

State of New York
Banking Department

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In the Matter of

THE FUNDING STORE LLC
A007362

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 The Funding Store LLC ("The Funding Store") 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 The Funding Store of New York State Banking Law Article 12-D; Sections 130, 349, and 350 of the New York General Business Law; and Part 38 of the General Regulations of the Banking Board, upon and subject to the terms and conditions hereof.

I.
RECITALS

1. The Funding Store, headquartered at 368 Broadway, Suite 12, Saratoga Springs, New York, 12866 was granted a registration by the Banking Department on July 13, 2010 to engage in the business of a mortgage broker 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 ("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. During a review of the website www.esgmortgage.com, the Banking Department noted that The Funding Store was engaged in unlicensed mortgage activities at 368 Broadway, Suite #11, Saratoga Springs, New York, 12866 via website www.esgmortgage.com.

5. On August 25, 2010, the Banking Department conducted a visitation of the Funding Store's official location at 368 Broadway, Suite 12, Saratoga Springs, New York 12866. During the visitation, the examiner observed that the Funding Store's name was posted on the door at 368 Broadway, Suite 11, Saratoga Springs, New York 12866. Further, the location was utilized by the registrants mortgage loan originator ("MLO") Gardner G Cummings.

6. In addition The Funding Store was not authorized to use the website www.esgmortgage.com, which is owned and controlled by MLO Gardner G Cummings.

7. Additionally, while The Funding Store's name appears on the aforementioned website, it accepted mortgage loan applications under the name of "East Side Group, LLP", a regulated mortgage broker, previously associated with Gardner Cummings.

8. However, The Funding Store is not authorized to conduct regulated mortgage activities at 368 Broadway Suite #11, Saratoga Springs, New York, 12866 or use the name "East Side Group LLP".

9. In addition, by allowing MLO Gardner G Cummings to establish and control the website www.esgmortgage.com, and by using “East Side Group LLP” on website, The Funding Store implied that it had transferred control of its mortgage broker registration to Mr. Cummings and “East Side Group LLP”.

10. By using the location 368 Broadway, Suite 11, Saratoga Springs, New York 12866 and the name “East Side Group LLP” on website www.esgmortgage.com, The Funding Store also misled consumers into believing that it was authorized to conduct New York regulated mortgage activities at this location and under the name of “East Side Group LLP”.

11. Additionally, in response to the Banking Department’s request to review five loan files, The Funding Store states that MLO, Mary Lou Wait took files of the mortgage loan applicants with her when she left their employment on August 6, 2010.

12. By permitting a MLO to remove files from The Funding Store’s premises, The Funding Store demonstrated a lack of control over their books and records and a disregard for the safeguarding of customer information required under The Gramm–Leach–Bliley Act.

13. Accordingly, The Funding Store violated Article 12-D, Section 593-a (1) of the Banking Law, which prohibits a mortgage broker from conducting business at a location or in a name other than that shown on their registration or branch certificate and also prohibits the transfer or assignment of a mortgage registration.

14. Accordingly, The Funding Store violated Article 9-B, Section 130 of the New York General Business Law, which prohibits anyone from carrying on, conducting or transacting business in this state under any name or designation other than his or its real name without filing a certificate of assumed or fictitious name in the office of the secretary of state.

15. Accordingly, The Funding Store violated Article 12-D Section 595-a (2)(a) of the Banking Law and Part 38 Section 38.2(a) of the General Regulations of the Banking Board, which requires advertisements including websites to list the name and address of the licensed mortgage banker or registered mortgage broker.

16. Accordingly, The Funding Store violated Article 22-A Section 349 and 350 of the New York General Business Law, which declares deceptive practices unlawful and also prohibits false advertising.

17. Accordingly, The Funding Store violated Article 12-D section 597 of the Banking Law and Part 410.7(a) of the Superintendent's Regulation, which requires registrants to maintain their books and records in manner that will enable the Superintendent to determine whether such registrant is complying with the provisions of this Article 12-D of the Banking Law and with the rules and regulations lawfully made by the Superintendent and the Banking Board.

II SETTLEMENT TERMS AND CONDITIONS

Without admitting or denying the Department's findings, The Funding Store 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. Therefore, in consideration of the promises and covenants set forth herein, the Settling Parties agree, as follows:

1. The Funding Store not shall:
 - a. Conduct or transact 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; and
 - b. Conduct or transact business in this state at any location that has not been approved by the Superintendent.

- c. Conduct or transact business in this state using any website that has not been authorized by the Superintendent.
- d. Engage in deceptive advertising as outline in Article 22-A Section 349 and 350 of the New York General Business Law.
- e. Engage in prohibited conduct outlined in Part 38 of the Regulation of the Banking Board.

2. The Funding Store 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 advertising requirements of Article 12-D of the Banking Law, Part 38 of the General Regulations of the Banking Board; and Article 22-A Section 349 and 350 of the New York General Business Law;
- b. Maintaining books and records in manner that will enable the Superintendent to determine whether The Funding Store is complying with the provisions of this article 12-D of the Banking Law and with the rules and regulations lawfully made by the Superintendent and the Banking Board;
- c. Assign MLOs to locations registered by the Superintendent, display the license for each MLO working at such location, and ensure that the unique identifier of each MLO performing mortgage loan origination services with respect to a mortgage application is recorded on such application;;
- d. Determine that each individual who becomes employed by, or affiliated as an independent contractor of, The Funding Store as an MLO has the character, fitness and education qualifications to warrant the belief that he or she will engage in mortgage loan originating honestly, fairly and efficiently; and

e. Ensure that any MLO employed by, or who is an independent contractor of, The Funding Store have been duly licensed by the Superintendent to engage in mortgage loan originating activities and that such license has not been terminated or suspended or revoked.

3. The Funding Store agrees to pay a fine of \$10,000. The Funding Store further agrees that such payment will be made in immediately available funds in accordance with Banking Department payment instructions.

4. The Funding Store agrees to develop a comprehensive operations manual governing the day-to-day operations, which shall, at a minimum, address maintenance of books and records, segregation of duties, and supervision of mortgage loan originators.

5. The Funding Store agrees to develop a written compliance manual designed to ensure compliance with all applicable federal and state laws, regulations, supervisory requirements and guidance letters. The manual shall, at a minimum, address:

- a. The designation of an individual responsible for monitoring compliance with all applicable laws, regulations and supervisory requirements;
- b. The handling, safeguarding and destruction of confidential customer information pursuant to privacy and credit reporting laws;
- c. Prohibited conduct as described by Part 38.7 of the General Regulations of the Banking Board;
- d. Consumer credit disclosure requirements;
- e. Advertising, including websites;
- f. Consultants, employees, independent contractors, and mortgage loan originators; and
- g. A compliance training program for employees and independent contractors.

6. Within ninety (90) days from the effective date of this Agreement, The Funding Store agrees to submit a draft of its operation and compliance manual to the Banking Department.

7. Within one hundred twenty (120) days from the effective date of this Agreement, The Funding Store agrees to submit a copy of its final operation and compliance manual to the Banking Department together with a letter from an authorized officer of The Funding Store indicating his/her approval of such policies and procedures.

8. The Funding Store will be subject to examinations semi annually for a twenty-four month period following the execution of this Agreement.

III. MISCELLANEOUS TERMS AND CONDITIONS

1. The Settling Parties acknowledge that The Funding Store'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 The Funding Stores'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 The Funding Store, 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 The Funding Store regarding this Agreement should be sent as follows.

Attention:

Adam D. Betz
The Funding Store LLC
368 Broadway, Suite 12
Saratoga Springs, New York 12866

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: _____
Adam D. Betz
The Funding Store LLC

Dated: _____

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

Dated: _____