

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, COMPLIANCE OFFICE

v.

AMERICAN CAPITAL FINANCE, INC.

PA DEPARTMENT OF  
BANKING AND SECURITIES

Docket No. 15 0037 (BNK-CAO)

**CONSENT AGREEMENT AND ORDER**

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities (“Department”), Compliance Office, conducted a review of American Capital Finance, Inc. (“American Capital”), and its officers, employees and directors. Based on the results of the review, the Compliance Office (“Office”) determines that American Capital 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 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 (“MLA”).
2. The Office is primarily responsible for administering and enforcing the MLA for the Department.
3. American Capital’s principal place of business is located at 750 Route 73 South, Suite 307B, Marlton, NJ 05053.
4. American Capital is corporation licensed by the Department as a mortgage broker, Nationwide Mortgage Licensing System and Registry (“NMLS”) identification no. 1472029, and Mortgage Broker license no. 27004.

5. On August 13, 2015, the Bureau of Non-Depository Examinations conducted a routine examination of American Capital.

6. American Capital fully cooperated with the examination.

7. The MLA defines the mortgage loan business to include “[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. § 6012.

8. The examination revealed that one mortgage originator continued to engage in the mortgage loan business from a previously licensed location even after the license lapsed on January 1, 2013.

9. The MLA requires licensees to “establish and maintain a separate license for the principal place of business and each branch.” 7 Pa. C.S. § 6131(a.1).

10. With some exceptions *branch* is defined as “[a]n office or other place of business, other than the principal place of business, where a person engages in the mortgage loan business subject to this chapter.” 7 Pa. C.S. § 6012.

11. The mortgage loan originator in question is properly licensed to be engaged in the mortgage loan business by the Department, but must meet the requirements for employment and work location set forth in Sections 6131(f)(1) & (2). 7 Pa. C.S. § 6131(f)(1) & (2).

12. By engaging in the mortgage loan business from an unlicensed location, at a location which does not meet any of the exceptions to the definition of branch, the mortgage originator failed to meet the work location requirements of Section 6131(f)(2).

13. The MLA requires American Capital, as a mortgage broker, to “[m]aintain supervision and control of and responsibility for the acts and omissions of all mortgage originators sponsored by the licensee.” 7 Pa. C.S. § 6121(13)(i).

14. Because American Capital is the sponsoring mortgage broker of the mortgage originator, it was required to ensure that the mortgage originator engaged in the mortgage loan business from a licensed location.

#### Authority of the Department

15. 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).

16. The Mortgage Licensing Act permits the Department to suspend, revoke or refuse to renew a license of a licensee where that licensee is a mortgage broker and “[f]ailed to comply with or violated any provision of this chapter or any regulation or order promulgated or issued by the department under this chapter.” 7 Pa. C.S. § 6139(a)(2).

17. 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).

#### **VIOLATION**

18. American Capital violated the Mortgage Licensing Act by failing to ensure that all its mortgage loan originators met the MLA’s work location requirements. 7 Pa. C.S. § 6139(a)(2).

#### **RELIEF**

19. Fine. American Capital agrees to pay a fine of nine thousand seven hundred and fifty dollars (\$9,750) in four installments of twenty-four thousand four hundred and thirty-seven dollars and fifty cents (\$2,437.50). The first payment shall be due to the Department within thirty (30) days of the Effective Date of this Order as defined in paragraph 26. The other payments shall be due every thirty (30) days thereafter until the total fine is paid. The payments shall be remitted by certified check made

payable to the Pennsylvania Department of Banking and Securities and sent to the attention of: Pennsylvania Department of Banking and Securities, Compliance Office, 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

20. Corrective Action. American Capital shall ensure that all mortgage originators are assigned to, and engage in the mortgage loan business, out of licensed locations.

#### FURTHER PROVISIONS

21. Consent. American Capital hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Office's order authority under the Mortgage Licensing Act and agrees that it understands all of the terms and conditions contained herein. American Capital, 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.

22. Publication. The Department will publish this Order pursuant to its authority in Section 302.A.(5) of the Department of Banking and Securities Code. 71 P.S. § 733-302.A.(5).

23. 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 Office and American Capital.

24. Binding Nature. The Department, American Capital, and all officers, owners, directors, employees, heirs and assigns of American Capital intend to be and are legally bound by the terms of this Order.

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

26. Effectiveness. American Capital hereby stipulates and agrees that the Order shall become effective on the date that the Office executes the Order (the "Effective Date").

27. 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 American Capital in the future regarding all matters not resolved by this Order.

b. American Capital 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.

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

34. Counterparts. This Order may be executed in separate counterparts, by facsimile and electronic mail in portable document format (PDF).

35. 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 and American Capital Finance, Inc. intending to be legally bound, do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES  
COMPLIANCE OFFICE**

Redacted  
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John Talalai, Administrator  
Department of Banking and Securities  
Compliance Office

Date: 11/6/15

**FOR AMERICAN CAPITAL FINANCE, INC.**

Redacted  
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(Officer Signature)

Sushant I. BATT  
(Print Officer Name)

President  
(Title)

Date: 11/8/15