

LIMS Mn 096000609
DEF/Mortgage Fraud

received
5/11/11

ENTERED
5/11/11

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release (the "Agreement") is entered into by and between Plaintiff Federal Deposit Insurance Corporation as Receiver of Downey Savings and Loan Association, F.A. ("FDIC as Receiver"), on the one hand, and Defendants EB Investments, Inc., ("EB Investments") and Capital Appraisals, Inc. ("Capital") (collectively, the "Defendants"), on the other hand. FDIC as Receiver and each of the Defendants are collectively referred to herein as "Settling Parties" or individually as a "Settling Party." / 8 0 2 3

RECITALS

This Settlement Agreement is entered into with respect to the following generalized facts:

A. On December 17, 2007, Downey Savings and Loan Association, FA. ("Downey Savings") filed a complaint against EB Investments, an entity of unknown form ("EB Investments"), Festus Ogbeide dba GAO Associates ("Ogbeide"), Capital Appraisals, Inc. ("Capital"), and Adrian Little ("Little"), and Does I through 20 generally asserting causes of action for breach of contract, negligent misrepresentation, fraud, breach of fiduciary duty, and unjust enrichment ("Complaint"). The matter was assigned Case No. 30-2007-00100424, in the Superior Court of the State of California, County of Orange (the "Action").

B. The Action arose out of a wholesale residential mortgage loan issued by Downey Savings to Little ("Borrower") on or about January 14, 2005 (the "Subject Loan") secured by the real property commonly known as 9847 Cortina Way, Elk Grove, California ("Subject Property").

C. Default has been entered against Little due to his failure to respond to the Complaint. Defendants denied the allegations made in the Complaint.

D. On November 21, 2008, FDIC as Receiver of Downey Savings became the successor-in-interest to Plaintiff's claims in this matter.

Settling Parties each desire to settle and terminate the dispute existing between and among them regarding the Subject Loan as outlined in the Action as well as all other known or unknown claims they each might have concerning any of the facts surrounding the transaction, or series of transactions that underlie the Action, on the terms set forth below.

///
///
///
///

AGREEMENT

NOW THEREFORE, for good and valuable consideration, including the mutual covenants and conditions contained herein, the Settling Parties agree as follows:

1. Settlement Amount. EB Investments and Capital Appraisals agree to promptly pay to Plaintiff the sum of \$32,000 as follows:

- 1.1 EB Investments shall tender and deliver payment to Plaintiff's counsel in the amount of \$15,000; and
- 1.2 The insurance carrier for Capital shall deliver payment to Plaintiff's counsel in the amount of \$17,000;

Settlement funds in good and immediately available funds in the total amount of Thirty-Two Thousand dollars and no/100 (\$32,000.00) ("Settlement Funds") shall be paid upon execution of this Agreement. Checks are to be made payable to "Marshack Hays, LLP, Client Trust Account". The Settlement Funds shall be delivered by overnight delivery to Sean A. Kading, Marshack Hays, LLP, 5410 Trabuco Road, Suite 130, Irvine, CA 92620. Settlement Funds must be received by Plaintiff's counsel before April 15, 2010.

2. Releases. Conditioned upon delivery of the Settlement Funds, FDIC as Receiver and EB Investments and Capital each fully and forever release and discharge each other, and their respective assignees, subsidiaries, transferees, predecessors and successors in interest, present and former employees, insurers, servants, agents, representatives, officers, directors, and parent corporations, if any, from and against all known actions, proceedings, causes of action, claims for relief, demands, rights, interests, damages, losses, costs, expenses, disbursements (including attorneys' fees and costs), obligations, liabilities and other claims of every nature whatsoever arising from or related to the transaction, or series of transactions, underlying the Action, the Subject Property or the Subject Loan (collectively, the "Claims"). Notwithstanding the foregoing, this release does not and is not intended to release claims or actions, if any, arising from or relating to properties or loans other than the Subject Property and the Subject Loan described herein.

2.1 No Release of Non-Settling Parties. Nothing contained herein shall be interpreted as a release or dismissal of any claims or causes of action asserted in the Action or otherwise as against Adrian Little or Festus Ogbide. FDIC as Receiver expressly reserves the right to continue to prosecute any and all claims and causes of action as against these non-settling parties.

3. Waiver of Civil Code Section 1542. Each of the Settling Parties expressly waives and relinquishes any and all rights and benefits conferred on them by California *Civil Code* §1542 and any similar enactment of, or other such rights afforded by, the State of California, the United States or any other state territory of the United States. Section 1542 of the California *Civil Code* states:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if

known by him or her must have materially affected his or her settlement with the debtor."

Each of the Settling Parties acknowledges California Civil Code § 1542, and the foregoing waiver and relinquishment of those rights, are understood by them and made voluntarily. Each of the Settling Parties acknowledges that if they hereafter discover facts different than or in addition to those that they now know or believe to be true, that said release shall be given full force and effect according to each and all of its express terms and conditions, notwithstanding such different or additional facts. The discovery of such different facts shall not in any way alter or affect the release contained herein. Nothing contained herein is intended to be a release of any claims arising from or relating to properties or loans other than the Subject Property and the Subject Loan.

5. Dismissal of Action As Against EB Investments and Capital. Forthwith upon receipt of the Settlement Payment specified in section 1 above, Plaintiff shall file a request for dismissal with prejudice of the Complaint *as against EB Investments and Capital only*, and provide EB Investments and Capital with a conformed copy after entry of dismissal is made by the Court.

6. Waiver of Attorneys' fees and costs. Upon execution of this Agreement, each of the Settling Parties shall bear its own attorneys' fees and costs in the Action.

7. No Admission of Liability. Neither the existence of this Agreement nor the conduct of any of the Parties shall constitute or be construed as an admission of liability or any wrongdoing whatsoever on the part of the Parties.

8. Independence of Performance. The failure of any party to perform its obligations hereunder, shall not impact the full force and binding effect of this Agreement as it relates to the remaining Settling Parties, including without limitation, the full and final release as to each party who performs its obligations herein. The Settling Parties agree that none of the parties are the guarantors of the other. The Settling Parties further agree that each party will not be held liable for any aspect of the performance, or lack of performance, by any other party, of its obligation under this Agreement. Notwithstanding the foregoing, No Settling Party shall be dismissed unless and until the FDIC as Receiver receives the full amount of Settlement Funds.

9. Confidentiality. EB Investments and Capital, including their respective officers, directors, employees, representatives, agents, attorneys, and accountants, each represent and agree that they will keep the terms and contents of this Agreement completely confidential, and will not disclose any information concerning this Agreement including the amount of the settlement payments, or concerning the negotiations leading up this Agreement, to anyone except as required by law and/or court process, or to parties who reasonably must be informed of the terms of the Agreement and who will be advised of, and bound by, this confidentiality clause. Any failure by EB Investments and Capital, their respective officers, directors, employees, representatives, agents, attorneys, and accountants to maintain the confidentiality of the negotiations leading to this Agreement, or the fact of, or the terms of, this Agreement shall constitute a material breach of this Agreement, and all Parties injured by such failure shall be entitled to recover damages, as well as reasonable attorneys' fees and costs incurred in connection with any action to recover such damages.

9.1 Notwithstanding the foregoing confidentiality provision, the parties each acknowledge and agree that this paragraph has no application or impact on the FDIC, that pursuant to 12 USC Section 1821(s) the FDIC may not enter into any agreement which prohibits the FDIC from disclosing the terms of any settlement, and that by executing this Agreement the FDIC and its officers, directors, employees, attorneys, successors, assigns and/or agents are not and shall not be prohibited from disclosing any or all of the facts at issue in the Action, and/or the terms of this Settlement Agreement.

10. Interpretation. In the case of any uncertainty or ambiguity regarding any part of this Agreement, the language shall be construed in accordance with its fair meaning rather than being interpreted against the party who caused the uncertainty to exist.

11. Parties in Interest. Except as expressly stated in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer third-party beneficiary status or to otherwise confer any rights or remedies on any person or entity (collectively "Third Party"), other than the Settling Parties. Nor shall any provision hereof afford any Third Party any right of subrogation, indemnity, contribution, set-off or action over and against any party to this Agreement.

12. Informed Consent. Each Party acknowledges that it has selected, or been afforded the opportunity to select, an attorney of its choice to review this Agreement and all related matters. Each Party declares that such party has received sufficient information, either through such Party's own legal counsel or other sources of such party's own selection, so as to be able to make an intelligent and informed judgment to enter into this Agreement. Each party further states that each has read this Agreement in its entirety prior to executing this Agreement, and that each has executed this Agreement voluntarily, with competence and capacity to contract and with knowledge of the terms, significance and legal effect of this Agreement. By executing this Agreement, it is understood by each party that substantial rights may be compromised and/or waived in their entirety.

13. Attorneys' Fees. If any action, motion or proceeding at law or in equity is instituted to enforce or interpret the terms of this Agreement, the prevailing party or parties therein shall be entitled to an award of reasonable attorneys' fees, costs, and necessary disbursements, as determined by a court of competent jurisdiction, in addition to any other relief to which any of the Settling Parties may be entitled.

14. Further Assurances. The Settling Parties shall execute all documents and perform all acts necessary or appropriate to effectuate the performance of this Agreement.

15. Severability. It is intended that any portion of this Agreement shall be treated as separate and divisible, and if any paragraphs are deemed unenforceable, the remainder shall continue to be in full force and effect so long as the primary purpose of this Agreement is unaffected.

///

Agreement. This Agreement cannot be amended or modified in any manner except by a writing executed by each of the Settling Parties or by their valid successor(s). Each of the Settling Parties acknowledges that no representations, warranties, covenants, assurances or other promises not specifically set forth in this Agreement have been made by any party in connection with the subject matter of this Agreement, nor is any party relying on any such conduct in entering into this Agreement. Any negotiations or other communications between the Parties relating to the subject matter of this Agreement are of no force or effect and are superseded by this document.

17. Counterparts. This Agreement may be signed in counterparts, and each counterpart shall have the same force and effect as though the signatures were contained in a single document. A faxed or electronically scanned signature shall be considered an original signature for all purposes under this Agreement.

18. Time of Essence. Time is of the essence of each provision of this Agreement wherein time is a factor.

19. Applicable Law; Jurisdiction; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be the courts located in Orange County, California, in accordance with applicable law.

20. No Assignment. The Settling Parties each represent and warrant that they have not assigned or transferred any claim or cause of action encompassed in the Action. The Settling Parties further represent and warrant that they each have the complete and sole authority to enter into this Agreement.

21. Successors and Assigns. The provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF, each of the undersigned Settling Parties has executed this Agreement effective as of March 8, 2010.

DATED: 3/25/10

FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER OF DOWNEY SAVINGS AND LOAN ASSOCIATION, F.A.

(b)(6)


By: Kevin Wheelwright

(SIGNATURES CONTINUE ON FOLLOWING PAGE)

DATED: MARCH 20, 2010

EB INVESTMENTS, INC.

(b)(6)

[Redacted Signature]

By: EVAN BADT (printed)

Its: PRESIDENT

DATED: _____

CAPITAL APPRAISALS, INC.

By: _____ (printed)

Its: _____

DATED: _____

EB INVESTMENTS, INC.

By: _____ (printed)

Its: _____

DATED: 3/22/10

CAPITAL APPRAISALS, INC.

(b)(6)

By: MARY DONNIS (printed)

Its: _____

(b)(6)