

NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES

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In the Matter of

**James B. Nutter & Company**  
B500463

**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 James B. Nutter & Company (“JBN”) and the New York State Department of Financial Services (the “Department” and collectively with JBN, the “Settling Parties”) evidencing an agreement between the Settling Parties to resolve, without a hearing, violations of Part 38 of the General Regulations (“General Regulations”), Article 12-D and Article 12-E of the New York Banking Law (“Banking Law”).

**I.**

**RECITALS**

1. JBN, headquartered at 4153 Broadway, Kansas City, MO 64111, was granted a license by the Department on December 12, 1995 to engage in the business of a mortgage banker pursuant to Article 12-D of the Banking Law.
2. The Department, with other examination teams from other states, conducted a multi-state examination (the “Examination”) of JBN as of July 26, 2010.
3. The Examination covered the period June 1, 2008 to May 31, 2010.

**Unauthorized Mortgage Loan Origination**

4. As a result of the Examination, it was discovered that JBN permitted two loan

officers, namely Michael Downey and Edward O'Connor, to originate mortgage loans relating to property located in New York, during the period between January 1, 2008 to July 11, 2009, without first receiving authorization or an MLO license from the Superintendent.

5. By permitting the loan officers to originate New York mortgage loans, JBN violated Section 599-c(6) of the Banking Law (in effect prior to July 11, 2009), which provides in part that no originating entity shall permit any person to engage in mortgage loan originating without having proof of notice from the Department that it has received an application and a copy of fingerprints for registration of such person as an MLO.

### **Books and Records**

6. As a result of the Examination, it was discovered that JBN failed to report in its 2008 and 2009 Volume of Operations Reports ("VOOR") all revenues earned from forward and reverse mortgage transactions and was unable to provide supporting documents to facilitate a complete reconciliation of said VOORs.

7. Accordingly, JBN violated Section 597 of the Banking Law, which requires licensees to provide accurate information, and to use and keep books and records as will enable the Superintendent to determine whether such licensee is complying with the provisions of Article 12-D and with the rules and regulations lawfully made by the Superintendent.

8. Additionally, during the Examination it was discovered that JBN, in violation of 3 NYCRR Section 410.7(1), failed to maintain a list of its closing agents.

### **Application Disclosure Requirement**

9. As a result of the Examination, it was discovered that certain mortgage loan applications taken by JBN were not signed by the respective employee taking such application.

10. Accordingly, JBN violated 3 NYCRR Section 38.3(b)(2)(iv), which requires that

mortgage loan applications taken by a mortgage banker be signed by the employee taking such application.

**Name and Address and Locations**

11. As a result of the Examination, it was discovered that JBN used the following names and addresses in its advertisement to New York consumers in 2010: Polaris Division, 4153 Broadway, P.O. Box 119009, Kansas City, MO 64171-9936; and West Port/ Plaza Office, 4153 Broadway, P.O. Box 10346, Kansas City MO 64171-9936.

12. As a result of the Examination, the Department determined that JBN had operated at the following four locations in Kansas City, Missouri: 4177 Broadway; 4026 Central Street; 4037 Central Street; and 104 Vietnam Memorial Drive (the “Locations”).

13. Following discussion of the Examination, the Department and JBN agreed that JBN going forward will comply with all requirements of the Department to ensure that any further operations of JBN, whether at the Locations or elsewhere, are authorized in the manner and to the extent required by the Banking Law, as determined by the Department in its sole discretion.

**II.**

**SETTLEMENT TERMS AND CONDITIONS**

JBN is willing to resolve the violations stated 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:

1. JBN 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 of the Banking Board;

- b. not conducting or transacting New York regulated mortgage business at any location that has not been approved by the Superintendent;
- c. not conducting or transacting business in this state under any assumed name or designation using a name that has not been approved by the Superintendent;
- d. ensuring that it will provide appropriate training for its employees regarding the establishment of or the change of branch locations;
- e. ensuring that all individuals engaged in New York regulated mortgage loan activities are duly licensed;
- f. ensuring that VOORs submitted are accurate, and that JBN maintains supporting documents which can be used to reconcile the information reported in the VOORs;
- g. ensuring that it reports all revenue from New York regulated forward and reverse mortgages in the VOORs;
- h. ensuring that it maintains for three years and has a list of closing agents available for examination upon request; and
- i. ensuring that all mortgage applications for New York properties are signed by the employee taking the application.

2. JBN agrees to develop appropriate written compliance 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 and regulations; (iii) establish a mechanism for ensuring that all applicable laws and regulations are met; (iv) establish a training program to ensure that JBN and its employees involved in establishing new branch locations and utilizing new assumed names understand all applicable federal and state laws and regulations.

3. Within ninety (90) days from the effective date of this Agreement, JBN agrees to submit a draft of its compliance 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, JBN agrees to submit a copy of its final compliance policies and procedures to the Department together with a letter from an authorized officer of JBN indicating his/her approval of such policies and procedures.

5. JBN agrees to pay a penalty of \$ 15,000.

6. JBN 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. JBN 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 JBN's license to engage in the business of a mortgage banker under Article 12-D of the Banking Law.

2. JBN 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 JBN, 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. Notwithstanding the provisions of the immediately preceding paragraph 2 above, no further action will be taken by the Department against JBN for the conduct set forth in this Agreement, provided JBN complies with the terms and conditions of this Agreement.

4. This Agreement may not be altered, modified or changed unless in writing signed by the Superintendent or his designee.

5. This Agreement shall be enforceable and remain in effect unless stayed or terminated in writing by the Superintendent or his designee.

6. The effective date of this Agreement is the date on which it is executed by the Deputy Superintendent.

7. 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 JBN regarding this Agreement should be sent as follows.

Attention:

Al Pitzner  
Vice President, Compliance  
James B. Nutter & Company  
4153 Broadway  
Kansas City, MO 64111

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.

James B. Nutter & Company

By: \_\_\_\_\_

Al Pitzner  
Vice President, Compliance

Dated:\_\_\_\_\_

New York State Department of Financial Services

By:\_\_\_\_\_

Rholda L. Ricketts  
Deputy Superintendent

Dated:\_\_\_\_\_