

FINAL ORDER
DATE 12/11/12

IN THE MATTER OF:
EAST SIDE LENDERS, LLC,
Respondent.

BEFORE THE MARYLAND
COMMISSIONER OF
FINANCIAL REGULATION

CFR Case No.: DFR-FY2010-313
OAH No.: DLR-CFR-76A-10-43163

SETTLEMENT AGREEMENT AND CONSENT ORDER

This Settlement Agreement and Consent Order (“Agreement”) is entered into this 3rd day of October, 2011, by and between the Maryland Commissioner of Financial Regulation (the “Commissioner”), and East Side Lenders, LLC, 314 E. Main Street, Suite 304, Newark, Delaware 19711 (the “Respondent”), (with the Commissioner and the Respondent collectively referred to as the "Parties"). The Parties consent to the entry of this Agreement as a final resolution of the captioned cases. All paragraphs below are intended to be part of the contractual obligations of the Parties hereto, and are not mere recitals to this Agreement.

1. Pursuant to the Maryland Consumer Loan Law (“MCLL”), at Md. Code Ann., Com. Law (“CL”), § 12-301 *et seq.* and Fin. Inst. (“FI”), § 11-201 *et seq.*, the Commissioner is responsible for licensing and regulating persons who make consumer loans to residents of the State of Maryland (the “State”).

2. Pursuant to FI § 11-204, “[u]nless a person is licensed by the Commissioner, the person may not: (1) [m]ake a loan; or (2) [i]n any way use any advantage provided by the Maryland Consumer Loan Law.”

3. Pursuant to CL § 12-302, a “person may not engage in the business of making loans under this subtitle unless the person is licensed under or is exempt from the licensing requirements of Title 11, Subtitle 2 of the Financial Institutions Article, Annotated Code of Maryland, known as the Maryland Consumer Loan Law – Licensing Provisions.”

4. CL § 12-306 specifies the maximum interest rates which a lender is permitted to charge on a loan under Title 12, Subtitle 3 of the Commercial Law Article. Section 12-306(a)(6)(i) provides as follows: “[f]or any loan with an original principal balance of \$2,000 or less, 2.75 percent interest per month on that part of the unpaid balance not more than \$1,000 and 2 percent interest per month on that part of the unpaid principal balance that is more than \$1,000.” This section, therefore, permits a lender to charge a maximum annual interest rate of 33 percent on unpaid principal balances up to \$1,000, and 24 percent on unpaid principal balances over \$1,000. Section 12-306(a)(6)(ii) provides: “[f]or any loan with an original principal balance of more than \$2,000, the maximum rate of interest is 2 percent per month on the unpaid principal balance of the loan.” This section only permits a lender to charge a maximum annual interest rate of 24 percent on the unpaid principal balance of the loan.

5. Pursuant to CL § 12-313(a)(1), a lender may not “[d]irectly or indirectly contract for, charge, or receive any interest, discount, fee, fine, commission, charge, brokerage, or other consideration in excess of that permitted by this subtitle.”

6. Pursuant to Maryland’s Consumer Credit Reporting Agencies Law (“CCRAL”), at CL § 14-1201 *et seq.*, the Commissioner is responsible for enforcing laws regulating consumer credit reporting. Notably, CL §§ 14-1217 and 14-1218 provide that the Commissioner has authority to conduct investigations, hold hearings, issue orders,

promulgate regulations, and otherwise enforce the provisions of the CCRAL as well as other laws regulating consumer credit reporting.

7. The Office of the Commissioner of Financial Regulation (“OCFR” or the “Agency”) commenced an investigation of Respondent in March 2008 after receiving consumer complaints related to Respondents’ lending activities with Maryland consumers. This investigation demonstrated the following:

a. That the Respondent continuously offered consumer loans to Maryland residents via the internet between 2008 and 2011, and that the Respondent issued consumer loans to multiple Maryland residents following the consumers’ submission of on-line loan applications originating in Maryland;

b. That by offering and entering into agreements to provide consumer loans to Maryland residents, the Respondent acted as a consumer lender, and was thus subject to the licensing, investigatory, enforcement, and penalty provisions of the MCLL;

c. That the Respondent has never heretofore been licensed as a lender authorized to make loans to Maryland residents, nor is it exempt from the provisions of the MCLL;

d. That the Respondent violated the MCLL with regard to each loan that Respondent made to Maryland consumers, with Respondent’s specific violations of the MCLL including, among other things, the following with regard to each of these transactions: the Respondent engaged in unlicensed consumer lending activities, in violation of CL § 12-302 and FI § 11-204; and the Respondent charged or received interest on its loans at a rate exceeding the maximum interest rates permitted under Maryland law, in violation of CL §§ 12-306 and 12-313(a)(1); and

e. That the aforementioned violations of the MCLL constituted grounds for the Commissioner to impose sanctions on the Respondent following an administrative hearing or a waiver of such hearing.

8. Based on the Agency's investigation, on June 30, 2010, after finding reasonable grounds to believe that the Respondent had violated various provisions of the MCLL, including those provisions indicated above, and upon determining that action under FI §§ 2-115 and 11-215(b) was appropriate, the Commissioner issued a Summary Order to Cease and Desist ("Summary Order") against the Respondent. Subsequent to a hearing conducted at the Office of Administrative Hearings ("OAH") on February 23, 2011, the Administrative Law Judge ("ALJ") assigned to the case issued a Proposed Decision on May 31, 2011 containing findings of fact and conclusions of law. The Deputy Commissioner issued a Proposed Order on June 2, 2011 which adopted the ALJ's findings of fact and conclusions of law. The Respondent filed Exceptions to the Proposed Order on June 22, 2011, and an Exceptions hearing was scheduled for September 22, 2011. However, the Exceptions hearing was continued on September 21, 2011 after the Parties agreed to the terms of a settlement, which is memorialized herein.

9. The Parties hereto agree that, in the event the Respondent violates any provision of this Agreement prior to it being designated as a "Final Order" of the Commissioner, as discussed on pages 12-14, below, the administrative action in the above-captioned matter shall resume at the point that the case was continued, *i.e.*, the matter will resume with an Exceptions hearing, to be conducted pursuant to Code of Maryland Regulations ("COMAR") 09.01.03.09, based on the Exceptions previously filed by the Respondent on June 22, 2011, except as hereinafter provided. The Parties shall have all

rights accorded to each of them under applicable law at the point that the case was continued and, to the extent that Respondent has complied with any of the provisions of Paragraph 12 of this Agreement, by making monetary payment(s) to the Commissioner and/or refunds to any affected Maryland consumers, Respondent shall be entitled to amend its Exceptions in order to have such payment(s) considered by the Commissioner prior to issuance of any Final Order.

10. The Respondent does not admit to any of the violations set forth above or in the Commissioner's Summary Order, and disputes the conclusions of the Agency's investigation, but wishes to resolve these alleged violations without the need for an Exceptions hearing and to avoid the costs associated with such proceedings and any potential appeals, and therefore agrees to resolve this matter fully, finally, and completely without an Exceptions hearing; further, the Respondent accepts without condition, and fully agrees to abide by, each and every term set forth in this Agreement.

11. The Commissioner desires to ensure that the Respondent fully complies with all applicable statutes, regulations, and others laws governing lending activities involving Maryland consumers and consumer credit reporting, and further wishes to avoid the costs to the taxpayers of an Exceptions hearing and any potential appeals.

12. The Respondent agrees to take each and every one of the following actions in exchange for a final resolution of this matter:

a. Respondent will pay a total penalty of \$112,800 (ONE HUNDRED TWELVE THOUSAND, EIGHT HUNDRED DOLLARS) in the form of two separate checks, each made payable to the "Commissioner of Financial Regulation" in the amount of \$56,400, with the first such check to be delivered to the Agency on or before October 4,

2011, and the second such check to be delivered to the Agency on or before October 17, 2011.

b. On or before October 31, 2011, Respondent will issue restitution to the following Maryland consumers, each of whom was identified in the ALJ's Proposed Decision of May 31, 2011, in the amounts specified, with the amount of restitution to be paid by the Respondent to these affected Maryland consumers totaling \$13,192.33 (THIRTEEN THOUSAND ONE HUNDRED NINETY-TWO DOLLARS AND THIRTY-THREE CENTS):

NAME	REFUND
██████████	\$267.50
██████████	\$970.00
██████████	\$843.33
██████████	\$1,939.00
██████████	\$150.00
██████████	\$900.00
██████████	\$750.00
██████████	\$300.00
██████████	\$120.00
██████████	\$952.50
██████████	\$140.00
██████████	\$505.00
██████████	\$985.00
██████████	\$865.00
██████████	\$2,335.00
██████████	\$570.00
██████████	\$600.00
TOTAL	\$13,192.33

c. For each of the remaining 361 Maryland consumers to whom the Respondent issued loans during the period when the Respondent engaged in lending activities with Maryland consumers, but which consumers were not identified in the ALJ's Proposed Decision of May 31, 2011, the Respondent shall issue refunds in the following amounts: (1) for each such Maryland consumer where the total amount of all money paid by the consumer to the Respondent, whether through the payments of interest, fees, and/or the repayment of principal, was \$150 or more, the Respondent shall issue a refund to the consumer in the amount of \$150.00; and (2) for each such Maryland consumer where the total amount of all money paid by the consumer to the Respondent, whether through the payments of interest, fees, and/or the repayment of principal, was less than \$150, the Respondent shall issue a refund to the consumer in an amount equal to the total amount of all money paid by the consumer to the Respondent. Applying the foregoing provisions of this Paragraph 12.c., the aggregate amount of refunds to be issued by Respondent to these affected Maryland consumers is \$37,525.00 (THIRTY-SEVEN THOUSAND, FIVE HUNDRED TWENTY-FIVE DOLLARS), as set forth in Attachment 1.

d. The Respondent agrees to forfeit the total amount of all unpaid money which the Respondent might allege is due the Respondent from Maryland consumers to whom the Respondent made any loans, and the Respondent agrees that it will not sell, assign, or otherwise transfer any such unpaid accounts receivable to any third party, and that it will not attempt to collect on those unpaid accounts, directly or indirectly. The Respondent also agrees that, from and after the date that this Agreement is fully executed, to the extent the Respondent receives any payment from a Maryland consumer to whom the

Respondent had previously made a loan, the Respondent shall forthwith refund such payment directly to the Maryland consumer from whom such payment was received. The total amount of money to be forfeited by the Respondent under this Agreement is \$45,544.00 (FORTY-FIVE THOUSAND, FIVE HUNDRED FORTY-FOUR DOLLARS), as set forth in Attachment 1.

e. The Respondent further agrees that, to the extent the Respondent has reported to any consumer credit reporting agency any delinquency or other negative comment or remark regarding any Maryland consumer to whom the Respondent made a loan during the time the Respondent made loans to Maryland consumers, the Respondent shall remove such negative comment or remark. The Respondent further agrees that, for every Maryland consumer about whom the Respondent sent any report to any consumer credit reporting agency regarding the payment of history of the consumer, the Respondent shall report to the consumer credit reporting agencies that the Maryland consumer's loan with Respondent has been fully satisfied.

f. The Respondent shall issue refunds to the affected Maryland consumers indicated in Paragraphs 12.b. and 12.c., above, in accordance with the following:

(1). On or before October 31, 2011, Respondent shall mail a check for the amount of money to be refunded to each consumer via First Class U.S. Mail, to each affected consumer's last known address, or to an updated address as can be identified through customary address verification means. Each refund shall be accompanied by a letter indicating that that the refund is being issued pursuant to a Settlement Agreement between the Respondent and the Commissioner of Financial Regulation, and that the Settlement Agreement does not in any way affect the consumer's legal rights.

(2). On or before October 31, 2011, Respondent shall provide the Agency with a spreadsheet indicating the name and last known address of each affected Maryland consumer, the total amount of money (including principal, interest, and/or fees) paid by the consumer to the Respondent in repayment of the loans received by the consumer from the Respondent, the amount of money to be refunded to the consumer by the Respondent pursuant to this Agreement, and the remaining loan balance to be forfeited by the Respondent pursuant to this Agreement. Once provided to the Agency, this spreadsheet shall become Attachment 1 to the present Agreement, and the Agreement shall be amended accordingly, with the amended pages to be initialed by both Parties' counsel.

(3). On or before November 30, 2011, the Respondent shall furnish evidence to the Agency that refunds were tendered to each affected consumer in the agreed amount by providing a copy of the front and back of the cancelled check for each refund payment that was negotiated by the affected consumer.

(4). On or before December 15, 2011, if any refund payment checks mailed by the Respondent to affected Maryland consumers in accordance with this Agreement are either not cashed or are returned to the Respondent as non-deliverable (collectively, the "Undeliverable Refunds"), such Undeliverable Refunds will escheat to the State of Maryland. In such event, the Respondent will stop payment on such undeliverable refund payment checks, and shall pay the total amount of all Undeliverable Refunds in the form of a single check made payable to the "Comptroller of Maryland," which shall be submitted to the Comptroller, copy to the Agency, both of which shall be accompanied by an update to the spreadsheet referenced above as Attachment 1, which updated spreadsheet shall be submitted in both hard copy and in an electronic format mutually agreeable to both

Parties, and which shall be supplemented with the following additional information for each affected consumer: the social security number of the consumer (if known), the date of birth of the consumer (if known), the date on which each refund check was mailed, and an indication of which refund checks were cashed, and which refund checks were either not cashed or were returned to the Respondents as non-deliverable. Such action on the part of the Respondent shall relieve the Respondent of any further obligation to make refunds to the affected consumers pursuant to this Agreement.

(5). The Respondent shall not seek releases from consumers in conjunction with these refunds.

13. Respondent acknowledges that it has voluntarily entered into this Agreement with full knowledge of its right to a hearing pursuant to FI § 2-115 (a)(1), pursuant to the Maryland Administrative Procedures Act – Contested Cases, Md. Code Ann., State Gov't. ("SG"), § 10-201 *et seq.*, and pursuant to COMAR 09.01.03.09, and that Respondent hereby waives its right to any further hearings or appeals of this matter, including but not limited to an Exceptions Hearing, upon this document being designated as a "Final Order" of the Commissioner as discussed on pages 12-14, below, but no such waiver will be in effect in the event that Respondent violates any of the terms of this Agreement prior to it being designated as a "Final Order" of the Commissioner, in which case the procedures set forth in Paragraph 9, above, will control. Respondent further acknowledges that it has had an opportunity to consult with independent legal counsel in connection with its waiver of rights and with the negotiation and execution of this Agreement, and that the Respondent has in fact consulted with independent legal counsel.

14. Respondent represents the following: that it has stopped making loans to Maryland consumers in accordance with the Summary Order; that it has stopped third party collections on all loans previously made to Maryland consumers; that it is currently in compliance with all applicable statutes, regulations, and others laws governing the making of loans to Maryland consumers; and that it will continue to act in compliance at all future times. The Respondent further agrees that it will not offer or provide loans to Maryland consumers without first complying with all applicable statutes, regulations, orders, and other provisions of Maryland law which govern lending activities with Maryland consumers, including but not limited to the Maryland Consumer Loan Law.

15. The Parties hereto agree that this Agreement shall be binding upon the Parties and enforceable in a court of competent jurisdiction by the Commissioner and by the Respondent, shall be admissible in court, if relevant, and shall be binding upon and inure to any of the Respondent's present and future owners, principals, directors, officers, members, partners, managers, agents, successors, and assigns.

16. The Parties hereto acknowledge that this Agreement does not in any way relate to, impact, or otherwise affect the legal rights of, or preclude the Commissioner from bringing or continuing actions against, persons not Parties to this Agreement, except as set forth in Paragraph 17 below.

17. The Commissioner agrees that, once this Agreement is designated as a Final Order, he will not bring an enforcement action of any kind against the Respondent or against any of its present or future members, principals, officers, managers, agents, employees, successors, or assigns, for any conduct arising out of or related to Respondent's lending activities with Maryland consumers prior to the date this Agreement is fully executed,

related to the investigation referred to in the Summary Order or otherwise covered by this Agreement.

18. The Parties hereto agree that they shall not disparage or undermine this Agreement in any way.

19. The Parties hereto agree that any notices hereunder shall be effectively “delivered” when sent via overnight delivery or certified mail as follows:

a. To the Commissioner:

Commissioner of Financial Regulation
500 North Calvert Street, Suite 402
Baltimore, Maryland 21202-3651
Attn: Anne Balcer Norton, Deputy Commissioner

Copy to:

W. Thomas Lawrie, Assistant Attorney General
Office of the Attorney General
Department of Labor, Licensing, and Regulation
500 North Calvert Street, Suite 406
Baltimore, Maryland 21202-3651

b. To Respondent:

East Side Lenders, LLC
314 E. Main Street, Suite 304
Newark, Delaware 19711
Attention: Michael Luxenberg, Member

Copy to:

Martin B. Ellis, Esquire
Shumaker Williams, P.C.
901 Dulaney Valley Road, Suite 610
Towson, Maryland 21204

NOW, THEREFORE, it is, by the Maryland Commissioner of Financial Regulation, hereby

ORDERED that the Respondent shall adhere to all terms of this Agreement; it is further

ORDERED that the Respondent shall conduct business in full compliance with all statutes, regulations, and other laws governing lending in the State of Maryland or otherwise involving Maryland consumers, shall fully comply with all statutes, regulations, and other laws governing consumer credit reporting with regard to Maryland consumers, and shall continue to act in full compliance at all future times; and it is further

ORDERED that the administrative action brought by the Commissioner against the Respondent in the above-captioned matter is STAYED pending Respondent's satisfaction of the terms set forth in Paragraph 12 of this Agreement; and that the Summary Order to Cease and Desist issued by the Commissioner to the Respondent on June 30, 2010 in the above-captioned matter shall remain in effect for as long as this action is stayed; and it is further

ORDERED that, once the Respondent satisfies all of the terms set forth in Paragraph 12 of this Agreement, the present document will be designated as a "Final Order," the violation of which shall constitute a violation of a Final Order of the Commissioner; and it is further

ORDERED that, automatically upon this document being designated as a "Final Order," it fully supersedes and replaces the Summary Order to Cease and Desist issued by the Commissioner on June 30, 2010 in the above-captioned matter as to the Respondent, which action shall be deemed dismissed; and it is further

ORDERED that, in the event the Respondent fails to satisfy all of the terms set forth in Paragraph 12 of this Agreement, or otherwise violates any of the terms of this Agreement before it is designated as a "Final Order," the administrative action in the above-captioned

matter shall resume at the point that the action was continued, *i.e.*, the matter will resume with an Exceptions hearing, to be conducted pursuant to Code of Maryland Regulations (“COMAR”) 09.01.03.09, based on the Exceptions previously filed by Respondent on June 22, 2011, except that the Parties shall have all rights accorded to each of them under applicable law at the point that the case was continued and, to the extent that Respondent has complied with any of the provisions of Paragraph 12 of this Agreement, by making monetary payment(s) to the Commissioner and/or refunds to any affected Maryland consumers, Respondent shall be entitled to amend its Exceptions in order to have such payment(s) considered by the hearing’s presiding officer; and it is further

ORDERED that, once this document is designated as a “Final Order,” in the event that the Respondent violates any provision of this Agreement, the Commissioner may, at the Commissioner’s discretion, take any enforcement actions available under FI § 2-115 and/or under the Maryland Consumer Loan Law, as well as take any other enforcement actions as permitted by, and in accordance with, applicable State law; and that such enforcement actions could include civil money penalties of up to \$1,000 for a first violation and up to \$5,000 for each subsequent violation of the law, an order to provide restitution of money or property to any aggrieved persons, and/or referral for possible criminal prosecution; and it is further

ORDERED that this matter shall be resolved in accordance with the terms of this Agreement, and that the same shall be reflected among the records of the Office of the Commissioner of Financial Regulation; and it is further

ORDERED that, once this document is designated as a “Final Order,” it shall constitute a Final Order of the Maryland Commissioner of Financial Regulation; and it may

be considered by the Agency or the Commissioner in connection with, and in deciding, any action or proceeding before the Agency or the Commissioner; and that this Agreement may, if relevant, be admitted into evidence in any other matter before the Agency or the Commissioner.

It is so ORDERED.

IN WITNESS WHEREOF, this Settlement Agreement and Consent Order is executed on the day and year first above written.

MARYLAND COMMISSIONER OF
FINANCIAL REGULATION

By: _____



Mark Kaufman
Commissioner

EAST SIDE LENDERS, LLC

By: _____



Christy Finazzo
Manager

Attachment 1

Redacted in Full