

FILED

COMMONWEALTH OF PENNSYLVANIA 2011 DEC -7 AM 11:19
DEPARTMENT OF BANKING

PA DEPT OF BANKING

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

v.

Docket No.: 11 0189 (ENF-ORD)

1st CHOICE MORTGAGE RESOLUTIONS,
WALTER GETZ, individually, AND
SUSAN WILLIAMS, individually

NOTICE OF RIGHT TO APPEAL AND HEARING

You, 1st Choice Mortgage Resolutions, Walter Getz and Susan Williams, have the right to appeal the attached Order of Prohibition (the "Order") within 10 days of the date of service. See 1 Pa. Code § 35.20. The date of service is the date the Order is deposited in the mail or delivered to you in person, as the case may be, as set forth in 1 Pa. Code § 33.34. If you appeal the Order, you also have a right to a hearing.

To file an appeal and request a hearing on the Order, you must file a petition with the Secretary of Banking within 10 days of the date of service. 1 Pa. Code § 35.20. The petition must be in writing, state clearly and concisely your grounds of interest in the subject matter, the facts you rely upon, the law you rely upon, and the relief you seek. See 1 Pa. Code § 35.17. Please deliver your petition to:

Linnea Freeberg, Docket Clerk,
Office of Executive Deputy Secretary
Pennsylvania Department of Banking
17 North Second Street, Suite 1300
Harrisburg, PA 17101

The petition must be **received** by the Docket Clerk within the aforementioned 10 day deadline. If the Docket Clerk does not receive your petition on time, you will waive your right to an appeal and a hearing and the Order will be deemed final.

If you choose to file a petition challenging the Order, please send an additional copy to:

Sarah E. Sedlak, Assistant Counsel
Pennsylvania Department of Banking
17 North Second Street, Suite 1300
Harrisburg, PA 17101

Once you file your petition appealing the Order and requesting a hearing, you will be notified of the hearing date, time, place, the person who will preside at your hearing, and any other pertinent information.

You have the right to be represented by an attorney. Corporations may be required to be represented by an attorney.

The hearing and all other procedural matters will be governed by the Pennsylvania Administrative Agency Law, 2 Pa. C.S. §§ 501-508, 701-704, and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1.-35.251.

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

2011 DEC -7 AM 11:19

COMMONWEALTH OF PENNSYLVANIA	:	PA DEPT OF BANKING
DEPARTMENT OF BANKING, BUREAU OF	:	
COMPLIANCE AND LICENSING	:	
	:	
v.	:	Docket No.: 11 <u>0189</u> (ENF-ORD)
	:	
1 st CHOICE MORTGAGE RESOLUTIONS,	:	
WALTER GETZ, individually, AND	:	
SUSAN WILLIAMS, individually	:	

ORDER

WHEREAS, the Department of Banking (“Department”) is the Commonwealth of Pennsylvania’s administrative agency authorized and empowered to administer and enforce 7 Pa. C.S. § 6101 (“Mortgage Licensing Act”) et seq.; and

WHEREAS, the Bureau of Compliance and Licensing (“Bureau”) is primarily responsible for administering and enforcing the Mortgage Licensing Act for the Department; and

WHEREAS, the Mortgage Licensing Act was amended on August 5, 2009, by Act 31 of 2009, H.B. 1654 (P.N. 2448); and

WHEREAS, 1st Choice Mortgage Resolutions (“1st Choice Mortgage”) is a business which engages in loan modification activities; and

WHEREAS, 1st Choice Mortgage used to maintain two office locations; and

WHEREAS, one of the offices *was* located at 911 Weston Place, 2nd Floor, Bethlehem, Pennsylvania 18018 (“Pennsylvania Office”); and

WHEREAS, the other office is located at 114 Adams Street, Number 1, Rochester, New York 14608 (“New York Office”); and

WHEREAS, Susan Williams (“Williams”) is an individual and co-owner of 1st Choice Mortgage; and

WHEREAS, Williams currently resides in the state of Pennsylvania; and

WHEREAS, Williams operated the Pennsylvania Office; and

WHEREAS, William Getz (“Getz”) is an individual and co-owner of 1st Choice Mortgage; and

WHEREAS, Getz currently resides in the state of New York; and

WHEREAS, Getz operates the New York Office; and

WHEREAS, Williams and Getz met while working for another loan modification company that was fined by the Department for failure to adhere to the Department’s statutes; and

Unlicensed Activity - 1st Choice Mortgage

WHEREAS, 1st Choice Mortgage maintains a website located at www.activerain.com/servicecomesfirst; and

WHEREAS, 1st Choice Mortgage maintains information regarding its services on other websites; and

WHEREAS, 1st Choice Mortgage lists a Pennsylvania address as a location of 1st Choice Mortgage on some of these websites; and

WHEREAS, through its websites, 1st Choice Mortgage advertises loan modification services; and

WHEREAS, specifically, 1st Choice Mortgage describes its business activity as, “Serving homeowners across the country with their mortgage matters. Helping to resolve/prevent foreclosures by obtaining loan mods, short sales, and other plans to keep homeowners out of foreclosure.”; and

WHEREAS, 1st Choice Mortgage's website does not exclude Pennsylvania residents as possible customers for loan modification services; and

WHEREAS, 1st Choice Mortgage entered into a contract for loan modification services with at least one Pennsylvania consumer; and

WHEREAS, by negotiating, offering or otherwise transacting mortgage loan modifications to at least one Pennsylvania consumer, 1st Choice Mortgage is actively engaged in and holding itself out as being engaged in the "mortgage loan business" as defined in the Mortgage Licensing Act, See 7 Pa. C.S. § 6151(1)(i); and

WHEREAS, the Mortgage Licensing Act prohibits persons from engaging in the mortgage loan business in Pennsylvania without holding a mortgage broker, mortgage lender, mortgage loan correspondent or mortgage originator license, See 7 Pa. C.S. § 6111(a); and

WHEREAS, 1st Choice Mortgage does not hold a license issued by the Pennsylvania Department of Banking to engage in the mortgage loan business in Pennsylvania; and

WHEREAS, Sections 6111(b) and 6112 of the Mortgage Licensing Act set forth exceptions to the licensure requirements of Section 6111(a), See 7 Pa. C.S. §§ 6111(b), 6112; and

WHEREAS, 1st Choice Mortgage does not meet any of the exceptions to licensure in Section 6111(b) and 6112 of the Mortgage Licensing Act, See 7 Pa. C.S. §§ 6111(b), 6112; and

WHEREAS, 1st Choice Mortgage has violated the Mortgage Licensing Act by engaging in the mortgage loan business in Pennsylvania without a license; and

Unlicensed Activity – Susan Williams

WHEREAS, Williams entered into a contract for loan modification services with at least one Pennsylvania consumer; and

WHEREAS, by negotiating, offering or otherwise transacting mortgage loan modifications to at least one Pennsylvania consumer, Williams is actively engaged in and holding herself out as being engaged in the “mortgage loan business” as defined in the Mortgage Licensing Act, See 7 Pa. C.S. § 6151(1)(i); and

WHEREAS, the Mortgage Licensing Act prohibits persons from engaging in the mortgage loan business in Pennsylvania without holding a mortgage broker, mortgage lender, mortgage loan correspondent or mortgage originator license, See 7 Pa. C.S. § 6111(a); and

WHEREAS, Williams does not hold a license issued by the Pennsylvania Department of Banking to engage in the mortgage loan business in Pennsylvania; and

WHEREAS, Williams does not individually meet any exception to licensure in the Mortgage Licensing Act, See 7 Pa. C. S. §§ 6111(b), 6112(2); and

WHEREAS, Susan Williams violated the Mortgage Licensing Act by engaging in the mortgage loan business in Pennsylvania without a license; and

Recordkeeping – Susan Williams

WHEREAS, when the Bureau requested to view her records, Williams could not produce all the requested records; and

WHEREAS, Williams indicated that at least one was lost, others were never created and others were only kept in a now cancelled email account; and

WHEREAS, the Department is permitted to deny the request for a license or to suspend, revoke or refuse to renew a license when a licensee fails to maintain the records required by the Department (See 7 Pa. C.S. § 6133(e)(3) and 7 Pa. C.S. § 6139(a)(8)); and

WHEREAS, Susan Williams violated the Mortgage Licensing Act by failing to maintain the proper records as required (See 7 Pa. C.S. § 6135 (a)(1)); and

Recordkeeping – William Getz

WHEREAS, when the Bureau requested to view his records, Getz could not produce all the requested records; and

WHEREAS, Getz indicated that he shreds all paperwork after storing all records in electronic format and then during the course of moving he lost all of his electronically stored records; and

WHEREAS, the Department is permitted to deny the request for a license or to suspend, revoke or refuse to renew a license when a licensee fails to maintain the records required by the Department (See 7 Pa. C.S. § 6133(e)(3) and 7 Pa. C.S. § 6139(a)(8)); and

WHEREAS, William Getz violated the Mortgage Licensing Act by engaging in the mortgage loan business in Pennsylvania without a license; and

Advance Fees – 1st Choice Mortgage/Susan Williams

WHEREAS, 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,” See 7 Pa. C.S. § 6102; and

WHEREAS, a mortgage loan application may either be in writing or electronically submitted, including a written record of an oral application and is defined as the submission of a borrower's financial information including “the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator.”

WHEREAS, the Department became aware of complaints from Pennsylvania consumers regarding Susan Williams; and

WHEREAS, the Department received information regarding eight (8) Pennsylvania consumers who contacted Susan Williams; and

WHEREAS, of those Pennsylvania consumers, six (6) consumers ("Pennsylvania Consumers") paid advance fees to Susan Williams; and

WHEREAS, the Pennsylvania Consumers engaged the services of Susan Williams and 1st Choice Mortgage for the purpose of obtaining a mortgage loan modification; and

WHEREAS, the Pennsylvania Consumers entered into contracts with Susan Williams and 1st Choice Mortgage for the loan modification services for the Pennsylvania residential properties; and

WHEREAS, the Pennsylvania Consumers' contracts required a payment of fees in advance of services being rendered by Susan Williams and 1st Choice Mortgage; and

WHEREAS, those advance fees are connected to the mortgage loan business; and

WHEREAS, the Pennsylvania Consumers made the required advance payments to Susan Williams and 1st Choice Mortgage; and

WHEREAS, by charging advance fees, Susan Williams and 1st Choice Mortgage has violated the Mortgage Licensing Act; and

Mortgage Licensing Act

WHEREAS, 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. § 6151(1) (emphasis added); and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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); and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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; and

WHEREAS, 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); and

WHEREAS, 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); and

WHEREAS, 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); and

AND NOW, THEREFORE, since 1st Choice Mortgage, Susan Williams, and William Getz have engaged in activity in violation of the Mortgage Licensing Act, the Bureau, pursuant to its authority referenced above hereby imposes the following Order:

1. Loan Origination. Upon the effective date of this Order¹, 1st Choice Mortgage, Susan Williams, and William Getz and any and all officers, members, managers, employees, independent contractors or agents of 1st Choice Mortgage shall cease and desist from engaging in the mortgage loan business subject to the Mortgage Licensing Act, including, but not limited to, advertising (including website advertising), accepting applications and negotiating mortgage loans and mortgage loan modifications in Pennsylvania or to Pennsylvania consumers, unless and until such time that 1st Choice Mortgage, Susan Williams, and William Getz and any other mortgage originators as defined by the Mortgage Licensing Act are licensed by the Department pursuant to the Mortgage Licensing Act.

2. Fine. Upon the effective date of this Order, 1st Choice Mortgage shall pay a \$1,000 fine for violating the Mortgage Licensing Act. The fine shall be made 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 and Licensing located at 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101.

3. Upon the Effective Date of this Order, 1st Choice Mortgage shall provide a refund to the Pennsylvania Consumers listed in the table in Appendix A. See attached Appendix A. The refund shall be in the amount that corresponds with each Pennsylvania consumer in the table

¹ This Order is effective on the tenth day of the date it is executed below, if no petition for hearing is timely filed. If a petition for hearing is timely filed, the Order will become effective on the date upon which a final order is issued.

in Appendix A. As evidence that the refund was paid, 1st Choice Mortgage shall provide the Bureau with a copy of a cancelled/cleared check. A copy of the cancelled/cleared check shall be sent to John Talalai, Administrator, Compliance Division, at _____, by 5:00 PM eastern time on the effective date of this Order.

4. Pipeline Report. Upon the effective date of this Order, 1st Choice Mortgage shall provide a list of consumers that 1st Choice Mortgage 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 advertisements or that 1st Choice Mortgage 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 _____, by 5:00 PM eastern time on the effective date of this Order. The Pipeline Report shall be updated weekly, until the Bureau no longer requires updates.

5. Advertising. Upon the effective date of this Order, 1st Choice Mortgage shall provide a list of any websites or copies of any other advertising that 1st Choice Mortgage has utilized including, but not limited to, mail solicitations. The information shall be sent to John

Talalai, Administrator, Compliance Division, at _____, by 5:00 PM eastern time on the effective date of this Order.

6. Contact Information. Upon the effective date of this Order, 1st Choice Mortgage shall provide a list of all owners, officers and employees of 1st Choice Mortgage. 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 _____, by 5:00 PM eastern time on the effective date of this Order.

8. Waiver. Nothing in this Order shall prevent 1st Choice Mortgage from seeking a waiver from the Department to allow 1st Choice Mortgage to complete a loan modification for a Pennsylvania consumer that is listed on the Pipeline Report as provided in Paragraph 4 in order to prevent further harm to the Pennsylvania consumer and for no other reason. Requests for waiver may be made to John Talalai, Administrator, Compliance Division, at _____.

9. Reservation of Rights. Nothing in this Order shall prevent the Bureau from taking any further administrative action as deemed necessary including, but not limited to imposing fines pursuant to Section 6140(a) or (b) of the Mortgage Licensing Act or seeking restitution for consumers.

IT IS SO ORDERED.

John Talalai, Administrator
Department of Banking,
Bureau of Compliance and Licensing

12-6-2011
(Date)

Appendix A

APPENDIX A

Consumer Name	Refund Owed
Redacted	\$1,500.00
Redacted	\$1,050.00
Redacted	\$1,200.00
Redacted	\$1,500.00
Redacted	\$1,500.00
Redacted	\$1,500.00

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

2011 DEC -7 AM 11:19

COMMONWEALTH OF PENNSYLVANIA	:	PA DEPT OF BANKING
DEPARTMENT OF BANKING, BUREAU OF	:	
COMPLIANCE AND LICENSING	:	
	:	
v.	:	Docket No.: 11 <u>0189</u> (ENF-ORD)
	:	
1 st CHOICE MORTGAGE RESOLUTIONS,	:	
WALTER GETZ, individually, AND	:	
SUSAN WILLIAMS, individually	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Order upon the parties below, who constitute the only parties of record in this proceeding, in accordance with the requirements of 1 Pa. Code §§ 33.35, 33.36 and 33.37:

BY CERTIFIED AND FIRST CLASS MAIL

Walter Getz, Sr.
180 E. Kleinhans St.
Easton, PA 18042

Susan Williams
2754 Red Oak Circle
Bethlehem, PA 18017-2773

Dated this 7th day of December, 2011.

Sarah E. Sedlak, Assistant Counsel
Attorney I.D. # 93810
FOR: Commonwealth of Pennsylvania
Department of Banking
17 North Second Street, Suite 1300
Harrisburg, PA 17101
(717) 787-1471