

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

PA DEPT OF BANKING

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

Docket No. 10 0275 (ENF-CO)

v.

VILLAGE CAPITAL & INVESTMENT LLC
D/B/A VILLAGE HOME MORTGAGE

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Examinations, conducted an examination of Village Capital & Investment LLC d/b/a Village Home Mortgage ("VCI"), and its officers, employees and directors. Based on the results of the examination, the Bureau of Compliance, Investigation and Licensing ("Bureau") believes that VCI operated in violation of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 et seq., and the regulation known as the Proper Conduct of Lending and Brokering in the Mortgage Loan Business ("Proper Conduct Regulation"), 10 Pa. Code § 46.1 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 and the Proper Conduct Regulation.

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

3. VCI is currently licensed as a mortgage lender, license no. 21472, with a Nationwide Mortgage Licensing System and Registry ("NMLSR") identification number of 3317.

4. VCI maintains its principal place of business at 700 E. Gate Dr., Ste. 400, Mount Laurel, NJ 08054-3807 along with various Pennsylvania licensed branch locations.

5. On or around April 19, 2010, an examination of VCI commenced at the principal place of business.

Unlicensed Location

6. The examination revealed that VCI, through employees, engaged in the mortgage loan business by soliciting Pennsylvania residents, by telephone, to obtain residential mortgage loans from a branch office located at 1800 Horizon Way, Suite 100, Mt. Laurel, New Jersey 08054 ("Mt. Laurel branch office").

7. The Mt. Laurel branch office was not licensed by the Department.

8. The Mortgage Licensing Act defines a "branch" as "[a]n office or other place of business, other than the principal place of business, where a person engages in the mortgage loan business subject to this chapter." 7 Pa. C. S. § 6102.

9. To engage in the mortgage loan business in the Commonwealth, a person must obtain a license by filing an application with the Department. 7 Pa. C.S. §§ 6111(a), 6131.

10. The application for licensure shall include "[t]he address of the principal place of business of the applicant and the address or addresses where the applicant's mortgage loan business is to be conducted." 7 Pa. C.S. § 6131(a)(1)(ii) (emphasis added).

11. Further, applicants must pay an application fee and renewal fees for the principal place of business and an additional fee for each branch office. 7 Pa. C.S. § 6132(a)(b).

12. Thus, branch offices of licensees where mortgage loan business is conducted involving Pennsylvania residents or property must be licensed by the Department.

13. VCI informed the Department that it has instituted internal control measures to ensure that all branches are properly licensed.

Unlicensed Mortgage Originators

14. The examination revealed that VCI permitted 46 employees to solicit Pennsylvania residents directly, through the telephone, to obtain residential mortgage loans.

15. During the solicitation, VCI's employees obtained application information from the residents, including name, property address, employment status, home value and loan purpose; such information resulted in mortgage loan originations for VCI.

16. The employees performing these services for VCI were not licensed by the Department as mortgage originators.

17. Section 6111(a) of the Mortgage Licensing Act provides, in relevant part, 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." 7 Pa. C.S. § 6111(a).

18. The mortgage loan business includes the "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.

19. Mortgage originators are the "individuals" who take a mortgage loan application or offer or negotiate terms of a mortgage loan for compensation or gain. 7 Pa. C.S. § 6101.

20. Mortgage originators must be an employee of a single licensed mortgage broker, mortgage lender or mortgage loan correspondent; the licensee "*shall* directly supervise, control and *maintain responsibility for the acts and omissions of the mortgage originator.*" 7 Pa. C.S. § 6131(f)(1)(emphasis added).

21. By soliciting mortgage loans directly to Pennsylvania residents for VCI and by collecting information that resulted in mortgage loan originations for VCI, the employees were engaging in the mortgage loan business as mortgage originators and; therefore, had to be licensed by the Department as mortgage originators.

22. VCI is responsible for the omissions of the mortgage originators that it employs, including their failure to obtain a license from the Department to engage in the mortgage loan business. See 7 Pa. C.S. § 6131(f)(1); see also 7 Pa. C.S. § 6139(a)(14)(providing that the Department may suspend, revoke or refuse to renew a license if a mortgage lender conducts the mortgage loan business through an unlicensed mortgage originator).

23. VCI contends that these employees were telemarketers in the Mt. Laurel branch office that engaged in telemarketing activities; the employees did not have the resources or equipment necessary to originate mortgage loans.

24. However, VCI acknowledges that the current language of the Mortgage Licensing Act is broad enough to require that its Mt. Laurel branch office and its employees obtain licenses from the Department.

25. Moreover, VCI has informed the Department that it has instituted internal control measures to prohibit unlicensed individuals from engaging in the mortgage business in Pennsylvania.

Failure to Provide Required Consumer Disclosures

26. The examination also revealed that VCI was not consistently providing applicants with the Pennsylvania Consumer Disclosures as required under the Proper Conduct Regulation.

27. Section 46.2(b) of the Proper Conduct Regulation requires mortgage licensees to disclose to applicants, on a form prescribed by the Department, information regarding any escrow account, any lock-in on rates, any variable rate, any balloon payment, any prepayment penalty, and any negative amortization. 10 Pa. Code § 46.2(b).

28. In addition, the examination revealed that because VCI did not consistently provide the Consumer Disclosures, VCI was not maintaining signed originals of the Consumer Disclosures in the consumers' loan files pursuant to Section 46.2(e) of the Proper Conduct Regulation. 10 Pa. Code § 46.2(e) (providing that a licensee shall require an applicant to sign and date the disclosure form and retain the original executed disclosure form in the applicant's file).

29. VCI has informed the Department that its origination software has been updated to include the Pennsylvania Consumer Disclosures as required by the Proper Conduct Regulation as part of all new mortgage loan originations.

Misleading Advertising

30. Between December 7, 2009 and May 3, 2010 VCI engaged in six separate direct mail advertising campaigns ("Solicitations") to Pennsylvania consumers.

31. The top portion of the Solicitations show a check made out to a Pennsylvania consumer which supposedly represents an amount equivalent to a mortgage refinance.

32. The bottom portion of the Solicitations reference a U.S. Government Relief Program, the "Making Homes Affordable Program," which makes it appear as if the advertisement is being sent on behalf of the Federal government.

33. By using the Solicitations, VCI is holding itself out as a representative of the Federal Government homeowner program; however, there is no entity or subset of the Making Homes Affordable Program for which VCI is an authorized representative.

34. Section 6123(3) of the Mortgage Licensing Act provides in relevant part, that a licensee shall not "[a]dvertise, cause to be advertised or otherwise solicit whether orally, in writing...or in any other manner any statement or representation which is false, *misleading or deceptive*. 7 Pa. C.S. § 6123(3) (emphasis added).

35. It is the Bureau's position that VCI violated the Mortgage Licensing Act by sending Solicitations to Pennsylvania residents that could be considered misleading or deceptive as to its content and purpose.

36. VCI ceased all direct mail marketing campaigns to Pennsylvania residents during the examination.

Net Worth Deficiency

37. The examination revealed that VCI had not been compliant with the net worth requirement for mortgage lenders under the Mortgage Licensing Act.

38. Section 6131(c)(3) of the Mortgage Licensing Act provides that mortgage lender applicants must establish and maintain a minimum net worth of \$250,000. 7 Pa. C.S. § 6131(c)(3).

39. To meet the on-going required capitalization, VCI will disclose their assets on the financial statements monthly starting with the April 30, 2010 interim balance sheet.

40. As of the Effective Date of this Order (as defined in Paragraph 61), VCI meets the net worth requirement to be licensed as a mortgage lender under the Mortgage Licensing Act.

Mortgage Originator Surety Bond

41. The examination revealed that VCI was not maintaining a surety bond in an amount sufficient to cover all the mortgage originators that it employed based on the mortgage origination volume of VCI.

42. The Mortgage Licensing Act requires all mortgage licensees, including mortgage lenders, to obtain and maintain a surety bond, in a form acceptable to the Department from a surety company authorized to do business in the Commonwealth. 7 Pa. C.S. § 6131(c)(5).

43. The amount of the bond is determined by the amount of mortgage loans originated and secured by Pennsylvania real property in a calendar year as indicated on the licensee's annual report. See 7 Pa. C.S. § 6131(c)(5).

44. Based on the reported volume of Pennsylvania mortgage loan originations on VCI's annual report for the 2009 calendar year, VCI's surety bond should have been in an amount greater than the bond on record with the Department.

45. During the examination, VCI agreed to increase its surety bond coverage to reflect the volume of Pennsylvania mortgage loan originations.

Authority of the Department

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

46. 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).

47. Section 46.3(a) of the Proper Conduct Regulation provides that a violation of the Proper Conduct Regulation is a violation of the Mortgage Licensing Act. 10 Pa. Code § 46.3(a).

VIOLETIONS

48. VCI is in violation of Section 6139(a)(2) of the Mortgage Licensing Act by engaging in Pennsylvania mortgage loan business from an unlicensed branch location.

49. VCI is in violation of Section 6139(a)(14) of the Mortgage Licensing Act by accepting mortgage loans from unlicensed mortgage originators.

50. VCI is in violation of Section 46.2 of the Proper Conduct Regulation by failing to routinely provide Pennsylvania consumers with the disclosure on escrow accounts, rates and other terms and conditions and by failing to maintain the signed originals of the disclosure forms in the consumers' loan files.

51. VCI is in violation of Section 6123(3) of the Mortgage Licensing Act by sending direct mail solicitations to Pennsylvania consumers are misleading as to its content and purpose.

52. VCI is in violation of Section 6131(c)(3) of the Mortgage Licensing Act by failing to maintain the minimum net worth requirement of \$250,000 at all times during licensure as a mortgage lender.

53. VCI is in violation of Section 6131(c)(5) of the Mortgage Licensing Act by failing to maintain the required surety bond in an amount that provides coverage for the mortgage originators employed by VCI.

RELIEF

54. Fine. VCI agrees to pay a fine of \$73,500 which shall be due and payable to the Department within 30 days of the Effective Date of this Order (as defined in Paragraph 61). The fine payment shall be remitted by a company check, certified check or money order made payable to the Pennsylvania Department of Banking and sent to the attention of: Pennsylvania Department of Banking, Bureau of Compliance, Investigation and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

55. Corrective Measures. Upon the Effective Date of this Order, VCI shall do the following:

- a. Ensure that all Pennsylvania mortgage originations are from licensed mortgage originators working out of licensed branch locations;
- b. Provide the required Pennsylvania Disclosure to Pennsylvania residents as required by the Proper Conduct Regulation;
- c. Cease engaging in misleading advertising;
- d. Maintain the required net worth to remain licensed as a mortgage lender;
and
- e. Maintain the required surety bond coverage in accordance with the Mortgage Licensing Act.

FURTHER PROVISIONS

56. Consent. VCI 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. VCI, 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.

57. 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).

58. 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 VCI.

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

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

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

62. 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 VCI in the future regarding all matters not resolved by this Order.

b. VCI 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.

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

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

65. 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 VCI 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: November 18, 2010

**FOR VILLAGE CAPITAL & INVESTMENT LLC
D/B/A VILLAGE HOME MORTGAGE**

(Officer Signature)

(Print Officer Name)

PRESIDENT
(Title)

Date: 11/16/2010