

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

2011 FEB 23 AM 11:40

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

PA DEPT OF BANKING

: Docket No. 11 0036 (ENF-CO)

v.

PREMIER RESIDENTIAL MORTGAGE, LP

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (“Department”), Bureau of Examinations has conducted an examination of Premier Residential Mortgage, LP (“Premier Residential”) and its officers, employees and directors. Based on the results of its review, the Bureau of Compliance, Investigation and Licensing (“Bureau”) believes that Premier Residential operated in violation of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 *et seq.*, and the Proper Conduct of Lending and Brokering in the Mortgage Loan Business Regulations (“Proper Conduct Regulations”), 10 Pa. Code §§ 46.1 – 46.3. Premier Residential denies that it engaged in any unlawful conduct.

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.
2. The Bureau is primarily responsible for administering and enforcing the Mortgage Licensing Act for the Department.
3. Premier Residential is a mortgage lender that engages in the mortgage loan business in Pennsylvania.
4. Premier Residential's principal place of business is located at 4610 Hamilton Boulevard, Allentown, Pennsylvania 18106.
5. Premier Residential maintains four branch offices in Pennsylvania.
6. Premier Residential initially obtained a mortgage banker license from the Department on March 22, 2007.
7. At the time of licensure, the Mortgage Bankers and Brokers and Consumer Equity Protection Act ("MBBCEPA"), Act of 1989, P.L. 687, No. 90, *formerly* 63 P.S. § 456.101 *et seq.*, was effective and governed the mortgage loan business in Pennsylvania.
8. However, on November 5, 2008, the MBBCEPA was repealed and replaced by the Mortgage Licensing Act.
9. Premier Residential properly transitioned its mortgage banker license to a mortgage lender license through the Nationwide Mortgage Licensing System ("NMLS") as required by the Mortgage Licensing Act and, therefore, has been continually licensed by the Department since its initial license date of March 22, 2007.
10. Premier Residential's NMLS Id. No. is 141750 and its Department of Banking License No. is 22640.

11. On January 11, 2010, an examiner from the Bureau of Compliance commenced an examination of Premier Residential.

12. As part of the examination, the examiner reviewed Premier Residential's business records, including its mortgage loan files, advertisements and accounting records for the calendar years 2008 and 2009.

13. The examiner found that Premier Residential violated the Mortgage Licensing Act with respect to mortgage loan transactions, advertisements and solicitations used in 2009 as set forth below.

14. The parties have agreed to enter this Order to resolve this matter amicably to avoid unnecessary litigation and to conserve resources and time. Nothing in this Order is meant to be, nor should it be construed, an admission of any unlawful conduct by Premier Residential.

VIOLATIONS

Insufficient Capital

15. First, in the examiner's opinion, Premier Residential's tangible net worth was less than \$250,000 as of December 31, 2007 based on the company's financial statements.

16. Section 6131(c)(3) of the Mortgage Licensing Act retained the requirement of Section 304(b)(3) of the MBBCEPA that licensees have a minimum tangible net worth of \$250,000 at the time of license application and to maintain that level of minimum net worth. *See* 7 Pa. C.S. § 6131(c)(3); *see also* former Section 304(b)(3) of the MBBCEPA, 63 P.S. § 456.304(b)(3).

17. In February 2008, Premier Residential obtained a capital contribution that increased its net worth to exceed the required minimum \$250,000.

18. Since February 2008, Premier Residential maintained capital levels above that required by the Mortgage Licensing Act.

19. By failing to have a tangible net worth of \$250,000 from 2007 until February 2008, Premier Residential would have violated Section 6131(c)(3) of the Mortgage Licensing Act, formerly Section 304(b)(3) of the MBBCEPA. *See* 7 Pa. C.S. § 6131(c)(3); *see also former* 63 P.S. § 456.304(b)(3).

Advertising

20. Second, in the examiner's opinion, Premier Residential did not require 6 of its mortgage originators to disclose on their business cards or the mortgage loan applications their NMLS identification number as required by the Mortgage Licensing Act.

21. The Mortgage Licensing Act requires mortgage loan originators to be employed by a "single licensed mortgage broker, mortgage lender or mortgage loan correspondent" which "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).

22. Section 6121(14) of the Mortgage Licensing Act provides that "[a] licensee *shall* do all of the following . . . [i]n the case of a mortgage originator, clearly display the mortgage originator's unique identifier on all mortgage loan application forms and personal solicitations or advertisements, including business cards." 7 Pa. C.S. § 6121(14) (emphasis added).

23. Further, "[i]n the case of a mortgage originator, *all advertising shall* include the name of the mortgage originator's employer *and the mortgage originator's unique identifier.*" 7 Pa. C.S. § 6135(a)(5).

24. By failing to require the 6 mortgage loan originators to display the unique identifier, the NMLS identification number, on its business cards and mortgage loan applications, Premier Residential would violated Sections 6121(14) and 6135(a)(5) of the Mortgage Licensing Act.

25. Further, in the examiner's opinion, Premier Residential was not disclosing on company letterhead and business cards that it is licensed by the Pennsylvania Department of Banking.

26. Section 6135(a)(5) of the Mortgage Licensing Act provides that "[e]ach licensee shall include in all advertisements language indicating that the licensee is licensed by the department." 7 Pa. C.S. § 6135(a)(5).

27. By failing to advertise that it is licensed by the Pennsylvania Department of Banking on its company letterhead and business cards, Premier Residential would have violated Section 6135(a)(5) of the Mortgage Licensing Act.

28. Next, based upon review of Premier Residential's website, www.premier-mtg.com, the examiner opined that Premier Residential was advertising mortgage loan programs that were no longer being offered by the company.

29. Specifically, the programs being advertised included "103% Purchase, 80/15/5 Program and High Debt Ratio Loans."

30. Section 6123(3) of the Mortgage Licensing Act provides, "[a] licensee engaging in the mortgage loan business shall not . . . [a]dvertise, cause to be advertised or otherwise solicit whether orally, in writing, by telecast, by broadcast or in any other manner any statement or representation which is false, misleading or deceptive." 7 Pa. C.S. § 6123(3).

31. The Proper Conduct Regulations provide that "[a] licensee may not engage in false or misleading advertising." 10 Pa. Code § 46.2(a).

32. By advertising loan programs that it was not offering, Premier Residential would have made a false and misleading statement in violation of Section 6123(3) of the Mortgage Licensing Act and 10 Pa. Code § 46.2(a).

33. Finally, the examiner opined that Premier Residential used a brochure to market reverse mortgages.

34. The brochure provided that Bob Ambler is “Premier’s Senior Reverse Mortgage Consultant” and has been counseling clients for over 13 years; the brochure provides contact information for Mr. Ambler and contact information for Premier Residential.

35. However, Mr. Ambler is not employed by Premier Residential as a mortgage originator; rather, Mr. Ambler is employed by another entity that engages in the mortgage loan business in Pennsylvania.

36. As noted above, “[a] licensee engaging in the mortgage loan business shall not . . . [a]dvertise, cause to be advertised or otherwise solicit whether orally, in writing, by telecast, by broadcast or in any other manner any statement or representation which is false, misleading or deceptive.” 7 Pa. C.S. § 6123(3).

37. By advertising Mr. Ambler as an employee of Premier Residential when he is employed by another entity, Premier Residential may have made a false, misleading and deceptive statement in violation of Section 6123(3) of the Mortgage Licensing Act and 10 Pa. Code § 46.2(a).

Licensed Name

38. Third, the examiner opined that consumer disclosures were not being prepared in the company’s licensed name, Premier Residential, but rather in an affiliated mortgage company’s name.

39. Although Premier Residential uses the affiliated mortgage company for certain services, the two companies are separately organized and licensed.

40. The subject disclosures included the Disclosure of Business Relationships, Privacy Policy Notice and the Statement of Credit Denial, Termination or Change.

41. Section 6136(a) of the Mortgage Licensing Act provides that, “[a] licensee cannot transact any business under this chapter under any other name or names except those names designated in its license.” 7 Pa. C.S. § 6136(a).

42. By transacting business under an affiliated mortgage company’s name, rather than its own name, Premier Residential would have violated Section 6136(a) of the Mortgage Licensing Act.

Displaying of Mortgage Licenses

43. Fourth, the examiner opined that Premier Residential was displaying an expired company license at its principal place of business and was not conspicuously displaying copies of licenses of all mortgage originators assigned to work at that location.

44. Section 6135(a)(1) provides, in relevant part, that “[a] licensee who is a mortgage broker, mortgage lender or mortgage loan correspondent shall conspicuously display, at each licensed place of business, its license and copies of the licenses of all mortgage originators assigned to that location.” 7 Pa. C.S. § 6135(a)(1).

45. By failing to display the licenses, Premier Residential would have violated Section 6135(a)(1) of the Mortgage Licensing Act.

Consumer Disclosure Forms

46. Fifth, the examiner opined that Premier Residential, in 4 mortgage loan transactions, did not obtain the original executed Consumer Disclosure forms from the consumer within the time required by the Proper Conduct Regulations.

47. The Consumer Disclosure forms advise the applicants of the loan terms including whether the lender will escrow the applicable property taxes and hazard insurance, whether the lender can lock in a loan interest rate, whether the loan contains a variable interest rate or balloon payment feature, a prepayment penalty or has a negative amortization feature as set forth in 10 Pa. Code § 46.2(b).

48. Section 46.2(c) of the Regulations provide, in relevant part, that “[a] licensee issuing the disclosure form . . . shall sign and date the disclosure form and deliver or place in the mail the disclosure form within 3 business days after the application is received or prepared by the licensee.” 10 Pa. Code § 46.2(c).

49. Further, “[a] licensee *shall* require an applicant to sign and date the disclosure form required . . . *within 10 business days after delivery or mailing* and retain the original executed disclosure form in the applicant’s loan file.” 10 Pa. Code § 46.2(e) (emphasis added).

50. Although Premier Residential maintained the consumer disclosure form executed by the consumer in its mortgage loan files, it apparently did not obtain the consumer’s signature within 10 days of providing it to the consumer; apparently Premier Residential on occasion obtained the consumer’s signature on the day of settlement rather than in advance as required by the Proper Conduct Regulations.

51. By failing to obtain the executed consumer disclosure forms within the time required, Premier Residential would have violated Section 46.2(e) of the Proper Conduct Regulations.

Rate Lock Agreements

52. Sixth, the examiner opined that Premier Residential was not consistently disclosing all terms and conditions of rate lock agreements to the loan applicants in writing.

53. Section 6121(11) of the Mortgage Licensing Act provides:

A licensee shall do all of the following. . . [e]nsure that all lock-in agreements shall be in writing and shall contain at least the following provisions:

- (i) The expiration date of the lock-in, if any.
- (ii) The interest rate locked in, if any.
- (iii) The discount points locked in, if any.
- (iv) The fee locked in, if any.
- (v) The lock-in fee, if any.

7 Pa. C.S. § 6121(11).

54. Although Premier Residential provided standard form rate lock agreements to the consumers, on at least 5 occasions, the agreements apparently did not disclose the expiration date of the lock in, the interest rate locked in, the fee locked in and the lock in fee, if any.

55. If Premier Residential did not disclose the specific terms of the lock in agreement to the consumer in writing, it would have violated Section 6121(11) of the Mortgage Licensing Act.

Authority of the Department

56. The Department has the authority to issue “orders as maybe necessary for the proper conduct of the mortgage loan business by licensees” and the enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4).

57. Further, the Department may fine a person licensed under the Mortgage Licensing Act that violates its terms or commits any action which would subject the licensee to suspension, revocation or nonrenewal up to \$10,000 for each offense. 7 Pa C.S. § 6140(b).

RELIEF

58. Fine. Within 30 days of the effective date of this Order as set forth in

Paragraph 65 of this Order, Premier Residential shall pay the Department a fine in the amount of \$5100 remitted by certified check or money order made payable to the Department of Banking. The fine payment shall be sent to the attention of: Non-Depository Institutions, Bureau of Compliance, Investigation and Licensing, Department of Banking, 17 North Second Street, Suite 1300, Harrisburg, PA 17101.

59. Corrective Action. Upon the effective date of this Order, Premier Residential shall do the following:

a. Ensure that it maintains a minimum tangible net worth of \$250,000 as required by Section 6131(c)(3) of the Mortgage Licensing Act.

b. Ensure that its mortgage originators disclose on their business cards and mortgage loan applications their NMLS identification number as required by Sections 6131(f)(1) and 6135(a)(5) of the Mortgage Licensing Act.

c. Ensure that its letterhead, business cards and other advertisements contain language indicating that Premier Residential is licensed by the Pennsylvania Department of Banking required by Section 6135(a)(5) of the Mortgage Licensing Act.

d. Ensure that Premier Residential does not make representations or statements in its advertising, including its website and brochures, that is false, misleading or deceptive as prohibited by Section 6123 of the Mortgage Licensing Act.

e. Ensure that consumer disclosures are prepared in the company's licensed name as required by Section 6136(a) of the Mortgage Licensing Act.

f. Ensure that Premier Residential displays a current mortgage lender license at each place of business and displays copies of licenses of all mortgage originators assigned to each location as required by Section 6135(a)(1) of the Mortgage Licensing Act.

g. Obtain the original executed consumer disclosure forms from the consumer per 10 Pa. Code § 46.2(b) within 10 days after delivery or mailing to the consumer as required by 10 Pa. Code § 46.2(e).

h. Disclose, in writing, to the applicants the specific terms and conditions of rate lock agreements as required by Section 6121(11) of the Mortgage Licensing Act.

FURTHER PROVISIONS

60. Consent. Premier Residential 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 therein. Premier Residential, 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.

61. 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).

62. 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 Premier Residential.

63. Binding Nature. The Department and Premier Residential intend to be and are legally bound by the terms of this Order.

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

65. Effectiveness. Premier Residential hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order.

66. 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 Premier Residential, in the future regarding all matters not resolved by this Order.

b. Premier Residential 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.

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

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

69. 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 Commonwealth of Pennsylvania, Bureau of Compliance, Investigation and Licensing and Premier Residential Mortgage, LP 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 R. Falalai, Enforcement Administrator
Bureau of Compliance, Investigation and Licensing
Department of Banking

Date: 2-22-2011

FOR PREMIER RESIDENTIAL MORTGAGE, LP

(Officer Signature)

(Print Officer Name)

RESIDENT
(Title)

Date: 2/21/11