

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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COMMONWEALTH OF PENNSYLVANIA	:	Docket No. 11 <u>0065</u>	PA DEPT OF BANKING
DEPARTMENT OF BANKING, BUREAU	:		(ENF-CO)
OF COMPLIANCE, INVESTIGATION	:		
AND LICENSING	:		
	:		
	:		
v.	:		
	:		
FIRST CAPITAL MORTGAGE GROUP, INC.	:		

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, through the Department of Banking's (the "Department") Bureau of Compliance, Investigation and Licensing (the "Bureau"), based on information obtained through its investigation, believes that First Capital Mortgage Group, Inc., ("First Capital") operated in violation of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 *et seq.* First Capital enters into this agreement and order to resolve this matter without litigation, but without admitting guilt or wrongdoing. 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 (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.
2. The Bureau is primarily responsible for administering and enforcing the Mortgage Licensing Act for the Department.

3. First Capital is licensed as a mortgage lender under the Mortgage Licensing Act with license number 21363 and a Nationwide Mortgage Licensing System ("NMLS") identification number of 94926.

4. First Capital maintains its principal place of business at 1910 Cochran Road, Suite 545 Manor Oak 2, Pittsburgh, PA 15220.

Unlicensed Mortgage Originators

5. The Mortgage Licensing Act provides, in relevant part, that ". . . on and after the effective date of this section [November 5, 2008], no person shall engage in the mortgage loan business in this Commonwealth without being licensed as a . . . 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).

6. Beginning September 13, 2010, the Bureau of Non-Depository Examinations conducted an examination of First Capital at its principal place of business location.

7. The results of the examination were provided to the Bureau which then concluded that First Capital originated mortgage applications through unlicensed mortgage originators.

8. Based on a review of a sampling of loan files during the examination, the Bureau has documented that First Capital originated at least six (6) mortgage loans after November 5, 2008 through four (4) unlicensed mortgage originators.

9. It is the position of the Bureau that the mortgage loan applications originated by First Capital subsequent to November 5, 2008 through unlicensed individuals are in violation of the Mortgage Licensing Act.

10. First Capital is required to directly supervise, control and maintain responsibility for the acts and omissions of the mortgage originators it employs. 7 Pa. C.S. § 6131(f)(1).

11. It is the position of the Bureau that First Capital failed to employ only licensed mortgage loan originators, and failed to directly supervise, control and maintain responsibility for the acts and omission of the mortgage originators they employed as required by the Mortgage Licensing Act.

12. First Capital believed it was, at all times, properly originating and processing mortgage loans in accordance with the licensing laws of each state in which it did business, including Pennsylvania.

Authority of the Department

13. Section 6138(a)(4) of the Mortgage Licensing Act grants the Department broad authority to issue orders for the proper conduct of the mortgage licensing business and the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4).

14. Section 6139 of the Mortgage Licensing Act provides that the Department may suspend, revoke or refuse to renew a license issued under the Mortgage Licensing Act if AA Mortgage has “[f]ailed to comply with or violated any provision of this chapter. . . ” and if “a mortgage broker, mortgage lender or mortgage loan correspondent, conducted the mortgage loan business through an unlicensed mortgage originator.” 7 Pa. C.S. § 6139(a)(2) and (a)(14).

15. 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).

VIOLATIONS

16. First Capital violated the Mortgage Licensing Act on six (6) occasions when it continued to conduct the mortgage loan business through unlicensed mortgage originators after November 5, 2008 and when it failed to properly control and supervise its employees in accordance with the requirements of the Mortgage Licensing Act. 7 Pa. C.S. § 6111(a); 7 Pa. C.S. § 6131(f)(1).

RELIEF

17. Fine. First Capital agrees to pay the Department a fine in the amount of \$1,500 within thirty days of the effective date of this Order as defined by paragraph 24 below. Payment shall be remitted by certified check or money order made payable to the Department of Banking, and shall be sent to the attention of Non-Depository Institutions, Bureau of Compliance, Investigation and Licensing, 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

18. Corrective Measures. Upon the effective date of this Order, First Capital shall cease and desist from conducting the mortgage loan business through unlicensed mortgage originators and from failing to properly control and supervise its employees in accordance with the requirements of the Mortgage Licensing Act.

FURTHER PROVISIONS

19. Consent. First Capital hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order issued 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. First Capital 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.

20. 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).

21. 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 First Capital.

22. Binding Nature. The Department and First Capital intend to be and are legally bound by the terms of this Order.

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

24. Effectiveness. First Capital hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order.

25. 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 First Capital, in the future regarding all matters not resolved by this Order.

b. First Capital 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.

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

29. Counterparts. This Order may be executed in separate counterparts and by facsimile or electronic mail in portable document format "pdf."

30. 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 First Capital, 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**

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

Date: 3-29-2011

FOR FIRST CAPITAL MORTGAGE GROUP, INC.

(Officer Signature)

(Print Officer Name)

(Title)

Date: 3-23-2011