

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made as of this 17th day of October, 2014, by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for AmTrust Bank (“FDIC-R”), and the Defendants Mr. Larry M. Gandy, Sr. (“L. Gandy”); Ms. Tiffany Gandy and Mr. Frank E. Kane (collectively the “Settling Defendants”), (individually the FDIC-R and the Settling Defendants may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to December 4, 2009, AmTrust Bank (“Bank”), was a depository institution organized and existing under the laws of the United States;

On December 4, 2009, the Office of Thrift Supervision closed the Bank and pursuant to 12 U.S.C. § 1821(c), the Federal Deposit Insurance Corporation was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers and privileges of the Bank, including those with respect to its assets.

Among the assets to which the FDIC-R succeeded were the Bank’s claims, demands, and causes of action that are subject to this Agreement.

On December 3, 2012, the FDIC-R filed a complaint for money damages against the Settling Defendants. Those claims for damages are now pending in the United States District Court for the District of Nevada in *FDIC v. Gandy*, Case Number 12-cv-02059 (the “Action”). The Settling Defendants have denied liability in the Action.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty, trouble, and expense of further litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments, and releases stated herein, the sufficiency of which consideration is hereby acknowledged, the undersigned Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-R

A. As an essential covenant and condition to this Agreement, within thirty (30) days of the Parties' execution of this Agreement, L. Gandy agrees to pay the FDIC-R the total sum of One Hundred Seventy Five Thousand Dollars (\$175,000) (the "Settlement Payment").

B. L. Gandy shall deliver the Settlement Payment by a check made payable to Mortgage Recovery Law Group Client Trust Account and sent via overnight delivery to Dana J. Clausen, Esq., Mortgage Recovery Law Group, 700 N. Brand Blvd., Glendale, California 91203
Reference: AmTrust/ Gandy Kane Settlement.

In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) within thirty (30) days of the Parties' execution of this Agreement, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the date of execution until the date of payment.

C. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subparagraph A above, then the FDIC-R, in its sole discretion, shall have the right at any time prior to receipt of the Settlement Payment in full (including all accrued interest) to:

1. Extend the period of time for payment, including interest accruing from the date determined by subsection A above, through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(b)(2); or

2. Enforce this Agreement and, in such event, Defendants agree to jurisdiction in United States District Court in Nevada and L. Gandy agrees to pay all of the

FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. Terminate the Agreement, move to vacate any dismissal order, to which Kane, L. Gandy, and T. Gandy agree to consent, and re-institute the action on the FDIC-R's claims. Kane, L. Gandy and T. Gandy further agree to waive any and all objections, defenses, claims or counterclaims, and covenant and agree not to assert any objections, defenses, claims or counterclaims that did not exist or were otherwise unavailable as of the date this Agreement was fully executed; and/or

4. Seek any other relief available to it in law or equity.

Any extension of time for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's right to take any of the actions set forth in Section I.C.2 through I.C.4 at any time prior to receipt of the Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

Within ten business days after the latter of (1) full execution of this Agreement by each of the Parties, and (2) receipt of the Settlement Payment, plus any accrued interest, the FDIC-R shall file a stipulation of dismissal with prejudice, executed by all Parties, or their respective counsel.

SECTION III: Releases

A. The FDIC-R's Release

Upon receipt of the Settlement Payment, and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Larry M. Gandy, Sr., Tiffany Gandy, and Frank E. Kane and their respective heirs, executors, trustees, administrators, representatives, successors and assigns, from any and all claims, demands,

obligations, damages, actions, and causes of action, direct or indirect, in law or in equity belonging to the FDIC-R, arising out of or relating to the Action.

B. Larry M. Gandy, Sr., Tiffany Gandy, and Frank E. Kane Release

Effective simultaneously with the release in Section III.A. above, Larry M. Gandy, Sr., Tiffany Gandy, and Frank E. Kane, on behalf of themselves, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge the FDIC-R, and its employees, officers, directors, representatives, attorneys, successors and assigns, from any and all claims, demands, obligations, damages, actions, and causes of action, direct or indirect, in law or in equity, that arise from or relate to the Bank or to the performance, nonperformance, or manner of performance of Larry M. Gandy, Sr.'s, Tiffany Gandy's, and Frank E. Kane's respective functions, duties and actions as alleged in the Action.

C. Exceptions from Releases by FDIC-R

1. Notwithstanding any other provision of this Agreement, the FDIC-R does not release, and expressly preserves fully and to the same extent as if this Agreement had not been executed, any claims or causes of action:

a. against the Settling Defendants or any other person or entity for liability, if any, incurred as the maker, endorser or guarantor of any promissory note or indebtedness payable or owed by them to the FDIC-R, the Bank, other financial institutions, or any other person or entity, including without limitation any such claims acquired by FDIC-R as successor in interest to the Bank or any person or entity other than Bank; and

b. against any person or entity not expressly released by the FDIC-R in this Agreement.

2. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed or interpreted as limiting, waiving, releasing, or compromising the

jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement or other proceedings seeking removal, prohibition, or any other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person.

3. Notwithstanding any other provision of this Agreement, this Agreement does not waive any claims that could be brought by the United States through the Department of Justice, the United States Attorney's Office for any federal judicial district, or any other department or agency of the United States as defined by 18 U.S.C. § 6. In addition, the FDIC-R specifically reserves the right to seek court-ordered restitution pursuant to the relevant provisions of the Victim and Witness Protection Act, 18 U.S.C. § 3663, *et. seq.*, if appropriate.

SECTION IV: Representations and Acknowledgements

A. Authorized Signatories. All of the undersigned persons represent and warrant that they are Parties hereto or are authorized to sign this Agreement on behalf of the respective Party, and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement shall be binding upon and inure to the benefit of the undersigned Parties and their respective heirs, executors, administrators, representatives, successors and assigns.

B. Advice of Counsel. Each Party hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or her counsel.

SECTION V: Reasonable Cooperation

A. The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing, or causing their agents and attorneys to do, whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording,

and entry, of any documents necessary to conclude the Action, and to otherwise perform the terms of this Agreement.

B. Further, Larry M. Gandy, Sr., Tiffany Gandy and Frank E. Kane agree to cooperate fully with the FDIC-R in connection with any action required under this Agreement. Any such cooperation that involves any out of pocket costs is subject to reasonable reimbursement by the FDIC-R pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall not require disclosure or waiver of any attorney/client privileged information or work product, but includes:

a. producing, from within their possession or control, all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R, in its reasonable discretion, to be relevant to the facts of the Action;

b. making themselves available upon request by the FDIC-R at reasonable times and places for interviews regarding facts, as determined by the FDIC-R in its reasonable discretion, to be relevant to the facts of the Action;

c. appearing to testify, upon request by the FDIC-R, in any matter determined by the FDIC-R in its reasonable discretion, to be related to the facts of the Action, without the necessity of subpoena;

d. signing truthful affidavits upon request by the FDIC-R, regarding any matter, as determined by the FDIC-R in its reasonable discretion, to be relevant to the facts of the Action.

SECTION VI: Other Matters

A. No Admission of Liability. The undersigned Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims and defenses, that this Agreement is not an admission or evidence of liability or infirmity

by any of them regarding any claim or defense, and that the Agreement shall not be offered or received in evidence by or against any Party hereto, except to enforce its terms.

B. Execution in Counterparts. This Agreement may be executed in counterparts by one or more of the Parties and all such counterparts when so executed shall together constitute the final Agreement, as if one document had been signed by all Parties; and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Party or Parties upon the execution by all Parties to this Agreement.

C. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the laws of the State of Nevada.

D. Notices. Any notices required hereunder shall be sent by registered mail, first class, return receipt requested, and by email, to the following:

If to the FDIC-R:

Paul A. Levin, Esq.
Mortgage Recovery Law Group
700 N. Brand Blvd., Suite 830
Glendale, CA 91203
(818) 630-7901

(b)(6)

If to Larry M. Gandy, Sr., Tiffany Gandy, and Frank E. Kane:

Michael M. Edwards, Esq.
Wilson Elser Moskowitz Edelman & Dicker LLP
300 South Fourth Street, 11th Floor Las Vegas, NV 89101
(702) 727-1400

(b)(6)

E. Entire Agreement. This Agreement constitutes the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the

Party or Parties bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Choice of Law.

This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, the internal laws of the State of Nevada, without regard to its conflicts of laws.

G. Advice of Counsel.

Each Party hereby acknowledges that he or it has consulted with and obtained the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his or its counsel.

H. Title and Captions.

All section titles and captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

I. Authorship/Construction.

This Agreement sets forth terms and agreements jointly negotiated by the Parties. It is expressly agreed that this Agreement shall not be construed for or against any party by reason of which party drafted it.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FDIC AS RECEIVER FOR AMTRUST BANK LARRY M. GANDY, SR.

By: _____

Name: _____

Date: _____

By: (b)(6)

Title: _____

Date: _____

TIFFANY GANDY

FRANK E. KANE

(b)(6)

By: _____

Name: _____

Date: _____

By: (b)(6)

Title: _____

Date: _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by each of them or their duly authorized representatives on the dates hereinafter subscribed.

FDIC AS RECEIVER FOR AMTRUST BANK LARRY M. GANDY, SR.

(b)(6)

By: _____

Name: Patrick M. McGurt

Date: 10/17/2014

By: _____

Title: _____

Date: _____

TIFFANY GANDY

FRANK E. KANE

By: _____

Name: _____

Date: _____

By: _____

Title: _____

Date: _____