



**GRANTED**

Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

**Dated: Sep 07, 2011**

**Brian Whitney**  
**District Court Judge**

DATE OF ORDER INDICATED ON ATTACHMENT

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, Colorado 80202</p> <hr/> <p>STATE OF COLORADO, <i>ex rel.</i> John W. Suthers, Attorney General,</p> <p>Plaintiff,</p> <p>v.</p> <p>PATRICK C. BRUNNER, an individual; JERRY OHU, an individual; GREGORY D. HOFFMAN, an individual; WILLIAM J. SCHULTZ, an individual; FORTUNE FINANCIAL GROUP, LLC, a Colorado limited liability company; and PLATINUM FINANCIAL GROUP, a sole proprietorship,</p> <p>Defendants.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
	<p>Case No.: 2010cv8168</p> <p>Courtroom: 203</p>
<p><b>CONSENT DECREE AND PERMANENT INJUNCTION AGAINST PATRICK C. BRUNNER</b></p>	

Plaintiff, the State of Colorado, *ex rel.* John W. Suthers, Attorney General (the “State”), and Defendant, Patrick C. Brunner (“Defendant”), (collectively the “Parties”) state that they have fully and finally resolved all disputes between them arising out of the conduct alleged in the Complaint filed on October 14, 2010. As such, the Parties present to the Court this Consent Decree and Permanent Injunction (“Consent Decree”). By their authorized signatures, the Parties stipulate to the Court that they understand and agree to the terms of this Consent Decree; that they had an opportunity to consult with legal counsel concerning this Consent Decree; that they accept the legal consequences involved in agreeing to this Consent Decree; that they waive all rights of appeal from this Consent Decree; that they are aware of the duties placed upon them by the Consent Decree and are desirous and capable of carrying out their duties in full; that they waive issuance and service of writ of injunction; and that this Consent Decree represents a

compromise and settlement of all matters arising out of facts alleged by the State in the Complaint filed on October 14, 2010.

The Parties stipulate that the final judgment of \$405,494 entered on May 16, 2011 by the Court remains in effect until such time as Defendant completes his total payment obligations required by this Consent Decree; however, the State shall not enforce the final judgment unless there is a default by Defendant of this Consent Decree.

The Parties submit to the jurisdiction of this Court and venue in the City and County of Denver, and do not contest the entry of this Consent Decree.

As all Parties have approved and agree to entry of this Consent Decree by their authorized signatures below, the Court, after being fully advised in this matter, FINDS, CONCLUDES AND ORDERS AS FOLLOWS:

- i. That it has jurisdiction of the Parties and subject matter of this suit;
- ii. That the settlement of this suit is fair, reasonable, and just; and
- iii. That it would be in the best interest of the Parties if the Court approves the Consent Decree.

Based on these findings, and having considered the representations made by the Parties, the Court is of the opinion that a permanent injunction should be issued as set forth in this Consent Decree, and that the State is entitled to recover from Defendant as follows:

#### **PERMANENT INJUNCTION**

1. Defendant Patrick C. Brunner, and any other persons or entities under his control or in concert or participation with him, shall be permanently enjoined from:

- (a) Engaging or otherwise participating in mortgage loan origination, mortgage brokerage activity, mortgage assistance, mortgage relief, foreclosure consulting, loan modifications, real estate activity, real estate sales, appraisals, title services, underwriting, lending, or loan or forensic audits in any capacity;
- (b) Soliciting, advertising, selling, marketing, displaying, offering, performing, or accepting payment for, services, including lead generation and product sales, relating to mortgage loan origination, mortgage brokerage activity, mortgage assistance, mortgage relief, foreclosure consulting, loan modifications, real estate activity, real estate sales, appraisals, title services, underwriting, lending, or loan or forensic audits; and
- (c) Publishing, distributing or disseminating any information, including written, oral, or video, to accept or receive, directly or indirectly, payment relating to mortgage loan origination, mortgage brokerage activity, mortgage assistance, mortgage relief,

foreclosure consulting, loan modifications, real estate activity, real estate sales, appraisals, title services, underwriting, lending, or loan or forensic audits.

2. Defendant shall comply with the Colorado Consumer Protection Act (CCPA), C.R.S. §§ 6-1-101 – 6-1-1121, as now constituted or as may hereafter be amended in conducting business in the state of Colorado.

3. Defendant agrees never to apply for a mortgage loan originator license or a real estate broker license in Colorado. If Defendant applies for any professional license, including a mortgage broker license, real estate broker license, appraiser license, insurance license, or securities license, in any state, he will notify the licensing body of that state of the existence and terms of this Consent Decree. Additionally, Defendant agrees to notify the State in writing within thirty (30) days of the application for any professional license, including a mortgage broker license, real estate broker license, appraiser license, insurance license, or securities license, in any state.

## **MONETARY RELIEF**

### **Disgorgement/Restitution**

4. Defendant shall pay \$20,000 to the State of Colorado for disgorgement/restitution pursuant to C.R.S. § 6-1-110(1) in accordance with the payment schedule below. These funds, and any interest thereon, shall be held in trust by the Attorney General for purposes of making restitution to the persons harmed by the conduct alleged in the Complaint. Such funds shall be distributed by and at the discretion of the Attorney General, and can be distributed without awaiting the satisfaction of all payments by Defendant.

### **Civil Penalties**

5. Defendant shall pay \$15,000 to the State of Colorado for a civil penalty pursuant to C.R.S. § 6-1-112(1)(a) in accordance with the payment schedule below.

### **Fees and Costs**

6. Defendant shall pay \$15,000 to the State of Colorado for costs and attorney fees pursuant to C.R.S. § 6-1-113(4) in accordance with the payment schedule below, which monies, and any interest thereon, shall be held in trust by the Attorney General to be used first for reimbursement of the State's actual costs and attorney fees and, second, to be held along with any interest thereon, in trust by the Attorney General for future consumer education, consumer fraud, or antitrust enforcement actions.

## **Payment Schedule**

7. Defendant shall make monthly payments to the State of Colorado not less than \$1,388.89, except the final payment may be \$1,388.85, beginning September 1, 2011 and on or before the 1st day of every month thereafter until the entire \$50,000 due is satisfied, which shall be paid in its entirety no later than September 1, 2014.

## **Payment Instructions**

8. For each of the above payments, a certified check shall be made payable to the "Colorado Department of Law," reference "Patrick C. Brunner settlement," and be delivered to:

Colorado Department of Law  
Attn: Don Finch  
Consumer Protection Section  
1525 Sherman Street  
Denver, Colorado 80203

9. If Defendant makes a partial payment under this Consent Decree, the State's acceptance of a partial payment does not prevent it from declaring the Consent Decree breached and collecting the full amount due and to seek other remedies, including contempt and triggering the suspended final judgment below. In such event, the State shall be entitled to recover all its costs and attorney fees in collecting such amounts and pursuing relief under this Consent Decree. Partial payments may be distributed at the discretion of the Attorney General and without the need for all future payments to be made.

10. If Defendant fully complies with his payment obligations under the Consent Decree and pays a total amount of \$50,000 to the State by September 1, 2014, or longer if modified at the sole discretion of the State, the State shall file with the Court a satisfaction of judgment for the final judgment entered by the Court on May 16, 2011 for \$405,494. During the time period in which Defendant is complying with the full monthly payment obligations and if Defendant does not default on this Consent Decree, as defined by paragraphs 11 and 12, the State agrees not to enforce the final judgment.

## **DEFAULT PROVISION AND FINAL JUDGMENT**

11. Subject to the exception in paragraph 12, if Defendant defaults on any monthly payment and such default is not cured within sixty (60) days, the State may enforce after the time for cure has expired the final judgment entered by the Court on May 16, 2011 for \$405,494. The amounts collected pursuant to this judgment may be distributed at the discretion of the Attorney General and before the entire judgment is collected. The final judgment of \$405,494 is a debt for a fine, penalty, or forfeiture, payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss, and therefore it is nondischargeable in bankruptcy.

12. If Defendant experiences a temporary financial hardship as a result of loss of employment, significant reduction in income, or a serious medical condition to him or a family member resulting in more than \$850 in out-of-pocket medical expenses per month, and is unable to make the full monthly payment in the Consent Decree as a result, Defendant must (1) contact the State in writing as provided in paragraph 23 no later than ten (10) days after the monthly payment obligation deadline to explain and document his hardship; (2) if requested by the State, complete and submit to the State a Financial Statement under oath and any other documents or information requested by the State to substantiate any claimed hardship; (3) and demonstrate a good faith hardship for the inability to comply with the full payment obligation. The State has the sole discretion to determine whether Defendant has demonstrated a good faith temporary financial hardship and the duration of such hardship. If Defendant does not make a full monthly payment because of such hardship, it shall not affect or otherwise modify the total amount due and owing to the State, and the State has the sole discretion to modify the deadline on which the total amount owing must be paid in full as set forth in paragraph 7, but in no case shall the deadline be extended by more than six months.

13. In the event of default under this Consent Decree, the State need provide only notice to Defendant of the default and may enforce the final judgment without any further proceedings, hearings, or argument. Defendant consents and stipulates to this procedure and waives any process, objection, opportunity to be heard, or appeal. All amounts paid to the State under this Consent Decree shall be credited to the final judgment entered on May 16, 2011.

#### **VIOLATIONS OF THE CONSENT DECREE**

14. For any violations of this Consent Decree, the State also reserves all rights and remedies under the law, including C.R.S. § 6-1-112(1)(b), which shall be in addition to any other penalty or provision set forth herein.

15. If the State discovers that Defendant made a material misrepresentation regarding the income or assets on his Financial Statement or related documents, then the State may provide written notice to the Court and Defendant describing the material misrepresentation. Upon receiving such notice, the Defendant has ten (10) days to file a response with the Court to the State's allegations. If the Court finds a material misrepresentation in the income and/or assets as described on the Financial Statement, it shall be considered a default and the State may enforce the final judgment entered on May 16, 2011.

16. The obligations set forth in this Consent Decree are continuing.

#### **OTHER TERMS AND CONDITIONS**

17. **Enforcement.** This Court shall retain jurisdiction over this matter for the purposes of (a) enabling the State to apply, at any time, for enforcement of any provision of this Consent Decree and for sanctions or other remedies for any violation of this Consent Decree, including contempt; and (b) enabling any party to this Consent Decree to apply, upon giving

thirty (30) days written notice to all other Parties, for such further orders and directions as might be necessary or appropriate either for the construction or enforcement of this Consent Decree or for the modification or termination of one or more injunctive provisions.

18. **Cooperation.** Defendant agrees to cooperate with all investigations and other proceedings that the State may bring to enforce the terms of this Consent Decree, including within this cooperation agreement are the obligations to:

- (a) Appear at the request of the State for hearings, depositions, and trial and provide testimony in any form during the pendency of this action and in any post-trial proceedings. All such testimony shall be truthful;
- (b) Produce documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the State; and
- (c) Accept a subpoena from the State without need for service of process.

19. **No Third Party Beneficiaries Intended.** This Consent Decree is not intended to confer upon any person any rights or remedies, including rights as a third-party beneficiary. This Consent Decree is not intended to create a private right of action on the part of any person or entity other than the Parties hereto.

20. **Private Parties Retain Rights.** This Consent Decree shall not be construed to affect the rights of any private party to pursue remedies pursuant to C.R.S. § 6-1-113, or under any other statute or common law.

21. **No Release by Any Other Government Authority.** Nothing in this Consent Decree shall be construed to release claims by any other government authority.

22. **Violation of this Consent Decree.** A violation of any of the terms of this Consent Decree shall constitute a prima facie violation of the CCPA and shall, in addition to resulting in the payments detailed above, give rise to remedial and punitive sanctions available under Rule 107 of the Colorado Rules of Civil Procedure.

23. **Service of Notices and Process.** Service of notices or process required or permitted by this Consent Decree shall be in writing and delivered on the following persons:

To Defendant:

Patrick C. Brunner  
P.O. Box 2738  
Loveland, CO 80539  
Tel: 720-635-9733  
E-mail: brunner79@hotmail.com

To the State of Colorado:

Andrew P. McCallin  
First Assistant Attorney General  
Consumer Protection Section  
Colorado Attorney General's Office  
1525 Sherman Street  
Denver, Colorado 80203  
Tel: 303-866-5079  
E-mail: andrew.mccallin@state.co.us

If Defendant changes his address, telephone number, or e-mail, he must notify the State in writing of the new address, telephone number or email address within thirty (30) days.

24. **Waiver.** The failure of any party to exercise any rights under this Consent Decree shall not be deemed a waiver of any right or any future rights.

25. **Severability.** If any part of this Consent Decree shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder hereof, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein

26. **Conflict with Subsequent Law.** In the event that any applicable law conflicts with any provision hereof, making it impossible for Defendant to comply both with the law and with the provisions of this Consent Decree, the provisions of the law shall govern.

27. **Counterparts.** This Consent Decree may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the Consent Decree. Facsimile and electronic copies of this Consent Decree and the signatures hereto may be used with the same force and effect as an original.

28. **Inurement.** This Consent Decree is binding and inures to the benefit of the Parties hereto and their respective successors and assigns.

29. **Amendment.** This Consent Decree may be amended solely by written agreement signed by the State and by the Defendant.

30. **No Other Representations.** There are no other representations, agreements or understandings between Defendant and the State that are not stated in writing herein.

IT IS SO ORDERED, ADJUDGED AND DECREED BY THIS COURT.

Agreed to and accepted this 27th day of July, 2011.

/s/ Patrick C. Brunner

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PATRICK C. BRUNNER

Agreed to and accepted this 26th day of August, 2011.

JOHN W. SUTHERS  
Attorney General

/s/ Erik R. Neusch

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ANDREW P. McCALLIN  
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ERIK R. NEUSCH  
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