

State of New York
Banking Department

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In the Matter of

UPSTATE CAPITAL INC.
A003492

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 Upstate Capital Inc. ("Upstate") 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 Upstate 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. Upstate, headquartered at 6522 Basile Rowe East Syracuse, New York 13057 was granted a registration by the Banking Department on August 03, 1992 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. In November 2008 and January 2009, Upstate sent a total of 2,665 mail solicitations to New York homeowners (“the solicitation”). A copy of the solicitation is annexed as Exhibit A.

5. The solicitation displays the Great Seal of the United States (“Great Seal”). By displaying the Great Seal, the solicitation directly and by implication misleads consumers into believing that Upstate’s mortgage origination activity is sponsored, approved, or endorsed by the Government of the United States, which it is not.

6. Accordingly, the solicitation violates GRBB Part 38 Section 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, Upstate is willing to resolve the alleged violations 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. Upstate 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 New York 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; and
- d. ensuring that its advertisements do not misrepresent, directly or by implication, that any of its products are sponsored, approved or endorsed by federal, state or local government.

2. Upstate 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 Upstate 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, Upstate 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, Upstate 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 Upstate indicating his/her approval of such policies and procedures. Upstate 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. Upstate agrees to pay a fine of \$ 10,000.

6. Upstate 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 Upstate'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 Upstate'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 Upstate, 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. The 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 Upstate regarding this Agreement should be sent as follows.

Attention:

Michael Wallace
Upstate Capital Inc.
6522 Basile Rowe
East Syracuse, NY 13057

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: _____

Michael Wallace
Upstate Capital Inc.

Dated: _____

By: _____

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

Dated: _____