

FILED

2011 FEB 24 AM 11:20

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

PA DEPT OF BANKING

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

Docket No. 100143(ENF-OSC)

v.

WF&K MORTGAGE INC., and
JOHN J. FARRENCE, individually, and
ARTHUR W. KARBOWSKI, individually, and
THOMAS J. WALSH, individually, and
TIMOTHY J. TANANA, 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 Thomas J. Walsh. Based on the results of its review, the Bureau believes that Thomas J. Walsh 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. WF&K Mortgage Inc. ("WF&K") was formerly licensed as a First Mortgage Broker, license no. 4938, pursuant to chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act ("MBBCEPA"), 63 P.S. 456.301 *et seq.*, and as a Secondary Mortgage Broker, license no 2260, pursuant to the Secondary Mortgage Loan Act ("SMLA"), 7 P.S. § 6601 *et seq.*

4. On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by 7 Pa. C. S. § 6101 *et seq.* On August 5, 2009, 7 Pa. C.S. § 6101 *et seq.* was amended by Act 31 of 2009, H.B. 1654 (P.N. 2448).

5. WF&K is currently licensed under the Mortgage Licensing Act as a Mortgage Broker with the Nationwide Mortgage Licensing System and Registry ("NMLSR") identification number of 51362.

6. WF&K maintains its principal place of business at 718 E. Drinker Street, Dunmore, Pennsylvania 18512.

7. The principal shareholders of WF&K are John J. Farrence, Thomas J. Walsh and Arthur W. Karbowski ("Owners").

8. Each of the Owners maintains a 33.33% interest in WF&K.

9. WF&K employed Timothy J. Tanana ("Tanana") until February 26, 2010 when WF&K permitted Tanana to resign.

10. On January 2, 2009, Tanana applied with the Department through the NMLSR for a mortgage originator license using his assigned NMLSR unique identified of 147651.

11. The Department granted Tanana a conditional mortgage originator license pursuant to the Mortgage Licensing Act on January 12, 2009.

12. The Bureau initiated a formal investigation based upon background information Tanana provided on his January 2, 2009 mortgage loan originator application regarding a July 2000 felony conviction. 7 Pa. C.S. § 6133(a.1).

13. Tanana surrendered his conditional license to the Department on March 24, 2009, based on ineligibility.

14. On November 19, 2009, Tanana submitted a second application to the Department through NMLSR to obtain a mortgage originator license as an employee of WF&K.

15. On January 27, 2010, an examination ("Examination") of WF&K commenced.

16. In February 2010, the Bureau initiated an investigation ("Investigation") into Tanana's second mortgage originator application. 7 Pa. C.S. § 6133(a.1).

Unlicensed Mortgage Loan Originator

17. The Investigation revealed that instead of acting in the capacity of a loan processor while unlicensed by the Bureau, Tanana instead engaged in the mortgage loan business as an unlicensed mortgage loan originator.

18. On February 4, 2010, as part of the Examination, WF&K provided a Department examiner with a spreadsheet of 56 mortgage loans attributable to Tanana.

19. Of the 56 mortgage loans, 39 occurred during Tanana's period of unlicensure.

20. The Mortgage Licensing Act defines a loan processor or underwriter as "[a]n individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under this chapter." 7 Pa. C.S. § 6102.

21. During the Investigation, the Bureau alleges that Tanana stated to the Department investigators that he met with consumers at their residences to discuss interest rates, he completed mortgage loan applications and he was present at mortgage loan closings.

22. The Mortgage Licensing Act defines a mortgage loan originator as "an individual who takes a mortgage loan application or offers or negotiates terms of a mortgage loan for compensation or gain." 7 Pa. C.S. § 6102.

23. The Mortgage Licensing Act defines the mortgage loan business as "[t]he 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." 7 Pa. C.S. § 6102.

24. Tanana's consumer interactions after he surrendered his conditional mortgage originator license constitute mortgage loan origination. 7 Pa. C.S. § 6102.

25. Section 6111(a) of the Mortgage Licensing Act states "[o]n and after the effective date of this section, 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." 7 Pa. C. S. § 6111(a).

26. Because Tanana surrendered his conditional mortgage originator license on March 24, 2009, the Mortgage Licensing Act prohibited him from engaging in the mortgage loan business by originating mortgage loans without a license. 7 Pa. C. S. § 6111(a).

Misuse of Mortgage Loan Originator's License

27. Thomas J. Walsh, in addition to being an owner of WF&K is a mortgage loan originator for WF&K using the NMLSR unique identifier 118379.

28. Thomas Walsh is listed as the mortgage loan originator for those loans that were actually originated by Tanana during his period of unlicensure.

29. Walsh allowed Tanana to use Walsh's mortgage originator's license in order to continue to originate mortgage loans when Tanana was not licensed to do so.

30. By signing his name to mortgage loan documents he did not originate, Walsh committed an act of dishonesty, unfair and/or unethical business practices. 7 Pa. C.S. § 6139(a)(3).

31. By signing the mortgage loan documents for loans that he did not originate, Walsh displayed negligence and incompetence in the mortgage business. 7 Pa. C.S. § 6139(a)(10).

Negligent Supervision

32. The Bureau's investigation revealed that WF&K and Walsh permitted Tanana to engage in the mortgage loan business and act in the capacity as a mortgage loan originator from March 24, 2009 through February 2010 while Tanana was unlicensed by the Department. However, files generated prior to March 24, 2009 were permitted by the Bureau to be closed.

33. WF&K accepted mortgage loan applications from Tanana while he was not licensed as a mortgage loan originator. 7 Pa. C.S. § 6139(a)(14).

34. Tanana received a 50% split in fees as compensation from WF&K for all loans that Tanana "referred" and that ultimately closed.

35. WF&K financially benefited from Tanana's work as a mortgage loan originator because WF&K received the broker fees from those loans.

36. WF&K and Walsh displayed negligence and incompetence in the mortgage loan business by allowing an employee of WF&K to act as a mortgage loan originator while unlicensed by the Department. 7 Pa. C.S. § 6139(a)(10).

37. WF&K and Walsh engaged in unfair and unethical activities by allowing Tanana to act a mortgage loan originator for WF&K when he was not licensed to do so by the Department. 7 Pa. C.S. § 6139(a)(3).

Unauthorized Fees

38. The Bureau's investigation revealed that while an employee of WF&K, Tanana took at least \$60,452 in unauthorized fees from at least twenty-one (21) Pennsylvania consumers.

39. Section 6123(8) of the Mortgage Licensing Act provides that a licensee engaging in the mortgage loan business shall not "[i]n the case of a mortgage originator, accept any fees from consumers in the mortgage originator's own name..." (See 7 Pa. C.S. § 6123(8)).

40. The Investigation revealed that Tanana requested and received monies outside of closing from these nineteen Pennsylvania consumers in the form of checks made out to himself or to his sister.

41. On or around July 2, 2010, WF&K informed the Bureau of an additional consumer from whom Tanana had requested unauthorized fees.

42. WF&K told the Department that the additional consumer paid Tanana in a manner similar to the other Pennsylvania consumers.

43. WF&K stated that upon learning of this additional consumer, WF&K reimbursed that consumer the amount of the unauthorized fees paid by the consumer to Tanana.

44. WF&K and Walsh allege that they did not know that Tanana was requesting such fees from consumers.

45. Section 6121(13)(i) provides that mortgage brokers must "[m]aintain supervision and control of and responsibility for the acts and omissions of all mortgage originators employed by the licensee," 7 Pa. C.S. § 6121(13)(i).

46. WF&K and Walsh did not maintain supervision or control over Tanana as required by statute. 7 Pa. C.S. § 6121(13)(i).

47. WF&K and Walsh displayed negligence and incompetence in the mortgage loan business by failing to maintain proper internal controls to prevent unlicensed activity. 7 Pa. C.S. § 6139(a)(10).

Order to Show Cause

48. On June 14, 2010, the Bureau issued an Order to Show Cause against WF&K, Farrence, Karbowski, Walsh and Tanana based on the results of the Investigation and Examination.

49. This Order is being entered in resolution of the counts against Thomas Walsh only.

50. This Order is being entered into between the parties based on the facts as they are known upon the Effective Date. Should additional facts arise that change the basis for this agreement, the Bureau reserves the right to take additional administrative action.

Authority of the Department

51. Section 6138(a)(1) of the Mortgage Licensing Act provides the Department with the authority to "[e]xamine 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. . . . The costs of the examination shall be borne by the licensee or the entity subject to the examination." 7 Pa. C.S. § 6138(a)(1).

52. 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).

53. 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).

54. 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).

55. Section 6138(a)(8) of the Mortgage Licensing Act provides the Department with the authority to impose such other conditions as the Department deems appropriate. 7 Pa. C.S. § 6138(a)(8).

56. Section 6139(a)(3) of the Mortgage Licensing Act provides that the Department may suspend, revoke or refuse to renew a license issued under the Act if a licensee or a director, officer, partner, employee or owner of a licensee 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).

57. Section 6139(a)(10) of the Mortgage Licensing Act provides that the Department may suspend, revoke or refuse to renew a license issued under the Act if a licensee or a director, officer, partner, employee or owner of a licensee 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).

58. Section 6139(a)(14) provides that the Department may suspend, revoke or refuse to renew a license issued under the Mortgage Licensing Act if a licensee or a employee or owner

of a licensee, if a mortgage broker has "... conducted the mortgage loan business through an unlicensed mortgage originator." 7 Pa. C.S. § 6139(a)(14).

59. 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).

60. 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).

61. The Mortgage Licensing Act applies to "[a]ny person who engages in the mortgage loan business in this Commonwealth" regardless of whether that person is licensed or not. 7 Pa. C.S. § 6151(2).

VIOLATIONS

62. Walsh is in violation of Section 6139(a)(3) of the Mortgage Licensing Act by displaying negligence and incompetence in the mortgage loan business.

63. Walsh is in violation of Section 6139(a)(10) of the Mortgage Licensing Act by engaging in unfair and unethical activities.

64. Walsh is in violation of Section 6139(a)(14) of the Mortgage Licensing Act by conducting the mortgage loan business through an unlicensed mortgage loan originator.

65. Walsh is in violation of Section 6121(13)(i) of the Mortgage Licensing Act by failing to maintain supervision and control over a mortgage loan originator.

66. Walsh is in violation of Section 6139(a)(3) of the Mortgage Licensing Act by committing an act of dishonesty, unfair and/or unethical business practices through the misuse of his mortgage originator's license.

RELIEF

67. Removal. Within 30 days of the Effective Date of this Order, Thomas J. Walsh shall be removed as an owner of WF&K. Thomas J. Walsh shall provide proof that removal has been accomplished by sending documentation to Ryan Walsh, Compliance Administrator, at
a. Thomas J. Walsh shall not be compensated by WF&K after the effective date of his removal.

68. Revocation. Upon the Effective Date of this Order, Thomas J. Walsh's mortgage loan originator's license shall be revoked and any loans that Walsh was working on prior to the Effective Date of this Order shall be transferred to another WF&K licensed mortgage loan originator to prevent harm to those consumers. A report listing the loans transferred including the name, address and telephone number of the consumer as well as the licensed mortgage originator to whom the loans were transferred shall be provided to the Bureau upon the Effective Date of this Order at:

69. Prohibition. Upon the Effective Date of this Order, Thomas J. Walsh, 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 Department.

FURTHER PROVISIONS

70. Consent. Thomas J. Walsh 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 he understand all of the terms and conditions contained herein. Thomas J. Walsh 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.

71. 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).

72. 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 Thomas J. Walsh.

73. Binding Nature. The Department and Thomas J. Walsh intend to be and are legally bound by the terms of this Order.

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

75. Effectiveness. Thomas J. Walsh hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

76. 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 Thomas J. Walsh in the future regarding all matters not resolved by this Order.

b. Thomas J. Walsh 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.

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

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

79. 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 Thomas J. Walsh 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 Walsh, Administrator
Bureau of Compliance, Investigation and Licensing
Department of Banking

Date: February 24, 2011

THOMAS J. WALSH

(Signature)

Date: 2/24/11