

State of New York
Banking Department

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In the Matter of

**NFM, CONSULTANTS
IN LIEU OF TRUE CORPORATE
NAME NFM, INC.
B500851**

SETTLEMENT AGREEMENT

A Licensed Mortgage Banker 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 NFM, Consultants in lieu of true corporate name NFM, Inc. ("NFM") 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 NFM 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, New York State General Business Law Article 22-A Sections 349 and 350, New York Business Corporation Law Section 301, Title 18 U.S.C. Section 709, and Section 226.24 of Regulation Z of the Truth in Lending Act, 12 C.F.R. Section 226.24, upon and subject to the terms and conditions hereof.

I.

RECITALS

1. NFM, headquartered at 505 Progress Drive, Suites 100-115, Linthicum, Maryland, 21090, was granted a license by the Banking Department on February 21,

2006 to engage in the business of a mortgage banker pursuant to Article 12-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 licensed mortgage banker 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 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 thereunder, or violations of state or federal law indicating that the entity is unfit to engage in the business of a mortgage banker.

4. NFM placed mortgage loan advertisements in the Times Union newspaper on May 17, 2009 and August 9, 2009 (collectively the “advertisements”). Samples of the advertisements are annexed as **Exhibit A** and **Exhibit B**.

Unauthorized Use of Assumed Name and Restricted Words

5. On February 21, 2006, the Banking Department issued a license to NFM under the name NFM, Consultants in lieu of true corporate name NFM, Inc.

6. The advertisements solicit business using the name National Fidelity Mortgage Inc.

7. The advertisements fail to state the name of the mortgage banker, which is “NFM, Consultants”. Further, NFM has not requested or received approval from the Banking Department to use the name National Fidelity Mortgage Inc., and did not receive approval from the Banking Department to use the restricted word “mortgage”.

8. Further, NFM is not affiliated with a national bank and as a state licensed mortgage entity is prohibited by law from conducting business using a name that includes the word “national.”

9. Therefore, the advertisements violate GRBB Part 38.2(b), which provides that any advertisement by a mortgage banker in print or electronic media must indicate the name of the entity.

10. The advertisements also violate General Business Law Section 130.1(b) which provides that no person or corporation shall carry on or conduct or transact business in this state under any name or designation other than his or its real name without filing a Certificate of Assumed Name with the Secretary of State.

11. The advertisements also violate New York Business Corporation Law Section 301(a)(5)(B), which provides that the name of a domestic or foreign corporation shall not contain the word “mortgage” without the prior approval of the superintendent of banks.

12. The advertisements also violate Title 18 U.S.C. Section 709 which prohibits any entity from using the word “national” as part of a business or firm name except as permitted by the laws of the United States.

13. The advertisements also violate New York Banking Law Article 12-D Section 593 which provides that a mortgage banking business can only be conducted in the name that is shown on its license.

Terms of Repayment

14. The advertisements typically offer 30 year, 15 year, and FHA mortgages with disclosure of the Annual Percentage Rate. By stating the years of the mortgage, the advertisements have effectively stated the period of repayment.

15. The advertisements fail to disclose the terms of repayment for each advertised loan that states a period of repayment.

16. Therefore, the advertisements violate Regulation Z under the Truth in Lending Act, Section 226.24(c), which provides that any advertisement stating a period of repayment must also state certain specific terms, including the terms of repayment which reflect the repayment obligations over the full term of the loan, including any balloon payment.

Required Legend

17. The advertisements fail to disclose the legend “Licensed Mortgage Banker – NYS Banking Department”.

18. Therefore, the advertisements violate GRBB Part 38 Section 38.2(a) which requires that mortgage banker advertisements in New York include the legend “Licensed Mortgage Banker – NYS Banking Department” or words to like effect.

19. Additionally, the practices described in paragraphs five to eight and paragraphs 14 to 15 also violate New York State General Business Law Article 22-A Section 349, which declares deceptive practices unlawful, and Section 350, which declares false advertisement unlawful.

II

SETTLEMENT TERMS AND CONDITIONS

Without admitting or denying the Department’s findings, NFM 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. NFM 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, 18 U.S.C. §709, and Part 38 of the General Regulations of the Banking Board; and
- b. ensuring that its advertisements and solicitations do not mislead consumers as to the identity of the entity making the offer or the nature of the offer; and
- c. ensuring that it does not use or conduct business under any name or designation other than its real name or the name that is identified on its mortgage banking license; and
- d. ensuring that it does not use the word “mortgage” in its name without prior approval of the Superintendent; and
- e. clearly identifying itself by the name and address in New York State on any advertisement for credit; and
- f. 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
- g. 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. NFM 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 NFM 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, NFM 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, NFM 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 NFM indicating his/her approval of such policies and procedures. NFM further agrees to provide copies of all advertisements run by it for consumers in New York for the twelve (12) month period following the effective date of this Agreement.

5. NFM agrees to pay a fine of \$ 5,000 in settlement of this matter. NFM 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 NFM'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 NFM'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 NFM, any of its current or former owners, officers, directors, employees, or insiders, or their successors or assigns.

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 NFM regarding this Agreement should be sent as follows.

Attention:

Moses David Silverman
NFM, Consultants in lieu of NFM, Inc.
505 Progress Drive, Suites 100-115
Linthicum, MD 21090

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: _____

Moses David Silverman
NFM, Consultants in lieu of NFM, Inc.

Dated: _____

By: _____

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

Dated: _____