

State of New York
Banking Department

_____ X
In the Matter of

**Wall Street Mortgage Bankers Ltd. DBA
Power Express
B500331**

SETTLEMENT AGREEMENT

A Licensed Mortgage Banker Pursuant To
Article XII-D of the New York Banking Law
_____ X

This Settlement Agreement ("Agreement") is made and entered into by and between Wall Street Mortgage Bankers Ltd. DBA Power Express ("Wall Street") 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 Wall Street of Part 38 of the General Regulations of the Banking Board, 3 N.Y.C.R.R. Part 38, Section 226.24 of Regulation Z of the Truth in Lending Act, 12 C.F.R. Section 226.24, Section 5(a) of the Federal Trade Commission Act, New York State General Business Law Article 22-A Section 350, and New York State Civil Rights Law Section 50 upon and subject to the terms and conditions hereof.

I.

RECITALS

1. Wall Street Mortgage Bankers Ltd. DBA Power Express, headquartered at 1111 Marcus Avenue, 3rd Floor, Lake Success, NY 11042, was granted a license by the Banking Department on October 18, 1991 to engage in the business of a mortgage banker 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 (“Superintendent”) may, in a proceeding after notice and a hearing, require a licensed mortgage banker to pay to the people of this State a penalty for a violation of the Banking Law and any regulation promulgated there under.

3. Part 38 Section 38.8 of the General Regulations of the Banking Board (“GRBB”), provides that a mortgage banker 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 there under, or violations of state or federal law indicating that the entity is unfit to engage in the business of a mortgage banker.

4. Wall Street placed advertisements for mortgage loans in the New York Post on January 25, 2008 and April 1, 2009 (“Post advertisements”). Samples of the advertisements are annexed as Exhibit A.

Use of Presidential Images

5. The 2009 Post advertisement prominently includes a picture of President Obama.

6. By including the picture of President Obama, the 2009 Post advertisement represents directly and by implication that the President of the United States approves or endorses the products and services of Wall Street. Whereas, in fact, Wall Street has not received any approval or endorsement from President Obama regarding its products and services, and has not obtained approval to use President Obama’s picture.

7. Therefore, the 2009 Post advertisement violates Section 5(a) of the Federal Trade Commission Act (Title 15 U.S.C. Section 45) which prohibits unfair or deceptive acts or practices in or affecting commerce, and New York State General Business Law Article 22-A Section 350, which declared false advertisement unlawful.

8. Additionally, the advertisement violates the General Regulations of the Banking Board, (“GRBB”) Part 38 Section 38.2(e) which provides that no mortgage banker

shall fraudulently or deceitfully advertise a mortgage loan, or misrepresent the terms, conditions or charges incident to a mortgage loan in any advertisement therefore.

9. In addition, the advertisement violates NYS Civil Rights Law Section 50, which prohibits using, for advertising purposes, the picture of any living person without first obtaining the written consent of such person.

Terms of Repayment

10. The Post advertisements typically offer adjustable rate mortgages (“ARM”), graduated payment loans, or interest only loans, with disclosure of low monthly payments.

11. One of the products promoted in the Post advertisements (a 5/1 Year LIBOR loan) has an interest rate that is fixed for five years, then adjusts annually thereafter.

12. The 2008 Post advertisement states the monthly payment on the 5/1 Year LIBOR loan (as of January 25, 2008) as “monthly payments of \$3.86 per \$1,000 borrowed”. The 2009 Post advertisement states the monthly payment on the 5/1 Year LIBOR loan (as of April 1, 2009) as “\$4.71 per \$1,000 borrowed”.

13. The advertisements fail to clearly, conspicuously, and adequately disclose the terms of repayment of the loans, which include the fact that the low monthly payments do not last over the life of the loan, the amount of the largest and smallest monthly payment, and the fact that other payments will vary between these amounts. The fact that the rate is subject to change is disclosed only in small print at the bottom of the advertisement.

14. One of the products promoted in the 2008 Post advertisement (an interest only loan) has, for a set period of time, a required monthly mortgage payment that consists only of interest. The principal on the loan is due at the end of the interest only

period.

15. The 2008 Post advertisement states the payments on the adjustable rate interest only loans as “monthly payments of \$3.86 per \$1000 borrowed”, and states the payment on the “30-YEAR FIXED” interest only loan as “monthly payments of \$5.00 per \$1000 borrowed”.

16. The advertisement fails to clearly, conspicuously, and adequately disclose the terms of repayment, which includes the fact that the outstanding balance of the loan does not decline, the loan balance may increase, or the consumer may end up owing a final “balloon” payment.

17. One of the products promoted in the 2008 Post advertisement (a 30 year fixed rate loan) has low initial monthly payments that increase for at least the first four years, even though the interest rate remains the same.

18. The 2008 Post advertisement states the payments on the 30 year fixed loan as “1st Year: Monthly payments of \$1,632.97; 2nd Year: Monthly payments of \$1,846.10; 3rd Year: Monthly payments of \$2,066.83; 4th Year: Monthly payments of \$2,293.71”.

19. The advertisement fails to clearly, conspicuously, and adequately disclose the terms of repayment of the loan, which includes the amount of the largest and smallest monthly payment, and the fact that other payments will vary between these amounts.

20. By disclosing only the lowest monthly payments and not disclosing other key repayment terms, consumers could believe that they would pay only the low monthly payments shown.

21. Accordingly, the advertisements violate Regulation Z under the Truth in Lending Act, Section 226.24(c), which provides that any advertisement stating the amount

of any payment shall also state certain specific terms, including the terms of repayment.

22. Also, the advertisement of monthly payment amounts, as described in paragraphs 10 through 20, violates the General Regulations of the Banking Board, Part 38 Section 38.2(e) which provides that no mortgage banker 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, Wall Street is willing to resolve the violation cited herein by entering into this Agreement and freely and voluntarily waives its right to a hearing under Banking Law Sections 44 and 598 on such violations. Therefore, in consideration of the promises and covenants set forth herein, the Settling Parties agree, as follows:

1. Wall Street 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. The requirements of the Federal Truth-In-Lending Act and Regulation Z, Article 12-D of the Banking Law, and Part 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. Wall Street agrees to develop appropriate written advertisement policies and procedures designed to ensure compliance with all applicable federal and state laws, regulations, supervisory requirements, and guidelines. 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 guidelines; (ii) include a listing of all applicable laws, regulations, and truth in advertising guidelines; (iii) establish a mechanism for ensuring that all applicable laws, regulations, and truth in advertising guidelines are met; (iv) establish a training program to ensure that Wall Street and its employees involved in preparing or approving advertisements understand all applicable federal and state laws, regulations, and truth in advertising guidelines.

3. Within ninety (90) days from the effective date of this Agreement, Wall Street 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, Wall Street 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 Wall Street indicating his/her approval of such policies and procedures. Wall Street 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. Wall Street agrees to pay a fine of \$ 15,000 payable in five (5) equal monthly installments as follows:

- \$3,000 upon execution of this Agreement
- \$3,000 each on or before the 15th day of immediately following four (4) months.

6. Wall Street 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 Wall Street'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 Wall Street's license to engage in the business of a mortgage banker 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 Wall Street, 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 Wall Street regarding this Agreement should be sent as follows.

Attention:

Keith D. Kantrowitz
Wall Street Mortgage Bankers Ltd. DBA
Power Express
1111 Marcus Avenue, 3rd Floor
Lake Success, NY 11042

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: _____
Keith D. Kantrowitz
Wall Street Mortgage Bankers Ltd. DBA
Power Express

Dated: _____

By: _____

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

Dated: _____