

STATE OF ILLINOIS

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

DIVISION OF BANKS AND REAL ESTATE

IN THE MATTER OF:)
)
First Capital Mortgage)
935 West Chestnut Street, Suite 600)
Chicago, Illinois 60622)

DBR No. 2004-BBTC-73

ORDER TO CEASE AND DESIST

The SECRETARY OF THE DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION (“Secretary”) hereby issues First Capital Mortgage this ORDER TO CEASE AND DESIST (“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. First Capital Mortgage, a business entity located at 935 West Chestnut Street, Suite 600, Chicago, Illinois has engaged in a marketing program designed to solicit prospective Illinois customers in a Mortgage Re-Financing Program, (the “Program”);
2. As part of the Program, First Capital Mortgage delivered or caused to be delivered certain solicitation materials to customers of an Illinois state-chartered bank;
3. These solicitation materials specifically make reference to and used 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; and

5. The Illinois state-chartered bank identified in the First Capital Mortgage Program solicitation materials did not consent to the use of its name.

CONCLUSIONS

BASED ON THE ABOVE FINDINGS, THE SECRETARY IS OF THE OPINION AND CONCLUDES that First Capital Mortgage has violated the provisions of Section 46 (d) of the Act.

ORDER

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

First Capital Mortgage 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.

IT IS HEREBY FURTHER ORDERED:

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 FIRST DAY OF DECEMBER, 2004.

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

DIVISION OF BANKS AND REAL ESTATE

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 Banks and Real Estate 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].