135(a)(4) and 6138(a)(1). Since Hawthorne, the licensee, has not paid the cost of the examination, it shall be required to do so.

The deemed admitted facts also support a finding that Hawthorne did not issue a one-page disclosure form to the applicants in any of the 29 files reviewed during the examination. As required by the Proper Conduct Regulation, a licensee who takes an application shall provide disclosure information to the applicant within 3 business days after the application is received by the licensee. 10 Pa. Code § 46.2(b-c). The Proper Conduct Regulation further provides that violations of the Regulation act as violations of the MLA. 10 Pa. Code § 46.3. Hawthorne's acceptance of 29 separate applications constitutes 29 separate violations of the Proper Conduct Regulation, and therefore the MLA. Furthermore, the failure to provide these standard disclosure

forms demonstrates Hawthorne's negligence and incompetence in the mortgage loan business. Such negligence directly violates section 6139(a)(10) of the MLA, which allows the Department to suspend, revoke, or refuse to renew a license based on demonstrated negligence or incompetence in the mortgage loan business. 7 Pa.C.S. §6139(a)(10). The MLA provides that a licensee who violates a provision of the Act 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). The Bureau seeks to impose a fine of only \$1,000.00 per offense, for a total of \$29,000.00, an amount which, considering the total amount the statute allows the Department to impose, is reasonable.

The examination conducted by the Department revealed that Hawthorne closed a loan from an unlicensed location. Under the MLA, every location where a licensee conducts business pursuant to the MLA must be licensed. 7 Pa.C.S. §§ 6131(a)(1)(ii) and 6132(a-b). Hawthorne's closure of that loan was a direct violation of the MLA. Through that act, Hawthorne displayed both negligence and incompetence in the mortgage loan business. The MLA provides that a licensee who violates a provision of the act may be fined by the department up to \$10,000 for each offense. 7 Pa.C.S. § 6140(b). The Order to Show Cause suggests that the Bureau does not seek to impose a separate fine for this violation, however, because the facts support a finding that there was a violation, a penalty should be imposed.⁴ Since the Bureau has requested fines of

⁴ The penalties requested in the Order to Show Cause for Hawthorne's violations are unclear and conflicting. For example, under Count II, entitled "examination violations," the Bureau requests that Hawthorne be fined for violations of the suspension period imposed by the Consent Order. Yet the facts and law concerning the violation of the suspension period and order are not discussed until Count III. Furthermore, Count III requests a fine for violating the Consent Order. To impose the fine requested in Count III, in addition to the fine sought in Count II, would impose two fines for the same action of failing to carry out the suspension period. In addition, the Bureau never requests that a fine be imposed for Hawthorne's violation of the MLA by operating out of an unlicensed location. These inconsistencies place the hearing officer in the position of having to attempt to discern what penalties are sought by the Bureau.

\$1,000 in this case for similarly negligent violations, a fine of \$1,000 will be recommended for Hawthorne's violation of the MLA by closing a loan from an unlicensed location.

The third set of violations involves Hawthorne's failure to comply with the specific provisions of the Consent Order and Agreement it entered into with the Department. The terms of the Consent Order required Hawthorne to serve a suspension period where it could not enter into any new mortgage loan business, and to provide a Pipeline Report detailing the status of several of Hawthorne's current loans. The deemed admitted facts reveal that Hawthorne completed neither of these requirements. Hawthorne pulled the credit reports for six new customers during the period of its suspension. By preparing information and files for these new customers Hawthorne was engaged in the mortgage loan business, and therefore violated the terms of the Consent Order. Further, the Pipeline Report was never provided to the Department, as explicitly required of them. These provisions were not secondary requirements of the Consent Order, hidden among pages of legal formalities and boilerplate language; the two provisions constitute almost the entire Consent Order. Hawthorne's failure to abide by the provisions it agreed to goes beyond mere negligence in carrying on the mortgage loan business. Its actions demonstrate a complete disregard for the Department's authority and obligation to protect the public. Additionally, Hawthorne engaged in unfair and unethical business practices by continuing to accept new customers during the suspension period, in violation of section 6139(a)(3) of the MLA. 7 Pa.C.S. § 6139(a)(3).

The Bureau seeks to impose a fine of \$2,000.00 for Hawthorne's six violations of the suspension period, for a total of \$12,000.00. The MLA provides that 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). A licensee is subject to suspension, revocation, or nonrenewal for violating an order of the Department. 7 Pa.C.S. § 6139(a)(2). The fines sought by the Bureau in connection with the willful violation of an explicit order of the Department are reasonable and still within the lower range of what the Department is authorized to impose.

The Bureau also seeks to impose a fine in the amount of \$10,000.00 for violating the Consent Order. It is assumed that the violation referred to is the failure to provide the Pipeline Report, as separate fines were sought for the suspension violations.⁵ The MLA allows the Department to fine the licensee up to \$10,000 for each offense, yet the fine requested for this violation is unreasonable when compared to the other fines requested. Hawthorne's failure to provide the Pipeline Report, although demonstrating a blatant disregard for the terms of the Consent Order, was no more egregious than Hawthorne's direct violations of the suspension order. The Bureau requested a fine of \$2,000 for each of the violations of the suspension provision of the Consent Order, yet now wants to impose a fine five times that amount for violating, in similar fashion, another provision of the same order. Moreover, the Bureau must be mindful of the fact that the primary focus of disciplinary sanctions is not punishment but, rather, public protection. *Galena v. Department of State*, 551 A.2d 676, 679-680 (Pa. Commw. Ct. 1988). While Hawthorne's conduct is deserving of punishment, a fine of much less than \$10,000 still protects the public by deterring licensees from violating Department orders. The Bureau reasoned that a fine of \$2,000 was reasonable for the violations of the suspension order, and therefore the same amount is reasonable for Hawthorne's violation in failing to provide the Pipeline Report.

To summarize, Hawthorne should be ordered to pay the following costs and fines: \$4,537.82 for the cost of the examination; \$29,000.00 for the 29 violations of the MLA by failing

⁵ See *supra* footnote 3.

to provide a disclosure form; \$1,000.00 for one violation of the MLA by closing a loan from an unlicensed location; \$12,000 for the six violations of the suspension provision of the Consent Order; and \$2,000.00 for the violation of the Pipeline Report provision of the Consent Order. The total amount to be assessed against Hawthorne, therefore, is \$48,537.82.

The Bureau also requests that Hawthorne's mortgage lender license and each branch license be revoked. The MLA provides that the Department may revoke a license if the licensee fails to comply with an order of the Department, engages in unfair or unethical business practices in the mortgage loan business, or demonstrates negligence or incompetence in the mortgage loan business. 7 Pa.C.S. §§ 6139(a)(2-3), 6139(a)(10). The deemed admitted facts establish that Hawthorne has not only met all of those criteria, but has consistently demonstrated that its business practices are, taken as a whole, inconsistent with the MLA and unsafe to consumers. Revocation of Hawthorne's mortgage lender license and branch licenses is a reasonable penalty for the multiple violations.

The Bureau also requests that Hawthorne be required to provide the Pipeline Report to the Department Compliance Administrator. It is requested that the order require Hawthorne to broker the loans listed in the Pipeline Report, but not fund the loans itself. As a measure of safety to consumers, the Bureau requests the order to require Hawthorne to not advertise or accept new business, and to have an orderly wind-down of its operations. Section 6138(a)(4) of the MLA 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 MLA. 7 Pa.C.S. §6138(a)(4). In light of Hawthorne's previously discussed conduct, such requirements are reasonable and necessary to protect both current and potential consumers.

The final count of the Order to Show Cause seeks to impose penalties against Hawthorne's president, Respondent Tropeano, in an individual capacity. The deemed admitted facts establish that Tropeano signed the Consent Order and was aware of its requirements. By failing to take action to ensure that the Pipeline Report was provided, Tropeano, individually, displayed negligence and incompetence in the mortgage loan business. Additionally, Tropeano, individually, engaged in unfair business practices by continuing to accept new customers during the suspension period, in violation of the Consent Order. The MLA authorizes the Department to suspend, revoke or refuse to renew a license if an officer has engaged in such behavior. 7 Pa.C.S. §§ 6139(a)(3), 6139(a)(10). The MLA authorizes the Department to levy a fine of up to \$10,000.00 per offense to an officer of a licensee who commits any action which would subject the licensee to suspension, revocation or nonrenewal under section 6139. 7 Pa.C.S. § 6140(b). The Bureau seeks to impose a fine of \$10,000, presumably against Tropeano.⁶ Since the Corporation was fined \$2,000.00 for its violations of the Consent Order, it is logical that Tropeano would be fined the same amount as the corporation. As there were six violations for violating the suspension order by pulling credit reports for six potential customers, and one violation of failing to provide the pipeline report, the Corporation was fined \$14,000.00 for these violations. Since Tropeano, in an individual capacity, failed to take action to ensure compliance with the order, it is reasonable to impose an equal fine of \$14,000.00 for seven violations.

The Bureau also requests that Tropeano be permanently prohibited as a natural person, corporation, or as any other form of business organization, from any activity regulated by the

⁶ The underlying facts and law surround Count IV concern Tropeano, individually, yet the Bureau requests the imposition of the fine against Hawthorne Capital. Furthermore, the language of the Order to Show Cause states that "the Bureau respectfully requests an order that Silvano Tropeano be required to do the following." Given the convoluted nature of the penalties requested throughout the Order to Show Cause, the hearing officer assumes that this was a clerical error, and that the Bureau intends the penalty to be assessed against Tropeano in an individual capacity.

Department in any capacity whatsoever. Section 6138(a)(5) of the MLA gives the Department broad authority to prohibit or permanently remove a person or licensee responsible for a violation of the MLA 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). In light of Tropeano's individual violations of the Consent Order, the Bureau's request is reasonable and should be granted.

The deemed admitted facts support the imposition of the above-discussed penalties against the Respondents. Accordingly, the following recommendation is made:

V. RECOMMENDATION

Hawthorne Capital Corp. and Silvano Tropeano should be deemed in default, pursuant to 1 Pa. Code § 35.37.

It is further recommended that Hawthorne Capital Corp. shall be ordered to pay Department examination costs of **Four Thousand, Five Hundred, and Thirty-Seven Dollars and Eighty-Two Cents (\$4,537.82)**, and pay fines in the amount of **Forty-Four Thousand Dollars (\$44,000)**.

It is further recommended that within thirty days of the effective date of the order, the Mortgage Lender License, License No. 26572, and Branch Licenses held by Hawthorne Capital Corp. shall be **REVOKED**.

It is further recommended that upon the effective date of the order Hawthorne Capital Corp. shall provide the Bureau of Compliance, Investigation and Licensing with a report for the following categories of loans:

- (i) Loans that have closed, but have not yet been funded;
- (ii) Loans that have been approved but not yet closed;

- (iii) Applications that have been received but have not undergone a decision;
and,
- (iv) Applications that are in the initial stages of review and document gathering.

It is further recommended that the report shall include: 1) the name, address, and telephone number of the applicant; 2) the status of the loan; and 3) the purpose of the loan. The report shall be submitted to Ryan M. Walsh, Compliance Administrator via email at

Redacted , and shall be updated weekly until the license is revoked. Additionally, it is recommended that Hawthorne Capital shall not advertise or accept any new mortgage loan business after the effective date of the order and shall have an orderly wind-down of its business.

It is further recommended that Silvano Tropeano, individually, shall be fined in the amount of **Fourteen Thousand Dollars (\$14,000.00)**, and be permanently prohibited as a natural person or as part of a business organization from carrying on any activity regulated by the Department of Banking in any capacity whatsoever.

Redacted

Linda C. Barrett, Esquire
Hearing Officer

DATED: March 9, 2011

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

Commonwealth of Pennsylvania :
Department of Banking :
Bureau of Compliance, Investigation :
and Licensing , :
Petitioner :
 :
v. : Docket No. 100178 (ENF-OSC)
 :
 :
Hawthorne Capital Corp. and :
Silvano Tropeano, individually :
Respondents. :

ORDER

AND NOW, this ____ day of _____, 2011, based upon the foregoing proposed report and recommendation of the Hearing Officer, the recommendation of the Hearing Officer is adopted. Pursuant to 1 Pa. Code § 35.37, Hawthorne Capital Corp. and Silvano Tropeano are deemed in default.

Hawthorne Capital Corp. is ORDERED to pay the Department's examination costs in the amount of **Four Thousand, Five Hundred, and Thirty-Seven Dollars and Eighty-Two Cents (\$4,537.82)**, and fines in the amount of **Forty-Four Thousand Dollars (\$44,000.00)**.

It is further ORDERED that within thirty days of the effective date of this order, the Mortgage Lender License, License No. 26572, and Branch Licenses held by Hawthorne Capital Corp. are REVOKED.

EFFECTIVE IMMEDIATELY, Hawthorne Capital Corp. shall provide the Bureau of Compliance, Investigation and Licensing with a report for the following categories of loans:

- (i) Loans that have closed, but have not yet been funded;
- (ii) Loans that have been approved but not yet closed;
- (iii) Applications that have been received but have not undergone a decision;
and,
- (iv) Applications that are in the initial stages of review and document gathering.

The report shall include: 1) the name, address, and telephone number of the applicant; 2) the status of the loan; and 3) the purpose of the loan. The report shall be submitted to Ryan M. Walsh, Compliance Administrator via email at rywalsh@state.pa.us, and shall be updated weekly until the license is revoked. Additionally, Hawthorne Capital is **PROHIBITED** from shall not advertising or accepting any new mortgage loan business after the effective date of this **ORDER** and shall have an orderly wind-down of its business.

It is further **ORDERED** that Silvano Tropeano, individually, shall be fined in the amount of **Fourteen Thousand Dollars (\$14,000.00)**, and be permanently **prohibited** as a natural person or as part of a business organization from carrying on any activity regulated by the Department of Banking in any capacity whatsoever.

Victoria A. Reider
Executive Deputy Secretary

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

FILED

2011 JUN 16 AM 10:48

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

Docket No.: 100178 (ENF-OSC)
PA DEPT OF BANKING

Petitioner,

v.

HAWTHORNE CAPITAL CORP. and
SILVANO TROPEANO,

Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on June 16th, 2011, I have served a true and correct copy of the foregoing documents and all attachments thereto and/or enclosures therewith, upon the following individuals in accordance with the requirements of 1 Pa. Code § 33.31 (relating to service by agency), in the manner indicated below:

BY FIRST CLASS U.S. MAIL:

Eric Salant, Esquire
998 Holmdel Road
Holmdel, NJ 07733

BY HAND DELIVERY

✓ Lauren A. Sassani, Assistant Counsel
Department of Banking
17 North Second Street, Suite 1300
Harrisburg, PA 17101-2290

By:~

Redacted

✓ Linnea Freeberg, Docket Clerk
Commonwealth of Pennsylvania
Department of Banking
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(717) 783-2255