

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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PEOPLE OF THE STATE OF NEW YORK,
by ANDREW M. CUOMO, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

Plaintiffs,
-against-

**CONSENT DECREE
CV 09-00004 (JFB)(ETB)**

U.S. CAPITAL FUNDING, LLC,

Defendant.
-----X

This Consent Decree ("Decree") is entered into by and between plaintiffs, the People of the State of New York, by Andrew M. Cuomo, Attorney General of the State of New York, and defendant U.S. Capital Funding, LLC ("USCF").

WHEREAS, USCF is licensed as a mortgage banker in New York, which authorizes the company to provide mortgage brokerage services;

WHEREAS, USCF has three branch offices in Long Island;

WHEREAS, from January 2006 through July 2007, USCF served as the mortgage broker for approximately 300 residential mortgage loans within the State of New York, including about 135 loans that were made to African-American and Latino borrowers;

WHEREAS, in late 2007, the Office of the Attorney General ("OAG") launched an investigation into the mortgage brokerage practices of USCF;

WHEREAS, the OAG's investigation was designed to determine whether USCF charges African-American and/or Latino customers higher Broker Fees than White customers in the State of New York;

WHEREAS, 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;

WHEREAS, as part of its investigation, the OAG, with the assistance of the New York State Banking Department ("Banking Department"), conducted statistical analyses of USCF's Loans from January 2006 through July 2007 to assess whether there were racial or ethnic disparities in the imposition of Broker Fees;

WHEREAS, with respect to customers who received only a first lien Loan, the statistical analyses revealed that, on average, USCF charged African-American and Latino customers about 57.9% more in Broker Fees (measured by Basis Points) than White Customers, resulting in about \$3500 more in Broker Fees;

WHEREAS, with respect to customers who received Piggyback Loans, the statistical analyses revealed that, on average, USCF charged African-American and Latino customers about 121.1% more in Broker Fees (measured by Basis Points) than White Customers, resulting in about \$5360 more in Broker Fees;

WHEREAS, the OAG found that 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 USCF took to arrange the loan;

WHEREAS, based on the foregoing, the OAG commenced a lawsuit alleging that USCF engaged in a pattern and practice of discriminating against African-American and Latino borrowers by charging them significantly higher mortgage brokerage fees than White borrowers in violation of the Fair Housing Act of 1968, as amended by the Fair Housing Amendments Act

of 1988, 42 U.S.C. § 3601 *et seq.*, New York Executive Law § 296-a, and New York Executive Law § 63(12);

WHEREAS, USCF desires to settle and resolve the lawsuit without admitting or denying the OAG's findings;

WHEREAS, it is expressly understood that this is a compromise settlement entered into solely for the purposes of avoiding the expense, inconvenience, and uncertainty of further litigation; and

WHEREAS, in consideration of the covenants and understandings set forth herein and intending to be legally bound thereby, USCF and the OAG hereby agree to the terms of this Decree voluntarily;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I.
DEFINITIONS

1. Throughout this Decree, the following terms shall have the following meanings:
 - (a) "Basis Points" means one-hundredth of one percent of the loan amount, such that 100 Basis Points equal one percent of the loan amount.
 - (b) "Broker" means an Employee who is a mortgage loan originator, as that term is defined in N.Y. Banking Law § 599-b(1), and who solicits, processes, places or negotiates residential mortgage loans made by entities other than USCF.
 - (c) "Broker Fees" means all compensation, aside from the yield spread premium paid by the lender, received and retained by USCF 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.

- (d) "Broker Service Fee" means the portion of the Broker Fee that does not include processing fees and application fees.
- (e) "Court" means the United States District Court for the Eastern District of New York, which shall have jurisdiction over this Decree and the parties to this Decree.
- (f) "Effective Date" means the date this Decree is entered by the Court.
- (g) "Employee" means any owner, shareholder, partner, officer, director, employee, agent, independent contractor, or representative of USCF.
- (h) "USCF" means U.S. Capital Funding, LLC 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 USCF office located in the State of New York or a residential mortgage loan brokered by USCF 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.
COMPLIANCE WITH THE LAW

2. USCF 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).

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

3. USCF will pay to the OAG the sum of \$60,000. USCF shall make this payment in monthly installments according to the following schedule:

\$5,000 must be paid by May 31, 2009

\$5,000 must be paid by June 30, 2009

\$5,000 must be paid by July 31, 2009

\$5,000 must be paid by August 31, 2009

\$5,000 must be paid by September 30, 2009

\$5,000 must be paid by October 31, 2009

\$5,000 must be paid by November 30, 2009

\$25,000 must be paid by December 31, 2009

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.

4. The OAG will use these funds to provide restitution to certain African-American and

Latino customers who (a) received Loans arranged by USCF from January 2006 through July 2007 and (b) were charged significantly higher Broker Fees than the average amount charged to White customers.

5. 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.
6. Upon request, USCF will provide the OAG with any information within USCF's possession, custody, or control that will assist the OAG in identifying, locating, and disbursing funds to the African-American and Latino customers that the OAG determines are entitled to restitution.

IV.
BROKER FEE POLICIES AND PROCEDURES

7. Within 10 days of the Effective Date, USCF 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 vary for different loan amount ranges and for different types of loans if such types of loans customarily require significantly more work to arrange than more common fixed rate loans (e.g., non-conforming loans, ARM loans) (“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 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 unless either of the following circumstances apply:
 - (i) The nature of the mortgage brokerage services provided in connection with the Loan is substantially different from the services typically provided in connection with similar Loans, and the Broker documents in detail in the customer’s file: (i) the services provided in connection with the Loan; (ii) why such services justify a departure from the Standard

Broker Fee; and (iii) the amount of time the Broker spent working on each task performed in connection with the Loan. Under these circumstances, the Broker Service Fee may depart from the Standard Broker Service Fee by no more than 20%.

- (ii) The customer clearly expresses a desire to pay a higher yield spread premium, which will result in a higher APR for the Loan, in exchange for paying a Broker Service Fee lower than the Standard Broker Service Fee. USCF may not depart from the Standard Broker Service Fee unless: (A) USCF clearly discloses to the customer the extent to which the APR for the Loan will be increased as a result of the reduced Broker Service Fee; and (B) the customer signs a document acknowledging that he or she has voluntarily chosen to pay a higher APR for the Loan in exchange for paying a lower Broker Service Fee and that he or she has been informed of the extent to which the APR for the Loan will be increased as a result of this decision. This executed document must be maintained in the customer's file. Under these circumstances, the additional yield spread premium received by USCF due to the reduction in the Broker Service Fee may be no greater than the difference between the Standard Broker Service Fee for the Loan and the actual Broker Service Fee received.
- (d) A requirement that Brokers may not depart from the Standard Processing Fee, the Standard Application Fee, or the Standard Broker Service Fee based solely on whether the customer was referred to USCF by a third party.

8. **The Broker Fee Policy shall be subject to the approval of the OAG and the Banking Department, which shall not be unreasonably withheld. Upon the approval of the OAG and the Banking Department, USCF shall adopt and implement the Broker Fee Policy, and provide it to all Brokers and USCF management personnel.**
9. **USCF shall prominently post the Fee Schedule on its website and in each of its branch offices 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.**
10. **USCF may amend the initial approved Fee Schedule provided that the amended Fee Schedule is consistent with the terms of Part IV of this Decree and the amended Fee Schedule is provided to the OAG and the Banking Department within five days of its implementation.**

V.
TRAINING

11. **Within 90 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 approval of the OAG and the Banking Department. 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 may be in addition to or part of any training mandated by the continuing education requirements of the Secure and Fair Enforcement Mortgage Licensing Act of 2008.**

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

VI.
MONITORING OF BROKER FEES

15. Within 30 days of the close of each of the three Reporting Periods defined in Part VIII, USCF will conduct the following analyses for all Loans brokered during the Reporting Period:
 - (a) USCF shall calculate the average Broker Fee (in Basis Points) charged to African-American customers and Latino customers ("Minority Average Broker Fee") and White customers ("White Average Broker Fee").¹ USCF 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.

¹ A Loan will be deemed to have been made to an African-American customer if at least one of the applicants is African-American. A Loan will be deemed to have been made to a Latino customer if at least one of the applicants is Latino. A Loan will be deemed to have been made to a White customer if at least one of the applicants is White and no applicant is African-American or Latino.

- (b) USCF 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”). USCF 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.
16. If USCF's statewide Minority Average Broker Fee exceeds USCF's statewide White Average Broker Fee by more than 20 Basis Points, USCF 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, determining whether the disparity was caused by the fact that African-American and/or Latino customers disproportionately received a specific type of loan or loan amount that allowed for higher Broker Fees under the Fee Schedule, providing additional training or counseling, and taking appropriate disciplinary actions.
17. If USCF's Minority Average Broker Fee for a particular branch office exceeds USCF's White Average Broker Fee for that branch office by more than 20 Basis Points, USCF 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, determining whether the disparity was caused by the fact that African-American and/or Latino customers disproportionately received a

specific type of loan or loan amount that allowed for higher Broker Fees under the Fee Schedule, providing additional training or counseling at the branch office, and taking appropriate disciplinary actions.

18. If USCF's statewide Minority Average Broker Fee exceeds USCF's statewide White Average Broker Fee by more than 30 Basis Points, USCF 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, except as provided for in Subparagraph 18(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) USCF will send the refund by mail to each customer's last known address within 45 days of the close of the Reporting Period.
 - (c) USCF shall not be required to provide refunds to customers if the racial and/or ethnic Broker Fee disparity can be fully explained through statistical regression analyses that control for race-and-ethnicity-neutral borrower, property, and loan characteristics that could potentially impact the amount of time and effort USCF takes to arrange residential mortgage loans. Such analyses may control only for the following factors: loan amount, whether the loan is a non-conforming loan, loan purpose, credit score, debt-to-income ratio, loan-to-value ratio, lien status, documentation level, property type, loan date, occupancy status (*e.g.*, investor purchase, second home), the number of loan applicants, and employment status (*e.g.*, unemployed, retired). The methodology used to conduct the regression

analyses will be subject to the approval of the OAG and the Banking Department. Absent such approval, which shall not be unreasonably withheld, USCF will provide refunds to customers as set forth above.

VII.
COMPLAINT PROCEDURE

19. Within ten days after receiving any customer complaint, whether written or oral, alleging discrimination involving the provision of mortgage brokerage services or mortgage banking services, USCF 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 USCF management Employee designated to handle customer discrimination complaints.
20. Within seven days of completing the investigation, USCF will inform the complainant of any action taken in response to the complaint. Within fourteen days of receiving any complaint, USCF will provide to the OAG and the Banking Department copies of all documents relating to the complaint.

VIII.
RECORD-KEEPING AND REPORTING

21. USCF will maintain the following records for the duration of the Decree:
 - (a) All documents and data, including records maintained in an electronic form, relating to Loans, including but not limited to Loan application files, the centralized application log required to be maintained pursuant to 3 N.Y.C.R.R.

§ 410.7(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 VI and any other fair lending monitoring analyses performed by USCF; and
- (c) The Fee Schedules referenced in Part IV.

22. USCF 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 15, and a detailed written summary of any follow-up and corrective actions taken in response to these results as required by Paragraphs 16-17;

- (d) In the event that customer refunds are required under Paragraph 18, 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 USCF asserts that the customer refunds required under Paragraph 18 are not required because of the results of the statistical regression analyses referenced in Subparagraph 18(c), a detailed written summary setting forth the results of these analyses and the methodology used; and
 - (f) Copies of the written acknowledgments executed by Brokers who received the fair lending training referenced in Part V during the Reporting Period.
23. Within 14 days after receiving a written request from the OAG or the Banking Department, USCF will provide to the OAG or the Banking Department any documents that it is required to maintain under the terms of this Decree or that relate to obligations under the Decree, 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.
24. This Decree does not in any way impair or affect the right of the OAG to seek to obtain documents from USCF pursuant to a subpoena.

IX.

SCOPE OF THE DECREE, JURISDICTION, AND ENFORCEMENT PROVISIONS

25. The Court shall retain jurisdiction over the parties and this matter for the term of three years and two months after the Effective Date.
26. The Court shall retain all equitable powers necessary to enforce the terms of this Decree and remedy any violations thereof, including but not limited to, the power to hold USCF in contempt and to award damages, restitution, or monetary penalties, as well as the power to extend the duration of the Decree upon a finding of noncompliance or if otherwise necessary.
27. This Decree shall become effective upon its execution by all parties and its entry by the Court.
28. Notwithstanding any provision of this Decree to the contrary, the OAG may, in its sole discretion, grant written extensions of time for USCF to comply with any provision of this Decree.
29. The signatories to this Decree warrant and represent that they are duly authorized to execute this Decree and that they have the authority to take all appropriate action required or permitted to be taken pursuant to this Decree to effectuate its terms.
30. The parties may seek to enforce this Decree by motion before the Court to the full extent of the law. 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.

31. Any failure by the OAG to enforce this entire Decree 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 Decree.
32. If any provision, term, or clause of this Decree 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 Decree shall remain valid and binding on the parties.
33. This Decree constitutes the entire agreement between USCF 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 Decree shall be enforceable.
34. Nothing in this Decree is intended to confer any right, remedy, obligation, or liability upon any person or entity other than the parties hereto.
35. Nothing in this Decree is intended to, nor shall, limit the OAG's or the Banking Department's investigatory or compliance review powers otherwise provided by law or this Decree.
36. This Decree may be executed in multiple counterparts, each of which shall be deemed a duplicate original.
37. This Decree 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.

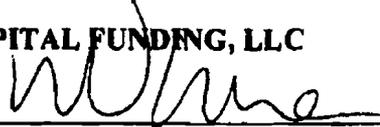
38. The parties hereby waive and shall not have any right to appeal any of the terms of this Decree or in any way challenge the validity of any of the terms of this Decree in any forum.
39. USCF agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Decree or creating the impression that this Decree is without factual basis. Nothing in this paragraph affects USCF'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.
40. Any payments and all correspondence related to this Decree shall reference CD-AOD 09-024.
41. All communications and notices regarding this Decree 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

U.S. Capital Funding, LLC
Daniel Hesse, President
U.S. Capital Funding, LLC
250 Carleton Avenue
East Islip, New York 11730
Tel. (631) 446-4001
Fax (631) 446-4002

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed this Consent Decree on the date set forth below.

U.S. CAPITAL FUNDING, LLC

By: 

Daniel Hesse
President, U.S. Capital Funding, LLC

Dated: East Islip, New York
May 20 2009

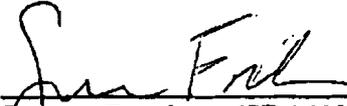
ANDREW M. CUOMO
Attorney General of the State of New York

By: 

Alphonso B. David (AD-9071)
Deputy Bureau Chief
Civil Rights Bureau

Jeffrey K. Powell (JP-2665)
Section Chief
Civil Rights Bureau

Office of the NYS Attorney General
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New York, NY 10271
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Fax (212) 416-8074


Spencer Freedman (SF-1420)
Counsel
Civil Rights Bureau

Dated: New York, New York
May 27, 2009

SO ORDERED: 


JOSEPH F. BIANCO
UNITED STATES DISTRICT JUDGE

Dated: May 27, 2009
Central Islip, New York