

**State of Vermont**

**Department of Financial Regulation**

**In re: North American )**

**Financial Management, LLC )**

**Docket No. 19-059- B**

**STIPULATION AND CONSENT ORDER**

The Vermont Department of Financial Regulation (the Department) and North American Financial Management, LLC (NAFM), hereby agree and stipulate as follows:

**Parties**

1. The Department, through its Commissioner, pursuant to 8 V.S.A. §§ 11, 12, 15, and 2115, is charged with enforcing the banking laws of the State of Vermont and authorized to investigate lenders to determine compliance with Vermont law.
2. NAFM is a limited liability company based in Libertyville, Illinois, with a principal place of business at 1580 South Milwaukee Avenue, #505, Libertyville, Illinois 60048.

**Findings of Fact**

3. In or around May 2017, NAFM purchased the rights to an employer-sponsored, voluntary benefit program known as the "Freedom Plan."
4. From May 2017 through December 2018, NAFM administered the Freedom Plan in Vermont, through three Vermont employers and to more than 200 Vermont employees. Through the Freedom Plan, NAFM made 285 loans to Vermont employees.

5. NAFM characterized the Freedom Plan as a voluntary benefit program offering employee-funded medical expense reimbursement and a non-recourse loan option which was an “exempt plan under 29 U.S.C. § 1144 and 26 U.S.C. §§ 105 and 125.”
6. The Freedom Plan, described simply, provided for the withholding of employee wages and the reimbursement of certain medical expenses through loans back to employees.
7. Participating employees executed a Promissory Note which included provisions for payment of an administrative fee and interest to NAFM. NAFM received administrative fees from participating employees. NAFM claims it did not collect or otherwise receive interest that may have been due under the Promissory Note.
8. Freedom Plan marketing materials advertised a 75% reimbursement of medical claims not paid by medical insurance and described potentially higher net paychecks due to the wage withholding and the non-recourse loan features of the plan.
9. NAFM advertised the Freedom Plan as a 100% employee funded plan, to be fully administered by NAFM, which would reduce FICA tax to employers and taxable income to employees.
10. Although NAFM made limited disclosures of potential adverse tax consequences, the Department contends those disclosures were inadequate.
11. NAFM is not and has never been a licensed lender in Vermont.

### **Conclusions of Law**

12. Pursuant to 8 V.S.A. §§ 11, 12, 15, and 2115, the Commissioner is charged with enforcing the banking laws of the State of Vermont.
13. It is a violation of 8 V.S.A. § 2201 for a person to engage in the business of making loans in Vermont without first obtaining a license to do so.

14. By making loans through the Freedom Plan to 285 Vermont employees, NAFM violated 8 V.S.A. § 2201 and made 285 unlicensed loans.
15. It is a violation of 8 V.S.A. §2121 for a person to advertise or publish false, misleading, or deceptive statements or representations.
16. By failing to disclose fully the potential tax consequences of participating in the Freedom Plan, NAFM violated 8 V.S.A. § 2121.
17. Pursuant to 8 V.S.A. § 2115, the Commissioner may enter orders to enforce the banking laws of Vermont and may impose administrative penalties and/or require the payment of restitution.

### Consent Order

18. If NAFM fails or neglects to comply with any of the terms and conditions set forth in this Stipulation and Consent Order, the Department may, on written notice to NAFM, institute any legal or administrative proceedings it deems appropriate to enforce the Order and to seek such other appropriate sanctions, and NAFM shall consent to the entry of judgment for any unpaid balance.
19. NAFM shall pay an administrative penalty of \$25,000 to the Department within thirty (30) days of the entry of this Order.
20. In addition to the penalty described in the preceding paragraph, NAFM shall pay the sum of \$191,504 to the Department within thirty (30) days of the entry of this Order, which shall be distributed through the Department as restitution to the employees who participated in the Freedom plan. For most participants, this sum will provide pro rata restitution of approximately 40% of the administrative fees paid by the employees, net of medical claims actually paid.
21. NAFM shall not make loans in Vermont or seek a license to make loans in Vermont for a period of at least two years.

22. Nothing in this Stipulation and Consent Order shall be construed as limiting the Commissioner's authority to investigate NAFM for matters not resolved by this Stipulation and Consent Order or for unrelated matters.
23. Nothing herein shall be construed as limiting any private action a person may have.
24. NAFM acknowledges that this Stipulation and Consent Order constitutes a valid order duly rendered by the Commissioner and agrees to be fully bound by it.
25. NAFM acknowledges that this Order constitutes a finding by the Commissioner that NAFM has violated Vermont law as set forth above and agrees not to contest such findings.
26. NAFM acknowledges that non-compliance with any term of this Order shall constitute a violation of lawful order of the Commissioner.
27. NAFM, without admitting a violation of Vermont law, and solely for the purpose of resolving this administrative action, has agreed to enter into this Stipulation and Consent Order with the Department on the terms and conditions set forth herein and agrees not to contest their validity in the event of any future administrative or judicial action involving the Department.
28. NAFM consents to the entry of this Order and acknowledges its consent is given freely and voluntarily and that no promise has been made to induce it to consent except as otherwise stated herein.
29. NAFM acknowledges that it has been represented by counsel in this matter and voluntarily waives its right to a hearing and to judicial review of this matter, including its right to a hearing before the Commissioner or his designee and all other procedures otherwise available under Vermont law, the rules of the Department, and the provisions of Title 3, Chapter 25.
30. NAFM further acknowledges the Commissioner retains jurisdiction over this matter for purposes of enforcing this Order.

31. This Order shall be governed by and construed under the laws of the State of Vermont.
32. NAFM acknowledges its understanding of all terms, conditions, and obligations contained in the Consent Order and further acknowledges that should it fail to comply with any provision of the Consent Order, the Commissioner may impose additional sanctions and seek appropriate relief, subject to NAFM's right to a hearing.

2/27/2020

Date

[Signature]

North American Financial  
Management, LLC

By its: Managing Partner

Entered at Montpelier, Vermont this 5<sup>th</sup> day of MARCH ~~February~~ 2020.

[Signature]

Michael S. Pieciak, Commissioner

Vermont Department of Financial Regulation