



## Department of Commerce

Division of Financial Institutions

Ted Strickland, Governor  
Kimberly A. Zurz, Director

In the matter of:

**CMCO MORTGAGE, LLC**

7851 Freeway Circle

Middleburg Heights, Ohio 44130

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Case No. M2009-1009

**SETTLEMENT AGREEMENT**

The Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions (the "Division"), is charged with the responsibility of enforcing the Ohio Mortgage Broker Act ("OMBA"), codified in Ohio Revised Code ("R.C.") Chapter 1322.

CMCO Mortgage, LLC ("CMCO") is a limited liability company that has applied for a mortgage broker certificate of registration issued by the Division pursuant to the OMBA. The business address of record for CMCO is 7851 Freeway Circle, Middleburg Heights, Ohio 44130; thirty percent (30%) of the ownership interest in CMCO Mortgage, LLC is indirectly held by the former owners of OMBA registrant Consumers Mortgage Corporation of Ohio ("Consumers Mortgage"), MB.802939. CMCO voluntarily enters into this Settlement Agreement being fully informed of the right to representation by counsel.

### ALLEGATIONS OF THE DIVISION

- A. R.C. 1322.04(A)(6) states that the superintendent may issue an applicant a certificate of registration if it finds the applicant complies with the OMBA.
- B. R.C. 1322.04(A)(10) states that the Division may issue an applicant a certificate of registration if it finds the applicant's financial responsibility, experience, character, and general fitness command the confidence of the public and warrant the belief that the business will be operated honestly and fairly in compliance with the purposes of the OMBA.
- C. R.C. 1322.10(A)(1)(a) states that the Division may refuse to issue a mortgage broker certificate of registration if the Division finds that a mortgage broker has committed a "violation of or failure to comply with any provision of sections 1322.01 to 1322.12 of the Revised Code[.]"
- D. R.C. 1322.062(A)(1) requires a registrant to deliver a mortgage loan origination disclosure statement that contains all of the information listed in 1322.062(A)(1)(a) through (A)(1)(k) to the buyer within three (3) days after taking an application for a mortgage loan.
- E. R.C. 1322.07(C) prohibits a mortgage broker, registrant, licensee or applicant for a certificate of registration from engaging in conduct that constitutes improper, fraudulent, or dishonest dealings.

- F. R.C. 1322.07(F) prohibits a mortgage broker, registrant, licensee or applicant for a certificate of registration from knowingly instructing, soliciting, proposing or otherwise causing a buyer to sign in blank a mortgage related document.
- G. R.C. 1322.06 authorizes the Division to conduct examinations of mortgage broker records to determine compliance with R.C. Chapter 1322.
- H. R.C. 1322.02(A) prohibits any person from acting as a mortgage broker without first having obtained a certificate of registration from the Division for every office to be maintained by the person for the transaction of business as a mortgage broker in this state.
- I. R.C. 1322.02(B) prohibits any person from acting as a loan officer without first obtaining a license issued by the Division.
- J. On or about January 15, 2009, Consumers Mortgage opened a branch office at 18500 Lake Road in Rocky River, Ohio (the "Rocky River Branch Office"), and began originating residential mortgage loans from that location. Consumers Mortgage did not obtain a mortgage broker certificate of registration for the Rocky River Branch Office before opening that office and transacting business as a mortgage broker in the State of Ohio in violation of R.C. 1322.02(A).
- K. On or about February 1, 2009, Consumers Mortgage opened a branch office at 7972 Tyler Boulevard in Mentor, Ohio (the "Mentor Branch Office"), and began originating residential mortgage loans from that location. Consumers Mortgage did not obtain a mortgage broker certificate of registration for the Mentor Branch Office before opening that office and transacting business as a mortgage broker in the State of Ohio in violation of R.C. 1322.02(A).
- L. Consumers Mortgage employed unlicensed individuals as loan officers and has allowed those individuals to originate residential mortgage loans and compensated those individuals for originating the loans in violation of R.C. 1322.02(B).
- M. Consumers Mortgage delivered mortgage loan origination disclosure statements that did not contain all of the information listed in 1322.062(A)(1)(a) through (A)(1)(k) in violation of R.C. 1322.062(A)(1).
- N. Consumers Mortgage proposed that buyers sign mortgage loan origination disclosure statements that were in blank in violation of R.C. 1322.062(A)(1).
- O. Consumers Mortgage proposed that buyers sign mortgage related documents in blank in violation of R.C. 1322.07(C) and (F).

- P. Because Consumers Mortgage violated R.C. 1322.02(A) and (B), R.C. 1322.062(A)(1) and R.C. 1322.07(C) and (F) and its owners indirectly own 30% of CMCO, the Division is authorized under R.C. 1322.10(A) and R.C. 1322.04(A)(6) and (10) to refuse CMCO's application for a certificate of registration.

#### **AGREED CONDITIONS**

CMCO acknowledges the allegations made by the Division. In consideration of the foregoing and the mutual promises set forth herein, the parties agree to the following:

- 1) CMCO neither admits nor denies the allegations of the Division, but in the interest of resolving the issues, CMCO agrees to the terms of this Settlement Agreement in lieu of the Division proceeding with prosecution of an administrative action and any other Division administrative or civil action against CMCO. Both parties agree that third parties may not rely upon this Settlement Agreement as an admission of fault or liability on the part of any party.
- 2) Nothing in this Settlement Agreement shall be deemed to prevent the Division or its employees, agents, or assignees from participating in, as a witness or otherwise, any lawful action by another, or obeying any lawful court order, arising out of or related to the matters set forth in this Settlement Agreement.
- 3) To fully resolve the alleged violations and findings of fact listed above by Consumers Mortgage, CMCO agrees to pay a civil monetary payment in the amount of one hundred thousand dollars (\$100,000.00). Payment shall be in the form of a check made payable to "Treasurer of State/Consumer Finance Fund" and remitted to the Division with this Settlement Agreement.
- 4) The current operations manager designated in CMCO's pending application has voluntarily agreed to step down from that position by January 31, 2010 and he will not apply to the Division to be an operations manager for a period of five (5) years after the execution of this Settlement Agreement. Subject to the foregoing, said operations manager may act as an executive officer, director and loan originator of CMCO as long as he does not serve as the Operations Manager as defined under R.C. 1322.01(H) for CMCO, to include ensuring compliance with R.C. 1322. Within ninety (90) days of its receipt of an OMBA certificate of registration, CMCO shall have designated to the Division and have in place a Division-approved operations manager in accordance with R.C. 1322.03.
- 5) CMCO hereby agrees to forego its administrative remedies, and waives any and all rights to an administrative hearing, as well as any right to appeal this matter.
- 6) The Division has reviewed the pending application for registration and agrees that upon the full execution of this Settlement Agreement, it will approve

CMCO's pending application for an OMBA certificate of registration provided there are no deficiencies with respect to the application that need to be resolved.

- 7) The Division agrees that the violations described herein will not be the basis for the denial, revocation, or refusal to renew the license of any loan officer or branch of CMCO for the specific loan officers and branches involved in the allegations described herein.
- 8) CMCO attests that on or after November 4, 2009, it has not originated mortgage loans in violation of Chapter 1322.
- 9) This Settlement Agreement contains the entire agreement between the parties as to the matters set forth herein and no promises, conditions or obligations, either expressed or implied, other than those set forth herein, shall be binding on either party.
- 10) CMCO must submit this Settlement Agreement completed per the terms dictated herein, no later than January 15, 2009.

#### **FAILURE TO COMPLY**

If, in the discretion of the Division, CMCO appears to have violated or breached any term or condition of this Settlement Agreement, the Division 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**

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

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

The Division hereby releases the applicant known as CMCO (MB.803973) and its members (Zubin Nagpal and Consumers Mortgage Corporation of Ohio Holdings, Inc.) jointly and severally from any and all liability arising from any actions or omissions of any person or entity which would constitute violations of R.C. Chapter 1322, occurring on or before the date of execution of this Settlement Agreement.

The Division hereby releases the shareholders, members, employees, agents, officers and representatives, including but not limited to the loan officers and operations manager, of the registrant known as Consumers Mortgage (MB.802939), jointly and severally from any and all liability arising from the actions or omissions described herein which would constitute violations of Ohio Revised Code Sections 1322.02(A), 1322.02(B), 1322.062(A)(1),

1322.07(C) or 1322.07(F), occurring on or before the date of execution of this Settlement Agreement.

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. Notwithstanding the foregoing, the Division shall not issue a press release specific to this Settlement Agreement.

This Settlement Agreement in no way binds or limits future actions the Division may take with respect to Consumers Mortgage, CMCO as well as shareholders, partners, members, assignees, and successors in interest thereof or any other person, individual, or company, for the same or similar violations, except as specifically provided herein.

Nothing in this Settlement Agreement shall deem to prevent the Division from taking any administrative action due to deficiencies which may arise in CMCO's violations of Chapter 1322 not specifically addressed in this Settlement Agreement.

#### EFFECTIVE DATE

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

The Settlement Agreement must be signed by: the owner if the registrant is a sole proprietor; all partners if the registrant is a partnership; at least one member if a limited liability company; and the president and secretary, as duly authorized by resolution of the board of directors, if the registrant is a corporation. **The ORIGINAL, signed Agreement with all pages attached must be returned. Keep a copy for your records.**

PRINTED Name and Title of Authorized Signor #1: Zubin Nagpal - Authorized Member

SIGNATURE of Authorized Signor #1

[Signature]

Jan. 14, 2010  
Date

PRINTED Name and Title of Authorized Signor #2: \_\_\_\_\_

SIGNATURE of Authorized Signor #2: \_\_\_\_\_

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

[Signature]  
Date  
ANTHONY D. SICILIANO  
Consumer Finance General Counsel  
Ohio Division of Financial Institutions