

Quicken Loans, Inc. and Lydia E. Garza. Case 28–CA–075857

November 3, 2014

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS HIROZAWA
AND SCHIFFER

On June 21, 2013, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB 1201 (2013). Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the District of Columbia Circuit.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the Board issued an order setting aside the Decision and Order, and retained this case on its docket for further action as appropriate.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein, as modified.¹ Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's recommended Order to the extent and for the reasons stated in the Decision and Order reported at 359

¹ We agree with the judge, for the reasons stated in his decision, that the provision of the Mortgage Banker Employment Agreement (MBEA) entitled "Non-disparagement" is unlawful because employees would reasonably construe its broad prohibitions as encompassing Sec. 7 activity. In adopting the judge's finding, we also rely on *Hills & Dales General Hospital*, 360 NLRB 611, 611 (2014), and *Valley Hospital Medical Center*, 351 NLRB 1250, 1252 (2007) (quoting *Richboro Community Mental Health Council*, 242 NLRB 1267, 1268 (1979)), enf'd. 358 Fed.Appx. 783 (9th Cir. 2009).

In concluding that the MBEA is unlawful with respect to nondisclosure of certain personnel information, we rely on *Fresh & Easy Neighborhood Market*, 361 NLRB 72, 73–74 (2014), and *MCPC, Inc.*, 360 NLRB 216, 216 (2014).

In finding that, when rescinding the offending language from the MBEA, the Respondent may supply its mortgage bankers either with inserts stating that the unlawful rules have been rescinded, or with new and lawfully worded rules on adhesive backing that will correct or cover the unlawfully broad rules, until it republishes the MBEA without the unlawful provisions, we rely on *Guardsmark, LLC*, 344 NLRB 809, 812 fn. 8 (2005), enf'd. in relevant part 475 F.3d 369 (D.C. Cir. 2007).

NLRB 1201, which is incorporated herein by reference.² The Order is set forth in full below.

ORDER

The National Labor Relations Board orders that the Respondent, Quicken Loans, Inc., Scottsdale, Arizona, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining provisions in attachment A of its Mortgage Banker Employment Agreement (MBEA) that define "proprietary/confidential information" to include the following: (1) "non-public information relating to or regarding . . . personnel" and (2) "personnel information including, but not limited to, all personnel lists, rosters, personal information of co-workers" and "handbooks, personnel files, personnel information such as home phone numbers, cell phone numbers, addresses, and email addresses[.]"

(b) Maintaining MBEA section K, paragraph 2, entitled "Non-disparagement."

(c) 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) Rescind the following provisions of the MBEA: (1) attachment A, paragraph A(a) to the extent that it defines "Proprietary/Confidential Information" to include "non-public information relating to or regarding the Company's . . . personnel"; (2) the paragraph entitled "Personnel Information" in attachment A insofar as it applies to "personnel information including, but not limited to, all personnel lists, rosters, personal information of co-workers" and "handbooks, personnel files, personnel information such as home phone numbers, cell phone numbers, addresses, and email addresses"; and (3) section K, paragraph 2, entitled "Non-disparagement."

(b) Furnish all current mortgage bankers with inserts for the current MBEA that (1) advise that the unlawful rules have been rescinded, or (2) provide the language of lawful rules; or publish and distribute a revised MBEA that (1) does not contain the unlawful rules, or (2) provides the language of lawful rules.(c) Within 14 days after service by the Region, post at all of its offices nationwide copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the

² We shall substitute a new notice in accordance with our decision in *Durham School Services*, 360 NLRB 694 (2014).

³ If this Order is enforced by a judgment of a 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."

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 physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current mortgage bankers and former mortgage bankers employed by the Respondent at any time since September 5, 2011.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 28 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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 the following provisions contained in our Mortgage Banker Employment Agreement (MBEA):

1. attachment A, paragraph A(a) to the extent that it defines "Proprietary/Confidential Information" to include "non-public information relating to or regarding the Company's . . . personnel[.]"
2. the paragraph entitled "Personnel Information" in attachment A insofar as it applies to "personnel information including, but not

limited to, all personnel lists, rosters, personal information of co-workers" and "handbooks, personnel files, personnel information such as home phone numbers, cell phone numbers, addresses, and email addresses[.]"

3. section K, paragraph 2, entitled "Non-disparagement."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the following language in the following provisions of our MBEA:

1. attachment A, paragraph A(a) to the extent that it defines "Proprietary/Confidential Information" to include "non-public information relating to or regarding the Company's . . . personnel[.]"
2. the paragraph entitled "Personnel Information" in attachment A insofar as it applies to "personnel information including, but not limited to, all personnel lists, rosters, personal information of co-workers" and "handbooks, personnel files, personnel information such as home phone numbers, cell phone numbers, addresses, and email addresses[.]"
3. paragraph 2 of section K of the MBEA, entitled "Non-disparagement."

WE WILL furnish all mortgage bankers with inserts for the current MBEA that (1) advise that the unlawful rules have been rescinded, or (2) provide the language of lawful rules; or WE WILL publish and distribute a revised MBEA that (1) does not contain the unlawful rules, or (2) provides the language of lawful rules.

QUICKEN LOANS, INC.

The Board's decision can be found at www.nlr.gov/case/28-CA-075857 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

