

State of New York
Banking Department

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In the Matter of

**NY MUTUAL LLC D/B/A
AMERIMUTUAL MORTGAGE
A007182**

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 NY Mutual LLC d/b/a Amerimutual Mortgage ("NY Mutual") 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 NY Mutual of Part 38 of Part 38 of the General Regulations of the Banking Board ("GRBB"), 3 N.Y.C.R.R. Part 38, New York Banking Law Article 12-D, New York General Business Law Section 130, and New York Business Corporation Law Section 301, upon and subject to the terms and conditions hereof.

I.

RECITALS

1. NY Mutual, headquartered at 37-20 Broadway, 2nd Floor, Astoria, New York 11103 was granted a registration by the Banking Department on May 13, 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 (“GRBB”), 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.

Usage of Assumed Name Prior to Approval

4. From January 2009 to October 18, 2009, NY Mutual advertised under the name of Amerimutual Mortgage via the website amerimutualmortgage.com. The Department approved the assumed name Amerimutual Mortgage for use by NY Mutual on October 19, 2009. A copy of the internet advertisement is annexed as Exhibit A.

5. The advertisement prominently states the name “AmerimutualMortgage” in the heading.

6. The advertisement also states “Amerimutual Mortgage 37-20 Broadway, 2nd Floor Astoria, NY 11103” in the address contact information.

7. By stating “Amerimutual Mortgage” in conjunction with the address contact information, the advertisement has represented directly and by implication that “Amerimutual Mortgage” is the advertiser promoting mortgage loans.

8. In addition, by prominently stating “AmerimutualMortgage” in the heading of its webpage prior to October 19, 2009, NY Mutual conducted business as Amerimutual Mortgage prior to receiving approval from the Department.

9. Accordingly, NY Mutual violated General Business Law Sec. 130.1(b) which

provides in general that no one shall carry on or conduct or transact business in this state under any name or designation other than his or its real name unless such person shall file in the office of the secretary of state a certificate setting forth the name or designation under which business is carried on or conducted.

10. Prior to the name change, the Department issued certificate number 206698 which stated the name of the entity “NY Mutual LLC” on the certificate.

11. The advertisement failed to clearly and conspicuously disclose the name of the entity as the certificate reads.

12. Accordingly, NY Mutual violated GRBB Part 38 Section 38.2(b) which provides in general that any advertisement by a mortgage broker must indicate the name of the entity.

13. The advertisement has the word “mortgage” in the name “Amerimutual Mortgage” prior to receiving approval from the Superintendent of Banks.

14. Accordingly, NY Mutual violated New York Business Corporation Law Sec. 301(a)(5)(B), which in general prohibits the use of the word “mortgage” in the name of a corporation without receiving approval from the Superintendent of Banks.

Annual Percentage Rate

15. The advertisement, under “Refinancing Options” section, stated “...If your balance today is ... \$130,000, you might take out a 15-year mortgage at six percent.”

16. The advertisement stated a simple annual rate of six percent, but failed to clearly and conspicuously disclose the Annual Percentage rate (“APR”).

17. Therefore, NY Mutual has violated Regulation Z under the Truth in Lending Act, Section 226.24(b), which provides: “If an advertisement states a rate of finance

charge, it shall state the rate as an “annual percentage rate,” using that term... The advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but no more conspicuously than, the annual percentage rate.”

Other Terms

18. The advertisement promoted zero down payment mortgages and piggyback loans.

19. The advertisement failed to disclose the fact that the additional costs of these products may increase monthly payments. The advertisement also failed to disclose that piggyback loans carry a much higher rate of interest than a first mortgage and therefore, higher monthly payments.

20. Accordingly, the advertisement 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.

21. NY Mutual promoted zero down payment mortgages in the advertisement, but in fact, it does not have such product or service.

22. Accordingly, the advertisement violates GRBB Part 38 Section 38.2(c), which provides in general that no mortgage broker may advertise a mortgage loan product unless the entity has the advertised product available to a reasonable number of qualified applicants responding to the advertisement on the date or the next business day it appears.

23. The advertisement failed to include the legend “Registered Mortgage Broker-NYS Banking Department”.

24. Accordingly, NY Mutual has violated GRBB Part 38 Section 38.2(a) which provides that no mortgage broker shall advertise its business in New York in print or electronic media without including the legend “Registered Mortgage Broker-NYS Banking Department.”

25. The advertisement failed to contain a statement to the effect that the mortgage broker arranges mortgage loans with third party providers.

26. Accordingly, NY Mutual has violated GRBB Part 38 Section 38.2(d), which provides that any advertisement by a mortgage broker must contain a statement to the effect that the mortgage broker arranges mortgage loans with third party providers.

27. By virtue of the foregoing, NY Mutual has also engaged in deceptive business practices and false advertising in violation of General Business Law Sections 349 and 350.

II

SETTLEMENT TERMS AND CONDITIONS

Without admitting or denying the Department’s findings, NY Mutual 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 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. NY Mutual 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 Part 38 of the General Regulations of the Banking Board; and

- b. not conducting or transacting business in this state under any assumed name or designation using any website, domain, or other name that has not been approved by the Superintendent or using the word “mortgage” in its name without prior approval by the Superintendent; and
- c. not promoting any products which it does not have available; and
- d. 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
- e. 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. NY Mutual 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 NY Mutual 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, NY Mutual

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, NY Mutual 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 NY Mutual indicating his/her approval of such policies and procedures. NY Mutual 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. NY Mutual agrees to pay a fine of \$ 2,500 payable in ten (10) equal monthly installments as follows:

- \$250 upon execution of this Agreement
- \$250 each on or before the 15th day of immediately following nine (9) months.

6. NY Mutual 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 NY Mutual'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 NY Mutual'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 NY Mutual, 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 NY Mutual regarding this Agreement should be sent as follows.

Attention:

Philip Loria
NY Mutual LLC D/B/A Amerimutual Mortgage
37-20 Broadway, 2nd Floor
Astoria, NY 11103

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: _____

Philip Loria
NY Mutual LLC D/B/A
Amerimutual Mortgage

Dated: _____

By: _____

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

Dated: _____