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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING DEC 28 PM 3:19

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING, BUREAU OF  
COMPLIANCE, INVESTIGATION AND  
LICENSING

PA DEPT OF BANKING

DOCKET No. 10 0306 (E-FILE-CO)

v.

LOVE HOMES, INC.

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking, (the "Department"), Bureau of Compliance, Investigation and Licensing, (the "Bureau") has reviewed the business practices Love Homes, Inc. (collectively "Love Homes"), and its officers, employees and directors. Based on the results of its review, the Bureau believes that Love Homes operated in violation of the Motor Vehicle Sales Finance Act (the "MVSFA"), 69 P.S. § 601 *et seq.* Love Homes asserts that it did not violate the Motor Vehicle Sales Finance Act and admits no wrongdoing. The parties to the above-captioned matter, to avoid litigation, stipulate that the following statements are true and correct and, intending to be legally bound hereby agree to the terms of this Consent Agreement and Order (the "Order").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Motor Vehicle Sales Finance Act (the "MVSFA"), 69 P.S. § 601 *et seq.*

2. The Bureau is primarily responsible for administering and enforcing the MVSFA for the Department.

3. Love Homes is a Pennsylvania business corporation located at 4325 Hamilton Boulevard, Allentown, PA 18103-6014.
4. Lawrence W. Higgins ("Higgins") is the President and 100% owner of Love Homes.
5. Love Homes is currently licensed as an installment seller, license no. 300 and as a sales finance company, license no. 0424 under the MVSFA.
6. Love Homes' primary business is the sale of manufactured or modular homes.
7. Love Homes enters into purchase order contracts with consumers which identifies the manufactured or modular home model to be ordered from a manufacturer on behalf of a consumer, or for the purchase of a model from the lot.
8. This purchase order contract provides that if the manufactured or modular home is not paid for in cash, the consumer will enter into a retail installment contract on or before delivery of the modular home in order to finance the purchase.
9. The purchase order contract provides for a proposed delivery date, but otherwise states that time is not of the essence thereby leaving no date certain for performance of the contract.
10. In August, 2009, Love Homes obtained a \$16,500 down payment from \_\_\_\_\_, an amount the Bureau contends is in excess of that allowed as a binder in violation of the MVSFA.
11. Love Homes failed to refund that down payment, or any portion of that down payment in excess of any actual, consequential and incidental damages as provided by the purchase order contract.

12. Love Homes denies any wrongdoing and does not admit liability, but enters into this agreement to avoid litigation, and Love Homes does not agree to the use of this Consent Agreement and Order by third parties.

#### APPLICABLE LAW

13. Section 10.A.14 of the MVSFA provides "[t]he department, upon thirty (30) days' written notice to the licensee, forwarded by registered mail to the place of business of such licensee, as shown in the application for license or as amended on the license certificate in case of change of address subsequent to issuance of the license certificate, may revoke or suspend any license if it finds that: . . . (14) *The licensee has engaged in unfair, deceptive, fraudulent or illegal practices or conduct in connection with any business regulated under this act.*" (*emphasis added*) 69 P.S. § 610.A.14.

14. It is the position of the Bureau that failure to provide a refund of the down payment monies for a contract that was not performed is an unfair or deceptive practice under the MVSFA.

15. Love Homes denies that it has ever engaged in an unfair or deceptive practice.

16. Section 31.B of the MVSFA provides that "[a] licensee under this act shall not collect any charge whatsoever in connection with a contemplated sale of a motor vehicle under an installment sale contract, if such contract is not consummated: Provided, however, that nothing contained herein shall affect the legal status of a deposit paid by a prospective buyer to a seller as a binder on the contemplated purchase of a motor vehicle." 69 P.S. § 631.B.

17. It is the position of the Bureau that down payments in excess of a binder and collected by Love Homes prior to the consummation of an installment sales contract violate the MVSFA.

18. It is the position of the Bureau that consummation of an installment sales contract occurs when the installment sales contract is executed by the parties and delivery of the unit purchased has been made.

19. Section 37.1 of the MVSFA grants the Department the authority to issue orders as may be necessary for the enforcement of the MVSFA. 69 P.S. § 637.1.

**RELIEF**

20. Restitution. Love Homes agrees to restitution to \_\_\_\_\_ as follows:

a. Love Homes agrees to a confession of judgment in favor of \_\_\_\_\_ to assure restitution of the \$16,500 plus \$1250 for the time value of money lost to \_\_\_\_\_ by delay in refunding her down payment and for expenses incurred;

b. Lawrence W. Higgins agrees to guarantee payment of any confession of judgment by Love Homes;

c. \$1,000 will be paid by January 1, 2011 followed by payments of \$1,000 every thirty days thereafter, with the entire balance due and payable by April 15, 2011;

d. payment shall be submitted directly to \_\_\_\_\_ in the form of certified checks or money orders;

e. Love Homes agrees to provide copies of the refund checks to Ryan Walsh, Administrator, Bureau of Compliance, Investigation and Licensing upon issuance;

21. Guarantor. Lawrence W. Higgins enters into this agreement as a guarantor of the obligation of Love Homes to pay restitution to \_\_\_\_\_. By guaranteeing this restitution, Lawrence W. Higgins is in no way intending to commingle his personal finances with that of Love Homes and the two remain distinct entities and legal persons.

22. Corrective Measures. Upon the effective date of this Order, Love Homes agrees to the following in relation to all installment sales governed by the Motor Vehicle Sales Finance Act:

a. cease and desist from taking down payments in excess of a binder and in no case will take more than a \$2,000 binder for an installment sale prior to entering into a consummation of a retail installment sales contract, as consummation is defined by the Bureau in paragraph 18 above;

b. identify on the front of purchase order contracts if the sale is to be an installment sales transaction under the MVSFSA;

c. include an exact date for expected performance of any contract under the MVSFSA on the front of the purchase order contract after which time an installment sale consumer may terminate the contract and receive a full refund of all binders and down payment monies paid. Any purchase order contract regulated by the MVSFSA will reflect this term on the front of the contract and will specify that this term supersedes the provision that states that "time is not of the essence" printed on the back of the contract;

d. cease and desist from entering into a purchase order contract for an installment sale regulated by the MVSFSA with any person known to lack the credit necessary to obtain financing for an installment sale;

e. establish and utilize an escrow account for the deposit of all binders for installment sales contracts;

23. Abeyance. Love Homes agrees that if the Department, after notice and opportunity to be heard, determines that Love Homes has violated the provisions of this Order,

the Bureau shall take action to impose additional penalties on Love Homes, including but not limited to suspension or revocation of the licenses and civil penalties.

#### FURTHER PROVISIONS

24. Consent. Love Homes hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the MVSA, and agrees that it understands all of the terms and conditions contained herein. Love Homes by voluntarily entering into this Order, waive any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

25. Lawrence W. Higgins, insofar as he is the guarantor of the identified resolution, hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the MVSA, and agrees that he understands all of the terms and conditions contained herein.

26. Consumer's Rights. This Order shall not limit or impair a consumer's rights under Section 35 of the MVSA. 69 P.S. § 635.

27. Publication and Release. The Department will publish this Order pursuant to its authority in Section 302.A.(5) of the Department of Banking Code. 71 P.S. § 733.302.A.(5).

28. Entire Agreement. This Order contains the whole agreement between the parties. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the Bureau and Love Homes.

29. Binding Nature. The Department, Love Homes, and all officers, owners, directors, employees, heirs and assigns of Love Homes intend to be and are legally bound by the terms of this Order.

30. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

31. Effectiveness. Love Homes hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order.

32. Other Enforcement Action.

(a) The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against Love Homes in the future regarding all matters not resolved by this Order. This Order resolves the amount and manner of deposits, binders and down payments Love Homes is authorized to make in transactions governed by the MVSFA going forward and provides for restitution to consumer. This agreement does not resolve any other consumer issues that may or may not exist and the Department specifically reserves the right to address any such issues separately.

(b) Love Homes acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

33. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

34. Counterparts. This Order may be executed in separate counterparts and by facsimile.

35. Titles. The titles used to identify the paragraphs of this document are for convenience of reference only and do not control the interpretation of this document.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Department and Love Homes intending to be legally bound, do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING  
BUREAU OF COMPLIANCE, INVESTIGATION  
AND LICENSING**

\_\_\_\_\_  
Ryan M. Walsh, Administrator  
Bureau of Compliance, Investigation  
and Licensing  
Department of Banking

Date: December 28, 2010

**FOR LOVE HOMES, INC.**

\_\_\_\_\_  
(Officer Signature)

\_\_\_\_\_  
(Printed Officer Name)

Pres  
\_\_\_\_\_  
(Title)

Date: 12/27/10

**FOR LAWRENCE W. HIGGINS, as Guarantor**

\_\_\_\_\_  
Date: 12/27/10