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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.: 08 0290 (ENF-CAO)

v.

SUN WEST MORTGAGE COMPANY, INC.

**CONSENT AGREEMENT AND ORDER**

The Commonwealth of Pennsylvania, acting through the Department of Banking, (the "Department"), Bureau of Compliance, Investigation and Licensing (the "Bureau"), has conducted an investigation of Sun West Mortgage Company, Inc. ("Sun West Mortgage"), and its officers, employees and directors. Based on the results of the investigation the Bureau believes that Sun West Mortgage operated in violation of the Mortgage Bankers and Brokers & Consumer Equity Protection Act (the "MBBCEPA"), 63 P.S. § 456.101 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 (the "Order").

**BACKGROUND**

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the MBBCEPA and the Secondary Mortgage Loan Act (the "SMLA"), 7 P.S. § 6601 et seq.

2. The Bureau is primarily responsible for administering and enforcing the MBBCEPA and the SMLA for the Department.

3. Sun West Mortgage was licensed as a First Mortgage Banker under the MBBCEPA, license no. 18919, and as a Secondary Mortgage Lender under the SMLA, license no. 18920 (collectively, the "Licenses"), with its principal place of business located at 1853 William Penn Way, #32, Lancaster, PA 17601 (the "Lancaster Location") and a licensed branch location in Cerritos, CA.

4. Section 302 of the MBBCEPA defines a principal place of business as "[t]he primary office of the licensee located in this Commonwealth which is staffed on a full-time basis and at which books, records, accounts and documents are to be maintained." 63 P.S. § 456.302.

5. The Lancaster Location was Sun West Mortgage's principal place of business in Pennsylvania as required by the MBBCEPA.

6. Sun West Mortgage failed to renew the Licenses by June 30, 2008.

7. Section 307(1) of the MBBCEPA provides that first mortgage licenses are to be renewed on July 1 of each year upon payment of the annual license fee. 63 P.S. § 456.307(1).

8. The Licenses were cancelled effective July 1, 2008.

9. On July 14, 2008, Sun West Mortgage submitted first mortgage banker license applications for the Former Principal Place and Cerritos, CA locations (the "Banker Applications").

10. Sun West Mortgage listed the office supervisor for the Lancaster Location as Craig Mallin ("Mallin").

11. Section 306(a) of the MBBCEPA provides the Department with the authority to investigate applications for licensure. 63 P.S. § 456.306(a).

12. During the routine licensing investigation of the pending Banker Applications it was discovered that Mallin had not been employed by Sun West Mortgage since October 27, 2007.

13. Subsequent to the resignation of Mallin, Sun West Mortgage entered into a branch agreement with Earl Leiby and relocated its principal place of business in Pennsylvania from the Lancaster Location to HC1 Box 112, Mount Pocono, PA 18344.

14. Section 309(a)(1) of the MBBCEPA provides, in relevant part, that “[a] licensee that changes its name or place or places of business shall immediately notify the department, which shall issue a certificate, if appropriate, to the licensee which shall specify the licensee’s new name or address.” 63 P.S. § 456.309(a)(1).

15. Sun West Mortgage did not notify the Department of the office supervisor change nor the address change for Sun West Mortgage’s principal place of business in Pennsylvania within the permitted timeframe.

16. The Banker Applications which were submitted on July 14, 2008 listed Mallin as the office supervisor at the Lancaster Location.

17. By listing Mallin as the office supervisor and using the address of the Lancaster Location, Sun West Mortgage provided a material misstatement on the Banker Applications.

18. Section 304(a) of the MBBCEPA provides, in relevant part, that each first mortgage banker license application “*shall include the address or addresses where business is to be conducted, the full name, official title and business address of each director and principal officer of the business* and any other information that may be required by the department.” 63 P.S. § 456.304(a) (emphasis added).

19. Sun West contends that the material misstatement was unintentional.

20. Upon notification by the Department of the misstatements on the Banker Applications, Sun West took immediate action to correct the applications, including submitting a change of officer form and a change of address form.

21. Additionally, Sun West provided the Department with employment records for both Mallin and Leiby including the hire and resignation dates for Mallin, thus clarifying the issue.

#### Authority of the Department

22. Section 310(a) of the MBBCEPA grants the Department broad authority to issue orders for the enforcement of the MBBCEPA. 63 P.S. § 456.310(a).

23. Section 306(a) of the MBBCEPA provides that the Department may refuse to issue a license "for any reason for which the department may suspend, revoke or refuse to renew a license as provided for by section 313. . ." 63 P.S. § 456.306(a).

24. Section 313(a)(1) of the MBBCEPA provides, in relevant part that the Department may suspend, revoke or refuse to renew any license after giving 30 days' written notice if the Department shall find, after the licensee has had an opportunity to be heard, that the licensee has "[m]ade any material misstatement in his application." 63 P.S. § 456.313(a)(1).

25. Section 314(b) of the MBBCEPA provides, in relevant part, that "[a]ny person who is subject to the provisions of this chapter, even though not licensed hereunder, or any person who is not licensed by the department or is not exempt from the licensing requirements, who violates any of the provisions to which it is subject shall be subject to a fine levied by the department or commission of up to \$2,000 for each offense." 63 P.S. § 456.314(b).

## VIOLATIONS

26. Sun West Mortgage is in violation of Sections 304(a) and 309(a)(1) of the MBCEPA by not notifying the Department of Sun West Mortgage's officer change and change of address within the required timeframe.

27. Sun West Mortgage made material misstatements on its applications for licensure when it used an address and an office manager that Sun West Mortgage knew was no longer valid.

## RELIEF

28. Fine. Within thirty (30) days of the Effective Date of this Order, Sun West Mortgage shall pay a fine to the Department in the amount of \$2,000. The fine payment shall be remitted by a certified check or money order made payable to the "Department of Banking" and forwarded to the following: Department of Banking, Bureau of Compliance, Investigation and Licensing, 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

29. Corrective Measures. Sun West Mortgage shall ensure that all future submissions to the Department including, but not limited to, license applications, renewal applications and annual reports shall contain accurate information.

## FURTHER PROVISIONS

30. Consent. Sun West Mortgage hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the MBCEPA and agrees that it understands all of the terms and conditions contained herein. Sun West Mortgage, 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.

31. 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).

32. Entire Agreement. This Order constitutes the whole and entire 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 Sun West Mortgage.

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

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

35. Effectiveness. Sun West Mortgage hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

36. 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 Sun West Mortgage in the future regarding all matters not resolved by this Order.

b. Sun West Mortgage 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.

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

38. Counterparts. This Order may be executed in separate counterparts and via facsimile.

39. 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 Sun West Mortgage 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

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Ryan M. Walsh, Administrator  
Bureau of Compliance, Investigation and Licensing  
Department of Banking

Date: October 30, 2008

FOR SUN WEST MORTGAGE COMPANY, INC.

\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Printed Officer Name)

Vice President  
(Title)

Date: 10/28/2008