

SETTLEMENT AGREEMENT & CONSENT ORDER

Case No. M2008-583
2007CE

This Settlement Agreement and Consent Order is entered into by and between the:

**OHIO DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS**

Consumer Finance Section
77 South High Street, 21st Floor
Columbus, OH 43215-6120

Hereinafter referred to as "DFI"

and

Earth Mortgage, L.P.

2245 Keller Way
Carrollton, TX 75006

Hereinafter referred to as "Respondent"

DFI is a state agency charged with the responsibility of administering and enforcing the Ohio Mortgage Broker Act ("OMBA"), codified in Chapter 1322 of the Ohio Revised Code ("R.C."). Respondent is an individual that currently holds a mortgage broker certificate of registration that expired on April 30, 2008 and held a mortgage broker certificate of registration during the 2007 calendar year. In May 2008, Respondent filed an application to renew its certificate of registration; the application remains pending. On September 17, 2008, DFI issued an Order automatically suspending Respondent's certificate of registration pursuant to R.C. 1322.10(F)(2) and a Notice of Intent to Deny Respondent's certificate of registration renewal application for failure to complete continuing education requirement of R.C. 1322.052 in 2007.

Respondent voluntarily enters into this Settlement Agreement and Consent Order ("Settlement Agreement") being fully informed of the right to representation by counsel, and the right to reject this Settlement Agreement and to proceed to a formal adjudicative hearing, pursuant to R.C. Chapter 119, on the issues considered herein.

STIPULATIONS AND ADMISSIONS

This Settlement Agreement is entered into on the basis of the following stipulations, admissions and understandings:

- A. DFI is required by R.C. 1322.10(F)(2) to suspend a mortgage broker certificate of registration if the registrant failed to fulfill the continuing education requirement of R.C. 1322.052.
- B. DFI is empowered by R.C. 1322.10(A)(1)(a) to deny a certificate of registration renewal application if the superintendent finds the registrant has violated or failed to comply with any provision of the Ohio Mortgage Broker Act.

- C. R.C. 1322.052 requires every registrant's designated operations manager to complete at least six (6) hours of approved continuing education every calendar year (by December 31st).
- D. Respondent held a certificate of registration during the 2007 calendar year.
- E. Respondent admits that its operations manager failed to complete the required CE credit hours for the 2007 calendar year.
- F. Because Respondent failed to comply with R.C. 1322.052, DFI has the authority to its certificate of registration and deny Respondent's renewal application.
- G. DFI enters into this Settlement Agreement in lieu of resuming formal proceedings under R.C. 1322.10(F)(2) and R.C. Chapter 119 to continue the suspension and deny the renewal of Respondent's loan officer license on the basis of Respondent's admitted violations and noncompliance with the OMBA.
- H. DFI expressly reserves the right to institute formal proceedings based upon any violation of or noncompliance with any provision of the OMBA not specifically addressed herein, whether occurring before or after the effective date of this Settlement Agreement.

AGREED CONDITIONS

Wherefore, in consideration of the foregoing and mutual promises hereinafter set forth, and in lieu of continuing with any formal disciplinary proceedings at this time, Respondent knowingly and voluntarily agrees with DFI to the following terms, conditions and limitations:

- 1. As penalty for the violation of law described herein, Respondent agrees to pay a fine of five hundred dollars (\$500.00). Payment shall be in the form of a cashier's check or money order, made payable to "Consumer Finance Fund," and shall be submitted to DFI with this Settlement Agreement.
- 2. Respondent agrees to complete six (6) hours of approved CE, which shall be applied toward the 2007 calendar year CE requirement. Respondent agrees to submit a copy of the attendance certificate(s) issued by the CE Provider with this Settlement Agreement, and to write in **RED INK on the face of a copy of the attendance certificate(s) "PLEASE APPLY TO 2007 CE REQUIREMENT."**
- 3. Respondent understands and agrees that the six (6) hours of CE credits earned are to be applied only to Respondent's 2007 CE requirement; these credits cannot be applied to Respondent's 2008 CE requirement, which must be completed by December 31, 2008.
- 4. Respondent understands and agrees that by executing this Settlement Agreement, Respondent admits that he has violated R.C. 1322.052 by failing to complete the CE requirement of R.C. 1322.052 in 2007 and has been penalized in the form of a fine for this violation.
- 5. Respondent understands that for this Settlement Agreement to be considered for acceptance by DFI, Respondent must be in compliance with every provision of this Settlement Agreement, and that the **ORIGINAL** properly executed Settlement Agreement, with all pages attached must be received in the offices of DFI on or before **October 10, 2008**. Should Respondent fully comply with every provision of this agreement, DFI agrees to

execute the same and DFI will terminate the Automatic Suspension and Notice of Intent to Deny Respondent's loan officer license renewal application.

6. Should DFI discover that Respondent has provided DFI with false, fraudulent, misleading, or incomplete information pertaining to this Agreement, Respondent agrees that such evidence will firmly establish that Respondent's character and general fitness do not command the confidence of the public and warrant the belief that he will conduct business honestly and fairly in compliance with the purposes of the OMBA.
7. Respondent understands and agrees that this Agreement shall be considered a public record as that term is used in R.C. 149.43, and may be reported to appropriate organizations, data banks, and governmental bodies, or released to the general public.
8. The above-described terms, conditions and limitations may be amended or terminated at any time upon the written agreement of both parties.

FAILURE TO COMPLY

If, in the discretion of DFI, Respondent appears to have violated or breached any term or condition of this Settlement Agreement, DFI reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of any law occurring before, on, or after the effective date of this Settlement Agreement.

ACKNOWLEDGMENTS/LIABILITY RELEASE

Respondent acknowledges that he has been advised by DFI to seek legal counsel if it has any question concerning the terms and/or effect of this Settlement Agreement.

Respondent hereby releases DFI, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter. Respondent shall not seek attorney fees or other costs arising from the within matter.

This Settlement Agreement shall be considered a public record as that term is used in R.C. section 149.43, and may be reported to appropriate organizations, data banks, and governmental bodies, or released to the general public.

This Settlement Agreement in no way binds or limits future actions DFI may take with respect to Respondent or any other person, individual, or company, for the same or similar violations.

EFFECTIVE DATE

It is expressly understood that this Settlement Agreement shall become effective upon the last date of signature below.

The ORIGINAL, signed Agreement with all pages attached must be returned.
Keep a copy for your records.

PRINTED Name of Respondent: _____

SIGNATURE of Respondent: _____ Date

LEIGH A. WILLIS Date
Deputy Superintendent for Consumer Finance
Ohio Division of Financial Institutions

MARTHA S. RHEA Date
Consumer Finance Attorney Examiner
Ohio Division of Financial Institutions