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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. 09 0024 (ENF-CO)

v.

NEW MILLENNIUM FINANCIAL, LLC and  
ANDREW KLIMENKO, Individually, and  
IGOR PONOMAREV, Individually

**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 into the business practices of New Millennium Financial, LLC, Andrew Klimenko and Igor Ponomarev (hereafter "New Millennium"). Based on the results of the investigation, the Bureau believes that New Millennium operated in violation of 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Secondary Mortgage Loan Act (the "SMLA"), 7 Pa.C.S. § 6601 *et seq.* On November, 5, 2008, Chapter 3 of the MBBCEPA was repealed by operation of law and replaced by the Mortgage Act.

4. New Millennium Financial, LLC was licensed by the Department as a first mortgage broker under the MBBCEPA, license no. 12073 and as a secondary mortgage broker under the SMLA, license no. 12476 with a principal place of business located at 1456 County Line Rd, Huntingdon Valley, PA 19006-1810).

5. According to Department records, Andrew Klimenko ("Klimenko") was listed as the President and 50% owner of New Millennium Financial, LLC and Igor Ponomarev ("Ponomarev") was listed as the Vice President and 50% owner, hereinafter collectively referred to as "New Millennium."

6. New Millennium was granted a conditional license by operation of law for the period of time between November 4, 2008 and December 31, 2008 pursuant to the Mortgage Act.

7. New Millennium submitted timely an application for re-licensing under the new law with through the National Mortgage Licensing System and a new permanent license was granted to New Millennium on December 30, 2008.

8. Klimenko is listed as the President and 100% owner of New Millennium on the conditional license and the new permanent license.

9. On March 4, 2005, Klimenko established a company he named Appraisal Search, LLC for the purpose of collecting appraisal fees in advance from consumers that were processing loans through New Millennium.

10. On August 25, 2008, the Bureau initiated an investigation of New Millennium.

#### **AUTHORITY OF THE DEPARTMENT**

11. Section 6135(a)(4) of the Mortgage Act (corresponding to Section 308(a)(4) of the MBBCEPA, 63 P.S. § 456.308(a)(4)) provides the department with the authority to conduct examinations. 7 Pa. C.S. § 6138(a)(4).

12. Section 6138(a)(1) of the Mortgage Act (corresponding to Section 310(c)(1) of the MBBCEPA, 63 P.S. § 456.310(c)(1)) provides the department with authority to examine any instrument, document, account, book, record or file of a licensee as may be necessary to administer the provisions of this chapter and assess the costs on the licensee. 7 Pa.C.S. § 6138(a)(1).

13. Section 6138(a)(4) of the Mortgage Act (corresponding to Sections 310(a) of the MBBCEPA, 63 P.S. § 456.310(a)) 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)).

14. Section 6138(a)(5) of the Mortgage Act provides the Department with the authority to prohibit or permanently remove a person or licensee responsible for a violation of this chapter from working in any capacity related to activities regulated by the department. 7 Pa.C.S. § 6138(a)(5).

15. Section 6139(a)(3) of the Mortgage Act (corresponding to Section 313(a)(5) of the MBBCEPA, 63 P.S. § 456.313(a)(5)) provides that the department may suspend, revoke or

refuse to renew a license if a licensee or director, officer, partner, employee or owner of a licensee has engaged 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).

16. Section 6140(b) of the Mortgage Act (corresponding to Section 314(c) of the MBBCEPA, 63 P.S. § 456.314(c)) 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).

#### ADVANCED FEES

17. The Bureau’s investigation revealed that New Millennium electronically debited funds from the checking account of a single consumer for a total of in advanced fees.

18. The Bureau’s investigation further revealed New Millennium collected an additional forty-three (43) advance fees from consumers during the 2007-2008 time frame totaling \$24,973.44.

19. New Millennium deposited the fees into the bank account held by Appraisal Search, LLC.

20. Of the total amount of advance fees collected by New Millennium, the Bureau established that only \$4,346.00 represented services actually rendered for the benefit of the consumers.

21. Any services actually rendered were provided not by New Millennium, but were provided by independent appraisal companies, some or all of whom were not compensated by New Millennium, despite the fact that the fees were collected from the consumers.

22. Collecting fees for services not rendered and failing to pass along fees to those that did render services are dishonest, fraudulent and illegal practices and are unfair and unethical practices in the mortgage industry which is a violation of the Mortgage Act, 7 Pa. C.S. § 6139 (a)(3), (corresponding to Section 313(a)(5) of the MBBCEPA, 63 P.S. § 456.313(a)(5)).

23. New Millennium does not maintain and never has maintained the \$100,000 penal bond required to collect advance fees under the Mortgage Act.

24. Collecting advance fees without being properly bonded is a violation of the Mortgage Act, 7 Pa.C.S. § 6131(e)(1) (corresponding to section 304(c) of the MBBCEPA, 63 P.S. § 456.304(c)).

#### UNLICENSED BROKERS

25. The Bureau's investigation revealed that New Millennium's loan originators' ("Loan Originators") wages were reported to the IRS on form 1099, and, therefore, the loan originators were not employees.

26. The Loan Originators were not individually licensed.

27. New Millennium engaged unlicensed independent contractors to perform mortgage loan origination services in violation of section 6111(a) of the Mortgage Act (7 Pa.C.S. § 6111(a) (corresponding to section 303(a) and 303(b)(11) of the MBBCEPA, 63 P.S. § 303(a) and (b)(11)).

### UNLICENSED NAME

28. The Bureau's investigation revealed that New Millennium was originating loans under several company names including Apex Mortgage and Assured Lending Corporation, from the New Millennium location.

29. Section 6136(a) of the Mortgage Act states "A licensee cannot transact any business under this chapter under any other name or names except those names designated in its license....." 7 Pa. C.S. § 6136(a) (corresponding to Section 309(a)(1) of the MBBCEPA, 63 P.S. § 456.309(a)(1)).

### VIOLATIONS

30. New Millennium violated Section 6131(e)(1) of the Mortgage Act (corresponding to Section 304(c) of the MBBCEPA, 63 P.S. § 456.304(c) by not maintaining the bond required in order to accept advance fees.

31. New Millennium violated Section 6139(a)(3) of the Mortgage Act (corresponding to Sections 313(a)(5) of the MBBCEPA, 63 P.S. § 456.313(a)(5)) by collecting funds from consumers for which no services were rendered and by failing to forward funds to appraisers that did render services.

32. New Millennium violated Section 6139 (a)(3) of the Mortgage Act (corresponding to Sections 313(a)(5) of the MBBCEPA, 63 P.S. § 456.313(a)(5)) by engaging unlicensed Loan Originators as independent contractors.

33. New Millennium violated Section 6136(a) of the Mortgage Act (corresponding to Section 309(a)(1) of the MBBCEPA, 63 P.S. § 309(a)(1)) by transacting business in a name not designated on the license.

**RELIEF**

34. License Surrender. Upon the Effective Date of this Order, New Millennium, Andrew Klimenko and Igor Ponomerev agree to the following terms and conditions;

a. Andrew Klimenko shall surrender New Millennium's mortgage broker license.

b. New Millennium shall provide a listing of loans in the pipeline. The listing shall include, at a minimum, the following information; consumer name, address, phone number, loan amount, interest rate, current status and loan officer assigned.

c. New Millennium shall cease accepting mortgage loan applications upon the date of New Millennium's license surrender so that all work on loans in New Millennium's pipeline shall be completed within thirty (30) days of the Effective Date of this Order.

d. In the event of unforeseen circumstances which cause unordinary delay in the closing or settlement of a loan, and work remains to be done within 30 days of the Effective Date of this Order, New Millennium is obligated to inform the Bureau of the delay and to seek permission to complete the work.

e. If, the Bureau finds that New Millennium has violated this provision, the Department may take any additional steps necessary to ensure that the applications are processed in a timely manner.

35. Prohibition. New Millennium, Andrew Klimenko and Igor Ponomerev as persons or as a corporation or as any other form of organization of any kind whatsoever, consent to a five (5) year prohibition from working in the mortgage loan business as regulated by the Mortgage Act as a licensee, owner, officer or employee in any capacity of any kind whatsoever, in any way whatsoever.

36. Refunds. New Millennium, Andrew Klimenko and Igor Ponomerev agree to refund the advance fees accepted from [redacted] (see paragraph 16) within one hundred twenty (120) days of the effective date of this order. In addition, Andrew Klimenko and Igor Ponomerev individually, and on behalf of New Millennium agree to refund any advance fees accepted from consumers during the processing of mortgage loans where no services were performed within one hundred (120) days of the effective date of this order. Proof of refunds shall be remitted to the attention of the Non-Depository Institutions, Bureau of Compliance, Investigation and Licensing, 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

37. Examination and Investigation Fees. New Millennium, Andrew Klimenko and Igor Ponomerev agree to pay all outstanding examination and investigation invoices pursuant to the Department's authority under Section 6138(a)(1) of the Mortgage Act (corresponding to Section 310(c)(1) of the MBBCEPA).

38. Withdrawal. The parties enter into this Order in resolution of the Cease and Desist Order, docket no. 080287 (ENF-C&D) and the Bureau withdraws that Cease and Desist Order by execution of this Order.

39. Abeyance. Should the Department find that New Millennium, Andrew Klimenko or Igor Ponomerev have violated this order in whole or in part, the Department may prohibit Andrew Klimenko and Igor Ponomerev from engaging in the mortgage business as defined by the Mortgage Act for the remainder of their natural lives.

#### FURTHER PROVISIONS

40. Consent. New Millennium, Andrew Klimenko and Igor Ponomerev 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 agrees that he understands all of the



terms and conditions contained therein. New Millennium, Andrew Klimenko and Igor Ponomerev, by voluntarily entering into this Order, waive any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

41. 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).

42. 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 New Millennium, Andrew Klimenko and Igor Ponomerev.

43. Binding Nature. The Department, New Millennium, Andrew Klimenko and Igor Ponomerev intend to be and are legally bound by the terms of this Order.

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

45. Effectiveness. New Millennium, Andrew Klimenko and Igor Ponomerev hereby stipulate and agree that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

46. 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 New Millennium, Andrew Klimenko and Igor Ponomerev in the future regarding all matters not resolved by this Order.

b. New Millennium, Andrew Klimenko and Igor Ponomerev acknowledge and agree 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.

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

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

49. 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, New Millennium, Andrew Klimenko and Igor Ponomerev 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  
Date: January 23, 2009

FOR NEW MILLENNIUM FINANCIAL, LLC

(Officer Signature)

\_\_\_\_\_  
(Print Officer Name)

President  
\_\_\_\_\_  
(Title)

Date: 01/23/09

FOR ANDREW KLIMENKO

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

\_\_\_\_\_  
(Print Name)

Date: 01/23/09

FOR IGOR PONOMEREV

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

\_\_\_\_\_  
(Print Name)

Date: 01/23/09