

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Plaintiffs

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Chancery / General Equity

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APR 20 2010

Division of Consumer Affairs

By: Lisa D. Kutlin
Deputy Attorney General
(973) 648-3540

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION,
PASSAIC COUNTY
DOCKET NO. PAS-C-24-09

PAULA T. DOW, Attorney General of the State
of New Jersey and SHARON JOYCE, Acting
Director of the New Jersey Division of
Consumer Affairs,
Plaintiffs,

vs.

CASEY PROPERTIES, LLC; SETH L.
GENDEL; MARTIN A. GENDEL; LEE ALAN
LLP; FRANCIS T. MEMMO; KELLY
KOTZKER; DAMIEN FIGUEROA; EDWARD
EVANS; NICHOLAS MANZI; and ROBERT
B. "BARRY" MCBRIAR,
Defendants.

Civil Action

**CONSENT JUDGMENT AS TO
DEFENDANT DAMIEN FIGUEROA**

WHEREAS, the parties to this Action are Plaintiffs PAULA T. DOW, Attorney General of the State of New Jersey ("Attorney General") and SHARON JOYCE, Acting Director ("Director") of the New Jersey Division of Consumer Affairs, ("Division") (collectively "Plaintiffs"), and Casey Properties, LLC; Seth L. Gendel; Martin A. Gendel; Lee Alan, LLP; Francis T. Memmo; Kelly Kotzker; Damien Figueroa; Edward Evans; Nicholas Manzi; and Robert B. "Barry" McBriar. As evidenced by their signatures below, Plaintiffs and Defendant Damien Figueroa, Esq. ("Settling Defendant" or

“Defendant Figueroa”) (collectively “Parties”) consent to the entry of this Consent Judgment (“Consent Judgment”) and its provisions as to Defendant Figueroa without trial of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:

PART ONE: DEFINITIONS

1. Unless otherwise specified, the following definitions shall apply to this Consent Judgment:

- a. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.
- b. “Settling Defendant” or “Defendant Figueroa” means Damien Figueroa, Esq.
- c. “Order” means this Consent Judgment.
- d. “Effective Date” means the date this Order is executed by the parties hereto and the Court.
- e. “Including” means without limitation.
- f. The use of the singular form of any word includes the plural and vice versa.
- g. “CFA” means the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.
- h. “RICO” means the New Jersey RICO statute, N.J.S.A. 2C:41-1 et seq.

i. "Approved CLE course" means a continuing legal education course or program accredited by the New Jersey Supreme Court Board of Continuing Legal Education.

PART TWO: COMPLIANCE WITH THE LAW

2. Settling Defendant agrees to comply fully with all Federal and State banking and consumer protection laws, including but not limited to the CFA and RICO.

PART THREE: INJUNCTIVE RELIEF

3. Settling Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of his business and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended, including all Federal and State banking and consumer protection laws, including the CFA and all regulations promulgated thereunder.

4. Settling Defendant shall not knowingly misrepresent, conceal, suppress and/or omit any material fact in connection with any purchase or sale of real estate within the State of New Jersey, and shall comply with all applicable state and/or federal laws, rules and regulations as now constituted or as hereafter amended, including, but not limited to, RICO.

5. Settling Defendant agrees that he will not hereafter represent any parties in any matter involving real estate, including acting as a closing attorney in any transaction, until he makes all payments required by paragraph 8 and attends and completes all of the following: (1) an approved CLE course concerning conducting closings in real estate transactions; (2) an approved CLE course concerning residential mortgage regulation; and (3) an approved CLE course on ethics and professional responsibility. Upon

completing each course identified in this paragraph, Settling Defendant shall forward to Plaintiffs a certification identifying the course taken, the CLE provider of the course, the date(s) of the course, and that he has attended all sessions of the course and completed all required coursework.

6. Settling Defendant shall fully and promptly cooperate with Plaintiffs and/or their respective representatives in court or administrative proceedings, any preparations therefore, and any investigations regarding the subject matter of the Complaint in this matter or any subsequent amendments thereto, or any other investigations or proceedings Plaintiffs may initiate. Such cooperation shall include, without limitation and without subpoena:

a. Voluntary production of all documents or other tangible evidence requested which has not already been produced to Plaintiffs;

b. Voluntary and prompt attendance at all proceedings at which the Defendant's presence and/or testimony is requested by subpoena by Plaintiffs, where Defendant shall give voluntary forthright and complete testimony; and

c. Voluntary forthright and complete responses to all inquiries from Plaintiffs to the Defendant.

d. Settling Defendant agrees to respond to any requests by Plaintiffs for documents or information in a timely and complete manner.

PART FOUR: MONETARY RELIEF

7. The Parties have agreed to a Settlement of the Action in the amount of \$14,000 (the "Settlement Amount").

8. Seven Thousand Dollars (\$7,000.00) of the Settlement Amount shall be paid as follows: On or before May 1, 2010, Settling Defendant shall pay Two Thousand Dollars (\$2,000.00) of the Settlement Amount; on or before October 1, 2010, Settling Defendant shall pay Two Thousand Dollars (\$2,000.00) of the Settlement Amount; and on or before April 1, 2011, Settling Defendant shall pay Three Thousand Dollars (\$3,000.00) of the Settlement Amount.

9. The payments referenced in paragraph 8 shall be made by wire transfer or certified or cashier's check made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to:

Jennifer Micco, Supervising Investigator
Office of Consumer Protection
Division of Consumer Affairs
124 Halsey Street – 7th Floor
P.O. Box 45025
Newark, New Jersey 07101

10. Upon making the payments referenced in paragraph 8, Settling Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

11. For a period of one year from the Effective Date, the Seven Thousand Dollar (\$7,000.00) balance ("the Suspended Penalty") of the Settlement Amount shall be suspended and automatically vacated at the end of that period, provided:

a. Settling Defendant complies in all material respects with the terms and conditions set forth in Paragraphs 2 through 9 of this Consent Judgment;

b. Settling Defendant timely makes all payments referenced in paragraph 8;

c. Plaintiffs do not uncover information that Settling Defendant made any misrepresentation or material lack of disclosure concerning his knowledge of or involvement in the activities described in the Complaint; and

d. Plaintiffs do not uncover additional instances of conduct by Settling Defendant in connection with real estate transactions in the State of New Jersey that are similar to that described in the Complaint in this matter.

12. In the event Settling Defendant materially fails to comply with paragraph 11, the entire Settlement Amount (\$14,000) shall be immediately due and payable upon notice by the Plaintiffs. In any such notice, however, Plaintiffs shall provide Settling Defendant with specific details of Settling Defendant's alleged noncompliance and Settling Defendant shall be afforded a fifteen-day period within which to dispute and/or cure any such noncompliance. In the event of Settling Defendant's failure to cure any such noncompliance, Plaintiffs may move on notice or by Order to Show Cause to have the Judgment entered for the entire Settlement Amount, including the Suspended Penalty. Settling Defendant shall have the right to submit opposition to any such motion or Order to Show Cause application filed by Plaintiffs and to contest same on any return date.

PART FIVE: JURISDICTION AND OTHER PROVISIONS

13. Pursuant to RICO, jurisdiction of this Court over the subject matter and over the Settling Defendant for purposes of entering into and enforcing this Consent Judgment is admitted. Jurisdiction is retained by this Court for such further orders and directions as may be necessary or appropriate for the construction and modification of the injunctive provisions herein, or execution of this Consent Judgment, including punishment for any violation of this Consent Judgment. If the Plaintiffs are required to file a petition to

enforce any provision of this Consent Judgment against Settling Defendant, Settling Defendant agrees to pay any courts costs and reasonable attorneys' fees associated with any successful petition to enforce any provision of this Consent Judgment.

14. Venue is proper in this Court, and venue as to all matters between the Parties relating hereto or arising out of this Consent Judgment is solely in the Superior Court of New Jersey, Passaic County.

15. The Parties consent to the entry of this Consent Judgment for the purposes of settlement only without this Judgment constituting evidence against or any admission by any party and without trial of any issue of fact or law. This Consent Judgment does not constitute any admission of liability or wrongdoing, either express or implied, by Settling Defendant or any other party. Further, this Consent Judgment shall not be competent evidence in any judicial or other proceeding of any liability or wrongdoing by Settling Defendant.

16. The entry of this Consent Judgment has been consented to by Settling Defendant as its own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon him by this Consent Judgment, and Settling Defendant consents to its entry without further notice, and avers that no offer, agreement or inducements of any nature whatsoever have been made to him by the Plaintiffs or their attorneys or any employee of the Office of the Attorney General to procure this Consent Judgment.

17. In the event that the Court shall not enter this Consent Judgment, this proposed Consent Judgment shall be of no force and effect against the Attorney General of New Jersey and the Director or the Settling Defendant.

18. This Consent Judgment shall bind Settling Defendant and shall be binding on any and all successors and assigns, successors-in-interest, agents, representatives, and employees, directly or indirectly or through any corporation or anyone acting directly or indirectly on Settling Defendant's behalf.

19. Settling Defendant has, by his signature and the signatures of its respective counsel hereto, waived any right to appeal, petition for certiorari, move to reargue or rehear or be heard in connection with entry of this Consent Judgment concerning past conduct addressed in this Consent Judgment.

20. In exchange for the consideration set forth herein, and conditioned upon Settling Defendant making payments referenced in paragraph 7, Plaintiffs agree to release Settling Defendant from all civil claims asserted against Settling Defendant in Plaintiffs' Complaint. This release does not apply to any other party to this Action. The release language in this paragraph is not intended to apply to any private right of action brought by any individual or entity or to any other Federal or State authority not a party to this Consent Judgment, or to any criminal action.

21. The monetary relief in this Consent Judgment is imposed pursuant to the police and regulatory powers of the State of New Jersey for the enforcement of the law and the protection of the public welfare, and is not intended to constitute a debt which may be limited or discharged in a bankruptcy proceeding. Settling Defendant waives the right to argue, submit, propose, seek to establish or otherwise contend before any court or tribunal that obligations of this Consent Judgment against him or any of his bankruptcy estates, including claims or debt based on this Consent Judgment, are dischargeable debt

or claims under the United States Bankruptcy Code (including under 11 U.S.C. § 523, including 11 U.S.C. § 523 (a)(7), (a)(19)) or any other federal or state law.

22. This Order, when fully executed and performed by Settling Defendant to a reasonable expectation of the Attorney General, will resolve all claims against Settling Defendant that were raised in the complaint filed by the Attorney General in this action. However, nothing in this Order is intended to, nor shall, limit the Attorney General's investigatory or compliance review powers otherwise provided by law.

23. Notwithstanding any provision of this Order to the contrary, the Office of the Attorney General may, in its sole discretion, grant written extensions of time for Settling Defendant to comply with any provision of this Order.

24. The signatories to this Order warrant and represent that they have read and understand this Order, that they are duly authorized to execute this Order, and that they have the authority to take all appropriate action required to be taken pursuant to the Order to effectuate its terms.

25. This Order may be executed in multiple counterparts, each of which shall be deemed a duplicate original.

26. This Order is final and binding on the Parties, including all principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. Each party has a duty to so inform any such successor in interest of the terms of this Order. No assignment by any party thereto shall operate to relieve such party of its obligations herewith.

27. All of the terms of this Order are contractual and not merely recitals, and none may be amended or modified except by a writing executed by all Parties hereto approved by the Court or with Court approval.

28. This above captioned lawsuit shall be dismissed without prejudice as to Defendant Figueroa. However, the Court shall retain jurisdiction over the Parties and the matter and retain the power to order all applicable equitable remedies to ensure compliance with this Order, including, but not limited to, contempt.

29. This Order supersedes and renders null and void any and all written or oral prior undertakings or agreements between the Parties regarding the subject matter hereof.

30. If any provisions, terms, or clauses in this Order are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Order shall remain valid and binding on the Parties.

31. The Parties may seek to enforce this Order by motion before the Court to the full extent of the law; however, in the event of a dispute among the Parties regarding any issue arising hereunder, the Parties shall attempt in good faith to resolve the dispute before seeking the Court's intervention.

32. Failure to comply with any provision of this Order shall be considered a violation of this Consent Order. Upon such a violation, the Attorney General may take any and all steps available to enforce this Consent Order, including seeking an order of contempt. Upon application by the Attorney General showing Settling Defendant has failed to pay the Settlement Amount and any costs pursuant to paragraphs herein, the Court shall also enter a money judgment in the amount of the unpaid balance, plus interest at the rate of

nine (9) percent per annum from the date of violation or nonpayment, against Settling Defendant, and the Attorney General shall have execution thereof.

33. In any application by the Attorney General pursuant to paragraph 32 above, the Attorney General may request an allowance for costs.

34. Failure by any party to seek enforcement of this order pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

35. Nothing in this Order shall preclude a right of action by any person not a party to this Agreement.

36. All communications and notices regarding this Order shall be sent by first class mail, e-mail, and facsimile, if twenty-five (25) pages or less in length, to:

Office of the Attorney General

Lisa D. Kutlin
Deputy Attorney General
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101
Lisa.Kutlin@DOL.LPS.STATE.NJ.US
FAX: 973-648-3879

Attorney for Plaintiffs


Damien Figueroa

George L. Mahr, III
Mahr & Mahr, LLC
80 Main Street
P.O. Box 534
Madison, NJ 07940

FAX: 973-377-3705

Attorney for Settling Defendant

IT IS ON THIS 7th DAY OF April, 2010 SO
ORDERED, ADJUDGED AND DECREED.


HON. MARY M. McVEIGH, J.S.C.