

STATE OF ILLINOIS

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

DIVISION OF BANKING

IN THE MATTER OF:)
)
) No. 2013-MBR-50
NAIL YOUR MORTGAGE a/k/a OmTelligence, LLC)
License No. MB.6760779)
Attention: Mark Pickett)
747 N. LaSalle, #400)
Chicago, IL 60654)

ORDER REVOKING LICENSE AND ASSESSING FINE

The DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION, Division of Banking (“Department”), having conducted a licensing status review, and having prior investigated and attempted examination, of Nail Your Mortgage a/k/a OmTelligence, LLC (“NYM”) and having documented violations of the Residential Mortgage License Act of 1987 (“RMLA”) [205 ILCS 635] and the rules promulgated under the Act (“RMLA Rules”) [38 Ill. Adm. Code 1050], hereby issues this Order for violations of RMLA and the RMLA Rules. The Department has further documented violations of the Residential Real Property Disclosure Act (“RRPDA”) [765 ILCS 77].

STATUTORY PROVISIONS

1. Section 4-1(h-1) of RMLA provides that the Secretary of Financial and Professional Regulation, or his or her designee, including the Director of the Division of Banking of the Department of Financial and Professional Regulation (“Secretary”) may issue orders against any person if the Secretary has reasonable cause to believe that an unsafe, unsound, or unlawful practice has occurred, is occurring, or is about to occur, if any person has violated, is violating, or is about to violate any law, rule, or written agreement with the Secretary, or for the purposes of administering the provisions of RMLA and RMLA Rules.
2. Sections 4-5(h)(1) and (5) of RMLA, respectively, provide that when the Secretary finds any person in violation of the grounds set forth in subsection (i), the Secretary may enter an order imposing the penalty of revocation of license and imposing the penalty of a fine not to exceed \$25,000 for each separate offense.
3. Section 4-5(i) of RMLA sets forth acts by a licensee that shall constitute grounds for disciplinary action specified in Section 4-5(h) of RMLA. Subsection (i)(2) is for fraud, misrepresentation, deceit or negligence in any mortgage financing transaction. Subsection (i) (11) is for failure to comply with any order of the Secretary or rule made or issued under provisions of RMLA. Subsection (i)(14) is for failure to maintain, preserve, and keep available for examination, all books, accounts, or other documents required by RMLA and RMLA Rules. Subsection (i)(15) is for refusal to permit an investigation or examination of the licensee’s or its affiliates’ books and records. Subsection (i)(17) is for failure to comply with or violation of any provision of RMLA.

4. Section 2-4 of RMLA requires a licensee to aver in the following subsections: (a) to maintain at least one full service office within the State of Illinois pursuant to Section 3-4 of RMLA, (b) to maintain staff reasonably adequate to meet the requirements of Section 3-4 of RMLA, (k) to not knowingly misrepresent, circumvent or conceal, through whatever subterfuge or device, any of the material particulars regarding a transaction to which it is a party to the injury of another party, (s) to advise the Secretary in writing of any changes to the information submitted on the most recent application for license within 30 days of said change, (t) to comply with the provisions of RMLA, or with any lawful order, rule or regulation made or issued under the provisions of RMLA, and (z) to not knowingly hire or employ a mortgage loan originator who is not licensed with the Secretary as required under Section 7-1A of RMLA.
5. Section 1-4 of RMLA provides definitions. Subsection (jj) defines a “mortgage loan originator” as an individual who for compensation or gain or in the expectation of compensation or gain: (i) takes a residential mortgage loan application; or (ii) offers or negotiates terms of a residential mortgage loan. Subsection (r) defines a “full service office” as an office, and staff in Illinois reasonably adequate to efficiently handle communications, questions, and other matters relating to any application for or an existing Illinois residential mortgage loan. The management and operation of each full service office must include observance of good business practices such as proper signage and adequate, organized, and accurate books and records, ample phone lines, hours of business, and staff training and supervision.
6. Section 2-6(e) of RMLA provides that a licensee ceasing an activity or activities regulated by this Act shall file a written surrender application with the Department, convey the license, and comply with the Department’s surrender guidelines or requirements.
7. Section 3-2 of RMLA provides that the most recent audit report or compilation financial statement, as applicable, shall be filed with the Secretary within 90 days after the end of the licensee’s fiscal year. The Secretary may promulgate rules regarding late audit reports.
8. Section 3-3 of RMLA provides in pertinent part in subsection (a) that advertising for loans transacted under RMLA may not be false, misleading or deceptive, and in subsection (b) that all advertisements by a licensee shall contain the name and office address of such entity, which shall conform to a name and address on record with the Secretary.
9. Section 3-4 of RMLA provides that a licensee establishing an office in Illinois shall maintain a full service office with staff reasonably adequate to handle efficiently communications, questions, and all other matters relating to any application for a home mortgage or an existing home mortgage for which it is providing services for any consumer, lender, or other specified party.
10. Section 4-1(j) of RMLA authorizes the Secretary’s functions, powers, and duties to include the examination of the books and records of every licensee under RMLA at intervals as specified in RMLA Section 4-2.
11. Section 4-2 of RMLA provides that the business affairs of a licensee under RMLA shall be examined for compliance with RMLA as often as the Secretary deems necessary and proper. The Secretary shall promulgate rules with respect to the frequency and manner of examination.
12. Section 4-6 of RMLA authorizes the Department to conduct investigations of complaints and inquiries made by persons concerning RMLA and of any licensees under RMLA. It provides

that each licensee shall open its books, records, documents and offices wherever situated to the Department as needed to facilitate its investigations. Section 4-7 of RMLA grants the Department additional investigation and examination authority.

13. Section 7-1A of RMLA provides in subsection (a) that it is unlawful to act or assume to act as a mortgage loan originator, as defined in subsection (jj) of RMLA Section 1-4, without obtaining a license from the Secretary or lawful exemption.
14. RRPDA Section 70(c) requires a mortgage broker or loan originator to submit to the APLD all of the information required in RRPDA Section 72 for any mortgage on property within the program area within 10 days after taking a mortgage loan application. RRPDA Section 72 requires a mortgage broker or loan originator to submit information about each loan into the APLD, including in subsection (4) the name of the loan originator for the transaction.
15. Section 1050.425 of the RMLA Rules provides, in part, that all licensees shall be subject to regular examination within a period not to exceed 36 months and authorizes the Secretary, in his or her sole discretion, to conduct an examination at any time.
16. Section 1050.430 of the RMLA Rules provides that audit reports not delivered within 90 days after the date specified in Section 3-2 of RMLA, unless extended for cause by the Secretary, shall cause the licensee to pay a fee at the rate of \$50 per calendar day for up to three months.
17. Section 1050.1140 of the RMLA Rules provides that loan application procedures shall comply with the Act as well as applicable Federal and State laws and regulations.
18. Section 1050.1175 of the RMLA Rules requires a licensee engaged in loan brokerage or loan origination to maintain a Loan Log for each residential mortgage loan application. The loan log contains 16 required fields of information.
19. Section 1050.1176 of the RMLA Rules provides, pursuant to RMLA Section 2-4(c), that each licensee shall retain all records prepared or received in the course of its residential mortgage business for 36 months.

FACTUAL FINDINGS

20. NYM, with its corporate office located at 747 N. LaSalle, #400, Chicago, Illinois 60654 (“Office”), holds inactive Illinois residential mortgage license number MB.6760779 (“License”). The License was first issued on October 5, 2010 and lapsed without renewal on December 31, 2012. NYM conducts 100% residential mortgage brokering activities under the License. NYM primarily advertises and takes initial borrower information over the Internet and completes loan applications through telephone calls or other communications with borrowers.
21. The Department conducted a License status review of NYM. The Department’s records showed that NYM had not applied for renewal of its License which expired on December 31, 2012; nor had NYM applied for surrender of the License. The Department’s records further showed that NYM owes a \$4,500 late audit reporting fee, and was the subject of open investigation and examination issues.

22. The Department opened an investigation of NYM in calendar year 2012 based upon a consumer complaint that NYM had an unlicensed individual perform mortgage loan originator activities for a residential mortgage loan transaction for Illinois borrowers.
23. The Department's investigation substantiated the complaint and found further evidence of violations by NYM. As to the individual named in the complaint, the Department found evidence that this individual in the guise of a "mortgage specialist" or "assistant" for NYM performed mortgage loan originator activities for Illinois borrowers in connection with 17 loans. NYM's owner, who held an active mortgage loan originator license, was also found to have falsely signed-off on these 17 loans as having originated the loans.
24. The Department's investigation found falsification of loan logs by NYM involving loan originator entries for these 17 loans as part of 54 total citations of false and inconsistent reporting of loan originator names in two loan logs supplied by NYM. As part of these citations, NYM was found to have falsely or improperly attributed in its loan logs another 17 loans under the name of a mortgage loan originator, other than NYM's owner, for loans consumers said this individual did not originate, or for times when this individual was not employed by NYM and/or had an expired license credential. The name of NYM's owner was found repeatedly on loan entries for which interviewed consumers stated that this individual had no contact with them regarding their loans or only minimal contact not arising to mortgage loan originator activity. In addition to falsification of entries, NYM's loan logs were incomplete and lacking required entry fields of information.
25. The Department's investigation found evidence in the APLD that NYM has failed to make any loan entries for 30 loans, failed to timely enter another 15 loans, and falsified the name of the actual loan originator by using the name of NYM's owner for 4 of its loan entries.
26. The Department's investigation provided evidence that NYM failed to provide quality control over business activities under its License and to properly operate a full service office at its Office. This included NYM's failure to provide adequate and accessible loan origination staff to communicate with borrowers, failure to properly post signage, and failure to respond to two borrowers for a two to three week period who had attempted to contact NYM using posted contact information for the Office. The Department's investigation found in one instance that NYM misrepresented the costs of a loan to an Illinois borrower and refused to issue a refund of appraisal or credit fees.
27. The Department's investigation found under the name MORExchange that NYM falsely advertised on websites, posted signage at the Office, and misrepresented that it could conduct licensable activities when MORExchange was never licensed under RMLA.
28. During the course of the Department's investigation, the Department served request upon NYM for designated loan file documents for 31 loans. NYM failed to provide any of these requested loan documents.
29. In spring 2012, the Department also opened a regular examination of NYM for the period October 5, 2010 to March 31, 2012 ("Examination"). The Department's examinations scheduler made and documented multiple and repeated unsuccessful attempts to reach NYM through its contact information on file with the Department; this ultimately resulted in the Department creating an enforcement issue against NYM for obstructing the Examination.

LEGAL CONCLUSIONS

1. NYM has violated RMLA Sections 2-4 (a), (b), (d), (k), (s), (t), (u), and (z), 2-6(e), 3-2, 3-3, 3-4, 4-5 (i)(2), (11), (14), (15) and (17), 4-6, and 4-7; NYM has violated RRPDA Sections 70(c) and 72(4), and RMLA Rules Sections 1050.340, 1050.430, 1050.1140, 1050.1175, and 1050.1176.

NOW IT IS HEREBY ORDERED THAT,

1. The Department **REVOKES NYM's** Illinois residential mortgage license number MB.6760779 pursuant to Sections 4-1(h-1) and 4-5 (h) (1) of the Act.
2. The Department assesses a **FINE** against NYM pursuant to RMLA Sections 4-1(h-1) and 4-5(h) (5) in the total amount of \$50,000 for violating 25 separate provisions of RMLA, RRPDA, and RMLA Rules as assessed at \$1,000 per each initial violation and doubled for multiple violations committed thereof. The fine is payable by certified check or money order within thirty (30) days of the effective date of this Order to the:

**Department of Financial and Professional Regulation
Division of Banking
Attention: FISCAL DIVISION
320 W. Washington, 5th Floor
Springfield, Illinois 62786.**

ORDERED THIS 18TH DAY OF NOVEMBER, 2013

ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION
MANUEL FLORES, ACTING SECRETARY

DIVISION OF BANKING

You are hereby notified that this Order is an administrative decision. Pursuant to 205 ILCS 635/4-12 and 38 Ill. Adm. Code, 1050.1510 *et seq.* any party may file a request for a hearing on an administrative decision. The request for a hearing and \$500 hearing fee by certified check or money order shall be filed with the Department at 320 West Washington Street, 5th Floor, Springfield, IL 62786 within 10 days after the receipt of an administrative decision. The request for hearing must include an explicit admission, denial, or appropriate response to each allegation or issue contained in the administrative decision pursuant to 38 Ill. Adm. Code 1050.1570. A hearing shall be held on the administrative decision, by the Department of Financial and Professional Regulation, Division of Banking. Absent a request for a hearing, this Order shall constitute a final administrative Order subject to the Administrative Review Law [735 ILCS 5/3-101].