

IN THE MATTER OF:

**REBUILDING AMERICA, LLC,
SMART LOAN FUNDING, LLC d/b/a
MCLEAN LENDING, LLC,
ENRICO CORPORATION,
KIMBERLY D. WILLIAMS,
JAMES E. JOHNSON, and
KENNETH J. ENRICO**

Respondents

**BEFORE THE MARYLAND
COMMISSIONER OF
FINANCIAL REGULATION**

Case No.: CFR-FY2012-193

**SUMMARY ORDER TO CEASE
AND DESIST AND ORDER TO PRODUCE**

WHEREAS, the Maryland Department of Labor, Licensing and Regulation, Office of the Commissioner of Financial Regulation (the “Agency”) undertook an investigation into the mortgage loan originating activities of Rebuilding America, LLC, Smart Loan Funding, LLC, Enrico Corporation, Kimberly D. Williams, James E. Johnson, and Kenneth J. Enrico (collectively the “Respondents”); and

WHEREAS, as a result of that investigation, the Commissioner of Financial Regulation (the “Commissioner”) finds grounds to allege that Respondents violated various provisions of the Annotated Code of Maryland, Financial Institutions Article (“FI”), Title 11, Subtitle 6, (the Maryland Mortgage Originators Law, hereafter “MMOL”), and Real Property Article (“RP”), Title 7, Subtitle 4 (the Maryland Mortgage Fraud Protection Act,

hereinafter “MMFPA”) and the Commissioner finds that action under FI §§ 2-114 and 2-115 is appropriate.

NOW, THEREFORE, the Commissioner has determined, for the reasons set forth below, that the Respondents are in violation of Maryland law, and that it is in the public interest that the Respondents immediately cease and desist from originating, brokering, lending, mitigating, or engaging in any other activities involving Maryland mortgage loans or otherwise pertaining to the mortgage industry in Maryland.

1. Pursuant to FI § 11-601(q), “mortgage loan originator” is defined as follows:

(1) “Mortgage loan originator” means an individual who for compensation or gain, or in the expectation of compensation or gain:

- (i) Takes a loan application; or
- (ii) Offers or negotiates terms of a mortgage loan.

(2) “Mortgage loan originator” does not include an individual who:

- (i) Acts solely as a mortgage loan processor or underwriter;
- (ii) Performs only real estate brokerage activities and is licensed in accordance with Title 17 of the Business Occupations and Professions Article, unless the individual is compensated by a mortgage lender, a mortgage broker, or other mortgage loan originator or by any agent of a mortgage lender, mortgage broker, or other mortgage loan originator; or
- (iii) Is involved solely in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53d).

2. Pursuant to FI § 11-602(b), “[u]nless exempted from this subtitle under subsection (d) of this section, an individual may not engage in the business of a mortgage loan originator unless the individual holds a valid license issued under this subtitle.” In addition, pursuant to FI § 11-603(b), for a “licensee to act as a mortgage loan originator,” he/she must be, “acting within the scope of employment with . . . (1) [a] mortgage lender . . . or (2) [a] person who is exempt from licensing as a mortgage lender.”

3. Pursuant to FI § 11-614, “[i]f the Commissioner finds that the conduct of any other business conceals a violation or evasion of this subtitle or any rule or regulation adopted under this subtitle, or any law regulating mortgage lending or mortgage origination in the State, the Commissioner may issue a written order to a licensee to stop doing business: (1) At any place in which the other business is conducted or solicited; or (2) In association or conjunction with the other business.”

4. FI § 11-615 provides, in part, as follows:

(c) *Sanctions.* –

(1) The Commissioner may enforce the provisions of this subtitle, regulations adopted under this subtitle, and the applicable provisions of Title 12 of the Commercial Law Article by:

(i) Issuing an order:

1. To cease and desist from the violation and any further similar violations; and

2. Requiring the violator to take affirmative action to correct the violation, including the restitution of money or property to any person aggrieved by the violation; and

(ii) Imposing a civil penalty not exceeding \$5,000 for each violation.

(2) If a violator fails to comply with an order issued under paragraph (1)(i) of this subsection, the Commissioner may impose a civil penalty not exceeding \$5,000 for each violation from which the violator failed to cease and desist or for which the violator failed to take affirmative action to correct.

5. Pursuant to FI § 11-617, “[a]ny person who willfully violates the provisions of this subtitle is guilty of a felony and, on conviction, is subject to a fine not exceeding \$25,000 or imprisonment not exceeding 5 years or both.”

6. Pursuant to the Code of Maryland Regulations (“COMAR”) 09.03.09.04A, the Commissioner has promulgated a good faith and fair dealing requirement upon each and every mortgage loan originator, which states in part: “[a] mortgage originator has a duty of good faith and fair dealing in communications and transactions with a borrower.”

7. Pursuant to RP § 7-401(d), “mortgage fraud” is defined as follows:

(d) *Mortgage Fraud.*— “Mortgage fraud” means any action by a person made with the intent to defraud that involves:

- (1) Knowingly making any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;
- (2) Knowingly creating or producing a document for use during the mortgage lending process that contains a deliberate misstatement, misrepresentation, or omission with the intent that the document containing the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;
- (3) Knowingly using or facilitating the use of any deliberate misstatement, misrepresentation, or omission during the mortgage lending process with the intent that the misstatement, misrepresentation, or omission be relied on by a mortgage lender, borrower, or any other party to the mortgage lending process;
- (4) Receiving any proceeds or any other funds in connection with a mortgage closing that the person knows resulted from a violation of item (1), (2), or (3) of this section;
- (5) Conspiring to violate any of the provisions of item (1), (2), (3), or (4) of this section; or
- (6) Filing or causing to be filed in the land records in the county where a residential real property is located, any document relating to a mortgage loan that the person knows to contain a deliberate misstatement, misrepresentation, or omission.

8. Pursuant to RP § 7-401(e), “mortgage lending process” is defined as follows:

(e) *Mortgage lending process.*—

- (1) “Mortgage lending process” means the process by which a person seeks or obtains a mortgage loan.
- (2) “Mortgage lending process” includes:
 - (i) The solicitation, application, origination, negotiation, servicing, underwriting, signing, closing, and funding of a mortgage loan; and
 - (ii) The notarizing of any document in connection with a mortgage loan.

9. Pursuant to RP § 7-402, “[a] person may not commit mortgage fraud.” RP §

7-407 provides for the following penalties for violation of the MMFPA:

(a) *In general.*— Except as provided in subsections (b) and (c) of this section, a person who violates this subtitle is guilty of a felony and on conviction is subject to a fine not exceeding \$5,000 or imprisonment not exceeding 10 years or both.

(b) *Enhanced penalties – Vulnerable adult victim.*— If a violation involves a victim who is a vulnerable adult as defined under § 3-604(a) of the Criminal Law Article, a person who violates this subtitle is guilty of a felony and on conviction is subject to a fine not exceeding \$15,000 or imprisonment not exceeding 15 years or both.

(c) *Enhanced penalties – Pattern of mortgage fraud or conspiracy.*— If a violation involves engaging or participating in a pattern of mortgage fraud or a conspiracy or endeavor to engage or participate in a pattern of mortgage fraud, a person who violates this subtitle is guilty of a felony and on conviction is subject to a fine not exceeding \$100,000 or imprisonment not exceeding 20 years or both.

(d) *Restitution.*—

(1) A person convicted of violating this subtitle shall pay restitution to any person damaged by the violation.

(2) Restitution shall be ordered in addition to a fine or imprisonment or both.

(e) *Separate offenses.*— Each residential real property transaction subject to a violation of this subtitle constitutes a separate offense, and shall not merge with any other crimes set forth in the Criminal Law Article.

(f) *Applicability of § 5-106(b) of the Courts Article.*— A person who violates this subtitle is subject to § 5-106(b) of the Courts Article.

10. FI §§ 2-115(a) and (b) set forth the Commissioner's general authority to issue summary cease and desist orders, and to take additional actions for violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction (in addition to taking any other action permitted by law, and subject to a hearing or waiver of hearing), providing as follows:

(a) *Summary cease and desist orders.*— When the Commissioner determines that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, and that immediate action against the person is in the public interest, the Commissioner may in the Commissioner's discretion issue, without a prior hearing, a summary order directing the person to cease and desist from engaging in the activity, provided that the summary cease and desist order gives the person:

(1) Notice of the opportunity for a hearing before the Commissioner to determine whether the summary cease and desist order should be vacated, modified, or entered as final; and

(2) Notice that the summary cease and desist order will be entered as final if the person does not request a hearing within 15 days of receipt of the summary cease and desist order.

(b) *Other authorized actions for violations.*- When the Commissioner determines after notice and a hearing, unless the right to notice and a hearing is waived, that a person has engaged in an act or practice constituting a violation of a law, regulation, rule or order over which the Commissioner has jurisdiction, the Commissioner may in the Commissioner's discretion and in addition to taking any other action authorized by law:

(1) Issue a final cease and desist order against the person;

(2) Suspend or revoke the license of the person;

(3) Issue a penalty order against the person imposing a civil penalty up to the maximum amount of \$1,000 for a first violation and a maximum amount of \$5,000 for each subsequent violation; or

(4) Take any combination of the actions specified in this subsection.

11. FI §§ 2-114(a) and (b) set forth the Commissioner's general authority to order the production of information, as well as documents and records, while investigating potential violations of laws, regulations, rules, and orders over which the Commissioner has jurisdiction (which is in addition to the Commissioner's specific investigatory authority set forth in various other Maryland statutes and regulations). Thus, FI § 2-114(a)(2) provides that the Commissioner may "[r]equire ... a person to file a statement in writing, under oath or otherwise as the Commissioner determines, as to all the facts and circumstances concerning the matter to be investigated." Further, pursuant to FI § 2-114(b), "the Commissioner or an officer designated by the Commissioner may," among other things, "take evidence, and require the production of books, papers, correspondence, memoranda, and agreements, or other documents.

12. In the present matter, in approximately March 2012, the Agency began an investigation into the business activities of the Respondents. Pursuant to this investigation,

the Agency developed reasonable grounds to believe that the Respondents provided unlicensed loan origination and mortgage brokering services related to Maryland residential real property, and engaged in a mortgage fraud scheme resulting in theft/fraud, in violation of various provisions of Maryland Law, including, but not limited to, the MMOL, MMFPA and FI, Title 11, Subtitles 2 and 3. The legal and factual basis for this determination is described below.

13. The Agency's investigation determined that Kimberly D. Williams of Chantilly, Virginia, James E. Johnson of Alexandria, Virginia, and Kenneth J. Enrico of Massapequa, NJ engage in mortgage-related business activities in the State of Maryland involving Maryland residential real property.

14. More specifically, the Agency investigation revealed that the Respondents engaged in unlicensed mortgage origination and mortgage brokering activities in perpetration of a mortgage fraud scheme which involved the following:

a. That Respondents Kimberly D. Williams, James E. Johnson, and Kenneth J. Enrico are owners, directors, officers, managers, employees and/or agents of Respondents Rebuilding America LLC, Smart Loan Funding, LLC, McLean Lending, LLC, and Enrico Corporation. None of these entities are registered to do business in Maryland;

b. That in approximately December, 2011, [REDACTED] (Consumer A) entered into an agreement with the Respondents, to obtain a mortgage loan to refinance a piece of real property in Accokeek, Maryland;

d. That Consumer A, at the direction of the Respondents, completed a loan application for a mortgage refinance, and turned the application over to the Respondent;

e. That, subsequent to the submission of the loan application, the Respondents informed Consumer A that she was approved for the loan and that Consumer A was required to provide a \$6,500 deposit to be applied towards closing costs. Consumer A gave Respondent James E. Johnson a check made payable to Rebuilding America, LLC, for the amount of \$6,500, which the Respondents then cashed;

f. That Respondents never submitted Consumer A's loan application to any lender, nor did they ever provide any of the loan origination and/or mortgage brokering services for which they had contracted to provide to Consumer A;

g. That Respondents ceased have refused to refund such deposit;

h. That Respondents' activities discussed above constituted a theft/fraud upon Consumer A and that such theft/fraud was conducted through a mortgage fraud scheme;

i. That none of the Respondents are duly licensed under either Title 11, Subtitle 5 or Subtitle 6 of the Financial Institutions Article;

j. That by advertising and contracting with Maryland residents to perform loan origination and mortgage brokering services, and by taking Consumer A's loan application, Respondents acted as unlicensed mortgage brokers and/or mortgage originators; and

k. That the Respondent did not show a duty of good faith and fair dealing in their communications and transactions with Consumer A.

15. By fraudulently converting clients' money for personal gain in the perpetration of a mortgage fraud scheme, Respondents have thus engaged in mortgage origination activities without the proper licensure in violation of Title 11, Subtitle 6 of the

Financial Institutions Article, including, but not limited to, FI § 11-602. In addition, by knowingly making deliberate misstatements, misrepresentations, and/or omissions during the mortgage lending process with the intent to defraud his clients, the Respondents have committed mortgage fraud in violation of Title 7, Subtitle 4 of the Real Property Article, including, but not limited to, RP § 7-402.

WHEREFORE, having determined that immediate action is in the public interest, and pursuant to the aforementioned provisions of the Annotated Code of Maryland and associated regulations, it is, by the Maryland Commissioner of Financial Regulation, **HEREBY**

ORDERED that the Respondents shall immediately **CEASE** and **DESIST** from engaging in any of the following: any and all activities which constitute a mortgage lending business as defined in FI § 11-501(k), including acting as a mortgage broker as defined under FI § 11-501(i) or as a mortgage lender as defined under FI § 11-501(j); acting as a mortgage originator as defined in FI § 11-601(q); or in any other way acting as a mortgage lender, broker, or originator in the State of Maryland or with Maryland residents, either by acting directly, or by acting indirectly through other individuals or business entities; and it is

ORDERED that Respondents shall immediately **CEASE** and **DESIST** from violating the aforementioned statutory provisions of Maryland law, including, but not limited to the MMOL and MMFPA; and that the Respondents should be assessed statutory monetary penalties and ordered to provide restitution for such violations; and it is further

ORDERED that the Respondents shall provide to the Office of the Commissioner each of the following within 15 days of the receipt of this Summary Order to Cease and Desist:

- **The names, addresses, and phone numbers of all Maryland residents, homeowners and/or consumers** (hereinafter “Maryland residents”) who, at any time on or after January 1, 2007, retained or contracted with the Respondents, or contracted with another person with whom the Respondents worked or were affiliated, for the purpose (in whole or in part) of providing mortgage loan origination and/or mortgage brokering services for them or on their behalf related to Maryland residential real property.
- **Any and all documents under Respondents’ control or in their possession** pertaining to mortgage loan origination and/or mortgage brokering services and activities on or after January 1, 2007, related to Maryland residential real property, or otherwise involving Maryland consumers.
- **The names, addresses, and phone numbers of third-party individuals or business entities** (“third parties”) who, at any time on or after January 1, 2007, referred or agreed to refer consumers to the Respondents for the purpose (in whole or in part) of providing mortgage loan origination and/or mortgage brokering services related to Maryland residential real property.
- **The names, addresses, and phone numbers of third-parties** to whom, at any time on or after January 1, 2007, the Respondents referred or agreed to refer consumers for the purpose (in whole or in part) of providing mortgage loan origination and/or mortgage brokering services related to Maryland residential real property.
- **Any and all documents under Respondents’ control or in his possession pertaining to the third-parties** identified above, the content of which documents relates in any way to mortgage loan origination and/or mortgage brokering services to be performed on or after January 1, 2007, or to any associated referral arrangements, fees, or other forms of compensation.
- **Copies of all marketing and advertising materials** potentially reaching Maryland consumers on or after January 1, 2007, which the Respondents, or which third parties marketing directly or indirectly on Respondents’ behalf, use or have used to market or advertise Respondents’ mortgage loan origination and/or mortgage brokering services related to Maryland residential real property, including, but not limited to, copies of all printed marketing materials, internet advertisements, and radio and television advertisements.

FURTHERMORE,

THE RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI §§ 2-115, the Respondent is entitled to a hearing before the Commissioner to determine whether this Summary Order to Cease and Desist should be vacated, modified, or entered as a final order of the Commissioner; and further

THE RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI §§ 2-115, this Summary Order to Cease and Desist will be entered as a final order of the Commissioner if the Respondents do not request a hearing within 30 days of the receipt of this Summary Order to Cease and Desist; and further

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to Code of Maryland Regulations (“COMAR”) § 09.01.02.08, and State Government Article (“SG”) §§ 9-1607.1, 10-206.1, and 10-207, and in accordance with SG § 10-207(b)(4), individual Respondents are only permitted to request a hearing, and to appear at such hearing, on behalf of themselves, or through an attorney authorized to practice law in Maryland at Respondents’ own expense; and further,

RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to SG §§ 9-1607.1 and 10-206.1, and in accordance with SG § 10-207(b)(4), business entities are only permitted to request a hearing, and to appear at such hearing, through an attorney authorized to practice law in Maryland at Respondents’ own expense; and further,

THE RESPONDENTS ARE HEREBY NOTIFIED that any and all requests for a hearing in this matter must conform to the requirements stated above, must be made in the form of a signed, written request, and must be submitted to the following address:

Enforcement Unit, Administrator
Office of the Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202;

and further

THE RESPONDENTS ARE HEREBY NOTIFIED that, pursuant to FI §§ 2-115(b) and 11-615(c) as a result of a hearing, or of the Respondents’ failure to correctly

request a hearing in the manner described above, the Commissioner may, in the Commissioner's discretion, and in addition to taking any other action authorized by law, take the following actions: enter an Order making this Cease and Desist Order final; issue an order requiring that the Respondents refund all interest, costs, originator fees, broker fees, and/or other charges paid by Maryland consumers to the Respondents in conjunction with residential mortgage loans that were originated, brokered, or closed during periods when the Respondents did not hold the appropriate license under Title 11, Subtitle 6, of the Financial Institutions Article; issue a penalty order against the Respondents imposing a civil penalty up to \$5,000 for each violation of the MMOL; issue a penalty order against the Respondents imposing a civil penalty up to \$5,000 for each subsequent violation of these laws; or may take any combination of the aforementioned actions against the Respondents. Additionally, pursuant to RP § 7-404, as a result of the Respondents' failure to comply with requirements imposed under the MMFPA, the Commissioner may seek an injunction against the Respondents in Maryland Circuit Court, and may recover from the Respondents the costs of bringing such an action. Additionally, pursuant to RP § 7-404.1(c) the Commissioner may enter an order directing Respondents to take affirmative action to correct the violations described herein, including the restitution of money or property to any person aggrieved by the violation. The Commissioner may also refer this matter to the appropriate law enforcement agency for criminal prosecution for the violations described herein.

**MARYLAND COMMISSIONER OF
FINANCIAL REGULATION**

5/13/2013
Date


By: Keisha Whitehall Wolfe
Acting Deputy Commissioner