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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

PA DEPT OF BANKING

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

v.

Docket No. 10 0231 (ENF-CO)

FRANKLIN AMERICAN
MORTGAGE COMPANY

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, through the Department of Banking's (the "Department") Bureau of Compliance, Investigation and Licensing (the "Bureau"), based on information obtained through its investigation, believes that Franklin American Mortgage Company ("Franklin"), operated in violation of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 *et seq.* It is Franklin's position that at all times it operated with the belief that it was in compliance with the Mortgage Licensing Act, and all other relevant statutes and regulations. Franklin enters into this agreement and order to resolve this matter without litigation, but without admitting guilt or wrongdoing. Accordingly, the parties, 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 Licensing Act.
2. The Bureau is primarily responsible for administering and enforcing the Mortgage Licensing Act for the Department.

3. Franklin is licensed as a mortgage lender under the Mortgage Licensing Act with license number 20386 and a National Mortgage Licensing System identification number of 1599.

4. Franklin maintains its principal place of business at 501 Corporate Centre Drive Suite 400, Franklin, Tennessee, 37067.

5. Franklin cooperated fully with the investigation and provided all the necessary information requested in a timely fashion to the Department.

Unlicensed Mortgage Originators

6. The Mortgage Licensing Act provides, in relevant part, that “. . . on and after the effective date of this section [November 5, 2008], no person shall engage in the mortgage loan business in this Commonwealth without being licensed as a . . . mortgage originator as provided under this chapter. A mortgage originator may not engage in the mortgage loan business unless the mortgage originator is employed and supervised by a licensed mortgage broker, mortgage lender or mortgage loan correspondent. . .” 7 Pa. C.S. § 6111(a).

7. Beginning on September 13, 2010 the Bureau conducted an investigation leading it to conclude that Franklin had originated mortgages through employees unlicensed to perform such services.

8. The Bureau believes that Franklin originated twenty-seven loans through unlicensed loan originators for the period beginning November 5, 2008 through August 30, 2010 based on a loan log obtained from Franklin pursuant to the Bureau's investigation.

9. It is the conclusion of the Bureau that the mortgage loan applications originated by Franklin subsequent to November 5, 2008 through unlicensed individuals are in violation of the Mortgage Licensing Act.

10. Franklin is required to directly supervise, control and maintain responsibility for the acts and omissions of the mortgage originators it employs. 7 Pa. C.S. § 6131(f)(1).

11. It is the conclusion of the Bureau that Franklin failed to employ only licensed mortgage loan originators, and failed to directly supervise, control and maintain responsibility for the acts and omission of the mortgage originators it employed as required by the Mortgage Licensing Act.

12. Franklin stated that at all times it believed it was properly originating and processing mortgage loans.

13. Nevertheless, Franklin has informed the Department that it has instituted internal control measures which will ensure that all mortgage originators are properly licensed and will also prohibit unlicensed individuals from engaging in the mortgage business in Pennsylvania.

14. Franklin as of September 23, 2010 is in full compliance with section 7 Pa. C.S. § 6111(a) of the Mortgage Licensing Act.

Authority of the Department

15. Section 6138(a)(4) of the Mortgage Licensing Act grants the Department broad authority to issue orders for the proper conduct of the mortgage licensing business and the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4).

16. Section 6139 of the Mortgage Licensing Act provides that the Department may suspend, revoke or refuse to renew a license issued under the Mortgage Licensing Act if an owner has "failed to comply with or violated any provision of this chapter. . ." and if "a mortgage broker, mortgage lender or mortgage loan correspondent, conducted the mortgage loan business through an unlicensed mortgage originator." 7 Pa. C.S. § 6139(a)(2) and (a)(14).

17. Section 6140(b) of the Mortgage Licensing Act 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).

ALLEGED VIOLATIONS

18. The Bureau believes Franklin violated the Mortgage Licensing Act when it continued to conduct the mortgage loan business through unlicensed mortgage originators after November 5, 2008, and when it failed to properly control and supervise its employees in accordance with the requirements of the Mortgage Licensing Act. 7 Pa. C.S. § 6111(a); 7 Pa. C.S. § 6131(f)(1).

RELIEF

19. Fine. Franklin, to avoid litigation and without admitting wrongdoing, agrees to pay a fine of \$6,750.00 which shall be due and payable to the Department within 30 days upon the effective date of this Order as defined in paragraph 26 below. The fine payment shall be remitted by a certified check or money order made payable to the Pennsylvania Department of Banking and sent to the attention of Compliance Division, Bureau of Compliance, Investigation and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

20. Corrective Measures. Upon the effective date of this Order, Franklin shall cease and desist from conducting the mortgage loan business through unlicensed mortgage originators and from failing to properly control and supervise its employees in accordance with the requirements of the Mortgage Licensing Act.

FURTHER PROVISIONS

21. Consent. Franklin hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order issued pursuant to the Bureau's order authority under the Mortgage Licensing Act and agrees that it understands all of the terms and conditions contained herein. Franklin, 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.

22. 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)

23. 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 Franklin.

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

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

26. Effectiveness. Franklin hereby stipulates and agrees that the Order shall become effective on the date the Bureau executes the Order.

27. 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 Franklin, in the future regarding all matters not resolved by this Order.

b. Franklin acknowledges and agrees that this Order is only binding upon the Department and not other local, state or federal agency, department or office regarding matters within this Order.

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

29. Counterparts. This order may be executed in separate counterparts and by facsimile or electronic mail in portable document format "pdf."

30. 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 Franklin 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

Robert E. Knaub, Enforcement Administrator
Bureau of Compliance, Investigation and Licensing
Department of Banking

Date: _____

9/27/10

FOR FRANCHISE IN AMERICAN MORTGAGE COMPANY

(Officer Signature)

(Print Officer Name)

(Title)

Date: 9/22/2010