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2011 AUG -2 PM 2:50

PA DEPT OF BANKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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

v.

Docket No. 11 0138 (ENF-CO)

CREATIVE MORTGAGE GROUP, INC. and :
MICHAEL J. D'ALONZO, individually :
:

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Compliance, Investigation and Licensing, ("Bureau") conducted an investigation of Creative Mortgage Group, Inc. ("Creative Mortgage"). Based on the results of the investigation, the Bureau believes that Creative Mortgage operated in violation of section 8 of the Real Estate Settlement Procedures Act ("RESPA"); and, in violation of the Mortgage Bankers and Brokers and Consumer Equity Protection Act ("MBBCEPA"), 63 P.S. § 456.101, and its successor statute, the Mortgage Licensing Act, 7 Pa. C. S. § 6101 *et seq.* It is Creative Mortgage's position that, at all times, it operated with the belief that it was in compliance with RESPA, the MBBCEPA, the Mortgage Licensing Act, and all other relevant statutes and regulations. Creative Mortgage and its owner Michael J. D'Alonzo enter into this agreement and order to resolve this matter without litigation, but without admitting guilt or wrongdoing. Accordingly, the parties, intending to be legally bound, 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and enforce the Mortgage Bankers and Brokers and Consumer Equity Protection Act, 63 P.S. § 456.101 *et seq.*, now repealed, and its successor statute, the Mortgage Licensing Act, 7 Pa. C.S. § 6101 *et seq.*

2. The Bureau is primarily responsible for administering and enforcing the Mortgage Licensing Act on behalf of the Department.

3. The Bureau operates from the Department's main office located at 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101.

4. Creative Mortgage was located at all relevant and material times at 1126 Horsham Road, Suite D, Maple Glen, Pennsylvania 19002.

5. Creative Mortgage is currently licensed as a mortgage broker under the Mortgage Licensing Act with license number 26218 and a Nationwide Mortgage Licensing System and Registry ("NMLS") identification number of 127461.

6. Creative Mortgage is 100% owned by Michael J. D'Alonzo who also serves as President of the company.

7. Mr. D'Alonzo is licensed by the Department as a mortgage originator as defined by the Mortgage Licensing Act, 7 Pa. C.S. § 6102, license number 30060 and he is registered with the NMLS with unique identification number 146537.

8. On or around February 2, 2010, the Bureau began an investigation of Creative Mortgage.

Legal Authority

9. Pursuant to the Mortgage Licensing Act, a licensee shall "[c]omply with all applicable Federal law, including the Real Estate Settlement Procedures Act (88 Stat. 1724, 12

U.S.C. §§ 2601 et seq.) the Truth in Lending Act (82 Stat. 146, 15 U.S.C. §§ 1601 et seq.) and the Equal Credit Opportunity Act (88 Stat. 1521, 15 U.S.C. §§ 1691 et seq.).” 7 Pa.C.S. § 6121(3).

10. Section 8(a) of RESPA provides, in relevant part, that “[n]o person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person. 12 U.S.C. § 2607(a).”

II. Mortgagee Letter 2008-17, interpreting section 8(a) of RESPA, issued by the United States Department of Housing and Urban Development (HUD) on June 20, 2008 provides “FHA loan origination services *must be performed by a FHA-approved lender or FHA-approved mortgage broker* (loan correspondent).” (emphasis added).

12. Mortgagee Letter 2008-17 further provides that “[w]hile FHA regulations permit a borrower to engage a broker who is not FHA-approved to assist him/her in obtaining mortgage financing (24 CFR 203.27(e)), the loan origination services *may not be performed by that broker and the FHA approved mortgagee shall not compensate the broker for such services.*” (emphasis added).

13. The Mortgagee Letter 2008-17 prohibits “the payment of duplicative fees.” “The payment to the unapproved broker for duplicated services *amounts to an unearned fee* in violation of section 8(b) of RESPA.”

14. The Mortgagee Letter 2008-17 further explains that counseling type services “must be paid from the mortgagor’s *own available assets*, must be disclosed on the HUD-1 at

closing and a copy of the contract for these services must be included in the loan file submitted for insurance endorsement.” (emphasis in the original).

15. The Bureau is responsible for investigations of licensees under the authority provided to the Department in the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(1), formerly section 310(c)(1) of the MBBCEPA, 63 P.S. § 456.310(c)(1).

16. The Department shall have the authority to issue orders for the proper conduct of the mortgage loan business by licensees and for the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4), formerly section 310(a) of the MBBCEPA, 63 P.S. § 456.310(a).

17. The Department shall have the authority to impose such other conditions as the Department deems appropriate. 7 Pa. C.S. § 6138(a)(8).

18. An order issued against a licensee is applicable to the mortgage originators employed by the licensee. 7 Pa. C.S. § 6138(f).

19. The Department may impose a fine upon any person licensed or unlicensed, or any director, officer, employee or agent of a licensee who shall violate the provisions of Mortgage Licensing Act, 7 Pa.C.S. § 6140, up to \$10,000 per violation and upon any person licensed or unlicensed, or any director, officer, employee or agent of a licensee who shall violate the MBBCEPA in an amount up to \$2,000 per violation, 63 P.S. § 456.314 (b) and (c).

ALLEGATIONS

20. The Bureau alleges as follows:

a. The Bureau alleges that on at least eighteen occasions, Creative Mortgage, a non FHA-approved broker, submitted FHA insured mortgage loan applications to an FHA-approved broker and received compensation for those submissions.

b. The Bureau alleges that Creative Mortgage would: 1) originate FHA mortgage loan applications; 2) send the applications and supporting documentation to the FHA-approved broker for processing; and 3) receive compensation in the form of origination fees.

c. The Bureau alleges that Creative Mortgage's compensation was paid through an affiliate company of the FHA-approved broker.

d. The Bureau alleges that the fees paid to Creative Mortgage were not in compliance with FHA guidelines.

e. The Bureau alleges that in some instances, payment for unauthorized origination of the FHA insured mortgage loan, although disclosed on the HUD-1 settlement sheet, was made directly to Creative Mortgage by the settlement agent at the closing of the FHA insured loan instead of directly by the consumer out of the consumer's own available assets.

f. The Bureau alleges that fees disclosed on the HUD-1 settlement sheets paid to Creative Mortgage were identified as "consulting" fees, when the Bureau believes the fees were for the act of origination.

g. The Bureau alleges that in most instances, the fees paid to Creative Mortgage were not disclosed on the HUD-1 settlement sheets.

21. The Bureau alleges that, by engaging in the acts or practices described in paragraph 20, Creative Mortgage violated RESPA, thereby violating the Mortgage Licensing Act and constituting grounds for administrative action pursuant to the Mortgage Licensing Act and its predecessor statute, the MBBCEPA. 7 Pa.C.S. § 6121(3), 7 Pa. C.S. § 6139(a)(3); 63 P.S. § 456.313(a)(5).

22. The Bureau alleges that the unauthorized, excessive and/or unearned fees paid by consumers to Creative Mortgage totaled \$84,076.00.

23. The Bureau alleges that, as a result of Creative Mortgage's failure to properly supervise staff and the absence of internal controls, the quality and accuracy of mortgage loan processing materially suffered leading to invalid documents being forwarded from Creative Mortgage to the FHA-approved broker and from there onto lenders and investor.

24. The Bureau alleges that by engaging in the acts and practices described above, Creative Mortgage violated the Mortgage Licensing Act, 7 Pa.C.S. § 6121(13)(i), for which discipline may be imposed pursuant to the MBBCEPA, 63 P.S. § 456.313(a)(14) and the Mortgage Licensing Act, 7 Pa. C.S. § 6139(a)(10).

25. The Bureau alleges that Creative Mortgage did not maintain all of the records, including complete loan files, associated with the loan originations described above.

26. Section 6135(a)(2) of the Mortgage Licensing Act states "Each licensee shall maintain at its principal place of business, or at another place if agreed to by the department, the original or a copy of any books, accounts, records and documents, or electronic or similar access thereto, of the business conducted under the license as prescribed by the department to enable the department to determine whether the business of the licensee is being conducted in accordance with the provisions of this chapter and the regulations, statements of policy or orders issued under this chapter..." 7 Pa. C.S. § 6135(a)(2).

RESPONSE OF CREATIVE MORTGAGE

27. Creative Mortgage states that at all times it believed it was solely engaged in performing consulting services on loans that had been referred to an FHA approved mortgage broker as permitted by the FHA.

28. Creative Mortgage states that all consulting fees paid to Creative Mortgage were disclosed to consumers in a separate document and were disclosed separately from the broker's fee that was also disclosed on that document.

29. Creative Mortgage further states that its fees were included on the HUD-1 settlement sheet within the total broker fee.

30. Creative Mortgage contends that consumers were pleased with the loans they obtained, that the consumers involved could not qualify for conventional loans, and that no consumer raised any concern over the fees charged.

31. Creative Mortgage denies any wrongdoing.

RELIEF

32. Fine. Creative Mortgage and Michael J. D'Alonzo, jointly and severally, to avoid litigation and without admitting wrongdoing, agree to pay a fine of \$40,000 for violations of the MBBCEPA and Mortgage Licensing Act. The fine shall be due and payable in twenty (20) payments of two thousand dollars (\$2,000) with the first payment due and payable within thirty (30) days of the Effective Date of this Order and subsequent payments due every 30 days thereafter until paid in full. The fine payments shall be remitted by company checks, certified checks or money order made payable to the Pennsylvania Department of Banking and sent to the attention of the Compliance Division, Bureau of Compliance, Investigation and Licensing, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

33. Corrective Measures. Upon the effective date of this Order, Creative Mortgage and Michael J. D'Alonzo agree that Creative Mortgage:

a. shall cease and desist from accepting, through third parties, consulting fees for work that qualifies as origination of a loan;

b. shall cease and desist from activities in violation of Mortgage Letter 2008-17, section 8 of RESPA and the Mortgage Licensing Act and all other related state and federal laws and regulations;

c. shall cease and desist from collecting fees that are unauthorized or unearned in violation of section 8 of RESPA and Mortgage Licensing Act;

d. shall cease and desist from failing to properly control and supervise its employees in accordance with the requirements of section 6121(13)(i) of the Mortgage Licensing Act; and

e. shall maintain all records in accordance with the Mortgage Licensing Act.

Further Provisions

34. Consent. Creative Mortgage hereby knowingly, willingly, voluntarily and irrevocably consent 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. Creative Mortgage by voluntarily entering into this Order, waive any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

35. 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).

36. 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 Creative Mortgage.

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

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

39. Effectiveness. Creative Mortgage hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order.

40. 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 Creative Mortgage in the future regarding all matters not resolved by this Order.

b. Creative Mortgage acknowledge and agree 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.

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

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

43. 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, Creative Mortgage and Michael J. D'Alonzo 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: August 2, 2011

FOR CREATIVE MORTGAGE GROUP, INC.

(Officer's Signature)

(Print Officer Name)

President
(Title)

Date: 7/18/11

FOR MICHAEL J. D'ALONZO

(Signature)

(Print Name)

Date: 7/18/11