

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	FINDINGS OF FACT
American Home Improvement Lending, Inc.,)	CONCLUSIONS OF LAW
d/b/a American Funding Corporation,)	AND
4420 NW Urbandale Drive,)	CONSENT AGREEMENT
Urbandale, Iowa)	

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Mortgage Bankers Registration and Licensing Act, Neb. Rev. Stat. §§ 45-701 to 45-723 (Reissue 2004; Cum. Supp. 2006; Supp. 2007) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-710 (Supp. 2007), the DEPARTMENT has investigated the actions of American Home Improvement Lending, Inc., d/b/a American Funding Corporation, 4420 NW Urbandale Drive, Urbandale, Iowa (“AMERICAN”). As a result of such investigation, and being duly advised and informed in the matter, the Director and AMERICAN enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. On July 31, 2001, the DEPARTMENT issued a license to AMERICAN pursuant to the Act. AMERICAN has renewed its license annually on March 1st each year thereafter as required by the Act.
2. References to customers of AMERICAN will be by way of initials in order to protect the privacy of such individuals. AMERICAN knows or should know the identity of these customers. If AMERICAN is unable to ascertain the identity of these customers, the DEPARTMENT will provide a list of these customers upon receipt of a written request.

3. On April 9, 2007, the DEPARTMENT received a complaint from customers JG & EG regarding a loan that they obtained through AMERICAN. The complaint alleged that AMERICAN's loan originator, Shaun Calaway ("CALAWAY"), had made misrepresentations concerning a loan transaction that the complainants had with AMERICAN.

4. The DEPARTMENT forwarded the complaint to AMERICAN on April 11, 2007, and requested a response and a copy of the loan file. On May 1, 2007, the DEPARTMENT received a response from Michelle Pagano ("PAGANO") on behalf of AMERICAN. The DEPARTMENT received additional information from EG on May 30, 2007, and a supplemental response from AMERICAN on September 14, 2007.

5. AMERICAN acted as a mortgage broker in the JG & EG transaction. The loan was funded by Popular Financial Services, LLC ("POPULAR"), a Nebraska-licensed mortgage banker. The DEPARTMENT also obtained and reviewed POPULAR's loan file for this transaction.

6. CALAWAY, on behalf of AMERICAN, sent JG & EG a letter dated November 15, 2006, which purported to show a substantial monthly savings associated with refinancing their current mortgage. The letter presented two different scenarios. The first scenario presented a loan at an interest rate of 9.48% at 80% loan to value with no cash to the borrowers at closing. The second scenario was based upon a rate of 10.11% at 90% loan to value, consolidation of existing credit card debt, and approximately \$7,000 in cash to the borrowers at the closing. Both scenarios estimated a monthly payment; however, neither scenario disclosed the principal amount of the loan on which the payment was calculated.

7. JG & EG were interested in consolidating their credit card debt and receiving cash out as part of their closing and proceeded with the transaction with AMERICAN under the belief that they would receive approximately \$7,000.00 at closing. Furthermore, during the week of December 4, 2006, EG and CALAWAY had a telephone conversation regarding the loan in which she emphasized that a major reason for refinancing was the cash that she would receive at closing.

8. On December 18, 2006, EG & CALAWAY had a telephone conversation during which CALAWAY informed her that the appraisal had been lower than expected and that they could not receive the \$7,000.00 cash at closing; instead they might receive \$1,000.00 at closing. However, on December 19, 2006, CALAWAY informed EG that they would receive no cash at the closing.

9. PAGANO, in her May 1, 2007 response on behalf of AMERICAN stated:

Apparently, what [JG & EG] indicates is true, that they were unhappy with the loan and they expressed their concerns to Mr. Calaway but decided to go ahead and close the loan, knowing that they were getting no cash-out as previously thought.

10. CALAWAY enclosed a number of disclosures with his November 15, 2007 letter to JG & EG, including a Good Faith Estimate ("Initial GFE") and Truth-in-Lending Disclosure ("Initial TIL Disclosure"). He also included a Uniform Residential Mortgage Loan Application ("Form 1003"), and requested that JG & EG sign the enclosed forms. JG & EG signed the forms and dated them November 21, 2006, and faxed them to AMERICAN on November 22, 2006.

11. According to the Form 1003, the borrowers were requesting a loan in the amount of \$100,800.00. The purpose of the loan was listed as "debt consolidation/cash

out.” However, the Form 1003 also stated that the borrowers owed \$95,967.00 on their current mortgage making it impossible for them to receive \$7,000.00 in cash at closing.

12. Similarly, POPULAR’s loan file contains a loan summary prepared on November 21, 2006, which indicates that AMERICAN had requested a loan on behalf of JG & EG in the amount of \$102,000.00. According to POPULAR’s estimate contained on this summary, the borrowers would receive a total of \$2,140.40 back at closing either as cash or to consolidate other debt.

13. According to the Initial GFE, the interest rate on the loan was 9.48% which is consistent with scenario #1 in CALAWAY’s November 15, 2006 letter.

14. The closing on JG & EG’s loan occurred on December 22, 2006. JG & EG executed a promissory note in the amount of \$105,300.00 with an adjustable rate mortgage with an initial interest rate of 10.11 percent.

15. According to the Initial GFE, Initial TIL Disclosure, and Form 1003 that were signed on November 21, 2006, the borrowers had actually applied for a loan with a fixed interest rate. Furthermore, the Initial TIL Disclosure disclosed a payment schedule based upon the assumption that the loan had a fixed interest rate.

16. PAGANO, on behalf of AMERICAN specifically responded to this issue in her September 14, 2007 response, in which she stated:

As far as the explanation of the mortgage being an adjustable rate, this is what I can interrupt (sic). It appears it was our initial intention was (sic) to get a fixed rate for the [JG & EG] but based on the [JG & EG] past credit history a fixed rate was much higher than an ARM. Popular Finance the lender made the counter offer with the higher rate and it was adjustable based on their risk of the [JG & EG’s] past credit history. The [JG & EG] were informed of this and there was never any complaints regarding this in their letter. The 12/21/06 GFE actually indicates that the loan is an ARM.

17. The reference to a "12/21/06 GFE" in PAGANO's letter is an apparent reference to a second GFE ("December GFE") which appears in the loan file that AMERICAN provided to the DEPARTMENT. The December GFE contains a preparation date of December 21, 2006, but the copy in AMERICAN's file was not signed by the borrowers.

18. In addition to the December GFE, AMERICAN's file contained a second TIL Disclosure also prepared on December 21, 2006 ("December TIL Disclosure"). The December TIL Disclosure also was not signed by the borrowers. Moreover, the December TIL Disclosure was inaccurate as it failed to account for the fact that the loan had an adjustable rate mortgage and that its initial interest rate was less than the fully-indexed rate of the mortgage. Therefore, the annual percentage rate was substantially understated. Furthermore, the December TIL Disclosure was also inaccurate as it disclosed a fixed payment for 359 months despite the fact that the monthly payments would increase substantially after two years pursuant to the terms of the note.

19. EG provided a response to the DEPARTMENT on May 30, 2007. She specifically addressed the GFE and TIL Disclosures dated December 21, 2006 as follows:

The Good Faith Estimate that we have in our closing documents is just slightly off from the one that is in American Funding's file. The total Settlement charges on our document shows \$7563.16 in comparison to \$7678.19 on the one from American Funding. We also have different figures on our Truth-in-Lending Statement than the one you sent me.

20. EG provided the DEPARTMENT with copies of the TIL Disclosure and GFE that they had received at closing. The documents that the borrower had were not prepared by AMERICAN, but were prepared by POPULAR and the DEPARTMENT found signed copies of these documents in POPULAR's file. POPULAR's loan file did not have copies of the December TIL Disclosure or December GFE which were prepared by AMERICAN on December 21, 2006.

21. According to the Loan Summary in POPULAR's file which was prepared on November 21, 2006, AMERICAN submitted this loan as a 2/28 adjustable rate mortgage to POPULAR. This is in direct conflict with the Initial GFE and Initial Truth-in-Lending Disclosure which the borrower signed on November 21, 2006, which stated that the loan had a fixed interest rate.

22. According to the Initial GFE, AMERICAN was charging a \$1,008.00 loan origination fee and a \$1,008.00 mortgage broker fee. These fees totaled 2 percent of the loan amount of \$100,800.00. In addition, the Initial GFE disclosed a processing fee of \$850.00 which AMERICAN was intending to charge the borrowers. Therefore, AMERICAN estimated that it would receive a total fee of \$2,866.00 in fees from the borrowers. The Initial GFE did not provide an estimate of a yield spread premium.

23. According to the HUD-1 signed by the borrowers at closing, AMERICAN received a yield spread premium in the amount of \$2,106.00 from POPULAR.

24. A yield spread premium is a commission paid to the mortgage broker by the lender. A yield spread premium is required to be disclosed on a GFE. The United States Department of Housing and Urban Development ("HUD") has promulgated regulations illustrating examples of items that must be included on the GFE, including 24 CFR 3500, Appendix B, Example 13, which illustrates proper disclosure of a yield spread premium on the GFE. Moreover, HUD has issued two statements of policy, Statement of Policy 1999-1 and Statement of Policy 2001-1, which specifically address yield spread premiums. Both statements emphasize the importance of proper disclosure of the yield spread premium to the borrower on the GFE.

25. A yield spread premium is therefore a material condition of a mortgage loan and is required to be disclosed to the borrower on the GFE.

26. According to the HUD-1 signed at the closing, JG & EG paid AMERICAN a mortgage broker fee of \$3,640.54 and no processing fee. Therefore, AMERICAN charged \$774.54 more in fees than it had estimated on the GFE.

27. In her September 14, 2007 response, PAGANO on behalf of AMERICAN addressed this discrepancy as follows:

Since the loan amount was raised to \$105,300 the 2% to American Funding charge that was initially listed on the 11/21/2006 of \$2010.00 (sic) was raised to \$2106.00 which is \$96.00 (sic) more. On the (sic) 11/21/2006 GFE American Funding charged 2% fees plus a \$850.00 processing fee, which at the time of closing given the raise in the loan amount should have been \$2956.00. On the 12/21/06 GFE American Funding charged was (sic) \$3640.54. I am not sure why the loan officer raised his fees \$684.54 since he is not here to question.

28. When the DEPARTMENT compared AMERICAN's loan file to the loan file provided by POPULAR and the documents provided to the DEPARTMENT by JG & EG, the DEPARTMENT determined that AMERICAN's file had documents missing. AMERICAN's file did not have a copy of the letter that CALAWAY had sent to JG & EG describing the terms of the loan. Furthermore, when the DEPARTMENT reviewed POPULAR's file, the DEPARTMENT discovered that AMERICAN had faxed copies of JG & EG's W-2 forms to POPULAR. AMERICAN's file did not have copies of these documents.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-705 (Supp. 2007) provides, in part, that no person shall act as a mortgage banker or use the title mortgage banker in this state unless he, she, or it is licensed or registered with the DEPARTMENT.

2. Neb. Rev. Stat. § 45-706(1) (Supp. 2007) provides that the business of a mortgage banker shall be operated honestly, soundly, and efficiently in the public interest consistent with the purposes of the Act.

3. 4 CFR 3500.7 (2006) requires that a lender deliver a GFE to a potential borrower within three business days of accepting a loan application. If a mortgage broker is utilized in the transaction, the mortgage broker must deliver a GFE within 3 days after accepting an application. A yield spread premium is required to be disclosed on the GFE.

4. Neb. Rev. Stat. § 45-714(1)(c) (Supp. 2007) provides that a licensee, an officer, an employee, or an agent of the licensee shall not misrepresent or conceal material facts or make false promises intended to influence, persuade, or induce an applicant for a mortgage loan or a borrower to take a mortgage loan or cause or contribute to such a misrepresentation by any person acting on a licensee's or any other lender's behalf.

5. Neb. Rev. Stat. § 45-714(1)(l) (Supp. 2007) provides that a licensee may not assess any fees against the borrower other than those which are reasonable and necessary, including actual charges incurred in connection with the making, closing, disbursing, servicing, extending, transferring, or renewing of a loan, including, but not limited to, (i) prepayment charges, (ii) delinquency charges, (iii) premiums for hazard, private mortgage, disability, life, or title insurance, (iv) fees for escrow services, appraisal services, abstracting services, title services, surveys, inspections, credit reports, notary services, and recording of documents, (v) origination fees, (vi) interest on interest after default, and (vii) costs and charges incurred for determining qualification for the loan proceeds and disbursement of the loan proceeds.

6. Neb. Rev. Stat. § 45-711(8) (Supp. 2007) provides that the licensee shall maintain a copy of all documents and records relating to each mortgage loan and

application for a mortgage loan, including, but not limited to, loan applications, federal Truth in Lending Act statements, good faith estimates, appraisals, notes, rights of rescission, and mortgages or trust deeds for a period of two years after the date the mortgage loan is funded or the loan application is denied or withdrawn.

7. Neb. Rev. Stat. § 45-707(1)(l) (Cum. Supp. 2006) provides that if the Director, following an administrative hearing, finds that a licensee has failed to reasonably supervise any officer, employee, or agent to assure his or her compliance with the Act or with any state or federal law applicable to the mortgage banking business, the Director may suspend or revoke the license, or issue an administrative fine not exceeding five thousand dollars for each violation of the Act.

8. Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006) provides that if the Director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has knowingly committed any act prohibited by Section 45-707 or has otherwise violated the Act, the Director may order such person to pay an administrative fine not exceeding five thousand dollars for each separate violation plus the costs of investigation.

9. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to conclude that AMERICAN, through its agent CALAWAY, committed multiple violations of Neb. Rev. Stat. § 45-714(1)(c) (Supp. 2007) as it provided false and misleading information to JG & EG concerning the terms of the loan that AMERICAN originated on their behalf, including the ability to obtain cash out at closing, the presence of a yield spread premium, and the fact that the loan had an adjustable rate.

10. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to conclude that AMERICAN violated Neb. Rev. Stat. § 45-714(1)(l) (Supp.

2007) by charging fees that were not reasonable and necessary including an undisclosed yield spread premium and an unnecessary increase in the mortgage broker fee in the amount of \$684.54.

11. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to conclude that AMERICAN violated Neb. Rev. Stat. § 45-711(8) (Supp. 2007) by failing to properly maintain copies of all documents in its loan files.

12. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to conclude that AMERICAN violated Neb. Rev. Stat. § 45-707(1)(l) (Cum. Supp. 2006) by failing to properly supervise CALAWAY to insure his compliance with the Act.

13. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that proceedings could be commenced to revoke or suspend AMERICAN's license and/or an administrative fine in an amount of not more than five thousand dollars for each of the violations plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-717.01(2) (Cum. Supp. 2006).

14. Under the Act's statutory framework, the Director has the legal and equitable authority to fashion significant remedies.

15. It is in the best interest of AMERICAN and in the best interest of the public for AMERICAN and the DEPARTMENT to resolve the issues included herein.

CONSENT AGREEMENT

The DEPARTMENT and AMERICAN agree as follows:

Stipulations: In connection with this Consent Agreement, AMERICAN and the DEPARTMENT stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.

2. This Consent Agreement shall resolve all matters between the DEPARTMENT and AMERICAN in connection with the Findings of Fact listed above. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the DEPARTMENT.

3. This Consent Agreement shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Agreement.

AMERICAN further represents as follows:

1. AMERICAN is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.

2. AMERICAN is acting free from any duress or coercion of any kind or nature.

3. This Consent Agreement is executed to avoid further proceedings.

AMERICAN neither admits nor denies the allegations contained in the Findings of Fact and Conclusions of Law. AMERICAN's entry into this Agreement shall not bar or preclude AMERICAN from contesting or defending itself concerning any of the matters referenced herein in any Court or forum, other than the DEPARTMENT, nor does AMERICAN's entry into this Agreement constitute an admission against interest or its agreement that CALAWAY was acting within the scope of his agency concerning the JG & EG transaction.

IT IS THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Agreement, AMERICAN shall pay a fine of five thousand dollars (\$5,000.00) for its multiple violations of Neb. Rev. Stat. § 45-714(1)(c) (Supp. 2007) where it made material misrepresentations to JG & EG concerning their loan transaction.

2. Within ten (10) days after the effective date of this Consent Agreement, AMERICAN shall pay a fine of one thousand dollars (\$1,000.00) for the violation of Neb. Rev. Stat. § 45-714(1)(l) (Supp. 2007) where AMERICAN charged JG & EG an unreasonable fee in connection with a mortgage loan.

3. Within ten (10) days after the effective date of this Consent Agreement, AMERICAN shall pay a fine of one thousand dollars (\$1,000.00) for the violation of Neb. Rev. Stat. § 45-711(8) (Supp. 2007) where it failed to properly maintain all records related to JG & EG's loan file.

4. Within ten (10) days after the effective date of this Consent Agreement, AMERICAN shall pay a fine of one thousand dollars (\$1,000.00) for its violation of Neb. Rev. Stat. § 45-707(1)(l) (Cum. Supp. 2006) as it failed to supervise CALAWAY to properly ensure his compliance with the Act.

5. Within ten (10) days after the effective date of this Consent Agreement, AMERICAN shall pay the DEPARTMENT's investigation costs in the amount of five hundred dollars (\$500.00).

6. The total amount of the fine and investigation costs, eight thousand five hundred dollars (\$8,500.00) shall be payable in one check or money order to the DEPARTMENT.

7. Within twenty-one (21) days after the effective date of this Consent Agreement, AMERICAN shall submit a cashier's check to the DEPARTMENT in the amount of two thousand seven hundred ninety dollars and fifty-four cents (\$2,790.54) payable to customer JG & EG refunding the undisclosed yield spread premium and the excess fee collected from borrower funds at closing. The DEPARTMENT will forward the check to the customers and obtain a receipt from such customers.

8. In the event AMERICAN fails to comply with any of the provisions of this Consent Agreement, the DEPARTMENT may commence such action regarding AMERICAN as it deems necessary and appropriate in the public interest.

9. The effective date of this Consent Agreement shall be the date of the Director's signature.

DATED this 9th day of January, 2008.

**American Home Improvement Lending, Inc.,
d/b/a American Funding**

By: Colleen O. Pagano
Colleen O. Pagano, President

4420 NW Urbandale Drive
Urbandale, Iowa 50322
(515) 309-0603

DATED this 17th day of January, 2008.

**STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE**

By: John Munn
John Munn, Director

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