

New York State
Department of Financial Services

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In the Matter of

**Franklin First Financial, Ltd. D/B/A
Franklin First Mortgage Bankers
B500728**

SETTLEMENT AGREEMENT

A Licensed Mortgage Banker 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 Franklin First Financial, Ltd. D/B/A Franklin First Mortgage Bankers ("Franklin First") 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 (the "General Regulations"), Article 12-D of the New York Banking Law (the "Banking Law"), and Section 226.24 of Regulation Z under the Truth in Lending Act ("Regulation Z"), cited herein by the Department, upon and subject to the terms and conditions hereof.

I.

RECITALS

1. Franklin First, headquartered at 538 Broadhollow Road, Suite 401, Melville, NY 11747, was granted a license by the Department on June 11, 2003 to engage in the business of a mortgage banker pursuant to Article 12-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 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.

4. In March 2012, Franklin First ran an advertisement three times for residential mortgage loans in the Queens Property Magazine (the "Advertisement".) Samples of the Advertisement are annexed as Exhibit A.

Misleading Terms

5. The Advertisement stated a telephone number of "855-569-Bank (2265)."

6. By stating the word "Bank" in the telephone number, Franklin First could mislead consumers into believing that it is a bank.

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

8. The Advertisement promoted "No Income Check" and "No Income Verification Loans."

9. The promotion of such services and/or products could mislead consumers into believing that they do not have to demonstrate the ability to repay such mortgages.

10. Prudent underwriting requires a lender to diligently verify and document a borrower's income and ability to repay.

11. Accordingly, the Advertisement violated Section 38.2(e) of the General Regulations, which provides that no mortgage banker 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

12. The Advertisement promoted an interest rate of 1.75% for an adjustable rate mortgages ("ARM"). It also stated a payment amount at that rate of \$893.11 on a \$250,000 loan.

13. The Advertisement therefore failed to clearly and conspicuously disclose the actual terms of repayment of the ARM, including the repayment obligations over the full term of the loan, including any balloon payment requirement.

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

15. The Advertisement also violated Regulation Z Section 226.24(d) which provides that if an advertisement states the amount of any payment, it shall also state certain specific terms, including the terms of repayment.

16. Furthermore, the Advertisement failed to clearly and conspicuously disclose the fact that the payments do not include the amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation could be greater.

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

18. The Advertisement also violated Regulation Z Section 226.24(f)(3)(i)(C), which provides that if an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement shall disclose in a clear and conspicuous manner the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payments could be greater.

19. The Advertisement also stated an annual percentage rate (“APR”) and failed to disclose that the APR may be increased after consummation.

20. Accordingly, the Advertisement violated Regulation Z Section 226.24(c), which provides that if an advertisement states a rate of finance charge, it shall state the rate as an “annual percentage rate” and if the APR may be increased after consummation, the advertisement also shall state that fact.

II.

SETTLEMENT TERMS AND CONDITIONS

Franklin First 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. Franklin First 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 the Federal Truth-In-Lending Act and Regulation Z, Article 12-D of the Banking Law, and Part 38 of the General Regulations;
- b. ensuring that its advertisements do not mislead consumers as to the terms and conditions of credit and that such advertisements disclose clearly and conspicuously, the existence of material terms, conditions, and limitations relating to any advertised offer of credit;
- c. ensuring that its advertised offers of credit are consistent with prudent lending practices, as reflected in the Department's May 25, 2007 Industry Letter on Mortgage Lending Standards and its June 30, 2007 Industry Letter on Subprime Mortgage Lending (collectively, the "Guidance Letters");
- d. ensuring that when it advertises any mortgage product, it will provide clear and conspicuous information about the costs, terms, features and risk of such loans;
- 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(s) of its advertisements, and that it will disclose, clearly and conspicuously, all material information; and
- f. ensuring that when it advertises an introductory rate or monthly payment amount that may subsequently increase it will disclose, clearly and conspicuously: (i) how long the introductory rate is in effect; (ii) the reset or adjustment period; (iii) the maximum reset rate (if there is one); and (iv) if the advertisement contains a monthly payment amount at an introductory rate, it also will disclose the repayment terms or loan period over the full

term of the loan, including the maximum monthly payment amount at the fully indexed rate (taking into consideration the expiration of any negative amortization or interest rate caps, or if there is no interest rate cap, a rate equal to any applicable margin on the loan plus the highest recorded rate during the prior ten years for the index used to calculate the interest rate) and any balloon payments.

2. Franklin First 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 Franklin First and its MLO and non-MLO employees 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, Franklin First 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, Franklin First agrees to submit a copy of its final advertisement policies and procedures to the Department together with a letter from an authorized officer of Franklin First indicating his/her approval of such policies and procedures.

5. Franklin First agrees to pay a fine of \$ 10,000 payable in ten (10) equal monthly installments as follows:

- \$1,000 upon execution of this Agreement
- \$1,000 each on or before the 15th day of immediately following

nine (9) months.

6. Franklin First 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. Franklin First 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 Franklin First's license to engage in the business of a mortgage banker under Article 12-D of the Banking Law.

2. Franklin First 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 Franklin First, any of its current or former owners, officers, directors, employees, or insiders, or their successors or assigns with respect to any other matter or matters whether related or not to the violations cited herein.

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 Franklin First regarding this Agreement should be sent as follows.

Attention:

Frederick L. Assini
President
Franklin First Financial, Ltd. D/B/A
Franklin First Mortgage Bankers
538 Broadhollow Road, Suite 401
Melville, NY 11747

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.

Franklin First Financial, Ltd. D/B/A
Franklin First Mortgage Bankers

By: _____

Frederick L. Assini
President

Dated: _____

New York State Department of Financial Services

By: _____

Rholda L. Ricketts
Deputy Superintendent

Dated: _____