

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is made by, between, and among the following undersigned parties:

The Plaintiff Federal Deposit Insurance Corporation as Receiver for Founders Bank (“FDIC-R”) and Jo Jo Real Estate Enterprises, LLC, d/b/a Property Valuation Services (“Settling Defendant”).

Individually, the FDIC-R and the Settling Defendant may be referred to herein as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS:

Prior to July 2, 2009, Founders Bank (“Bank”) was a state-chartered nonmember depository institution operating in the State of Illinois.

On July 2, 2009, the Illinois Department of Financial and Professional Regulation closed the Bank and the Federal Deposit Insurance Corporation was appointed Receiver pursuant to 12 U.S.C. § 1821(c). 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 certain of the Bank’s claims, demands, and causes of action against appraisers.

On June 29, 2012, the FDIC-R filed a complaint for money damages against the Settling Defendant. This claim for damages is now pending in the United States District Court for the Northern District of Illinois in *Federal Deposit Insurance Corporation as Receiver for Founders Bank v. Chicago Title Insurance Company, Chicago Title and Trust Company, and Jo Jo Real Estate Enterprises, LLC, d/b/a Property Valuation Services*, Case Number 12-cv-05198 (“Action”). The Settling Defendant has denied liability in the Action.

The undersigned Parties deem it in their best interests to enter into this Agreement to avoid the uncertainty 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, the Settling Defendant agrees to pay the FDIC-R the total sum of Five Hundred Thousand Dollars (\$500,000.00) (“Settlement Payment”).

B. Within fifteen (15) calendar days following the date that this Agreement is fully executed, the Settling Defendant shall file a motion in the Action for a good faith finding as to the settlement agreed to by the Parties in this Agreement. FDIC-R will not object to the Settling Defendant’s motion for a good faith finding.

C. Within fifteen (15) calendar days following the date that the Court grants the Settling Defendant’s motion for a good faith finding described in subsection B, the Settling Defendant shall deliver the Settlement Payment by check made payable to “RJ Landau Partners Client Trust Account” on behalf of FDIC-R. If the Court refuses to enter a good faith finding as to the settlement agreed to by the Parties in this Agreement, this Agreement shall be null and void.

D. In the event that the Settlement Payment is not delivered to the FDIC-R (or its counsel) as required by subsection C, interest shall accrue on all unpaid amounts at the rate of 5% per annum from the date that payment was required by subsection C until the date of payment.

E. If the FDIC-R does not receive the Settlement Payment in full on or before the date determined by subsection C 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 the Settlement Payment, including interest accruing from the date determined by subsection C above, through the date of payment; or

2. Enforce this Agreement, in which event the Settling Defendant agrees to jurisdiction in United States District Court in the Northern District of Illinois; or

3. Declare the Agreement null and void, move to vacate any dismissal order, to which the Settling Defendant agrees to consent, and re-institute an action on the FDIC-R's claims. The Settling Defendant further agree to waive any defense based on any statute of limitations that would bar any of the FDIC-R's claims and waive 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 under Section I.E.1 for delivery of the Settlement Payment or acceptance of a portion of the Settlement Payment shall not prejudice the FDIC-R's rights to take any of the actions set forth in Section I.E.2, I.E.3, or I.E.4 at any time prior to receipt of Settlement Payment (including all accrued interest) in full.

SECTION II: Stipulation and Dismissal

After this agreement has been signed by all Parties and the Court has issued the good faith finding specified in Section I.B., then within ten (10) business days after receipt by the FDIC-R or its attorneys of the Settlement Payment plus any accrued interest, the attorneys for the FDIC-R and the Settling Defendant shall execute a stipulation of dismissal of the Action with prejudice, which shall then promptly be filed in the Action by the attorneys for FDIC-R.

SECTION III: Releases

A. Release by FDIC-R.

Upon receipt of the Settlement Payment in full and except as provided in Section III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges the Settling Defendant and its insurers, employees, officers, directors, representatives, partners, heirs, executors, administrators, 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, that arise from or relate to the causes of action alleged in the Action, including without limitation the causes of action alleged in the Action and any complaints or grievances to any board or agency that has professional licensing or certification authority in the State of Illinois.

B. Release by the Settling Defendant.

Effective simultaneously with the release granted in Section III.A, the Settling Defendant, on behalf of itself individually, and its administrators, representatives, successors, and assigns, hereby releases and discharges the FDIC-R, and its 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, that arise from or relate to the causes of action 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 Defendant 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 it to 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 administrative enforcement action.

3. Notwithstanding any other provision of this Agreement, this Agreement does not purport to waive, or intend to 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 Mandatory Victims Restitution Act, 18 U.S.C. §§ 3322 and 3663 *et. seq.*, if appropriate.

SECTION IV: Representations and Acknowledgements

A. Authorized Signatories. Each of the undersigned persons represents and warrants that he or she is authorized to sign this Agreement on behalf of the respective Party, and that he or she has 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 each of the undersigned Parties and its respective administrators, representatives, successors, and assigns.

B. 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 its 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.

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, and that this Agreement is not an admission or evidence of liability by either of them regarding any claim.

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 Parties subscribed thereto, 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 Illinois.

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:

Richard J. Landau
RJ Landau Partners PLLC
5340 Plymouth Rd., Ste. 200
Ann Arbor, MI 48105

If to the Settling Defendant:

Michael P. Tone
Kimberly E. Blair
Wilson Elser Moskowitz Edelman & Dicker LLP
55 West Monroe Street - Suite 3800
Chicago, IL 60603-5001

E. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between the undersigned Parties concerning the matters set forth herein. This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing signed by the Parties bound thereby, or by their respective authorized attorney(s), or other representative(s).

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

G. No Confidentiality. The undersigned Parties acknowledge that this Agreement shall not be confidential and will be disclosed pursuant to the Federal Deposit Insurance Corporation's applicable policies, procedures, and other legal requirements.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the dates hereinafter subscribed.

FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR FOUNDERS BANK

(b)(6)

Date:

3/7/16

BY:

[Redacted Signature]

TITLE:

Senior Attorney

PRINT NAME:

Bob J. Rogers

JO JO REAL ESTATE ENTERPRISES, LLC, D/B/A
PROPERTY VALUATION SERVICES

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

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FEDERAL DEPOSIT INSURANCE CORPORATION AS
RECEIVER FOR FOUNDERS BANK

Date: _____

BY: _____

TITLE: _____

PRINT NAME: _____

JO JO REAL ESTATE ENTERPRISES, LLC, D/B/A
PROPERTY VALUATION SERVICES

(b)(6)
Date: 3/7/16

BY: _____

TITLE: Member

PRINT NAME: Harry Fishman