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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

PA DEPT OF BANKING

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

v.

Docket No. 11 0078 (ENF-CO)

UPSTATE CAPITAL, INC.

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Examinations has conducted an examination of Upstate Capital, Inc. ("Upstate Capital") and its officers, employees and directors. Based on the results of its review, the Bureau of Compliance, Investigation and Licensing ("Bureau") found that Upstate Capital operated in violation of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 et seq. and the Proper Conduct of Lending and Brokering in the Mortgage Loan Business Regulations ("Regulations"), 10 Pa. Code § 46.1 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 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. Upstate Capital is a mortgage broker located at 6522 Basile Rowe, Syracuse, New York 13057.

4. Upstate Capital is licensed by the Department, License No. 21635, Nationwide Mortgage Licensing System Number ("NMLS") 20823, to engage in the mortgage loan business in Pennsylvania as set forth in 7 Pa. C.S. § 6151.

5. On October 25, 2010, an examiner of the Department commenced an examination of Upstate Capital.

6. During the examination, the examiner noted three violations of the Mortgage Licensing Act.

Unlicensed Mortgage Loan Originators

7. First, the examiner found that between November 17, 2008 and April 22, 2010 Upstate Capital permitted ten mortgage loan originators to originate, on its behalf, 31 mortgage loans for Pennsylvania residents.

8. A mortgage originator is an "individual that takes a mortgage loan application or offers or negotiates terms of a mortgage loan for compensation or gain." 7 Pa. C.S. § 6102.

9. A mortgage originator must be licensed by the Department to engage in the mortgage loan business in the Commonwealth. 7 Pa. C.S. § 6111(a).

10. Further, a mortgage originator must be an employee of a single licensed broker . . . who shall "directly supervise, control and *maintain responsibility for the acts and omissions of the mortgage originator.*" 7 Pa. C.S. § 6131(f)(1) (emphasis added).

11. By permitting unlicensed mortgage originators to originate mortgages on its behalf for Pennsylvania residents, Upstate Capital violated Section 6111(a) of the Mortgage Licensing Act.

12. Upstate Capital contends that it was not required to have its mortgage originators licensed in Pennsylvania until August 5, 2009 when the Mortgage Licensing Act adopted the standards imposed by the Federal Secure and Fair Enforcement for Mortgage Licensing Act.

13. However, the Mortgage Licensing Act required mortgage originators doing business in Pennsylvania to be licensed as of November 5, 2008; all of the mortgages in this case were originated by Upstate Capital's employees after November 5, 2008.

Mortgage Originator Unique Identifier

14. Second, the examiner found that 31 mortgage loan applications originated by Upstate Capital's mortgage loan originators for Pennsylvania residents did not display the mortgage originator's NMLS numbers.

15. Section 6121(14) of the Mortgage Licensing Act provides that "[a] licensee shall do all of the following . . . [i]n the case of a mortgage originator, clearly display the mortgage originator's unique identifier on all mortgage loan application forms . . ." 7 Pa. C.S. § 6121(14).

16. ~~By failing to display the mortgage originator's unique identifiers, i.e., NMLS~~ numbers, on the mortgage loan applications, Upstate Capital violated Section 6121(14) of the Mortgage Licensing Act.

17. Upstate Capital agreed to institute measures to ensure compliance with this requirement as of October 29, 2010.

Consumer Disclosure Forms

18. Third, the examiner found that Upstate Capital did not provide the disclosure form or maintain an original executed disclosure form in three mortgage loan files wherein the Pennsylvania residents were applying for a forward mortgage loan.

19. Section 46.2(b) of the Regulations provides that:

[o]n 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.

10 Pa. Code § 46.2(b).

20. Further, Section 46.2(e) provides that “[a] licensee *shall* require an applicant to sign and date the disclosure form required by subsections (b) . . . within 10 business days after delivery or mailing *and retain the original executed disclosure form in the applicant’s loan file.*”

10 Pa. Code § 46.2(e) (emphasis added).

21. By failing to provide the disclosure form to the applicant and to maintain the original executed disclosure form in the applicant’s loan file, Upstate Capital violated Section 46.2(b),(e) of the Regulations.

22. Upstate Capital asserts that it did not know that this form was required on forward mortgages and agreed to add this form to the closing package for all forward mortgage loans starting October 28, 2010.

Authority of the Department

23. The Department has broad authority to issue orders for the proper conduct of the mortgage loan business and the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4).

24. 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*. . . may be fined by the department up to \$10,000 for each offense." 7 Pa C.S. § 6140(b).

RELIEF

25. Fine. Upstate Capital agrees to pay the Department a fine in the amount of \$8,500 payable in five monthly payments of \$1,700 with the first payment being due within 30 days of the effective date of this Order (as defined in Paragraph 32) and each subsequent payment being due by the first day of the following month thereafter until paid in full. The fine payment shall be sent to the attention of: Non-Depository Institutions, Bureau of Compliance, Investigation and Licensing, Department of Banking, 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

26. Corrective Action. Upon the effective date of this Order, Upstate Capital shall ensure for mortgage loan transactions occurring within Pennsylvania, *see* 7 Pa. C.S. § 6151, the following:

~~(1) That the mortgage loan originators it employs to engage in the mortgage loan~~

business in Pennsylvania are licensed by the Department; and

(2) That the NMLS unique identifier of the mortgage originator responsible for originating the mortgage loan application appears on the application; and

(3) That the disclosure form required by Section 46.2 of the Regulations is provided to mortgage loan applicants for forward mortgage loans and an original executed disclosure form is maintained in the applicant's loan file.

FURTHER PROVISIONS

27. Consent. Upstate Capital 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 therein. Upstate Capital, 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.

28. 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).

29. 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 Upstate Capital.

30. Binding Nature. The Department and Upstate Capital intend to be and are legally bound by the terms of this Order.

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

32. Effectiveness. Upstate Capital hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order.

33. 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 Upstate Capital, in the future regarding all matters not resolved by this Order.

b. Upstate Capital 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.

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

35. Counterparts. This Order may be executed in separate counterparts and by facsimile or electronic mail in portable document format "PDF."

36. 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 Commonwealth of Pennsylvania, Department of Banking, Bureau of Compliance, Investigation and Licensing and Upstate Capital, Inc. 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

Administrator
Bureau of Compliance, Investigation and Licensing
Department of Banking

Date: 4/14/2011

FOR UPSTATE CAPITAL, INC.

(Officer Signature)

(Print Officer Name)

(Title)

Date: 4/14/2011