

New York State Department
of Financial Services

_____ X
In the Matter of

**Total Group
In Lieu of Its True Corporate Name
Total Mortgage Services, LLC
B500949**

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 Total Group In Lieu of Its True Corporate Name Total Mortgage Services, LLC ("Total Group") and the New York State Department of Financial Services (the "Department" collectively with Total Group, the "Settling Parties") evidencing an agreement between the Settling Parties to resolve, without a hearing, the violations of Part 38 of the General Regulations of the Superintendent ("General Regulations"), Business Corporation Law ("BCL") Section 301, General Business Law ("GBL") Section 130, and Article 12-D of the New York Banking Law ("Banking Law"), cited herein by the Department, upon and subject to the terms and conditions hereof.

I.

RECITALS

1. Total Group, headquartered at 185 Plains Road, 3rd Floor, Milford, CT 06461, was granted a license by the Department on October 20, 2010 to engage in the business of a mortgage banker pursuant to Article 12-D of the Banking Law.

2. Section 44 of the Banking Law provides, in part, that 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. Section 38.8 of the General Regulations provides that a mortgage banker may be subject to disciplinary action by the 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. Pursuant to the Department's June 1, 2000 industry letter, the domain name of any website used by a licensee or a registrant to conduct mortgage banking or brokering activity qualifies as a business address.

5. In December 2010, Total Group placed an advertisement promoting New York residential mortgages on www.nycmortgage.com, an unaffiliated website. A sample of the advertisement is annexed as Exhibit A.

6. Total Group published advertisements for New York residential mortgage loans on its website www.totalmortgage.com. A sample of the advertisement is annexed as Exhibit B.

Unauthorized Domain Name

7. Total Group failed to obtain authorization from the Department to utilize the domain name www.nycmortgage.com to conduct New York regulated residential mortgage activities.

8. Accordingly, Total Group violated Article 12-D Section 591(3) of the Banking Law, which requires licensees to apply for and receive permission prior to

using a specific business address.

Required Disclosures

9. Both www.nycmortgage.com and www.totalmortgage.com stated the name of the mortgage banker as “Total Mortgage” and “Total Mortgage Services LLC.”

10. By stating “Total Mortgage” and “Total Mortgage Services LLC” on these two websites, Total Group conducted business as “Total Mortgage” and “Total Mortgage Services LLC” prior to receiving approval from the Department.

11. Accordingly, Total Group violated Section 595-a(2)(a) of the Banking Law, which provides in part that any advertisement by a mortgage banker must contain the name and address of such entity, and shall conform to a name and address on record with the Department.

12. Furthermore, Total Group violated GBL Section 130(1)(b) which provides that no entity 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 entity has filed a Certificate of Assumed Name with the New York Secretary of State.

Unauthorized Usage of Restricted Word

13. Total Group utilized the word “mortgage” in the names “Total Mortgage” and “Total Mortgage Services LLC” to promote New York residential mortgages.

14. Total Group failed to receive approval from the Department to use the restricted word or a derivative of the word “mortgage.”

15. Accordingly, Total Group violated BCL Section 301(a)(5)(B), which prohibits the use of the word or a derivative of the word “mortgage” in the name of a corporation without receiving approval from the Superintendent.

16. In addition, Total Group violated GBL Section 130(2)(c), which provides

that no corporation shall use any name to conduct business in New York without having obtained necessary consents or approvals which would permit the use of the word(s) pursuant to such laws.

II.

SETTLEMENT TERMS AND CONDITIONS

Total Group 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:

1. Total Group 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 Article 12-D of the Banking Law, and Part 38 of the General Regulations;
- 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;
- c. ensuring that its advertisements do not otherwise 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

- d. 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. Total Group 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; and (iv) establish a training program to ensure that Total Group 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, Total Group agrees to submit a draft of its advertisement policies and procedures to the Department.

4. Within thirty (30) days of receipt of non-objection or any comments from the Department, and after incorporation and adoption of all comments, Total Group agrees to submit a copy of its final advertisement policies and procedures to the Department together with a letter from an authorized officer of Total Group indicating his/her approval of such advertisement policies and procedures.

5. Total Group further agrees to provide copies of all advertisements run by it for the twelve (12) month period following the effective date of this Agreement.

6. Total Group agrees to pay a fine of \$ 5,000.

7. Total Group further agrees that such payment will be made in immediately available funds in accordance with the Department's payment instructions.

III.

MISCELLANEOUS TERMS AND CONDITIONS

1. Total Group acknowledges that its failure to comply with any of the settlement terms and conditions of this Agreement may result in the Department taking action to revoke Total Group's license to engage in the business of a mortgage banker under Article 12-D of the Banking Law.

2. Total Group acknowledges 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 Total Group, 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.

6. All written communications to the Department regarding this Agreement should be sent as follows.

Attention:

Rholda L. Ricketts
Deputy Superintendent
New York State Department of Financial Services
One State Street,
New York, New York 10004

7. All written communications to Total Group regarding this Agreement should be sent as follows.

Attention:

John T. Walsh, President
Total Group
in lieu of its true corporate name
Total Mortgage Services, LLC
185 Plains Road, 3rd Floor
Milford, CT 06461

8. This Agreement is not confidential; and all of the Settling Parties understands that it is available to the public.

WHEREFORE, the Settling Parties hereto have caused this Agreement to be executed.

Total Group
in lieu of its true corporate name
Total Mortgage Services, LLC

By: _____

John T. Walsh
President

Dated: _____

New York State Department of Financial Services

By: _____

Rholda L. Ricketts
Deputy Superintendent

Dated: _____