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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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

Docket No. : 100153 (ENF-ORD)

PA DEPT OF BANKING

v.

HOME RESCUE, LLC.

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Compliance, Investigation and Licensing ("Bureau"), has conducted a review of the business practices of Home Rescue, LLC ("Home Rescue"), and its officers, employees and directors. Based on the results of its review, the Bureau believes that Home Rescue operated in violation of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 et seq. Home Rescue denies having operated in violation of the Mortgage Licensing Act. The parties to the above captioned matter, in lieu of litigation, intending to be legally bound, hereby agree to the terms of this Consent Agreement and Order ("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. The Mortgage Licensing Act was amended on August 5, 2009, by Act 31 of 2009, H.B. 1654 (P.N. 2448).

4. In or around January 2010, the Bureau became aware that Home Rescue had sent a direct mail solicitation to an individual located in State College, Pennsylvania (Centre County) regarding mortgage loan modifications.

5. Home Rescue advertises through its website, www.homerescuellc.net, that it is in the mortgage loan modification business.

6. "Pennsylvania" is included in the dropdown menu under the "Application" section and the "Foreclosure Laws" section of Home Rescue's website.

7. The Website lists the principal place of business of Home Rescue as 10600 York Rd., Suite 200, Cockeysville, MD 21030.

8. The Mortgage Licensing Act applies to any mortgage loan that is "(i) negotiated, offered or otherwise transacted within this Commonwealth, in whole or in part, whether by the ultimate lender *or any other person*; (ii) made or executed within this Commonwealth; or (iii) notwithstanding the place of execution, secured by real property located in this Commonwealth." 7 Pa. C.S. § 6135(1) (emphasis added).

9. Section 6102 of the Mortgage Licensing Act defines "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." 7 Pa. C.S. § 6102.

10. Section 6102 of the Mortgage Licensing Act defines a "first mortgage loan" as a loan which is "(1) made primarily for personal, family or household use; and (2) secured by any first lien mortgage, deed of trust, or equivalent consensual security interest on a dwelling or on residential real estate." 7 Pa. C.S. § 6102.

11. Section 6102 of the Mortgage Licensing Act defines a "secondary mortgage loan" as "(1) made primarily for personal, family or household use; and (2) secured by any secondary

lien mortgage, deed of trust, or equivalent consensual security interest on a dwelling or on residential real estate.” 7 Pa. C.S. § 6102.

12. Section 6102 of the Mortgage Licensing Act defines a “mortgage loan” as “[a] first or secondary mortgage loan, or both, as the context may require.” 7 Pa. C.S. § 6102.

13. Section 6102 of the Mortgage Licensing Act defines a “mortgage originator” as “[a]n individual [who] takes a mortgage loan application or offers or negotiates terms of a mortgage loan for compensation or gain.” 7 Pa. C.S. § 6102.

14. Section 6111(a) of the Mortgage Licensing Act provides that “. . . no 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. 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).

15. It is the Bureau’s position that by advertising the loan modification business through a direct mail solicitation and its website to Pennsylvania consumers, Home Rescue is actively engaged in, and holding itself out as being engaged in, the mortgage loan business in Pennsylvania.

16. It is the Bureau’s position that Home Rescue does not meet any of the exceptions to licensure in Sections 6111(b) and 6112 of the Mortgage Licensing Act. *See* 7 Pa. C.S. § 6111(b), 6112.

17. Home Rescue is not licensed in Pennsylvania under the Mortgage Licensing Act.

18. It is the Bureau’s position that Home Rescue has violated the Mortgage Licensing Act by engaging in the mortgage loan business in Pennsylvania without a license.

19. Section 6102 of the Mortgage Licensing Act defines an “advance fee” as “[a]ny funds requested by or to be paid to a person in advance of or during the processing of a mortgage loan application, excluding those fees paid by a consumer directly to a credit agency reporting bureau, title company or real estate appraiser.” 7 Pa. C.S. § 6102

20. Section 6102 of the Mortgage Licensing Act defines a “mortgage originator” as:

- (1) An individual [that] takes a mortgage loan application or offers or negotiates terms of a mortgage loan for compensation or gain.
- (2) The term does not include any of the following:
 - (i) An individual engaged solely as a loan processor or underwriter consistent with section 6112(8) (relating to exceptions to licensing requirements).
 - (ii) A person or entity solely involved in extensions of credit relating to timeshare plans. . . .
- (3) Except as set forth in paragraph (4), the term does not include an employee of a licensee or person exempt or excepted from licensure under this chapter who *solely renegotiates terms for existing mortgage loans held or serviced by that licensee or person* and who does not otherwise act as a mortgage originator.
- (4)

7 Pa. C.S. § 6102 (emphasis added).

21. Section 6131(e)(1) of the Mortgage Licensing Act provides that mortgage broker license applicants must obtain and “maintain a bond in the amount of \$100,000, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The bond shall be a penal bond conditioned on compliance with this chapter and subject to forfeiture by the department and shall run to the Commonwealth for its use. The bond shall also be for the use of any person against the mortgage broker for failure to carry out the terms of any provision for which advance fees are paid. . . .” 7 Pa. C.S. § 6131(e)(1).

22. The employees of Home Rescue that conduct the mortgage loan modification negotiations with third party lenders on behalf of consumers are not licensed as mortgage

originators pursuant to the Mortgage Licensing Act and it is the Department's position that they do not meet any exception to licensure. See 7 Pa. C.S. § 6102.

23. It is the Bureau's position that only licensees that have an advance fee bond are permitted to collect advance fees under the Mortgage Licensing Act. See 7 Pa. C.S. § 6131(e)(1).

24. Home Rescue is not licensed as a mortgage broker under the Mortgage Licensing Act.

25. Home Rescue attests that any consumer for whom Home Rescue could not successfully negotiate a mortgage loan modification in Pennsylvania is provided a 100% refund of all fees paid to Home Rescue.

Previous Order

26. On July 19, 2010 the Bureau issued an Order against Home Rescue for engaging in the mortgage loan business in Pennsylvania without a license.

27. Home Rescue timely appealed the July 19, 2010 Order.

28. This Order resolves the July 19, 2010 Order.

Authority of the Department

29. Section 6138(a)(4) of the Mortgage Licensing Act provides the Department with authority to issue orders as may be necessary for the proper conduct of the mortgage loan business and the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4).

30. Section 6140(a) of the Mortgage Licensing Act provides, in relevant part that "[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.” 7 Pa. C.S. § 6140(a).

VIOLATIONS

31. It is the Bureau’s position that Home Rescue violated Section 6111(a) of the Mortgage Licensing Act by engaging in unlicensed activity.

32. It is the Bureau’s position that Home Rescue violated Section 6131(e)(1) of the Mortgage Licensing Act by collecting advance fees when it did not have a bond to do so.

RELIEF

33. Fine. Within thirty (30) days of the Effective Date of this Order, Home Rescue shall pay a \$1,000 fine. The fine shall be paid by certified check or money order made payable to the “Department of Banking” and shall be sent to the attention of the Department of Banking, Bureau of Compliance, Investigation and Licensing located at 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101.

34. Loan Origination. Upon the Effective Date of this Order, Home Rescue and any and all officers, members, managers, employees, independent contractors or agents of Home Rescue shall cease and desist from engaging in the mortgage loan business subject to the Mortgage Licensing Act, which in the Department’s view includes, but is not limited to, advertising (including website advertising and direct mailings), accepting applications and negotiating mortgage loans and mortgage loan modifications in Pennsylvania or to Pennsylvania consumers, unless and until such time that Home Rescue and all loan originators, as defined by the Mortgage. It remains Home Rescue’s position that by performing loan modification work for its customers, Home Rescue has not been engaging in any mortgage loan business that is subject to the Mortgage Licensing Act. However, Home Rescue has voluntarily ceased loan

modification business in Pennsylvania and is attempting to complete all loan modifications in its pipeline in Pennsylvania and will not do any new business in Pennsylvania or with Pennsylvania consumers unless and until such time as Home Rescue is properly licensed.

35. Pipeline Report. Upon the Effective Date of this Order, Home Rescue shall provide a list of Pennsylvania consumers that Home Rescue has worked with in order to negotiate mortgage loan modifications (the "Pipeline Report"). The Pipeline Report shall include, but is not limited to:

- a. The names, addresses and phone numbers of Pennsylvania consumers that have responded to Home Rescue's advertisements, including direct mail and through its website, or that Home Rescue has as clients;
- b. The amount of fees collected from the Pennsylvania consumers;
- c. The current rate, term and payment of the Pennsylvania consumers' loans;
- d. The proposed rate, term and payment of the loans subsequent to the loan modification; and
- e. The current status and/or resolution of the loan modification.

The Pipeline Report shall be sent to John Talalai, Administrator, Compliance Division, at jtalalai@state.pa.us, by 5:00 PM eastern time on the Effective Date of this Order. This Pipeline Report shall be updated biweekly until the Bureau no longer requires updates.

36. Contact Information. Upon the Effective Date of this Order, Home Rescue shall provide a list of all owners, officers, and employee of Home Rescue. The list shall include the name, address telephone number and position of these individuals. The information shall be sent to John Talalai, Administrator, Compliance Division, at jtalalai@state.pa.us, by 5:00 PM eastern time on the Effective Date of this Order. There shall be no enforcement by the Department

against any such persons with regard to this matter herein that is the subject of this Consent Agreement and Order. This Consent Agreement and Order resolves entirely this matter with respect to Home Rescue and any and all of its owners, officers, employees, agents, and attorneys unless after a due process hearing it is determined that Home Rescue and any and all of its owners, officers, employees, agents and attorneys have violated this Order or any provision of the Mortgage Licensing Act with respect to this matter.

37. Non-prohibited Conduct. Nothing in this Order shall prevent Home Rescue from negotiating loan modifications for consumers listed on the Pipeline Report provided the consumer wants Home Rescue to proceed on his/her behalf. Home Rescue is only permitted to process the Pipeline Report as provided in Paragraph 35 and may not accept any new loan modification business in Pennsylvania or with a Pennsylvania consumer unless and until such time as Home Rescue is licensed as under the Mortgage Licensing Act.

FURTHER PROVISIONS

38. Consent. Home Rescue hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order 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. Home Rescue, by voluntarily entering into this Order, waives any right to a hearing or concerning the terms, conditions and/or penalties set forth in this Order.

39. 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).

40. 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 Home Rescue.

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

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

43. Effectiveness. Home Rescue hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order (the "Effective Date").

44. 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 Home Rescue in the future regarding all matters not resolved by this Order.

b. Home Rescue 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.

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

46. Counterparts. This Order may be executed in separate counterparts, by facsimile or electronic mail in portable document format "PDF."

47. 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.

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