

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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DEPARTMENT OF BANKING, BUREAU
OF COMPLIANCE, INVESTIGATION
AND LICENSING

v.

SERVICE 1ST MORTGAGE, INC.

Docket No. 09 0140 (ENF-CO)

FILED
2009 JUL 17 PM 12:52
PA DEPT OF BANKING

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Examinations, has conducted an examination of Service 1st Mortgage, Inc. ("Service 1st"), and its officers, employees and directors. Based on the results of the examination, the Bureau of Compliance, Investigation and Licensing (the "Bureau") believes that Service 1st operated in violation of 7 Pa.C.S. § 6101 et seq. (the "Mortgage Act"). While Service 1st denies any wrongdoing, 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 On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by the Mortgage Act.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. Service 1st was licensed as a First Mortgage Broker, license no. 4387, pursuant to the MBBCEPA and as a Secondary Mortgage Broker, license no. 11526 pursuant to the SMLA.

5. Service 1st was granted a conditional license pursuant to the Mortgage Act on November 5, 2008.

6. Service 1st is currently licensed as a Mortgage Lender pursuant to the Mortgage Act.

7. Service 1st's principal and sole place of business in Pennsylvania is located at 37 West Market Street, Suite 9, York, PA 17401 (the "Pennsylvania Location").

8. Service 1st has a licensed branch location for its corporate headquarters located at 1415 Madison Park Dr., Glen Burnie, MD 21061 (the "Glen Burnie Location").

Attempted Exam/Office Staffing

9. On or around June 29, 2006, the Department sent a subpoena by certified mail to the Pennsylvania Location regarding advertising that Service 1st was using.

10. The subpoena was returned to the Department as undeliverable.

11. On January 3, 2007, an examiner of the Department visited the Pennsylvania Location, confirmed that the Pennsylvania Location was not staffed by Service 1st and noted that the office was dark and no one appeared to be there.

12. The Bureau believes that the Pennsylvania Location had not been used by Service 1st in several weeks.

13. Section 6102 of the Mortgage Act (corresponding to Section 302 of the MBBCEPA) defines a principal place of business as “[t]he primary office of a person located in this Commonwealth which is staffed on a full-time basis and at which the person’s books, records, accounts and documents are maintained.” 7 Pa.C.S. § 6102 (corresponding to 63 P.S. § 456.302).

14. The Pennsylvania Location is Service 1st’s principal place of business as defined in Section 6102 of the Mortgage Act.

15. Section 6135(a)(4) of the Mortgage Act (corresponding to Section 308(a)(4) of the MBBCEPA and Section 10(a)(4) of the SMLA) provides, in relevant part, that all licensees “shall be subject to an examination by the department at its discretion at which time the department shall have free access, during regular business hours, to the licensee’s place or places of business in this Commonwealth and to all instruments, documents, accounts, books and records which pertain to a licensee’s first or secondary mortgage loan business, whether maintained in or outside this Commonwealth.” 7 Pa.C.S. § 6135(a)(4) (corresponding to 63 P.S. § 456.308(a)(4) and 7 P.S. § 6610(a)(4)).

16. On or around April 20, 2007, a representative of the Bureau sent a letter to Service 1st at the Glen Burnie Location regarding the inability for the Department to conduct an examination because the Pennsylvania Location was not staffed.

17. In a letter dated April 26, 2007, Service 1st Chief Operating Officer Franco Prezioso stated that Service 1st “had difficulty keeping [an employee] at the office at all times [and] is actively seeking an employee to staff that office on a daily basis.” The letter went on to

explain that Service 1st would resolve the issue immediately as follows: “[Two employees] from our Maryland office will be staffing the office. They each have almost five years of experience or more with Service 1st Mortgage and can assist an examiner as needed. They will be required to send facsimiles to my office several times per day to assure compliance.”

18. Since April 26, 2007, Service 1st has staffed the Pennsylvania Location on a full-time basis as indicated in Mr. Prezioso’s letter.

Officer Change

19. On June 18, 2007, an examiner of the Department initiated an examination of Service 1st at the Pennsylvania Location (the “Examination”).

20. At the time of the Examination, Jeff Hughes was acting as the office manager for the Pennsylvania Location.

21. Department records indicated that Service 1st President, Robert Lewis Cole, was the office manager for the Pennsylvania Location.

22. Service 1st had not filed the required change of officer forms with the Department indicating that Jeff Hughes was the new office manager.

Rate Lock Agreements

23. The Examination revealed that for nine (9) of thirty (30) mortgage files examined, Service 1st used a rate lock agreement with Pennsylvania consumers.

24. Service 1st notes that, according to the rate lock agreement, the rate lock is not effective until Service 1st has received confirmation of its rate lock with the lender. (Although not a defense per se, Service 1st also notes that each of these consumers received the rate referenced on the rate lock agreement.).

25. The Bureau contends that, even if Service 1st's rate lock with a consumer is contingent on Service 1st entering into a rate lock with the lender, Service 1st has still entered into a rate lock with the consumer.

26. Section 6123(7) of the Mortgage Act (corresponding to Section 309(a)(5) of the MBBCEPA) prohibits a mortgage broker from entering into rate lock agreements with consumers in the mortgage broker's own name. 7 Pa.C.S. § 6123(7) (corresponding to 63 P.S. § 456.309(a)(5)).

27. Service 1st contends that it interpreted Pennsylvania law regarding rate lock agreements differently than the Bureau and, therefore, believed its actions were in compliance at the time.

Loan Commitments

28. The Examination revealed that for two (2) of thirty (30) mortgage files examined, Service 1st issued a loan commitment in Service 1st's own name.

29. Service 1st contends that the loan commitments were neither issued to nor signed by the borrowers. Service 1st notes that it was required to issue the commitments to subordinate lien holders in order to obtain a subordination of an existing second mortgage and that, if Service 1st did not issue the commitment to the lien holder, it would have been unable to obtain the requested mortgage for the borrower.

30. Section 6123(7) of the Mortgage Act (corresponding to Section 309(a)(5) of the MBBCEPA) prohibits a mortgage broker from committing to close a mortgage loan in the mortgage broker's own name. 7 Pa.C.S § 6123(7) (corresponding to 63 P.S. § 456.309(a)(5)).

Advertising

31. Service 1st complied with the subpoena as stated in Paragraph 9 and produced copies of Service 1st's advertising as requested.

32. The Department believes that one of the advertisements had the name of a borrower's current mortgage holder listed several times, including in the portion of the advertisement that is designed to show through a window envelope.

33. The Department believes that the placement and font size of the name of the current mortgage holder is designed to confuse the borrower that the sender of the advertisement is from the current mortgage holder and not from Service 1st.

34. By having an advertisement that is designed to appear from an entity other than Service 1st the advertisement could be considered dishonest, fraudulent, unfair and/or unethical.

35. Section 6139(a)(3) of the Mortgage Act (corresponding to Section 313(a)(5) of the MBBCEPA) allows the Department to suspend, revoke or refuse to renew any license issued pursuant to the Mortgage Act of a licensee for engaging 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) (corresponding to 63 P.S. § 456.313(a)(5)).

36. Two of the advertisements purport to offer interest rates "below 5%," but do not show an annual percentage rate for the loan products being advertised.

37. Service 1st contends that it was offering a range of interest rates and therefore could not specify an APR. A Department examiner confirmed that there were numerous loans closed with a rate and APR "below 5%."

38. Section 226.24 of Federal Reserve Regulation Z, Truth in Lending ("Regulation Z"), requires that any advertisement which states any rate, payment terms, down payment terms

or finance charge must also disclose the annual percentage rate using that term or the abbreviation "APR" for the loan or loans being advertised. Furthermore, the annual percentage rate must be at least as conspicuous as any other rate. 12 CFR 226.24.

39. Section 226.24(b) also requires that, if the annual percentage rate might increase after the loan consummation, any advertising must disclose that the rate may increase. 12 CFR 226.24(b).

40. It is not clear whether the rates mentioned in those two advertisements may increase, however if the rates did increase, the advertisements could be in violation of Regulation Z:

41. To the extent that the advertisements are not using the term annual percentage rate, disclosing an annual percentage rate more conspicuously than any other rate in its advertising, and not disclosing whether the rate may increase the advertisements could be construed to be in violation of Section 226.24 of Regulation Z for which the Department could take appropriate action.

Authority of the Department

42. Section 6138(a)(4) of the Mortgage Act (corresponding to Section 310(a) of the MBBCEPA and Section 16(1) of the SMLA) grants the Department the authority to issue orders as may be necessary 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)).

43. 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)).

VIOLATIONS

44. According to the Department’s position, Service 1st is in violation of Sections 6135(a)(4) and 6123(a)(7) of the Mortgage Act.

RELIEF

45. Fine. Within thirty (30) days of the Effective Date of this Order, Service 1st shall pay to the Department a fine in the amount of \$6,500. The fine payment shall be remitted by certified check or money order made payable to the Department of Banking, and shall be sent to the Attention of the Bureau of Compliance, Investigation and Licensing at 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

46. Corrective Action.

a. Staffing. Within thirty (30) days of the Effective Date of this Order, Service 1st shall staff its principal place of business in Pennsylvania on a full time basis, i.e. Service 1st shall have a knowledgeable W-2 employee who meets the continuing education requirements of the Mortgage Act and who is physically located at the principal place of business during regular business hours. Knowledgeable is defined as having the ability to conduct the business of Service 1st including being able to directly contact consumers to present, negotiate or provide advice regarding loan terms.

b. Change of Officers. Upon the Effective Date of this Order, Service 1st shall timely file notice to the Department of any officer changes, including office managers.

c. Rate Lock Agreements. Upon the Effective Date of this Order, Service 1st shall cease and desist from entering into rate lock agreements with Pennsylvania consumers in its own name while being licensed as a first mortgage broker.

d. Loan Commitments. Upon the Effective Date of this Order, Service 1st shall cease and desist from issuing loan commitments in its own name while being licensed as a first mortgage broker.

e. Advertising. Upon the Effective Date of this Order, Service 1st shall ensure that its future advertising is readily understandable to a consumer and in compliance with Section 226.24 of Federal Reserve Regulation Z, Truth in Lending.

FURTHER PROVISIONS

47. Consent. Service 1st 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 it understands all of the terms and conditions contained herein. Service 1st, 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.

48. Publication and Release. 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).

49. 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 Service 1st.

50. Binding Nature. The Department, Service 1st, and all officers, owners, directors, employees, heirs and assigns of Service 1st intend to be and are legally bound by the terms of this Order.

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

52. Effectiveness. Service 1st hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

53. 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 Service 1st in the future regarding all matters not resolved by this Order, with a reciprocal reservation by Service 1st.

b. Service 1st 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.

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

55. Counterparts. This Order may be executed in separate counterparts.

56. 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.

