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8  
9 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT  
10 OF THE STATE OF CALIFORNIA

11 In the Matter of: ) CFLL LICENSE No. 603-A922  
12 )  
13 THE COMMISSIONER OF BUSINESS )  
OVERSIGHT, ) ORDER TO DISCONTINUE VIOLATIONS  
14 ) UNDER FINANCIAL CODE SECTION 22712,  
Complainant, ) SUBDIVISION (a)  
15 )  
16 v. )  
17 )  
GOTMORTGAGE.COM, doing business as )  
18 PERFORMANCE CAPITAL GROUP, )  
19 Respondent. )  
20 )

21 TO: GOTMORTGAGE.COM, doing business as  
22 PERFORMANCE CAPITAL GROUP  
17220 Newhope Street, Suite 213  
23 Fountain Valley, CA 92708

24  
25 The Commissioner of Business Oversight (“Commissioner”) finds that GotMortgage.com,  
26 doing business as Performance Capital Group (“GotMortgage.com”), violated the provisions of the  
27 California Finance Lenders Law (Fin. Code, § 22000 et seq.) (“CFLL”) as follows:

- 28 1. At all relevant times herein, GotMortgage.com was a CFLL mortgage lender

1 with its principal place of business located at 17220 Newhope Street, Suite 213, Fountain Valley,  
2 California.

3 2. The Commissioner commenced a regulatory examination of the business in or about  
4 October 2013 that disclosed the following violations of the CFLL:

5 a. GotMortgage.com had overcharged the borrowers' recording fees in approximately 17  
6 of the 20 loan files reviewed during the examination in violation of Financial Code section 22336,  
7 subdivision (a). The Commissioner previously cited the company for overcharging borrowers'  
8 recording fees during the 2011 regulatory examination; and

9 b. GotMortgage.com had charged borrowers a "Lender Credit Overfund Refund" fee that  
10 was payable to the company in connection with some of its mortgage loans. The fee was not  
11 disclosed in the initial or revised Good Faith Estimates ("GFE") provided to borrowers. The  
12 Commissioner requested GotMortgage.com provide the Department with documentation to  
13 substantiate the fee, but the company failed to provide the requested documents. The Commissioner  
14 concluded that the "Lender Credit Overfund Refund" was an origination charge that should have  
15 been disclosed in the GFE under the section "Charges That Cannot Increase" as required by section  
16 22346 of the Financial Code and Title 12 Code of Federal Regulations section 1024.7 of the Real  
17 Estate Settlement Procedures Act ("RESPA").

18 3. As a result of the Department's findings, the Commissioner demanded  
19 GotMortgage.com make a global review of its loan files and make borrower refunds for both the  
20 recording fee overcharges and the "Lender Credit Overfund Refund" fees, but the company failed to  
21 complete the review and make the refunds as requested. The company also failed to provide the  
22 requested documentation to explain the "Lender Credit Overfund Refund" fees it charged borrowers  
23 in violation of Financial Code section 22709.

24 Financial Code section 22346 provides in relevant part:

25 Any licensee that violates any provision of any of the following federal  
26 acts or regulations violates this division:

27 (a) The federal Real Estate Settlement Procedures Act, as amended (12  
28 U.S.C. Sec. 2601 et seq.).

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1 Title 12 Code of Federal Regulations section 1024.7 provides in relevant part:

2 (a) Lender to provide. (1) Except as otherwise provided in paragraphs  
3 (a), (b), or (h) of this section, not later than 3 business days after a  
4 lender receives an application, or information sufficient to complete an  
5 application, the lender must provide the applicant with a GFE. In the  
6 case of dealer loans, the lender must either provide the GFE or ensure  
7 that the dealer provides the GFE.

8 (2) The lender must provide the GFE to the loan applicant by hand  
9 delivery, by placing it in the mail, or, if the applicant agrees, by fax,  
10 email, or other electronic means.

11 (e) Tolerances for amounts included on GFE. (1) Except as provided in  
12 paragraph (f) of this section, the actual charges at settlement may not  
13 exceed the amounts included on the GFE for:

14 (i) The origination charge;

15 (ii) While the borrower's interest rate is locked, the credit or charge for  
16 the interest rate chosen;

17 (iii) While the borrower's interest rate is locked, the adjusted  
18 origination charge; and

19 (iv) Transfer taxes.

20 (2) Except as provided in paragraph (f) of this section, the sum of the  
21 charges at settlement for the following services may not be greater than  
22 10 percent above the sum of the amounts included on the GFE:

23 (i) Lender-required settlement services, where the lender selects the  
24 third party settlement service provider;

25 (ii) Lender-required services, title services and required title insurance,  
26 and owner's title insurance, when the borrower uses a settlement  
27 service provider identified by the loan originator; and

28 (iii) Government recording charges.

(3) The amounts charged for all other settlement services included on  
the GFE may change at settlement.

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Financial Code section 22709 provides:

The commissioner may require the production for examination in this state of all books, records, and supporting data used by the licensee in the preparation of reports to the commissioner. The books, records, and supporting data shall be made available for examination by the commissioner in this state within 10 days after written demand.

Financial Code section 22712, subdivision (a), provides:

Whenever, in the opinion of the commissioner, any person is engaged in the business as a broker or finance lender, or a mortgage loan originator, as defined in this division, without a license from the commissioner, or any licensee is violating any provision of this division, the commissioner may order that person or licensee to desist and to refrain from engaging in the business or further violating this division. If, within 30 days after the order is served, a written request for a hearing is filed and no hearing is held within 30 days thereafter, the order is rescinded. For purposes of this section, "licensee" includes a mortgage loan originator.

NOW, BASED ON THE FOREGOING, AND GOOD CAUSE APPEARING, it is hereby ORDERED under the provisions of Financial Code section 22712, subdivision (a), that GotMortgage.com, doing business as Performance Capital Group, immediately discontinue the violations stated above and complete its global audit, make the borrower refunds, and provide the Commissioner with the requested documentation explaining the "Lender Credit Overfund Refund" it charged borrowers.

Dated: May 12, 2015  
Los Angeles, CA

JAN LYNN OWEN  
Commissioner of Business Oversight

By \_\_\_\_\_  
MARY ANN SMITH  
Deputy Commissioner  
Enforcement Division