

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

FILED

2012 JUL -3 AM 10:23

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF BANKING, BUREAU :
OF COMPLIANCE AND LICENSING :
v. : Docket No. : 12 0062 (ENF-ORD)
USLMP, INC. AND CAPITAL DEBT :
MANAGEMENT, INC. :

PA DEPT OF BANKING

NOTICE OF RIGHT TO APPEAL AND HEARING

You, USLMP, Inc. and Capital Debt Management, Inc., have the right to appeal the attached 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 N. 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, your right to a hearing will be waived and the Order will be deemed final.

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

Sharon M. Williams, Assistant Counsel
Pennsylvania Department of Banking
17 N. 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

ORDER

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

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

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

WHEREAS, USLMP, Inc. ("USLMP") is a mortgage loan modification company located at 15061 Springdale Street, Suite 206, Huntington Beach, CA 92649; and

WHEREAS, USLMP is registered as a business entity with the California Department of State with a registered address of 681 South Tustin Street, Suite 214, Orange, CA 92866; and

WHEREAS, Capital Debt Management, Inc. ("Capital Debt Management") offers marketing and sales work for loan modification and credit/debt consolidation companies,

including USLMP, and is located at 3829 Veterans Memorial Parkway, St. Peters, MO 63376; and

WHEREAS, Capital Debt Management also maintains an address of PO Box 691, Ballwin, MO 63011-0991; and

WHEREAS, Capital Debt Management markets to and signs up consumers for USLMP's loan modification services. *See* Exhibit A or <http://nela.bbb.org/article/consumers-say-capital-debt-management-took-thousands-failed-to-help-reduce-mortgage-payments-26120>; and

WHEREAS, on or around May 2, 2011, the Department received a consumer complaint from (‘‘Consumer’’) regarding USLMP and Capital Debt Management; and

WHEREAS, Consumer resides at ; and

Unlicensed Activity

WHEREAS, Consumer paid fees to Capital Debt Management in advance of a mortgage loan modification being negotiated and/or completed by USLMP; and

WHEREAS, according to an initial contact letter provided by USLMP, the company stated that ‘‘[t]hroughout the entire process of your loan restructuring request, we will communicate with your lender, your assigned Negotiators and you to work toward a reasonable solution.’’ *See* Exhibit B; and

WHEREAS, as of the date this Order is issued, the status of any loan modification for Consumer is unknown; and

WHEREAS, by offering and/or negotiating mortgage loan modifications to at least one Pennsylvania consumer, USLMP and Capital Debt Management are actively engaged in and holding themselves out as being engaged in the ‘‘mortgage loan business’’ as defined in the MLA; and

WHEREAS, neither USLMP nor Capital Debt Management meet any of the exceptions to licensure in Sections 6111(b) and 6112 of the MLA. *See* 7 Pa. C.S. §§ 6111(b), 6112; and

WHEREAS, USLMP and Capital Debt Management are not licensed to engage in the mortgage loan business in Pennsylvania; and

WHEREAS, the employees of USLMP that conduct the mortgage loan modification negotiations with third party lenders on behalf of consumers are not licensed as mortgage originators pursuant to the MLA and do not meet any exception to licensure. *See* 7 Pa. C.S. § 6102, 6111(a), 6112; and

WHEREAS, USLMP and Capital Debt Management have violated the MLA by engaging in the mortgage loan business in Pennsylvania without a license; and

Advance Fees Prior to January 31, 2011

WHEREAS, Section 6102 of the MLA 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, Consumer, received information from USLMP for loan modification services regarding Pennsylvania residential properties; and

WHEREAS, on January 18, 2011, a payment in the amount of \$1,495.00 made payable to Capital Debt Management was withdrawn from Consumer’s checking account for USLMP in advance of the mortgage loan modifications being negotiated with the Consumer’s lenders by USLMP; and

WHEREAS, this advance fee is connected to the mortgage loan business; and

WHEREAS, by charging advance fees, USLMP and Capital Debt Management have violated the MLA; and

Advance Fees After January 31, 2011

WHEREAS, on December 29, 2010, the FTC's regulation of mortgage assistance relief services, 16 CFR § 322.1, *et seq.* became effective (the "FTC Regulation"); and

WHEREAS, mortgage loan modifications and other similar services are included in the the FTC Regulation's definition of "Mortgage Assistance Relief Service." *See* 16 CFR § 322.2(i); and

WHEREAS, the FTC Regulation defines a "Mortgage Assistance Relief Service Provider" as "any person that provides, offers to provide, or arranges for others to provide, any mortgage assistance relief service." 16 CFR § 322.2(j) and

WHEREAS, a mortgage loan modification company provides, offers to provide or arranges for others mortgage assistance relief services and is therefore a Mortgage Assistance Relief Service Provider as defined by the FTC Regulation; and

WHEREAS, on January 31, 2011, the FTC Regulation became effective and Section 322.5(a) of the FTC Regulation provides that it is a violation of the regulation for any mortgage assistance relief service provider to "[r]equest or receive payment of any fee or other consideration until the consumer has executed a written agreement between the consumer and the consumer's dwelling loan holder or servicer incorporating the offer of mortgage assistance relief the provider obtained from the consumer's dwelling loan holder or servicer." 16 CFR § 322.5(a); and

WHEREAS, neither USLMP nor Capital Debt Management meet any exception to the applicability of the FTC Regulation. *See* 16 C.F.R. § 322.7; and

WHEREAS, on January 18, 2011, a second payment in the amount of \$1,495.00 made payable to Capital Debt Management was withdrawn from Consumer's checking account for USLMP in advance of the mortgage loan modifications being negotiated with the Consumer's lender(s) by USLMP; and

WHEREAS, this advance fee is connected to the mortgage loan business; and

WHEREAS, Section 6121(3) of the MLA provides that a licensee must comply with all applicable Federal law. *See* 7 Pa. C.S. § 6121(3); and

WHEREAS, by charging advance fees in violation of the FTC Regulation, USLMP and Capital Debt Management have violated the MLA; and

Mortgage Licensing Act

WHEREAS, the MLA 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 MLA 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 MLA 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. . . .

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

WHEREAS, Section 6102 of the MLA 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 MLA 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 MLA 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 MLA 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 MLA 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

Authority of the Department

WHEREAS, Section 6138(a)(4) of the MLA 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 MLA. *See* 7 Pa. C.S. § 6138(a)(4); and

WHEREAS, Section 6140(a) of the MLA 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 \$10,000.00 for each offense.” 7 Pa. C.S. § 6140(a); and

AND NOW, THEREFORE, since USLMP and Capital Debt Management have 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, USLMP and any and all officers, members, managers, employees, independent contractors or agents of USLMP shall cease and desist from engaging in the mortgage loan business subject to the MLA, including, but

¹ This Order is effective on the tenth day of the date it is executed 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.

not limited to, advertising (including website advertising), accepting applications and negotiating mortgage loans and mortgage loan modifications in Pennsylvania or to Pennsylvania consumers, unless and until such time that USLMP and all mortgage originators of either company as defined by the MLA are licensed by the Department pursuant to the MLA.

2. Fine. Upon the effective date of this Order, USLMP shall pay a \$1,000.00 fine for violating the MLA. 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, PA 17101.

3. Refund. Upon the effective date of this Order, USLMP and Capital Debt Management shall provide Consumer a refund of \$2,990.00 for the advance fee collected. Capital Debt Management shall provide the Bureau with evidence that the refund was paid by providing 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.

4. Pipeline Report. Upon the effective date of this Order, USLMP shall provide a list of consumers that USLMP has worked with in order to negotiate mortgage loan modifications (the "Pipeline Report"). The Pipeline Report shall include, but is not limited to:

- a. The names, addresses and phone numbers of Pennsylvania consumers that have responded to advertisements or that USLMP has as clients; and
 - b. The amount of fees collected from the consumers; and
 - c. The current rate, term and payment of the Pennsylvania consumers' loans;
- and

- 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.

5. Advertising. Upon the effective date of this Order, USLMP and Capital Debt Management shall provide a list of any websites or copies of any other advertising that USLMP and Capital Debt Management have utilized including, but not limited to, mail solicitations. 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. Contact Information. Upon the effective date of this Order, USLMP shall each provide a list of all owners, officers and employees of USLMP and Capital Debt Management. 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.

7. Advance Fees. Upon the effective date of this Order, Capital Debt Management shall refund all advance fees collected from any Pennsylvania consumer. Proof of the refunded advance fees shall be made in the form of cancelled/cleared checks and shall be sent to John Talalai, Administrator, Compliance Division, at _____, by 5:00 PM eastern time on the effective date of this Order.

8. Waiver. Nothing in this Order shall prevent USLMP from seeking a waiver from the Department to allow USLMP to complete a loan modification for a Pennsylvania consumer

that is listed on the Pipeline Report as provided in Paragraph 4 in order to prevent further harm to the Pennsylvania consumer and for no other reason. Requests for waiver may be made to John Talalai, Administrator, Compliance Division, at

9. 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 MLA or seeking restitution for consumers.

IT IS SO ORDERED.

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

7-3-2012
(Date)

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DEPARTMENT OF BANKING

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Docket No. : 12 0062 (ENF-ORD)

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

USLMP, Inc.
15061 Springdale St.
Suite 206
Huntington Beach, CA 92649

USLMP, Inc.
681 South Tustin Street
Suite 214
Orange, CA 92866

Capital Debt Management, Inc.
PO Box 691
Ballwin, MO 63011-0991

Capital Debt Management, Inc.
3829 Veterans Memorial Parkway
St. Peters, MO 63376

Dated this 3rd day of July, 2012.

Sharon M. Williams
Assistant Counsel
Attorney I.D. # 207545
FOR: Commonwealth of Pennsylvania
Department of Banking
17 North Second Street, Suite 1300
Harrisburg, PA 17101
(717) 787-1471