**UNITED STATES OF AMERICA**

**BEFORE THE NATIONAL LABOR RELATIONS BOARD**

QUICKEN LOANS INC.,

Respondent,

Case 28-CA-075857

and

LYDIA E. GARZA, an individual,

Charging Party.

_____/

**RESPONDENT QUICKEN LOANS INC.'S**
**EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION**

**ORAL ARGUMENT REQUESTED**


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Quicken Loans Inc. ("Quicken Loans"), by and through its attorneys and pursuant to Section 102.46(a) of the Rules and Regulations of the National Labor Relations Board ("Board"), takes exceptions to Administrative Law Judge Joel P. Biblowitz's ("ALJ") January 8, 2013 Decision and rulings during the November 13, 2012 hearing as follows:[1]

1. The ALJ's factual findings in the Decision that Mortgage Bankers' "job duties include the processing of loan applications, as well as negotiating the terms and interest rate of the proposed loans" (ALJD 1:30-42) is incomplete and disregards record evidence detailing the myriad of other responsibilities of Quicken Loans' Mortgage Bankers. AGCX 2, Sections B.3., C.2. and C.5.; Tr. 34-39. The record evidence that was disregarded relates to the context in which Mortgage Bankers execute the Mortgage Banker Employment Agreement ("MBEA") and the various obligations and acknowledgments arise. Tr. 34-39. Thus, the ALJ misapplied or otherwise disregarded Board precedent by failing to consider the context of the disputed provisions. ALJD 1:30-42, 4:5-51, 5:1-10.

2. The ALJ's factual findings in the Decision do not quote or consider the entire Proprietary/Confidential Information provision and many other relevant provisions contained in the MBEA. ALJD 1:42-2:50. The record evidence that was disregarded relates to the context in which Mortgage Bankers execute the MBEA and the various obligations and acknowledgments arise. AGCX 2, Section B.3.; Tr. 34-39. Thus, the ALJ misapplied or otherwise disregarded Board precedent by failing to consider the context of the disputed provisions and improperly reading handpicked phrases of the MBEA in isolation. ALJD 1:42-2:50, 4:5-51, 5:1-10.

[1] Citation to "ALJD ___" refers to the page(s) and line number(s) of the ALJ's Decision dated January 8, 2013. Citation to "Tr. __" refers to the page(s) of the transcript from the hearing in this matter conducted on November 13, 2012. Citation to "AGCX __" refers to exhibits introduced by Acting General Counsel at the November 13, 2012 hearing.

3. The ALJ's factual findings in the Decision do not consider that the only Mortgage Banker to testify at the hearing – complainant Lydia Garza – admitted she never read the MBEA and Quicken Loans never enforced the disputed provisions against her. *Compare* ALJD 1:30-3:42, *with* Tr. 21-24 32. The record evidence that was disregarded relates to the context and circumstances of this case and demonstrates there is no basis to conclude any reasonable Quicken Loans employee would construe the Proprietary/Confidential Information and Non-disparagement provisions to restrict Section 7 activity. Tr. 21-24, 32. Thus, the ALJ disregarded Board precedent by failing to consider the context and circumstances of this case and simply presuming interference with Section 7 rights. ALJD 1:30-3:42, 4:5-51, 5:1-10.

4. The ALJ's factual findings in the Decision do not consider that the record is devoid of any evidence that the Proprietary/Confidential Information and Non-disparagement provisions have been applied by Quicken Loans or construed by any of its Mortgage Bankers to restrict Section 7 rights. *Compare* ALJD 1:30-3:42, *with* Tr. 32, 45-46. The record evidence that was disregarded relates to the context and circumstances of this case and demonstrates there is no basis to conclude any reasonable Quicken Loans employee would construe the Proprietary/Confidential Information and Non-disparagement provisions to restrict Section 7 activity. Tr. 32, 45-46. Thus, the ALJ disregarded Board precedent by failing to consider the context and circumstances of this case and simply presuming interference with Section 7 rights. ALJD 1:30-3:42, 4:5-51, 5:1-10.

5. The ALJ's factual findings in the Decision do not consider that Ms. Garza filed her charge to gain a tactical advantage in a litigation that was filed against her and other former Quicken Loans mortgage bankers unrelated to the provisions at issue in her charge. *Compare* ALJD 1:30-3:42, *with* AGCX 2, Section I.; Tr. 18-19, 24-29. The record evidence that was

disregarded relates to the context and circumstances of this case and demonstrates there is no basis to conclude any reasonable Quicken Loans employee would construe the Proprietary/Confidential Information or Non-disparagement provisions to restrict Section 7 activity. AGCX 2, Section I.; Tr. 18-19, 24-29. Thus, the ALJ disregarded Board precedent by failing to consider the context and circumstances of this case and simply presuming interference with Section 7 rights. ALJD 1:30-3:42, 4:5-51, 5:1-10.

6. The ALJ erroneously found in the Decision that the Proprietary/Confidential Information provision violates Section 8(a)(1) because "there can be no doubt" that it purportedly would prevent employees from discussing "the wages and other benefits they receive, [sic] the names, wages, benefits, addresses or telephone numbers of other employees." ALJD 4:29-36, 5:7-9. The ALJ disregarded Board precedent because the record evidence does not support a finding that the Proprietary/Confidential Information provision explicitly restricts activities protected by Section 7. *See generally* AGCX 1-3; Tr. 1-47.

7. The ALJ disregarded in the Decision that the Proprietary/Confidential Information provision provides that non-disclosure obligations relate to non-public information and the record evidence that demonstrates the information providing the basis for the ALJ's Decision is publicly available. *Compare* ALJD 4:24-36, *with* AGCX 2, Attachment A, Section A.; Tr. 39-42, 46. The record evidence that was disregarded relates to the context and circumstances of this case and demonstrates there is no basis to conclude any reasonable Quicken Loans employee would construe the Proprietary/Confidential Information provision to restrict Section 7 activity. *See* Tr. 39-42, 46. Thus, the ALJ misapplied or otherwise disregarded Board precedent by failing to consider the context and circumstances of this case, improperly

reading handpicked phrases in isolation, and simply presuming interference with Section 7 rights. ALJD 4:24-36, 5:6-9.

8. The ALJ misapplied Board precedent and made findings contrary to the record evidence in concluding that the Proprietary/Confidential Information provision in the MBEA violates Section 8(a)(1) of the Act because the Acting General Counsel ("AGC") failed to satisfy its burden to establish that employees would reasonably construe the language to prohibit Section 7 activity. *Compare* ALJD 4:24-36, 5:6-9, *with* AGCX 1-3; Tr. 1-47.

9. The ALJ erroneously found that a reasonable employee "could" conclude that the Non-disparagement provision in the MBEA violates Section 8(a)(1). ALJD 4:49-50. The correct standard requires a determination that employees *would* reasonably construe the language to prohibit Section 7 activity.

10. The ALJ misapplied Board precedent and made findings contrary to the record evidence in concluding that the Non-disparagement provision in the MBEA violates Section 8(a)(1) of the Act because the AGC failed to satisfy its burden to establish that employees would reasonably construe the language to prohibit Section 7 activity. *Compare* ALJD 4:39-51, 5:6-9, *with* AGCX 1-3; Tr. 1-47.

11. The ALJ erroneously precluded Quicken Loans from offering into and/or eliciting evidence relevant to its defenses, including, but not limited to, regarding whether Ms. Garza read the MBEA prior to filing her charge, the conduct Ms. Garza believed was prevented by the MBEA, and whether Ms. Garza believed she violated the Proprietary/Confidential Information provision. Tr. 23-26, 30-32. The record evidence that was excluded relates to the context and circumstances of this case and demonstrates there is no basis to conclude any reasonable

Quicken Loans employee would construe the Proprietary/Confidential Information provision to restrict Section 7 activity. *Compare* ALJD 4:24-36, 5:6-9, *with* Tr. 23-26, 30-32.

12. The ALJ erroneously precluded Quicken Loans from offering into and/or eliciting evidence relevant to its defenses, including, but not limited to, Quicken Loans' recruitment efforts and methods (Tr. 36-37) and the types of information available on Quicken Loans' intranet website (Tr. 42-43). The record evidence that was excluded relates to the context and circumstances of this case and demonstrates there is no basis to conclude any reasonable Quicken Loans employee would construe the Proprietary/Confidential Information provision to restrict Section 7 activity. *Compare* ALJD 4:24-36, 5:6-9, *with* Tr. 36-37, 42-43.

13. The ALJ erroneously precluded Quicken Loans from offering into and/or eliciting evidence relevant to its defenses, including, but not limited to, whether Ms. Garza discussed the Proprietary/Confidential Information provision with her managers or supervisors at Quicken Loans. Tr. 32. The record evidence that was excluded relates to the context and circumstances of this case and whether there is a basis to conclude any reasonable Quicken Loans employee would construe the Proprietary/Confidential Information provision to restrict Section 7 activity. *Compare* ALJD 4:24-36, 5:6-9, *with* Tr. 32.

WHEREFORE, Respondent Quicken Loans respectfully requests that the Board refuse to adopt the Decision and recommendations of the ALJ, but rather dismiss the complaint in its entirety. Quicken Loans relies on the exceptions set forth above and its Brief in Support of Exceptions to Administrative Law Judge's Decision filed herewith.

Respectfully submitted,

Dated: February 19, 2013

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**STATEMENT OF SERVICE**

I hereby certify that a copy of Quicken Loans Inc.'s EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION, in Case 28-CA-075857, was E-Filed and served by E-Mail on this 19th day of February 2013, on the following:

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