

NEW YORK STATE DEPARTMENT
OF FINANCIAL SERVICES

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In the Matter of

**Fidelcap Corp. D/B/A Fidelity Capital
A003307**

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 Fidelcap Corp. D/B/A Fidelity Capital ("Fidelcap") and the New York State Department of Financial Services (the "Department" and collectively with Fidelcap, the "Settling Parties") evidencing an agreement between the Settling Parties to resolve, without a hearing, the violations by Fidelcap of Part 410 of the Superintendent's Regulations, Section 591-a of the New York Banking Law (the "Banking Law"), and Section 380-b of the New York General Business Law (Fair Credit Reporting Act), upon and subject to the terms and conditions hereof.

I.

RECITALS

1. Fidelcap, headquartered at 1385 Boston Post Road, 1st Floor Suite 3, Larchmont, New York 10538, was granted a registration by the Department on July 18, 1991 to engage in business as a mortgage broker 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 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 any violation of the Banking Law and/or regulation promulgated thereunder.

3. Section 38.8 of the General Regulations provide that a mortgage broker may be subject to disciplinary action by the Department for, among other things, violations of Articles 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. The Department conducted an examination of Fidelcap's mortgage business activities as of close of business December 31, 2015 (the "2015 Examination"), which disclosed a number of violations and deficiencies of state and federal laws and regulations.

Failure to Maintain Adequate Books and Records

5. The 2015 Examination disclosed violations of Part 401.7 (a) and (f) of the Superintendent's Regulations. Specifically, Fidelcap failed to: (i) include the file number assigned, address of the property, and the source of the application in the application log; (ii) maintain final Good Faith Estimates in at least seven loan files; and (iii) maintain copies of the relevant HUD-1s in at least five loan files.

6. Accordingly, the Department has determined that Fidelcap violated Sections 410.7(a) and (f) of the Superintendent's Regulations by failing to maintain adequate books and records and preserve all necessary documents for their loan files.

Unauthorized Domain Names

7. 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.

8. During the 2015 Examination, the Department determined that Fidelcap used the domain name, "<http://fidelcapcorp.lendingoutpost.com>" to solicit residential mortgage loans relating to properties in New York State.

9. According to Department records, Fidelcap was not authorized to conduct New York

regulated mortgage loan activities using the aforementioned domain name.

10. Accordingly, the Department has determined that Fidelcap violated Section 591-a(1) of the Banking Law, which requires registrants to apply for and receive permission prior to using a specific business address.

Failure to Provide Proper Disclosures

11. A review of 31 loan files revealed that Fidelcap failed to provide the New York State Fair Credit Reporting Act disclosure to 24 applicants prior to ordering credit reports.

12. Accordingly, the Department has determined that Fidelcap violated Section 380-b(b) of the New York General Business Law (Fair Credit Reporting Act), which provides, *inter alia*, that no person shall request a consumer report unless the applicant is first informed in writing, or in the same manner in which the application is made, of certain prescribed information, including that a credit report would be requested.

II.

SETTLEMENT TERMS AND CONDITIONS

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

Fidelcap 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. Fidelcap 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 provisions of Part 410 of the Superintendent's Regulations;

- b. maintaining a detailed application log with all required information;
- c. implement a quality control checklist to ensure that all required disclosures are maintained in each loan file;
- d. complying with the Mortgage Banking Industry Letter dated June 1, 2000 regarding recording Domain Names and Section 591-a(1) of the Banking Law by ceasing use of any unauthorized websites to conduct mortgage broker business; and
- e. complying with Section 380-b(b) of the New York General Business Law and informing applicants prior to ordering a credit report of their rights and maintain a copy of such disclosure in their loan files.

2. Fidelcap agrees to pay a fine of \$5,000 payable in ten (10) equal monthly installments as follows. The payments shall be made by wire transfer in accordance with the Department's payment instructions.

- \$500 no later than ten (10) days after the effective date of this Agreement;
- \$500 each on or before the 15th day of immediately following nine (9) months.

3. Neither Fidecap, 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.

4. Fidelcap 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. Fidelcap 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 Fidelcap's registration to engage in the business of a mortgage broker under Article 12-D of the Banking Law.

2. Fidelcap 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 Fidelcap, 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 or matters 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 Fidelcap regarding this Agreement should be sent as follows.

Attention:

Frank Audino
President
Fidelcap Corp. D/B/A Fidelity Capital
1385 Boston Post Road, 1st Floor, Suite 3
Larchmont, NY 10538

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

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

Fidelcap Corp. D/B/A Fidelity Capital

By: _____ / S / _____

Frank Audino
President

Dated: _____

New York State Department of Financial Services

By: _____ / S / _____

Rholda L. Ricketts
Deputy Superintendent

Dated: _____