

New York State
Department of Financial Services

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In the Matter of

R.B.I. ASSOCIATES, LTD.
A004752

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 R.B.I. Associates, Ltd. ("RBI") and the New York State Department of Financial Services (the "Department"), collectively (the "Settling Parties"), evidencing an agreement between the Settling Parties to resolve, without a hearing, the violations of Part 38 of the General Regulations of the Banking Board ("General Regulations"), and New York Banking Law Article 12-D, cited herein by the Department, upon and subject to the terms and conditions hereof.

I.

RECITALS

1. RBI, headquartered at 1888 Bellmore Avenue, Bellmore, New York 11710, was granted a registration by the Department on July 20, 1999 to engage in the business of a mortgage broker pursuant to Article XII-D of the Banking Law.
2. Section 44 of the Banking Law provides, 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 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.

Misleading Content

4. In April 2010, RBI sent out a solicitation letter (the "Solicitation") to 100 New York homeowners. A copy of the Solicitation is annexed as Exhibit A.

5. The Solicitation prominently stated "Section 255 of the National Housing Act (12 U.S.C. 1715z-20) is amended" in the space normally occupied by the name and address of the sender of the letter.

6. The Solicitation also stated "Case Number: NY402R1892".

7. The Solicitation failed to state RBI's name or address, and there was no indication that RBI was the sender of the letter.

8. The Solicitation letter was mailed in an envelope in which the phrase "BUSINESS MAIL – PENALTY FOR TAMPERING", "2010", a bar code, and a \$2,000 fine warning disclosure were displayed in the location of the sender's return address.

9. The envelope failed to state RBI's name or address, and it did not identify RBI as the sender of the letter.

10. By failing to identify RBI as the advertiser and sender of the Solicitation letter, by stating "Case Number: NY402R1892", and by stating "Section 255 of the National Housing

Act (12 U.S.C. 1715z-20) is amended”, the Solicitation appeared to be from an agency of the U.S. government, when in fact, it is not.

11. Accordingly, the Solicitation violated GRBB Section 38.2(e) which provides that no mortgage broker shall fraudulently or deceitfully advertise a mortgage loan, or misrepresent the terms, conditions or charges incident to a mortgage loan in any advertisement therefor.

12. The Solicitation targeted homeowners over the age of 62 with an offer of the FHA/HUD’s Home Equity Conversion Mortgage (“HECM”) program, a reverse mortgage loan program. The Solicitation indicated the homeowners, upon participation, are entitled to monthly benefits.

13. The phrase "entitled to monthly benefits” represented directly and by implication that the benefits are from a government sponsored program, and consumers are automatically qualified to receive monthly benefits upon participation of the HECM program.

14. The Solicitation failed to disclose that the source of the monthly benefit is a mortgage or a loan with obligation to repay.

15. By stating “entitled to monthly benefits” and by failing to disclose that the source of the monthly benefit is a loan with an obligation to repay, the Solicitation misleads recipients to believe that they are qualified to receive government sponsored monthly benefits without a repayment obligation.

16. Accordingly, the Solicitation violated General Regulations Section 38.2(e) which provides that no mortgage broker shall fraudulently or deceitfully advertise a mortgage loan, or misrepresent the terms, conditions or charges incident to a mortgage loan in any advertisement therefor.

Omitted Disclosures

17. The Solicitation failed to state certain circumstances, including failure to pay taxes or insurance, moving to a new residence or failing to maintain the property that will result in a HECM becoming due and payable.

18. The Solicitation also failed to disclose that there may be significant upfront costs and fees for obtaining a reverse mortgage.

19. In addition, the Solicitation failed to state that the homeowners must participate in a consumer information session given by an approved HECM counselor.

20. As a result of the foregoing, the Solicitation violated General Regulations Section 38.2(e), which provides that no mortgage broker shall fraudulently or deceitfully advertise a mortgage loan, or misrepresent the terms, conditions or charges incident to a mortgage loan in any advertisement therefor.

Other Omitted Disclosures

21. The Solicitation failed to state the legend “Registered Mortgage Broker - NYS Banking Department” or words to like effect therein.

22. Accordingly, the Solicitation violated General Regulations Section 38.2(a), which provides that no mortgage broker shall advertise its business in New York without including the legend “Registered Mortgage Broker - NYS Banking Department” or words to like effect therein.

23. The Solicitation failed to state the name and address of RBI.

24. Accordingly, the Solicitation violated General Regulations Section 38.2(b), which provides that any advertisement by a mortgage broker must indicate the name of the entity and a street address of any one of its New York offices.

25. The Solicitation failed to state that the mortgage broker arranges mortgage loans with third-party providers.

26. Accordingly, the Solicitation violated General Regulations Section 38.2(d), which provides that any advertisement by a mortgage broker must contain a statement to the effect that the mortgage broker arranges mortgage loans with third-party providers.

II.

SETTLEMENT TERMS AND CONDITIONS

Without admitting or denying the Department's findings, RBI 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. RBI 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 38 of the General Regulations of the Banking Board; and
- b. ensuring that its advertisements do not mislead consumers as to the identity of the party offering credit; and
- c. clearly identifying itself by name and an approved office address located in New York in any advertisement targeted to New York consumers; and
- d. ensuring that its advertisements do not mislead consumers as to the terms and conditions of credit it is offering and that such advertisements disclose

clearly and conspicuously the existence of material terms, conditions, and limitations relating to any advertised offer of credit; and

- e. ensuring that it will not advertise terms of credit using footnotes, asterisks, small print and color contrasts that materially contradict or modify the principal message of its advertisements, and will disclose clearly, and conspicuously all material information.

2. RBI agrees to develop appropriate written advertisement policies and procedures designed to ensure compliance with all applicable federal and state laws, regulations, supervisory requirements and guidance letters. The 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 RBI and its employees involved in preparing or approving advertisements understand all applicable federal and state laws, regulations, supervisory requirements and guidance letters.

3. Within ninety (90) days from the effective date of this Agreement, RBI agrees to submit a draft of its advertisement policies and procedures to the Department.

4. Within one hundred twenty (120) days from the effective date of this Agreement, RBI agrees to submit a copy of its final advertisement policies and procedures to the Department together with a letter from an authorized officer of RBI indicating his/her approval of such policies and procedures.

5. RBI further agrees to provide copies of all advertisements run by it for the twelve (12) month period following the effective date of this Agreement.

6. RBI agrees to pay a fine of \$ 7,500 payable in ten (10) equal monthly installments as follows:

- \$750 upon execution of this Agreement, and
- \$750 each on or before the 15th day of each consecutive month for the following nine (9) months.

7. RBI further agrees that such payment will be made in immediately available funds in accordance with the Department's payment instructions.

III.

MISCELLANEOUS TERMS AND CONDITIONS

1. The Settling Parties acknowledge that RBI's failure to comply with any of the settlement terms and conditions of this Agreement may result in the Department taking action to revoke RBI's registration to engage in the business of a mortgage broker under Article 12-D of the Banking Law.

2. The Settling Parties acknowledge 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 RBI, 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.

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 RBI regarding this Agreement should be sent as follows.

Attention:

Roger Guido Boffardi
R.B.I. Associates, Ltd.
1888 Bellmore Avenue
Bellmore, New York 11710

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

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

By: _____

Roger Guido Boffardi
President
R.B.I. Associates, Ltd.

Dated: _____

By: _____

Rholda L. Ricketts
Deputy Superintendent
New York State Department of Financial Services

Dated: _____