

NEW YORK STATE DEPARTMENT  
OF FINANCIAL SERVICES

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In the Matter of

**NEW YORK PROCESSING INC.**  
**A004518**

**SETTLEMENT AGREEMENT**

A Registered Mortgage Broker 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 New York Processing, Inc. (“NYP”) and the New York State Department of Financial Services (the “Department,” and together with NYP, collectively referred to herein as the “Parties”), evidencing an agreement between the Parties to resolve, without a hearing, the violation of Sections 597 and 595-a of the New York Banking Law (the “Banking Law”), Section 202 of the New York Business Corporation Law (the “Business Corporation Law”), and Section 130 of the New York General Business Law (the “General Business Law”), upon and subject to the terms and conditions hereof.

**I.**

**RECITALS**

1. NYP, headquartered at 17 Leanore Drive, Farmingdale, New York 11735, was granted a registration by the Department on December 10, 1998 to engage in the business of 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 of the State of New York (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 (the “General Regulations”) 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.

#### **Failure to Maintain Books and Records**

4. Section 597 of the Banking Law states, in part, that, “[e]ach licensee and registrant shall annually, on or before a date to be determined by the superintendent, file a report with the superintendent giving such information as the superintendent may require concerning the business and operations during the preceding calendar year of such licensee or registrant.”

5. During the examination conducted as of December 31, 2017 (the “2017 Examination”), the Department discovered that NYP failed to report revenue generated from the loans it processed for other entities on the 2016 and 2017 volume of operation reports (“VOOR”).

6. In July 2019, the Department required NYP to submit revised VOORs and supporting documents.

7. In its July 19, 2019 response letter, NYP acknowledged to the Department that it was unable to provide records of the loans processed for the aforementioned periods.

8. Accordingly, NYP violated Section 597 of the Banking Law by failing to provide records of the loan operations during 2016 and 2017.

#### **Unauthorized Assumed Name**

9. Section 595-a(2)(a) of the Banking Law provides that a mortgage broker’s advertisements must contain the name that conforms to the name on record with the Department.

10. Additionally, Section 130(1)(b) of the General Business Law provides that no one shall “carry on or conduct or transact business in this state under any name or designation other

than his or its real name” unless such person files a Certificate of Assumed Name with the New York State Department of State.

11. Furthermore, Section 202(b) of the Business Corporation Law dictates that “[n]o corporation shall do business in New York state under any name, other than that appearing in its certificate of incorporation,” without compliance with the filing provisions of Section 130 of the General Business Law governing the conduct of business under an assumed name.

12. During the 2017 Examination, the Department discovered that NYP utilized an unauthorized assumed name, “NY Processing Inc.,” to promote and solicit New York regulated mortgage activities in New York, without approval from the Department.

13. Specifically, NYP used the name “NY Processing Inc.” in its correspondence with the Department on July 17, 2019. Additionally, NYP promotes itself as “NY Processing Inc.” on Facebook.

14. According to the Department’s records, the Department did not authorize NYP to utilize the assumed name “NY Processing Inc.” to conduct New York regulated mortgage business.

15. Accordingly, NYP’s use of the name “NY Processing Inc.” without authorization constitutes a violation of Section 595-a(2)(a) of the Banking Law.

16. Additionally, NYP violated Section 202(b) of the Business Corporation Law and Section 130 of the General Business Law by utilizing a name other than its real name and not filing a Certificate of Assumed Name with the New York Secretary of State.

## II.

### SETTLEMENT TERMS AND CONDITIONS

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

1. NYP is willing to resolve the violations cited herein by entering into this Agreement and freely and voluntarily waives 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. NYP 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 NYP files an annual report with the Superintendent in such form as the Superintendent shall prescribe;
- b. not conducting or transacting business in New York under any name that has not been approved by the Superintendent and without filing a Certificate of Assumed Name with the New York State Department of State; and
- c. complying with the requirements of Article 12-D of the Banking Law and Part 38 of the General Regulations.

3. NYP shall pay a fine of \$2,500.00, 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 NYP, 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. NYP 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. NYP 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 NYP – either directly or through its counsel – and the Department’s findings. To the extent that the written representations or written submissions, made by NYP 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, NYP shall provide all documentation and information necessary for the Department to verify full compliance with this Agreement.

4. NYP 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. NYP 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. NYP 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 NYP, 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.

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

13. 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

14. All written communications to NYP regarding this Agreement should be sent as follows:

Attention:

Nicole Consi  
President  
New York Processing, Inc.  
17 Leanore Drive  
Farmingdale, NY 11735

15. 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.

**New York Processing, Inc.**

By: \_\_\_\_\_ / S / \_\_\_\_\_

Nicole Consi  
President

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

**New York State Department of Financial Services**

By: \_\_\_\_\_ / S / \_\_\_\_\_

Rholda L. Ricketts  
Deputy Superintendent

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