

NEW YORK STATE DEPARTMENT
OF FINANCIAL SERVICES

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In the Matter of

CONTINENTAL MORTGAGE BANKERS, INC.
DBA FINANCIAL EQUITIES
B500259

SETTLEMENT
AGREEMENT

A Licensed Mortgage Banker Pursuant To
Article 12-D of the New York Banking Law
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This Settlement Agreement (the “Agreement”) is made and entered into by and between Continental Mortgage Bankers, Inc. d/b/a Financial Equities (“CMB”) and the New York State Department of Financial Services (the “Department,” and together with CMB, collectively, the “Parties”), evidencing an agreement between the Parties to resolve, without a hearing, the violations of Article 12-D of the New York Banking Law (“Banking Law”) and Part 38 of the General Regulations of the Superintendent (“General Regulations”), upon and subject to the terms and conditions hereof.

I.

RECITALS

1. CMB, headquartered at 1025 Old Country Road, Suite STR 4, Westbury, NY 11590, was granted a license by the Department on August 14, 1989 to engage in business as a mortgage banker pursuant to Article 12-D of the Banking Law.

2. Sections 44 and 598 of the Banking Law provide, in part, that the Superintendent of Financial Services of the State of New York (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.

Unauthorized Domain Names and Websites

4. Section 591(3) of the Banking Law requires licensees to apply for and receive permission prior to using a specific business address.

5. Additionally, Section 593 of the Banking Law prohibits a mortgage banker from conducting business at a location or in a name other than that shown on its license or branch certificate.

6. Furthermore, pursuant to the Department's June 1, 2000 Industry Letter, the domain name of any website used by a licensee or registrant to conduct mortgage banking or mortgage brokering activity qualifies as a separate business address that must be registered with the Department.

7. The Department conducted an Examination of CMB's mortgage business activities as of close of business on March 31, 2015 (the "2015 Examination"). During the 2015 Examination, the Department discovered that CMB utilized the unauthorized domain name and website, www.mvmortgages.com, to promote, solicit, and advertise New York regulated mortgage business. In addition, CMB also was utilizing another domain name and website, www.spinnelliindex.com, to promote and solicit residential mortgage loans relating to properties in New York State. CMB was advised during the examination that it must refrain from using the aforementioned domain names and websites.

8. CMB failed to obtain prior authorization from the Department to utilize the domain name and websites, www.mvmortgages.com and www.spinnelliindex.com, to conduct New York

regulated mortgage loan business and residential mortgage activities.

9. Accordingly, CMB violated Sections 591 and 593 of the Banking Law by using the aforementioned domain name and website without prior authorization.

Failure to Disclose Information to Consumers

10. Section 595-a(3)(a) of the Banking Law states that “each mortgage broker, mortgage banker and exempt organization shall provide to each applicant for a mortgage loan at or before the time of application a disclosure of the fees payable at the time of application and the conditions under which such fees may be refundable, and such other disclosures as shall be required by the superintendent of financial services.”

11. Additionally, Section 38.3(b)(1)(i) of the General Regulations requires that the amount of the application fee, and the licensee’s “good faith estimate of the credit report fee, property appraisal fee, the processing fee, if any, and the terms and conditions” for obtaining a refund of such fees if any must be disclosed to the applicants.

12. During the loan file review conducted during the 2015 Examination, the Department discovered that CMB failed to provide the pre-application disclosure to at least ten borrowers as required.

13. Accordingly, CMB violated Section 595-a(3)(a) of the Banking Law and Section 38.3(b)(1)(i) of the General Regulations by failing to provide the necessary pre-application disclosures to applicants.

14. Section 38.3(b)(1)(v) of the General Regulations states that “in those instances in which the lender charges discount points,” a licensee must provide the following disclosure to applicants:

Discount points should lower the interest rate paid on the loan but may not lower the overall cost of the loan. If you refinance or pay off your loan quickly, you will

lose the benefit of any lower interest rate provided by the discount points. Furthermore, if you finance the discount points, this will increase the amount of money that you must repay to the lender and you will have to pay interest on the discount points as part of the amount you have borrowed.

15. During the loan file review conducted during the 2015 Examination, the Department discovered that CMB failed to provide the discount point disclosures to at least two borrowers as required.

16. Accordingly, CMB violated Section 38.3(b)(1)(v) of the General Regulations by failing to provide the necessary discount point disclosures to applicants.

II.

SETTLEMENT TERMS AND CONDITIONS

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

1. CMB is willing to resolve the violations cited herein by entering into this Agreement and freely and voluntarily waive its right to a hearing under Sections 44 and 598 of the Banking Law and appeal on such violations. Therefore, in consideration of the promises and covenants set forth herein:

2. CMB 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. ensuring that CMB obtains the prior approval of the Superintendent of any action that will result in the use a different domain name or website.
- b. complying with the requirements of Article 12-D of the Banking Law and Part 38 of the General Regulations; and

3. CMB agrees to pay a fine of \$10,000, as a penalty, to the Department no later than

ten (10) days after the effective date of this Agreement. The payment shall be made by wire transfer in accordance with the Department's payment instructions.

4. Neither CMB, 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 Agreement.

5. CMB 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. CMB 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 registration to engage in the business of a mortgage broker under Article 12-D of the Banking Law.

2. The Superintendent has agreed to the terms of this Agreement based on the written representations made to the Department, or the written materials submitted to the Department, by CMB either directly or through its counsel and the Department's findings. To the extent that the written representations or written submissions, made by CMB 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, CMB shall provide all documentation and

information necessary for the Department to verify full compliance with this Agreement.

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

12. 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, NY 10004

13. All written communication to CMB regarding this Agreement should be sent as follows:

Attention:

Walter Stashin
President
Continental Mortgage Bankers, Inc.
d/b/a Financial Equities
1025 Old Country Road, Suite STR4
Westbury, NY 11590

14. This Agreement is not confidential; the Parties understand that it may be made available to the public.

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

**Continental Mortgage Bankers, Inc.
d/b/a Financial Equities**

By: _____/S/_____
Walter Stashin
President

Dated: _____

New York State Department of Financial Services

By: _____/S/_____
Rholda L. Ricketts
Deputy Superintendent

Dated: _____