

New York State
Department of Financial Services

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In the Matter of

Impac Mortgage Corp. dba Excel Mortgage
NMLS NO. # 128231

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 Impac Mortgage Corp. dba Excel Mortgage ("Impac") and the New York State Department of Financial Services (the "Department" and collectively with Impac, the "Settling Parties") to address the violation of Part 590.2(b) of the New York Banking Law ("Banking Law").

I.

RECITALS

1. Impac, headquartered at 19500 Jamboree Road Irvine, CA 92612, was granted a license to operate as a mortgage banker pursuant to Article 12-D of the Banking Law. In 2018, Impac requested but was denied permission to originate mortgage loans in New York using the dba CashCall or CashCall Mortgage.

2. Section 598 of the Banking Law provides, in part, that the Superintendent of Financial Services ("Superintendent") may, in a proceeding after notice and a hearing, require an entity to pay to the people of this State a penalty for any violation of the Banking Law and/or regulation promulgated thereunder.

Unauthorized Solicitation

3. Impac, using the unauthorized CashCall name, utilized a cable television commercial to solicit and promote refinancing and/or origination of mortgage loans to consumers

with bad or poor credit during a period starting October 2017 which were accessible to New York consumers (*i.e.* the “Credit Solver Commercial”).

4. Specifically, the Credit Solver Commercial promised “credit and income solving mortgages” to consumers who have “been told no” or have a “FICO stuck around 585”, and did so under the name of Impac dba CashCall Mortgage.

5. The Credit Solver Commercial aired on stations accessible in New York, and contained insufficient disclosures regarding its lack of authority to solicit and or originate mortgage loans in New York until about March 15, 2018 when Impac began to feature a printed disclaimer that it **“was not licensed in all states including New York.”** Impac made this change after discussions with the Department.

6. There is no evidence of any applications being taken from New York consumers as a result of the airing of the Credit Solver Commercial.

7. Accordingly, Impac violated Part 590.2(b) of the Banking Law, which prohibits a “person, partnership, association, corporation or other entity [from] engag[ing] in the business of soliciting, processing, placing or negotiating a mortgage loan or offering to solicit, process, place or negotiate a mortgage loan in this state without first being registered with the superintendent as a mortgage broker.”

Unauthorized Assumed Name

1. The Department found that Impac conducted New York regulated mortgage loan activities under the unauthorized assumed name “dba CashCall Mortgage” from October 2017 until March 15, 2018

2. Accordingly, Impac violated BL Sections 591 and 593, which require a mortgage banker to be licensed under its full name.

II.

SETTLEMENT TERMS AND CONDITIONS

IT IS HEREBY UNDERSTOOD AND AGREED by Impac and all subsidiaries, affiliates, successors, assigns, agents, representatives and employees, that:

Impac is willing to resolve the violations 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. Impac 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 loan servicing business, including, but not limited to:
 - a. complying with the requirements of Article 12-D of the Banking Law, and Part 418 of the Superintendent's Regulations; and
 - b. ensuring that it will not engage in loan originating activities without first being registered as a mortgage broker or licensed as mortgage banker.
2. Impac agrees to maintain the written disclaimer, *i.e.* **"not licensed in all states including New York"** on the Credit Solver Commercial and any other advertisements that solicit mortgage business under the name Impac dba CashCall or CashCall Mortgage.
3. Impac agrees to develop appropriate advertisement policies and procedures designed to ensure compliance with all applicable federal and state laws, regulations, supervisory requirements and guidance letters. The advertisement 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 Impac and its employees understand all applicable federal and state laws, regulations, supervisory requirements and guidance letters.
4. No later than ten (10) days after the effective date of this Agreement, Impac shall

pay a penalty of \$10,000 to the Department. The payment shall be made by wire transfer in accordance with the Department's payment instructions.

5. Neither Impac nor any of its parents, subsidiaries, or affiliates shall, collectively or individually, seek or accept, directly or indirectly, reimbursement or indemnification including but not limited to payment made pursuant to any insurance policy, or from any of its parents, subsidiaries, or affiliates, with regard to any or all of the amount payable pursuant to this Settlement Agreement.

6. Impac agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state or local tax, directly or indirectly, for any portion of the penalty paid pursuant to this Agreement.

III.

MISCELLANEOUS TERMS AND CONDITIONS

1. Impac acknowledges that its failure to fully comply with any of the terms and/or conditions of this Agreement may result in the Department taking action to suspend or revoke its mortgage banker license under the Banking Law.

2. The Superintendent has agreed to the terms of this Agreement based on the representations made to the Department, or the written materials submitted to the Department, by Impac – either directly or through its counsel – and the Department's findings. To the extent that the written representations or written submissions, made by Impac to the Department – either directly or through its counsel—are later found to be materially incomplete or inaccurate, this Agreement is voidable by the Superintendent in her sole discretion.

3. Upon the request of the Department, Impac shall provide all documentation and information necessary for the Department to verify full compliance with this Agreement.

4. Impac represents and warrants, through the signature below, that the terms and

conditions of this Agreement were duly approved, and execution is duly authorized.

5. This Agreement and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

6. Impac waives all rights to further notice and hearing in this matter as to any allegations of past violations up to and including the effective date of this Agreement and agrees that no provision of the Agreement is subject to review in any court or tribunal outside of the Department.

7. In the event that one or more provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

8. Impac acknowledges that entering into this Agreement shall not bar, estop, or otherwise prevent the Superintendent, or any state, federal or local agency or department from taking any other, or additional, action affecting Impac, or 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.

9. This Agreement may not be altered, modified or changed unless in writing signed on behalf of all parties to this Agreement.

10. This Agreement shall be enforceable and remain in effect until stayed, modified, suspended or terminated in writing by the Superintendent.

11. This Agreement may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto and So Ordered by the Superintendent or her designee.

12. All notices, reports, requests, and other communications to any party pursuant to this Agreement shall be in writing and shall be directed as follows:

Attention:

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

13. All written communications to Impac regarding this Agreement should be sent as follows.

Attention:

Nima J. Vahdat
SVP, Chief Compliance Officer and Associate General Counsel
Impac Mortgage Corp.
19500 Jamboree Road
Irvine, CA 92612

14. This Agreement is not confidential; therefore, it is available to the public.

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

Impac Mortgage Corp.

By: 

George Mangiaracina
Chief Executive Officer

Dated: 2-8-2019

New York State Department of Financial Services

By: 

Peter C. Dean
Executive Deputy Superintendent

Dated: 2/8/2019