

1 STATE OF NEVADA  
2 DEPARTMENT OF BUSINESS AND INDUSTRY  
3 DIVISION OF MORTGAGE LENDING

4 \* \* \*

5 In re:  
6 Ernst, Inc. dba North American Funding  
7 and  
8 R. Gregory Ernst,  
9 Respondents.

10 **STIPULATED SETTLEMENT AGREEMENT**

11 The licensing and regulation of mortgage brokers and mortgage agents in the State of  
12 Nevada is governed by Chapter 645B of the Nevada Revised Statutes ("NRS") and Chapter  
13 645B of the Nevada Administrative Code ("NAC"). The State of Nevada, Department of  
14 Business and Industry, Division of Mortgage Lending ("the Division") has the general duty to  
15 exercise supervision and control over mortgage brokers and mortgage agents, as well as  
16 mortgage broker and mortgage agent activity. See, NRS 645B.060(1), NRS 645B.670 and  
17 NRS 645B.690. Pursuant to that authority, the Division hereby enters into the following  
18 Stipulated Settlement Agreement ("Agreement") with Ernst, Inc., dba North American Funding  
19 and J. Gregory Ernst (collectively, "Respondents"), as follows:  
20

21 **RECITALS**

22 WHEREAS, Ernst, Inc. ("Ernst") was a corporation organized and existing under the  
23 laws of the State of Nevada from its incorporation on approximately October 16, 2001, until its  
24 dissolution on approximately July 8, 2008. Presently, Ernst's status with the Nevada Secretary  
25 of State is "dissolved."  
26

27 WHEREAS, from approximately July 29, 2002, to approximately July 1, 2008, when the  
28

1 company closed, Ernst, doing business as North American Funding ("North American")  
2 operated within the State of Nevada as a licensed mortgage broker.

3 WHEREAS, pursuant to NRS 645B.060, the Division is charged with conducting "...an  
4 annual examination of each mortgage broker doing business in this State..." See, NRS  
5 645B.060(2)(d).

6 WHEREAS, pursuant to NRS 645B.060, the Division conducted a regularly scheduled  
7 examination of North American's books and records which commenced on January 18, 2008.

8 WHEREAS, the relevant findings of the examination were that Respondents:

9  
10 1. Allowed unlicensed mortgage agents and mortgage agents whose licenses were  
11 inactive or had expired to conduct loan origination activity on behalf of Respondents; and

12 2. Failed to establish and implement a system to review, oversee and inspect the  
13 activities of their mortgage agents, including the review, oversight and inspection of mortgage  
14 loan transactions, and thus failed to discover altered documents in several loan files.

15 WHEREAS, after settlement negotiations, the Division and Respondents (collectively,  
16 "the parties") herein mutually desire to resolve this matter without further proceedings through  
17 this Agreement.

18  
19 NOW, THEREFORE, in consideration of the representations, covenants and  
20 conditions set forth herein, IT IS HEREBY STIPULATED AND AGREED by the parties that  
21 the above-referenced purported violations found during the examination of North American's  
22 books and records shall be settled on the following terms and conditions:

23 1. Respondents admit that they failed to conduct business in accordance with law  
24 and violated provisions of Chapter 645B of NRS by affiliating with or employing persons as  
25 mortgage agents, or authorizing persons to be affiliated with North American as mortgage  
26 agents, when those persons were not licensed by the Division and/or authorized to conduct  
27 mortgage agent activity, in violation of NRS 645B.460(2)(c) and NRS 645B.450(2).  
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1           2.       Respondents admit that they failed to exercise reasonable supervision over the  
2 activities of their mortgage agents by failing to ensure that all agents were licensed and  
3 authorized to conduct mortgage agent activity and by failing to establish and implement a  
4 system to review, oversee and inspect the activities of their mortgage agents, including the  
5 review, oversight and inspection of mortgage loan transactions, in violation of NRS  
6 645B.460(1)(b)(1).

7           3.       Respondents hereby acknowledge and agree, with full knowledge, to waive their  
8 rights to have the Division file a complaint, if one has not been filed by the date that  
9 Respondent executes this Agreement, or if a complaint has been filed, to go to a hearing in  
10 this matter.  
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12           4.       In light of the parties' desire to resolve this matter, Respondents shall, pursuant to  
13 NRS 645B.670 and/or NRS 622.400, pay to the Division an administrative fine in the amount of  
14 One Thousand Five Hundred Dollars (\$1,500.00). Payment shall be made upon the execution  
15 of this Agreement by the Respondents.  
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17           5.       Respondents shall, pursuant to NRS 645B.670 and/or NRS 622.400, pay to the  
18 Division investigatory costs directly related to the investigation of this case in the amount of  
19 Eight Hundred and Seventy-Five Dollars (\$875.00). Payment shall be made upon  
20 Respondents' execution of this Agreement.

21           6.       Respondents agree that in the event that they violate any of the provisions of  
22 this Agreement, the Division shall retain any and all remedies available to it in accordance  
23 with NRS Chapter 645B.

24           7.       The parties agree and acknowledge that this Agreement shall constitute the  
25 complete and final resolution of any issues arising out of the Division's investigation into  
26 Respondents' conduct as specified herein.  
27

28           8.       The parties represent and warrant that the person executing the Agreement on

1 behalf of each party has full power and authority to do so, and has the legal capacity to  
2 conduct the legal obligations assigned to it hereunder.

3 9. Respondents further acknowledge and agree that the Division shall retain the  
4 original of the Agreement.

5 10. This Agreement may be signed in counterparts and a facsimile signature shall  
6 be deemed as valid as an original, however, Respondents shall immediately forward all  
7 original signature pages to the Division.

8 11. The Agreement, as well as the rights and obligations of the parties hereto shall  
9 be interpreted, governed, and construed pursuant to the laws of the State of Nevada.  
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11 12. Any action to enforce the Agreement shall be brought in the Eighth Judicial  
12 District Court of the State of Nevada in and for Clark County.

13 13. If the Division is successful in any action to enforce this Agreement, the court  
14 may award it attorney's fees. It is specifically agreed that reasonable attorney's fees for the  
15 State-employed attorneys shall be \$125 per hour.

16 14. Failure to declare a breach or the actual waiver of any particular breach of the  
17 Agreement or its material terms, by either party, shall not operate as a waiver by such party of  
18 any of its rights or remedies as to any other breach.  
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20 15. The Respondents have the right to retain an attorney to review this Agreement  
21 at their sole cost and expense and have freely and voluntarily chosen not to do so.

22 16. Other than the fines and investigative costs set forth herein, each party shall pay  
23 its own costs and fees, including attorney's fees.

24 17. If any provision contained in the Agreement is held to be unenforceable by a  
25 court of law or equity, the Agreement shall be construed as if such a provision(s) did not exist  
26 and the unenforceability of such provision(s) shall not be held to render any other provision(s)  
27 of the Agreement unenforceable.  
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1           18. The Agreement constitutes the entire Agreement of the parties, and it is  
2 intended as a complete and exclusive statement of the promises, representations,  
3 negotiations, and discussions of the parties. Unless otherwise expressly authorized by its  
4 terms, the Agreement shall be binding upon the parties unless the same is in writing, signed  
5 by the respective parties hereto, and approved by the Office of the Attorney General.

6           19. **NOTICE TO RESPONDENTS:** By executing this Agreement, you hereby agree  
7 that you are waiving certain rights as set forth herein. As the Respondents, you are  
8 specifically informed that you have the right to request that the Division file an administrative  
9 complaint against you, at any hearing on such a complaint you have the right to appear and  
10 be heard in your defense, either personally or through your counsel of choice. If the Division  
11 were to file a complaint, at the hearing, the Division would have the burden of proving the  
12 allegations in the complaint and would call witnesses and present evidence against you. You  
13 would have the right to respond and to present relevant evidence and argument on all issues  
14 involved. You would have the right to call and examine witnesses, introduce exhibits, and  
15 cross-examine opposing witnesses on any matter relevant to the issues involved.  
16

17           You would have the right to request that the Commissioner of the Division issue  
18 subpoenas to compel witnesses to testify and/or evidence to be offered on your behalf. In  
19 making this request, you may be required to demonstrate the relevance of the witness's  
20 testimony and/or evidence. Other important rights you have are listed in NRS Chapter 645B  
21 and NRS Chapter 233B.  
22

23           20. The obligations of Respondents under this Agreement are join and several.

24           21. In consideration of execution of this Agreement, each Respondent, for itself, its  
25 owners, and their heirs, executors, administrators, successors, and assigns, hereby release,  
26 remise, and forever discharge the State of Nevada, the Department of Business and Industry  
27 of the State of Nevada, the Division, and each of their members, agents, attorneys (including  
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1 any and all employees of the Nevada Attorney General), and employees in their individual  
2 and representative capacities, from any and all manner of actions, causes of action, suits,  
3 debts, judgments, executions, claims, and demands whatsoever, known and unknown, in law  
4 or equity, that the Respondent ever had, now has, may have, or claim to have against any or  
5 all of the persons or entities named in this section, arising out of or by reason of the Division's  
6 investigation, into this matter, and all other matters relating thereto.

7         22. Each Respondent hereby indemnifies and holds harmless the State of Nevada,  
8 the Department of Business and Industry of the State of Nevada, the Division, and each of  
9 their members, agents, and employees, and employees of the Nevada Attorney General in  
10 their individual and representative capacities against any and all claims, suits, and actions  
11 brought against said persons and/or entities by reason of the Division's investigation into this  
12 disciplinary action, this Agreement, and all other matters relating thereto, and against any and  
13 all expenses, damages, and costs, including court costs and attorney fees, which may be  
14 sustained by the persons and/or entities named in this section as a result of said claims, suits,  
15 and actions.

16  
17         IN WITNESS WHEREOF, the parties have caused the Agreement to be signed and  
18 intend to be legally bound thereby.

19  
20         DATED this 31 day of July, 2009.

21         North American Funding

22         By: 

23         R. Gregory Ernst, Owner

24         DATED this 14<sup>th</sup> Sept day of ~~July~~, 2009.

25         State of Nevada,  
26         Department of Business and Industry,  
27         Division of Mortgage Lending

28         By: 

Joseph L. Waltuch, Commissioner