

STATE OF ILLINOIS

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

DIVISION OF BANKING

IN THE MATTER OF:)
)
Kemper Mortgage Inc.)
2350 East Devon, Suite 108)
Des Plaines, Illinois 60018)

BTC No. 2005-DB-24

**ORDER TO CEASE AND DESIST
AND TO ASSESS A CIVIL MONETARY PENALTY**

The SECRETARY OF THE DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION (“Secretary”) hereby issues to Kemper Mortgage Inc. this ORDER TO CEASE AND DESIST AND TO ASSESS A CIVIL MONETARY PENALTY (“Order”). This Order is authorized by and issued pursuant to the provisions of Section 46(d) of the Illinois Banking Act [205 ILCS 5/46(d)] (the “Act”).

FINDINGS

The Secretary is of the opinion and finds as follows:

1. Kemper Mortgage Inc., a business entity located at 2350 East Devon, Suite 108, Des Plaines, Illinois 60018 has engaged in a marketing program designed to solicit prospective Illinois customers in a mortgage refinancing program, (the “Program”);
2. As part of the Program, Kemper Mortgage Inc. delivered or caused to be delivered certain solicitation materials to a customer of an Illinois state-chartered bank;
3. These solicitation materials specifically make reference to and use the name of the Illinois state-chartered bank;
4. Section 46(d) of the Act provides that unless otherwise expressly permitted by law, no person, firm, partnership or corporation may use the name of an existing bank when

marketing to or soliciting business from customers if the reference is made without consent of the existing bank;

5. The Illinois state-chartered bank identified in the Kemper Mortgage Inc. Program solicitation materials did not consent to the use of its name;
6. The solicitation materials described in paragraphs two (2) and three (3) above, were delivered to the referenced customer of an Illinois state-chartered bank during the 2005 calendar year;
7. On December 19, 2001, the Office of Banks and Real Estate, the predecessor agency of the Illinois Department of Financial and Professional Regulation, issued a Cease and Desist Order No. 2001-BBTC-47 against Kemper Mortgage, Inc. based upon Findings of Fact and Conclusions of Law that Kemper Mortgage Inc. had violated the provisions of Section 46(d) by means of a solicitation program that improperly utilized the name of a state chartered bank without prior consent and that would cause a reasonable person to believe that this solicitation originated or was endorsed by the Illinois state-chartered bank ;
8. Order No. 2001-BBTC-47 required Kemper Mortgage Inc. to cease and desist from using the solicitation materials referenced in that Order in the State of Illinois;
9. The solicitation materials delivered to the customer of the state-chartered bank referenced in paragraphs two (2) and three (3) above are significantly similar to those utilized by Kemper Mortgage Inc. that resulted in the entry of Order No 2001-BBTC-47, in that the solicitation materials specifically identify that the recipients have obtained a mortgage at the Illinois state-chartered bank and specifically identified the original mortgage amount. In addition, the solicitation materials delivered to the bank customer referenced in paragraphs Two (2) and Three (3) above were delivered in such a manner as to cause a reasonable person to believe that the solicitation originated from or was endorsed by the state-chartered bank;
10. Section 46(d)(2) of the Act provides authority to impose a civil monetary penalty in an amount of up to \$10,000 based upon a finding that a person, firm, partnership or corporation has persisted in the use of marketing material or solicitation material after previously having been ordered to cease and desist; and
11. Kemper Mortgage Inc. has persisted in the use of marketing material or solicitation material after previously having been ordered to cease and desist.

CONCLUSIONS

BASED ON THE ABOVE FINDINGS, THE SECRETARY IS OF THE OPINION AND CONCLUDES :

1. The Kemper Mortgage Inc. solicitation materials delivered to a customer of a state-chartered bank as described in paragraphs two (2) and three (3) of the Findings above violate the provisions of Section 46(d) of the Act;
2. The violation by Kemper Mortgage Inc as described in paragraphs Two (2) and Three (3) of the Findings above provide a basis to enter an Order to Cease and Desist against Kemper Mortgage Inc.; and
3. The persistence by Kemper Mortgage Inc. in the use of marketing or solicitation materials after previously having been ordered to Cease and Desist as described in paragraphs Seven (7), Eight (8) and Nine (9) of the Findings above provide a basis to enter an Order Assessing a Civil Monetary Penalty in an amount of up to \$10,000.

ORDER

BASED ON THE FINDINGS AND CONCLUSIONS STATED ABOVE, IT IS HEREBY ORDERED:

1. Kemper Mortgage Inc. shall CEASE AND DESIST from using the name of any existing Illinois state-chartered bank in connection with marketing or solicitation materials, absent express consent from such existing Illinois state-chartered bank and complete compliance with all the provisions of Section 46(d) of the Act;
2. Kemper Mortgage Inc. shall initiate procedures to insure that all marketing materials or solicitation materials are delivered in such a manner as to clearly identify that the solicitation is originated by Kemper Mortgage Inc. Such procedures shall include, but not be limited to, a clear and conspicuous disclosure on the marketing or solicitation delivery envelope that the solicitation is originated by Kemper Mortgage Inc;
3. Kemper Mortgage Inc. shall be assessed a Civil Monetary Penalty in an amount of \$1000.00;
4. The above referenced Civil Monetary Penalty in the amount of \$1000.00 shall be paid no later than sixty (60) days after service of this Order upon Kemper Mortgage Inc.; and

5. The Civil Monetary Penalty in the amount of \$1000.00 shall be paid by means of a certified check or money order made payable to IDFPR, Division of Banking.

IT IS HEREBY FURTHER ORDERED:

1. This ORDER shall be effective on the date it is signed and the provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this ORDER shall have been modified, terminated, suspended or set aside by the Secretary, or a court of competent jurisdiction.

DATED THIS TWENTY-SECOND DAY OF AUGUST, 2005.

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION of the State of Illinois;
FERNANDO E. GRILLO, SECRETARY

DIVISION OF BANKING

D. Lorenzo Padron
Director

By:

SCOTT D. CLARKE
Assistant Director

You are hereby notified that this Order is an administrative decision. Pursuant to 38 Ill. Adm. Code, Section 392, any party may file a request for a hearing on an administrative decision. The request for a hearing shall be filed within 10 days after the receipt of an administrative decision. A hearing shall be held within thirty (30) days after the receipt by the Director of a request for a hearing. Absent a request for hearing, this Order shall constitute a final administrative Order subject to the Administrative Review Law, [735 ILCS 5/3-101].