

**STATE OF VERMONT
DEPARTMENT OF FINANCIAL REGULATION**

In The Matter Of:)	
)	
UPSTART NETWORK, INC.)	Docket No. 18-055-B
Respondent)	

STIPULATION AND CONSENT ORDER

Background

The Commissioner is charged with administering and enforcing the lending laws of the State of Vermont, including 8 V.S.A. Chapter 73 and applicable Regulations which govern the conduct of licensed lenders. 8 V.S.A. §§ 11 and 12.

1. Upstart Network, Inc. (“Upstart”) is a Delaware corporation with an address of record at 2 Circle Star Way, San Carlos, CA 94070.

2. In November 2017, Upstart applied for a Vermont lender license.

3. Upstart operates an online lending platform.

4. Upstart solicits loans through various targeted advertising methods designed to encourage borrowers to utilize the online marketplace. Loans are originated by Cross River Bank.

5. Upon reviewing Upstart’s lender license application, the Department learned that Upstart has been soliciting loans in Vermont since May 2015. On May 4, 2017, Vermont enacted a law to require entities engaged in loan solicitation activity to obtain a loan solicitation license. Prior to the enactment of the loan solicitation license, the Department required entities that solicited loans to obtain a Vermont lender license.

6. Upstart solicited loans without obtaining either a Vermont loan solicitation license or a Vermont lender license.

7. The parties wish to resolve the Department’s allegation of unlicensed activity without administrative or judicial proceedings.

8. Upstart and the Department expressly agree to enter into this Stipulation and Consent Order (“Order”) in full and complete resolution of the alleged violations.

Stipulation and Agreement

Upstart and the Department hereby stipulate and agree as follows:

9. Upstart does not dispute that it previously directed loan solicitation advertisements to Vermont residents.
10. Upstart agrees to pay an administrative penalty to the Vermont Department of Financial Regulation in the amount of eighty-five thousand dollars (\$85,000) on or before January 11, 2019.
11. Upstart shall maintain a Vermont lender license and/or a Vermont loan solicitation license so long as it engages in lending and/or loan solicitation in Vermont.
12. In the event that Upstart withdraws from Vermont, Upstart will not direct any advertising to Vermont residents; will block Vermont residents from accessing a loan through any Upstart website; and will disclose on its website that loans are not available in Vermont.
13. In the event Upstart fails to make the payment described in paragraph 10 on or before January 11, 2019, the Commissioner may issue an Order suspending, revoking, or terminating any or all of Upstart's licenses and imposing additional administrative penalties. The Department's failure to exercise this option shall not constitute a waiver of the right to exercise such option at any other time in connection with other matters not addressed by this Stipulation and Consent or in connection with a breach of this Stipulation and Consent Order.
14. The Department shall retain continuing jurisdiction in this matter until Upstart has complied with the terms and conditions of this Stipulation and Consent Order.
15. This Stipulation and Consent Order shall not prevent any person from pursuing any claim he or she may have against Upstart, nor shall it be understood as determining whether any such claim may or may not exist in law or equity.
16. Nothing contained in this Stipulation and Consent Order shall restrain or limit the Department in responding to and addressing any actual complaint filed with the Department involving Upstart and the Department reserves the right to pursue restitution in connection with any complaint filed with the Department.

17. Upstart knowingly and voluntarily waives any right it may have to judicial review by any court of this Stipulation and Consent Order by way of suit, appeal, or extraordinary relief resulting from entry or enforcement of this Stipulation and Consent Order. Upstart reserves its rights to contest liability and defend itself against claims from any other person or from claims of the Department in all other contexts, including any alleged breach of this Stipulation and Consent Order.

18. Upstart acknowledges and agrees that the Stipulation and Consent Order is entered into freely and voluntarily and that no promise was made, nor was any coercion used, to induce Upstart to enter into the Stipulation and Consent Order. Upstart acknowledges that it understands all terms and obligations contained herein.

19. Upstart consents to the entry of this Stipulation and Consent Order and agrees to be fully bound by its terms and conditions. Upstart acknowledges that noncompliance with any of the terms of this Order may constitute a separate violation of the laws of the State of Vermont and may subject it to sanctions, penalties, and/or other remedies.

20. The undersigned representative of Upstart affirms that he or she has taken all necessary steps to obtain the authority to bind Upstart to the obligations stated herein and has the authority to bind Upstart to the obligations stated herein.

CONSENTED AND AGREED TO:

Upstart Network, Inc.

By: Alison Nicoll Date 12/19/2018

Print Name: ALISON NICOLL

Title: GENERAL COUNSEL

ACCEPTED BY:

Molly Dillon Date: 12/27/2018

Molly Dillon, Deputy Commissioner
Banking Division

CONSENT ORDER

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. Upstart shall comply with all agreements, stipulations, and undertakings as recited in the Stipulation and Consent Order.

2. Upstart shall make the payment described in paragraph 10 of the Stipulation and Consent Order on or before January 11, 2019.

3. In the event Upstart fails to make the payment described above on or before January 11, 2019, the Commissioner may issue an Order suspending, revoking, or terminating any or all of Upstart's licenses and may impose additional administrative penalties. The Department's failure to exercise this option shall not constitute a waiver of the right to exercise such option at any other time in connection with other matters not addressed by the Stipulation and Consent Order or in connection with a breach of the Stipulation and Consent Order.

4. Upstart will maintain a Vermont lender license or a loan solicitation license to originate loans and/or solicit loans in Vermont or, in the event Upstart withdraws from the state, Upstart will not direct any advertising to Vermont residents; will block Vermont residents from accessing a loan through any Upstart website; and will disclose on its website that loans are not available in Vermont.

5. This Order shall not prevent any other person from pursuing any claim he or she may have against Upstart.

6. Nothing contained in this Order shall restrain the Department from responding to and addressing any complaint involving Upstart filed with the Department or from pursuing any other violation of law.

7. This Order shall not be construed as an adjudication of any violation of any Vermont law or federal law, except as specifically set forth herein.

Entered at Montpelier, Vermont, this 27th day of December, 2018



Michael S. Pieciak, Commissioner
Vermont Department of Financial Regulation