

1 State of New Hampshire Banking Department

2 In re the Matter of:) Case No.: 09-060
))
3 State of New Hampshire Banking)
) Order to Show Cause
4 Department,)
))
5 Petitioner,)
) Consent Order
6 and)
))
7 First American Mortgage Trust (d/b/a)
))
8 NxtLoan.com), Shifra Nachama Polack,)
))
9 and Barry S. Polack,)
))
10 Respondents)
))
11)
))
12)

13 CONSENT ORDER

14 I. This Consent Order (hereinafter referred to as "Consent Order") is
15 entered between the New Hampshire Banking Department ("the
16 Department"), Respondent First American Mortgage Trust (d/b/a
17 NxtLoan.com) ("Respondent First American Mortgage"), Respondent Shifra
18 Nachama Polack ("Respondent S. Polack") and Respondent Barry S. Polack
19 ("Respondent B. Polack"), (all Respondents hereinafter referred to
20 collectively as "Respondents"). The Department and Respondents do
21 hereby stipulate and agree to the following:

- 22 1. The term "this action" shall refer to the Department's August
23 24, 2009 Staff Petition.
- 24 2. Respondent First American Mortgage is currently licensed as a
25 Mortgage Banker and was during the period referenced in this

1 action.

2 3. Respondent S. Polack is the 100% owner, Vice
3 President/Trustee and principal of Respondent First
4 American Mortgage, as that term is defined in RSA Chapter
5 397-A.

6 4. Respondent B. Polack is the President, Trustee, control
7 person for and principal of Respondent First American
8 Mortgage, as that term is defined in RSA Chapter 397-A.

9 5. Without constituting an admission by the above named
10 Respondents, of any allegations made or implied by this
11 action; and solely for the purpose of settlement of all
12 matters in this action, Respondents stipulate that at least
13 one consumer loan was co-brokered with an unlicensed entity
14 and at least two consumers were charged discount fees that
15 did not actually lower the rate of the loans.

16 6. In consideration of the mutual promises and representations
17 set forth herein, and in further consideration of the
18 Department's reliance upon the substantial accuracy and good
19 faith of the representations and submissions made to it by
20 Respondents, the Department and Respondents intending to be
21 legally bound herein, agree to the terms and conditions
22 below.

1 II. For purposes of amicably resolving and closing this action, each of
2 the above named Respondents and the Department do hereby agree to the
3 following terms and conditions:

4 1. Respondents agree that they have voluntarily entered into
5 this Consent Order without reliance upon any discussions
6 between the Department and Respondents, without promise of a
7 benefit of any kind (other than concessions contained in this
8 Consent Order), and without threats, force, intimidation, or
9 coercion of any kind. Respondents further acknowledge their
10 understanding of the nature of the allegations set forth in
11 this action, including the potential penalties provided by
12 law.

13 2. Respondents agree to waive any and all rights to a hearing
14 and appeal regarding the allegations set forth in this
15 action.

16 3. The Respondents agree that they will not deny the factual
17 basis for this Consent Order to which they have stipulated
18 above and will not give conflicting statements about such
19 facts or their involvement in the stipulated facts.

20 4. Respondents agree that all terms of this Consent Order are
21 contractual and none is a mere recital.

22 5. Respondent First American Mortgage represents and warrants
23 that it has all the necessary rights, powers and ability to
24 carry out all of the terms of this Consent Order which are
25 applicable to Respondent First American Mortgage.

- 1 6. Respondent S. Polack represents and warrants that she has all
2 the necessary rights, powers and ability to carry out all of
3 the terms of this Consent Order which are applicable to
4 Respondent S. Polack.
- 5 7. Respondent B. Polack represents and warrants that he has all
6 the necessary rights, powers and ability to carry out all of
7 the terms of this Consent Order which are applicable to
8 Respondent B. Polack.
- 9 8. Respondents represent and warrant that they can accomplish
10 the full relief contemplated and required herein and that all
11 parents, subsidiaries, affiliates, and successors necessary
12 to effectuate the full relief contemplated by this Consent
13 Order are parties to this Consent Order.
- 14 9. Respondents represent and warrant that they have obtained all
15 third-party approvals necessary to comply with the Consent
16 Order.
- 17 10. Respondents acknowledge that the Department is relying upon
18 the representations and warranties of Respondents, stated
19 herein, in making its determination in this matter.
- 20 11. Respondents each agree they are jointly and severally subject
21 to potential administrative penalties of at least \$12,500.00
22 each as a result of the allegations stated in this action.
- 23 12. The Department agrees to accept monies in lieu thereof in the
24 amount of \$5,000.00 in penalties from Respondent First
25 American Mortgage, which shall be paid contemporaneously with

1 the execution of this Consent Order.

2 13. Respondents further agree to pay the following consumer
3 restitution contemporaneously with the execution of this
4 Consent Order:

5 a. Consumer A: \$2,750.00;

6 b. Consumer B: \$1,278.90; and

7 c. Consumer C: \$1,053.55.

8 14. Respondents further agree, within sixty (60) days of the
9 effective date of this Consent Order, to develop and
10 implement a comprehensive information security program ("the
11 Program") as mandated by the Gramm-Leach-Bliley Act.
12 Respondents will hire at Respondents' own expense a third
13 party provider to develop and implement the Program if the
14 Respondents fail to do so within the sixty (60) days.
15 Respondents shall obtain the prior written approval of the
16 Bank Commissioner of the third party provider before the
17 third party provider is hired.

18 15. The provisions of this Consent Order shall not limit, estop,
19 or otherwise prevent the Department, or any federal or state
20 agency or department, from taking any other action affecting
21 Respondents.

22 16. Failure to comply with the terms of this Consent Order as
23 related to the underlying Order to Show Cause shall result in
24 imposition of further administrative penalties and possible
25 criminal liability.

1 17. This Consent Order shall become effective immediately upon
2 the date of its issuance.

3 18. The provisions of this Consent Order shall remain effective
4 and enforceable except to the extent that, and until such
5 time as, any provisions of this Consent Order shall have been
6 modified, terminated, suspended, or set aside by the Bank
7 Commissioner or upon an order of a court of competent
8 jurisdiction.

9 III. This Consent Order represents the resolution of and discharge of any
10 basis for any civil or administrative proceeding by the Department
11 against the above named Respondents for violations arising as a result
12 of or in connection with any actions or omissions by the above named
13 Respondents through the date of this Consent Order as it applies to
14 the allegations in this action; provided, however, this release does
15 not apply to facts not known by the Department or not otherwise
16 provided by the above named Respondents to the Department as of the
17 date of this Consent Order nor to actions for restitution under RSA
18 383:10-d. The Department expressly reserves its right to pursue any
19 administrative, civil or criminal action or remedy available to it
20 should the above named Respondents breach this Consent Order or in the
21 future violate the Act or rules and orders promulgated thereunder.

1 **WHEREFORE**, based on the foregoing, we have set our hands to this Agreement,
2 with it taking effect upon the signature of Peter C. Hildreth, Bank
3 Commissioner.

4
5 Recommended this 16th day of October, 2009 by

6
7 _____ /s/
8 Maryam Torben Desfosses, Hearings Examiner, Banking Department

9
10 Executed this 29th day of October, 2009 by

11
12 _____ /s/ _____, Barry S. Polack on
13 behalf of himself and as representative for Respondent First American
14 Mortgage Trust (d/b/a NxtLoan.com)

15 Executed this 29th day of October, 2009 by

16
17 _____ /s/
18 Shifra Nachama Polack

19 **SO ORDERED,**

20 Entered this 2nd day of November, 2009.

21
22
23 _____ /s/
24 Peter C. Hildreth,
25 Bank Commissioner