

NEW YORK STATE DEPARTMENT
OF FINANCIAL SERVICES

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In the Matter of

Freedom One Funding, Inc.
A005580

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 Freedom One Funding, Inc (“FOF”) and the New York State Department of Financial Services (the “Department” and collectively, with FOF, the “Settling Parties”), evidencing an agreement between the Settling Parties to resolve, without a hearing, the violations of Section 591-a(2) of the New York Banking Law (“Banking Law”), Section 254-b of the New York Real Property Law, Part 38.2(d) of the General Regulations of the Superintendent (“GRS”), Part 38.3 of the GRS, and Part 420.15(a)(b) of the Superintendent’s Regulations (“SR”) upon and subject to the terms and conditions hereof.

I.

RECITALS

1. FOF, headquartered at 404 Troy Schenectady Road, Suite 1, Latham, NY 12110, was granted a registration by the Department on November 21, 2002 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 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(a) of the GRS 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 Names and Websites

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. During the 2016 Examination, the Department discovered that FOF utilized the domain name and website, “www.cliftonparkhomemortgage.com,” to promote and solicit mortgage loans related to 1-4 family residential properties in New York State for a period including September 2018.

6. During the 2016 Examination review, the Department discovered that FOF utilized another domain name and website, “www.priority1online.com,” to promote and solicit mortgage loans related to 1-4 family residential properties in New York State.

7. The Department’s records reveal that FOF never received approval from the Department to utilize the aforementioned domain names to conduct mortgage loan activities related to properties in New York State.

8. Accordingly, FOF violated Section 591-a(2) of the Banking Law, which requires a registrant to apply for and receive permission prior to using a specific business address.

Incorrect Disclosures

9. Section 254-b of the New York Real Property Law provides for a mortgagee or lender to collect a late fee on any installment which has become due and remains unpaid. Such late fee “shall not exceed and shall only be enforced to the extent of two percent of such delinquent installment”.

10. FOF disclosed an incorrect late fee of five percent instead of two percent on the initial Truth in Lending (“TIL”) disclosures for all conventional loans originated.

11. Accordingly, FOF’s use of the incorrect late fee percentage rate on the TIL disclosure was a violation of Section 254-b of the New York Real Property Law, which requires the late payment fee to not exceed a maximum of two percent.

Deceitful Advertisement

12. Pursuant to Part 38.2(d) of the GRS, “no advertisement by a mortgage broker shall contain language which indicates or suggests that the mortgage broker will fund a mortgage loan. Any advertisement by a mortgage broker must contain a statement to the effect that the mortgage broker arranges mortgage loans with third party providers.”

13. FOF advertised that it is an “equal opportunity lender.” The Department has determined that the advertisement is likely to mislead applicants into believing that the registrant is a mortgage lender and can fund a mortgage loan.

14. Accordingly, the Department has determined that FOF violated Part 38.2(d) of the GRS.

Failure to Provide the Required Pre-Application Disclosures

15. Part 38.3 of the GRS provides that an application may be taken in writing, over the telephone, or electronically transmitted. A written application, irrespective of how it is transmitted, should contain the following statement: It is a crime to intentionally falsify information on this application. For oral applications, the mortgage broker, mortgage banker or exempt organization must make this statement to the borrower(s).

16. A review of FOF files revealed that FOF failed to provide the required disclosure that “it is a crime to intentionally falsify information on this application” in 22 of its loan applications.

17. Accordingly, FOF violated Part 38.3 of the GRS.

Failure to Maintain Adequate Surety Bond Coverage

18. Part 420.15(a) of the SR requires each mortgage loan originator to be covered by a surety bond in accordance with Section 599-k of the Banking Law. In accordance, Part 420.15(b) sets forth the required penal amount of the surety bond to be maintained based on the dollar amount of loans originated.

19. The Department, as a result of the 2016 Examination, determined that Benjamin Forcucci, who is a mortgage loan originator (“MLO”) of FOF, maintained a surety bond in the amount of \$15,000.00 in 2015. Based on the dollar amount of loans originated by Mr. Forcucci in 2015, he was required to maintain a surety bond of \$25,000.00.

20. Accordingly, the Department has determined that the failure to maintain the required penal amount of individual surety bond coverage violated Part 420.15(b) of the SR for the time period in question.

II.

SETTLEMENT TERMS AND CONDITIONS

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

1. FOF 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, the Parties agree as follows:

2. FOF 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, Part 38 of the FRS and Part 420 of the SR; and
 - b. ensuring that FOF obtains the prior approval of the Superintendent for any action that will result in the use a different name or website.
3. FOF shall pay a fine of \$7,000.00 as a penalty to the Department no later than ten (10) days after the effective date of this Agreement.
4. The payment shall be made by wire transfer in accordance with the Department's payment instructions.
5. Neither FOF, 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. FOF 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. FOF 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

FOF – either directly or through its counsel – and the Department’s findings. To the extent that the written representations or written submissions made by FOF 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, FOF shall provide all documentation and information necessary for the Department to verify full compliance with this Agreement.

4. FOF 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. FOF 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. FOF acknowledges that entering into this Agreement shall not bar, stop, or otherwise prevent the Superintendent, or any state, federal or local agency or department from taking any other, or additional, action affecting FOF, 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. The effective date of this Agreement is the date on which it is executed by the Deputy Superintendent.

12. 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

13. All written communications to FOF regarding this Agreement should be sent as follows.

Attention:

Mark Pawlows
President
Freedom One Funding, Inc
404 Troy Schenectady Road, Suite 1
Latham, NY 12110

14. This Agreement is not confidential; the Parties understand that it is made available to the public.

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

Freedom One Funding, Inc

By: _____ / S / _____

Mark Pawlows
President

Dated: _____

New York State Department of Financial Services

By: _____ / S / _____

Rholda L. Ricketts
Deputy Superintendent

Dated: _____