

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING

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

v.

PRECISION FINANCIAL, INC.

Docket No.: 080094(ENF - C&D)

PA DEPT OF BANKING

2008 SEP 22 PM 2: 5

FILED

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 Precision Financial, Inc. ("Precision Financial"), and its officers, employees and directors. Based on the results of the investigation the Bureau believes that Precision Financial 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. Precision Financial is licensed as a First Mortgage Banker under the MBBCEPA, license no. 14610, and as a Secondary Mortgage Lender under the SMLA, license no. 14611, with its principal place of business located at 1021 Millcreek Drive, Suite 7, Feasterville Trevose, PA 19053 (the "Principal Place") and a licensed branch location in Syosset, NY.

4. On April 16, 2008, Pennsylvania consumers Troy and Paulette Guffey (the "Consumers") closed on a consolidating closed-end first lien refinance mortgage loan with Precision Financial in the principal amount of \$174,529.00 (the "Loan").

5. "Closed," "loan closing" and similar terms refer to the fact that a mortgage loan agreement was entered into and legally binding documents were signed to evidence that mortgage loan agreement.

6. On or around June 6, 2008, the Bureau became aware that Precision Financial did not fund the Consumers' Loan that Precision Financial had committed to funding.

7. It is the Bureau's position that Federal Reserve Regulation Z, Truth-in-Lending, 12 CFR 226.23, provides that a residential mortgage borrower has three business days by which to rescind a mortgage loan such as the Consumers' Loan.

8. It is the Bureau's position that according to Federal Reserve Regulation Z, Truth-in-Lending, 12 CFR 226.23, the Consumers had until midnight on April 21, 2008, by which to rescind the Loan.

9. The Consumers did not rescind the Loan.

10. It is the Bureau's position that because the Consumers did not rescind the Loan, Precision Financial was required to fund and disburse the proceeds of the loan.

11. As of June 12, 2008, the Loan had not been funded. The Loan was funded by Precision Financial on June 13, 2008.

12. It is the Bureau's position that Precision Financial's failure to fund the Loan until June 13, 2008 caused the Consumers harm and damages including, but not necessarily limited to, a decrease in the Consumers' credit scores, a lien being placed on the property by creditors that were to be paid off by the Loan, and late charges and additional interest imposed and assessed by creditors who were to be paid off by Loan.

13. On June 12, 2008, the Bureau issued a Cease and Desist Order, docket no. 080094 (ENF-C&D), against Precision Financial based on its failure to fund the closed Loan. On June 30, 2008, Precision Financial filed a timely Petition of Appeal to Order to Cease and Desist.

14. On June 13, 2008, representatives from the Department participated in a conference call with representatives from Precision Financial to discuss a resolution to the failure to fund issue.

15. On the conference call, Precision Financial, through Chief Executive Officer Mark Rosenbloom, agreed to fund the Loan at the same terms as originally agreed.

16. Precision Financial funded the Loan on June 13, 2008 at the same or more favorable terms.

17. On June 19, 2008, a re-closing was held in order to lower the Consumers' interest rate from 6.75 % to 6.00 %.

18. It is Precision Financial's position that in April 2008 there were extraordinary mortgage market circumstances surrounding the Loan that caused the funding of the Loan to be delayed.

19. It is Precision Financial's position that when its investor suddenly reneged on its agreement to purchase the FHA insured Loan, that action caused Precision Financial to comply with its representations and warranties by informing its warehouse lender that there was no longer an investor to buy the Loan from Precision Financial. Thus, the funds earmarked to accomplish the Loan were interrupted through no fault of Precision Financial.

20. Accordingly, Precision Financial denies any wrongdoing or improper conduct of mortgage loan business regarding Consumers and the Loan.

21. Precision Financial has paid the Consumers' creditors as a result of the closing on June 13, 2008.

22. This Order is being entered into in resolution of the Cease and Desist Order, docket no. 080094 (ENF-C&D) issued by the Bureau and that was timely appealed by Precision Financial.

#### Authority of the Department

23. Section 310(a) of the MBBCEPA grants the Department broad authority to issue orders for the enforcement of the MBBCEPA and for the proper conduct of a mortgage banker. 63 P.S. § 456.310(a).

24. Section 16(1) of the SMLA grants the Department broad authority to issue orders for the enforcement of the SMLA and for the proper conduct of a mortgage lender. 7 P.S. § 6616(1).

#### **VIOLATION**

25. It is the Department's position that Precision Financial was not engaged in the proper conduct of a first mortgage banker when it refused to fund the Loan upon the expiration

of the applicable rescission period. Precision Financial denies the alleged violation, but consents to this Order without any admission of wrongdoing, as a compromise of disputed claims.

#### RELIEF

26. Corrective Measures. Upon the Effective Date of this Order:

a. Precision Financial shall not refuse to fund, or delay funding of, any loan which a Pennsylvania consumer in good faith closes with Precision Financial under the MBBCEPA or the SMLA unless the Pennsylvania consumer exercises any applicable right of rescission, consumers are discovered to have committed fraud regarding the loan before it is funded, or other legally valid reasons exist.

27. Resolution. The Department and Precision Financial acknowledge and agree that this Order resolves all matters that pertain to the Consumers' Loan.

#### FURTHER PROVISIONS

28. Consent. Precision Financial hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the MBBCEPA and the SMLA and agrees that it understands all of the terms and conditions contained herein. Precision Financial, 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.

29. 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).

30. 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 Precision Financial.

31. Binding Nature. The Department, Precision Financial, and all officers, owners, directors, employees, heirs and assigns of Precision Financial intend to be and are legally bound by the terms of this Order.

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

33. Effectiveness. Precision Financial hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

34. 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 Precision Financial in the future regarding all matters not resolved by this Order.

b. Precision Financial 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.

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

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

37. 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.

