

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made as of this ___ day of August, 2013, by, between, and among the Federal Deposit Insurance Corporation as Receiver for AmTrust Bank, Cleveland, Ohio ("FDIC-R") and Antonietta Russo ("Russo"). The FDIC-R and Russo each may be referred to herein as a "Party" and collectively as the "Parties").

WHEREAS:

Prior to December 4, 2009, AmTrust Bank, Cleveland, Ohio, previously known as Ohio Savings Bank ("AmTrust"), was a depository institution organized and existing under the laws of the United States.

On November 4, 2009, AmTrust filed a lawsuit naming several entities and individuals as defendants, now captioned FDIC as Receiver for AmTrust Bank v. Malik, et al., Case No: 09-CV-4805 in the United States District Court for the Eastern District of New York (the "Lawsuit"). Russo was named as a defendant in the Lawsuit and allegations of fraud (the "Claims") were asserted against her and other defendants in connection with alleged improper activities in the origination of certain residential mortgage loans (the "Subject Loans"). Russo has denied all of the allegations of the Claims asserted against it.

On December 4, 2009, the Office of Thrift Supervision closed AmTrust and appointed the Federal Deposit Insurance Corporation as its receiver. In accordance with 12 U.S.C. § 1821(d), the FDIC-R succeeded to all rights, titles, powers, and privileges of AmTrust, including those with respect to the Claims which are subject to this Agreement.

The Parties now 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, Russo has agreed to pay the FDIC-R the sum of Twenty-Five Thousand Dollars (\$25,000.00) (the "Settlement Funds").

B. Within 30 days of the execution of this Agreement, Russo shall deliver the first Fifteen Thousand Dollars (\$15,000.00) (the "Initial Settlement Payment") of the Settlement Funds to the FDIC-R by certified or cashier's check drawn upon a depository institution acceptable to the FDIC-R.

C. Beginning no later than 60 days of the execution of this Agreement, Russo shall submit monthly payments of at least One Thousand Dollars (\$1,000.00) per month (the "Monthly Settlement Payments") to the FDIC-R by certified or cashier's check drawn upon a depository institution acceptable to the FDIC-R. Russo shall continue to make the Monthly Settlement Payments until the entire amount of the Settlement Funds has been paid in full, with the entire balance due no later than eleven months from the execution of this Agreement.

D. If the FDIC-R does not receive the Initial Settlement Payment or any one or more of the Monthly Settlement Payments in full on or before the dates determined by subparagraphs B and C above ("Settlement Payment Due Dates"), then the FDIC-R, in its sole discretion, shall have the right to:

1. extend the period of time for payment, including interest accruing from the relevant Settlement Payment Due Date through the date of payment at a rate calculated in accordance with 26 U.S.C. § 6621(b)(3); or

2. enforce this Agreement and, in such event, Russo agrees to jurisdiction in Federal District Court in the Eastern District of New York and to pay all of the FDIC-R's reasonable attorney's fees and costs expended in enforcing the terms of this Agreement; or

3. obtain a Confession of Judgment against Russo for the amount of Fifty Thousand Dollars (\$50,000.00) as agreed to in Section II below; or

4. declare this Agreement null and void, move to vacate any dismissal order, to which Russo agrees to consent, and institute an action on the FDIC-R's claims, as to which Russo waives any and all objections and defenses and covenants and agrees not to assert any objections and defenses; and/or

5. seek any other relief available to it in law or equity. Any extension of time for delivery of the Settlement Payment shall not prejudice the FDIC-R's right to take other action or seek any relief during or after such period of extension, including the right to bring an action to enforce the Agreement, or declare the Agreement null and void.

SECTION II: Confession of Judgment.

A. As an additional essential covenant and condition to this Agreement, Russo 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 Fifty Thousand Dollars (\$50,000.00).

B. In the event that Russo fails to make the Initial Settlement Payment or any of the Monthly Settlement Payments by the applicable Settlement Payment Due Date, Russo shall be in default of this Agreement and the FDIC-R shall have the right to obtain a Confession of Judgment against Russo in order to recover the amount of Fifty Thousand Dollars, less any Settlement Funds already paid to the FDIC-R.

SECTION III: Releases.

Each Party acknowledges that this Agreement applies to all claims for injuries, damages, or losses of any type or nature (whether those injuries, damages, or losses are known or unknown, foreseen or unforeseen, patent or latent) which that Party may have against another Party arising from the Claims asserted in the Lawsuit.

A. The FDIC-R's Release.

Upon receipt of the Settlement Payment, plus any accrued interest, and except as provided in PARAGRAPH III.C., the FDIC-R, for itself and its successors and assigns, hereby releases and discharges Russo and her insurers, employees, officers, directors, representatives, heirs, executors, administratorsattorneys, successors and assigns, from any and all claims, demands, contracts, 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 Claims asserted in the Lawsuit.

B. Russo's Release.

Effective simultaneously with the release in PARAGRAPH III.A. above, Russo, on behalf of herself and her respective insurers, employees, officers, directors, representatives, heirs, executors, administrators, successors and assigns, hereby releases and discharges the FDIC-R, and its insurers, attorneys, employees, officers, directors, representatives, successors and assigns, from any and all claims belonging to Russo, arising out of or relating to the Claims asserted in this Lawsuit.

C. Exceptions to Release 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 Russo, 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 FDIC-R, AmTrust, other financial institutions, or any other person or entity, including without limitation any claims acquired by FDIC-R as successor in interest to AmTrust or any person or entity other than AmTrust;

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

c. which are not expressly released in PARAGRAPH III.A. 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 brought on behalf of another failed institution or any claims which 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 governmental entity. 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: Insolvency.

A. Insolvency.

Russo warrants as to payments made by or on her behalf that at the time of such payment, she is not insolvent nor will the payment made by or on her behalf render it insolvent within the meaning and/or for the purposes of the United States Bankruptcy Code. This warranty is made by Russo and not by her counsel.

B. Preferences.

In the event that the FDIC-R is required to return any portion of the Settlement Payment due to a final order by a court that the transfer of the Settlement Payment or any portion thereof constituted a preference, voidable preference, fraudulent transfer or similar transaction, then, in its sole discretion, the FDIC-R may, without waiver of any other rights it may have in law or equity, pursue any of the rights and remedies set forth in paragraph I(D) above, and/or otherwise permitted by law.

SECTION V: Termination.

In the event the FDIC-R exercises its right to declare this Agreement null and void as provided herein, then, for the purposes of any statute of limitations or other time-based defense to any of the claims of the FDIC-R, the parties to this Agreement shall be deemed to have reverted to their respective status as of 5:00 p.m. Eastern Time, July 31, 2013.

SECTION VI: Notices.

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

If to the FDIC-R:

William W. Jacobs
Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114
216) 408-3837

[Redacted]

If to Russo:

Peter A. Saad, Jr., Esq.
Law Offices of Peter A. Saad, Jr., P.C.
The Lever Building, Suite 560
114 Old Country Road
Mineola, NY 11501

[Redacted]

SECTION VII: 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 Claims in the Lawsuit, 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 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.

All of the undersigned persons represent and warrant 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 undersigned Parties and their respective heirs, executors, administrators, representatives, attorneys, successors and assigns.

D. Entire Agreement.

This Agreement along with the Affidavit of Confession of Judgment described in Section II constitute the entire agreement and understanding between and among the undersigned Parties concerning the matters set forth herein and supersedes any prior agreements or understandings. No representations, warranties or inducements have been made to or relied on by any Party concerning this Agreement and its exhibits other than those contained therein.

E. Amendments.

This Agreement may not be amended or modified, nor may any of its provisions be waived, except in writing by the Party or Parties bound thereby, or by their respective authorized attorney(s) or other representative(s).

F. Specific Representations Warranties and Disclaimer.

Russo expressly acknowledges that in determining to settle the claims released here, the FDIC has reasonably and justifiably relied upon the accuracy of financial information in the affidavit submitted. If, in her affidavit, Russo has failed to disclose any interest, legal, equitable, or beneficial, in any asset, Russo agrees to cooperate fully with the FDIC to transfer her interest in the asset to the FDIC and to sign any and all documents necessary to transfer her interest in the asset to the FDIC. Moreover, if, in her affidavit Russo has failed to disclose any interest, legal,

equitable, or beneficial, in any asset, the FDIC in its sole discretion, may exercise one or more or all of the following remedies: (a) the FDIC may declare the release granted to Russo as null and void; (b) the FDIC may retain the Settlement Funds; (c) the FDIC may sue Russo for damages, an injunction, and specific performance for the breach of this agreement; and (d) the FDIC may seek to vacate any dismissal order and reinstate the FDIC's claims against Russo. Russo agrees that if, in her affidavit, she have failed to disclose any interest, legal, equitable, or beneficial, in any asset, Russo consents to the reinstatement of FDIC's claims and waives any statute of limitations that would bar any of the FDIC's claims against her.

G. Reasonable Cooperation.

1. The undersigned 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 perform the terms of this Agreement.

2. Further, Russo agrees 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 consist of:

- a. producing all documents requested by the FDIC-R, without the necessity of subpoena, as determined by the FDIC-R, in its sole discretion, to be relevant to the Claim;

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 sole discretion, to be relevant to the Claim;

c. appearing to testify, upon request by the FDIC-R, in any matter determined by the FDIC-R in its sole discretion, to be related to the Claim, 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 sole discretion, to be relevant to the Claim.

II. 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 New York, without regard to its conflicts of laws.

I. 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.

J. 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.

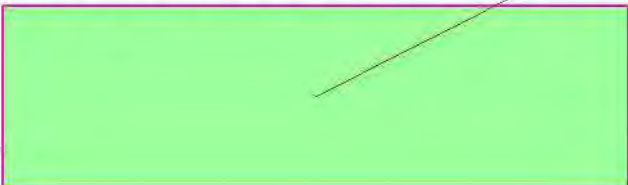
K. Authorship/Construction.

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 Closed Office

By 

By 

Name: Patrick M. McGarrick

Name: _____

Title: Counsel

Title: _____

Date: 8/12/2014

Date: _____

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
FEDERAL DEPOSIT INSURANCE CORPORATION :
AS RECEIVER FOR AMTRUST BANK, :

Plaintiff, :

- against - :

ANTONIETTA RUSSO :

Defendant. :

Index No.

AFFIDAVIT OF
CONFESSION
OF JUDGMENT

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

(b)(6)

Antonietta Russo ("Russo"), being duly sworn, deposes and says:

1. I reside at [REDACTED]
2. I am 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").
3. I entered into Settlement Agreement and Release dated August __, 2013 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.
4. Pursuant to the Settlement Agreement and Release, I am obligated to make Settlement Payments to the FDIC-R totaling \$25,000.00, as follows: \$15,000.00 no later than September __, 2013, and \$1,000.00 per month beginning October __, 2013 for a period of ten

consecutive months. These Settlement Payments are in consideration for the FDIC-R's agreement not to demand payment of the full amount of its losses on the claims asserted against me in the Malik Litigation. In the event that I should default on any Settlement Payment as such payment becomes due, I shall be responsible to the FDIC-R for the amount of Twenty Five Thousand Dollars (\$25,000.00) less any payments already made.

5. In the event that I default on making any of the Settlement Payments in accordance with the schedule set forth in Paragraph 4 above, I hereby confess judgment pursuant to CPLR 3218 in favor of the FDIC-R in the amount of Twenty Five Thousand Dollars (\$25,000.00) less any amount already paid to the FDIC-R as set forth in Paragraph 4 and authorize the FDIC-R to enter judgment for that amount.

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

7. 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

(b)(6)

[Redacted signature area]

Antonietta Russo

(b)(6)

[Redacted signature area]

