

FILED

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

2012 APR 17 PM 1:47

COMMONWEALTH OF PENNSYLVANIA	:	PA DEPT OF BANKING
DEPARTMENT OF BANKING, BUREAU OF	:	
COMPLIANCE AND LICENSING	:	
	:	
v.	:	Docket No.: 120047 (ENF-ORD)
	:	
AMERICA FIRST FINANCIAL	:	
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NOTICE OF RIGHT TO APPEAL AND HEARING

You, America First Financial have the right to appeal the attached Order of Prohibition (the "Order") within **10 days** of the date of service. See 1 Pa. Code § 35.20. The date of service is the date the Order is deposited in the mail or delivered to you in person, as the case may be, as set forth in 1 Pa. Code § 33.34. If you appeal the Order, you also have a right to a hearing.

To file an appeal and request a hearing on the Order, you must file a petition with the Secretary of Banking within 10 days of the date of service. 1 Pa. Code § 35.20. The petition must be in writing, state clearly and concisely your grounds of interest in the subject matter, the facts you rely upon, the law you rely upon, and the relief you seek. See 1 Pa. Code § 35.17. Please deliver your petition to:

Linnea Freeberg, Docket Clerk,
Office of Executive Deputy Secretary
Pennsylvania Department of Banking
17 North Second Street, Suite 1300
Harrisburg, PA 17101

The petition must be **received** by the Docket Clerk within the aforementioned 10 day deadline. If the Docket Clerk does not receive your petition on time, you will waive your right to an appeal and a hearing and the Order will be deemed final.

If you choose to file a petition challenging the Order, please send an additional copy to:

Sarah E. Sedlak, Assistant Counsel
Pennsylvania Department of Banking
17 North Second Street, Suite 1300
Harrisburg, PA 17101

Once you file your petition appealing the Order and requesting a hearing, you will be notified of the hearing date, time, place, the person who will preside at your hearing, and any other pertinent information.

You have the right to be represented by an attorney. Corporations may be required to be represented by an attorney.

The hearing and all other procedural matters will be governed by the Pennsylvania Administrative Agency Law, 2 Pa. C.S. §§ 501-508, 701-704, and the General Rules of Administrative Practice and Procedure, 1 Pa. Code §§ 31.1.-35.251.

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PA DEPT OF BANKING

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

v.

AMERICA FIRST FINANCIAL

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Docket No.: 12 0047 (ENF-ORD)

ORDER

WHEREAS, the Department of Banking ("Department") is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce 7 Pa. C.S. § 6101 ("Mortgage Licensing Act") et seq.; and

WHEREAS, the Bureau of Compliance and Licensing ("Bureau") is primarily responsible for administering and enforcing the Mortgage Licensing Act for the Department; and

WHEREAS, the Mortgage Licensing Act was amended on August 5, 2009, by Act 31 of 2009, H.B. 1654 (P.N. 2448); and

WHEREAS, America First Financial is an entity located at 8 Corporate Park, Suite 300, Irvine, California 92606; and

Unlicensed Activity

WHEREAS, on or around March 1, 2011 the Department became aware that America First Financial was conducting mortgage loan business in Pennsylvania; and

WHEREAS, America First Financial used to maintain a website at the web address of www.americafirstfinancial.com; and

WHEREAS, on the website, America First Financial advertised its loan modification business and offered an option to call or apply for a free consultation to consumers; and

WHEREAS, America First Financial also advertised on the radio; and

WHEREAS, the Department received one complaint on or around March 1, 2011 from a Pennsylvania consumer (“Consumer”) regarding America First Financial; and

WHEREAS, America First Financial entered into a contract with at least one Consumer in the middle of February 2011 for loan modification services to be provided by America First Financial; and

WHEREAS, by negotiating, offering or otherwise transacting mortgage loan modifications to at least one consumer, America First Financial actively engaged in and held itself out as being engaged in the “mortgage loan business” as defined in the Mortgage Licensing Act, 7 Pa. C.S. § 6151(1)(i); and

WHEREAS, the Mortgage Licensing Act prohibits persons from engaging in the mortgage loan business in Pennsylvania without holding a mortgage broker, mortgage lender, mortgage loan correspondent or mortgage originator license, 7 Pa. C.S. § 6111(a); and

WHEREAS, America First Financial does not hold a license issued by the Pennsylvania Department of Banking to engage in the mortgage loan business in Pennsylvania; and

WHEREAS, Sections 6111(b) and 6112 of the Mortgage Licensing Act set forth exceptions to the licensure requirements of Section 6111(a), See 7 Pa. C.S. §§ 6111(b), 6112; and

WHEREAS, America First Financial does not meet any of the exceptions to licensure in Section 6111(b) and 6112 of the Mortgage Licensing Act, See 7 Pa. C.S. §§ 6111(b), 6112; and

WHEREAS, the employees of America First Financial that conduct the mortgage loan modification negotiations with third party lenders on behalf of consumers are not licensed as mortgage originators pursuant to the Mortgage Licensing Act; and

WHEREAS, the employees of America First Financial do not meet any exception to licensure, See 7 Pa. C.S. §§ 6102, 6111(a), 6112; and

WHEREAS, America First Financial has violated the Mortgage Licensing Act by engaging in the mortgage loan business in Pennsylvania without a license; and

Advance Fees

WHEREAS, Section 6102 of the Mortgage Licensing Act defines an “advance fee” as “[a]ny funds requested by or to be paid to a person in advance of or during the processing of a mortgage loan application, excluding those fees paid by a consumer directly to a credit agency reporting bureau, title company or real estate appraiser,” See 7 Pa. C.S. § 6102; and

WHEREAS, a mortgage loan application may either be in writing or electronically submitted, including a written record of an oral application and is defined as the submission of a borrower's financial information including “the borrower's name, the borrower's monthly income, the borrower's social security number to obtain a credit report, the property address, an estimate of the value of the property, the mortgage loan amount sought, and any other information deemed necessary by the loan originator.”

WHEREAS, the Consumer contacted America First Financial for loan modification services regarding residential properties; and

WHEREAS, the Consumer entered into a contract with America First Financial for the loan modification services for the residential property; and

WHEREAS, the Consumers' contract required a payment of fees in advance of services being rendered by America First Financial; and

WHEREAS, those advance fees are connected to the mortgage loan business; and

WHEREAS, the Mortgage Licensing Act requires those collecting advance fees related to the mortgage business to obtain specific bond coverage, 7 Pa. C. S. § 6131(e)(1); and

WHEREAS, America First Financial has never obtained this bond; and

WHEREAS, the Consumer made partial payments towards the required advance payments to America First Financial; and

WHEREAS, by charging advance fees without obtaining the proper bond, America First Financial has violated the Mortgage Licensing Act; and

Mortgage Licensing Act

WHEREAS, the Mortgage Licensing Act applies to any mortgage loan that is "(i) negotiated, offered or otherwise transacted within this Commonwealth, in whole or in part, whether by the ultimate lender *or any other person*; (ii) made or executed within this Commonwealth; or (iii) notwithstanding the place of execution, secured by real property located in this Commonwealth." 7 Pa. C.S. § 6151(1) (emphasis added); and

WHEREAS, Section 6102 of the Mortgage Licensing Act defines an "advance fee" as "[a]ny funds requested by or to be paid to a person in advance of or during the processing of a mortgage loan application, excluding those fees paid by a consumer directly to a credit agency reporting bureau, title company or real estate appraiser." 7 Pa. C.S. § 6102; and

WHEREAS, Section 6102 of the Mortgage Licensing Act defines "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; and

WHEREAS, Section 6102 of the Mortgage Licensing Act defines a “mortgage originator” as:

- (1) An individual [that] takes a mortgage loan application or offers or negotiates terms of a mortgage loan for compensation or gain.
- (2) The term does not include any of the following:
 - (i) An individual engaged solely as a loan processor or underwriter consistent with section 6112(8) (relating to exceptions to licensing requirements).
 - (ii) A person or entity solely involved in extensions of credit relating to timeshare plans. . . .
- (3) Except as set forth in paragraph (4), the term does not include an employee of a licensee or person exempt or excepted from licensure under this chapter who *solely renegotiates terms for existing mortgage loans held or serviced by that licensee or person* and who does not otherwise act as a mortgage originator.
- (4)

7 Pa. C.S. § 6102 (emphasis added); and

WHEREAS, Section 6102 of the Mortgage Licensing Act defines a “first mortgage loan” as a loan which is “(1) made primarily for personal, family or household use; and (2) secured by any first lien mortgage, deed of trust, or equivalent consensual security interest on a dwelling or on residential real estate.” 7 Pa. C.S. § 6102; and

WHEREAS, Section 6102 of the Mortgage Licensing Act defines a “secondary mortgage loan” as “(1) made primarily for personal, family or household use; and (2) secured by any secondary lien mortgage, deed of trust, or equivalent consensual security interest on a dwelling or on residential real estate.” 7 Pa. C.S. § 6102; and

WHEREAS, Section 6102 of the Mortgage Licensing Act defines a “mortgage loan” as “[a] first or secondary mortgage loan, or both, as the context may require.” 7 Pa. C.S. § 6102; and

WHEREAS, Section 6111(a) of the Mortgage Licensing Act provides that “. . . 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); and

WHEREAS, Section 6131(e)(1) of the Mortgage Licensing Act provides that mortgage broker license applicants must obtain and “maintain a bond in the amount of \$100,000, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The bond shall be a penal bond conditioned on compliance with this chapter and subject to forfeiture by the department and shall run to the Commonwealth for its use. The bond shall also be for the use of any person against the mortgage broker for failure to carry out the terms of any provision for which advance fees are paid. . . .” 7 Pa. C.S. § 6131(e)(1); and

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

WHEREAS, 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); and

AND NOW, THEREFORE, since America First Financial has engaged in unlicensed activity, the Bureau, pursuant to its authority referenced above hereby imposes the following Order:

1. Loan Origination. Upon the Effective Date of this Order¹, America First Financial and any and all officers, members, managers, employees, independent contractors or agents of America First Financial shall cease and desist from engaging in the mortgage loan business subject to the Mortgage Licensing Act, including, but not limited to, advertising (including website and radio advertising), accepting applications and negotiating mortgage loans and mortgage loan modifications in Pennsylvania, unless and until such time that America First Financial and all mortgage originators as defined by the Mortgage Licensing Act are licensed by the Department pursuant to the Mortgage Licensing Act.

2. Fine. Upon the Effective Date of this Order, America First Financial shall pay a \$1,000 fine for violating the Mortgage Licensing Act. The fine shall be made by certified check or money order made payable to the "Department of Banking" and shall be sent to the attention of the Department of Banking, Bureau of Compliance and Licensing located at 17 North Second Street, Suite 1300, Harrisburg, Pennsylvania 17101.

3. Pipeline Report. Upon the Effective Date of this Order, America First Financial shall provide a list of consumers that America First Financial has worked with in order to negotiate mortgage loan modifications (the "Pipeline Report"). The Pipeline Report shall include, but is not limited to:

¹ This Order is effective ten days after the date of execution below, if no petition for hearing is timely filed. If a petition for hearing is timely filed, the Order will become effective on the date upon which a final order is issued.

- a. The names, addresses and phone numbers of consumers that have responded to advertisements or that America First Financial has as clients;
- b. The amount of fees collected from the consumers;
- c. The current rate, term and payment of the consumers' loans;
- d. The proposed rate, term and payment of the loans subsequent to the loan modification; and
- e. The current status and/or resolution of the loan modification.

The Pipeline Report shall be sent to John Talalai, Administrator, Compliance Division, at _____, by 5:00 PM eastern time on the Effective Date of this Order. The Pipeline Report shall be updated weekly, until the Bureau no longer requires updates.

4. Advertising. Upon the effective date of this Order, America First Financial shall provide a list of any websites or copies of any other advertising that America First Financial have utilized including, but not limited to, mail solicitations and radio advertisement recordings. The information shall be sent to John Talalai, Administrator, Compliance Division, at _____, by 5:00 PM eastern time on the Effective Date of this Order.

5. Contact Information. Upon the Effective Date of this Order, America First Financial shall provide a list of all owners, officers and employees of America First Financial. The list shall include the name, address telephone number and position of these individuals. The information shall be sent to John Talalai, Administrator, Compliance Division, at _____, by 5:00 PM eastern time on the effective date of this Order.

6. Advance Fees. Upon the Effective Date of this Order, America First Financial shall provide a refund to the Consumer listed in the table in Appendix A. See attached Appendix

A. The refund shall be in the amount listed in the table in Appendix A. America First Financial shall provide the Bureau with a copy of a cancelled/cleared check. A copy of the cancelled/cleared check shall be sent to John Talalai, Administrator, Compliance Division, at _____, by 5:00 PM eastern time on the Effective Date of this Order.

7. Waiver. Nothing in this Order shall prevent America First Financial from seeking a waiver from the Department to allow America First Financial to complete a loan modification for a consumer that is listed on the Pipeline Report as provided in Paragraph 3 in order to prevent further harm to the consumer and for no other reason. Requests for waiver may be made to John Talalai, Administrator, Compliance Division, at _____

8. Reservation of Rights. Nothing in this Order shall prevent the Bureau from taking any further administrative action as deemed necessary including, but not limited to imposing fines pursuant to Section 6140(a) or (b) of the Mortgage Licensing Act or seeking restitution for consumers.

IT IS SO ORDERED.

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

4-17-2012
(Date)

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DEPARTMENT OF BANKING

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AMERICA FIRST FINANCIAL

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing Order upon the parties below, who constitute the only parties of record in this proceeding, in accordance with the requirements of 1 Pa. Code §§ 33.35, 33.36 and 33.37:

BY CERTIFIED AND FIRST CLASS MAIL

America First Financial
8 Corporate Park
Suite 300
Irvine, CA 92606

Dated this 17th day of April, 2012.

Sarah E. Sedlak, Assistant Counsel
Attorney I.D. # 93810
FOR: Commonwealth of Pennsylvania
Department of Banking
17 North Second Street, Suite 1300
Harrisburg, PA 17101
(717) 787-1471