

DISTRICT COURT, CITY AND COUNTY OF
DENVER, COLORADO

1437 Bannock Street
Denver, Colorado 80202

STATE OF COLORADO, ex rel. JOHN W. SUTHERS,
Attorney General,

Plaintiff,

v.

LEONID SHIFRIN, a/k/a LEO SHIFRIN, Individually;
MARK SHIFRIN, Individually;
JERRY A. JOHNSON, Individually;
MORTGAGE PLANNING AND LENDING
SPECIALISTS, LTD., a Colorado Limited Partnership;
WHOLESALE MORTGAGE LENDING, LLC,
a Colorado Limited Liability Company;
MORTGAGE PROCESSING GROUP, INC.,
a Colorado Corporation;
SHIFRIN, INC., a Colorado Corporation;
JUPITER LENDING, INC., a Nevada Corporation;
UNITED STATES MARKETING ASSOCIATES, INC.,
a Nevada Corporation; and
CBA, INC., a Nevada Corporation,

Defendants.

Attorneys for Plaintiff:
JOHN W. SUTHERS, Attorney General
ANDREW. P. McCALLIN, Reg. No. 20909*
First Assistant Attorney General
ALISSA H. GARDENSWARTZ, Reg. No. 36126*
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▲ COURT USE ONLY ▲

Case Number: 2008 CV 1047

Courtroom: 203

CONSENT JUDGMENT AND PERMANENT INJUNCTION

Plaintiff, the State of Colorado, *ex rel.* John W. Suthers, Attorney General (the “State”), and Defendant, Jerry A. Johnson (“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 February 15, 2008. As such, the Parties present to the Court this Consent Judgment and Permanent Injunction (“Consent Judgment”). By their authorized signatures, the Parties stipulate to the Court that they understand and agree to the terms of this Consent Judgment; that they had an opportunity to consult with legal counsel concerning this Consent Judgment; that they accept the legal consequences involved in agreeing to this Consent Judgment; that they waive all rights of appeal from this Consent Judgment; that they are aware of the duties placed upon them by the Consent Judgment 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 Judgment represents a compromise and settlement of all matters arising out of facts alleged by the State in the Complaint filed on February 15, 2008.

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 Judgment.

As all Parties have approved and agree to entry of this Consent Judgment 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 settlement and renders judgment accordingly.

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 Judgment, and that the State is entitled to recover a judgment from Defendant as follows:

PERMANENT INJUNCTION

1. Defendant Jerry A. Johnson, 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, 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, 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, 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 in Colorado for a mortgage loan originator license. 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 Judgment. 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.

JUDGMENT

4. A judgment shall enter by this Court against Defendant Jerry A. Johnson for \$1,000,000 in favor of the State of Colorado for disgorgement, restitution, and civil penalties pursuant to C.R.S. § 6-1-110 and C.R.S. § 6-1-112. The State shall be entitled to recover its costs and attorney fees in enforcing the judgment. The judgment shall be considered 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. It is therefore agreed by federal statute and case law that this judgment is not dischargeable in bankruptcy.

5. The Parties agree that this judgment will be suspended, and the State will not enforce the judgment, if Defendant Jerry A. Johnson completes and provides the State with a sworn financial statement, does not commit any misrepresentation or omission in the sworn financial statements as provided for in this Consent Judgment or in this Consent Judgment, and fully complies with all the terms of the Consent Judgment. The Parties agree that the State has discretion to determine whether there is a violation of this paragraph. All financial affidavits required hereunder shall be confidential and remain with the State as a confidential record. If said financial affidavit is necessary to be filed with the Court, it shall be filed under seal.

6. If Defendant Jerry A. Johnson receives any material increases in his income or assets during the next 7 years of this Consent Judgment, the State may apply to the Court for execution on this judgment or a portion of it. Defendant shall not attempt to avoid the terms of this Consent Judgment by titling assets in the name of any relative or affiliate. Each year by the

anniversary date of this Consent Judgment Defendant Jerry A. Johnson will complete a sworn financial statement as provided by the State. The State shall provide Defendant Jerry A. Johnson with a financial affidavit at least 14 days before the anniversary date of this Consent Judgment. The Parties agree that the Court has the discretion to determine whether an increase in income or assets is “material” within the meaning of this paragraph.

7. If Defendant Jerry A. Johnson complies with this Consent Judgment for a period of 7 years with no violations the State may not enforce the monetary provisions of this Consent Judgment, and the payment obligations hereunder shall be discharged.

8. For any violations of this Consent Judgment, the State also reserves all rights and remedies under the law, including § 6-1-112(1)(b), C.R.S. (2010), which shall be in addition to any other penalty or provision set forth herein.

9. The obligations set forth in this Consent Judgment are continuing.

OTHER TERMS AND CONDITIONS

10. **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 Judgment and for sanctions or other remedies for any violation of this Consent Judgment, including contempt; and (b) enabling any party to this Consent Judgment to apply, upon giving 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 Judgment or for the modification or termination of one or more injunctive provisions.

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

- (a) Appear at the request of the State for hearings, depositions, or 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.

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

13. **Private Parties Retain Rights.** This Consent Judgment 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.

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

15. **Violation of this Consent Judgment.** A violation of any of the terms of this Consent Judgment 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.

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

To Defendant:

Jerry A. Johnson
17325 East Fair Lane
Aurora, Colorado 80016
Phone: 720-339-8643
E-mail: grandbaker@gmail.com

To the State of Colorado:

Andrew P. McCallin
First Assistant Attorney General
Consumer Protection Section
Colorado Department of Law
1525 Sherman Street
Denver, Colorado 80203
Andrew.McCallin@State.Co.US
Phone: 303-866-5079

If Defendant changes his address, telephone number or email address, he must notify the State in writing of the new address, telephone number or email address within 30 days.

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

18. **Severability.** If any part of this Consent Judgment 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

19. **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 Judgment, the provisions of the law shall govern.

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

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

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

23. **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 this _____ day of January, 2011.

JUDGE BRIAN R. WHITNEY
Denver District Judge

Agreed to and accepted this 2nd day of January, 2011

/s/ Jerry A. Johnson

JERRY A. JOHNSON

Agreed to and accepted this 2nd day of January, 2011.

JOHN W. SUTHERS
Attorney General

/s/ Andrew P. McCallin

ANDREW P. McCALLIN
Consumer Protection Section
Colorado Attorney General's Office
1525 Sherman Street
Denver, Colorado 80203

Pursuant to C.R.C.P. 121, § 1-26(7), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Seventh Floor, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.