

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE

QUICKEN LOANS, INC.

and

Case No. 28-CA-75857

LYDIA E. GARZA, An Individual

*Eva Herrera, Esq.*, Counsel for the General Counsel.

*Frederick Miner, Esq.*, *Little Mendelson, P.C.*, Counsel for the Respondent.

**DECISION**

**Statement of the Case**

**Joel P. Biblowitz, Administrative Law Judge:** This case was heard by me on November 13, 2012<sup>1</sup> in Phoenix, Arizona. The Complaint herein, which issued on September 14 and was based upon an unfair labor practice charge that was filed on March 5 by Lydia Garza, alleges that Quicken Loans, Inc., herein called Respondent, has maintained certain overly broad and discriminatory rules in its Mortgage Banker Employment Agreement, in violation of Section 8(a)(1) of the Act.

**I. Jurisdiction**

Respondent admits, and I find, that it has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

**II. The Facts**

Respondent, which is engaged in providing mortgage loan services, has its main office in Detroit, Michigan, as well as other offices throughout the country, including one in Scottsdale, Arizona, where Garza was employed as a mortgage banker from 2006 to 2011. Respondent employs approximately 1,700 mortgage bankers nationwide. Their job duties include the processing of loan applications, as well as negotiating the terms and interest rate of the proposed loans. The sole issue herein is the legality of two provisions contained in its Mortgage Banker Employment Agreement, herein called the Agreement, which all of its mortgage bankers must agree to be bound by. The allegedly unlawful provisions are "Proprietary/Confidential Information" and "Non-Disparagement."

**Section D: Proprietary/Confidential Information**

2. You agree that:

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<sup>1</sup> Unless indicated otherwise, all dates referred to herein relate to the year 2012.

(a) You shall hold and maintain all Proprietary/ Confidential Information in the strictest of confidence and that you shall preserve and protect the confidentiality, privacy and secrecy of all Proprietary/Confidential Information;

5 (b) You shall not disclose, reveal or expose any Proprietary/Confidential Information to any person, business or entity . . .

\* \* \*

10 (e) You shall take all necessary precautions to keep Proprietary/Confidential Information secret, private, concealed and protected from disclosure, and shall follow and implement the Company’s privacy and security procedures . . .

**Attachment A**

15 **A. “Proprietary/Confidential Information”** – For purposes of this Agreement, “Proprietary/Confidential Information” means: (a) non-public information relating to or regarding the Company’s business, personnel, customers, operations, or  
20 confidential, proprietary, secret or sensitive business information . . .

“Proprietary/Confidential Information” includes, but is not limited to, the following categories of information, irrespective of the medium in which it is stored . . . :

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Personnel Information including, but not limited to, all personnel lists, rosters, personal information of co-workers, managers, executives and officers; handbooks, personnel files, personnel information such as home phone  
30 numbers, cell phone numbers, addresses, and email addresses;

Personal Information Pertaining to Company Executives and Officers including, but not limited to, personal and family information, personal financial information, investment and investment opportunities, background information, personal activities, information  
35 pertaining to the work and non-work schedules, contacts, meetings, meeting attendees, travel, home phone numbers, cell phone numbers, addresses, and email addresses;

**Section K: Additional Terms and Requirements**

40 2. **Non-disparagement.** The Company has internal procedures for complaints and disputes to be addressed and resolved. You agree that you will not (nor will you cause or cooperate with others to) publicly criticize, ridicule, disparage or defame the Company or its products, services, policies, directors, officers, shareholders, or employees, with or  
45 through any written or oral statement or image (including, but not limited to, any statements made via websites, blogs, postings to the internet, or emails and whether or not they are made anonymously or through the use of a pseudonym). You agree to provide full cooperation and assistance in assisting the Company to investigate such statements if the Company reasonably believes that you are [the] source of the statements. The foregoing does not apply to statutorily privileged statements made to  
50 governmental or law enforcement agencies.

Garza had been employed as a mortgage banker for the Respondent for about five years beginning in 2006, when she signed the Agreement. After she resigned that employment on October 18, 2011, she received a letter from Respondent regarding her "...continuing obligations to Quicken Loans," stating *inter alia*:

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As a reminder, some of the terms contained in your Employment Agreement remain in effect despite your voluntary departure from Quicken Loans. Such ongoing obligations include:

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1. Your continuing obligation to keep secret all Proprietary/Confidential Information. This includes, but is not limited to, information relating to proprietary software, business methods, client information, employee information, financial information, or any other internal information about Quicken Loans.

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2. Your obligation to return all Company Property and Information and to delete any residual Information stored on any of your personal devices or other electronic storage means. Company Property and Information includes, but not limited to, computers, monitors, pagers, lists, reports, employee handbooks, manuals, business cards, diskettes or any other Quicken Loans equipment and material...

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3. Your continuing obligation to refrain from using any work product outside of Quicken Loans, even if you created it, invented it or developed it while working here.

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4. Your continuing obligation to refrain from contacting or soliciting Quicken Loans' employees or clients, for any reason, even if you cultivated the clients while working here.

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5. Your continuing obligation to refrain from engaging in a competing line of business or working for a competing company for a period of nine months after your date of separation.

The letter ends by saying that if the recipient has any questions "...pertaining to your continuing obligations under your employment agreement," he/she should call the Respondent for answers.

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Garza testified that shortly after she left the Respondent's employ, she and five other former employees of the Respondent were sued by the Respondent for an alleged violation of the no contact/no raiding and the non-compete provisions of the Agreement. Matthew Stoffer, Site Vice President for the Respondent's Scottsdale Web Center, where Garza was employed, testified that all employees employed as mortgage bankers are required to sign the Agreement. He also testified that to his knowledge, no employee of the Respondent has ever been disciplined for violating the Agreement.

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### III. Analysis

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The issues herein are whether the Respondent's Proprietary/Confidential Information Rule, Section D, and the Non-Disparagement Rule, Section K, contained in the Agreement, which Garza and all mortgage bankers employed by the Respondent were required to sign, violates Section 8(a)(1) of the Act. Counsel for the General Counsel alleges that the restrictions contained in these two provisions unlawfully restrict employees in the exercise of their Section 7

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rights. Respondent defends that because of the time and expense spent in educating and

training its mortgage bankers, it requires them to sign the Agreement in order to protect its investment in them, as well as to protect the confidential and proprietary information that they are entrusted with.

5           The line between lawful and unlawful restrictions is very thin and often difficult to discern. The two principal Board cases relevant to this issue are *Lafayette Park Hotel*, 326 NLRB 824, 828 (1998), enfd. 203 F.3d 52 (D.C. Cir. 1999), and *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004). In *Lafayette Park*, the Board stated: “The appropriate inquiry is whether the rules would reasonably tend to chill employees in the exercise of their Section 7 rights. Where  
10 the rules are likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice even absent evidence of enforcement.” The test enunciated in *Lutheran Heritage* is:

15           Our inquiry into whether the maintenance of a challenged rule is unlawful begins with the issue of whether the rule *explicitly* restricts activities protected by Section 7. If it does, we will find the rule unlawful.

20           If the rule does not explicitly restrict activity protected by Section 7, the violation is dependent upon the showing of one of the following: (1) employees would reasonably construe the language to prohibit Section 7 activity; (2) the rule was promulgated in response to union activity; or (3) the rule has been applied to restrict the exercise of Section 7 rights.

25           The Proprietary/Confidential Information rule requires employees to maintain this information “in the strictest of confidence” and “you shall not disclose [it] to any person, business or entity.” The Agreement defines proprietary and confidential information as “non-public information relating to...the Company’s business, personnel...all personnel lists, personal information of co-workers...personnel information such as home phone numbers, cell phone numbers, addresses and email addresses.” There can be no doubt that these restrictions would substantially hinder  
30 employees in the exercise of their Section 7 rights. In complying with these restrictions, employees would not be permitted to discuss with others, including their fellow employees or union representatives, the wages and other benefits that they receive, the names, wages, benefits, addresses or telephone numbers of other employees. This would substantially curtail their Section 7 protected concerted activities. The Proprietary/Confidential Information Rule  
35 contained in the Agreement therefore violates Section 8(a)(1) of the Act. *The NLS Group*, 352 NLRB 744, 745 (2008); *Security Walls, LLC*, 356 NLRB No. 87 (2011).

40           The remaining issue is whether the Non-Disparagement provision contained in Section K also violates Section 8(a)(1) of the Act. That provision states that the employees will not “...publicly criticize, ridicule, disparage or defame the Company or its products, services, policies...through any written or oral statement...” In *Albertson’s, Inc.*, 351 NLRB 254, 259 (2007), the Board stated: “In determining whether an employer’s maintenance of a work rule reasonably tends to chill employees in the exercise of Section 7 rights, the Board will give the work rule a reasonable reading and refrain from reading particular phrases in isolation.” There  
45 can be no doubt that an employee reading these restrictions could reasonably construe them as restricting his rights to engage in protected concerted activities. Within certain limits, employees are allowed to criticize their employer and its products as part of their Section 7 rights, and employees sometime do so in appealing to the public, or to their fellow employees, in order to gain their support. A reasonable employee could conclude that the prohibitions contained in the  
50 Agreement prohibited them from doing so. The Non-Disparagement provision therefore violates Section 8(a)(1) of the Act.

### Conclusions of Law

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The provisions and restrictions contained in Section D, Proprietary/Confidential Information, and Section K2, Non-Disparagement, of Respondent's Mortgage Banker Employment Agreement, violate Section 8(a)(1) of the Act.

### The Remedy

Having found that the Respondent has engaged in certain unfair labor practices by promulgating and maintaining the Proprietary/Confidential and the Non-Disparagement rules in its Mortgage Banker Employment Agreement, I recommend that it be ordered to post the attached notice and to notify all of its mortgage bankers, nationwide, that it will rescind these provisions. Respondent may comply with this Order by reprinting the Mortgage Banker Employment Agreement without these provisions or, in order to save the expense of reprinting the Agreement without these provisions, Respondent may supply its mortgage bankers either with handbook inserts stating that the unlawful rules have been rescinded, or with new and lawfully worded rules on adhesive backing which will cover the old and unlawfully broad rules regarding Proprietary/Confidential and Non-Disparagement rules. *The Carney Hospital*, 350 NLRB 627, 631 (2007).

Upon the foregoing findings of fact, conclusions of law, and on the entire record, I hereby issue the following recommended<sup>2</sup>

### ORDER

The Respondent, Quicken Loans,, Inc., its officers, agents, successors and assigns, shall

1. Cease and desist from

(a) Maintaining overly broad rules regarding Proprietary/Confidential Information and Non-Disparagement in its Mortgage Banker Employment Agreement.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Notify all of its mortgage bankers that the Proprietary/Confidential Information provision in Section D, and the Non-Disparagement provision in Section K of its Mortgage Banker Employment Agreement is rescinded, void, of no effect and will not be enforced, and will further notify all employees that Respondent will not prohibit employees from discussing the terms and conditions of their employment in a manner protected by the Act.

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<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Within 14 days after service by the region, post at all of its offices nationwide, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physically posting the paper notices at all of its locations where mortgage bankers are employed, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means to all of its mortgage bankers. Finally, Respondent will give each of its mortgages banking employees the new version of the Mortgage Banker Employment Agreement, without the offending provisions, as provided in the Remedy section herein. In the event that during the pendency of these proceedings, the Respondent has gone out of business or closed the Scottsdale facility, the Respondent shall duplicate and mail at its own expense, a copy of the notice and the revised Agreement to all current and former employees employed by the Respondent at any time since March 5, 2012.

(c) Within 21 days after service by the region, file with the Regional Director a sworn certification of a responsible official on a form provided by the region attesting to the steps that Respondent has taken to comply.

**Dated, Washington, D.C. January 8, 2013**

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**Joel P. Biblowitz**  
**Administrative Law Judge**

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<sup>3</sup> If this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

**APPENDIX**

**NOTICE TO EMPLOYEES**

**Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

**FEDERAL LAW GIVES YOU THE RIGHT TO**

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

**WE WILL NOT** maintain or enforce the provisions contained in our Mortgage Banker Employees Agreement entitled "Proprietary/Confidential Agreement" and "Non-Disparagement," and **WE WILL NOT** in any like or related manner interfere with, restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

**WE WILL** notify you that the version of the Proprietary/Confidential Information Rule, and the Non-Disparagement Rule that was contained in our Mortgage Banker Employment Agreement are rescinded, void, of no effect, and will not be enforced, and that we will not prohibit employees from discussing the terms and conditions of their employment in a manner protected by the Act.

**WE WILL** furnish all of our mortgage bankers will a revised version of the Mortgage Banker Employment Agreement where all unlawful provisions have been rescinded.

**QUICKEN LOANS, INC.**  
**(Employer)**

**Dated** \_\_\_\_\_ **By** \_\_\_\_\_  
**(Representative)** **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).  
2600 North Central Avenue, Suite 1800, Phoenix, Arizona 85004-3099. (602) 640-2160. Hours: 8:15 a.m. to 4:45 p.m.

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**  
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 602-640-2146.