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DEPARTMENT OF BANKING

PA DEPT OF BANKING

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

v.

UMH SALES AND FINANCE, INC.

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Docket No. 110187 (ENF-co)

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking (the "Department"), Bureau of Examinations has conducted an examination of UMH Sales and Finance, Inc. ("UMH") and its officers, employees and directors. Based on the results of the examination, the Bureau of Compliance and Licensing (the "Bureau") believes that UMH operated in violation of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 *et seq.* and the regulations promulgated under the Mortgage Licensing Act known as the Proper Conduct of Lending and Brokering in the Mortgage Loan Business ("Proper Conduct Regulations"), 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 (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. UMH is a mortgage lender licensed by the Department and assigned license number 31702, and an installment seller assigned license number 7451.

4. UMH was assigned identification number 200331 by the Nationwide Mortgage Licensing System and Registry ("NMLSR").

5. UMH's principal place of business is located at 3499 Route 9 North, Suite 3C, Freehold, New Jersey 07728.

6. On May 16, 2011, the Bureau of Examinations commenced an examination of UMH upon which the Bureau's position is based.

Advertising

7. Based on the examination, the Bureau concluded that UMH did not include UMH's NMLS unique identifier, its mortgage originator's NMLS unique identifier or the statement that it was licensed by the Department on all its advertising and applications.

8. Section 6135(a)(5) of the Mortgage Licensing Act requires 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).

9. Section 6121(14) of the Mortgage Licensing Act requires that "in 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).

10. By failing to include the NMLS unique identifiers and the statement that it was licensed by the Department of Banking, UMH violated sections 6135 (a)(5) and 6121(14) of the Mortgage Licensing Act.

Unlicensed Activity

11. Based on the examination, the Bureau concluded that on 11 (eleven) occasions between October 24, 2009 and August 2, 2010, UMH conducted the mortgage loan business through unlicensed mortgage originators in its New Jersey office.

12. 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 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).

13. By allowing unlicensed mortgage originators to conduct the mortgage business, UMH failed to supervise and control its mortgage originators in violation of the Mortgage Licensing Act. 7 Pa. C.S. §§ 6131(f)(1); 6139(a)(14).

Unlicensed Branch

14. Based on the examination, the Bureau believes that Pennsylvania mortgage business was conducted in an unlicensed location in Ohio because that was the primary address of the Pennsylvania licensed originator responsible for loans bearing the licensed corporate address.

15. Section 6131(f)(2) of the Mortgage Licensing Act requires mortgage originators to be assigned to and work out of a licensed location of the employer licensee. 7 Pa. C.S. § 6131(f)(2).

16. UMH does not concede that any loans were originated out of the unlicensed Ohio location.

17. Nevertheless, to resolve this issue, UMH agrees to apply for a branch license in Pennsylvania for the primary address of the loan officer located in Ohio and agrees not to engage in any mortgage business in unlicensed locations.

Consumer Disclosure Forms

18. Based on the examination, the Bureau concluded that in twenty-nine (29) instances, UMH was not providing the required Consumer Disclosure Form required by the Proper Conduct Regulations and the Mortgage Licensing Act. 10 Pa. Code § 46.2(b).

19. Section 46.2(b), (c) and (e) of the Proper Conduct Regulations requires the mortgage lenders to disclose information to consumers regarding any escrow of taxes and insurance, rate lock-in, variable interest rates, balloon payments, prepayment penalty, negative amortization by delivering or mailing a form to the consumer within three business days, requiring the lender to obtain the form bearing the consumer's signature within ten days, and the retention of the form in the lender's file. 10 Pa. Code § 46.2(b), (c), and (e).

20. By failing to provide the applicants with a fully completed Pennsylvania Consumer Disclosure and by failing to maintain the original executed form bearing the signature of the lender and the consumer in the applicant's loan file, UMH violated the Proper Conduct Regulations.

Adverse Action Notice

21. Based on the examination, the Bureau concluded that UMH failed to provide adverse action notices within thirty days of application to six consumers.

22. Section 701(d)(1) of the federal Equal Credit Opportunity Act requires mortgage lenders to provide a credit determination or adverse action notice to all consumers within thirty days of application and failure to comply with the Equal Credit Opportunity Act is a violation of the Mortgage Licensing Act. 7 Pa. C.S. § 6121(3).

23. By failing to provide adverse action notices to all consumers that had withdrawn their application or were denied a loan, UMH violated the Mortgage Licensing Act by violating the Equal Credit Opportunity Act.

24. UMH has acknowledged this error and in full resolution of this violation agrees to provide adverse action notices in all future situations where consumers' applications are denied or withdrawn.

Authority of the Department

25. 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).

26. 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).

RELIEF

27. Fine. Within 30 days of the effective date of this Order as defined in paragraph 33 below, UMH shall pay the Department a fine in the amount of \$3,750. Payments shall be 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.

28. Corrective Action. Upon the effective date of this Order, UMH shall cease and desist from violating the Mortgage Licensing Act and related regulations by ensuring that all advertisements display the required licensing language and NMLS identifiers; maintain licensed mortgage originators; and provide required Consumer Disclosure forms.

FURTHER PROVISIONS

29. Consent. UMH 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. UMH Sales and Finance, 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. This Order represents the final resolution of the Department's Examination of UMH Sales and Finance and evidences the Department's agreement that no other fines, remedies, proceedings or actions shall be commenced, asserted or directed against UMH Sales and Finance as a result of the Examination.

30. 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).

31. 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 UMH.

32. Binding Nature. The Department and UMH intend to be and are legally bound by the terms of this Order.

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

34. Effectiveness. UMH hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order.

35. 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 UMH, in the future regarding all matters not resolved by this Order.

b. UMH 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.

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

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

38. 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, UMH intending to be legally bound, do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING, BUREAU OF
COMPLIANCE AND LICENSING**

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

Date: 11-14-2011

FOR UMH SALES AND FINANCE, INC.

(Officer Signature)

(Print Officer Name)

(Title)

Date: 11/14/2011