

STATE OF OHIO
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL INSTITUTIONS

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

CHECK NO. 715680

AMOUNT \$1,000.00

DATE AUG - 9 2004

REC. BY [Signature]

In the matter of:

**CAPITOL MORTGAGE
SERVICES, INC.**

445 N. High Street, 5th Floor
Columbus, OH 43215

Case No. 04-NOV- 408

**SETTLEMENT AND
CONSENT ORDER**

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, Capitol Mortgage Services, Inc. ("Respondent") is an Ohio corporation 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 445 N. High Street, 5th Floor Columbus, Ohio 43215. This office operates under the registration number MB 0621; and

WHEREAS, on April 7, 2004, the Division sent via certified mail a Notice of Violation ("the Notice") to Capitol Mortgage Services, Inc. ("Respondent") to its main office business address; and

WHEREAS, the Notice contained allegations that:

(A) On January 20, 2004, a consumer filed with the Division's Office of Consumer Affairs a complaint against Capitol Mortgage Services, Inc.

(B) The complaint alleged that an employee of Capitol Mortgage Services, Inc. pulled the consumer's credit report without proper authorization on January 22, 2003. The complaint was supported by the attachment of the item detail portion of her credit report indicating Capitol Mortgage pulled the credit report on that date.

(C) The Division's Office of Consumer Affairs received a further complaint on March 16, 2004 from the husband of the above-mentioned consumer alleging that his credit report was also improperly pulled on January 22, 2003 by Capitol Mortgage Services, Inc. This complaint also had attached to it the item detail portion of his credit report indicating Capitol Mortgage Services, Inc. had pulled his credit report on January 22, 2003.

(D) R.C. 1322.07(C) prohibits mortgage brokers and licensees from engaging in conduct that constitutes improper, fraudulent, or dishonest dealings.

(E) The consumers at issue have reason to believe that a person known to them may have induced an employee of Respondent to pull their credit reports without authorization in violation of the Federal Credit Reporting Act, 15 U.S.C. § 1681b.

WHEREAS, Capitol Mortgage Services, Inc. denies any wrongdoing in relation to the foregoing allegations of the Division, and further, to avoid the cost and uncertainty of litigation Respondent agrees to enter into this Consent Order for purposes of settlement only.

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 April 7, 2004, 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, that the Notice shall be part of the public record, 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:

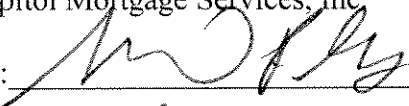
- A. The parties to this Settlement and Consent Order shall abide by the terms of this order as agreed.
- B. The Respondent and its agents shall cease and desist from engaging in conduct that constitutes improper, fraudulent, or dishonest dealings in violation of R.C. 1322.07(C), by pulling credit reports of consumers without due authorization from the consumer whose credit report is being pulled and shall conform its procedures for pulling credit reports in the future to all requirements of law.
- C. The Respondent is hereby assessed a fine in the amount of One Thousand Dollars (\$1000). Respondent shall pay the amount of One Thousand Dollars (\$1000) to the Consumer Finance Fund pursuant to R.C. § 1322.21 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.


F. Scott O'Donnell
Superintendent of Financial Institutions

9/7/04
Date

Approved and Agreed

Capitol Mortgage Services, Inc.
By: 
Its: VICE - PRESIDENT

6/22/04
Date