


STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

77 South High Street, 21st Floor
Columbus, Ohio 43215-6120

CHECK NO. 931032195
AMOUNT \$1,000. -
DATE OCT - 3 2005
REC. BY 

In the matter of:

**RANDALL MORTGAGE
SERVICES, INC.**

**655 Metro Place South, Suite 600
Dublin, OH 43017**

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) **Case No. 05-NOV-105**

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) **SETTLEMENT AND
CONSENT ORDER**
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WHEREAS, the Ohio Department of Commerce, by and through the Superintendent of the Division of Financial Institutions ("Division"), is charged with the responsibility of enforcing the Ohio Mortgage Broker Act, codified in Ohio Revised Code ("R.C.") Chapter 1322; and

WHEREAS, Randall Mortgage Services, Inc. ("Respondent") is an Ohio corporation and is registered with the Division as a mortgage broker pursuant to R.C. Chapter 1322. The business address of record for Respondent's main office is 655 Metro Place South, Suite 600, Dublin, OH 43017 and operates under the registration number MB 0014; and

WHEREAS, on August 16, 2005, the Division sent via certified mail a Notice of Violation ("the Notice") to Respondent to its main office business address; and

WHEREAS, the Notice contained allegations that:

(A) The Division received a complaint from a consumer couple alleging that Respondent made an oral agreement with the couple that it would reimburse them \$5,000 after the loan closed, as the consumers essentially wanted a "cash out" purchase. Respondent and the consumers agreed on the first mortgage payment being due in July 2005.

(B) At closing, the consumer couple discovered that the first mortgage payment was due in June 2005. At this point, the consumers through their title agent contacted Respondent, whose agent agreed to reimburse to the consumers an additional \$1,000 to compensate for the earlier due date of the first mortgage payment.

(C) After the closing, the consumers received \$5,000 from the Respondent. The consumers filed a complaint with the Division, alleging they were owed an additional \$1,000 from Respondent.

(D) 12 U.S.C. 2603(a) states that the Uniform Settlement Statement required in federally regulated mortgage transactions "shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement." 1301:8-7-06(A)(3) of the Ohio Administrative Code describes the settlement statement registrants are required to keep as records: "The statements shall disclose: (a) the amount of each type of fee paid to the registrant (b) the identity of the buyer or other person paying the fees (c) the amount of each type of fee charged to the buyer." R.C. 1322.07(C) prohibits mortgage brokers and loan officers from engaging in conduct that constitutes improper, fraudulent, or dishonest dealings.

(E) Because only \$1,191 of the \$6,191 mortgage broker fee disclosed on the settlement statement went to the mortgage broker, Respondent did not accurately disclose in the settlement statement the amount of each type of fee paid to the registrant. Because the settlement statement misstated the amount of the mortgage broker fee, it did not conspicuously and clearly itemize all charges imposed upon the seller in connection with the settlement as required by 12 U.S.C. 2603(a) of RESPA. Because Respondent failed to accurately disclose the fee on the settlement statement, Respondent committed an improper act in violation of R.C. 1322.07(C).

(F) The failure to properly categorize the \$5,000 intended as cash out to the consumer caused the APR disclosure to be inaccurate, since such monies should not be treated as a finance charge. Consequently, Respondent violated R.C. 1322.07(C) by committing an improper act by overstating the APR.

WHEREAS, Randall Mortgage Services, Inc. denies the allegations of the Division, but in order to avoid the cost and uncertainty of litigation Respondent agrees to enter into this Consent Order for purposes of settlement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth herein, the parties agree to the following:

- 1) The parties acknowledge and agree to the accuracy of the foregoing recitals.
- 2) This Settlement and Consent Order represents a compromise between the parties for the full, complete, and final settlement of all of their claims, differences, and causes of action with respect to the allegations contained in the Notice.
- 3) The parties agree that the terms of this Settlement and Consent Order bind the parties hereto, and their shareholders, partners, members, assigns, and successors in interest.
- 4) The Division hereby terminates the Notice of Violation issued August 16, 2005, and agrees that it shall not, as long as Respondent is in compliance with this Settlement and Consent Order pursue the matters set forth in such Notice through its administrative process. Nothing, however, in this order shall be deemed to prevent the Division or its employees, agents, or assigns 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 the Notice.

- 5) Nothing in this Settlement and Consent Order shall be deemed an admission of guilt or liability, or agreement with the allegations set forth in the Notice on the part of Respondent.
- 6) Respondent acknowledges lawful service and receipt of the Notice, and stipulates to the jurisdiction of the Division in this matter.
- 7) The Respondent hereby agrees to forego its administrative remedies, and waive any and all rights to an administrative hearing, as well as any right to appeal this matter or order.
- 8) This Settlement and Consent Order shall be effective on the date it is signed by the Superintendent of the Division of Financial Institutions and on such date it will become a final order.
- 9) This Settlement and Consent Order 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.

For purposes of effecting this Settlement and Consent Order, it is hereby ORDERED and DECREED that:

- A. The parties to this Settlement and Consent Order shall abide by the terms of this order as agreed.
- B. Respondent agrees to abide by the provisions of the Ohio Mortgage Broker Act and the rules thereunder, particularly O.A.C. 1301:8-7-06(A)(3) which provides that settlement statements shall disclose (a) the amount of each type of fee paid to the registrant (b) the identity of the buyer or other person paying the fees (c) the amount of each type of fee charged to the buyer. Neither Respondent nor its agents or its employees shall orally agree to disburse funds from the transaction in any way other than as provided in the settlement statement.
- C. The Respondent is hereby assessed a fine in the amount of One Thousand Dollars (\$1,000.) Respondent shall pay the amount of One Thousand Dollars (\$1,000) to the Consumer Finance Fund pursuant to R.C. § 1321.21 within ten days of the effective date of this Settlement and Consent Order. Payment shall be made by certified check or money order made payable to the Ohio Division of Financial Institutions delivered to the Division's counsel.

The Respondent understands that any breach of this Settlement and Consent Order may result in the reinstitution of administrative proceedings, including suspension or revocation, the imposition of additional fines and any other remedy available to the Division.

Robert M. Grieser
Robert M. Grieser
Deputy Superintendent of Consumer Finance

10/3/05
Date

Approved and Agreed

Randall Mortgage, Inc.

By: [Signature]
Its: President

9/28/05
Date

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