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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

PA DEPT OF BANKING

DOCKET No. 10 0253 (ENF-CO)

v.

MAIN STREET MORTGAGE SERVICES,
INC. D/B/A ASSET MORTGAGE &
FINANCIAL SERVICES, INC. and
JEFFREY A. GARBINSKI, individually

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Compliance, Investigation and Licensing ("Bureau") has investigated the business practices of Main Street Mortgage Services, Inc. d/b/a Asset Mortgage & Financial Services, Inc. ("Main Street Mortgage") and Jeffrey A. Garbinski. Based on the results of its investigation, the Bureau believes that Jeffrey A. Garbinski violated the Mortgage Licensing Act, 7 Pa. C.S. § 6101, *et. seq.* 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 ("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. Department records indicate that Jeffrey A. Garbinski ("Mr. Garbinski") is the President and one hundred percent (100%) owner of both Main Street Mortgage, a mortgage lender and of The Closing Company of Pennsylvania ("CCPA"), a title agent.

4. Main Street Mortgage and CCPA are currently located at 450 Highland Avenue, Pittsburgh, Pennsylvania 15229.

5. Main Street Mortgage was formerly located at 2593 Wexford Bayne Road, Suite 208A, Sewickley, Pennsylvania 15143.

6. Main Street Mortgage is licensed by the Department as a mortgage lender, license number 24281 with a Nationwide Mortgage Licensing System and Registry ("NMSLR") identification number of 147284.

7. CCPA is an agent for Fidelity National Title Insurance Company ("Fidelity"), a title insurance underwriter that issues title insurance policies.

8. Mr. Garbinski, as owner of CCPA, is responsible for the day to day operations of CCPA has maintains control over the operations and funds of CCPA.

Refinance Transactions

9. In May 2010, the Department received a complaint from a Pennsylvania consumer stating that he refinanced his initial mortgage ("Initial Mortgage") with his original lender through Main Street Mortgage.

10. The consumer stated that CCPA, as the closing agent, received the funds from the new mortgage lender ("Payoff Monies") to pay off the Initial Mortgage.

11. The consumer alleged that although CCPA had the Payoff Monies to forward to the original lender, CCPA never paid off the Initial Mortgage.

12. The consumer stated he continued to receive bills from the original lender requesting monthly mortgage payments.

13. On or about June 11, 2010, the Department initiated an investigation into the matter.

14. During its investigation, the Department determined that when several other consumers refinanced their mortgages through Main Street Mortgage, the same basic set of facts occurred.

15. The Department's investigation revealed that in some cases to cover up the misappropriation of the Payoff Monies, Mr. Garbinski continued to pay the consumers' monthly mortgage bills on their Initial Mortgages.

16. Because in some of the transactions Mr. Garbinski continued to pay the Initial Mortgage bills, those consumers remained unaware that CCPA failed to pay off and satisfy their Initial Mortgage.

17. As an agent for Fidelity, CCPA was required to forward the Payoff Monies to the prior lenders.

18. Mr. Garbinski knew CCPA was required to forward the Payoff Monies to the original lenders and he failed to properly forward them.

19. Instead of properly forwarding the Payoff Monies, Mr. Garbinski redirected the monies for his own personal uses, including keeping his multiple other businesses in operation.

20. By failing to forward the Payoff Monies to the original lenders, Mr. Garbinski misappropriated the Payoff Monies.

21. By misappropriating the Payoff Monies, Mr. Garbinski violated Section 6139(a)(3) of the Mortgage Licensing Act by engaging in dishonest practices or conduct in the business of CCPA. 7 Pa. C.S. §§ 6139(a)(3), 6140(b).

22. Mr. Garbinski contends that by the Effective Date of this Order he had forwarded all Payoff Monies to the appropriate original lenders.

Unlicensed Mortgage Loan Originator

23. The Bureau's investigation revealed that Mr. Garbinski originated Pennsylvania residential mortgage applications while unlicensed by the Department.

24. Individuals acting as mortgage loan originators are required to be licensed as mortgage originators pursuant to Section 6111(a) of the Mortgage Licensing Act. See Section 13 of H.B. 1654 (2009).

25. Section 6111(a) of the Mortgage Licensing Act states "on and after the effective date of this section, 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." 7 Pa. C.S. §6111(a).

26. The Mortgage Licensing Act took effect on August 5, 2009.

27. The Mortgage Licensing Act transition provisions permitted individuals who were not previously required to be licensed as mortgage originators sixty (60) days from the effective date of the act to file for a license with the Department. See Section 13 of H.B. 1654 (2009).

28. Prior to the enactment of the Mortgage Licensing Act, Mr. Garbinski was not required to obtain a mortgage originator license because he was the President and Owner of Main Street Mortgage.

29. The Mortgage Licensing Act transition provisions permitted Mr. Garbinski to engage in the mortgage business without a license until October 5, 2009, at which time Section 6111(a) required him to submit an application for a mortgage originator license or stop originating mortgage loans. 7 Pa. C.S. §6111(a).

30. Mr. Garbinski submitted an incomplete application for a mortgage loan originator license on December 23, 2009.

31. As of the Effective Date of this Order, the Department had not approved Mr. Garbinski's mortgage loan originator license application.

32. The Bureau's investigation revealed that Mr. Garbinski continued to originate mortgage loans after October 5, 2009 while unlicensed in violation of Section 6111(a) of the Mortgage Licensing Act.

Authority of the Department

33. Section 6138(a)(4) of the Mortgage Licensing Act grants the Department broad 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).

34. Section 6138(a)(5) of the Mortgage Licensing Act provides the Department with the authority to "[p]rohibit or permanently remove a person or licensee responsible for a violation of this chapter from working in the present capacity or in any other capacity of the person or licensee related to activities regulated by the department." 7 Pa. C.S. § 6138(a)(5).

35. Section 6138(a)(6) of the Mortgage Licensing Act provides the Department with the authority to "[o]rder a person or licensee to make restitution for actual damages to consumers caused by any violation of this chapter." 7 Pa. C.S. § 6138(a)(6).

36. Section 6139(a)(3) of the Mortgage Licensing Act provides that the Department may suspend, revoke or refuse to renew a license issued under the Act if a licensee or a director, officer, partner, employee or owner of a licensee has “[e]ngaged 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).

37. 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 \$10,000 for each offense.” 7 Pa. C.S. § 6140(a).

VIOLATIONS

38. Main Street Mortgage is in violation of Section 6139(a)(14) of the Mortgage Licensing Act by originating mortgage loans through Mr. Garbinski as unlicensed mortgage loan originator.

39. Mr. Garbinski is in violation of Section 6139(a)(3) of the Mortgage Licensing Act because he engaged in dishonest practices and conduct in a business.

RELIEF

40. Corrective Action. Upon the Effective Date of this Order:

a. Mr. Garbinski shall consent to revocation of the mortgage lender license of Main Street Mortgage.

b. Mr. Garbinski agrees to the withdrawal of his pending mortgage originator license.

c. Mr. Garbinski shall immediately cease and desist from engaging in the mortgage loan business in any way, including, but not limited to, advertising, causing to be advertised, soliciting, negotiating or arranging or offering to make or making mortgage loans.

41. Prohibition. Upon the Effective Date of this Order, Mr. Garbinski, as a natural person or as a corporation or as any other form of organization of any kind whatsoever, shall be prohibited from negotiating, arranging, advertising, soliciting, originating, or placing mortgage loans directly or indirectly into the primary market for consideration, as regulated by the Department, for the remainder of his natural life.

42. Restitution. Mr. Garbinski shall immediately payoff any outstanding Initial Mortgages relating to those consumers who refinanced with Main Street Mortgage and closed with CCPA. This Order does not preclude any consumers affected by the alleged conduct from seeking other remedies to which they are entitled to at law.

FURTHER PROVISIONS

43. Consent. Mr. Garbinski 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 he understands all of the terms and conditions contained herein. Mr. Garbinski, 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.

44. 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).

45. 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 Mr. Garbinski.

46. Binding Nature. The Department and Mr. Garbinski intend to be and are legally bound by the terms of this Order.

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

48. Effectiveness. Mr. Garbinski hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

49. 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 Main Street Mortgage and Garbinski in the future regarding all matters not resolved by this Order.

b. Mr. Garbinski 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.

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

51. Counterparts. This Order may be executed in separate counterparts, by facsimile and PDF.

52. 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 Jeffrey A. Garbinski, 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**

Ryan M. Walsh, Administrator
Bureau of Compliance, Investigation and Licensing
Department of Banking

Date: October 13, 2010

**MAIN STREET MORTGAGE SERVICES, INC.
D/B/A ASSET MORTGAGE & FINANCIAL SERVICES, INC.**

(Officer Signature)

(Print Officer Name)

(Title)

10/12/10

(Date)

FOR JEFFREY A. GARBINSKI

(Signature)

(Print Name)

Date: 10/12/10