

Suffolk, SS.

In the Matter of
BOSTON COMMON MORTGAGE, INC.

Northboro, Massachusetts
Mortgage Broker License No. MB1916

CONSENT ORDER

WHEREAS, the Division through the Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in the business of a mortgage broker in Massachusetts pursuant to M.G.L. chapter 255E, section 2 and its implementing regulation at 209 C.M.R. 42.00 *et seq.*;

WHEREAS, Boston Common has its main office located at 300 West Main Street, Building A, Suite 6, Northboro, MA 01532;

WHEREAS, Boston Common is licensed by the Commissioner as a mortgage broker under M.G.L. chapter 255E, section 2. According to records maintained on file with the Division, and as recorded in the Nationwide Multi-State Licensing System & Registry (NMLS), the Commissioner issued a mortgage broker license, license number MB1916, to Boston Common to engage in the business of a mortgage broker on or about July 28, 2006;

WHEREAS, Derrick Szklarz is, and at all relevant times has been, the President and sole owner of Boston Common;

WHEREAS, Derrick Szklarz is licensed by the Commissioner as a mortgage loan originator under M.G.L. chapter 255F, section 2 and its implementing regulation 209 C.M.R. 41.00 *et seq.* According to records maintained on file with the Division, and as recorded in the NMLS, the Commissioner issued Derrick Szklarz a mortgage loan originator license, license number MLO8358, on or about September 23, 2008;

WHEREAS, on or about December 16, 2013, pursuant to the authority granted under M.G.L. chapter 255E, section 8, the Division commenced an examination of the books, accounts, papers, records and files maintained by Community to evaluate the Corporation's compliance with the laws and regulations applicable to the conduct of a mortgage broker in Massachusetts (2013 examination);

WHEREAS, on or about December 1, 2014, as a result of the findings from 2013 examination, Boston Common and the Commissioner entered into a Memorandum of Understanding wherein Boston Common agreed to address compliance deficiencies to include but not limited to: meet the minimum net worth requirement as contemplated by

209 C.M.R. 42.05(2)(a)(1); establish, implement, and maintain procedures to ensure Boston Common maintains and uses all loan documents in the Licensee's books and records in a manner sufficient to evidence compliance as contemplated by 209 C.M.R. 42.09(1) and 209 C.M.R. 48.03; and establish and implement, and maintain procedures to ensure Boston Common files its mortgage call reports and required financial statements within mandated timeframes as contemplated by 209 C.M.R. 42.09(a)(3);

WHEREAS, on or about September 12, 2017, pursuant to the authority granted under M.G.L. chapter 255E, section 8, the Division commenced an examination of the books, accounts, papers, records and files maintained by Boston Common to evaluate the Corporation's compliance with the laws and regulations applicable to the conduct of a mortgage broker in Massachusetts (2017 examination);

WHEREAS, on or about June 21, 2018, as a result of the findings from the 2017 examination, Boston Common and the Commissioner entered into a Stipulation and Consent to the Issuance of a Consent Order (Consent Order) wherein Boston Common agreed to address repeated compliance deficiencies to include but not limited to: meet the minimum net worth requirement as contemplated by 209 C.M.R. 42.05(2)(a)(1); establish, implement, and maintain procedures to ensure Boston Common maintains and uses all loan documents in the Licensee's books and records in a manner sufficient to evidence compliance as contemplated by 209 C.M.R. 42.09(1) and 209 C.M.R. 48.03; and establish and implement, and maintain procedures to ensure Boston Common files its mortgage call reports and required financial statements within mandated timeframes as contemplated by 209 C.M.R. 42.09(a)(3);

WHEREAS, on or about December 8, 2020, pursuant to the authority granted under M.G.L. chapter 255E, section 8, the Division commenced an examination of the books, accounts, papers,

records and files maintained by Boston Common to evaluate the Corporation's compliance with the laws and regulations applicable to the conduct of a mortgage broker in Massachusetts (2020 examination);

WHEREAS, the Report of Examination (the Report) issued pursuant to the Division's examination of Boston Common as of December 8, 2020 alleged substantial non-compliance with applicable state and federal statutes, rules, and regulations governing the conduct of those engaged in the business of a mortgage broker in Massachusetts;

WHEREAS, books and records reviewed by the Division's examiners revealed that Boston Common failed to demonstrate financial responsibility and maintain a net worth of not less than \$25,000.00;

WHEREAS, 209 C.M.R. 42.05(2)(a)(1) states in part that each applicant for a license as a mortgage broker shall demonstrate financial responsibility and maintain a net worth of not less than \$25,000.00;

WHEREAS, books and records reviewed by the Division's examiners revealed that Boston Common failed to notify the Commissioner, in writing within one (1) business day, of the occurrence of any change to its net worth resulting from market valuation or future loss liability or any other change which caused the net worth of Boston Common to fall below the requirements of 209 C.M.R. 42.05;

WHEREAS, books and records reviewed by the Division's examiners revealed that Boston Common failed to demonstrate that the licensee possesses the character, reputation, integrity, and fitness that would warrant the belief that the business will be operated in an honest, fair, sound, and efficient manner;

WHEREAS, 209 C.M.R. 42.05(2)(c) states in part that an Applicant for a license as a mortgage broker shall submit information demonstrating that the Applicant possesses the character, reputation, integrity and fitness to engage in the business of a mortgage broker in an honest, fair, sound and efficient manner;

WHEREAS, books and records reviewed by the Division's examiners revealed that Boston Common failed to notify the Commissioner, in writing within one (1) business day, of the occurrence of the existence of negative balances, exceeding \$100, in any operating account at any time;

WHEREAS, 209 C.M.R. 42.12(1)(j) states in part that a mortgage broker licensee shall notify the Commissioner immediately, in writing within one business day, of the existence of negative balances, exceeding \$100, in any operating account at any time or the return of checks, exceeding \$100, for insufficient funds, or any change to net worth resulting from market valuation or future loss liability or any other change which causes the net worth of the licensee to fall below the requirement of 209 C.M.R. 42.05;

WHEREAS, M.G.L. 255E, section 6, states in part, that the Commissioner may suspend or revoke a mortgage broker license if the Commissioner finds that any fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Commissioner in refusing to issue such license; and

WHEREAS, the parties now seek to resolve by mutual agreement the matters identified above.

ORDER

NOW COME the parties in the above-captioned matter, the Division and the Company, and stipulate and agree as follows:

1. Immediately upon the effective date of this Consent Order, Boston Common will refrain from operating as a mortgage loan broker, as that term is defined under M.G.L. chapter 255E, section 1.
2. Immediately upon the effective date of this Consent Order, the Division will update the license status of Boston Common in Massachusetts in the NMLS to “Terminated – Ordered to Surrender.”
3. Derrick Szklarz is prohibited from taking an ownership position in any entity licensed as a mortgage broker by the Division and from participating, in any manner, in the responsibilities or duties of a control person of such an entity at any time in the future for a period of three (3) years (Term). For purposes of this Consent Order, “control” shall be defined as the power, directly or indirectly, to direct the management or policies of a company, whether through ownership or securities, by contract, or otherwise.
4. To the extent that Boston Common wishes to resume or engage in business as a licensed mortgage broker, Boston Common shall be required to submit a completed application to obtain the relevant license from the Commissioner. The Commissioner shall have all of the discretion set forth within M.G.L. chapter 255E, section 4 and the Division’s implementing regulation 209 C.M.R. 42.00 *et seq.* in determining whether to issue a license to Boston Common

to conduct the licensed business; provided, however, that any such application shall not be denied because Boston Common entered into or agreed to the issuance of this Consent Order.

5. The provisions of this Consent Order shall not limit, estop, or otherwise prevent any other state agency or department from taking any other action affecting Boston Common.

6. In order to provide adequate time for Boston Common to resolve any outstanding matters prior to its execution, this Consent Order shall become effective on July 26, 2021 (“Effective Date”).

7. In accordance with the terms of the Consent Agreement entered by Boston Common and the Commissioner, Boston Common has waived all rights of appeal that he may have relative to this Consent Order or any of its provisions.

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

9. This Consent Order and the Consent Agreement are the complete documents representing the resolution of this matter. There are no other agreements, promises, representations, or warranties other than those set forth in this Consent Order and the Consent Agreement.

BY ORDER AND DIRECTION OF THE COMMISSIONER OF BANKS:

Dated at Boston, Massachusetts, this 2nd day of June, 2021.

By:

Mary L. Gallagher
Commissioner of Banks