

New York State
Department of Financial Services

_____ X
In the Matter of

**AGENCY FOR CONSUMER EQUITY
MORTGAGES, INC.**
A004338

SETTLEMENT AGREEMENT

A Registered Mortgage Broker Pursuant To
Article XII-D of the New York Banking Law
_____ X

This Settlement Agreement ("Agreement") is made and entered into by and between Agency For Consumer Equity Mortgages, Inc. ("ACEM" or the "Entity") and the New York State Department of Financial Services (the "Department" and collectively with the Entity, the "Settling Parties") evidencing an agreement between the Settling Parties to resolve, without a hearing, the violations of Article 12-D of the New York Banking Law ("Banking Law"), Section 130 of the General Business Law ("GBL"), and Section 202 of the New York Business Corporation Law, upon and subject to the terms and conditions hereof.

I.

RECITALS

1. The Entity, headquartered at 100 Clearbrook Road, Elmsford, NY 10523, was granted a registration by the Department on January 30, 1997 to engage in the business of a mortgage broker 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 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.

4. On January 30, 1997, a mortgage broker's registration was issued to ACEM, which was 100% owned by Mario L. Martirano.

Change of Control

5. According to records maintained by the Nationwide Mortgage Licensing System & Registry ("NMLS") as of July 1, 2008, ACEM was owned 34% by Mr. Martirano, 33% by Robert Nascimento, and 33% by Alexander O. Farber.

6. A review of the Department records indicated that the Department was never notified of the sale of shares to Messrs. Nascimento and Farber and the Entity failed to submit a change of control application to register them as new owners in 2008.

7. Accordingly ACEM violated Section 594-b(1) of the Banking Law, which requires a registrant to obtain prior approval of the Superintendent for any action to be taken, which would result in a change of control of the business of a registrant.

8. Accordingly, ACEM's failure to notify the Department of the change in control constituted a violation of Section 594-b(1) of the Banking Law.

Unauthorized Domain Name

9. 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. The industry letter is annexed as

Exhibit A.

10. From 2008 to 2011, the Entity placed an advertisement promoting New York residential mortgage loans using the domain name and website consumerequity.com. A sample of the advertisement is annexed as Exhibit B.

11. The Entity failed to obtain authorization from the Department to utilize the domain name consumerequity.com to conduct New York regulated residential mortgage activities.

12. Accordingly, the Entity violated Article 12-D Section 591-a(2) of the Banking Law, which requires registrants to apply for and receive permission prior to using a specific business address.

Unauthorized Assumed Name

13. On January 30, 1997, the Department issued a certificate to the Entity under the name of Agency For Consumer Equity Mortgages, Inc.

14. The website consumerequity.com used the name Consumer Equity to solicit New York regulated mortgage business.

15. The Entity failed to receive approval from the Department to use the assumed name Consumer Equity.

16. Accordingly, the Entity violated Article 12-D Section 595-a(2)(a) of the Banking Law which provides that all advertisements of a mortgage broker shall contain the name which conforms to a name on record with the Department.

17. Furthermore, the Entity violated GBL Section 130(1)(b) which 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 Secretary of State.

18. Additionally, the Entity violated Section 202(a)(16)(b) of the New York Business Corporation Law which provides that no corporation shall do business in New York State under any name, other than the names that appear in its certificate of incorporation, in compliance with the filing provisions of Section 130 of the General Business Law governing the conduct of business under an assumed name.

II.

SETTLEMENT TERMS AND CONDITIONS

ACEM 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. The Entity 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;
- b. Obtaining the prior approval of the Superintendent for any action that will result in a change of control of the Entity;
- c. Not conducting or transacting business in this state under any assumed name without filing a Certificate of Assumed Name with the New York Secretary of State; and
- d. Not conducting or transacting business in this state under any assumed name or designation using any website, domain, or other name that has not been approved by the Superintendent.

2. The Entity agrees to develop appropriate written compliance policies and procedures designed to ensure compliance with all applicable federal and state laws, regulations, supervisory requirements, and guidelines. 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 the Entity and its MLO and non-MLO employees understand all applicable federal and state laws, regulations, supervisory requirements and guidance letters. Within ninety (90) days from the effective date of this Agreement, the Entity agrees to submit a draft of its compliance policies and procedures to the Department.

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

4. ACEM agrees to pay a fine of \$ 5000 payable in six (6) monthly installments as follows:

- \$1,000 upon execution of this Agreement, and
- \$800 each on or before the 15th day of each consecutive month for the following five (5) months.

5. The Entity 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 the Entity's failure to comply with any of the settlement terms and conditions of this Agreement may result in the Department taking action to revoke the Entity'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 the Entity, 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 ACEM regarding this Agreement should be sent as follows.

Attention:

Mario L. Martirano, President
Agency For Consumer Equity Mortgages, Inc.
38 Pouting Rock Road
Mahopac, NY 10541

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.

Agency For Consumer Equity Mortgages, Inc.

By: _____

Mario L. Martirano
President

Dated: _____

New York State Department of Financial Services

By: _____

Rholda L. Ricketts
Deputy Superintendent

Dated: _____