

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

FILED
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PA DEPT OF BANKING
(ENF-C&D)

COMMONWEALTH OF PENNSYLVANIA	:	Docket No.: 09 <u>0079</u>
DEPARTMENT OF BANKING, BUREAU OF	:	(ENF-C&D)
COMPLIANCE, INVESTIGATION AND	:	
LICENSING	:	
	:	
	:	
v.	:	
	:	
FASTCAPITAL 360	:	

ORDER TO CEASE AND DESIST

Background

WHEREAS, the Department of Banking (the “Department”) is the Commonwealth of Pennsylvania’s administrative agency authorized and empowered to administer and enforce 7 Pa. C.S. § 6101 et seq. (relating to mortgage loan industry licensing and consumer protection) (the “Mortgage Act”); and

WHEREAS, the Bureau of Compliance, Investigation and Licensing (the “Bureau”) is primarily responsible for administering and enforcing the Mortgage Act for the Department; and

WHEREAS, the Mortgage Act is the successor statute to Chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act (the “MBBCEPA”), 63 P.S. § 456.301 et seq., and the Secondary Mortgage Loan Act (the “SMLA”), 7 P.S. § 6601 et seq. On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by the Mortgage Act; and

WHEREAS, FastCapital 360 is a business located in Huntingdon Valley, PA that is engaged in the business of negotiating mortgage loans; and

WHEREAS, in or around May 2009 the Bureau became aware that FastCapital 360 was engaged in the business of mortgage origination in Pennsylvania through their web site www.fastcapital360.com; and

WHEREAS, FastCapital 360 offers first mortgages, second mortgages, refinance mortgage loans, debt consolidation, home equity loans, and home equity line's of credit for Pennsylvania consumers; and

WHEREAS, specifically, FastCapital 360's website, www.fastcapital360.com, advertises Pennsylvania as a state in which FastCapital 360 conducts mortgage loan business; and;

WHEREAS, FastCapital 360 conducts its mortgage loan origination business from a physical location in Pennsylvania; and

WHEREAS, the Mortgage Act applies to any mortgage loan that is "(i) negotiated, offered or otherwise transacted within this Commonwealth, in whole or in part, whether by the ultimate lender or any other person; (ii) made or executed within this Commonwealth; or (iii) notwithstanding the place of execution, secured by real property located in this Commonwealth" or to "[a]ny person who engages in the mortgage loan business in this Commonwealth." 7 Pa. C.S. § 6151; and

WHEREAS, Section 6102 of the Mortgage Act defines a "first mortgage loan" as "[a] loan which is secured in whole or in part by a first lien upon any interest in real property created by a security agreement, including a mortgage, indenture, deed of trust or any other similar instrument or document, which real property is used as a one-family to four-family dwelling, a portion of which may be used for nonresidential purposes." 7 Pa. C.S. § 6102; and

WHEREAS, Section 6102 of the Mortgage Act defines a “secondary mortgage loan” as “[a] loan which is secured in whole or in part by a lien upon any interest in real property created by a security agreement, including a mortgage, indenture, deed of trust or any other similar instrument or document, which real property is subject to a prior lien and which is used as a one-family to four-family dwelling, a portion of which may be used for nonresidential purposes.” 7 Pa. C.S. § 6102; and

WHEREAS, Section 6102 of the Mortgage Act defines a “mortgage loan” as “[a] first or secondary mortgage loan, or both, as the context may require.” 7 Pa. C.S. § 6102; and

WHEREAS, Section 6102 of the Mortgage Act defines “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 (emphasis added); and

WHEREAS, by advertising first mortgages, second mortgages, refinance mortgage loans, debt consolidation, home equity loans, and home equity line’s of credit with Pennsylvania consumers, FastCapital 360 has engaged in the “mortgage loan business” as defined in the Mortgage Act;; and

WHEREAS, FastCapital 360 is not licensed to conduct mortgage loan business in Pennsylvania; and

WHEREAS, Section 6111 of the Mortgage Act provides that “. . . 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; and

WHEREAS, FastCapital 360 has violated the Mortgage Act by engaging in the mortgage loan business in Pennsylvania without a license; and

WHEREAS, Section 6138(a)(4) of the Mortgage Act provides the Department with authority to issue orders as may be necessary for the proper conduct of the mortgage loan business and the enforcement of the Mortgage Act. 7 Pa. C.S. § 6138(a)(4); and

WHEREAS, Section 6140(a) of the Mortgage 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); and

AND NOW, THEREFORE, since FastCapital 360 has engaged in unlicensed activity, the Bureau, pursuant to its authority referenced above hereby imposes the following Order:

1. Upon the effective date of this Order, FastCapital 360 shall cease and desist from engaging in the mortgage loan business subject to the Mortgage Act, including, but not limited to, advertising (including website advertising) refinancing mortgage loans for Pennsylvania consumers and in refinancing mortgage loans for Pennsylvania consumers, unless and until such time that FastCapital 360 is licensed by the Department pursuant to the Mortgage Act.

2. Upon the effective date of this Order, FastCapital 360 shall provide a list of Pennsylvania consumers that are working with FastCapital 360. The list shall include, but is not limited to:

- a. The names of all Pennsylvania consumers that have responded to FastCapital 360’s advertisements or that FastCapital 360 have as clients;

- b. The address and telephone numbers of the consumers listed in (a); and
- c. The current application status.

The list shall be sent to John Talalai, Administrator, Compliance Division, at
by 5:00 PM eastern time on the effective Date of this Order.

3. Nothing in this Order shall prevent the Bureau from taking any further administrative action as deemed necessary including, but not limited to imposing fines pursuant to Section 6140(a) of the Mortgage Act or seeking restitution for Pennsylvania consumers.

IT IS SO ORDERED.

John Talalai, Administrator
Compliance Division
Department of Banking,
Bureau of Compliance, Investigation and Licensing

5/7/2009
(Date)

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DEPARTMENT OF BANKING

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(IN DEPT OF BANKING)

v.

FASTCAPITAL 360

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Order to Cease and Desist upon the parties below, who constitute the only parties of record in this proceeding, in accordance with the requirements of 1 Pa. Code §§ 33.35, 33.36 and 33.37:

BY CERTIFIED AND FIRST CLASS MAIL

FastCapital 360
67 Buck Road
Suite #B25
Huntingdon Valley, PA 19006

Dated this 7th day of May, 2009.

Lauren A. Sassani
Assistant Counsel
Attorney I.D. # 203016
FOR: Commonwealth of Pennsylvania
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