

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED

STATE OF OHIO *EX REL.*
ATTORNEY GENERAL MARC DANN
and
OHIO DEPARTMENT OF COMMERCE,
DIVISION OF FINANCIAL INSTITUTIONS
JOHN REARDON, Superintendent

Plaintiffs,

v.

NEW CENTURY FINANCIAL CORP.,
ET AL.,
Defendants.

2008 NOV 25 P 3: 59
CASE NO. CV 07 618660
GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY
JUDGE EILEEN T. GALLAGHER

**AGREED FINAL ENTRY AND
ORDER**

PREAMBLE

This matter came to be heard upon the March 14, 2007 filing of a Complaint for Declaratory Judgment, Restitution, Injunctive Relief and Civil Penalties ("Complaint") by the Attorney General of Ohio and Ohio Department of Commerce (hereinafter "State" or "Plaintiffs"), charging New Century Financial Corporation, a Maryland corporation ("Defendant NCFC"), New Century Mortgage Corporation, a California corporation ("Defendant NCMC") and Home123 Corporation, a California corporation ("Defendant Home123") (collectively "Defendants") with violations of Ohio's Consumer Sales Practices Act, R.C. 1345.01 et seq., the Ohio Mortgage Loan Act, R.C. 1321.20 et seq., and the Ohio Mortgage Brokers Act, R.C. 1322.01 et seq. Subsequent to the filing of the Complaint, Defendants, along with certain affiliated entities (collectively, the "Debtors"), voluntarily filed bankruptcy petitions under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware, thereby commencing bankruptcy proceedings which are being jointly

386010.01.117805.0001
402350.01.117805.0001

RECEIVED TIME NOV. 25. 4:25PM

administered under case number 07-10416 (KJC) (the "Bankruptcy Case"). The Debtors, including the Defendants in this matter, are liquidating all assets for final distribution to creditors. The State of Ohio has filed a proof of claim related to the instant action against each of the Defendants in the Bankruptcy Case.

On July 15, 2008, the Bankruptcy Court entered its order (the "Confirmation Order") confirming the *Second Amended Joint Chapter 11 Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors Dated as of April 23, 2008* (as supplemented, modified, or amended, the "Plan"), which Plan became effective on August 1, 2008 (the "Effective Date"). Pursuant to the terms of the Plan, on the Effective Date a liquidating trust (the "Trust") was created to complete the wind down of the Debtors' estates and Alan M. Jacobs was appointed as Liquidating Trustee of the Trust ("Liquidating Trustee"). The Trust and the State are hereinafter collectively referred to as the "Parties".

The Parties have agreed to settle and resolve the matters arising from the proofs of Claim filed by the State of Ohio in the Bankruptcy Court. By signing this Agreed Final Entry and Order (hereinafter "Agreed Order"), the Trust submits to the personal jurisdiction of this Court, consents to the imposition of this Agreed Order, and consents to the rights of Plaintiffs to enforce this Agreed Order. The Trust enters into this Agreed Order with Plaintiffs to resolve the matters pertaining to Defendants before this Court. The Trust does not admit, and this Court does not find, that Defendants engaged in any wrongdoing, and the Trust specifically denies the legal allegations of Plaintiffs' Complaint..

PLAINTIFFS' ALLEGATIONS

In their Complaint, Plaintiffs allege as follows:

1. Defendant NCFC is a Maryland corporation with its principal place of business located at

18400 Von Karman Avenue, Suite 1000, Irvine, California, which, at all times mentioned in the Complaint, transacted business within Ohio and engaged in the brokering, origination, and funding of real estate secured, owner-occupied, residential mortgage loans through its wholly owned subsidiaries and affiliates, many of which are located in Ohio.

2. Defendant NCMC is a California corporation with its principal place of business located at 18400 Von Karman Avenue, Suite 1000, Irvine, California, which, at all times mentioned in the Complaint, transacted business within Ohio and engaged in the brokering, origination, and funding of real estate secured, owner-occupied, residential mortgage loans in Ohio.
3. Defendant Home123 is a California corporation with its principal place of business located at 3351 Michelson Drive, Suite 400, Irvine, California, which, at all times mentioned in the Complaint, transacted business within Ohio and engaged in the brokering, origination, and funding of real estate secured, owner-occupied, residential mortgage loans in Ohio.
4. Defendants NCMC and Home123 are wholly owned subsidiaries of Defendant NCFC.
5. Defendants NCMC and Home123 were, at the time of filing of this action, "registrants" as defined in R.C. 1321.51(C), engaged in the business of making mortgage loans to consumers in Cuyahoga County and other Ohio counties pursuant to the Ohio Mortgage Loan Act, R.C. 1321.20 et seq.
6. Defendants NCMC and Home123 were, at the time of filing of this action, "mortgage brokers," as that term is defined in R.C. 1322.01(D), who were authorized and registered with the State to engage in the business of brokering mortgages, as defined in R.C.

1322.01(G)(1), to consumers in Cuyahoga County and other Ohio counties pursuant to the Ohio Mortgage Brokers Act, R.C. 1322.01 et seq

7. Defendants had hundreds of Ohio consumers as clients in the mortgage loan approval process, including consumers whose loan applications had been approved, or who were in the process of being reviewed for underwriting approval ("pipeline consumers").
8. Defendants had represented to hundreds of Ohio "pipeline consumers" that their loan applications had been approved and that Defendants would close and fund their loans in the near future.
9. Defendants did not have the net worth or the financial ability to fund the loans that had been approved or the loans that were going to be approved for funding by the underwriters.
10. Defendants continued to solicit Ohio consumers for residential mortgage loans and broker services.
11. Defendants continued to accept money from "pipeline consumers" for services promised to be provided in connection with residential mortgage loan transactions, with loan applications being accepted as late as March 8, 2007.
12. Defendants, directly or through subsidiaries, continued to file and prosecute foreclosure actions against Ohio consumers related to loans originated and funded by Defendants, with foreclosure actions being filed as late as March 8, 2007.
13. Defendants failed to timely notify the "pipeline consumers" that Defendants did not have the financial ability to fund the consumers' promised and approved mortgage loans.
14. The Ohio Attorney General is a proper party to commence these proceedings pursuant to the authority provided him under the Ohio Consumer Sales Practices Act, R.C. 1345.01

et seq., the Ohio Mortgage Loan Act, R.C. 1321.20 et seq., and the Ohio Mortgage Brokers Act, R.C. 1322.01 et seq., and by virtue of his statutory and common law authority to protect the interest of the citizens of Ohio.

15. The Superintendent of the Division of Financial Institutions, Ohio Department of Commerce, is a proper party to commence these proceedings pursuant to the authority vested in him by the Ohio Mortgage Loan Act, R.C. 1321.20 et seq. and the Ohio Mortgage Brokers Act, R.C. 1322.01 et seq.
16. Defendants are each a "supplier" as that term is defined in R.C. 1345.01(C), as Defendants were at all times relevant herein engaged in the business of engaging in consumer transactions by effecting or soliciting mortgage loans to "consumers" in Cuyahoga County and other Ohio counties, which solicitations were for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
17. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the Ohio Consumer Sales Practices Act, R.C. 1321.54(C) of the Ohio Mortgage Loan Act, and R.C. 1322.11(B)(1) of the Ohio Mortgage Brokers Act.
18. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3).
19. Defendants committed unfair and deceptive and unconscionable acts and practices in violation of R.C. 1345.02(A) and R.C. 1345.03(A) by accepting money from consumers for services promised to be provided when they knew or should have known that they did not have the financial ability to fund the consumers' loans. Such acts or practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. Defendants committed said violation after such decisions were

available for public inspection pursuant to R.C. 1345.05(A)(3).

20. Defendants committed unfair and deceptive acts and practices in violation of R.C. 1345.02(B)(5) by representing that the subject of a consumer transaction was being supplied in accordance with a previous representation when it was not. Such acts or practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).
21. Defendants committed unfair and deceptive acts and practices in violation of OAC 109:4-3-09(A) by failing to promptly deliver promised services. Such acts or practices have been previously determined by Ohio courts to violate the Consumer Sales Practices Act, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).
22. Defendants' actions constituted making false or misleading statements of a material fact, false promises regarding a material fact, and engaging in a continued course of misrepresentations in violation of R.C. 1322.07(B).
23. Defendants' conduct constitutes improper, fraudulent, or dishonest dealings in violation of R.C. 1322.07(C).
24. Defendants violated their duty of care owed to Ohio consumers by failing to act in good faith and fair dealing in any transaction, practice, or course of business in connection with the brokering or originating of any mortgage loan in violation of R.C. 1322.081(A)(4) and R.C. 1349.41.
25. Defendants, by publicly disseminating insufficient financial information, prevented the Superintendent of the Ohio Division of Financial Institutions from ascertaining whether

or not the Defendants had maintained a net worth of at least \$50,000, as is required by R.C. 1321.53(B)(1).

26. The Superintendent of the Ohio Division of Financial Institutions is authorized pursuant to R.C. 1321.54(C) to obtain injunctive and other appropriate relief from this court upon a showing that a person has committed, or is about to commit, a violation of R.C. 1321.51 to 1321.60.

ORDER

For the purposes of implementing this AGREED FINAL ENTRY AND ORDER, the Parties agree and the Court hereby ORDERS, ADJUDGES AND DECREES that:

1. Plaintiffs' request for a Declaratory Judgment, seeking declaration that the types of acts set forth above in Paragraphs 1 through 26 of this Agreed Order violate the Ohio Consumer Sales Practices Act, R.C. 1354.01 et seq., the Ohio Mortgage Loan Act, R.C. 1321.20 et seq., and the Ohio Mortgage Broker Act, R.C. 1322.01 et seq. is hereby GRANTED. Pursuant to R.C. 1345.10(A), given that this Agreed Order is being entered prior to any testimony having been taken, this Agreed Order would not be admissible as prima-facie evidence against Defendants or the Trust in any future proceedings under R.C. 1345.09 or any other action.
2. Defendants NCFC, NCMC, and Home123, under these or any other names, in connection with any consumer transaction, are hereby PERMANENTLY ENJOINED, pursuant to R.C. 1345.07, 1321.54(C), 1321.541(A), and 1322.11(B)(1), from:
 - a. Soliciting Ohio consumers for broker services or residential mortgage loans;
 - b. Accepting fees from Ohio consumers in connection with residential mortgage loans, except fees disbursed by a closing agent after a loan is closed and funded

by an entity other than the Defendants;

- c. Accepting mortgage loan applications in Ohio;
 - d. Arranging for appraisals in connection with mortgage loan applications where consumers will be obligated to pay, directly or indirectly, for such appraisal;
 - e. Initiating new foreclosure actions, continuing to prosecute pending foreclosure actions, enforcing foreclosure sale notices, or evicting consumers from houses in foreclosure, without receiving prior approval from the State;
 - f. Transferring, selling or assigning rights to any Ohio residential mortgage loans absent prior approval from the bankruptcy court with prior notice to the Plaintiffs; or,
 - g. Engaging in any acts or practices that violate the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq., the Ohio Mortgage Loan Act, R.C. 1321.20 et seq., or the Ohio Mortgage Brokers Act, R.C. 1322.01 et seq.
3. Defendants NCMC and Home123 are jointly and severally liable to Plaintiffs for a settlement payment in the amount of Two Hundred Thousand Dollars (\$200,000.00). Plaintiffs acknowledge, and the Court hereby Orders, that any attempt to collect this settlement payment may only be made via a Proof of Claim or settlement thereof in the Bankruptcy Case. Defendants acknowledge that Plaintiffs have filed their proofs of claim in the Bankruptcy Case which claims are being allowed pursuant to the terms of a separate stipulation to be filed in the Bankruptcy Case.
4. Defendants NCMC and Home123 are jointly and severally liable to Plaintiffs for attorney fees and costs in the amount of Fifty Thousand Dollars (\$50,000.00), to be split evenly between the Plaintiffs. Plaintiffs acknowledge, and the Court hereby Orders, that any attempt to collect this settlement payment may only be made via a Proof of Claim or

settlement thereof in the Bankruptcy Case. Defendants acknowledge that Plaintiffs have filed their proofs of claim in the Bankruptcy Case which claims are being allowed pursuant to the terms of a separate stipulation to be filed in the Bankruptcy Case.

5. Defendant NCFC has no financial liability to the Plaintiffs on account of the instant action.
6. Except as expressly provided in paragraphs 3 and 4 of this Agreed Order, neither the Plaintiffs nor any other department or division of the State of Ohio may seek in any manner to receive a distribution of money with regard to the instant action or the allegations set forth in the Complaint from the Trust, any entity whatsoever, including but not limited to the Defendants' bankruptcy estates, any successors to such estates, and any entity furnishing a bond, undertaking, guarantee or other obligatory instrument of suretyship on behalf of the Defendants or the Trust.
7. Defendants and the Trust shall not represent, directly or indirectly, that the Court, or the Ohio Attorney General, or the Superintendent of the Ohio Division of Financial Institutions has sanctioned, condoned, or approved any part or aspect of the Defendants' business operations.
8. This Agreed Order shall not be deemed to preclude any investigation or enforcement action against Defendants for occurrences which are not the subject matter of this Agreed Order, including, inter alia, any acts which may have transpired after the filing of the Agreed Order, under any legal authority granted to the Ohio Attorney General or the Superintendent of the Ohio Division of Financial Institutions.
9. The Trust shall only be required to retain, in electronic storage media in a non-rewriteable, non-erasable format searchable by the Ohio Department of Financial

Institutions, records required to be maintained and preserved pursuant to R.C. 1322.06, that were created during the past four years from the effective date of the related Stipulation agreed to by the Parties documenting the resolution of the State's bankruptcy claims, and any paper records if such records are not available in electronic storage media.

10. In the event that the Plaintiffs, individually or collectively, must initiate legal action in the Bankruptcy Court to compel the Trust to abide by this Agreed Order, the Trust shall be liable to the Plaintiff(s) for bringing the action, should they prevail, for all related enforcement costs, including, but not limited to, a reasonable sum for attorneys' fees and investigative costs.
11. Defendants are assessed court costs not to exceed \$1,000 associated with this matter.

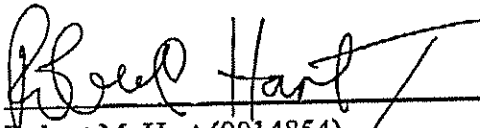
It is so ordered.

Eileen T. Gallagher
JUDGE EILEEN T. GALLAGHER

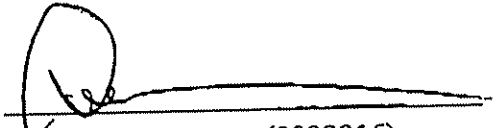
11-21-08
DATE

APPROVED BY:

Nancy H. Rogers
Attorney General



Robert M. Hart (0014854)
Assistant Attorney General
Consumer Protection Section
30 East Broad Street - 14th Floor
Columbus, Ohio 43215-3428
614.466.1305 [telephone]
614.466.8898 [facsimile]
rhart@ag.state.oh.us
Counsel for Plaintiff
Ohio Attorney General



Donald S. Scherzer (0022315)
Roetzel & Andress, LPA
1375 East Ninth Street
One Cleveland Center, 9th Floor
Cleveland, Ohio 44114
216.623.0150 [telephone]
216.623.0134 [facsimile]
dscherzer@ralaw.com
Counsel for Defendants
and The New Century
Liquidating Trust

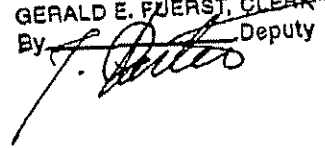
JOHN REARDON
Superintendent, Division of
Financial Institutions



MATTHEW J. LAMPKE (0067973)
Assistant Attorney General
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3400
614.466.2980 [telephone]
614.728.9470 [facsimile]
mlampke@ag.state.oh.us
Counsel for Plaintiff,
Ohio Department of Commerce
Division of Financial Institutions

RECEIVED FOR FILING

NOV 25 2008

GERALD E. FUERST, CLERK
By  Deputy