
SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made as of this day of September, 2011, by, between, and among the following undersigned parties:

(1) The Plaintiff, Federal Deposit Insurance Corporation, acting as receiver of Washington Mutual Bank, N.A. (“FDIC-Receiver”) and (2) the Defendants, the Law Office of Robert Jay Gumenick, P.C., Robert Jay Gumenick (collectively the “Gumenick Defendants”), Chicago Title Insurance Company (“Chicago”), Fidelity National Title Insurance Company (“Fidelity”) (collectively Chicago and Fidelity may be referred to as the “Title Insurance Companies”), and Jerome Shapiro (“Shapiro”), and (3) America Guarantee and Liability Insurance Company (“AGLIC”) (individually, the FDIC-Receiver, the Gumenick Defendants, Shapiro, the Title Insurance Companies, and AGLIC may be referred to herein as “Party” and collectively as the “Parties”).

RECITALS

WHEREAS:

Prior to September 25, 2008, Washington Mutual Bank, NA (“Bank”) was a depository institution organized and existing under the laws of the State of Utah.

On September 25, 2008, the Bank was closed by the Office of Thrift Supervision and the FDIC was appointed receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-Receiver 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-Receiver succeeded were any and all of the Bank’s claims, demands, and causes of actions against its former professionals.

On or about December 22, 2009, the FDIC-Receiver applied to the Court to be included as a plaintiff in the cause of action previously asserted by JPMorgan Chase Bank, N.A., relative

(b)(4) _____ to commercial loan number (the "Norwood Loan"). Those claims for damages are now pending in the United States District Court for the Southern District of New York, in The Federal Deposit Insurance Corporation v. Gumenick, et al., Docket No. 08-02154 (the "Action").

The FDIC-Receiver alleged, among other things, that the Gumenick Defendants were negligent related to the representation of the Bank for the Norwood Loan.

The FDIC-Receiver alleged that the Title Insurance Companies were committed to issue a title insurance policy for the Norwood Loan (the "Policy").

Gumenick alleged, by way of third-party complaint against Chicago, that Chicago was liable for the alleged negligence of its agent, Successful Title Agency, LLC.

Further, the FDIC-Receiver alleged Shapiro was liable under other various theories of damages.

The Gumenick Defendants, Shapiro, and the Title Insurance Companies have denied liability in the Action.

The 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 Parties agree, each with the other, as follows:

SECTION I: Payment to FDIC-Receiver

A. As an essential covenant and condition to this Agreement, AGLIC agrees to pay directly to the FDIC-Receiver, on behalf of its insured, the total sum of \$1,360,000.00 ("the Settlement Funds"). Upon the execution of the Agreement by all parties, AGLIC shall deliver to the FDIC-Receiver within three (3) business days a check payable to the Federal Deposit Insurance Corporation for the full amount of the Settlement Funds.

B. In the event that (1) by September 30, 2011, the Gumenick Defendants and AGLIC have not executed the Agreement and represented in writing that the check for the Settlement Funds is in the possession of their counsel for prompt tender to the FDIC-Receiver, or (2) the Settlement Funds are not tendered to the FDIC-Receiver within three (3) business days of the execution of the Agreement by all Parties, interest shall accrue on all unpaid amounts of the Settlement Funds at the rate of 5% per annum from September 30, 2011 until the date of payment.

C. In addition, and without waiving any other rights that the FDIC-Receiver may have, in the event that the Settlement Funds (including all accrued interest) are not received by the FDIC-Receiver on or before September 30, 2011, then, with respect to the Party, or Parties, that fail to deliver their share of the Settlement Funds only (the "Non-Delivering Parties"), the FDIC-Receiver, in its sole discretion, shall have the right at any time prior to receipt of all Settlement Funds (including all accrued interest) to declare this Agreement null and void, shall have the right to extend this Agreement for any period of time until it receives all Settlement Funds (including all accrued interest), and/or shall have the right to enforce this Agreement against the Non-Delivering Parties, in which event the Non-Delivering Parties agree to jurisdiction in Federal District Court in the Southern District of New York and agree to pay all of the FDIC-Receiver's reasonable attorney's fees expended in enforcing the terms of this Agreement. Any decision by the FDIC-Receiver to extend the terms of this Agreement or to accept a portion of the Settlement Funds shall not prejudice its rights to declare this Agreement null and void with respect to the Non-Delivering Parties, at any time prior to receipt of all Settlement Funds (including all accrued interest) or to enforce the terms of this Settlement Agreement; provided however, that in the event the FDIC-Receiver declares this Agreement

null and void, the FDIC-Receiver will return all amounts paid to it under this Agreement by the Non-Delivering Parties.

SECTION II: Stipulation of Dismissal

Upon execution of this Agreement by each of the Parties, and receipt of the Settlement Funds, plus any accrued interest, the FDIC-Receiver shall dismiss the Action, as it relates to the Gumenick Defendants, the Title Insurance Companies, and Shapiro. The Parties agree to enter a stipulation providing that the dismissal of the Action shall be with prejudice, with each party to bear its own costs as these were originally incurred.

SECTION III: Releases

A. Release of the Gumenick Defendants and AGLIC by FDIC-Receiver.

Effective upon receipt in full of the Settlement Funds plus any accrued interest, and dismissal described in Sections I and II above, and except as provided in Paragraph III.H. below, the FDIC-Receiver, for itself and its successors and assigns, hereby releases and discharges the Gumenick Defendants and AGLIC, their respective heirs, executors, 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-Receiver, that arise from or relate to, the performance, nonperformance, or manner of performance of the Gumenick Defendants' respective functions, duties and actions related to the Norwood Loan, including without limitation, the causes of action alleged in the Action.

B. Release of FDIC-Receiver by the Gumenick Defendants and AGLIC

Effective simultaneously with the release granted in Paragraph III.A. above, the Gumenick Defendants and AGLIC, on behalf of themselves individually, and their respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge the FDIC-Receiver, and its employees, officers, directors, 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, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of the Gumenick Defendants' respective functions, duties and actions related to the Norwood Loan.

C. Release of Shapiro by the FDIC-Receiver

Effective upon receipt in full of the Settlement Funds plus any accrued interest, and dismissal described in Sections I and II above, and except as provided in Paragraph III.H. below, the FDIC-Receiver, for itself and its successors and assigns, hereby releases and discharges Shapiro, his respective heirs, executors, 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-Receiver, that arise from or relate to, the performance, nonperformance, or manner of performance of Shapiro's respective functions, duties and actions related to the Norwood Loan, including without limitation, the causes of action alleged in the Action.

D. Release of FDIC-Receiver by Shapiro

Effective simultaneously with the release granted in Paragraph III.C. above, Shapiro, on behalf of himself individually, and his respective heirs, executors, administrators, agents, representatives, successors and assigns, hereby release and discharge the FDIC-Receiver, and its employees, officers, directors, 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, that arise from or relate to, the Bank or to the performance, nonperformance, or manner of performance of Shapiro's respective functions, duties and actions related to the Norwood Loan or otherwise, including without limitation, the causes of action alleged in the Action.

E. Release by the Gumenick Defendants, Shapiro, and the Title Insurance Companies of Each Other.

Effective simultaneously with the releases granted in Paragraph III.A-D above, the Gumenick Defendants, Shapiro, and the Title Insurance Companies and their respective heirs, executors, administrators, representatives, successors and assigns, hereby release and discharge each other, their parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, 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, that arise from or relate to the performance, nonperformance, or manner of performance of their respective functions, duties and actions related to or in connection with all causes of action that were or that could have been alleged in the Action concerning the Norwood Loan.

F. Release of the Title Insurance Companies by FDIC-Receiver.

Effective upon receipt in full of the Settlement Funds plus any accrued interest and dismissal described in Sections I and II above, and except as provided in Paragraph III.H below, the FDIC-Receiver, for itself and its successors and assigns, hereby releases and discharges the Title Insurance Companies, their parents, subsidiaries, affiliates and reinsurers, and their respective employees, officers, directors, agents, 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, that arise from or relate to the Action or any commitments or policies of any kind and any closing service letters that were issued by or on behalf of the Title Insurance Companies in connection with the Norwood Loan. The FDIC-Receiver agrees that any interest it may have under such commitments, policies or closing service letters related solely to the Norwood Loan is extinguished.

G. Release of FDIC-Receiver by the Title Insurance Companies.

Effective simultaneously with the release granted in Paragraph III.F above, the Title Insurance Companies, for themselves and their successors and assigns, and on behalf of their parents, subsidiaries, affiliates and reinsurers, and their successors and assigns, hereby releases and discharges FDIC-Receiver, and its employees, officers, directors, agents, 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, that arise from or relate to the Action or any commitments or policies of any kind and any closing service letters that were issued by or on behalf of the Title Insurance Companies in connection with the Norwood Loan.

H. Express Reservations From Releases By FDIC-Receiver.

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

a. against the Gumenick Defendants, AGLIC, Shapiro and the Title Insurance Companies 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-Receiver, the Bank, other financial institutions, or any other person or entity, including without limitation, any claims acquired by the FDIC-Receiver as successor in interest to the Bank or any person or entity other than Bank;

b. against any person or entity not expressly released in this Agreement; and

c. which are not expressly released in Paragraphs III.A, C or F above.

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

authority of the FDIC-Receiver in the exercise of its supervisory or regulatory authority or to diminish its ability to institute administrative enforcement proceedings seeking removal, prohibition or any other administrative enforcement action which may arise by operation of law, rule or regulation.

3. Notwithstanding any other provision, this Agreement does not purport to waive, or intend to waive, any claims which could be brought by the United States through either the Department of Justice, the United States Attorney's Office, or in any federal judicial district. In addition, the FDIC-Receiver 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: The Dwek Bankruptcy

In the event that the FDIC-Receiver is paid in full on the Norwood Loan (including all principal, accrued interest, attorneys fees and costs, and interest thereon) (the "Loan Amount"), the FDIC-Receiver agrees that should it receive distributions in the bankruptcy proceedings of Solomon Dwek, Case No.: 07-11757 (the "Dwek Bankruptcy") in excess of the Loan Amount (the "Excess Distributions"), the FDIC-Receiver shall send to AGLIC all such Excess Distributions within thirty (30) business days of its receipt of such Excess Distributions. The FDIC-Receiver may, in its sole discretion, elect to direct the Liquidating Trustee in the Dwek Bankruptcy to send the Excess Distribution directly to AGLIC.

SECTION V: Representations and Acknowledgements

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

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

C. Binding Effect. Each of the undersigned persons represents and warrants that they are a party 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 Parties and their respective heirs, executors, administrators, representatives, successors and assigns.

D. Choice of Law. This Agreement shall be interpreted, construed and enforced according to applicable federal law, or in its absence, applicable state law.

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between and among the Parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the party or parties to be bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Specific Representations Warranties and Disclaimer. The settling parties expressly acknowledge that in determining to settle the claims released here, the FDIC-Receiver has reasonably and justifiably relied upon the accuracy of financial information in the affidavits submitted. If, in their affidavits the settling parties have failed to disclose any material interest, legal, equitable, or beneficial, in any material asset, the FDIC-Receiver in its

sole discretion, may exercise one or more or all of the following remedies within the statute of limitations period applicable to FDIC-Receiver under 12 U.S.C. §1821(d)(14)(A)(ii)(1) after the date this Agreement is executed: (a) the FDIC-Receiver may declare the releases granted to the settling parties as null and void, but only as to the breaching and non-disclosing settling party or parties; (b) the FDIC-Receiver may retain the Settlement Funds; (c) the FDIC-Receiver may sue the breaching and non-disclosing settling party or parties for damages, an injunction, and specific performance for the breach of this agreement; and (d) the FDIC-Receiver may seek to vacate any dismissal order and reinstate the FDIC-Receiver's claims against the breaching and non-disclosing settling party or parties. The settling parties agree that if, in their affidavits, they have failed to disclose any material interest, legal, equitable, or beneficial, in any material asset, the settling parties consent to the reinstatement of FDIC-Receiver's claims against the breaching and non-disclosing settling party or parties.

G. Reasonable Cooperation.

1. 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.

2. Further, the Defendants agree to cooperate fully with the FDIC-Receiver 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-Receiver pursuant to its internal guidelines and policy for such reimbursement. Such cooperation shall consist of:

a. producing all documents requested by the FDIC-Receiver , without the necessity of subpoena, as determined by the FDIC, in its sole discretion, to be relevant to the Bank so long as it relates to the subject matter of the Action or the Norwood Loan;

b. making themselves available upon request by the FDIC-Receiver at reasonable times and places for interviews regarding facts, as determined by the FDIC-Receiver in its sole discretion, to be relevant to the Bank so long as it relates to the subject matter of the Action or the Norwood Loan;

c. appearing to testify, upon request by the FDIC-Receiver, in any matter determined by the FDIC-Receiver in its sole discretion, to be related to the Bank, without the necessity of subpoena so long as it relates to the subject matter of the Action or the Norwood Loan;

d. signing truthful affidavits upon request by the FDIC-Receiver, regarding any matter, as determined by the FDIC-Receiver in its sole discretion, to be relevant to the Bank so long as it relates to the subject matter of the Action or the Norwood Loan.

H. Advice of Counsel. Each party hereby acknowledges that 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.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK

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.

Date: ^{October} ~~September~~ 3 2011

FEDERAL DEPOSIT INSURANCE CORPORATION
as Receiver to Washington Mutual Bank

(b)(6)

BY: _____
TITLE: Counsel for the FDIC-Receiver
PRINT NAME: Leonard J. DePasquale

LAW OFFICES OF ROBERT JAY GUMENICK, PC

(b)(6)

Date: September ___ 2011

By: _____
Name: _____
Title: _____

Date: September ___ 2011

By: _____
ROBERT JAY GUMENICK:
(b)(6)

CHICAGO TITLE INSURANCE COMPANY

Date: September ___ 2011

By: _____
Name: _____
Title: _____

FIDELITY NATIONAL TITLE INSURANCE
COMPANY

Date: September ___ 2011

By: _____
Name: _____
Title: _____

AMERICA GUARANTEE AND LIABILITY
INSURANCE COMPANY

Date: September ___ 2011

By: _____
Name: _____
Title: _____

By: _____
JEROME SHAPIRO

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.

Date: September ___ 2011

FEDERAL DEPOSIT INSURANCE CORPORATION
as Receiver to Washington Mutual Bank

BY: _____
TITLE: Counsel for the FDIC-Receiver
PRINT NAME: Leonard J. DePasquale

LAW OFFICES OF ROBERT JAY GUMENICK

Date: September ___ 2011

By: _____
Name: _____
Title: _____

Date: September ___ 2011

By: _____
ROBERT JAY GUMENICK:

CHICAGO TITLE INSURANCE COMPANY

(b)(6)

Date: *Oct* *4* 2011

By: _____
Name: *VINCENT J SHARKEY JR*
Title: *SENIOR VICE PRESIDENT*

FIDELITY NATIONAL TITLE INSURANCE
COMPANY

(b)(6)

Date: *Oct* *4* 2011

By: _____
Name: *VINCENT J SHARKEY JR*
Title: *SENIOR VICE PRESIDENT*

AMERICA GUARANTEE AND LIABILITY
INSURANCE COMPANY

Date: September ___ 2011

By: _____
Name: _____
Title: _____

By: _____
JEROME SHAPIRO

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.

Date: ^{October} September 3 2011

FEDERAL DEPOSIT INSURANCE CORPORATION
as Receiver to Washington Mutual Bank

(b)(6)

BY:

TITLE: Counsel for the FDIC-Receiver

PRINT NAME: Leonard J. DePasquale

LAW OFFICES OF ROBERT JAY GUMENICK

Date: September ___ 2011

By: _____

Name: _____

Title: _____

Date: September ___ 2011

By: _____

ROBERT JAY GUMENICK:

CHICAGO TITLE INSURANCE COMPANY

Date: September ___ 2011

By: _____

Name: _____

Title: _____

FIDELITY NATIONAL TITLE INSURANCE
COMPANY

Date: September ___ 2011

By: _____

Name: _____

Title: _____

AMERICA GUARANTEE AND LIABILITY
INSURANCE COMPANY

(b)(6)

Date: ^{October} September 12, 2011

By:

Name: Jean Flora Nacchio

Title: Claims Counsel

By: _____

JEROME SHAPIRO

7138425v1

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.

Date: ~~September~~ ^{October} 3 2011

FEDERAL DEPOSIT INSURANCE CORPORATION
as Receiver to Washington Mutual Bank

(b)(6)

BY: _____

TITLE: Counsel for the FDIC-Receiver

PRINT NAME: Leonard J. DePasquale

LAW OFFICES OF ROBERT JAY GUMENICK

Date: September ___ 2011

By: _____

Name: _____

Title: _____

Date: September ___ 2011

By: _____

ROBERT JAY GUMENICK:

CHICAGO TITLE INSURANCE COMPANY

Date: September ___ 2011

By: _____

Name: _____

Title: _____

FIDELITY NATIONAL TITLE INSURANCE
COMPANY

Date: September ___ 2011

By: _____

Name: _____

Title: _____

AMERICA GUARANTEE AND LIABILITY
INSURANCE COMPANY

(b)(6)

Date: ~~September~~ ^{October} 13 2011

By: _____

Name: Jean Flora Nacchio

Title: Claims Counsel

By: _____

JEROME SHAPIRO

7138425v1

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.

Date: September ___ 2011

FEDERAL DEPOSIT INSURANCE CORPORATION
as Receiver to Washington Mutual Bank

BY: _____
TITLE: Counsel for the FDIC-Receiver
PRINT NAME: Leonard J. DePasquale

LAW OFFICES OF ROBERT JAY GUMENICK

Date: September ___ 2011

By: _____
Name:
Title:

Date: September ___ 2011

By: _____
ROBERT JAY GUMENICK;

CHICAGO TITLE INSURANCE COMPANY

Date: September ___ 2011

By: _____
Name:
Title:

FIDELITY NATIONAL TITLE INSURANCE
COMPANY

Date: September ___ 2011

By: _____
Name:
Title:

AMERICA GUARANTEE AND LIABILITY
INSURANCE COMPANY

October 28
Date: ~~September~~ ___ 2011

By: _____
Name:

JEROME SHAPIRO

(b)(6)

(b)(6)