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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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PA DEPT OF BANKING

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

Docket No. : 090148 (ENF-ORD)

v.

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Compliance, Investigation and Licensing (the "Bureau"), has reviewed the business practices of Taylor, Bean & Whitaker Mortgage Corp. ("Taylor Bean") and its officers, employees, and directors. Based on the results of its review, the Bureau believes that Taylor Bean operated in violation of the Mortgage Licensing Act, 7 Pa. C. S. § 6101 et. seq. The above-captioned parties, wishing to resolve this matter and intending to be legally bound, without admitting liability 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 and the regulations known as the Proper Conduct of Lending and Brokering in the Mortgage Loan Business Regulation ("Proper Conduct Reg"), 10 Pa. Code § 46.1 et. seq.

2. The Bureau is primarily responsible for administering and enforcing the Mortgage Licensing Act and the Proper Conduct Reg for the Department.

3. Taylor Bean is currently licensed as a Mortgage Lender, license no. 23392, under the Mortgage Licensing Act.

4. Taylor Bean maintains a corporate office at 315 NE 14th Street, Ocala, FL 34470 ("Corporate Office"). Taylor Bean maintained a branch office located at 755 Business Center Drive, Suite 150 Horsham, PA 19044.

5. On August 24, 2009, Taylor Bean filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Middle District of Florida, Jacksonville, *In re Taylor, Bean & Whitaker Mortgage Corp.*, Case No. 3:09-bk-07047 ("Bankruptcy Proceeding").

Mortgage Loan Origination

6. On August 4, 2009, the Bureau became aware through a press release issued by the Department of Housing and Urban Development ("HUD") that the Federal Housing Administration ("FHA") had suspended Taylor Bean from making loans insured by FHA (the "Press Release") (See a copy of the August 4, 2009 press release attached as Appendix A).

7. The Press Release provided that Government National Mortgage Association ("Ginnie Mae") was defaulting and terminating Taylor Bean as an issuer in Ginnie Mae's mortgage back security program and would be terminating Taylor Bean's ability to continue servicing Ginnie Mae securities (See App. A).

8. The suspension was issued as a result of Taylor Bean's alleged failure to submit required annual financial reports along with a failure to report certain irregular transactions (See App. A).

9. On August 5, 2009, a press release issued by Taylor Bean stated that the company was ceasing all mortgage loan origination operations effective immediately (*See* a copy of the August 5, 2009 press release attached as Appendix B).

10. Taylor Bean's press release stated that it would not fund mortgage loans in the pipeline although it had already committed to funding them (*See* App. B).

11. By failing to fund mortgage loans in the pipeline, there was a substantial likelihood that Pennsylvania consumers would be harmed.

12. Section 46.2(k)(1) of the Proper Conduct Reg provides that "[a] licensee lender may not refuse or fail to fund a consummated loan. . . ." 10 Pa. Code § 46.2(k)(1).

13. When a licensee violates the Proper Conduct Regs, it also violates the Mortgage Licensing Act, 10 Pa. Code § 46.3(a).

14. Taylor Bean allegedly engaged in improper conduct by failing to complete and/or fund loans in its pipeline, which it had committed to close.

Servicing

15. At the time Taylor Bean filed for bankruptcy, it serviced approximately 11,800 Pennsylvania consumer accounts and held the approximately 11,800 consumers' monies in Escrow Accounts.

16. The Escrow Accounts included the consumers' payments of mortgage loan principle and interest, property taxes, and homeowner insurance premiums ("Consumer Payments").

17. Taylor Bean represented that the Escrow Accounts had been "frozen."

18. Because the Escrow Accounts had been frozen, Taylor Bean did not have access to the funds in those accounts.

19. Because the Escrow Accounts had been "frozen" Taylor Bean was unable to deposit checks, accept automated clearinghouse deposits, and forward Consumer Payments collected on behalf of the consumers as they came due.

20. Various localities in Pennsylvania require tax payments in August and September.

21. Taylor Bean could not forward Consumer Payments, including tax payments, because the monies were frozen in the Escrow Accounts.

22. Taylor Bean had been collecting Consumer Payments without depositing them into an escrow account.

23. For a limited period of time immediately prior to Taylor Bean filing for bankruptcy relief, it used an existing operating account to deposit the Consumer Payments ("Operating Account"). The account balance levels in the Operating Account were closely monitored to ensure consumer funds were not being used.

24. As a consequence of the monies having been frozen in the Escrow Accounts, Taylor Bean's process to service consumer mortgage loans had been disrupted.

25. In addition, Taylor Bean significantly reduced the staff in its servicing department.

26. Because of the reduced staff, allegedly Taylor Bean could not timely respond to consumer questions regarding servicing or produce requested reports by various state regulators, including Pennsylvania.

27. Pennsylvania-licensed mortgage lenders that service mortgage loans are required to:

a. provide consumers written receipts at the time payment is received of cash payments of a mortgage loan;

- b. provide a written statement of the consumers' accounts upon request;
- c. cancel insurance, stamp the mortgage loan agreement or promissory note "Paid in Full" or "Cancelled" and release liens on any mortgage loan that is paid in full;
- d. provide periodic accounting of escrow accounts held; and
- e. provide a written statement upon request of the unpaid balance of consumers' mortgage loans or accounts, *see* 7 Pa. C.S. § 6121(6), (7), (8), (9) and (12).

28. Taylor Bean was allegedly unable to comply with the mortgage loan servicing provisions of the Mortgage Licensing Act.

29. Taylor Bean's financial condition allegedly precluded it from operating safely on behalf of Pennsylvania customers.

30. Taylor Bean is engaged in an orderly winding down of its business nationwide, including its business in Pennsylvania.

31. As of the Effective Date of this Order, twenty (20) net-funded consumer accounts are still with Taylor Bean.

Administrative Orders

32. On August 6, 2009, the Department issued an Administrative Order, Docket No. : 090148 (ENF-ORD) ("Administrative Order"), requiring Taylor Bean to cease and desist from its mortgage loan origination business.

33. On August 21, 2009, the Department amended the August 6, 2009 Administrative Order to impose additional requirements on Taylor Bean as it relates to the servicing of mortgage loans ("Amended Order").

34. This Order resolves the Administrative Order and Amended Order.

Authority of the Department

35. 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 for the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4).

36. Section 6139(a)(3) of the Mortgage Licensing Act authorizes the Department to suspend, revoke or refuse to renew a license issued under the Mortgage Licensing Act if the 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 6139(a)(12) of the Mortgage Licensing Act authorizes the Department to suspend, revoke or refuse to renew a license issued under the Mortgage Licensing Act if the licensee “. . . is in such financial condition that the applicant or licensee cannot continue in business with safety to the customers of the applicant or licensee.” 7 Pa. C.S. § 6139(a)(12).

38. 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).

RELIEF

39. License Surrender. Upon the Effective Date of this Order, Taylor Bean shall surrender its mortgage lender’s license with the Department electronically through the National Mortgage Licensing System.

40. Recordkeeping. Upon the Effective Date of this Order, Taylor Bean shall maintain all required records at its Corporate Office and allow the Department free access to examine the records as required under Section 6135(a)(2) of the Mortgage Licensing Act. *See* 7 Pa. C.S. § 6135(a)(2).

FURTHER PROVISIONS

41. Consent. Taylor Bean hereby knowingly, willingly, voluntarily, and irrevocably consents to the entry of this Order pursuant to the Bureau's authority under the Mortgage Licensing Act and agrees that it understands all of the terms and conditions contained therein. Taylor Bean, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms and conditions set forth in this Order.

42. 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).

43. 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 Taylor Bean.

44. Binding Nature. The Department and Taylor Bean intend to be and are legally bound by the terms of this Order.

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

46. Effectiveness. Taylor Bean hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

47. 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 Taylor Bean in the future regarding all matters not resolved by this Order.

b. Taylor Bean 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.

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

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

50. 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 Taylor Bean, 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**

Brian Crossland, Chief
Compliance Division
Bureau of Compliance,
Investigation and Licensing
Department of Banking

Date: 1/29/10

FOR TAYLOR, BEAN & WHITAKER MORTGAGE CORP.

(Officer Signature)

Jeffery W. Cavender
(Print Officer Name)

General Counsel
(Title)

Date: 1/25/10