

Suffolk, SS.

In the Matter of
Mutual of Omaha Mortgage, Inc.
San Diego, CA
NMLS No. MC1025894

1. The Division of Banks (“Division”), through the Commissioner, has jurisdiction over the licensing and regulation of persons and entities engaged in the business of a mortgage lender and mortgage broker in Massachusetts pursuant to M.G.L. chapter 255E, section 2.
2. Mutual of Omaha is, and at all relevant times, has been a foreign company conducting business in the Commonwealth of Massachusetts. The main office of Mutual of Omaha is located at 3131 Camino Del Rio North, Suite 3100, San Diego, California 92108.

3. Mutual of Omaha is licensed by the Commissioner as a mortgage lender and mortgage broker under M.G.L. chapter 255E, section 2. According to records maintained on file with the Division, the Commissioner initially issued mortgage company license number MC1025894 to Mutual of Omaha, covering both mortgage broker and mortgage lender license types, on or about November 12, 2019.
4. On or about November 10, 2021, the Division was forwarded a copy of a solicitation received by at least one Massachusetts consumer from Mutual of Omaha. A copy of the solicitation is attached as Exhibit 1.
5. M.G.L. chapter 93A, section 2(a) states, “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”
6. Regulation 940 C.M.R. 8.06(1) states, “It is an unfair or deceptive act or practice for a mortgage broker or lender to make any representation or statement of fact in an advertisement if the representation or statement is false or misleading or has the tendency or capacity to be misleading, or if the mortgage broker or lender does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based.”
7. Regulation 209 CMR 42.12A(9) states, “It is a prohibited act or practice for a mortgage broker or mortgage lender to make false promises to influence, persuade, or induce a consumer to sign a mortgage loan application or mortgage loan documents.”
8. The “Adverse Market Refinance Fee” was a fee charged by Fannie Mae and Freddie Mac to consumers who refinanced their non-exempt, conforming mortgages between

December 1, 2020 and August 1, 2021. It was a one-time fee paid as a part of the refinance.

9. The solicitation references a “Notice of Fee Removal” with the current month and year above the current lender of the consumer. On the opposite side from the current lender information, the solicitation provides a notice date of November 4, 2021, a notice number, the “proposed lender” of Mutual of Omaha Mortgage along with the NMLS number of Mutual of Omaha Mortgage. The body of the solicitation notified the consumer that the loan with the consumer’s current lender has been identified as benefitting from the removal of the “Adverse Market Fee.” The solicitation continued to state, “The removal of this fee will generate economic benefits for those, like you, with a conventional mortgage.” This statement is misleading as the removal of the fee would only affect a consumer if they were to refinance their mortgage. Also, unless they had refinanced between December 1, 2020 and August 1, 2021, the consumer had never paid the fee.
10. Under the heading “**What You Need to Do**” (emphasis original) the solicitation instructs the consumer to provide the notice number information to the “Fee Removal Help Desk” in order “[t]o get the necessary information”. The solicitation misleadingly implies that the consumer’s account already includes the “Adverse Market Fee” and that the consumer would need to take active steps in order to have the fee removed.
11. The body of the solicitation further informs the consumer that, in order to “get the necessary information”, they would have to call a certain telephone number before November 19, 2021. This is misleading as the fee has already been removed for all

refinances after August 1, 2021, more than three months before the issuance of the solicitation, and was therefore not time sensitive as suggested by the solicitation.

12. Despite being entitled “**UNDERSTANDING THE ADVERSE MARKET FEE**”

(emphasis original), the body of the solicitation failed to adequately explain or contextualize the “Adverse Market Fee” or explain that the consumer was required to enter into a refinance program to avail themselves of the removal of the “Adverse Market Fee”.

13. Including the name of the consumer’s current lender at the top left of the solicitation, where customarily the sender of a business letter includes the sender’s information, could confuse a consumer and make the consumer believe the solicitation in fact a notice coming from their current lender.

14. The language and references in the notice collectively create the appearance that the consumer automatically qualified for a lower monthly payment and failed to explain or describe the “Adverse Market Fee” in the appropriate context. Although the bottom of the solicitation identified that this was a third-party offer for a refinance program, not everyone who received the letter would qualify for the program; furthermore, eligibility must be confirmed in order to receive a lower payment and interest rate, but such language was in a font size that is significantly smaller than that of the body of the solicitation and is located in a non-prominent location at the bottom of the solicitation.

CONCLUSIONS OF LAW

15. Based upon the information contained in paragraphs 1 through 14 of this Directive, the Division has reason to believe that Mutual of Omaha has failed to demonstrate and maintain the character, reputation, integrity, and general fitness that would warrant the

belief that the mortgage lender and mortgage broker business will be operated honestly, fairly, and soundly in the public interest in violation of M.G.L. chapter 255E, section 4 and the Division's regulations 209 C.M.R. 42.03(2)(c) and 209 C.M.R. 42.06(2)(b)(2).

16. Based upon the information contained in paragraphs 1 through 14 of this Directive, by mailing Massachusetts consumers a solicitation containing false or misleading language or language that had the tendency to be false or misleading, including language that could lead the reader to believe that they automatically qualified for removal of the Adverse Market Fee, Mutual of Omaha has violated M.G.L. chapter 93A, section 2(a), and the 940 C.M.R. 8.06(1).

17. Based upon the information contained in paragraphs 1 through 14, by mailing Massachusetts consumers a solicitation containing false promises to influence, persuade, or induce a consumer to sign a mortgage loan application, including references that the loan with the consumer's current lender has been identified as benefitting from the removal of the "Adverse Market Fee"; that "The removal of this fee will generate economic benefits for those, like you, with a conventional mortgage"; and that, in order to "get the necessary information", the consumer would have to call a certain telephone number before November 19, 2021, Mutual of Omaha has violated the Division's regulation 209 C.M.R. 42.12A(9).

ORDER TO CEASE AND DESIST AND NOTICE OF ADMINISTRATIVE PENALTY

After taking into consideration the FINDINGS OF FACT and CONCLUSIONS OF LAW stated herein, it is hereby directed:

18. ORDERED that Mutual of Omaha shall cease mailing any solicitations to Massachusetts consumers that contain any representations or statements that could be considered false, misleading, or have the tendency or capacity to be misleading including but not limited to:
- a. Solicitations that contain language that could lead the reader to believe that the consumer automatically qualified for removal of the Adverse Market Fee; and
 - b. Solicitations that have the tendency to make false promises to influence, persuade, or induce a consumer to sign a mortgage loan application.
19. IT IS FURTHER ORDERED that within twenty (20) days of the effective date of this Order, Mutual of Omaha shall submit a payment of twenty-five thousand dollars (\$25,000.00) in satisfaction of an administrative penalty collected in consideration of the deceptive advertising as evidenced by the solicitation. Such administrative penalty is imposed pursuant to Massachusetts General Laws chapter 255E, section 11. The payment shall be remitted pursuant to this Paragraph of the Order for the amount due, payable to the "Commonwealth of Massachusetts," to the Office of the Commissioner of Banks, Attn: Enforcement and Investigation Unit, 1000 Washington Street, 10th Floor, Boston, Massachusetts 02118-6400.
20. IT IS FURTHER ORDERED that within five (5) days of the effective date of this Order, Mutual of Omaha shall submit to the Commissioner a detailed record, prepared as of the date of submission, of all Massachusetts consumers to whom the Solicitation was distributed and a loan list of all applications taken by Mutual of Omaha from October 15, 2021 to the effective date of this Order. The records to be produced shall include the consumers' names and addresses.

21. IT IS FURTHER ORDERED that Mutual of Omaha shall review and revise, as necessary, the Company's policies and procedures to ensure that individuals performing on behalf of the Company neither act, nor represent themselves, as a different company.
22. IT IS FURTHER ORDERED that a copy of each advertisement used by Mutual of Omaha and its sponsored Mortgage Loan Originators shall be retained in the Company's books and records and shall be made available to the Division at its examinations/inspections of Mutual of Omaha.
23. IT IS FURTHER ORDERED that Mutual of Omaha shall revise its advertising practices and procedures to ensure that all solicitations and advertising materials used by the Company and its sponsored Mortgage Loan Originators do not contain any representations or statements that could be considered false, misleading, or have the tendency or capacity to be misleading.
24. IT IS FURTHER ORDERED that Mutual of Omaha shall take all necessary steps to ensure that the solicitation or any similar solicitation is not published or distributed to consumers in Massachusetts.
25. IT IS FURTHER ORDERED that Mutual of Omaha shall implement, establish, and maintain a system of internal controls to monitor the Company's compliance with the laws and regulations applicable to advertising practices including, but not limited to, the 209 C.M.R. 42.12A and 940 C.M.R. 8.00 *et.seq.*.

NOTICE OF RIGHT TO REQUEST A HEARING

26. Mutual of Omaha or its authorized representative(s) have the right to request a hearing to contest the allegations described herein. In order to request a hearing, Mutual of Omaha or its authorized representative is required to file a notice of claim for an Adjudicatory

Proceeding within thirty (30) days of the effective date of this Cease Directive, pursuant to the Standard Adjudicatory Rules of Practices and Procedures, 801 CMR 1.01(6)(b) and (c).

27. A hearing will be scheduled on this matter only upon receipt of a written request for such a hearing from Mutual of Omaha or its authorized representative(s) within thirty (30) days of service of this Cease Directive upon Mutual of Omaha or its authorized representative. Mutual of Omaha's failure to request a hearing within this thirty (30) day period or failure to appear at a scheduled hearing date shall be deemed consent to the issuance of the Cease Directive.

28. The hearing shall be fixed for a date not more than thirty (30) days after the date of service upon the Commissioner of the request for hearing and will be conducted according to M.G.L. chapter 30A, sections 10 and 11, and the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 and 1.03.

BY ORDER AND DIRECTION OF THE COMMISSIONER OF BANKS.

Dated at Boston, Massachusetts, this 4th day of January, 2022

/s/ Cynthia A. Begin

Cynthia A. Begin, Esq.
First Deputy Commissioner
Commissioner of Banks