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PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

COMMONWEALTH OF PENNSYLVANIA	:	Docket No. 09 <u>0035</u> (ENF-CO)
DEPARTMENT OF BANKING, BUREAU OF	:	
COMPLIANCE, INVESTIGATION	:	
AND LICENSING,	:	
	:	
v.	:	
	:	
MONUMENT MORTGAGE.	:	

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Examinations, has conducted an examination of Monument Mortgage and its officers, employees and directors. Based on the results of the examination, the Bureau of Compliance, Investigation and Licensing (the "Bureau") believes that Monument Mortgage operated in violation of the 7 Pa. C. S. § 6101 et seq. (the "Mortgage Act"). 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 Mortgage Act.
2. The Bureau is primarily responsible for administering and enforcing the Mortgage Act for the Department.
3. 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 On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by the Mortgage Act.

4. Monument Mortgage was licensed as a First Mortgage Broker, license no. 2595, pursuant to the MBBCEPA and as a Secondary Mortgage Broker, license no. 13879, pursuant to the SMLA.

5. Monument Mortgage was granted a conditional license pursuant to the Mortgage Act on November 5, 2008.

6. Monument Mortgage is currently licensed as a Mortgage Lender pursuant to the Mortgage Act.

7. Monument Mortgage's principal place of business in Pennsylvania is located at 821 Forest Lane, Malvern, PA 19355-2846 (the "Principal Place").

8. On September 20, 2007, an examiner from the Department commenced an examination of Monument Mortgage at the Principal Place (the "Examination").

Unlicensed Loan Originator

9. The Examination revealed that Monument Mortgage permitted an individual to broker at least nineteen (19) Pennsylvania first mortgage loans and at least two (2) secondary mortgage loans on behalf of Monument Mortgage.

10. The individual was not a W-2 employee of Monument Mortgage.

11. Since the individual was not a W-2 employee of Monument Mortgage the individual was required to be individually licensed.¹

¹ At the time of the violations, employees of a mortgage broker were not required to be individually licensed. See 63 P.S. § 456.303(b)(11).

12. The individual was not individually licensed pursuant to the MBBCCEPA and/or the SMLA.

13. Monument Mortgage knew that the individual brokering loans on its behalf was not a W-2 employee of Monument Mortgage or individually licensed in Pennsylvania but nevertheless brokered the individual's loans and received compensation for closed loans.

14. Section 6111(a) of the Mortgage Act (corresponding to Section 303(a) of the MBBCCEPA and Section 3(a)(1) of the SMLA) provides, in relevant part, 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(a) (corresponding to 63 P.S. § 456.303(a) and 7 P.S. § 6603(a)(1)).

15. Section 6136(a)(1) of the Mortgage Act (corresponding to Section 309(a)(1) of the MBBCCEPA and Section 11(1) of the SMLA) provides, in relevant part, that "[a] licensee cannot transact any business under this chapter under any name or names except those names designated in its license. . . ." 7 Pa.C.S. § 6136(a)(1) (corresponding to 63 P.S. § 456.309(a)(1) and 7 P.S. § 6611(1)).

16. By brokering first and secondary mortgage loans originated by an unlicensed individual, Monument Mortgage transacted business with an unlicensed broker, consented to unlicensed activity and, therefore, violated the Mortgage Act.

17. The owner of Monument Mortgage admitted that he did not pay the individual by a W-2 or a 1099 and instead paid the individual "under the table."

18. By not compensating employees on a W-2 basis or on a 1099 basis as an independent contractor, Monument Mortgage could be in violation of state and/or federal taxation laws.

Authority of the Department

19. Section 6138(a)(4) of the Mortgage Act (corresponding to Sections 310(a) of the MBBCEPA and 16(1) of the SMLA) grants the Department broad authority to issue orders for the enforcement of the Mortgage Act. 7 Pa.C.S. § 6138(a)(4) (corresponding to 63 P.S. § 456.310(a) and 7 P.S. § 6616(1)).

20. Section 6140(b) of the Mortgage Act (corresponding to Section 314(c) of the MBBCEPA and Section 22(b) of the SMLA) 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) (corresponding to 63 P.S. § 456.314(c) and 7 P.S. § 6622(b)).

VIOLATION

21. Monument Mortgage is in violation of Section 6102 of the Mortgage Act (corresponding to sections 303(a) and 314(c)) by allowing an unlicensed individual to solicit and negotiate mortgage loans and not compensating the individual on a W-2 basis.

RELIEF

22. Corrective Action. Upon the Effective Date of this Order, Monument Mortgage shall:

a. cease and desist from accepting, processing and/or closing Pennsylvania first or secondary residential mortgage loan applications from any and all non-employees and/or unlicensed persons including, but not limited to, those persons acting as independent contractors or otherwise.

b. compensate all employees on a W-2 tax basis.

FURTHER PROVISIONS

23. Consent. Monument Mortgage hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the Mortgage Act and agree that it understands all of the terms and conditions contained therein. Monument 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.

24. 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).

25. 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 Monument Mortgage.

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

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

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

29. 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 Monument Mortgage in the future regarding all matters not resolved by this Order.

b. Monument 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.

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

31. Counterparts. This Order may be executed in separate counterparts and by facsimile.

32. 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 Monument 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

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

Date: February 20, 2009

FOR MONUMENT MORTGAGE

(Officer Signature)

(Print Officer Name)

President
(Title)

Date: Feb 20th 2009