

SETTLEMENT AGREEMENT AND MUTUAL RELEASES

This Settlement Agreement and Mutual Releases ("Agreement") is made this _____ day of May, 2012 by, between and among the following undersigned Parties: the Plaintiff, Federal Deposit Insurance Corporation, in its capacity as receiver for AmTrust Bank ("FDIC-R"); and the Defendant Acorn Funding Group, Inc. ("Acorn"); both of whom are parties in a case captioned *FDIC, as Receiver for AmTrust Bank v. Pankaj Malik, et al.*, Case No: 09-cv-4805 (E.D.N.Y.) ("The Litigation").

RECITALS

WHEREAS, In November, 2009, AmTrust Bank initiated The Litigation against its closing attorney Pankaj Malik, various mortgage brokers, and other individuals and entities alleged to be involved in the origination of mortgages using improper flip transactions and straw buyers, including claims against Acorn for breach of contract related to one such mortgage;

WHEREAS, on December 4, 2009, AmTrust was closed by the Office of Thrift Supervision 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 and all of the Bank's claims, demands, and causes of action, including those claims asserted in The Litigation; and

WHEREAS, Acorn has denied the allegations asserted against it for breach of contract;

WHEREAS, Acorn has provided the FDIC-R with a sworn affidavit and other financial materials to demonstrate that it has limited means from which to pay a judgment;

WHEREAS, the FDIC-R has relied upon the accuracy of the information provided by Acorn regarding its financial condition as a material condition for entering this Settlement Agreement; and

WHEREAS, without any admission of liability by any of the undersigned Parties, the Parties deem it to be in their respective best interests to end their disputes arising out of and related to The Litigation, and avoid further costs and risks associated with The Litigation and enter into this Agreement.

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

Section 1. Payment to the FDIC-R.

A. As an essential covenant and condition to this Agreement, Acorn has agreed to pay the FDIC-R the sum of Seventeen Thousand Dollars (\$17,000.00) (the "Settlement Funds").

B. Within 30 days of the execution of the Agreement, Acorn shall deliver the first Five Thousand Dollars (\$5,000.00) of the Settlement Funds to the FDIC-R by direct wire transfer into an account designated by FDIC-R or by certified or cashier's check drawn upon a depository institution acceptable to FDIC-R.

C. No later than December 31, 2012, Acorn shall deliver the remaining Twelve Thousand Dollars (\$12,000.00) of the Settlement Funds to the FDIC-R by direct wire transfer into an account designated by FDIC-R or by certified or cashier's check drawn upon a depository institution acceptable to FDIC-R.

Section 2. Confession of Judgment.

A. As an additional essential covenant and condition to this Agreement, Acorn has agreed to execute and deliver to the FDIC-R an Affidavit of Confession of Judgment, confessing judgment in the FDIC-R's favor for the sum of One Hundred Thousand Dollars (\$100,000).

B. In the event that Acorn fails to make either payment listed in Section 1 above by the applicable deadline, Acorn shall be in default of this Agreement and the FDIC-R shall have the right to obtain a Confession of Judgment against Acorn in order to recover the amount of One Hundred Thousand Dollars, less any Settlement Funds already paid to the FDIC-R.

C. If the Settlement Funds, or any portion thereof, are not received by the FDIC-R within the deadlines stated in Section 1 of the Agreement, interest upon any unpaid portion of the Settlement Funds will accrue at a rate of 6% per annum commencing on the 31st day after the funds were due.

D. Without waiving any other rights that the FDIC-R may have, in the event that the Settlement Funds, including all accrued interest as may be applicable, are not received by the dates specified in Section 1 of this Agreement, then the FDIC-R shall have the right, in its sole discretion, to enforce this Agreement, and Acorn shall be responsible for the sum of One Hundred Thousand Dollars (\$100,000), and all fees, including attorney fees, incurred by the FDIC-R in enforcing the Agreement. The Parties further acknowledge and consent to the jurisdiction of Magistrate Judge Azrack for enforcement of this Agreement in connection with her continuing role overseeing settlement negotiations related to The Litigation.

Section 3. Acorn's Agreement to Cooperate.

Acorn further agrees to cooperate fully with the FDIC-R in the ongoing Litigation and any future litigation or other proceedings related to the persons, entities, and events involved in the Litigation, including, if necessary, testifying regarding the persons, entities, and events involved in the Litigation.

Section 4. Stipulations and Dismissals.

Upon execution of this Agreement by each of the undersigned Parties, the FDIC-R shall dismiss with prejudice all of its claims in the Litigation against Acorn, and those claims related to the loans identified in the release at Section 5A below. A stipulation of dismissal with prejudice as to these claims shall be prepared by the FDIC-R and executed by Acorn within 30 days after receipt of this settlement agreement by the FDIC-R from Acorn.

Section 5. Mutual Releases.

A. Release of Acorn by the FDIC-R.

Effective upon receipt of the sworn statement specified in Section 1 above, the FDIC-R hereby releases and discharges Acorn, its insurers, representatives, successors, assigns and attorneys, from any and all claims, demands, obligations, damages, actions, causes of action, direct or indirect, in law or in equity, belonging to the FDIC-R that arise from or relate to The Litigation, that arise from or relate to the loan for borrower [redacted], for the

(b)(4),(b)(6) property located at [redacted] Rosedale, NY (the [redacted] Loan"), or that arise from or (b)(4),(b)(6)
(b)(4),(b)(6) relate to the loan for borrower [redacted] loan [redacted], for the property located at (b)(4),(b)(6)
(b)(4),(b)(6) [redacted] Far Rockaway, NY (the [redacted] Loan"). (b)(4),(b)(6)

B. Release of the FDIC-R by Acorn.

Effective simultaneously with the release in Section 5A above, Acorn, on its own behalf, and on behalf of its insurers, representatives, successors, assigns, and attorneys hereby releases and discharges the FDIC-R from any and all claims, demands, obligations, damages, actions, causes of action, direct or indirect, in law or in equity, that arise from or relate to the Litigation, the Royal Loan or the Smulowitz Loan.

C. Express Reservation of Releases By The FDIC-R.

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

- i. Against any other party in the Litigation not expressly released by this Agreement; and
- ii. Which are not expressly released in Section 5A, above.

2. Notwithstanding any other provision of this Agreement, nothing herein limits, waives, releases, diminishes or compromises the jurisdiction and authority of the Federal Deposit Insurance Corporation in the exercise of its supervisory or regulatory authority to institute administrative enforcement or other proceedings seeking removal, prohibition, civil penalties, restitution or other relief it is authorized to seek pursuant to its supervisory or regulatory authority against any person, or which may arise by operation of law, rule, or regulation.

3. Notwithstanding any other provision of this Agreement, this Agreement does not waive any claims which could be brought by the United States through the Department of Justice or the United States Attorney's Office for any federal judicial district. 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 6. Representations and Acknowledgments

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

D. Specific Representations, Warranties and Disclaimer. Acorn acknowledges that in determining to settle the claims released herein, the FDIC-R reasonably and justifiably relied upon the accuracy of financial information provided by Acorn. If Acorn misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, Acorn agrees to

cooperate fully with the FDIC-R to transfer its interest in the asset to the FDIC-R and to sign any and all documents necessary to transfer its interest in the asset to the FDIC-R. Moreover, if Acorn has intentionally failed to disclose or materially misstated any interest, legal, equitable, or beneficial, in any asset, the FDIC-R in its sole discretion, may exercise one or more or all of the following remedies: (a) the FDIC-R may declare the release granted to Acorn as null and void; (b) the FDIC-R may sue Acorn for damages, an injunction, and specific performance for the breach of this Agreement; and (c) the FDIC-R may seek to vacate any dismissal order and reinstate the FDIC-R's claims against Acorn. Acorn agrees that if it has intentionally failed to disclose, or materially misrepresented the nature or amount of, any interest, legal, equitable, or beneficial, in any asset, Acorn consents to the reinstatement of FDIC-R's claims and waives any statute of limitations defense that would bar any of the FDIC-R's claims against it.

E. 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 New York.

F. Entire Agreement and Amendments. This Agreement along with the Affidavit of Confession of Judgment described in Section 2 constitute the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the parties to be bound thereby, or by their respective authorized attorneys or other representatives.

G. 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.

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

Federal Deposit Insurance Corporation, as
Receiver for AmTrust Bank

(b)(6)

Date:

6/22/2012



Acorn Funding Group, Inc.

Date:

6/13/2012



(b)(5)

11664003

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X	
FEDERAL DEPOSIT INSURANCE CORPORATION	: Index No.
AS RECEIVER FOR AMTRUST BANK,	:
	:
Plaintiff,	:
	:
- against -	:
	:
ACORN FUNDING GROUP, INC.	: AFFIDAVIT OF
	: CONFESSION
Defendant.	: <u>OF JUDGMENT</u>
	:
-----X	

STATE OF NEW YORK)
)ss.:
COUNTY OF QUEENS)

I, William Korman, being duly sworn, state:

1. I am the [president/CEO/Controlling Member] and the owner of ___% of the outstanding shares of stock of Acorn Funding Group, Inc. ("Acorn").

(b)(6) 2. I reside at

3. As [the president, CEO, and sole shareholder of Acorn], I have authority to enter into agreements on behalf of Acorn.

4. Acorn is a defendant named in the case of Federal Deposit Insurance Corporation as Receiver for AmTrust Bank v. Pankaj Malik, *et al.*, in the United States District Court for the Eastern District of New York, case number 09-cv-4805 (the "Malik Litigation").

5. Acorn entered into Settlement Agreement and Mutual Release dated May __, 2012 with the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank (the "FDIC-

R"), the plaintiff in the Malik Litigation, to resolve all pending claims between me and the FDIC-R in the Malik Litigation.

6. Pursuant to the Settlement Agreement and Mutual Release, Acorn is obligated to make payments to the FDIC-R totaling \$17,000.00, as follows: \$5,000.00 no later than June __, 2012, and \$12,000.00 no later than December 31, 2012. In the event that Acorn should default on any payment as such payment becomes due, Acorn shall be responsible to the FDIC-R for the amount of One Hundred Thousand Dollars (\$100,000) less any payments already made.

7. I hereby confess judgment on behalf of Acorn pursuant to CPLR 3218 in favor of the FDIC-R in the amount of One Hundred Thousand Dollars (\$100,000) less any amount already paid to the FDIC-R as set forth in Paragraph 5 and authorize the FDIC-R to enter judgment for that amount against me in the event that I should default on any payment under the terms outlined in Paragraph 5.

8. No part of this obligation has been paid, although payment has been demanded.

9. This confession of judgment is for an obligation due or to become due to the FDIC-R arising from and out of the Settlement Agreement and Mutual Release.

Acorn Funding Group, Inc.

By:

[Redacted Signature Box]

(b)(6)

Its:

President

Date:

6/13/2012

Sworn to before me this
day of May, 2012

Notary Public