

UNITED STATES OF AMERICA
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING

File No. 2014-CFPB-0015

In the Matter of:

**Lighthouse Title, Inc.,
Respondent.**

CONSENT ORDER

The Consumer Financial Protection Bureau (“Bureau”) has reviewed the practices of Lighthouse Title, Inc. (“Respondent”) regarding the use of marketing services agreements, and has identified violations of Section 8(a) of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2607, and its implementing regulation, Regulation X, 12 C.F.R. Part 1024 (formerly codified at 24 C.F.R. Part 3500) (collectively, “RESPA”): Respondent entered the marketing services agreements as quid pro quo for the referral of business, and Respondent paid fees under the agreements that were set based on the amount of business that the other party had referred or that Respondent anticipated would be referred in the future. The Bureau issues this Consent Order (“Order”) under Sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5563, 5565.

I

JURISDICTION

1. The Bureau has jurisdiction over this matter under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565.

II

STIPULATION

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated September 24, 2014 (“Stipulation”), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Order by the Bureau under Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, without admitting or denying any findings of fact or conclusions of law, except that Respondent admits the facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

III

DEFINITIONS

3. The following definitions shall apply to this Order:
 - a. “Effective Date” means the date on which the Consent Order is issued.
 - b. “Enforcement Director” means the Assistant Director of the Office of Enforcement for the Consumer Financial Protection Bureau, or his/her delegatee.
 - c. For purposes of paragraphs 27 and 28, “Marketing Services Agreement” and “MSA” mean an agreement pursuant to which Respondent is to provide any

Thing of Value to a person in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan in exchange for marketing or advertising services. This includes agreements that allow Respondent to market or promote Respondent's services to such a person or its employees or agents, agreements that require a person or its employees or agents to endorse Respondent or Respondent's services, agreements pursuant to which such a person is to market Respondent's services to others, and agreements to include references to Respondent in any advertising placed by such a person. An agreement for mass advertising for consumer consumption pursuant to which Respondent is to pay a person who does not provide real estate settlement services to place an advertisement to the public (*e.g.*, an agreement to place an advertisement in a newspaper or magazine or on a television or radio station) is not a marketing services agreement unless the person endorses Respondent as part of the advertisement.

- d. "Related Consumer Action" means a private action by or on behalf of one or more consumers, or an enforcement action by another governmental entity, brought against Respondent based on substantially the same facts as described in Section IV of this Order.
- e. "Respondent" means Lighthouse Title, Inc., and its successors and assigns.
- f. "Thing of Value" means any payment, advance, funds, loan, service, or other consideration, including, without limitation, monies, things, discounts, salaries, commissions, fees, duplicate payments of a charge, stock, dividends, distribution of partnership profits, franchise royalties, credits representing

monies that may be paid at a future date, the opportunity to participate in a money-making program, retained or increased earnings, increased equity in a parent or subsidiary entity, special bank deposits or accounts, special or unusual banking terms, services of all types at special or free rates, sales or rentals at special prices or rates, lease or rental payments based in whole or in part on the amount of business referred, trips and payments of another person's expenses, or reduction in credit against an existing obligation.

IV

BUREAU FINDINGS AND CONCLUSIONS

The Bureau finds the following:

4. Respondent is a title insurance agency located in Holland, Michigan, that, among other activities, provides settlement services for federally related mortgage loans in Michigan.
5. RESPA Section 8(a) provides, “No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.” 12 U.S.C. § 2607(a).
6. Repeated payments “connected in any way with the volume or value of the business referred . . . [are] evidence that [the payments are] made pursuant to an agreement or understanding for the referral of business.” 12 C.F.R. § 1024.14(e).
7. “If the payment of a thing of value bears no reasonable relationship to the market value of the goods or services provided, then the excess is not for services or goods

actually performed or provided. These facts may be used as evidence of a violation of Section 8” 12 C.F.R. § 1024.14(g)(2).

8. A fair market value for goods or services is based only on the value of the goods or services in and of themselves and cannot include any consideration of the value of any referrals of business incident to or a part of real estate settlement services related to federally related mortgage loans. *Id.*
9. RESPA Section 8(c)(2) provides an exemption for “payment[s] to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.” 12 U.S.C. § 2607(c)(2); *see also* 12 C.F.R. § 1024.14(g)(1)(iv).
10. Payments to non-employees for referrals are prohibited by Section 8(a) and cannot be bona fide payments for goods actually furnished or services actually performed. 12 U.S.C. § 2607(a); 12 C.F.R. § 1024.14(b) (“A company may not pay any other company or the employees of any other company for the referral of settlement service business.”).

Findings and Conclusions Related to Respondent’s Use of Marketing Services Agreements

11. Since May 2009, Respondent entered a series of Marketing Services Agreements (“MSAs”) with various counterparties for the provision of marketing and advertising services.
12. Respondent entered and renewed these MSAs with the agreement or understanding that in return the counterparties would refer closings and title insurance business related to federally related mortgage loans to Respondent.

13. Respondent believed that if it did not enter MSAs with these counterparties that the counterparties would refer their business to other companies.
14. Respondent did not determine a fair market value for the services it allegedly received pursuant to the MSAs.
15. Respondent did not document how it determined the fair market value for the specific services allegedly received under the MSAs.
16. Respondent set the fees to be paid pursuant to the MSAs, in part, by considering how many referrals it had received from the counterparties and the revenue generated by those referrals.
17. In some cases, Respondent also set the fees, in part, by considering how much competing title insurance companies were willing to pay those same counterparties for marketing and advertising services.
18. Respondent did not diligently monitor its counterparties to ensure that it received the services for which it contracted.
19. The counterparties referred significantly more transactions to Respondent when they had MSAs with Respondent than when they did not. The differences are statistically significant and are not explained by seasonal or year-to-year fluctuations.
20. Entering a contract is a “thing of value” within the meaning of Section 8, even if the fees paid under that contract are fair market value for the goods or services provided.
21. Entering a contract with the agreement or understanding that in exchange the counterparty will refer settlement services related to federally related mortgage loans violates Section 8(a).

22. In addition, marketing fees set by considering the amount of business received from the counterparty are connected with the volume or value of the business referred, and therefore are evidence that the payments are made pursuant to an agreement or understanding for the referral of business.
23. The fees that Respondent paid were not a fair market value for the services for which Respondent contracted.
24. Thus, Respondent violated Section 8(a) by entering contracts—the Marketing Services Agreements—with the agreement or understanding that in exchange the counterparties would refer closings and title insurance business related to federally related mortgage loans to Respondent and by paying counterparties to those contracts fees with the agreement or understanding that in exchange the counterparties would refer closings and title insurance business related to federally related mortgage loans to Respondent.

V

Order to Cease and Desist and to Take Other Affirmative Action

IT IS ORDERED, under Sections 1053 and 1055 of the CFPB, that:

25. Respondent and its officers, agents, servants, and employees, who have actual notice of this Consent Order, whether acting directly or indirectly, must not violate Section 8 of RESPA.
26. Respondent must document all exchanges of things of value worth more than \$5.00 with persons in a position to refer business incident to or part of a real estate settlement service involving a federally related mortgage loan, including a description of all things of value exchanged and the reasons for the exchange, must

maintain such documentation for five years after the exchange, and must produce such documentation to the Bureau promptly upon request.

27. Respondent must terminate immediately any and all Marketing Services Agreements currently in effect.
28. Respondent must not enter into Marketing Services Agreements.

VI

Order to Pay Civil Money Penalties

IT IS FURTHER ORDERED that:

29. Under Section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$200,000 to the Bureau.
30. Within 10 days of the Effective Date, Respondent must pay the civil money penalty by wire transfer to the Bureau or to the Bureau's agent in compliance with the Bureau's wiring instructions.
31. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by Section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
32. Respondent must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondent may not:
 - a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or

- b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.
33. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action (Penalty Offset). If the court in any Related Consumer Action grants such a Penalty Offset, Respondent must, within 30 days after entry of a final order granting the Penalty Offset, notify the Bureau, and pay the amount of the Penalty Offset to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

VII

Order Related to Additional Monetary Provisions

IT IS FURTHER ORDERED that:

34. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.
35. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.

36. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.
37. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Enforcement Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

VIII

Order Related to Reporting Requirements

IT IS FURTHER ORDERED that:

38. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice at least 30 days before the development or as soon as practicable after the learning about the development, whichever is sooner.

IX**Order Related to Order Distribution and Acknowledgment**

IT IS FURTHER ORDERED that:

39. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who have responsibilities directly related to the subject matter of the Consent Order.
40. For five (5) years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section VIII, and future board members and executive officers, as well as to any managers, employees, service providers, or other agents and representatives who will have responsibilities directly related to the subject matter of the Consent Order before they assume their responsibilities.
41. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all board members, executive officers, managers, employees, or other agents or representatives of Respondent who receive a copy of this Consent Order under this Section. Respondent must request and must make diligent efforts to receive a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from any third parties who receive a copy of this Consent Order under this Section.

X

Order Related to Recordkeeping

IT IS FURTHER ORDERED that:

42. Respondent must create, for at least five (5) years from the Effective Date, the following business records: All documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau.
43. Respondent must retain the documents identified in Paragraph 42 for at least five (5) years.
44. Respondent must make the documents identified in Paragraph 42 available to the Bureau upon the Bureau's request.

XI

Order Related to Notices

IT IS FURTHER ORDERED that:

45. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re Lighthouse Title, Inc., File No. 2014-CFPB-0015*" and send them either:
 - a. By overnight courier (not the U.S. Postal Service), as follows:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1625 Eye Street, N.W.
Washington D.C. 20006; or

b. By first-class mail to:

Assistant Director for Enforcement
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington D.C. 20552

and contemporaneously by email to Enforcement_Compliance@cfpb.gov.

XII

Order Related to Compliance Monitoring

IT IS FURTHER ORDERED that:

46. Within 30 days of receipt of a written request from the Bureau, Respondent must submit additional compliance reports or other requested information, which must be made under penalty of perjury; provide sworn testimony; or produce documents.
47. Respondent must permit Bureau representatives to interview any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.
48. Nothing in this Consent Order will limit the Bureau's lawful use of compulsory process, under 12 C.F.R. § 1080.6.

XIII

Order Related to Modifications to Non-Material Requirements

IT IS FURTHER ORDERED that:

49. Respondent may seek a modification to non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Enforcement Director.

50. The Enforcement Director may, in his/her discretion, modify any non-material requirements of this Consent Order (*e.g.*, reasonable extensions of time and changes to reporting requirements) if he/she determines good cause justifies the modification. Any such modification by the Enforcement Director must be in writing.

XIV

Order Related to Administrative Provisions

IT IS FURTHER ORDERED that:

51. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondent, except as described in Paragraph 52.
52. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.
53. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under Section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not

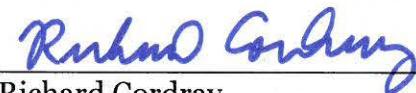
form, and may not be construed to form, a contract binding the Bureau or the United States.

54. This Consent Order will terminate five (5) years from the Effective Date or five (5) years from the most recent date that the Bureau initiates an action alleging any violation of the Consent Order by Respondent. If such action is dismissed or the relevant adjudicative body rules that Respondent did not violate any provision of the Consent Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Consent Order will terminate as though the action had never been filed. The Consent Order will remain effective and enforceable until such time, except to the extent that any provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.
55. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
56. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under section 1055(c) of the CFP Act, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.
57. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the

accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.

58. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing the Respondent, its officers, or its employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 25 th day of September, 2014.



Richard Cordray
Director
Consumer Financial Protection Bureau