

New York State
Department of Financial Services

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In the Matter of

David P. Breitstein
NMLS NO. 21737

SETTLEMENT AGREEMENT

A Licensed Mortgage Loan Originator Pursuant To
Article XII-E of the New York Banking Law

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This Settlement Agreement (“Agreement”) is made and entered into by and between David P. Breitstein (“Mr. Breitstein”) and the New York State Department of Financial Services (the “Department” and collectively with Mr. Breitstein, the “Parties”) evidencing an agreement between the Parties to resolve, without a hearing, the violation of 3 NYCRR 420.20(a)(7), upon and subject to the terms and conditions hereof.

I.

RECITALS

1. Mr. Breitstein, was granted a license on July 13, 2010, pursuant to Article 12-E of the Banking Law to engage in business as a mortgage loan originator (“MLO”). Mr. Breitstein was employed as an MLO with Apple Mortgage Corp. (“Apple” NMLS No. 17332), a previously registered mortgage broker until September 2013, and thereafter, joined GuardHill Financial Corp. (NMLS No. 1609), a licensed mortgage banker (“GuardHill”). As of to date, Mr. Breitstein is still employed by GuardHill as an MLO.

2. As a licensed MLO, Mr. Breitstein was prohibited, pursuant to 3 NYCRR 420.20(a)(7) from “download[ing] or remov[ing] borrowers’ or mortgage loan applicants’ loan

files or other information from the premises or automated systems of an originating entity without permission of the originating entity.”

3. The Department received a complaint alleging that Mr. Breitstein violated 3 NYCRR 420.20(a)(7) by removing and/or downloading mortgage loan applications, files and other records from the premises and automated systems of Apple.

4. Based on the Department’s review of information provided as part of that complaint, Mr. Breitstein engaged in the following prohibited conduct: (i) downloading, emailing, or printing documents from Apple’s Encompass Database which contained loan documents and customer information; (ii) printing out borrower summaries consisting of the first page of loan applications (Forms 1003 and 1008), containing customers’ social security numbers and dates of birth; (iii) deleting information and folders that were contained on Mr. Breitstein’s computer at Apple; and (iv) downloading information from Mr. Breitstein’s Apple computer to external memory devices and connecting the memory device to computers at GuardHill.

5. Accordingly, Mr. Breitstein violated 3 NYCRR 420.20(a)(7). The Department has made no determination with respect to any civil claims against Mr. Breitstein.

II.

SETTLEMENT TERMS AND CONDITIONS

IT IS HEREBY UNDERSTOOD AND AGREED by Mr. Breitstein that:

1) Mr. Breitstein is willing to resolve the violations cited herein by entering into this Agreement and freely and voluntarily waives his right to a hearing under Section 44 of the Banking law and 3 NYCRR 420.21 and any appeal on such violations. In consideration of the promises and covenants set forth herein, the Parties agrees as follows:

2) Mr. Breitstein agrees to take all necessary steps to ensure his compliance with all applicable federal and state laws, regulations and supervisory requirements relating to his mortgage business, including, but not limited to:

- a. complying with the requirements of Articles 12-D and 12-E of the Banking Law and 3 NYCRR 420; and
- b. ensuring that he will not copy, download or delete loan files or other information from the premises or automated system of any originating entity without prior authorization of such originating entity;

3) Mr. Breitstein agrees to pay a fine of \$15,000 as a penalty, payable in 12 monthly installments as follows:

- (i) \$1,250 upon execution of this Agreement, and
- (ii) \$1,250 on or before the 15th day of each of the immediately following 11 months.

4) Mr. Breitstein further agrees that such payment will be made in immediately available funds in accordance with the Department's payment instructions.

5) Mr. Breitstein shall not accept, directly or indirectly, reimbursement or indemnification including but not limited to payment made pursuant to any insurance policy, or from any of his affiliates, with regard to any or all of the amount payable pursuant to this Agreement.

6) Mr. Breitstein agrees that he will not claim, assert, or apply for a tax deduction or tax credit with regard to any United States 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. Mr. Breitstein acknowledges that his 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 his MLO license to engage as an MLO under Article 12-E 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 Mr. Breitstein either directly or through his counsel and the Department's findings. To the extent that the written representations or written submissions, made by Mr. Breitstein to the Department are either directly or through his 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, Mr. Breitstein shall provide all documentation and information necessary for the Department to verify full compliance with this Agreement.

4. Mr. Breitstein 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. Mr. Breitstein 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. Mr. Breitstein 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 his, or any of his sponsor's 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 and signed by the Superintendent or her designee.

10. This Agreement shall be enforceable and remain in effect until stayed, modified, suspended or terminated in writing by the Superintendent or her designee.

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 or her designee.

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 David P. Breitstein regarding this Agreement

should be sent as follows.

Attention:

David P. Breitstein
Mortgage Loan Originator

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

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

By: _____ / S /
David P. Breitstein
Mortgage Loan Originator

Dated: _____

New York State Department of Financial Services

By: _____ / S /
Rholda L. Ricketts
Deputy Superintendent

Dated: _____