

1 MARY ANN SMITH
Deputy Commissioner
2 DAN O'DONNELL
Assistant Chief Counsel
3 CHARLES CARRIERE (State Bar No. 285837)
4 Senior Counsel
5 Department of Business Oversight
6 One Sansome Street, Suite 600
7 San Francisco, California 94104
Telephone: (213) 576-7586
Facsimile: (213) 576-7181
8 Attorneys for Complainant

9
10 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
11 OF THE STATE OF CALIFORNIA

12 In the Matter of:) CRMLA LICENSE NO. 413-1132
13 THE COMMISSIONER OF BUSINESS)
14 OVERSIGHT,)
15 Complainant,)
16 v.) CONSENT ORDER
17 ATLANTIC HOME LOANS, INC.,)
18 Respondent.)
19)
20)

21 The Commissioner of Business Oversight (Complainant or Commissioner) and Atlantic
22 Home Loans (Respondent or AHL) enter this Consent Order with respect to the following facts:

23 **I.**

24 **Recitals**

25 A. The Commissioner has jurisdiction over the licensing and regulation of persons and
26 entities engaged in the business of lending and/or servicing residential mortgage loans pursuant to
27 the California Residential Mortgage Lending Act (CRMLA) (Fin. Code, § 50000 et seq.), including
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1 mortgage loan originators.

2 B. AHL is a residential mortgage lender licensed by the Commissioner pursuant to the
3 CRMLA since June 15, 2011, under the license number 413-1132.

4 C. Edmund Buchser is the Chief Executive Officer of AHL and, as such, is authorized to
5 enter this Consent Order on AHL's behalf.

6 D. On or about May 2, 2017, the Department of Business Oversight (Department)
7 initiated a routine examination of AHL to assess AHL's compliance with the CRMLA. During the
8 examination, the Department identified the following violations:

- 9 1. Servicing mortgage loans without a mortgage servicer's license, in violation
10 of Financial Code section 50002, subdivision (a).
- 11 2. Commingling of escrow funds with trust funds, in violation of Financial Code
12 section 50202, subdivision (a).
- 13 3. Providing fair lending notices that did not identify the Department as the
14 appropriate contact agency to certain borrowers or applicants, in violation of
15 California Code of Regulations, title 21, section 7114, and California Health
16 and Safety Code section 35830.

17 E. On or about February 4, 2019, AHL submitted all documentation necessary to apply
18 for a license to service mortgage loans under the CRMLA.

19 F. The Commissioner finds this Consent Order is appropriate, in the public interest and
20 consistent with the purposes fairly intended by the policy and provisions of the CRMLA.

21 NOW, THEREFORE, in consideration of the foregoing, and the terms and conditions set
22 forth herein, the parties agree as follows:

23 **II.**

24 **Terms and Conditions**

25 1. Purpose. This Consent Order resolves the issues before the Commissioner set
26 forth above in a manner that avoids the expense of a hearing and other possible court
27 proceedings, protects consumers, is in the public interest, and is consistent with the purposes,
28 policies, and provisions of the CRMLA.

1 2. Order to Discontinue Violation. Pursuant to Financial Code section 50321, AHL
2 is hereby ordered to immediately discontinue the violations of the CRMLA, including the
3 following: (i) Servicing mortgage loans without a mortgage servicer’s license, in violation of
4 Financial Code section 50002, subdivision (a); (ii) Commingling of escrow funds with trust
5 funds, in violation of Financial Code section 50202, subdivision (a); and (iii) Providing fair
6 lending notices that do not identify the Department as the appropriate contact agency, in
7 violation of California Code of Regulations, title 21, section 7114; and California Health and
8 Safety Code section 35830. AHL agrees to discontinue such violations and stipulates to the
9 finality of the Commissioner’s Order to Discontinue.

10 3. Policies and Procedures. AHL has submitted to the Commissioner the policies
11 and procedures that have been implemented as of the date of this Consent Order by AHL to
12 ensure compliance with Financial Code section 50202, subdivision (a). The Commissioner has
13 reviewed and determined that the policies and procedures are satisfactory. AHL agrees to
14 continue implementing those policies and procedures in the future.

15 4. Self-Audit. AHL agrees to audit all California loans originated and/or funded by
16 AHL from July 1, 2014 through six months after the Effective Date of this Consent Order as
17 defined by paragraph 30 (Self-Audit). AHL agrees to produce a Self-Audit Report for the
18 Commissioner containing information specified herein no later than 90 days after the last day of
19 the Self-Audit period.

20 5. Self-Audit Accuracy and Re-Audit.

21 A. AHL agrees and acknowledges that the Commissioner may test the results of
22 the Self-Audit Report to ensure its accuracy. In connection with these tests,
23 AHL agrees to provide loan files and related information requested by the
24 Commissioner within 10 calendar days of receiving written notice. AHL
25 further agrees to have its Self-Audit conducted anew (Re-Audit) by and
26 through a Commissioner-approved independent certified accounting firm or
27 compliance auditing firm (Auditor) if the Commissioner’s testing reveals
28 more than a 10 percent error rate.

1 B. In the event a Re-Audit is required, AHL, by and through the Auditor, shall
2 submit to the Commissioner the results of the Re-Audit (Re-Audit Report)
3 within 90 calendar days of the date AHL is notified in writing by the
4 Commissioner that a Re-Audit is required. The Re-Audit Report shall include
5 the information specified herein.

6 6. Scope of Audit Reports. Any audit reports shall include, unless otherwise
7 specified, the total number of loans originated by AHL in California, and a summary of the
8 review of AHL's Fair Lending Disclosures provided to all California borrowers pursuant to
9 California Code of Regulations, title 21, section 7114, and California Health and Safety Code
10 section 35830. The audit report(s) shall identify every California loan where the required
11 disclosures were not given, or where incorrect or incomplete information was provided to the
12 borrower(s).

13 7. Penalties.

14 A. AHL shall pay an administrative penalty of \$10,000.00 for the violations
15 enumerated in Recital D above no later than 30 days after the Effective Date
16 of this Consent Order as defined in paragraph 30.

17 B. AHL shall pay a penalty of \$200.00 per violation for each violation found
18 through the Self-Audit. Such penalties shall be paid concurrently with the
19 filing of the Self-Audit Report.

20 C. AHL further agrees that it shall pay an administrative penalty to the
21 Commissioner, concurrently with submission of the Re-Audit Report, of
22 \$1,000.00 for each violation discovered during the Re-Audit that was not
23 previously reported in the Self-Audit Report.

24 D. All penalties shall be made payable in the form of (i) a cashier's check mailed
25 to the attention of:

26 Accounting-Litigation
27 Department of Business Oversight
28 1515 K Street, Suite 200
Sacramento, California 95814

1 or (ii) Automated Clearing House deposit to the Department of Business Oversight:

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3 Notice of payment shall be made via email to Charles Carriere, Senior Counsel at Department of
4 Business Oversight, charles.carriere@dbo.ca.gov:

5 8. Servicing Authority. The Commissioner hereby acknowledges that the
6 mortgage loan
7 servicer application filed by AHL is ready to be approved, and the Commissioner hereby agrees to
8 approve AHL's residential mortgage loan servicer application within five days of execution of this
9 Consent Order.

10 9. Effect of Consent Order on License. In consideration of AHL's payment of
11 penalties in Paragraph 7, the Commissioner hereby agrees, except as otherwise set forth in this
12 Consent Order, to not suspend or revoke the residential mortgage lender or servicer license of AHL,
13 or take any further action, based on the violations cited herein. Accordingly, this Consent Order,
14 which resolves said violations, does not affect the licensing status of AHL.

15 10. Remedy for Breach: In the event AHL fails to comply with any of the terms of this
16 Consent Order, AHL hereby agrees that the Commissioner may institute proceedings for any and all
17 violations otherwise resolved under this Consent Order, and further agrees the Commissioner may,
18 in addition to all other available remedies he may invoke under the CRMLA, summarily suspend or
19 revoke the CRMLA license of AHL. AHL hereby stipulates to the finality of any such CRMLA
20 license suspension or revocation that the Commissioner may order. AHL hereby waives any notice
21 and hearing rights to contest the immediate license suspension or revocation order that may be
22 issued after such breach, which may be afforded under the CRMLA, the California Administrative
23 Procedure Act, the California Code of Civil Procedure, or any other law.

24 11. Waiver of Hearing Rights. AHL acknowledges that the Commissioner is ready,
25 willing and able to proceed with the filing of an administrative enforcement action on the charges
26 contained in this Consent Order, and AHL hereby waives the right to a hearing, and to any
27 reconsideration, appeal, or other right to review which may be afforded pursuant to the CRMLA;
28 and AHL further expressly waives any requirement for the filing of an Accusation that may be

1 afforded by Government Code section 11415.60, subdivision (b), the California Administrative
2 Procedure Act, the California Code of Civil Procedure, or any other provision of law; and by
3 waiving such rights, AHL effectively consents to this Consent Order becoming final.

4 12. Full and Final Settlement. The parties hereby acknowledge and agree that this
5 Consent Order is intended to constitute a full, final, and complete resolution of the violations
6 described herein, and that no further proceedings or actions will be brought by the Commissioner in
7 connection with those matters under the CRMLA or any other provision of law, excepting therefrom
8 any proceeding to enforce compliance with the terms of this Consent Order.

9 13. Information Willfully Withheld or Misrepresented. This Consent Order may be
10 revoked, and the Commissioner may pursue any and all remedies available under law against AHL if
11 the Commissioner discovers that AHL knowingly or willfully withheld or misrepresented
12 information used for and relied upon in this Consent Order.

13 14. Future Actions by Commissioner. The Commissioner reserves the right to bring any
14 future actions against AHL, or any of its partners, owners, officers, shareholders, directors,
15 employees or successors for any and all unknown violations of the CRMLA.

16 15. Assisting Other Agencies. Nothing in this Consent Order limits the Commissioner's
17 ability to assist any other government agency (city, county, state, or federal) with any prosecution,
18 administrative, civil or criminal brought by that agency against AHL or any other person based upon
19 any of the activities alleged in this matter or otherwise.

20 16. No Presumption Against Drafting Party. Each party acknowledges that it has had the
21 opportunity to draft, review, and edit the language of this Consent Order. Accordingly, the parties
22 intend that no presumption for or against the drafting party will apply in construing any part of this
23 Consent Order. The parties waive the benefit of Civil Code section 1654 as amended or
24 corresponding provisions of any successor statute, which provide that in cases of uncertainty,
25 language of a contract should be interpreted most strongly against the party that caused the
26 uncertainty to exist.

1 17. Independent Legal Advice. Each of the parties represents, warrants, and agrees that it
2 has received independent advice from its attorney(s) and/or representatives with respect to the
3 advisability of executing this Consent Order.

4 18. Headings. The headings to the paragraphs of this Consent Order are inserted for
5 convenience only and will not be deemed a part hereof or affect the construction or interpretation of
6 the provisions hereof.

7 19. Binding. This Consent Order is binding on all heirs, assigns, and/or successors in
8 interest.

9 20. Reliance. Each of the parties represents, warrants, and agrees that in executing this
10 Agreement it has relied solely on the statements set forth herein and the advice of its own counsel.
11 Each of the parties further represents, warrants, and agrees that in executing this Consent Order it
12 has placed no reliance on any statement, representation, or promise of any other party, or any other
13 person or entity not expressly set forth herein, or upon the failure of any party or any other person or
14 entity to make any statement, representation or disclosure of anything whatsoever. The parties have
15 included this clause: (1) to preclude any claim that any party was in any way fraudulently induced to
16 execute this Consent Order; and (2) to preclude the introduction of parol evidence to vary, interpret,
17 supplement, or contradict the terms of this Consent Order.

18 21. Waiver, Amendments, and Modifications. No waiver, amendment, or modification of
19 this Consent Order will be valid or binding unless it is in writing and signed by each of the parties.
20 The waiver of any provision of this Consent Order will not be deemed a waiver of any other
21 provision. No waiver by either party of any breach of, or of compliance with, any condition or
22 provision of this Consent Order by the other party will be considered a waiver of any other condition
23 or provision or of the same condition or provision at another time.

24 22. Full Integration. This Consent Order is the final written expression and the complete
25 and exclusive statement of all the agreements, conditions, promises, representations, and covenant
26 between the parties with respect to the subject matter hereof, and supersedes all prior or
27 contemporaneous agreements, negotiations, representations, understandings, and discussions
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1 between and among the parties, their respective representatives, and any other person or entity, with
2 respect to the subject matter covered hereby.

3 23. Governing Law. This Consent Order will be governed by and construed in
4 accordance with California law. Each of the parties hereto consents to the jurisdiction of such court,
5 and hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient
6 forum to the maintenance of such action or proceeding in such court.

7 24. Counterparts. This Consent Order may be executed in one or more separate
8 counterparts, each of which when so executed, shall be deemed an original. Such counterparts shall
9 together constitute a single document.

10 25. Effect Upon Future Proceedings. If AHL applies for any license, permit or
11 qualification under the Commissioner's current or future jurisdiction, or is the subject of any future
12 action by the Commissioner to enforce this Consent Order, then the subject matter hereof shall be
13 admitted for the purpose of such application(s) or enforcement proceedings(s).

14 26. Voluntary Agreement. AHL enters into this Consent Order voluntarily and without
15 coercion and acknowledges that no promises, threats or assurances have been made by the
16 Commissioner or any officer, or agent thereof, about this Consent Order. The parties each represent
17 and acknowledge that he, she or it is executing this Consent Order completely voluntarily and
18 without any duress or undue influence of any kind from any source.

19 27. Notice. Any notice required under this Consent Order shall be provided to each party
20 at the following addresses:

21 To AHL: Atlantic Home Loans, Inc.
22 50 Route 46 West
23 Parsippany, New Jersey 07054
State-Correspondence@atlantichomeloans.com

24 To the Commissioner: Charlie Carriere, Senior Counsel
25 Enforcement Division
26 Department of Business Oversight
27 One Sansome Street, Suite 600
28 San Francisco, CA 94104
Charles.carriere@dbo.ca.gov

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28. Signatures. A fax or electronic mail signature shall be deemed the same as an original signature.

29. Public Record. AHL hereby acknowledges that this Consent Order is and will be a matter of public record.

30. Effective Date. This Consent Order shall become final and effective when signed by all parties and delivered by the Commissioner's agent via e-mail to AHL at bkim@atlantichomeloans.com.

31. Authority to Sign. Each signatory hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement and undertake the obligations set forth herein.

Dated: September 14, 2020

MANUEL P. ALVAREZ
Commissioner of Business Oversight

By _____
MARY ANN SMITH
Deputy Commissioner
Enforcement Division

Dated: September 14, 2020

ATLANTIC HOME LOANS

By _____
Edmund Buchser
Chief Executive Officer