

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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

Petitioner,

v.

U.S. MORTGAGE GROUP, INC.,

Respondent.

Docket No.: 090091 (ENF-C&D)

FILED
2010 JAN 13 PM 1:55
PA DEPT OF BANKING

NOTICE OF RIGHT TO APPEAL

You, U.S. Mortgage Group, Inc. are hereby notified that you have the right to appeal the attached Final Order (the "Order") issued by the Commonwealth of Pennsylvania Department of Banking.

If you wish to appeal the attached Order, you must file a petition for review with the Prothonotary of the Pennsylvania Commonwealth Court within 30 days of the date of mailing of the attached Order, in accordance with and pursuant to Title 65 P.S. § 66.4(a). If you file a petition for review with the Prothonotary of the Pennsylvania Commonwealth Court, the petition for review must comply with Pennsylvania Rules of Appellate Procedure 1511 *et seq.*

Please be advised that failure to file a petition for review with the Prothonotary of the Pennsylvania Commonwealth Court pursuant to the Pennsylvania Rules of Appellate Procedure will result in the attached Order becoming final and unappealable.

In addition, please be advised that this Notice of Right to Appeal is not intended to and does not constitute legal advice. You should consult an attorney regarding your legal rights including your right to appeal the attached Order or your right to file an application for rehearing or reconsideration.

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FINAL ORDER

AND NOW, this 13th day of January, 2010, based upon the pleadings filed in this case, all matters of record and the Proposed Report prepared by Hearing Officer Linda C. Barrett, Esquire, the unopposed Proposed Report and the findings of fact and conclusions of law contained therein, the Hearing Officer's Proposed Report and Recommendations attached hereto as Exhibit "A" are **ADOPTED** in their entirety, and it is hereby

ORDERED and **DECREED** that the Cease and Desist Order entered on May 19, 2009 shall remain in effect.

By:

Redacted

VICTORIA A. REIDER
EXECUTIVE DEPUTY SECRETARY

Date of Mailing: 1-13-10

Exhibit "A"

I. PROCEDURAL HISTORY

On April 17, 2009, the Department of Banking's ("Department") Bureau of Compliance, Investigation and Finance ("Bureau") commenced an examination of U.S. Mortgage Group, Inc. On May 19, 2009 the Bureau issued a Cease and Desist Order (09-0091 (ENF-C&D)) ordering U.S. Mortgage Group, Inc. ("Respondent" or "U.S. Mortgage") to immediately cease and desist from engaging in the mortgage loan business including, but not limited to soliciting, advertising (including website advertising) or causing to be advertised residential first and/or secondary mortgage loans, negotiating, arranging, originating or closing any applications for such loans or making or offering to make any such loans for Pennsylvania consumers or involving Pennsylvania real property until U.S. Mortgage provided information sought by the Department regarding U.S. Mortgage Mod, LLC. The Order permitted U.S. Mortgage to process any mortgage loan applications taken before the Order was filed.

Following the filing of the Department's Cease and Desist Order, the designated Adjudicator appointed a Hearing Officer to hold a hearing within fourteen (14) days in accordance with the provisions of Section 6138(a)(7) of the Mortgage Act, 7 Pa.C.S. § 6138(a)(7). The hearing was scheduled for May 28, 2009.

The hearing was held on May 28, 2009 before the designated Hearing Officer. Respondent did not appear at the hearing.

Lauren A. Sassani, Esquire represented the Department.

Following the close of testimony, the Hearing Officer issued a Briefing Scheduling Order. Under the terms of the June 3, 2009 Order, Respondent was given an

opportunity to submit a brief within thirty (30) days and the Department was given an opportunity to reply.

Respondent did not file a brief nor did it request an extension of time in which to file a responsive brief. The Department elected not to file a brief.

This matter is now ready for appropriate disposition.

II. FINDINGS OF FACT

1. The Department is the Executive Agency authorized and empowered to administer and enforce the Mortgage Act, 7 Pa.C.S. § 6101 *et seq.* (PDB 1, p. 2 ¶ 1)

2. The Department, through the Bureau of Compliance, Investigation and Licensing has primary responsibility for administering and enforcing the Mortgage Act. (PDB 1, p. 2 ¶ 2)

3. At all relevant and material times, Respondent, U.S. Mortgage was located at 1617 John F. Kennedy Blvd., Suite 889, Philadelphia, PA 19103. (N.T. 13-14; PDB 1, p.2 ¶ 4)¹

4. At all relevant and material times, Marc Dambrosio (“Dambrosio”) was the 100% owner of U.S. Mortgage. (N.T. 27, 30; PDB 9)

5. On April 17, 2009, Theresa Thi-Gemerek (“Gemerek”), a financial institution examiner from the Bureau, commenced an examination of records (“Examination”) at U.S. Mortgage. (N.T. 13; PDB 1 p. 2 ¶ 6)

6. Gemerek initiated the Examination based upon complaints received by the Department concerning U.S. Mortgage. (N.T. 13).

¹N.T. refers to Notes of Testimony from the May 28, 2009 hearing.

7. The Examination took approximately three weeks and Gemerek spent about twelve (12) days on site at U.S. Mortgage business offices located at 1617 John F. Kennedy Blvd., Suite 889, Philadelphia, PA 19103. (N.T. 14)

8. When Gemerek started the Examination, she was initially seated at a desk by the receptionist but then asked to work in an empty office. (N.T. 18)

9. Gemerek asked to work in the empty office because the desk where she was originally located also had a fax machine and she had to move aside whenever a fax was received or sent. (N.T. 18)

10. The owner, Marc Dambrosio, agreed to Gemerek's request. *Id.*

11. Gemerek worked from this office for approximately three days with the door partly closed with no problems or complaints from U.S. Mortgage. (N.T. 19; PDB 1, p. 3 ¶ 2)

12. On May 7, 2009, Gemerek sent Dambrosio an e-mail asking for loan modification documents related to an affiliated company located at the same address, U.S. Mortgage Mod., LLC. On advice of counsel, Dambrosio declined to provide loan modification information. (N.T. 17, 19; PDB 5)

13. On the following day, the room where Gemerek had been working was reconfigured. Desks were pushed into the middle of the room making it difficult to get to the other side of the room. A box of copier paper and three large water cooler bottles were propped against the door with a note that indicated that the door was to remain open at all times. The note was signed "Marc". (N.T. 20)

14. Surfaces on Gemerek's workspace contained smears from some kind of lotion requiring Gemerek to clean her desk. (N.T. 20)

15. Gemerek found this change to the work environment to be hostile. *Id.*

16. Dambrosio did not provide the information request by Gemerek and asserted that Gemerek was not entitled to information asserting that U.S. Mortgage did not advertise or process mortgage modifications in the Commonwealth of Pennsylvania. (N.T. 21; PDB 6-7)

17. After Gemerek's last request for information, Dambrosio refused to answer any questions and had security escort Gemerek from the office building. (N.T. 23)

18. U.S. Mortgage Mod, LLC is in the business of making mortgage loan modifications and debt settlement. (N.T. 16-17)

19. Marc Dambrosio is the 100% owner of U.S. Mortgage Mod, LLC. (N.T. 28; PDB 10)

20. U.S. Mortgage did not notify the Department that it had an affiliated business located at 1617 John F. Kennedy Blvd., Suite 889, Philadelphia, PA 19103. (N.T. 32)

21. The Examination revealed that U.S. Mortgage had an affiliated business, U.S. Mortgage Mod, LLC operating from 1617 John F. Kennedy Blvd., Suite 889, Philadelphia, PA 19103. (N.T. 32-33)

22. On May 19, 2009 the Bureau issued a cease and desist Order directing U.S. Mortgage to immediately cease and desist from engaging in the mortgage loan business subject to the Mortgage Act, including, but not limited to soliciting, advertising (including website advertising) or causing to be advertised residential first and/or secondary mortgage loans, negotiating, arranging, originating or closing any applications

for such loans or making or offering to make any such loans for Pennsylvania consumers or involving Pennsylvania real property unless and until such time as U.S. Mortgage provides the information requested regarding U.S. Mortgage Mod, LLC. (N.T. 31, 33; PDB 1)

23. In accordance with the May 19, 2009 order, U.S. Mortgage was permitted to process any mortgage loan applications it had taken by the date this order was filed. (PDB 1)

24. The Bureau issued a Cease and Desist Order based on the fact that U.S. Mortgage refused the examiner access to documents and records of U.S. Mortgage and the affiliate company operating out of the same address. (N.T. 31-32).

25. On May 20, 2009, the Department served a copy of the Cease and Desist Order upon U.S. Mortgage addressed to Justin Kassick, Manager at 1617 John F. Kennedy Blvd., Suite 889, Philadelphia, PA 19103. (N.T. 8-9;PDB 2)

26. The "Notice of Right To Appeal and Hearing" attached to the Department's Cease and Desist Order notified U.S. Mortgage notified it of its right to a hearing within 14 days of the date of the Order and established May 28, 2009 at 10:00 a.m. as the time and place of the hearing. (N.T. 8-10; PDB 1)

27. U.S. Mortgage did not appear at the hearing scheduled for May 28, 2009. (N.T., *passim*)

28. U.S. Mortgage was given the opportunity to file a brief but did not do so. (Official Notice, Department Records)

III. CONCLUSIONS OF LAW

1. The Secretary has jurisdiction over the Respondent in this matter. 7 Pa.C.S. §§ 6111(a) and 6138(b)

2. The Department, through the Bureau of Compliance, Investigation and Licensing has responsibility for administering the Mortgage Act. 7 Pa.C.S. § 6101 *et seq.*

3. Respondent was served with a copy of the Department's "Cease and Desist" Order and was granted an opportunity to be heard in accordance with the Administrative Agency Law, 2 Pa.C.S. § 504 and the Mortgage Act, 7 Pa.C.S. 6138 (b). (Official Notice, Department Records; Findings of Fact Nos. 25-28; *Fiore v. Bd. of Fin. & Revenue*, 534 Pa. 511, 633 A.2d 1111, 1114 (Pa. 1993))

4. Section 6135(a)(4) of the Mortgage Act provides that "[e]ach licensee shall be subjected to 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 the Commonwealth. The department may examine a licensee at any time if the department deems the examination to be necessary and desirable. The cost of any such examination shall be borne by the licensee." 7 Pa.C.S. § 6135(a)(4)

5. Section 6138(a)(1) of the Mortgage Act provides that the Department has the authority to "[e]xamine any instrument, document, account, book, record or file of a licensee or any person having a connection to the licensee or make other investigation as may be necessary to administer the provisions of this chapter." 7 Pa.C.S. § 6138(a)(1).

6. Section 6136(b) of the Mortgage Act provides that “[a] licensee cannot conduct a business other than the mortgage loan business licensed by the department under this chapter without at least 30 days prior written notification to the department.” 7 Pa.C.S. § 6136(b)

7. Section 6138(a)(7) provides the Department the authority to “[i]ssue cease and desist orders that are effective immediately, subject to a hearing as specified in subsection (b) within 14 days of the issuance of the order.” 7 Pa.C.S. § 6138(a)(7)

8. The Department has the authority to question a licensee about affiliated businesses. 7 Pa.C.S. § 6138(a)(1) and 7 Pa.C.S. § 6135(a)(4)

9. By refusing to answer questions and provide documentation, U.S. Mortgage failed to cooperate with an examination. (Findings of Fact No. 12, 16, 17)

10. U.S Mortgage failed to notify the Department that it had an affiliated business located at 1617 John F. Kennedy Blvd., Suite 889, Philadelphia, PA 19103. (Findings of Fact Nos. 12, 18-21).

11. The Department was authorized under the Mortgage Act to issue a Cease and Desist Order to Respondent prohibiting them from engaging in the mortgage business. 7 Pa.C.S. §§ 6138 (a)(4), (7) and (f)

12. The Department has demonstrated through credible and competent evidence that the Department had just cause to issue the May 19, 2009 Cease and Desist Order. (Findings of Fact Nos. 1-21)

13. The Department has demonstrated through un rebutted, credible, and competent evidence that the Cease and Desist Order should remain in effect. (Findings of Fact Nos. 1-21)

IV. DISCUSSION

The Secretary of Banking must consider whether the business practices of a licensee assure safety to customers and the public. In this instance, U.S. Mortgage, through its agents failed to cooperate with the Examination initiated by Gemerek and failed to fulfill certain notice requirements applicable to the presence of an affiliated business.

The pertinent provisions of the Mortgage Act provide that:

§ 6135(a)(4).

[e]ach licensee shall be subject to 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 of this Commonwealth. The department may examine a licensee at any time if the department deems such examination to be necessary or desirable. 7 P.S. §6135(a)(4).

§ 6138(a)(1).

[e]xamine any instrument, document, account, book, record or file of a licensee or any person having a connection to the licensee or make other investigation as may be necessary to administer the provisions of this chapter. 7 P.S. §6138(a)(1).

In addition, pursuant to Section 6136(b) of the Mortgage Act, "[a] licensee cannot conduct a business other than the mortgage loan business licensed by the department under this chapter without a least 30 days prior written notification to the department." 7 P.S. § 6136(b).

The undisputed facts reveal that when the Department initiated the Examination, U.S. Mortgage restricted access to its files and took steps to make the working conditions for the Examination untenable. (Findings of Fact Nos. 6-14). The examiner construed

these steps to be hostile behavior as a way to evade the Department's efforts to conduct the Examination especially in connection with the undisclosed affiliated business. (Findings of Fact No. 15).

Although given the opportunity to specifically respond to the Department's Cease and Desist Order and to expressly defend against the factual allegations, U.S. Mortgage declined that opportunity. (Findings of Fact No. 25-28).

The Department must be mindful of the fact that the primary focus of disciplinary sanctions is not punishment but, rather, public protection. *Galena v. Department of State*, 551 A.2d 676, 679-680 (Pa. Cmwlth. 1988). The entry of the May 19, 2009 Cease and Desist Order is consistent with that obligation. U.S. Mortgage's failure to participate in the hearing and offer any evidence and lack of mitigation in conjunction with the lack of cooperation during the examination and its failure to notify the Department of the presence of an affiliated business creates a presumption of questionable and possible unlawful business practices. While public protection has not been alleged to be an immediate issue, the Department has a continuing responsibility to protect the public against licensees who place the public at risk. The examination of U.S. Mortgage began based upon consumer complaints and as such the Department had to take appropriate action to satisfy itself that this entity did not present a threat to its customers, other consumers and the public at large. The Examination revealed nothing to contradict this concern and U.S. Mortgage has done nothing to rebut the Department's position. (Findings of Fact No. 1-28).

V. RECOMMENDATION

The decision of the Department should be upheld and the Cease and Desist Order should remain in place. The following Order should be issued:

Redacted

Linda C. Barrett
Hearing Officer

DATE: August 31, 2009

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

Commonwealth of Pennsylvania	:	
Department of Banking	:	
Bureau of Compliance, Investigation and Licensing,	:	
Petitioner	:	
v.	:	Docket No. 090091(ENF-C&D)
	:	
U.S. Mortgage Group, Inc.	:	
Respondent	:	

ORDER

AND NOW, this ____ day of ____ 2009, based upon the foregoing Findings of Fact, Conclusions of Law and Discussion, the proposed report of the Hearing Officer is adopted and the Cease and Desist Order entered on May 19, 2009 shall remain in effect.

Victoria A. Reider
Executive Deputy Secretary

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DEPARTMENT OF BANKING

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CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2010, I have served a true and correct copy of the foregoing documents and all attachments thereto and/or enclosures therewith, upon the following individuals in accordance with the requirements of 1 Pa. Code § 33.31 (relating to service by agency), in the manner indicated below:

BY FIRST CLASS U.S. MAIL:

U.S. Mortgage Group, Inc.
U.S. Mortgage Mod, LLC
Marc Dambrosio
1916 Delancey Place
Philadelphia, PA 19103

U.S. Mortgage Group, Inc.
U.S. Mortgage Mod, LLC
Marc Dambrosio
9 Coopertown Road
Haverford, PA 19041

BY HAND DELIVERY

✓ Lauren A. Sassani, Assistant Counsel
Department of Banking
17 North Second Street
Suite 1300
Harrisburg, PA 17101-2290

By:

Redacted

~~Robert C. Lopez, Deputy Chief Counsel~~
17 N. Second Street, Suite 1300
Harrisburg PA 17101
Phone: (717) 787-1471
Counsel to the Adjudicator