

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

CONSENT DECREE AND ORDER
OF SETTLEMENT CONCERNING
THE FRANKLIN FIRST
DEFENDANTS

-Against-

Civil Action No. 2015-5576

RAINY DAY HOLDINGS, LLC,
THE RAINY DAY FOUNDATION, INC.,
DEFAULT MITIGATION SERVICES, LLC,
RICK DEL SONTRO, ROBERT CLUTE,
MICHAEL SHRUM, CHRIS NAILLON,
CHRIS HAUVER, KELLY SCHWEDLAND,
TODD LUDLOW, FRANKLIN FIRST
FINANCIAL, LTD., FREDERICK ASSINI,
ANTONIO BAINES, ANDREW DAURO,
CHRIS BERTMAN, INTERCONTINENTAL
CAPITAL GROUP, INC., DUSTIN DIMISA,
RICHARD STEINBERG, MAX KANE,
JOANN MEDEIROS, WALTER STASHIN,
CONTINENTAL MORTGAGE
BANKERS, INC. d/b/a
FINANCIAL EQUITIES, and GREGG
MARCUS,

(Bianco, J.)
(Brown, M.J.)

Defendants.

-----X

PARTIES

This Consent Decree and Order of Settlement (“Agreement”) is between the United States of America, acting through the United States Department of Justice (“DOJ”) and the United States Attorney’s Office for the Eastern District of New York (collectively, the “United States”), Frederick Assini, Andrew Dauro, Chris Bertman and Franklin First Financial, Ltd., a mortgage lender participating in the United States Department of Housing and Urban Development’s (“HUD”) Direct Endorsement Program through their authorized

representatives. The United States, Frederick Assini (“Assini”), Andrew Dauro (“Dauro”), Chris Bertman (“Bertman”) and Franklin First Financial, Ltd. (“Franklin First”) are referred to collectively in this Agreement as the “Parties.”

RECITALS

WHEREAS, on September 28, 2015, the United States commenced this action against Assini, Dauro, Bertman and Franklin First (the “Franklin First Defendants”) by filing a complaint in this Court (“the Complaint”); and

WHEREAS, the Complaint, whose allegations are incorporated by reference herein, states claims for relief against the Franklin First Defendants pursuant to the Financial Institutions Recovery, Reform and Enforcement Act, 12 U.S.C. § 1833a, and under common law, based on certain information and documentation the Franklin First Defendants caused to be transmitted to the United States and certain financial institutions, and certain payments that the Franklin First Defendants made to and through the Rainy Day Foundation, which payments the United States contends artificially suppressed Franklin First’s mortgage loan comparative delinquency and default ratios as reported to HUD and, as set out in the Civil Action (the “Covered Conduct”);

WHEREAS, the Complaint does not allege that Franklin First engaged in the improper origination or underwriting of any loan; and

WHEREAS, to avoid the delay, uncertainty, inconvenience and the expense of protracted litigation of these claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties reach a full and final settlement as set forth below; and

WHEREAS, the Franklin First Defendants admit, accept responsibility for the following conduct alleged in the Government's Complaint:

- a. At all times relevant to the Complaint, Franklin First was a Direct Endorsement Lender in the Federal Housing Administration's mortgage insurance program. At all times relevant to the Complaint, Assini was president of Franklin First Financial Ltd. and acted in that capacity. At all times relevant to the Complaint, and Dauro was a manager of Franklin First Financial Ltd. Bertman's employment with Franklin First began in December, 2009, and going forward he held the position of Chief Operating Officer for Franklin First.
- b. HUD tracks the delinquency and default ratios of FHA-insured mortgages for Direct Endorsement lenders through its Neighborhood Watch System ("Neighborhood Watch"). Neighborhood Watch is HUD's primary means of monitoring Direct Endorsement lender compliance with HUD's underwriting and origination regulations. FHA relies on, and requires, prompt and accurate reporting by Direct Endorsement lenders of all early payment defaults.
- c. In 101 instances from February, 2009 through March, 2010 when mortgage borrowers with loans originated or refinanced by Franklin First could not make a payment within the first two years of their loans' issuance, and were either delinquent, about to enter into default, or actually in default, the Franklin First Defendants transferred funds to the Rainy Day Foundation or Default Mitigation Services. At the Franklin First Defendants' direction, the Rainy Day Foundation then paid the borrowers' mortgages so as to bring the mortgages out of default or delinquency. The source of funds for such payment from Rainy Day Foundation was derived from the monies received from Franklin First Financial Ltd. The payments suppressed Franklin First's overall delinquency and default ratios as reported in Neighborhood Watch. Franklin First's delinquency and default rate reported lower in Neighborhood Watch than they would have if the Rainy Day Foundation or Default Mitigation Services had not made the payments at the Franklin First Defendants' direction.
- d. As a result of such payments by Franklin First Financial Ltd., the Rainy Day Foundation and Default Mitigation Services, individual borrowers and secondary purchasers of the mortgages may have been delayed in their ability to use HUD's comprehensive Loss Mitigation program, which offers multiple remedies to cure borrower delinquencies and defaults.
- e. After originating and endorsing mortgage loans for FHA insurance, Franklin First sold the mortgage loans to FDIC-insured financial institutions (the "Secondary Purchasers"). The Secondary Purchasers of Franklin First

Financial Ltd.'s mortgage loans were not aware of the payments made by Rainy Day Foundation and Default Mitigation Services at the Franklin First Defendant's direction.

Wherefore, the Parties hereby agree as follows:

TERMS AND CONDITIONS

1. This Agreement shall become effective upon being "So Ordered" by the Court (the "Effective Date").
2. Within seven days of the Effective Date, the Franklin First Defendants will pay the United States \$250,000. The Franklin First Defendants agree to pay this amount by electronic funds transfer, pursuant to written instruction to be provided by the United States Attorney's Office for the Eastern District of New York. The Franklin First Defendants shall be jointly and severally liable for this amount. Every six months after the Effective Date, the Franklin First Defendants shall pay the United States an additional \$250,000 via electronic funds transfer, until the Franklin First Defendants have paid a total amount of \$1,250,000 to the United States
3. The Franklin First Defendants shall each sign a consent judgment in the form attached hereto as Exhibit A (the "Consent Judgment"), acknowledging that they (a) are jointly and severally indebted to the United States in the amount of \$1,250,000; (b) have no defense, counterclaim or offset, as of the Effective Date, to the debt created by this Agreement, except to the extent that a portion of the Settlement Amount shall have been paid, in which event the Franklin First Defendants shall have an offset in the amount of the payments as of the date, if any, of the Court's so-ordering of the Consent Judgment; and (c) confess judgment to the United States as a result of their failure to pay a debt owed to the United States. The United States shall hold this Consent Judgment in escrow and not submit

the same to any court to be "so ordered" provided that (a) the Franklin First Defendants make the payments in accordance with this Agreement, as set forth in paragraph 2 above, or (b) any default by the Franklin First Defendants in making the payments in accordance with paragraph 2 above is not cured in accordance with paragraph 4 below.

4. In the event of a default by the Franklin First Defendants in making the payments in accordance with paragraph 2 above, and such default remains uncured for 14 days after notice sent to the Franklin First Defendants in the manner provided in this paragraph, the United States shall have the right, at its sole option and discretion, to submit the Consent Judgment to any court to be "so ordered," and to declare due and owing the entire amount of the confessed judgment, in the amount of \$1,250,000, less any amounts paid towards the Settlement Amount by the Franklin First Defendants to the United States before any such default, plus any interest until fully and finally paid. The United States shall give written notice of such default, and of its declaration of the same, by certified mail return receipt requested, to each of the Franklin First Defendants and to their undersigned counsel, and also shall provide counsel with an email copy of any notice of default. The Franklin First Defendants shall have 14 days from the date of mailing the notice of default in which to cure such default. In the event the default remains uncured after the expiration of the 14-day period from the date of mailing of the notice, the United States shall have the right of execution upon the Consent Judgment for the entire \$1,250,000, plus interest running from the Effective Date (less any amounts paid towards the Settlement Amount by the Franklin First Defendants to the United States); until fully and finally paid.

5. Subject to paragraph 6 below (concerning excluded claims) below, the United States, on behalf of itself and its officers and employees (excepting the United States Department of

Housing and Urban Development (“HUD”)), releases Franklin First Financial Ltd. and all of its current and former officers (including, but not limited to Assini, Dauro, and Bertman, directors, employees, agents, affiliates, and assigns from any civil claim of any type (including but not limited to claims for attorney’s fees, costs, and expenses of every kind and however denominated) that the United States has or may have for the Covered Conduct under any statute or the common law, including but not limited to the False Claims Act, 31 U.S.C. §§ 3729-3733, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, the Financial Institutions Reform, Recovery and Enforcement Act, 12 U.S.C. §1833a, and the common law claims of gross negligence, breach of fiduciary duty, indemnification, and unjust enrichment.

6. Notwithstanding any term of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any liability based upon such obligations as are created by this Agreement; or
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct; or
- e. Any administrative liability, including any administrative claims by the United States Department of Housing and Urban Development concerning the Covered Conduct.

7. The Franklin First Defendants finally and fully release the United States, its agencies, employees, servants, and agents from any claims (including claims for attorney’s fees, costs, and expenses of every kind and however denominated) that the Franklin First Defendants have asserted, could have asserted, or may assert in the future against the United

States, and its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

8. Nothing in this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. Upon receipt of the initial \$250,000 payment described in Paragraph 2 above, the United States shall, within five days of receipt, sign and file in this action a Notice of Dismissal, pursuant to Federal Rules of Civil Procedure 41. Despite the terms or filing of any stipulation of dismissal, the Court shall retain jurisdiction over this Agreement and the Parties to enforce the obligations of each party under this Agreement. Each of the Parties shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

10. The Franklin First Defendants represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

11. This Consent Decree and Order of Settlement is governed by the laws of the United States. The Parties agree that exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement is in the United States District Court for the Eastern District of New York.

12. For purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any single Party for that reason in any subsequent dispute.

13. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties and approval by the Court.

14. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the entities indicated below.

15. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.


16. Facsimiles of signatures and scanned or other electronic signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

IN WITNESS WHEREOF, the parties hereto affix their signatures and consent to the entry of the foregoing Consent Decree and Order of Settlement.

THE UNITED STATES OF AMERICA

DATED: Brooklyn, New York
Jan 11, 2016 *EN*

ROBERT L. CAPERS
United States Attorney
Eastern District of New York


BY: 

Edward K. Newman
John Vagelatos
Robert Schumacher
Assistant United States Attorneys
(718) 254-7000

THE FRANKLIN FIRST DEFENDANTS

FRANKLIN FIRST FINANCIAL, LTD.

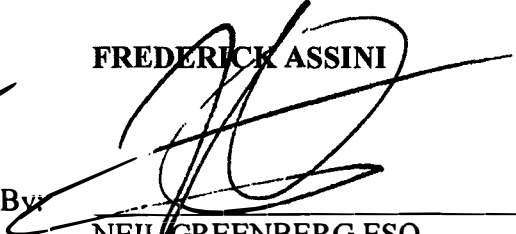
DATED: 12/14/16 *nasan*, New York

By: 
NEIL GREENBERG ESQ.
COUNSEL FOR FRANKLIN FIRST FINANCIAL,
LTD.

DATED: Suffolk, New York
12/8, 2016

By:  as CEO
FREDERICK ASSINI *Executive*
CHIEF FINANCIAL OFFICER *FA*
FRANKLIN FIRST FINANCIAL

DATED: 12/14/16 *nasan*, New York
_____, 2016

FREDERICK ASSINI

By: _____
NEIL GREENBERG ESQ.
COUNSEL FOR FREDERICK ASSINI

DATED: Suffolk, New York
12/8, 2016

By: 
FREDERICK ASSINI

ANDREW DAURO

DATED: _____, New York
_____, 2016

By: _____
WILLIAM McDONALD, ESQ
COUNSEL FOR ANDREW DAURO

THE FRANKLIN FIRST DEFENDANTS

FRANKLIN FIRST FINANCIAL, LTD.

DATED: _____, New York By: _____
NEIL GREENBERG ESQ.
COUNSEL FOR FRANKLIN FIRST FINANCIAL,
LTD.

DATED: _____, New York By: _____
_____, 2016
FREDERICK ASSINI
CHIEF FINANCIAL OFFICER
FRANKLIN FIRST FINANCIAL

FREDERICK ASSINI

DATED: _____, New York By: _____
_____, 2016
NEIL GREENBERG ESQ.
COUNSEL FOR FREDERICK ASSINI

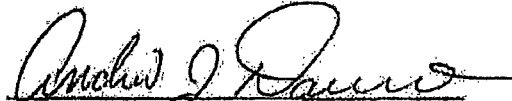
DATED: _____, New York By: _____
_____, 2016
FREDERICK ASSINI

ANDREW DAURO

DATED: ~~Ronkonkoma~~ New York By: 
December 21, 2016
WILLIAM McDONALD, ESQ.
COUNSEL FOR ANDREW DAURO

DATED: East Meadow, New York
December 20, 2016


By:


Andrew Daurio

CHRISTOPHER BERTMAN

DATED: _____, New York

1/23, 2016 By:


Kevin Keating, Esq.
Counsel for Christopher Bertman

DATED: _____, New York

1/23, 2016 By:


Christopher Bertman

SO ORDERED

Honorable Joseph F. Bianco
United States District Judge

Islip, New York, this ____ day of _____, 2016

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

– against –

RAINY DAY HOLDINGS, LLC,
THE RAINY DAY FOUNDATION, INC.,
DEFAULT MITIGATION SERVICES, LLC,
RICK DEL SONTRO, ROBERT CLUTE,
MICHAEL SHRUM, CHRIS NAILLON,
CHRIS HAUVER, KELLY SCHWEDLAND,
TODD LUDLOW, FRANKLIN FIRST
FINANCIAL, LTD., FREDERICK ASSINI,
ANTONIO BAINES, ANDREW DAURO,
CHRIS BERTMAN, INTERCONTINENTAL
CAPITAL GROUP, INC., DUSTIN DIMISA,
RICHARD STEINBERG, MAX KANE,
JOANN MEDEIROS, WALTER STASHIN,
CONTINENTAL MORTGAGE
BANKERS, INC. d/b/a
FINANCIAL EQUITIES, and GREGG
MARCUS,

Defendants.

CONSENT JUDGMENT

Civil Action No. 2015-cv-5576
(Bianco, J.)
(Brown, M.J.)

WHEREAS, on September 28, 2015, the United States commenced this action against Franklin First Financial, Ltd., Frederick Assini, Andrew Dauro and Chris Bertman (the “Franklin First Defendants”) by filing a complaint in this Court (“the Complaint”); and

WHEREAS, by Consent Decree and Order of Settlement signed by the parties on or about December 11, 2016, the United States and the Franklin First Defendants agreed to a settlement of the above-captioned action on terms requiring the payment in the amount of

United States v. Rainy Day Holdings, et al., (E.D.N.Y. No 15-cv-5576 (JB)(GB))
Consent Judgment of Franklin First Financial, Ltd., Frederick Assini, Andrew Dauro and Chris Bertman

\$1,250,000, to be paid by the Franklin First Defendants to the United States in five installments of \$250,000 each, the first to be made within seven (7) days of the date the Consent Decree and Order of Settlement was so ordered by the Court; and

WHEREAS, the Consent Decree and Order of Settlement also stated that the Franklin First Defendants agreed to sign a Consent Judgment in the amount of \$1,250,000, with the Consent Judgment to be held in escrow by the United States and to be submitted to the Court for entry on the docket sheet in the event the Franklin First Defendants failed to make payment as set forth above and in the Consent Decree and Stipulation of Settlement,

The Franklin First Defendants, by and through their undersigned counsel, acknowledge the following:

1. As of 12/14/2016 the Franklin First Defendants are indebted to the United States in the amount of \$1,250,000.
2. The Franklin First Defendants have no defense, counterclaim or offset thereto, and do hereby confess judgment to the United States as a result of their failure to pay a debt owed to the United States.
3. This consent judgment is for a debt now justly and truly due and owing to the United States.
4. The Defendants agree to the entry of a judgment by the Court, as set forth above.

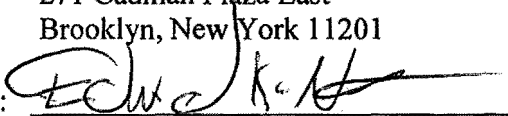
Consented to by:

THE UNITED STATES OF AMERICA

ROBERT L. CAPERS
UNITED STATES ATTORNEY
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

December 14, 2016

By:


EDWARD K. NEWMAN
JOHN VAGELATOS
ROBERT SCHUMACHER
Assistant United States Attorneys


United States v. Rainy Day Holdings, et al., (E.D.N.Y. No 15-cv-5576 (JB)(GB))
Consent Judgment of Franklin First Financial, Ltd., Frederick Assini, Andrew Dauro and Chris Bertman

FRANKLIN FIRST FINANCIAL, LTD.

DATED: Nassau, New York
12/14, 2016

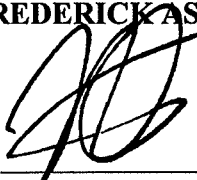
By: 
NEIL GREENBERG ESQ.
COUNSEL FOR FRANKLIN FIRST FINANCIAL

DATED: Suffolk, New York
12/8, 2016

By:  as CEO
FREDERICK ASSINI
CHIEF FINANCIAL OFFICER
Executive FA

FREDERICK ASSINI

DATED: Nassau, New York
12/14, 2016

By: 
NEIL GREENBERG ESQ.
COUNSEL FOR FREDERICK ASSINI

DATED: Suffolk, New York
12/8, 2016

By: 
FREDERICK ASSINI

ANDREW DAURO

DATED: _____, New York
_____, 2016 By: _____

ANDREW DAURO

Before me, the undersigned notary public in and for the county of _____, State of New York, on the ____ day of ____ in the year 2016 Andrew Dauro, known to me, the undersigned, or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed

United States v. Rainy Day Holdings, et al., (E.D.N.Y. No 15-cv-5576 (JB)(GB))
Consent Judgment of Franklin First Financial, Ltd., Frederick Assini, Andrew Dauro and Chris Bortman

FRANKLIN FIRST FINANCIAL, LTD.

DATED: _____, New York
_____, 2016

By: _____
NEIL GREENBERG ESQ.
COUNSEL FOR FRANKLIN FIRST FINANCIAL

DATED: _____, New York
_____, 2016

By: _____
FREDERICK ASSINI
CHIEF FINANCIAL OFFICER

FREDERICK ASSINI

DATED: _____, New York
_____, 2016

By: _____
NEIL GREENBERG ESQ.
COUNSEL FOR FREDERICK ASSINI


DATED: _____, New York
_____, 2016

By: _____
FREDERICK ASSINI

ANDREW DAURO


DATED: Ronkonkoma, New York

December 21, 2016

By: 
WILLIAM McDONALD, ESQ.
COUNSEL FOR ANDREW DAURO

DATED: East Meadow, New York

December 20, 2016

By: 
Andrew Dauro


United States v. Rainy Day Holdings, et al., (E.D.N.Y. No 15-cv-5576 (JB)(GB))
Consent Judgment of Franklin First Financial, Ltd., Frederick Assini, Andrew Dauro and Chris Bertman

CHRISTOPHER BERTMAN

DATED: GALLOON CITY New York

1/11, 2016

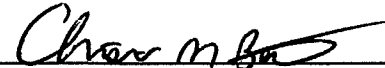
By:


Kevin Keating, Esq.
Counsel for Christopher Bertman

DATED: GALLOON CITY New York

1/11/17, 2016

By:


Christopher Bertman

IT IS ORDERED, ADJUDGED AND DECREED that the United States is awarded judgment in the sum of \$1,250,000, as of _____, 2016, as against Franklin First Financial, Ltd., Frederick Assini, Andrew Dauro and Christopher Bertman, jointly and severally, together with any applicable post-judgment interest as permitted by law.

Dated: Central Islip, New York
_____, 2016

SO ORDERED

Honorable Joseph F. Bianco
United States District Judge



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

*271 Cadman Plaza East
Brooklyn, N.Y. 11201*

January 31st, 2017

Via ECF

Honorable Joseph F. Bianco
United States District Judge
United States District Court for the Eastern District of New York
100 Federal Plaza
Central Islip, N.Y. 11722

Re: Consent Decree and Order of Settlement, and Consent Judgment for the Franklin First Defendants/United States of America v. Rainy Day Holdings, LLC *et al.*, 15-cv-5576 (E.D.N.Y.)(JFB)(GMB)

Dear Judge Bianco:

Attached are a Consent Decree and Order of Settlement together with a Consent Judgment in the above-captioned matter, as executed by the United States of America and defendants Franklin First Financial, Ltd., Frederick Assini, Andrew Dauro and Christopher Bertman.

Please contact the undersigned Assistant United States Attorneys should you have any questions.

Respectfully submitted,
ROBERT L. CAPERS
United States Attorney
Eastern District of New York

By: /s/ Edward K. Newman
Edward K. Newman
Robert Schumacher
John Vagelatos
Assistant United States Attorneys
271 Cadman Plaza East
Brooklyn, N.Y. 11201
(718)254-7000

Enc.

cc: Honorable Gary R. Brown
United States Magistrate

Neil Greenberg, Esq.
Counsel for Franklin First Financial, Ltd. and Frederick Assini

William McDonald, Esq.
Counsel for Andrew Dauro

Kevin Keating, Esq.
Counsel for Christopher Bertman