

In the matter of the California Department of Corporations v. Hurst Financial Corporation
OAH CASE NOS.: 2008100126; 2008090957

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of the date signed by all parties, by and between the Complainant, the California Corporations Commissioner (“Commissioner”), and Respondent, Hurst Financial Corporation (Respondent) (hereinafter collectively “the Parties”).

RECITALS

This Agreement is made with reference to the following facts:

A. Hurst Financial Corporation is a California corporation located at 1502 Spring Street, Suite D, Paso Robles, California 93446, and owned and operated by James Hurst Miller.

B. James Hurst Miller is the only principal of Hurst Financial Corporation and is authorized to enter into this Agreement on behalf of Hurst Financial Corporation, his business.

C. On December 14, 2007, the Commissioner issued a permit under Corporations Code section 25113 (Corporate Securities Law of 1968 § 25000 et seq.) (“Corporations Code”) to Hurst Financial Corporation to offer and sell securities in the form of fractional interests in notes secured by deeds of trust in California.

D. Hurst Financial Corporation is a finance lender licensed by the California Corporations Commissioner (“Commissioner”) pursuant to the California Finance Lenders Law of the State of California (California Financial Code § 22000 et seq.) (“Finance Lenders Law”). The Department of Corporations issued Hurst a license pursuant to the Finance Lenders Law on November 6, 2006. Pursuant to section 22700 of the Finance Lenders Law, the license does not expire unless surrendered, revoked, or suspended.

E. On July 18, 2008, the Commissioner issued an Accusation to Respondent for violations of California Corporations Code section 25000 et seq., served to Respondent on July 18, 2008 (attached as Exhibit 1).

F. On September 8, 2008, the Commissioner issued an Accusation to Respondent for violations of California Financial Code section 22000 et seq., served to Respondent on September 8, 2008 (attached as Exhibit 2).

G. It is the intention of the parties to resolve this matter without the necessity of an administrative hearing or other litigation.

NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set forth herein, the parties agree as follows:

TERMS AND CONDITIONS

1. **Purpose.** The purpose of this Agreement is to resolve the Accusations expeditiously, avoid the expense of a hearing, and possible further court proceedings.
2. **Waiver of Hearing Rights.** Respondent acknowledges its right to a hearing under the California Corporations Code and the California Financial Code in connection with the Accusations and hereby waives that right to a hearing, and to any reconsideration, appeal, or other right to review which may be afforded pursuant to the California Corporations Code and/or the California Financial Code, the California Administrative Procedure Act (“APA”), the California Code of Civil Procedure, or any other provision of law, and by waiving such rights, consents to the agreement becoming final.
3. **Independent Legal Advice.** Each of the Parties represents, warrants, and agrees that it has received or been advised to seek independent legal advice from its attorneys with respect to the advisability of executing this Agreement. Respondent acknowledges that it consulted with attorney Jeffrey S. Benice, prior to entering into this Agreement.
4. **Admissions.** Respondent neither admits nor denies the facts and findings stated in the Accusations. It is the intent and understanding between the parties that this Agreement shall not be binding or admissible against Respondent in any action(s) with third parties.
5. **Revocation.** Respondent hereby agrees to the issuance by the Commissioner of an Order Revoking Respondent’s Permit Issued Under Corporations Code Section 25113, and an Order Revoking Respondent’s Finance Lenders License pursuant to Section 22714 of the California Finance Lenders Law (“Revocations”). The revocations preclude Respondent from engaging in any activities related to the offering and/or selling of unqualified non-exempt securities unless such securities are otherwise exempt from qualification and preclude Respondent from engaging in any activities related to the California Finance Lenders Law, after the date this agreement is executed by both parties.
6. **Future Actions by the Commissioner.** The Commissioner reserves the right to bring any future actions against Respondent or any of its partners, owners, employees or successors of Respondent for any and all unknown or future violations of the Corporations Code and/or the California Finance Lenders Law. This Agreement shall not serve to exculpate Respondent or any of the partners, owners, employees or successors of Respondent from liability for any and all unknown or future violations of the Corporations Code and/or the California Finance Lenders Law. If it is found, after the execution of this Agreement and Revocations that Respondent has at any time violated any of the statutes and/or rules set forth in the Accusations or Agreement, the Commissioner reserves the right to take further action against Respondent, including but not limited to, imposing penalties and requesting restitution for all violations of the

Corporations Code and/or the California Finance Lenders Law originated in breach of this Agreement. Respondent acknowledges and agrees that the Revocations provided for above in paragraph 5 shall not be the exclusive remedy available to the Commissioner in pursuing future violations but may be sought and employed in addition to any other remedy available pursuant to the Corporations Code and/or the California Finance Lenders Law.

7. Settlement Agreement Coverage. This Agreement is intended by both parties to constitute a full, final and complete resolution of the Accusations. The parties further agree that nothing contained in this Agreement shall operate to limit the Commissioner's ability to assist any other agencies with any prosecution, administrative, civil or criminal, brought by any such agency against Respondent based upon any of the activities alleged in this matter or otherwise. Each of the parties represents, warrants, and agrees that in executing this Agreement, it has relied solely on the statements set forth herein and the advice of its own counsel and has placed no reliance on any statement, representation, or promise of any other party, or any other person or entity not expressly set forth herein, or upon the failure of any party or any other person or entity to make any statement, representation or disclosure of anything whatsoever. The parties have included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute this Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or contradict the terms of this Agreement.

8. Full Integration. This Agreement, including the attached Accusations, is the final written expression and the complete and exclusive statement of all the agreements, conditions, promises, representations, and covenants between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements, negotiations, representations, understandings, and discussions between and among the parties, their respective representatives, and any other person or entity.

9. No Presumption From Drafting. In that the parties have had the opportunity to draft, review and edit the language of this Agreement, no presumption for or against any party arising out of drafting all or any part of this Agreement will be applied in any action relating to, connected to, or involving this Agreement. Accordingly, the parties waive the benefit of California Civil Code section 1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

10. Effective Date. This Agreement shall not become effective until signed by Respondent and delivered to all parties. The Commissioner shall file this Agreement with the Office of Administrative Hearings five days after execution by the parties.

11. Counterparts. This Agreement may be executed in any number of counterparts by the Parties, and when each Party has signed and delivered at least one such counterpart to the other Party, each counterpart shall be deemed an original and taken together shall constitute one and the same Agreement.

12. Modifications and Qualified Integration. No amendment, change or modification

of this Agreement shall be valid or binding to any extent unless it is in writing and signed by all of the parties affected by it.

13. Headings and Governing Law. The headings to the paragraphs of this Agreement are inserted for convenience only and will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof. This Agreement shall be construed and enforced in accordance with and governed by California law.

14. Authority For Settlement. Respondent covenants that it possesses all necessary capacity and authority to sign and enter into this Agreement. Each Party warrants and represents that such Party is fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and without limiting the generality of the foregoing, each Party warrants and represents that it is fully entitled to enter into the covenants, and undertake the obligations set forth herein.

15. Public Record. Respondent acknowledges that this Agreement is a public record.

16. Voluntary Agreement. The Parties each represent and acknowledge that he or it is executing this Agreement completely voluntarily and without any duress or undue influence of any kind from any source.

17. Notices. Notice shall be provided to each party at the following addresses:

Respondent to: Jeffrey S. Benice, 650 Town Center Drive, 13th Floor, Suite 1300, Costa Mesa, California 92626

Commissioner to: Mary Ann Smith, Senior Corporations Counsel, 1515 K Street, Suite 200, Sacramento, California 95814.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

Dated: 1/06/09

PRESTON DuFAUCHARD
California Corporations Commissioner

By _____
ALAN S. WEINGER
Lead Corporations Counsel
Enforcement Division

Dated: 1/06/09

By _____
PATRICIA SPEIGHT
Special Administrator
California Finance Lender Law
Financial Services Division

HURST FINANCIAL CORPORATION

Dated: 1/05/09

By _____
JAMES HURST MILLER
Owner

Dated: 1/05/09

Approved as to form by Respondents' counsel

By _____
Jeffrey S. Benice, Esq.