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Attorney for Plaintiffs

**FILED**  
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Chancery/General Equity

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Deputy Attorney General  
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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION,  
PASSAIC COUNTY  
DOCKET NO. PAS-C-24-09

PAULA T. DOW, Attorney General of the State  
of New Jersey and SHARON JOYCE, Acting  
Director of the New Jersey Division of  
Consumer Affairs,  
Plaintiffs,

vs.

CASEY PROPERTIES, LLC; SETH L.  
GENDEL; MARTIN A. GENDEL; LEE ALAN  
LLP; FRANCIS T. MEMMO; KELLY  
KOTZKER; DAMIEN FIGUEROA; EDWARD  
EVANS; NICHIOLAS MANZI; and ROBERT  
B. "BARRY" MCBRIAR,  
Defendants.

Civil Action

**CONSENT JUDGMENT AS TO  
DEFENDANT EDWARD EVANS**

WHEREAS, the parties to this Action are Plaintiffs PAULA T. DOW, Attorney General of the State of New Jersey ("Attorney General") and SHARON JOYCE, Acting Director ("Director") of the New Jersey Division of Consumer Affairs, ("Division") (collectively "Plaintiffs"), and Casey Properties, LLC; Seth L. Gendel; Martin A. Gendel; Lee Alan, LLP; Francis T. Memmo; Kelly Kotzker; Damien Figueroa; Edward Evans; Nicholas Manzi; and Robert B. "Barry" McBriar. As evidenced by their signatures below, Plaintiffs and Defendant Edward Evans, Esq. ("Settling Defendant" or "Defendant

Evans”) (collectively “Parties”) consent to the entry of this Consent Judgment (“Consent Judgment”) and its provisions as to Defendant Evans without trial of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind.

**WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:**

**PART ONE: DEFINITIONS**

1. Unless otherwise specified, the following definitions shall apply to this Consent Judgment:

a. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make the meaning inclusive rather than exclusive.

b. “Settling Defendant” or “Defendant Evans” means Edward Evans, Esq.

c. “Order” means this Consent Judgment.

d. “Effective Date” means the date this Order is executed by the parties hereto and the Court.

e. “Including” means without limitation.

f. The use of the singular form of any word includes the plural and vice versa.

g. “CFA” means the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

h. “RICO” means the New Jersey RICO statute, N.J.S.A. 2C:41-1 et seq.

i. “Referral Source” means any person, entity, or company that recommends Settling Defendant’s services to any person, entity, or company, or requires that any person, entity or company use Settling Defendant’s services;

j. "Purchase Assignment" means any contracts or proposed contracts for sales of real estate whereby Settling Defendant is aware that one buyer replaced another pursuant to an option exercised by the first buyer, or by the first buyer and the seller.

**PART TWO: COMPLIANCE WITH THE LAW**

2. Settling Defendant agrees to comply fully with all Federal and State banking and consumer protection laws, including but not limited to the CFA and RICO.

**PART THREE: INJUNCTIVE RELIEF**

3. Settling Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of his business and shall comply with such State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended, including all Federal and State banking and consumer protection laws, including the CFA and all regulations promulgated thereunder.

4. Settling Defendant shall not knowingly misrepresent, conceal, suppress and/or omit any material fact in connection with any purchase or sale of real estate within the State of New Jersey, and shall comply with all applicable state and/or federal laws, rules and regulations as now constituted or as hereafter amended, including, but not limited to, RICO.

5. When representing buyers in residential real-estate closings, Settling Defendant shall:

- a. Not accept anything of value from a Referral Source;
- b. Inform his clients, if Settling Defendant has actual knowledge of these facts: (i) whether the clients' contracts are Purchase Assignments, (ii) how the terms of the clients' contracts compare with the previous contracts or proposed contracts,

including disclosure of any increases in the purchase prices, (iii) who will benefit from the Purchase Assignments and how, (iv) the identities of parties to the previous contracts or proposed contracts, and (v) the identities of their legal counsel or other representatives;

c. Fully disclose on HUD-1 Settlement Statements any Purchase Assignments, including by identifying funds disbursed because of any assignments of sales contracts as "assignments";

d. Disburse all funds in accordance with final HUD-1 Settlement Statements;

e. Not allocate money from closing proceeds to anyone, including to any Referral Source, without obtaining sufficient documentation to substantiate such payments and disclosing all such payments and documentation to any lenders providing funds for such closings and to Settling Defendant's buyers/clients;

f. Meet with Settling Defendant's clients outside the presence of any Referral Source to review and explain details of transactions, including terms of loans, purchase prices, secondary financing, funds to close, prior sales within two years, parties to prior sales, and what, if anything, any Referral Source will gain from the transactions, and to answer clients' questions;

g. Review residential mortgage applications and other loan documents with Settling Defendant's clients and ask whether they intend to use and occupy the properties as represented in those documents, including whether the clients intend to use and occupy the properties as their primary residences. If any client indicates that he does not intend to use and occupy a property as indicated on his residential mortgage application, Settling Defendant may not conduct that closing without correcting the misstatements, including informing the lenders providing funds for such closing in writing of the buyer's intention

and receiving written approval that the closing may nevertheless proceed then or at a later date;

h. Provide directly to Settling Defendant's clients any documents intended for them, regardless whether additional copies are supplied to the clients' agents;

i. Maintain a list, available for inspection upon three days' notice from Plaintiffs, documenting Referral Sources, resulting transactions, and anything of value Settling Defendant received and disbursed in connection with such transactions; and

j. Make Settling Defendant's attorney trust account records available for inspection upon three days' notice from Plaintiffs.

6. Settling Defendant shall fully and promptly cooperate with Plaintiffs and/or their respective representatives in court or administrative proceedings, any preparations therefore, and any investigations regarding the subject matter of the Complaint in this matter or any subsequent amendments thereto, or any other investigations or proceedings Plaintiffs may initiate. Such cooperation shall include, without limitation and without subpoena:

a. Voluntary production of all documents or other tangible evidence requested which has not already been produced to Plaintiffs;

b. Voluntary and prompt attendance at all proceedings at which the Defendant's presence and/or testimony is requested by Plaintiffs, where Defendant shall give voluntary forthright and complete testimony; and

c. Voluntary forthright and complete responses to all inquiries from Plaintiffs to the Defendant.

d. Settling Defendant agrees to respond to any requests by Plaintiffs for documents or information in a timely and complete manner.

**PART FOUR: MONETARY RELIEF**

7. The Parties have agreed to a Settlement of the Action in the amount of \$30,000 (the "Settlement Amount").

8. Seventeen Thousand Dollars (\$17,000.00) of the Settlement Amount shall be paid as follows: On or before April 1, 2010, Settling Defendant shall pay Nine Hundred Dollars (\$900.00) of the Settlement Amount. On or before the first of each month for the next twenty-three months thereafter, Settling Defendant shall pay an additional \$700 per month of the Settlement Amount.

9. The payments referenced in paragraph 7 shall be made by wire transfer or certified or cashier's check made payable to "New Jersey Division of Consumer Affairs" and shall be forwarded to:

Jennifer Micco, Supervising Investigator  
Office of Consumer Protection  
Division of Consumer Affairs  
124 Halsey Street – 7th Floor  
P.O. Box 45025  
Newark, New Jersey 07101

10. Upon making the payments referenced in paragraph 9, Settling Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

11. For a period of four years from the Effective Date, the Thirteen Thousand Dollar (\$13,000.00) balance (“the Suspended Penalty”) of the Settlement Amount shall be suspended and automatically vacated at the end of that period, provided:

a. Settling Defendant complies in all material respects with the terms and conditions set forth in Paragraphs 2 through 9 of this Consent Judgment;

b. Settling Defendant timely makes all payments referenced in paragraph 8;

c. Plaintiffs do not uncover information that Settling Defendant made any material misrepresentation or material lack of disclosure concerning his knowledge of or involvement in the activities described in the Complaint; and

d. Settling Defendant does not engage in any unlawful conduct in connection with real estate transactions.

12. In the event Settling Defendant materially fails to comply with paragraph 11, the entire Settlement Amount (\$30,000) shall be immediately due and payable upon notice by the Plaintiffs. In any such notice, however, Plaintiffs shall provide Settling Defendant with specific details of Settling Defendant’s alleged noncompliance and Settling Defendant shall be afforded a fifteen-day period within which to dispute and/or cure any such noncompliance. In the event of Settling Defendant’s failure to cure any such noncompliance, Plaintiffs may move on notice or by Order to Show Cause to have the Judgment entered for the entire Settlement Amount, including the Suspended Penalty. Settling Defendant shall have the right to submit opposition to any such motion or Order to Show Cause application filed by Plaintiffs and to contest same on any return date.

## **PART FIVE: JURISDICTION AND OTHER PROVISIONS**

13. Pursuant to RICO, jurisdiction of this Court over the subject matter and over the Settling Defendant for purposes of entering into and enforcing this Consent Judgment is admitted. Jurisdiction is retained by this Court for such further orders and directions as may be necessary or appropriate for the construction and modification of the injunctive provisions herein, or execution of this Consent Judgment, including punishment for any violation of this Consent Judgment. If the Plaintiffs are required to file a petition to enforce any provision of this Consent Judgment against Settling Defendant, Settling Defendant agrees to pay any courts costs and reasonable attorneys' fees associated with any successful petition to enforce any provision of this Consent Judgment.

14. Venue is proper in this Court, and venue as to all matters between the Parties relating hereto or arising out of this Consent Judgment is solely in the Superior Court of New Jersey, Passaic County.

15. The Parties consent to the entry of this Consent Judgment for the purposes of settlement only without this Judgment constituting evidence against or any admission by any party and without trial of any issue of fact or law. This Consent Judgment does not constitute any admission of liability or wrongdoing, either express or implied, by Settling Defendant or any other party. Further, this Consent Judgment shall not be competent evidence in any judicial or other proceeding of any liability or wrongdoing by Settling Defendant.

16. The entry of this Consent Judgment has been consented to by Settling Defendant as his own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon him by this

Consent Judgment, and Settling Defendant consents to its entry without further notice, and avers that no offer, agreement or inducements of any nature whatsoever have been made to him by the Plaintiffs or their attorneys of any employee of the Office of the Attorney General to procure this Consent Judgment.

17. In the event that the Court shall not enter this Consent Judgment, this proposed Consent Judgment shall be of no force and effect against the Attorney General of New Jersey and the Director or the Settling Defendant.

18. This Consent Judgment shall bind the Parties hereto and shall be binding on any and all successors and assigns, successors-in-interest, agents, representatives, and employees, directly or indirectly or through any corporation or anyone acting directly or indirectly on Settling Defendant's behalf.

19. Settling Defendant has, by his signature and the signatures of its respective counsel hereto, waived any right to appeal, petition for certiorari, move to reargue or rehear or be heard in connection with entry of this Consent Judgment concerning past conduct addressed in this Consent Judgment.

20. In exchange for the consideration set forth herein, and conditioned upon Settling Defendant making payments referenced in paragraph 7, Plaintiffs agree to release Settling Defendant from all civil claims asserted against Settling Defendant in Plaintiffs' Complaint. This release does not apply to any other party to this Action. The release language in this paragraph is not intended to apply to any private right of action brought by any individual or entity or to any other Federal or State authority not a party to this Consent Judgment, or to any criminal action.

21. The monetary relief in this Consent Judgment is imposed pursuant to the police and regulatory powers of the State of New Jersey for the enforcement of the law and the protection of the public welfare, and is not intended to constitute a debt which may be limited or discharged in a bankruptcy proceeding. Settling Defendant waives the right to argue, submit, propose, seek to establish or otherwise contend before any court or tribunal that obligations of this Consent Judgment against him or any of his bankruptcy estates, including claims or debt based on this Consent Judgment, are dischargeable debt or claims under the United States Bankruptcy Code (including under 11 U.S.C. § 523, including 11 U.S.C. § 523 (a)(7), (a)(19)) or any other federal or state law.

22. This Order, when fully executed and performed by Settling Defendant to a reasonable expectation of the Attorney General, will resolve all claims against Settling Defendant that were raised in the complaint filed by the Attorney General in this action. However, nothing in this Order is intended to, nor shall, limit the Attorney General's investigatory or compliance review powers otherwise provided by law.

23. Notwithstanding any provision of this Order to the contrary, the Office of the Attorney General may, in its sole discretion, grant written extensions of time for Settling Defendant to comply with any provision of this Order.

24. The signatories to this Order warrant and represent that they have read and understand this Order, that they are duly authorized to execute this Order, and that they have the authority to take all appropriate action required to be taken pursuant to the Order to effectuate its terms.

25. This Order may be executed in multiple counterparts, each of which shall be deemed a duplicate original.

26. This Order is final and binding on the Parties, including all principals, agents, representatives, successors in interest, assigns, and legal representatives thereof. Each party has a duty to so inform any such successor in interest of the terms of this Order. No assignment by any party thereto shall operate to relieve such party of its obligations herewith.

27. All of the terms of this Order are contractual and not merely recitals, and none may be amended or modified except by a writing executed by all Parties hereto approved by the Court or with Court approval.

28. This above captioned lawsuit shall be dismissed without prejudice as to Defendant Evans. However, the Court shall retain jurisdiction over the Parties and the matter and retain the power to order all applicable equitable remedies to ensure compliance with this Order, including, but not limited to, contempt.

29. This Order supersedes and renders null and void any and all written or oral prior undertakings or agreements between the Parties regarding the subject matter hereof.

30. If any provisions, terms, or clauses in this Order are declared illegal, unenforceable, or ineffective in a legal forum, those provisions, terms, and clauses shall be deemed severable, such that all other provisions, terms, and clauses of this Order shall remain valid and binding on the Parties.

31. The Parties may seek to enforce this Order by motion before the Court to the full extent of the law; however, in the event of a dispute among the Parties regarding any issue arising hereunder, the Parties shall attempt in good faith to resolve the dispute before seeking the Court's intervention.

32. Failure to comply materially with any provision of this Order shall be considered a violation of this Consent Order. Upon such a violation, the Attorney General may take any and all steps available to enforce this Consent Order, including seeking an order of contempt. Upon application by the Attorney General showing Settling Defendant has failed to pay the Settlement Amount and any costs pursuant to paragraphs herein, the Court shall also enter a money judgment in the amount of the unpaid balance, plus interest at the rate of nine (9) percent per annum from the date of violation or nonpayment, against Settling Defendant, and the Attorney General shall have execution thereof.

33. In any application by the Attorney General pursuant to paragraph 32 above, the Attorney General may request an allowance for costs.

34. Failure by any party to seek enforcement of this order pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

35. Nothing in this Order shall preclude a right of action by any person not a party to this Agreement.

36. All communications and notices regarding this Order shall be sent by first class mail, e-mail, and facsimile, if twenty-five (25) pages or less in length, to:

Office of the Attorney General

Lisa D. Kutlin  
Deputy Attorney General  
Division of Law  
124 Halsey Street, 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, NJ 07101  
Lisa.Kutlin@DOL.LPS.STATE.NJ.US  
FAX: 973-648-3879  
Attorney for Plaintiffs

Edward Evans

Kalman Harris Geist, Esq.  
PNC Bank Building  
One Garret Mountain Plaza  
Sixth Floor  
West Paterson, NJ 07424  
khgeist@aol.com  
FAX: 973-523-1021  
Attorney for Edward Evans

IT IS ON THIS <sup>24<sup>th</sup></sup> DAY OF <sup>March</sup>, 2010 SO ORDERED,  
ADJUDGED AND DECREED.

  
\_\_\_\_\_  
Hon. Margaret M. McVeigh, P.J. Ch.