

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING

PA DEPT OF BANKING

---

COMMONWEALTH OF PENNSYLVANIA	:	
DEPARTMENT OF BANKING, BUREAU	:	Docket No. 100143(ENF-OSC)
OF COMPLIANCE, INVESTIGATION	:	
AND LICENSING,	:	
	:	
v.	:	
	:	
WF&K MORTGAGE INC., and	:	
JOHN J. FARRENCE, individually, and	:	
ARTHUR W. KARBOWSKI, individually, and	:	
THOMAS J. WALSH, individually, and	:	
TIMOTHY J. TANANA. individually.	:	

---

**CONSENT AGREEMENT AND ORDER**

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Compliance, Investigation and Licensing ("Bureau") has reviewed the business practices of WF&K Mortgage Inc., and its officers, employees and directors including John J. Farrence and Arthur W. Karbowski. Based on the results of its review, the Bureau believes that WF&K Mortgage Inc., John J. Farrence and Arthur W. Karbowski operated in violation of the Mortgage Licensing Act, 7 Pa. C.S. § 6101 *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 and conditions 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. WF&K Mortgage Inc. ("WF&K") was formerly licensed as a First Mortgage Broker, license no. 4938, pursuant to chapter 3 of the Mortgage Bankers and Brokers and Consumer Equity Protection Act ("MBBCEPA"), 63 P.S. 456.301 *et seq.*, and as a Secondary Mortgage Broker, license no 2260, pursuant to the Secondary Mortgage Loan Act ("SMLA"), 7 P.S. § 6601 *et seq.*

4. On November 5, 2008, Chapter 3 of the MBBCEPA and the SMLA were repealed by operation of law and replaced by 7 Pa. C. S. § 6101 *et seq.* On August 5, 2009, 7 Pa. C.S. § 6101 *et seq.* was amended by Act 31 of 2009, H.B. 1654 (P.N. 2448).

5. WF&K is currently licensed under the Mortgage Licensing Act as a Mortgage Broker with the Nationwide Mortgage Licensing System and Registry ("NMLSR") identification number of 51362.

6. WF&K maintains its principal place of business at 718 E. Drinker Street, Dunmore, Pennsylvania 18512.

7. The principal shareholders of WF&K are John J. Farrence, Thomas J. Walsh and Arthur W. Karbowski ("Owners").

8. Each of the Owners maintains a 33.33% interest in WF&K.

9. WF&K employed Timothy J. Tanana ("Tanana") until February 26, 2010 when WF&K permitted Tanana to resign.

10. On January 2, 2009, Tanana applied with the Department through the NMLSR for a mortgage originator license using his assigned NMLSR unique identified of 147651.

11. The Department granted Tanana a conditional mortgage originator license pursuant to the Mortgage Licensing Act on January 12, 2009.

12. The Bureau initiated a formal investigation based upon background information Tanana provided on his January 2, 2009 mortgage loan originator application regarding a July 2000 felony conviction. 7 Pa. C.S. § 6133(a.1).

13. Tanana surrendered his conditional license to the Department on March 24, 2009, based on ineligibility.

14. On November 19, 2009, Tanana submitted a second application to the Department through NMLSR to obtain a mortgage originator license as an employee of WF&K.

15. On January 27, 2010, an examination ("Examination") of WF&K commenced.

16. In February 2010, the Bureau initiated an investigation ("Investigation") into Tanana's second mortgage originator application. 7 Pa. C.S. § 6133(a.1).

#### Unlicensed Mortgage Loan Originator

17. The Investigation revealed that instead of acting in the capacity of a loan processor while unlicensed by the Bureau, Tanana instead engaged in the mortgage loan business as an unlicensed mortgage loan originator.

18. On February 4, 2010, as part of the Examination, WF&K owner Karbowski provided a Department examiner with a spreadsheet of 56 mortgage loans attributable to Tanana.

19. Of the 56 mortgage loans, 39 occurred during Tanana's period of unlicensure.

20. The Mortgage Licensing Act defines a loan processor or underwriter as "[a]n individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under this chapter." 7 Pa. C.S. § 6102.

21. During the Investigation, the Bureau alleges that Tanana stated to the Department investigators that he met with consumers at their residences to discuss interest rates, he completed mortgage loan applications and he was present at mortgage loan closings.

22. The Mortgage Licensing Act defines a mortgage loan originator as "an individual who takes a mortgage loan application or offers or negotiates terms of a mortgage loan for compensation or gain." 7 Pa. C.S. § 6102.

23. The Mortgage Licensing Act defines the 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.

24. Tanana's consumer interactions after he surrendered his conditional mortgage originator license constitute mortgage loan origination. 7 Pa. C.S. § 6102.

25. Section 6111(a) of the Mortgage Licensing Act states "[o]n and after the effective date of this section, 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." 7 Pa. C. S. § 6111(a).

26. Because Tanana surrendered his conditional mortgage originator license on March 24, 2009, the Mortgage Licensing Act prohibited him from engaging in the mortgage loan business by originating mortgage loans without a license. 7 Pa. C. S. § 6111(a).

#### Negligent Supervision

27. The Bureau's investigation revealed that WF&K, Farrence and Karbowski permitted Tanana to engage in the mortgage loan business and act in the capacity as a mortgage loan originator from March 24, 2009 through February 2010 while Tanana was unlicensed by the

Department. However, files generated prior to March 24, 2009 were permitted by the Bureau to be closed.

28. WF&K accepted mortgage loan applications from Tanana while he was not licensed as a mortgage loan originator. 7 Pa. C.S. § 6139(a)(14).

29. Karbowski and Farrence stated to the Department examiner that Tanana received a 50% split in fees as compensation for all loans that Tanana "referred" and that ultimately closed.

30. WF&K financially benefited from Tanana's work as a mortgage loan originator because WF&K received the broker fees from those loans.

31. WF&K displayed negligence and incompetence in the mortgage loan business by allowing an employee of WF&K to act as a mortgage loan originator while unlicensed by the Department. 7 Pa. C.S. § 6139(a)(10).

32. WF&K, Farrence and Karbowski engaged in unfair and unethical activities by allowing Tanana to act a mortgage loan originator for WF&K when he was not licensed to do so by the Department. 7 Pa. C.S. § 6139(a)(3).

#### Unauthorized Fees

33. The Bureau's investigation revealed that while an employee of WF&K, Tanana took at least \$50,637.58 in unauthorized fees from at least twenty-one (21) Pennsylvania consumers.

34. Section 6123(8) of the Mortgage Licensing Act provides that a licensee engaging in the mortgage loan business shall not "[i]n the case of a mortgage originator, accept any fees from consumers in the mortgage originator's own name..." (See 7 Pa. C.S. § 6123(8)).

35. The Investigation revealed that Tanana requested and received monies outside of closing from these nineteen Pennsylvania consumers in the form of checks made out to himself or to his sister.

36. On or around July 2, 2010, WF&K informed the Bureau of an additional consumer from whom Tanana had requested unauthorized fees.

37. WF&K told the Department that the additional consumer paid Tanana in a manner similar to the other Pennsylvania consumers.

38. WF&K stated that upon learning of this additional consumer, WF&K reimbursed that consumer the amount of the unauthorized fees paid by the consumer to Tanana.

39. WF&K, Farrence and Karbowski allege that they did not know that Tanana was requesting such fees from consumers.

40. Section 6121(13)(i) provides that mortgage brokers must "[m]aintain supervision and control of and responsibility for the acts and omissions of all mortgage originators employed by the licensee." 7 Pa. C.S. § 6121(13)(i).

41. WF&K, Farrence and Karbowski did not maintain supervision or control over Tanana as required by statute. 7 Pa. C.S. § 6121(13)(i).

42. WF&K, Farrence and Karbowski displayed negligence and incompetence in the mortgage loan business by failing to maintain proper internal controls to prevent unlicensed activity or fraud. 7 Pa. C.S. § 6139(a)(10).

#### Order to Show Cause

43. On June 14, 2010, the Bureau issued an Order to Show Cause against WF&K, Farrence, Karbowski, Walsh and Tanana based on the results of the Investigation and Examination.

44. This Order is being entered in resolution of the counts against WF&K, Farrence and Karbowski only.

45. This Order is being entered into between the parties based on the facts as they are known upon the Effective Date. Should additional facts arise that change the basis for this agreement, the Bureau reserves the right to take additional administrative action.

Authority of the Department

46. Section 6138(a)(1) of the Mortgage Licensing Act provides the Department with the authority to "[e]xamine any instrument, document, account, book, record or file of a licensee or any person having a connection to the licensee or make other investigation as may be necessary to administer the provisions of this chapter. . . . The costs of the examination shall be borne by the licensee or the entity subject to the examination." 7 Pa. C.S. § 6138(a)(1).

47. Section 6138(a)(4) of the Mortgage Licensing Act grants the Department broad authority to issue orders as may be necessary for the proper conduct of the mortgage loan business and enforcement of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(4).

48. Section 6138(a)(5) of the Mortgage Licensing Act provides the Department with the authority to "[p]rohibit or permanently remove a person or licensee responsible for a violation of this chapter from working in the present capacity or in any other capacity of the person or licensee related to activities regulated by the department." 7 Pa. C.S. § 6138(a)(5).

49. Section 6138(a)(6) of the Mortgage Licensing Act provides the Department with the authority to order a person or licensee to make restitution for actual damages to consumers caused by any violation of the Mortgage Licensing Act. 7 Pa. C.S. § 6138(a)(6).

50. Section 6138(a)(8) of the Mortgage Licensing Act provides the Department with the authority to impose such other conditions as the Department deems appropriate. 7 Pa. C.S. § 6138(a)(8).

51. Section 6139(a)(3) of the Mortgage Licensing Act provides that the Department may suspend, revoke or refuse to renew a license issued under the Act if a licensee or a director, officer, partner, employee or owner of a licensee has “[e]ngaged in dishonest, fraudulent or illegal practices or conduct in a business or unfair or unethical practices or conduct in connection with the mortgage loan business.” 7 Pa. C.S. § 6139(a)(3).

52. Section 6139(a)(10) of the Mortgage Licensing Act provides that the Department may suspend, revoke or refuse to renew a license issued under the Act if a licensee or a director, officer, partner, employee or owner of a licensee has “[d]emonstrated negligence or incompetence in performing an act for which the licensee is required to hold a license under this chapter.” 7 Pa. C.S. § 6139(a)(10).

53. Section 6139(a)(14) provides that the Department may suspend, revoke or refuse to renew a license issued under the Mortgage Licensing Act if a licensee or a employee or owner of a licensee, if a mortgage broker has “. . . conducted the mortgage loan business through an unlicensed mortgage originator.” 7 Pa. C.S. § 6139(a)(14).

54. 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).

55. 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).

56. The Mortgage Licensing Act applies to “[a]ny person who engages in the mortgage loan business in this Commonwealth” regardless of whether that person is licensed or not. 7 Pa. C.S. § 6151(2).

#### **VIOLATIONS**

57. WF&K, Farrence and Karbowski are in violation of Section 6139(a)(3) of the Mortgage Licensing Act by displaying negligence and incompetence in the mortgage loan business.

58. WF&K, Farrence and Karbowski are in violation of Section 6139(a)(10) of the Mortgage Licensing Act by engaging in unfair and unethical activities.

59. WF&K, Farrence and Karbowski are in violation of Section 6139(a)(14) of the Mortgage Licensing Act by conducting the mortgage loan business through an unlicensed mortgage loan originator.

60. WF&K, Farrence and Karbowski are in violation of Section 6121(13)(i) of the Mortgage Licensing Act by failing to maintain supervision and control over a mortgage loan originator.

#### **RELIEF**

61. Fine. WF&K shall pay a fine in the amount of twenty thousand dollars (\$20,000). The first payment of \$5,000 shall be due and payable within thirty (30) days of the

Effective Date of this Order. WF&K shall pay 5 installments of \$3,000 each every thirty (30) days thereafter until the total fine is paid. The fine payment checks shall be remitted by certified check 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.

62. Suspension. WF&K's mortgage broker license shall be suspended for a period of five (5) days (meaning that WF&K and its owners, officers, directors and/or employees shall not engage in the mortgage loan business in Pennsylvania as defined in Section 6102 of the Mortgage Licensing Act, 7 Pa. C.S. § 6102) ("Suspension Period") from Monday 03/28/2011 until Friday 04/01/2011. One day prior to the Suspension Period, WF&K shall provide the Bureau with a report for the following categories of loans:

- a. loans that have closed, but have not yet funded;
- b. loans that have been approved but that have not closed;
- c. applications that have been received, but no decision has been made on approving the applications; and
- d. applications that are in the initial stages of review and document gathering (the "Pipeline Report").

The Pipeline Report shall include the following information:

- (i) the name, address and telephone number of the applicant;
- (ii) the status of the loan; and
- (iii) the purpose of the loan (i.e. purchase or refinance).

The Pipeline Report shall be sent via email to Ryan Walsh, Compliance Administrator, at

So as to prevent harm to consumers that submitted loan applications to WF&K prior to the Suspension Period, WF&K shall be permitted to process the loans that are listed on the Pipeline Report, however WF&K shall not be permitted to advertise, meet with new consumers not listed on the Pipeline Report or otherwise accept any new mortgage loan business during the Suspension Period.

63. Restitution. Within thirty (30) days of the Effective Date of this Order, WF&K, John J. Farrence and Arthur Karbowski, jointly and severally, shall make restitution to the consumers as listed in Attachment A of this Consent Agreement (with the exception of and because they already received their reimbursement). The restitution still due is as listed on Attachment A, minus the amount already paid to the , totaling the amount of \$50,637.58.

Within five (5) days of the Effective Date of the Order and every five (5) thereafter, until the Consumer Restitution has been made or until the expiration of the thirty (30) days, whichever is later, WF&K shall provide the Bureau with a status report relating to the Consumer Restitution which shall include: (i) the manner in which the restitution has been or will be made; (ii) the date on which the restitution was sent to the consumer; (iii) evidence that the restitution was paid to the consumer, *i.e.* copy of a cleared check; and (iv) a list of any restitution that was returned or was not able to be delivered ("Status Report") that is forwarded to the attention of Ryan Walsh, Compliance Administrator, via email to

If after thirty (30) days from the Effective Date of the Order WF&K is unable to locate or deliver the Consumer Restitution after having made diligent and reasonable efforts to do so, the Bureau requests that WF&K be ordered to hold and dispose of the funds in accordance with Pennsylvania's Disposition of Abandoned and Unclaimed Property Law, 72 P.S. § 1301.1 et seq.

64. Additional Consumer Restitution. If any consumer comes forward within 365 days of the Effective Date of this Order and claims that the consumer is owed a refund similar to those consumers listed in Paragraph 63 above, and no evidence can be provided to refute that the consumer is owed such refund, WF&K, John J. Farrence and Arthur Karabowski, jointly and severally, shall make the refund. WF&K, John J. Farrence and Arthur Karabowski, will have 14

days to produce any documentation to refute that those consumers are owed a refund. After the expiration of the 14 day period, WF&K, John J. Farrence and Arthur Karabowski, will then have 30 days within which to refund any amount due to the consumers. All refund checks shall be made payable to the respective consumers by certified check or money order and sent to counsel for the Bureau at:

Lauren A. Sassani, Assistant Counsel  
Pennsylvania Department of Banking  
17 N. Second Street, Suite 1300  
Harrisburg, PA 17101

Upon receipt, counsel for the Bureau shall forward the checks to the respective consumers.

65. Abeyance. WF&K, John J. Farrence and Arthur W. Karabowski agree that if the Department, after notice and opportunity to be heard, determines that restitution has not been made or proof of reasonable efforts to make restitution has not been produced as required by Paragraph 63, WF&K shall pay an additional fine of \$58,000 and serve an additional 25 day suspension.

66. Thomas J. Walsh.

a. Removal. Within 30 days of the Effective Date of this Order, WF&K shall remove Thomas J. Walsh as an owner of WF&K. WF&K shall provide proof that removal has been accomplished by sending documentation to Ryan Walsh, Compliance Administrator, at

Thomas J. Walsh shall not be compensated by WF&K after the effective date of his removal.

b. Upon the Effective Date of this Order, WF&K shall provide a report to the Bureau listing the loans transferred from Thomas J. Walsh to other licensed mortgage originators. The report shall include the name, address and telephone number of the consumer

transferred as well as the licensed mortgage originator to whom the loans were transferred to. The report shall be sent to Ryan Walsh, Compliance Administrator at

67. Internal Control Plan. Within thirty (30) days of the effective date of this Order, WF&K submit an acceptable internal control plan (the "Plan") to the Bureau which discloses how policies and procedures will be implemented to actively detect warning indicators of fraud and/or misrepresentation and to prevent unlicensed activity that provides policies and procedures which include, but are not limited to: compliance with the Mortgage Licensing Act and training employees and managers in fraud detection and to prevent unlicensed activity.

The Bureau requests an order that the Bureau shall review the Plan and approve or refuse to approve the Plan within fifteen (15) days of the submission of the Plan. Approval of the Plan shall not be unreasonably withheld. If the Bureau does not approve the Plan, the Bureau shall provide comments on why the Plan is unacceptable and allow WF&K the opportunity to resubmit the Plan with the appropriate changes. The submission process shall continue unless and until such time as the Bureau approves the Plan.

68. Corrective Measures. W&K shall immediately cease and desist from accepting Pennsylvania residential mortgage applications from individuals who are not properly licensed under the Mortgage Licensing Act.

#### FURTHER PROVISIONS

69. Consent. WF&K, Farrence and Karbowski 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 agree that they understand all of the terms and conditions contained herein. WF&K, Farrence and Karbowski 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.

70. 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).

71. 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 WF&K, Farrence and Karbowski.

72. Binding Nature. The Department, WF&K, and all officers, owners, directors, employees, heirs and assigns of WF&K including Farrence and Karbowski intend to be and are legally bound by the terms of this Order.

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

74. Effectiveness. WF&K, Farrence and Karbowski hereby stipulate and agree that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

75. 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 WF&K, Farrence and Karbowski in the future regarding all matters not resolved by this Order.

b. WF&K, Farrence and Karbowski 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.

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

77. Counterparts. This Order may be executed in separate counterparts, by facsimile or by PDF.

78. 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, WF&K, Farrence and Karbowski 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 Walsh, Administrator  
Bureau of Compliance, Investigation and Licensing  
Department of Banking

Date: February 24, 2011

**WF&K MORTGAGE INC.**

\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Print Officer Name)

PREG  
\_\_\_\_\_  
(Title)

Date: FEB 24, 2011

JOHN J. FARRENCE

\_\_\_\_\_  
(Signature)

Date: 02/24/2011

ARTHUR W. KARBOWSKI

\_\_\_\_\_  
(Signature)

Date: FEB 24, 2011

**ATTACHMENT A**

<b>Consumer Name</b>	<b>Refund Owed</b>
Redacted	\$5,000
Redacted	\$6,660
Redacted	\$5,985.58
Redacted	\$5,687
Redacted	\$1,600
Redacted	\$500
Redacted	\$1960
Redacted	\$500
Redacted	\$296
Redacted	\$5,000
Redacted	\$4,000
Redacted	\$400
Redacted	\$1,000
Redacted	\$9,000
Redacted	\$2,500*
Redacted	\$1,049
Redacted	\$2,000

\*Already refunded to consumer