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STATE OF OHIO  
DEPARTMENT OF COMMERCE  
DIVISION OF FINANCIAL INSTITUTIONS  
77 South High Street, 21<sup>st</sup> Floor  
Columbus, Ohio 43215-6120

In the matter of:

**BAYVIEW MORTGAGE, INC.**  
**122 W. Second Street**  
**Suite 200**  
**Port Clinton, Ohio 43452**

Case No. 03-MB-S-02-04

**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, Bayview Mortgage, 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 122 W. Second Street, Suite 200, Port Clinton, Ohio 43452. Said registrant also holds a license to operate a branch office at 1080 Fishinger Road, Columbus, Ohio 43221, under the registration number MB 4532; and

WHEREAS, on April 18, 2003, the Division sent via certified mail a Notice of Intent to Assess Fine and Suspend Mortgage Broker Certificate of Registration and Notice of Opportunity for a Hearing ("the Notice") to Bayview Mortgage, Inc. ("Respondent") to its main office business address; and

WHEREAS, the Notice contained allegations and findings that:

(A) In February 2003 the Registrant's branch office in Columbus, Ohio sent out a direct mailing to potential customers seeking to solicit business. The mailing consisted of a pink telephone message note referring to the consumer by his or her first name, leaving a phone number to call back, and a message of "great news- please call" signed by a person identified as Micah. Consumers are simply urged to return the call to find out about some "good news." Micah Reese, a loan officer at the Columbus branch location, is the person to whom return calls were to have been directed. The Division contends that these solicitations are an improper and dishonest business practice in violation of R.C. § 1322.07(C).

(B) The Division contends that the direct mailing of February 2003 at issue that was sent by Registrant's branch office to solicit business was an advertisement pursuant to rules of the Division governing mortgage brokers. (O.A.C. § 1301:8-7-07(B)).

(C) The Division contends that said February 2003 direct mailing of the Registrant's Columbus, Ohio branch failed to state the identity of the mortgage broker, provided only the telephone number of the Registrant's branch and provided no address for the Registrant in violation of R.C. § 1322.09 and O.A.C. § 1301:8-7-07 (A)(1) and (2). In addition, the Division contends that the solicitation did not set forth or provide the Registrant's Columbus office's certificate of registration number in violation of R.C. § 1322.09 and O.A.C. § 1301:8-7-07(A)(1).

WHEREAS, Bayview Mortgage, Inc. denies the allegations and contentions of the Division set forth in the Division's Notice and as outlined above, but to avoid the cost and uncertainty of litigation 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 Division and Bayview Mortgage, Inc. agree that the settlement of this matter and Bayview's payment pursuant herein in no manner constitutes an admission of any wrongdoing and/or liability relative to the allegations and contentions of the Division, it being understood that Bayview disputes and denies each and every claim which was or could have been asserted against it by the Division.
- 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 Intent to Assess Fine and Suspend Mortgage Broker Certificate of Registration and Notice of Opportunity of Hearing issued April 18, 2003, 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) Respondent acknowledges lawful service and receipt of the Notice, and stipulates to the jurisdiction of the Division in this matter.
- 6) 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. However, Respondent hereby reserves all administrative remedies and rights in the event of any subsequent action by the Division relative to this Settlement and Consent Order and/or the notice and/or allegations and/or contentions therein.

- 7) 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.
- 8) 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 shall cease and desist from soliciting business through advertisements, including the use of direct mail in the manner set forth in the Notice, in violation of the Ohio Mortgage Broker Act, R.C. § 1322.01 et seq. and the rules thereunder and shall conform its advertisements in the future to all requirements of state law.
- C. The Respondent is hereby assessed a fine in the amount of Five Thousand Dollars (\$5,000.00), half of which shall be suspended upon the Respondent's full compliance with this order during the proceeding three years. Respondent shall pay the unsuspended amount of Two Thousand Five Hundred Dollars (\$2,500.00) to the Consumer Finance Fund pursuant to R.C. § 1322.21 within fourteen business 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 subject the Respondent to the payment of the suspended portion of the fine set forth herein and may result in the reinstitution of administrative proceedings, which may include suspension or revocation, the imposition of additional fines and any other remedy available to the Division.

  
F. Scott O'Donnell  
Superintendent of Financial Institutions

5/20/03  
\_\_\_\_\_  
Date

Approved and Agreed

Bayview Mortgage, Inc.

By: James P. Simpson  
James P. Simpson

05/15/03  
Date

Its: President Secretary / Treasurer

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April 28, 2003

**Via Facsimile 614-644-1631  
and Regular U.S. Mail**

Timothy C. Winslow  
Staff Attorney  
Office of Consumer Affairs  
Ohio Department of Commerce  
Division of Financial Institutions  
77 South High Street - 21<sup>st</sup> Floor  
Columbus, Ohio 43215-6120

**Re: Settlement and Consent Order  
Bayview Mortgage, Inc. – MB4532**

RECEIVED  
DIVISION OF FINANCIAL  
INSTITUTIONS  
03 MAY - 1 AM 8:11

Dear Mr. Winslow:

This shall memorialize our telephone conversation of April 21, 2003 relative to the captioned matter. As discussed, neither in the March 28<sup>th</sup> meeting with Bayview Mortgage, Inc. ("Bayview Mortgage"), nor our previous telephone conversations, did you or the State indicate, mention, or threaten to suspend Bayview's Mortgage Brokerage Registration No. MB4532 for any length of time. Our discussions were limited to the facts of the case, as well as, the fine. Subsequently, we negotiated and finalized the terms of the Settlement and Consent Order ("Settlement") which was reduced to writing.

In our brief conversation on April 18<sup>th</sup>, you stated that you were sending the finalized Settlement, as well as a Notice of Intent to Assess Fine and Suspend Mortgage Broker Certificate of Registration and Notice of Opportunity ("Notice") that you prepared as a procedural matter. Upon my review of the Notice however, it was discovered that under the State's "Proposed Action" the State for the first time asserted a possible six (6) month suspension. It is agreed that the reference in the Notice is erroneous as to any suspension of Bayview Mortgage Brokerage Registration No. MB4532. Therefore, the parties agree that all reference to suspension of Registration No. MB4532 shall be removed from the Notice and have no effect.

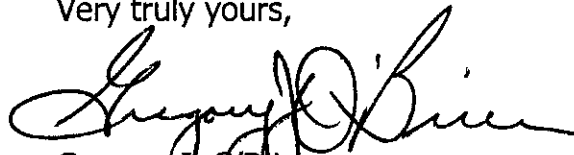
Timothy C. Winslow  
April 28, 2003  
Page 2

If this is your understanding, please indicate by execution in the space below and return to me in the enclosed envelope at your earliest convenience.

Upon return receipt of this letter, I will obtain my client's signature of the Settlement and return it to you.

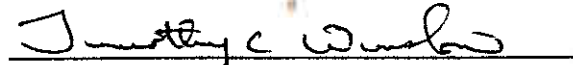
Should you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Gregory J. O'Brien

IT IS AGREED AS TO THE ABOVE, IN MUTUAL AGREEMENT WITH THE ATTACHED  
CLARIFYING LANGUAGE.



Timothy C. Winslow

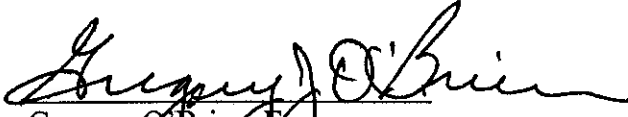
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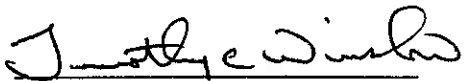
cc: James P. Simpson, President  
Tod Kelly, Vice-President

**Attachment**

(Relative to April 28, 2003 Letter of Agreement- Clarifying Language)

It is understood and agreed by the parties that the Ohio Division of Financial Institutions' agreement to remove reference to any suspension of Bayview Mortgage, Inc.'s license from its Notice of Opportunity of Hearing of April 18, 2003 does not waive or forego any right the Division may have to seek such penalty in any enforcement action for future conduct in violation of the Mortgage Broker Act, R.C. § 1322.01 *et seq.*; And further that the agreement to remove such reference of the suspension of license from its Notice is contingent and dependent upon the execution of the Consent Order agreed to by the parties in this matter.

  
Gregory J. O'Brien, Esq.  
Attorney- Bayview Mortgage, Inc.

  
Timothy C. Winslow  
Staff Attorney- Ohio Division of Financial Institutions