

New York State Department
of Financial Services

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In the Matter of

A & F CAPITAL, INC.
A006164

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 A & F Capital, Inc. (“A & F”) and the New York State Department of Financial Services (the “Department” and collectively, with the A & F, the “Settling Parties”) evidencing an agreement between the Settling Parties to resolve, without a hearing, the violation of Section 591-a(2) of the New York Banking Law (“Banking Law”), and Part 410.7 of the Superintendent’s Regulations, upon and subject to the terms and conditions hereof.

I.

RECITALS

1. A & F, headquartered at 112-10 Springfield Boulevard, Queens Village, NY 11429 was granted a registration by the Department on October 13, 2004 to engage in the business of 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 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 a violation of the Banking Law and any regulation promulgated thereunder.

3. Section 38.8 of the General Regulations of the Superintendent provides that a

mortgage broker 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 broker.

Unauthorized Domain Name

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. A & F used the domain name "aandfcapital.com" to promote and solicit mortgage loans related to properties in New York State for a period including July 2015.

6. A & F failed to obtain authorization to utilize the aforementioned domain name to conduct business in connected with mortgage loans related to properties in New York State.

7. Accordingly, A & F violated Section 591-a(2) of the Banking Law, which requires registrants to apply for and receive permission prior to using a specific business address.

Failure to Maintain an Application Log

8. The Department's examination as of October 31, 2014 determined that A & F repeatedly failed to establish and maintain an application log as required.

9. Accordingly, A & F violated Part 410.7(a)(4) of the Superintendent's Regulations which requires every mortgage broker to establish and maintain a centralized application log for the principal office and all branch offices.

II.

SETTLEMENT TERMS AND CONDITIONS

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

1. A & F is willing to resolve the violations cited herein by entering into this Agreement and freely and voluntarily waives its right to a hearing under Section 44 of the Banking Law and appeal on such violations.

2. A & F 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 410 of the Superintendent's Regulations; and
- b. ensuring that A & F obtains the prior approval of the Superintendent for any action that will result in the use a different name or website.

3. A & F agrees to develop appropriate written compliance policies and procedures ("Compliance Policies and Procedures") designed to ensure compliance with all applicable federal and state laws, regulations, supervisory requirements and guidance letters. The Compliance 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 A & F and its employees involved in loan origination 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, A & F

shall pay a penalty of \$3,000 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.

- \$300 no later than ten (10) days after the effective date of this Agreement;
- \$300 each on or before the 15th day of immediately following nine (9) months.

5. Neither A & F, 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. A & F 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. A & F 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 business as a registered mortgage broker under Article 12-D of 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 A & F – either directly or through its counsel – and the Department’s findings. To the extent that the written representations or written submissions, made by A & F 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, A & F shall provide all documentation and information necessary for the Department to verify full compliance with this Agreement.

4. A & F 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. A & F 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. A & F 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 A & F, 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
New York State Department of Financial Services
One State Street
New York, NY 10004

13. All written communications to A&F regarding this Agreement should be sent as follows.

Attention:

Adetunji Akinboboye
Owner
A & F Capital, Inc.
112-10 Springfield Boulevard
Queens Village, NY 11429

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.

A & F Capital, Inc.

By: _____ / S / _____

Adetunji Akinboboye
Owner

Dated: _____

New York State Department of Financial Services

By: _____ / S / _____

Rholda L. Ricketts
Deputy Superintendent

Dated: _____