

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2014 FEB 25 P 12:48

In Re: Sure Advance, LLC

) CIVIL DIVISION

) Docket No. 102-2-146 Wncv

FILED

ASSURANCE OF DISCONTINUANCE

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Sure Advance, LLC (“Sure Advance” or “Respondent”), hereby enter into this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

Background

Sure Advance

1. Sure Advance, LLC d/b/a/ SureAdvance.com is a Delaware limited liability company with its primary place of business at 750 Shipyard Drive, Suite 213, Wilmington, DE 19801. From 2010 through August 2013, Respondent engaged in the business of making high interest consumer loans.

Regulatory Framework

2. Pursuant to 9 V.S.A. § 2481w, it is an unfair and deceptive act and practice in commerce for a lender to solicit or make consumer loans unless the lender is in compliance with all provisions of 8 V.S.A. Chapter 73.
3. Chapter 73 of Title 8 requires all lenders to obtain a state license from the Department of Financial Regulation. *See* 8 V.S.A. § 2201.
4. Any loan made in knowing and willful violation of the requirement that an entity engaged in the business of making loans of money or credit without first obtaining a

license shall be void and the lender shall have no right to collect or receive any principal, interest, or charges. 8 V.S.A. § 2215(d)(1).

5. A lender which makes a loan made without a license, but without a finding of knowing and willful violation of the requirement of a license, shall have no right to collect or receive any interest or charges whatsoever, but shall have a right to collect and receive principal. 8 V.S.A. § 2215(d)(1).
6. Chapter 4 of Title 9 limits the amount of interest and other consideration a lender may charge to between 12-24% per annum, depending on the type of loan. *See* 9 V.S.A. § 41a, 8 V.S.A. § 2233.
7. A lender that charges interest plus other consideration in excess of the allowable rates forfeits the right to collect any interest or charges whatsoever, and is entitled to collect only half the principal. *See* 9 V.S.A. § 50(b).
8. Violations of the Consumer Protection Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1). Each day that a violation continues is a separate violation.

Respondent's Consumer Loan Practices

9. Sure Advance owns and operated the website www.sureadvance.com, by which it previously marketed loans to consumers in various states, including to consumers in Vermont.
10. In order to fund and ensure repayment of its loans, Sure Advance obtained access to Vermont consumers' bank accounts. Loans were electronically funded by crediting a borrower's account. Respondent then electronically debited that same account, often using a third-party payment processor in order to collect on the loan.

11. Sure Advance has offered loans to Vermont consumers in amounts that range from \$200-\$1,000. The annual percentage rate of Respondent's loans exceeded the interest rates allowed by Vermont law, and typically exceeded 300% per annum.
12. Since 2010, Sure Advance has funded 296 loans to Vermont consumers, for a total of \$143,950 in principal funded.
13. To date, Respondent has collected a total of \$288,182.86 from Vermont consumers (representing \$144,232.86 in interest and fees collected).
14. As of August 7, 2013, Sure Advance no longer engages in consumer lending nationwide, and as of December 31, 2013, has ceased all operations, including its consumer loan business.

The State's Allegations

15. The Vermont Attorney General's Office alleges the following violations of the Consumer Protection Act and Vermont law:
 - a. The making of loans to Vermont consumers without a state license under Title 8, Chapter 73 violated 9 V.S.A. § 2481w(b); and
 - b. The charging of interest and other compensation in excess of Vermont's legal rates violated 9 V.S.A. § 41a.
16. The State of Vermont alleges that the above behavior constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

Assurances and Relief

In lieu of instituting an action or litigation, the Attorney General and Respondent are willing to accept this AOD pursuant to 9 V.S.A. § 2459, and the parties agree as follows:

Injunctive Relief

17. Prior to doing any business in Vermont involving a loan as defined in Vermont law, Sure Advance shall comply with the following sections of the Vermont Statutes Annotated: Title 8, Chapter 73 (Licensed Lenders statutes); Title 9, Chapter 4 (Interest statutes); and Title 9, Chapter 63 (Consumer Protection statutes).
18. Sure Advance shall cease offering, funding, or collecting upon any loan to Vermont consumers, unless and until Respondent has obtained the proper state license under Title 8, Chapter 73, and has complied with all other lending requirements.
19. Sure Advance shall cancel all current, delinquent, defaulted, charged-off, or outstanding lending transactions which it entered into with Vermont consumers, and shall not undertake any efforts to collect on these transactions. Sure Advance shall not contract with any third-party debt collectors regarding these transactions, nor sell, or transfer, any obligations arguably due based upon these transactions. Sure Advance shall not make any negative reports to any credit bureau, check clearinghouse, or other related service with respect to these transactions. If any negative reports to any such credit bureau or related service with respect to a Vermont consumer have been made, the responsible party for Sure Advance shall, within thirty (30) days of the entry of this AOD, request that those negative references be removed.
20. If any consumer complains to the Attorney General or to Sure Advance about a loan transaction entered into with Respondent, Sure Advance shall review the complaint within ten days of receipt, and take actions consistent with this AOD, including cancelling any outstanding loan, removing any negative credit reporting, and

refunding all interest and fees. If Sure Advance disputes any complaint, Respondent shall send a written explanation to the consumer, and shall include a statement that the consumer may contact the Consumer Assistance Program at (802) 656-3183 or consumer@uvm.edu, if the consumer disagrees.

Payments to Consumers

21. Within 30 days of signing this AOD, Sure Advance shall repay all interest and fees that it collected from Vermont consumers, for a total of \$144,232.86 paid to 296 consumers. Sure Advance shall send a letter from the Attorney General (Exhibit A), and the consumer's payment, in an envelope provided by the Attorney General's Office. Each consumer check shall have a deposit deadline of 90 days from the date of issuance.
22. Within 35 days of signing this AOD, Sure Advance shall send to the Attorney General's Office a list (in electronic Excel spreadsheet) of all consumers to whom payments were made, including the consumer name (which list shall set out the first and last names of the consumers in distinct fields or columns), contact information, and the amount paid.
23. In the event that Sure Advance is not able to locate consumers to whom any payments are owed after all reasonable efforts to do so have been taken and no later than 120 days after signing this AOD, Respondent shall mail to the Attorney General's Office:
 - a. A single check, payable to "Vermont State Treasurer" in the total dollar amount of all outstanding amounts and all checks that were returned as

undeliverable or that went uncashed, to be treated as unclaimed funds, under Vermont's unclaimed property statute, Title 17, Chapter 14;

- b. A list, in electronic Excel format, of the consumers whose checks were returned or were not cashed (which list shall set out the first and last names of the consumers in distinct fields or columns), and for each such consumer, the last known address and dollar amount due; and
- c. The company's corporate address and federal tax identification number.

Payment to the State of Vermont

- 24. Within 30 days of signing this AOD, Sure Advance shall pay to the State of Vermont \$15,000 in civil penalties and costs. Payment shall be made to the "State of Vermont" and shall be sent to the Vermont Attorney General's Office at the following address: Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

Other Terms

- 25. The parties have consented to the entry of this AOD for the purpose of settlement only and agree that it does not constitute an admission of the violation of any law, rule, or regulation.
- 26. Nothing in this AOD shall be construed to limit Sure Advance's ability or right to assert any legal, factual, or equitable defenses, including jurisdictional defenses, in any pending or future proceeding of any kind, except with respect to enforcement of this AOD by the Attorney General.

27. Neither Sure Advance nor anyone acting on its behalf shall state or infer that the Vermont Attorney General's Office approves any business practices of Respondent.
28. This AOD and all terms therein shall be binding on Sure Advance, all of its affiliate companies doing business in Vermont, its officers, directors, owners, managers, successors and assigns. All current and future officers and directors of Sure Advance further agree to be personally bound by ¶¶ 17-18 of this AOD in both their official and individual capacity, and shall not undertake any role, personally or with any other company or entity (past, present, or future), in making loans in Vermont unless they comply with ¶¶ 17-18 of this AOD.
29. The undersigned authorized agent of Sure Advance shall promptly take reasonable steps to ensure that copies of this document are provided to all officers, directors, owners and managers of the company, and all of its affiliate companies doing business in Vermont.
30. This AOD resolves all existing claims the State of Vermont may have against Sure Advance stemming from the conduct described in this document.
31. Nothing in this AOD waives the right of any consumer to pursue claims stemming from the conduct described in this document; excepting, however, any consumer who accepts payment under ¶ 21 shall waive any such claim against Sure Advance.
32. The Superior Court of the State of Vermont, Washington Unit, shall have Jurisdiction over this AOD and the parties hereto for the purpose of enabling any of the parties hereto to apply to this Court at any time for orders and directions as may be necessary or appropriate to carry out or construe this AOD, to modify or terminate

any of its provisions, to enforce compliance, and to punish violations of its provisions.

33. All notice related to this AOD shall be given to Sure Advance at:

750 Shipyard Drive, Suite 213, Wilmington, DE 19801

With a copy to:

Duane Morris, LLP, attn.: Gary Lipkin, Esq., 222 Delaware Avenue, Suite 1600,
Wilmington, DE 19801.

34. Sure Advance shall notify the Attorney General of any change of business name or address within 20 business days.

Violations and Stipulated Penalties

35. If the Superior Court of the State of Vermont, Washington Unit enters an order finding Sure Advance to be in violation of this AOD, then the parties agree that penalties to be assessed by the Court for each act in violation of this Assurance of Discontinuance shall be \$10,000. For purposes of this paragraph, the term "each act" shall mean: (a) each instance of soliciting, making, or collecting a loan in Vermont without a state license; and (b) each instance of charging an interest rate above the legal rates allowed by 9 V.S.A. § 41a.

36. In the event that the Attorney General alleges that Respondent has violated any of the terms of this AOD, then the parties agree that the Attorney General shall be entitled to bring any other matters to the Court's attention involving potential violations of law by Respondent, and that the Attorney General shall not have waived any of its rights to assert and prove any violations of law by Respondent.

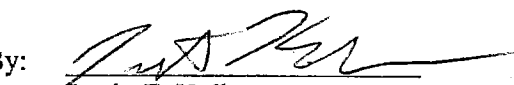
*** SIGNATURES APPEAR ON NEXT PAGE ***

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

DATED at Montpelier, Vermont this 25th day of February, 2014.

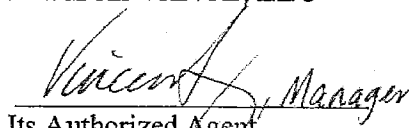
STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 
Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-5620
jkolber@atg.state.vt.us


DATED at _____, _____ this _____ day of February, 2014.

SURE ADVANCE, LLC

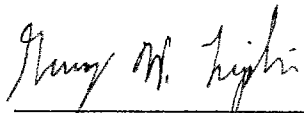
By: 
Its Authorized Agent

Vincent K. Ney, Manager
Name and Title of Authorized Agent

APPROVED AS TO FORM:


Justin E. Kolber
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, VT 05609

For the State of Vermont


Gary Lipkin, Esq.
Duane Morris LLP
222 Delaware Avenue,
Suite 1600
Wilmington, DE 19801-1659

For Sure Advance, LLC

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

EXHIBIT A

March 2014

Re: Sure Advance, LLC settlement

Dear Vermont consumer:

You have been identified as a consumer who took out a loan from Sure Advance, LLC between 2010 and 2013. As a result of a settlement with the Attorney General's Office, Sure Advance is providing the enclosed payment to refund all interest and fees that you paid in connection with your loan.

If you accept this payment, you will waive whatever rights, if any, that you may possess to pursue an individual claim against Sure Advance in connection with your loan. You may decline to accept the check by returning or mailing it to Sure Advance, first class postage, within 90 days of the date of this letter, to the following address:

Sure Advance, LLC
750 Shipyard Drive, Suite 213
Wilmington, DE 19801

For more information on Vermont consumer protection law or the terms of this settlement, please visit the Attorney General's Office website at www.atg.state.vt.us or call the Consumer Assistance Program at 800-649-2424 or (802) 656-3183.

Sincerely,

William H. Sorrell
Attorney General

Enc.