

ATTORNEY GENERAL OF THE STATE OF NEW YORK
CIVIL RIGHTS BUREAU

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In the Matter of:

CONSUMER ONE CORP.,
D/B/A CONSUMER ONE MORTGAGE

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ASSURANCE OF
DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW 63(15)
AOD No. 08-187

WHEREAS, pursuant to the provisions of 63(12) of the Executive Law, Andrew M. Cuomo, Attorney General of the State of New York ("OAG"), has made an inquiry into the mortgage brokerage practices of Consumer One Corp., d/b/a Consumer One Mortgage ("Consumer One"), within the State of New York;

WHEREAS, Consumer One is a registered mortgage broker in the State of New York;

WHEREAS, Consumer One has retail branches in Suffolk County;

WHEREAS, from January 2005 through July 2007, Consumer One served as the mortgage broker for approximately 1150 residential mortgage loans within the State of New York, including about 260 loans that were made to African-American and Latino borrowers;

WHEREAS, the parties herein desire to obviate further investigation or litigation, and it is expressly understood that, with respect to the investigation of the OAG, that this is a compromise settlement entered into solely for the purposes of avoiding the expense and inconvenience of further investigation and litigation;

WHEREAS, in consideration of the covenants and understandings set forth herein and intending to be legally bound thereby, Consumer One and the OAG hereby agree as follows:

I.
DEFINITIONS

1. Throughout this Assurance of Discontinuance, the following terms shall have the following meanings:
- (a) “Assurance” means this Assurance of Discontinuance.
 - (b) “Basis Points” means one-hundredth of one percent of the loan amount, such that 100 Basis Points equal one percent of the loan amount.
 - (c) “Broker” means any Employee who is in any way involved in arranging residential mortgage loans.
 - (d) “Broker Fees” means all compensation, aside from the yield spread premium paid by the lender, received and retained by Consumer One for mortgage brokerage services provided in connection with a Loan, including but not limited to processing fees, application fees, and other charges imposed on a customer by a Broker.
 - (e) “Broker Service Fee” means the portion of the Broker Fee that does not include processing fees and application fees.
 - (f) “Effective Date” means the date this Assurance is executed by the parties hereto.
 - (g) “Employee” means any owner, shareholder, partner, officer, director, employee, agent, independent contractor, or representative of Consumer One.
 - (h) “Consumer One” means Consumer One Corp., d/b/a Consumer One Mortgage, and any of its owners, shareholders, partners, officers, directors, employees, agents, consultants, independent contractors, and assignees.

- (i) “Including” means including but not limited to.
- (j) “Loan” means a residential mortgage loan brokered by any Consumer One branch office located in the State of New York or a residential mortgage loan brokered by Consumer One in connection with residential property located in the State of New York.
- (k) “Piggyback Loans” means a first lien Loan and a second lien Loan that were (i) provided to the same customer; (ii) secured by the same property; and (iii) closed within four weeks of each other.
- (l) “White” means Non-Latino White.
- (m) The use of the singular form of any word includes the plural and vice versa.

II. INVESTIGATION AND CONCLUSIONS

2. In late 2007, the OAG launched an investigation into the mortgage brokerage practices of Consumer One. The investigation was designed to determine whether Consumer One charges African-American and/or Latino customers higher Broker Fees than White customers in the State of New York. Broker Fees, which are a component of the interest rate (APR) for a residential mortgage loan, are often left largely to the discretion of the individual broker.
3. As part of its investigation, the OAG, with the assistance of the New York State Banking Department (“Banking Department”), conducted statistical analyses of Consumer One’s Loans from January 2005 through July 2007 to assess whether there were racial or ethnic

disparities in the imposition of Broker Fees. The OAG also reviewed Consumer One's internal policies, procedures, and forms.

4. With respect to customers who received only a first lien Loan, the statistical analyses revealed the following:
 - (a) On average, Consumer One charged African-American customers about 45% more in Broker Fees (measured by Basis Points) than White Customers, resulting in about \$1810 more in Broker Fees.
 - (b) On average, Consumer One charged Latino customers about 30% more in Broker Fees (measured by Basis Points) than White Customers, resulting in about \$1340 more in Broker Fees.
5. With respect to customers who received Piggyback Loans, the statistical analyses revealed the following:
 - (a) On average, Consumer One charged African-American customers about 68% more in Broker Fees (measured by Basis Points) than White Customers, resulting in about \$3070 more in Broker Fees.
 - (b) On average, Consumer One charged Latino customers about 57% more in Broker Fees (measured by Basis Points) than White Customers, resulting in about \$2170 more in Broker Fees.
6. The racial and ethnic Broker Fee disparities could not be explained by controlling for race-and-ethnicity-neutral borrower, property, and loan characteristics that could potentially impact the amount of time and effort Consumer One took to arrange the loan.

7. Based on the foregoing, the OAG has determined that Consumer One has engaged in a pattern and practice of unlawful discrimination in violation of Section 296-a of the New York State Human Rights Law (N.Y. Executive Law § 296-a) and Section 805 of the federal Fair Housing Act (42 U.S.C. § 3605).

IT NOW APPEARING THAT Consumer One desires to settle and resolve the investigation without admitting or denying the OAG's findings, the OAG and Consumer One hereby enter into this Assurance.

III.
COMPLIANCE WITH THE LAW

8. Consumer One will comply fully with the obligations, terms, and conditions of Section 296-a of the New York State Human Rights Law (N.Y. Executive Law § 296-a) and Section 805 of the federal Fair Housing Act (42 U.S.C. § 3605).

IV.
**COMPENSATION OF NEW YORK AFRICAN-AMERICAN
AND LATINO CUSTOMERS**

9. Consumer One will pay to the OAG the sum of \$125,000. Consumer One shall make this payment in four installments according to the following schedule:

\$30,000 must be paid by June 30, 2009

\$30,000 must be paid by December 31, 2009

\$30,000 must be paid by June 30, 2010

\$35,000 must be paid by December 31, 2010

Payment will be in the form of certified or bank checks made out to the New York State Department of Law and forwarded to the Office of Attorney General, Civil Rights

Bureau, 120 Broadway, New York, New York 10271, Attention: Jeffrey K. Powell, Section Chief.

10. The OAG will use these funds to provide restitution to certain African-American and Latino customers who (a) received Loans arranged by Consumer One from January 2005 through July 2007 and (b) were charged significantly higher Broker Fees than the average amount charged to White customers.
11. The OAG will determine, in a fair and equitable manner and as the OAG deems appropriate, whether an African-American or Latino customer is entitled to compensation and, if so, in what amount. The OAG will then disburse the funds accordingly. Any funds remaining after restitution is paid shall be distributed by the OAG cy pres to not-for-profit corporations or organizations to provide consumer financial education or assistance to homeowners facing foreclosure within the State of New York.
12. Upon request, Consumer One will provide the OAG with any information within Consumer One's possession, custody, or control that will assist the OAG in identifying, locating, and disbursing funds to the African-American and Latino customers entitled to restitution.

V.

BROKER FEE POLICIES AND PROCEDURES

13. Within 10 days of the Effective Date, Consumer One will develop and provide to the OAG and the Banking Department written policies and procedures governing the imposition of Broker Fees ("Broker Fee Policy"). The policies and procedures will include the following elements:

- (a) A fee schedule that sets forth the standard amounts to be charged for each component of the Broker Fee (“Fee Schedule”), including but no limited to:
- (i) The standard processing fee, which shall be expressed as a lump sum (“Standard Processing Fee”);
 - (ii) The standard application fee, which shall be expressed as a lump sum (“Standard Application Fee”); and
 - (iii) The standard Broker Service Fee, which shall be expressed as a percentage of the loan amount and may depend on the amount of time spent arranging the Loan and the loan amount. (“Standard Broker Service Fee”).
- (b) A requirement that Brokers charge the Standard Processing Fee and the Standard Application Fee for each Loan unless exceptional circumstances exist, which must be documented in the customer’s file and be subject to the written approval of the branch manager prior to the Loan being closed. Examples of such exceptional circumstances may include the identification of a cloud on the property’s title or a change in the condition of the property that affects its estimated value.
- (c) A requirement that Brokers charge the Standard Broker Service Fee for each Loan, except that Brokers may charge a Broker Service Fee less than the Standard Broker Service Fee if such a fee reduction is necessary to compete with an offer made to the customer by another mortgage brokerage company that is in writing and presented to Consumer One. Under such circumstances, Consumer One shall maintain a copy of the written offer in the customer’s file and shall document the reason for the fee reduction and the source of the offer in the customer’s file..

14. The Broker Fee Policy shall be subject to the approval of the OAG, which shall not be unreasonably withheld. Upon the OAG's approval, Consumer One shall adopt and implement the Broker Fee Policy, and provide it to all Brokers and Consumer One management personnel. The Consumer One Policies and Procedures Handbook shall be amended to include the Broker Fee Policy.
15. Consumer One shall prominently post the Fee Schedule on its website and in each of the offices of its branches in the State of New York. The posting in the offices shall be no smaller than 18 inches x 22 inches, in bold lettering, and in no less than 28 point font.
16. If at any time during the duration of this Assurance Consumer One decides to amend the Fee Schedule, Consumer One will provide the amended Fee Schedule to the OAG and the Banking Department within five days of its implementation.
17. Consumer One shall ensure that Brokers document the following information in detail in each customer's file: (i) the services provided in connection with the Loan; and (ii) the amount of time the Broker spent working on each task performed in connection with the Loan. At the time a Loan closes, Consumer One shall disclose in writing to the customer the total amount of time spent arranging the Loan.

VI. **TRAINING**

18. Within 60 days of the Effective Date, all Brokers shall participate in a fair lending training program to be conducted by a qualified organization. The selection of the organization shall be subject to the OAG's approval. The training program shall cover the requirements of federal and state fair lending laws, including the prohibition on

charging higher Broker Fees based on race and/or ethnicity. The training shall be in addition to any training mandated by the continuing education requirements of the Secure and Fair Enforcement Mortgage Licensing Act of 2008.

19. All new Brokers shall attend this fair lending training program within 60 days from their date of hire as a condition of employment.
20. All Brokers who attend the fair lending training program shall acknowledge in writing that they have done so.
21. Any Broker who violates this Assurance or otherwise engages in discriminatory lending practices prohibited by federal or state law shall be subject to appropriate discipline, up to and including termination.

VII.
MONITORING OF BROKER FEES

22. Within 30 days of the close of each of the three Reporting Periods defined in Part IX, Consumer One will conduct the following analyses for all Loans brokered during the Reporting Period:
 - (a) Consumer One shall calculate the average Broker Fee (in Basis Points) charged to African-American customers (“African-American Average Broker Fee”), Latino customers (“Latino Average Broker Fee”), and White customers (“White Average Broker Fee”). Consumer One shall calculate these averages statewide, as well as for each of its branch offices in the State of New York. For the purposes of this calculation, the Broker Fee for Piggyback Loans shall be calculated by

aggregating the Broker Fee charged for the first lien Loan and the second lien Loan.

(b) Consumer One shall calculate the frequency with which Brokers (i) departed from the Standard Application Fee (“Standard Application Fee Departure Percentage”); (ii) departed from the Standard Processing Fee (“Standard Processing Fee Departure Percentage”); and (iii) departed from the Standard Broker Service Fee (“Standard Broker Service Fee Departure Percentage”). Consumer One shall calculate these percentages statewide, as well as for each of its branch offices in the State of New York. The statewide and branch office percentages shall be broken down by the race and ethnicity of the customers.

23. If the statewide African-American Average Broker Fee or the statewide Latino Average Broker Fee exceeds the statewide White Average Broker Fee by more than 20 Basis Points, Consumer One will take appropriate follow-up and corrective actions to address the racial and/or ethnic disparity, including identifying whether any particular Broker’s or branch’s practices caused the disparity, providing additional training or counseling, and taking appropriate disciplinary actions.

24. If the African-American Average Broker Fee or the Latino Average Broker Fee for a particular branch office exceeds the White Average Broker Fee for that branch office by more than 20 Basis Points, Consumer One will take appropriate follow-up and corrective actions with respect to that branch office to address the racial and/or ethnic disparity, including identifying whether any particular Broker’s practices caused the disparity,

providing additional training or counseling at the branch office, and taking appropriate disciplinary actions.

25. If the statewide African-American Average Broker Fee or the statewide Latino Average Broker Fee exceeds the statewide White Average Broker Fee by more than 30 Basis Points, Consumer One will provide a refund to each African-American and/or Latino customer who was charged more than the White Average Broker Fee during the Reporting Period, subject to the provisions of Subparagraph 24(c).
- (a) Each customer's refund will be calculated based on the Basis Point differential between the customer's Broker Fee and the White Average Broker Fee.
 - (b) Consumer One will send the refund by mail to each customer's last known address within 45 days of the close of the Reporting Period.
 - (c) Consumer One shall not be required to provide refunds to customers if the racial and/or ethnic Broker Fee disparity can be fully explained by differences in the amount of Broker time documented in each customer's file. The methodology used to conduct this analysis will be subject to the approval of the OAG. Absent such approval, which shall not be unreasonably withheld, Consumer One will provide refunds to customers as set forth above.

VIII. **COMPLAINT PROCEDURE**

26. Within seven days after receiving any customer complaint, whether written or oral, alleging discrimination involving the provision of mortgage brokerage services, Consumer One will complete a thorough investigation of the complaint and prepare a

report setting forth the name and contact information of the complainant, the nature of the complaint, the Employees involved, the investigation conducted, the results of the investigation, and any actions taken as a result of the investigation. The investigation shall be conducted by a management Employee designated to handle customer discrimination complaints.

27. Within seven days of completing the investigation, Consumer One will inform the complainant of any action taken in response to the complaint. Within fourteen days of receiving any complaint, Consumer One will provide to the OAG and the Banking Department copies of all documents relating to the complaint.

IX.
RECORD-KEEPING AND REPORTING

28. Consumer One will maintain the following records for the duration of the Assurance:
 - (a) All documents and data, including records maintained in an electronic form, relating to Loans, including but not limited to Loan application and customer files, the centralized application log required to be maintained pursuant to 3 N.Y.C.R.R. § 410.8(a)(1), U.S. Department of Housing and Urban Development Settlement Statements ("HUD-1 Form"), Uniform Residential Loan Applications ("Form 1003"), Uniform Underwriting Transmittal Summaries, all documents reflecting disclosures and notices that are legally required to be provided to customers, and all other documents and data reflecting Broker Fees, yield spread premiums, and the race and ethnicity of customers.

- (b) All documents and data, including records maintained in an electronic form, relating to the fair lending monitoring analyses referenced in Part VII and any other fair lending monitoring analyses performed by Consumer One; and
 - (c) The Fee Schedules referenced in Part V.
29. Consumer One will prepare reports and provide them to the OAG and the Banking Department within 45 days of the close of each of the three Reporting Periods. The first Reporting Period shall begin on the Effective Date and end 12 months thereafter. The remaining Reporting Periods shall begin at the close of the prior Reporting Period and end 12 months thereafter. The reports shall include:
- (a) The total number of Loans brokered during the Reporting Period, broken down by branch office and the race and ethnicity of the customer;
 - (b) The number of Piggyback Loans brokered during the Reporting Period, broken down by branch office and the race and ethnicity of the customer;
 - (c) The results of the analyses required by Paragraph 22, and a detailed written summary of any follow-up and corrective actions taken in response to these results as required by Paragraphs 23-24;
 - (d) In the event that customer refunds are required under Paragraph 25, a chart reflecting the name of each customer who received a refund, the address where the refund was sent, the date the refund was sent, and the amount of the refund and how this amount was calculated;
 - (e) In the event that Consumer One asserts that the customer refunds required under Paragraph 25 are not required because of the results of the analysis referenced in

Subparagraph 25(c), a detailed written summary setting forth the results of this analysis and the methodology used; and

- (f) Copies of the written acknowledgments executed by Brokers who received the fair lending training referenced in Part VI during the Reporting Period.
30. Within 14 days after receiving a written request from the OAG or the Banking Department, Consumer One will provide to the OAG or the Banking Department any documents that it is required to maintain under the terms of this Assurance or that relate to obligations under the Assurance, and representatives of the OAG or the Banking Department shall be permitted to inspect and copy all such records at any and all reasonable times.
31. This Assurance does not in any way impair or affect the right of the OAG to seek to obtain documents from Consumer One pursuant to a subpoena.

X.

SCOPE OF THE ASSURANCE, JURISDICTION, AND ENFORCEMENT PROVISIONS

32. This Assurance shall expire three years and two months after the Effective Date.
33. Notwithstanding any provision of this Assurance to the contrary, the OAG may, in its sole discretion, grant written extensions of time for Consumer One to comply with any provision of this Assurance.
34. The signatories to this Assurance warrant and represent that they are duly authorized to execute this Assurance and that they have the authority to take all appropriate action required or permitted to be taken pursuant to this Assurance to effectuate its terms.

35. The OAG may seek to enforce this Assurance through enforcement proceedings including a civil action in federal or state court seeking appropriate relief, such as specific performance of the provisions of this Assurance. Pursuant to New York State Executive Law § 63(15), evidence of a violation of the Assurance will constitute *prima facie* proof of a violation of applicable state and federal statutes that prohibit discrimination in the extension of credit, such as New York Executive Law § 296-a, in any civil action or proceeding hereafter commenced by the OAG. In the event of a dispute among the parties regarding any issue arising hereunder, the parties will attempt in good faith to resolve the dispute before seeking judicial intervention.
36. Any failure by the OAG to enforce this entire Assurance or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the OAG's right to enforce other deadlines and provisions of this Assurance.
37. If any provision, term, or clause of this Assurance is declared illegal, unenforceable, or ineffective in a legal forum, such provision, term, or clause shall be deemed severable, such that all other provisions, terms, and clauses of this Assurance shall remain valid and binding on the parties.
38. This Assurance constitutes the entire agreement between Consumer One and the OAG on the matters raised herein, and no other statement, promise or agreement, either written or oral, made by either party or agents of either party that is not contained in this Assurance shall be enforceable.
39. Nothing in this Assurance is intended to confer any right, remedy, obligation, or liability upon any person or entity other than the parties hereto.

40. Nothing in this Assurance is intended to, nor shall, limit the OAG's or Banking Department's investigatory or compliance review powers otherwise provided by law or this Assurance.
41. This Assurance may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
42. This Assurance is final and binding on the parties, including principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. No assignment by any party hereto shall operate to relieve such party of its obligations herewith.
43. Consumer One agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without factual basis. Nothing in this paragraph affects Consumer One's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.
44. Any payments and all correspondence related to this Assurance shall reference AOD No. 187.

45. All communications and notices regarding this Assurance shall be sent by first-class mail and, if 25 pages or fewer in length, by facsimile, to:

Office of the Attorney General:
Jeffrey K. Powell, Section Chief
Civil Rights Bureau
Office of the NYS Attorney General
120 Broadway, 3rd Floor
New York, New York 10271
Tel. (212) 416-6396
Fax (212) 416-8074

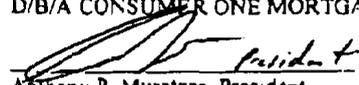
Consumer One Corp., d/b/a Consumer One Mortgage
Anthony P. Muratore, President
154-2 Remington Boulevard
Ronkonkoma, New York 11779
Tel. (631) 737-0707 (ext. 16)
Fax(631) 737-5074

IN WITNESS THEREOF, the undersigned subscribe their names:

Dated: New York, New York
December 31, 2008

CONSUMER ONE CORP.,
D/B/A CONSUMER ONE MORTGAGE

By:


Anthony P. Muratore, President
154-2 Remington Boulevard
Ronkonkoma, New York 11779
Tel. (631) 737-0707 (ext. 16)
Fax(631) 737-5074

CONSENTED TO:

Dated: New York, New York
~~December 5, 2008~~
JANUARY

ANDREW M. CUOMO
Attorney General of the State of New York

By:


Alphonso B. David
Deputy Bureau Chief
Civil Rights Bureau


Spencer Freedman
Counsel
Civil Rights Bureau

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