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**STATE OF KANSAS
OFFICE OF THE STATE BANK COMMISSIONER
CONSUMER & MORTGAGE LENDING DIVISION
TOPEKA, KANSAS**

In the matter of:)
)
Conseco Finance Servicing Corp.,)
1100 Landmark Towers)
345 St. Peter Street)
St. Paul, MN 55102)
Certificate No.: 1972-3188)
)
Licensee.)

Action No.: 01-CM-102

**CONSENT AND SETTLEMENT AGREEMENT
(In Accordance with K.S.A. 16a-6-104)**

THIS MATTER came before the Deputy Commissioner of the Consumer and Mortgage Lending Division (hereinafter “the Administrator”) upon the recommendation of the Consumer and Mortgage Lending Division Staff and with the consent of Conseco Finance Servicing Corp. (hereinafter “Licensee”). Having decided that the issues raised in this matter may be fairly, economically and efficiently settled, the Administrator agrees to the entry of this Settlement Agreement (hereinafter the “Agreement”). This Agreement is entered into pursuant to Chapter 16a, Article 6, part 1 of the Kansas Statutes.

I. Background and Factual Findings

1. Licensee is a Supervised Lender Licensee pursuant to Chapter 16a, Article 2, part 3 of the Kansas Statutes (License No. 1972-3188).
2. On or about December 18, 2001, the Administrator issued a Notification of Intent to Revoke License against Licensee, citing the following alleged violations of K.S.A. 16-207(a) and the Uniform Consumer Credit Code (K.S.A. 16a-1-101, *et seq.*):

- a. Since August 25, 1999, Licensee has financed the purchase of approximately 120 manufactured homes for Kansas consumers, in which the interest rate charged by Licensee exceeded the 15% per annum rate authorized by K.S.A. 16-207(a). Those transactions were not made subject to the Uniform Consumer Credit Code (K.S.A. 16a-1-101 et seq.) and are, therefore, usurious transactions.
- b. During internal self-audits conducted by Licensee in August 2000 and April 2001, Licensee identified approximately 83 transactions that violated the 15% per annum rate authorized by K.S.A. 16-207(a). Licensee reduced the interest rate on each contract to 14.99%, recalculated payments from the initial date of the contract, and sent each Kansas consumer a letter notifying them of the interest rate reduction. In each letter, however, Licensee stated that the borrower was “eligible for a permanent interest rate reduction,” with reference being made to an “Interest Rate Reduction Program.” Such actions by Licensee are considered deceptive business practices, in violation of K.S.A. 16a-2-303(1)(i).
- c. The Office of the Kansas Bank Commissioner (“the OSBC”) has received numerous complaints from Kansas consumers concerning Licensee’s abusive collection practices. Such complaints include allegations of the following conduct by Licensee, which is deceptive, misleading, or intended to harass or abuse the consumer, in violation of K.S.A. 16a-2-303(1)(i):
 - i. Multiple daily calls attempting to collect the same debt;
 - ii. Rude, abusive and profane language from debt collectors;
 - iii. Calls after 9:00 p.m.;
 - iv. Communications with, and information gathering through, the minor children of consumers;

- v. Multiple calls to the consumers' employers concerning the debt, even after consumers requested that such calls cease;
 - vi. Threats of forcible eviction, repossession, civil suit, sale of personal property, incarceration, and ruining credit histories;
 - vii. Multiple calls to the family and/or friends of consumers concerning the debt;
 - viii. Obtaining authorization from consumers to electronically transfer funds from consumers' accounts, but withdrawing a larger amount than authorized, or withdrawing amounts early, causing overdrafts of the accounts.
- d. A review of four (4) loan files provided by Licensee to the OSBC revealed the following problems with the credit determination process used by Licensee:
- i. Debt to income figures consistently understated lot rents at \$100.00 per month;
 - ii. Applicants with insufficient credit histories were approved;
 - iii. Incomes were erroneously calculated using items such as stock earnings;
 - iv. Written verification of full-time employment was not obtained;
 - v. Income/wage statements were not obtained.

Although none of the credit files reviewed contained all of the problems listed above, the discrepancies taken as a whole indicate a pattern on the part of Licensee to extend credit to consumers who cannot afford such credit. Such action by Licensee is considered a deceptive business practices, in violation of K.S.A. 16a-2-303(1)(i).

3. Licensee neither admits nor denies the allegations contained in the December 18, 2001, Notification of Intent to Revoke License or as restated in subsections (a) through (d) of section two (2) above.

II. Agreement and Order

As a fair, economical and efficient method of resolving the issues raised in the foregoing Background and Factual Findings, the Administrator and Licensee agree as follows:

1. The Administrator shall withdraw and terminate the Notification of Intent to Revoke License, issued on December 18, 2001, against Licensee.

2. Licensee shall, within ten (10) days of the date of this Agreement, pay \$75,000.00 to the Administrator as a settlement fee, to be used for consumer education purposes, in accordance with K.S.A. 16a-6-104(c). Such amount shall be made payable to the Office of the State Bank Commissioner.

3. The interest rate on all contracts listed in Exhibits A, B and C attached hereto will be reduced to 10% per year effective as of the initial contract date. The accounts from such contracts will be recast and all payments will be reapplied to the accounts based upon the reduced monthly payment amounts which have resulted from the interest rate reduction. The amount of excess interest collected on each account will be refunded to the borrower, or credited to the account, as follows:

a. Any borrower who has an open account and is current with his/her payments will be given the option of receiving the excess interest amount as a credit to his/her account or by issuance of a refund check to the borrower. Borrowers falling within this category shall be notified of this provision by Licensee in writing, as provided in Section (4) below, and shall be given at least 20 days from the date of the notice to respond. Any borrower failing to respond to such notice shall have the excess interest amount credited to his/her account.

- b.* any borrower who has an open account and is delinquent in his/her payments, after recasting, will first have the excess interest credited to his account in order to bring the account current, and second, if the excess interest amount is greater than the amount needed to bring the account current, the borrower will be given the option of receiving any remaining excess interest *as by* a credit to his/her account or by issuance of a refund check to the borrower, as provided in subsection (a) above;
- c.* any borrower whose account has resulted in repossession, voluntary surrender or assumption, prior to the interest rate reduction, will have any deficiency balance on his/her account waived and forgiven; or
- d.* any borrower whose account has been paid in full,, as a result of refinancing or otherwise, shall be issued a refund check for any and all excess interest paid.

4. Licensee shall, within 20 days of the date of this Agreement, send each borrower a letter, the format of which has been approved by the Administrator, explaining the interest rate reduction, the appropriate refund options, if any, or the deficiency forgiveness. The letters will include the exact amount to be refunded, applied to the account, or forgiven and will state that such action was taken as part of a settlement with the Administrator. New payment schedules and refund checks, if appropriate, will accompany all such letters. Licensee shall provide the Administrator with copies of all such letters and any refund checks.

5. Licensee agrees to follow all requirements and prohibitions of the Federal Fair Debt Collection Practices Act (“FDCPA”) when engaging in collection activities for Kansas

accounts. Licensee shall provide training to all of its employees, who collect Kansas manufactured housing accounts, on the requirements and prohibitions of the federal Fair Debt Collection Practices Act (“FDCPA”). Licensee shall inform the Administrator, within 45 days of the date of this Agreement, of actions taken in compliance with this section. Licensee shall have a separate group of collection employees assigned to handle all collection activities on Kansas manufactured home accounts. Such employees shall not attempt to collect late payments on Kansas manufactured home accounts until such payments are at least five (5) days late. Any collection activity or practice by Licensee for Kansas accounts, which would constitute a violation of the FDCPA, will also constitute a violation of this Section.

6. The Licensee shall clearly state, in all documents or other communications with Licensee’s Kansas borrowers, that the borrower’s voluntary surrender of possession of his/her manufactured home: (a) does not relieve the borrower of his/her obligation, (b) does not guarantee assumption of the obligation by another borrower, and (c) may result in a deficiency amount that borrower will remain obligated to pay. Licensee shall obtain a written acknowledgment of the above provisions, signed and dated by the Kansas borrower, prior to accepting any voluntary surrender of possession of a manufactured home.

7. Licensee shall take steps to ensure that its credit underwriters, on Kansas manufactured housing credit applications, strictly follow Licensee’s written policies and requirements concerning credit determinations, including, but not limited to, (a) accurate verification of employment/income; (b) accurate debt/liability figures; and (c) adequate credit histories. Any violation of Licensee’s written underwriting policies and requirements, on a Kansas manufactured home transaction, shall constitute a violation of this Section.

8. Licensee shall provide the Administrator with a list of all manufactured home dealers in the State of Kansas, with whom Licensee currently has an active Manufactured Home Dealer Agreement. Licensee shall provide written notification to the Administrator any time a manufactured home dealer's agreement is terminated. Licensee shall provide the Administrator with a list of all Kansas manufactured home dealers who have been terminated by Licensee within the last 24 months. Licensee shall notify the Administrator if it becomes aware of any Kansas manufactured home dealer conducting business in a deceptive or dishonest manner.

9. Licensee shall waive and forgive the deficiency balance, as well as any other outstanding fees or charges, on the account of Jamie and Rosario Hernandez (Acct. No. 93318223). The total amount of such forgiveness is \$23,354.52.

10. Licensee shall waive and forgive the deficiency balance, as well as any other outstanding fees or charges, on the account of Keith and Brandi Morris (Acct. No. 6903837554). The total amount of such forgiveness is \$48,052.16.

11. Licensee shall designate a contact person employed by Licensee who will oversee all Kansas consumer inquiries and complaints. Licensee shall maintain a toll-free telephone number for use by Kansas consumers when contacting such person.

12. Within 45 days of the date of this Agreement, Licensee shall provide the Administrator with written verification, accompanied by applicable documentation, that all of the actions on the part of Licensee required by this Agreement have been completed. Such verification shall include a report of all refunds, account credits, and deficiency balance waivers made by Licensee. The report shall include borrowers' names, account numbers, and the category and amount of any refund, credit or waiver made by Licensee. Such report shall also include the total amount of all refunds, credits and waivers made by Licensee, by category.

13. This Agreement will be considered a public record and may be released to any person.

14. Licensee, by entering into this Agreement, neither admits nor denies any specific violation of law alleged in this Agreement.

15. Licensee knowingly and voluntarily waives any right to further administrative proceedings or judicial review of the matters addressed by this Agreement.

16. Licensee hereby gives an assurance of discontinuance regarding the conduct and violations alleged in this Agreement.

17. If Licensee fails to abide by the terms and conditions of this Agreement, the Administrator may pursue any action or remedy allowed by law concerning the conduct and violations alleged in this Agreement.

18. Nothing in this Agreement shall be construed as to limit or interfere with the Administrator's authority to investigate, and pursue remedies for, future or additional violations of law not specifically addressed in this Agreement.

19. The date of this Agreement shall be the date the same is signed by the Administrator.

AGREED AND APPROVED AS TO FORM AND SUBSTANCE:

This ____ day of _____, 2002.

This ____ day of _____, 2002.

Kevin C. Glendenning
Deputy Commissioner (Administrator)
Office of the State Bank Commissioner
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Brian F. Corey, Senior Vice President,
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