

State of New York
Banking Department

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In the Matter of

WIN FINANCIAL CORP.
A007255

SETTLEMENT AGREEMENT

A Registered Mortgage Broker Pursuant To
Article XII-D of the New York Banking Law
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This Settlement Agreement ("Agreement") is made and entered into by and between Win Financial Corp. ("Win") and the State of New York Banking Department ("Banking Department"), collectively ("the Settling Parties"), evidencing an agreement between the Settling Parties to resolve, without a hearing, the violations cited herein by Win of Part 38 of the General Regulations of the Banking Board ("GRBB"), 3 N.Y.C.R.R. Part 38, upon and subject to the terms and conditions hereof.

I.

RECITALS

1. Win, headquartered at 2277 Fair Oaks Boulevard, Suite 110 Sacramento, California, 95825 was granted a registration by the Banking Department on August 12, 2008 to engage in the business of a mortgage broker pursuant to Article XII-D of the New York Banking Law ("Banking Law").

2. Section 44 of the Banking Law provides, in part, that the New York Superintendent of Banks ("the Superintendent") may, in a proceeding after notice and a hearing, require a registered mortgage broker to pay to the people of this State a penalty for a violation of the Banking Law and any regulation promulgated thereunder.

3. Part 38 Section 38.8 of the General Regulations of the Banking Board, provides that a mortgage broker may be subject to disciplinary action by the Banking Department for, among other things, violations of Article 12-D of the Banking Law, the regulations promulgated thereunder, or violations of state or federal law indicating that the entity is unfit to engage in the business of a mortgage broker.

4. From August 2008 to December 2008, Win sent 1,920 mail solicitations to New York homeowners (“the solicitation”). A copy of the solicitation is annexed as Exhibit A.

5. The solicitation prominently states “PENDING RATE ADJUSTMENT NOTIFICATION” in the heading, the name of the consumer’s mortgagee, “Processing Reference No: NY12345678”, “Any questions? Call Loan Servicing Depart. 866-444-9292”, and “Sincerely, Loan Servicing Department”. By prominently including these statements, the solicitation misleads consumers into falsely believing that the solicitation is directly from their mortgagee.

6. The solicitation also states “As scheduled, your payment is set to adjust. A payment increase will occur if you do not make any changes to your current account status.” The solicitation does not state the specific date that the consumer’s mortgage will adjust and increase.

7. These statements represent directly and by implication that the consumer’s mortgage is scheduled to increase, and do so imminently, without disclosing the date that the adjustment will occur. In fact, the actual recipient of Win’s 2008 mail solicitation that is listed as Exhibit A is not scheduled for a rate adjustment until 2013.

8. Accordingly, Win’s solicitation violates GRBB Part 38.2(e), which provides that no mortgage broker shall fraudulently or deceitfully advertise a mortgage loan, or misrepresent the terms, conditions or charges incident to a mortgage loan in any advertisement therefore.

II

SETTLEMENT TERMS AND CONDITIONS

Without admitting or denying the Department's findings, Win is willing to resolve the violations cited herein by entering into this Agreement and freely and voluntarily waives its right to a hearing under Banking Law Section 595 on such violations. Therefore, in consideration of the promises and covenants set forth herein, the Settling Parties agree, as follows:

1. Win agrees to take all necessary steps to ensure its compliance with all applicable federal and state laws, regulations, and supervisory requirements relating to its mortgage business, including, but not limited to:

- a. Complying with the requirements of the Federal Truth-In-Lending Act and Regulation Z , Article 12-D of the Banking Law, and Parts 38 of the General Regulations of the Banking Board; and
- b. ensuring that its advertisements do not mislead consumers as to the terms and conditions of credit it is offering and that such advertisements disclose clearly and conspicuously the existence of material terms, conditions, and limitations relating to any advertised offer of credit; and
- c. ensuring that it will not advertise terms of credit using footnotes, asterisks, small print and color contrasts that materially contradict or modify the principal message of its advertisements, and will disclose clearly and conspicuously all material information.

2. Win agrees to develop appropriate written advertisement policies and procedures designed to ensure compliance with all applicable federal and state laws, regulations, supervisory requirements and guidance letters. The policies and procedures shall, at a minimum: (i) designate an individual responsible for monitoring compliance with

all applicable federal and state laws, regulations, supervisory requirements and guidance letters; and (ii) establish a training program to ensure that Win and its employees involved in preparing or approving advertisements understand all applicable federal and state laws, regulations, supervisory requirements and guidance letters.

3. Within ninety (90) days from the effective date of this Agreement, Win agrees to submit a draft of its advertisement policies and procedures to the Banking Department.

4. Within one hundred twenty (120) days from the effective date of this Agreement, Win agrees to submit a copy of its final advertisement policies and procedures to the Banking Department together with a letter from an authorized officer of Win indicating his/her approval of such policies and procedures. Win further agrees to provide copies of all advertisements run by it for the twelve (12) month period following the effective date of this Agreement.

5. Win agrees to pay a fine of \$ 5,000 payable in twelve equal monthly installments as follows:

- \$600 upon execution of this Agreement
- \$400 on or before the 15th day of each of the immediately following eleven months

6. Win further agrees that such payment will be made in immediately available funds in accordance with Banking Department payment instructions.

III.

MISCELLANEOUS TERMS AND CONDITIONS

1. The Settling Parties acknowledge that Win's failure to comply with any of the settlement terms and conditions of this Agreement may result in the Banking Department taking action to revoke Win's registration to engage in the business of a mortgage broker under Article 12-D of the Banking Law.

2. The Settling Parties acknowledge that entering into this Agreement shall not

bar, estop, or otherwise prevent the Superintendent, or any state, federal or local agency or department or any prosecutorial authority from taking any other action affecting Win, any of its current or former owners, officers, directors, employees, or insiders, or their successors or assigns with respect to the violations cited herein, or any other matter whether related or not to such violations.

3. This Agreement may not be altered, modified or changed unless in writing signed by the Superintendent or his designee.

4. This Agreement shall be enforceable and remain in effect unless stayed or terminated in writing by the Superintendent or his designee.

5. This effective date of this Agreement is the date on which it is executed by the Deputy Superintendent of Banks for Mortgage Banking.

6. All written communications to the Banking Department regarding this Agreement should be sent as follows.

Attention:

Rholda L. Ricketts
Deputy Superintendent of Banks
Mortgage Banking Division
State of New York Banking Department
One State Street,
New York, New York 10004

7. All written communications to Win regarding this Agreement should be sent as follows.

Attention:

Ray Leon Schiavone
Win Financial Corp.
2277 Fair Oaks Boulevard, Suite 110
Sacramento, CA 95825

8. This Agreement is not confidential; therefore it is available to the public.

WHEREFORE, the Settling Parties hereto have caused this Agreement to be executed.

By: _____

Ray Leon Schiavone
Win Financial Corp.

Dated: _____

By: _____

Rholda L. Ricketts
Deputy Superintendent of Banks
State of New York Banking Department

Dated: _____