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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

2010 JUL 30 PM 2:45

PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF BANKING, BUREAU :
OF COMPLIANCE, INVESTIGATION AND :
LICENSING :
: :
: :
v. : DOCKET No. 090208 (ENF-C&D)
: :
THE HOLDEN GROUP, LTD and :
MICHAEL P. MEYER, individually :

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Compliance, Investigation and Licensing ("Bureau") has conducted an investigation of The Holden Group, Ltd., and Michael P. Meyer, individually (collectively "Holden Group, Ltd."). 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-caption matter and, intending to be legally bound, hereby agree to the terms and conditions of this Consent Agreement and Order ("Order").

BACKGROUND

1. The Department is the Pennsylvania agency authorized and empowered to administer and enforce the Mortgage Licensing Act ("MLA"), 7 Pa. C.S. § 6101, *et. seq.*
2. The Bureau is primarily responsible for administering and enforcing the MLA.
3. The MLA is the successor statute to Chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act ("MBBCEPA"), 63 P.S. § 456.301, *et. seq.* and the Secondary Mortgage Loan Act ("SMLA"), 7 P.S. § 6601, *et. seq.*

4. On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by the act known as the Mortgage Act.

5. On August 5, 2009, the Mortgage Act was amended to include changes to the licensing requirements for persons engaging in the mortgage loan business in Pennsylvania and was titled the Mortgage Licensing Act.

6. The Holden Group, Ltd. is located at P.O. Box 534, Camp Hill, Pennsylvania 17001.

7. The President of the Holden Group, Ltd. is Michael P. Meyer ("Mr. Meyer").

8. Michael P. Meyer was licensed by the Department as a mortgage broker from April 22, 1993 until July 1, 2008.

9. Neither the Holden Group, Ltd. nor Mr. Meyer has been licensed by the Department to engage in the mortgage loan business since July 2008.

10. Prior to this matter, Mr. Meyer has not been subject to an enforcement action by the Department for a period of over 15 years.

UNLICENSED ACTIVITY

11. On or about August 31, 2009, the Department received a complaint from a Pennsylvania consumer alleging that Mr. Meyer, as President of the Holden Group, Ltd., had attempted to facilitate the refinancing of a mortgage loan for the consumer in the spring of 2009.

12. The consumer alleged that Mr. Meyer, through the Holden Group, Ltd., represented that it would be able to assist him in refinancing his mortgage.

13. The consumer's mortgage loan was ultimately refinanced through a lender licensed by the Department, following a referral from the Holden Group, Ltd. to duly licensed entities.

14. Mr. Meyer, as President of the Holden Group, Ltd., contended that the refinancing occurred as a result of his efforts and instituted a civil action against the consumer requesting fees for his work.

15. Specifically, in the civil action, Mr. Meyer requested fees for the "considerable amount of financial work" that he expended on behalf of the consumer in arranging for the refinancing of the consumer's mortgage loan, at the request of the consumer.

16. Because the Holden Group, Ltd. was not licensed when it arranged for the refinancing of the consumer's mortgage and sought fees for the services provided, the Bureau concluded that the Holden Group, Ltd. engaged in unlicensed activity in violation of the MLA.

17. On October 13, 2009, the Bureau issued a Cease and Desist Order against the Holden Group, Ltd., Docket No. 090208.

18. In the Cease and Desist Order, the Bureau asserted that The Holden Group, Ltd. violated the MLA by arranging and negotiating the terms of a mortgage loan for a Pennsylvania consumer and by soliciting and advertising to a Pennsylvania consumer that it could engage in the mortgage loan transaction even though it was no longer licensed to do so.

19. In response to the Cease and Desist Order, the Holden Group, Ltd. voluntarily withdrew the civil action against the consumer.

20. The Holden Group, Ltd. represented to the Department that the transaction with the consumer was an isolated incident and it has not engaged in the mortgage loan business in the Commonwealth since July 1, 2008.

21. On October 23, 2009, the Holden Group, Ltd. filed an appeal challenging the Cease and Desist Order.

22. In the October 23, 2009 Appeal, the Holden Group, Ltd. contended that the appropriate statute under which Mr. Meyer's actions must be considered is the version of the MLA that was effective November 5, 2008 to August 4, 2009.

23. In the October 23, 2009 Appeal, the Holden Group, Ltd. and Mr. Meyer contended that the version of Section 6112(3) of the MLA in effect from November 5, 2008 through August 4, 2009 contained an exception to the licensing requirement that allowed for the transaction in question.

24. Specifically, Section 6112(3) of the MLA provided, prior to the August 5, 2009 amendments, as follows:

The following persons shall not be required to be licensed under this chapter in order to conduct the mortgage loan business:

A person who either originates, negotiates or services less than three mortgage loans in a calendar year in this Commonwealth, unless the person is otherwise deemed to be engaged in the mortgage loan business by the department.

25. Had the parties elected to go to a hearing on the matter, the Bureau would have produced evidence showing that:

a. The Holden Group, Ltd., through Mr. Meyer, violated the MLA when it arranged for the financing of a mortgage loan on behalf of a Pennsylvania consumer, requested fees for the services performed, and when it advertised and solicited mortgage loan business from a consumer without being licensed by the Department.

b. The above exception does not apply to The Holden Group, Ltd. because Mr. Meyer was continuing to hold the company out as able to engage in the

mortgage loan business in Pennsylvania when he performed the transaction at issue after its license expired.

26. Had the parties elected to go to a hearing on the matter, The Holden Group, Ltd. would have produced evidence showing that:

a. The Holden Group, Ltd., through Mr. Meyer, did not deliberately intend to violate the MLA when it engaged in the transaction at issue because it believed that the transaction fell within the above mentioned exception and was in accord with Public Law 621 of June 2001 for the above owner's and consumer's best interest.

b. Mr. Meyer, acting through the Holden Group, Ltd., acted in good faith when assisting the consumer with the transaction and did not intend to harm or injure the consumer in any way.

27. Due to the Holden Group, Ltd.'s cooperation with the Bureau, as demonstrated by its voluntary withdrawal of the civil suit against the consumer and by providing information relating to its business activities to the Bureau, the Bureau is willing to enter into this Order with the Holden Group, Ltd.

28. This Order resolves all issues relating to this matter: *The Holden Group, Ltd. and Michael P. Meyer, individually*, Docket No. 090208 (ENF-C&D).

AUTHORITY OF THE DEPARTMENT

29. Section 6111(a) of the MLA provides, in relevant part, that:

[N]o 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....

See 7 Pa. C.S. § 6111(a) (emphasis added).

30. Section 6102 of the MLA defines the 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.*” See 7 Pa. C.S. § 6102 (emphasis added).

31. Section 6139(a)(2) of the MLA provided that it is a violation if a person fails “to comply with or violated any provision of this chapter.” 7 Pa. C.S. § 6139(a)(2).

32. Section 6140(a) of the MLA provides as follows:

Persons operating without licenses. – 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.

See 7 Pa. C.S. § 6140(a).

VIOLATIONS

33. It is the Department’s position that the Holden Group, Ltd. violated Section 6111(a) of the MLA by arranging for the refinancing of a mortgage loan on behalf of a Pennsylvania consumer and by advertising and soliciting to the consumer that it could engage in the transaction without being licensed by the Department.

34. It is the Holden Group, Ltd.’s position that the violation of the MLA was unintentional as it believed that an exception to the MLA applied and the transaction in question was made in good faith with no intent to harm or injure the consumer in any way.

RELIEF

35. Corrective Actions.

a. The Holden Group, Ltd. shall immediately cease and desist from soliciting, advertising, causing to be advertised, originating, negotiating, or arranging in the ordinary course of business mortgage loans in the Commonwealth, until licensed by the Department.

b. The Holden Group, Ltd. agrees not to reinstitute the civil suit against the consumer or to, in any way, attempt to collect fees for the work allegedly performed for the consumer in spring 2009 giving rise to the Cease and Desist Order issued by the Department in this matter.

36. Fine. The Holden Group, Ltd. shall pay a fine in the amount of \$1,000 payable in ten payments of \$100. The first payment shall be due and payable on September 1, 2010 and additional payments shall be due on the first day of the month until paid in full. Payments shall be remitted by certified check or money order payable to the "Department of Banking," the Bureau of Compliance, Investigation and Licensing located at Market Square Plaza, 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

FURTHER PROVISIONS

37. Consent. The Holden Group, Ltd. hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's authority under the MLA and agrees that it understands all of the terms and conditions contained herein. The Holden Group, Ltd., by voluntarily entering into the Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

38. 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).

39. 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 the Holden Group, Ltd.

40. Binding Nature. The Bureau, the Holden Group, Ltd., and all officers, owners, directors, employees, heirs and assigns of the Holden Group, Ltd. intend to be and are legally bound by the terms of this Order.

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

42. Effectiveness. The Holden Group, Ltd. hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

43. 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 the Holden Group, Ltd. in the future regarding all matters not resolved by this Order.

b. The Holden Group, Ltd. acknowledged 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.

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

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

46. 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 Bureau and the Holden Group, Ltd. intending to be legally bound, do hereby execute this Consent Agreement and Order.

