

STATE OF MAINE  
BUREAU OF CONSUMER CREDIT PROTECTION

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*In re:* OCWEN FINANCIAL CORPORATION )                      CONSENT AGREEMENT  
Docket No. 2018-0107 )

INTRODUCTION

Ocwen Financial Corporation (“Ocwen Financial”), the Maine Bureau of Consumer Credit Protection (“the Bureau”), and the Office of the Maine Attorney General (“the Attorney General”) hereby consent to this Agreement, pursuant to 10 M.R.S. § 8003(5)(B).

1. The Bureau is the agency of the State of Maine responsible for administering and enforcing the Maine Consumer Credit Code, Title 9-A of the Maine Revised Statutes.

2. Ocwen Financial is a financial services holding company incorporated in Florida with headquarters in West Palm Beach, Florida. At all times relevant hereto, Ocwen Loan Servicing, LLC (“OLS”) was a Delaware limited liability company indirectly wholly owned by Ocwen Financial and licensed by the Bureau as a supervised lender, License No. NLC654762, and as a debt collector, License No. DCL6982.

AUTHORITY

3. A “supervised lender” is defined in 9-A M.R.S. § 1-301(39) as a person authorized to make or take assignments of or to service supervised loans, either under a license issued by the Bureau Superintendent or as a supervised financial organization.

4. A “supervised loan” is defined in 9-A M.R.S. § 1-301(40) as “a consumer loan, including a loan made pursuant to open end credit, in which the rate of the finance charge, calculated according to the actuarial method, exceeds 12 1/4% per year, or which is secured by an interest in real estate.”

5. Persons engaged in enforcing security interests securing debts are debt collectors. 32 M.R.S. § 11002(6).

6. Pursuant to 32 M.R.S. § 11013(2), no debt collector may use any false, deceptive, or misleading representation or means in connection with collecting a debt.

7. Pursuant to 10 M.R.S. § 8003(5)(A-1), for each violation of applicable laws, rules, or condition of licensure or registration, the Bureau may issue a warning, censure, or reprimand; suspend a license; revoke a license; impose conditions of license probation; or impose a civil penalty.

8. Title 10 M.R.S. § 8003(5)(B) authorizes the Bureau to execute with a licensee and the Attorney General a consent agreement that resolves a complaint or investigation without further proceedings. Any remedy, penalty, or fine that is otherwise available by law, even if only in the jurisdiction of the Superior Court, may be achieved by consent agreement.

#### FACTS

9. In 2007, OLS purchased a portfolio of servicing rights from a combined group of corporate entities including Aegis Mortgage Corporation, Aegis Wholesale Corporation, Aegis Lending Corporation, and Aegis Funding Corporation, hereinafter collectively referred to as "the Aegis entities" or "Aegis," and each as an "Aegis entity."

10. Beginning in 1993, the Aegis entities had operated as mortgage lenders and servicers but in 2007 were seeking Chapter 11 bankruptcy protection because of the collapse of the mortgage market that began in the summer of 2007. *In re: Aegis Mortgage Corporation, et al.*, Case No. 07-11119 (Bankr. D. Del.).

11. The assets OLS purchased from Aegis were "servicing rights" as defined in the sales agreement. The ownership of the loans and mortgages themselves were not part of the assets purchased from Aegis. OLS purchased the assets as part of the bankruptcy proceeding, and the bankruptcy court approved the transaction.

12. In August and September 2007, the Aegis entities provided OLS with certain Powers of Attorney, which appointed OLS as their respective attorney-in-fact and authorized and empowered OLS to, among other things, "execute, acknowledge, seal and deliver...assignments of deed of trust/mortgage and other recorded documents" and "defend [the Aegis entities] in actions and to bring affirmative actions on [the Aegis entities'] behalf, provided that the defense and affirmative actions are undertaken in the best interest of [the Aegis entities]" (collectively, the "Aegis Powers of Attorney").

13. The loans to which servicing rights were acquired by OLS had been placed in securitized trusts by Aegis, but a record of such transfers appears to have been made electronically in the Mortgage Electronic Registration Systems, Inc. ("MERS") and not through recording of any assignments with applicable registries of deeds in Maine.

14. Aegis's Chapter 11 bankruptcy plan was confirmed by order dated October 20, 2010. The order provided for the revestment of assets in the liquidating debtors (Aegis) and appointed a "Responsible Officer" for the liquidating debtors. It also provided that the Responsible Officer would be the representative for the liquidating debtors under the plan and applicable law. The Responsible Officer was to marshal assets, prosecute litigation, wind up the corporate affairs, and then close the Chapter 11 case.

15. The Responsible Officer was to dissolve the corporate entities upon the winding up of their affairs.

16. Aegis Lending Corporation and Aegis Mortgage Corporation merged on March 13, 2012, with Aegis Mortgage Corporation being the surviving entity. All other Aegis entities had previously merged into Aegis Lending Corporation effective December 28, 2010, with Aegis Lending Corporation being the surviving entity.

17. The bankruptcy court entered an order dated October 31, 2012 closing the Chapter 11 case.

18. Aegis Mortgage Corporation was dissolved effective November 2, 2012. It was the last surviving Aegis entity.

19. The Aegis entities were both incorporated and dissolved under Delaware law.

20. Generally, under Delaware law, when a corporation ceases to exist, any agency relationship it had as a principal, which would include a power of attorney, ceases to exist. *International Pulp Equipment Co. v. St. Regis Kraft Co.*, 54 F. Supp. 745, 748 (D. Del. 1944).

21. Delaware law provides that upon merger the separate corporate existence of all merged entities except that of the surviving corporation ceases. 8 Del. C. § 259.

22. When a Delaware corporation dissolves, its existence continues for three years

to allow its affairs to be wound up. After the expiration of the three-year period, the dissolved Corporation ceases to exist as a "body corporate," loses the power to conduct its own affairs, and continues solely for any action, suit or proceeding commenced before the expiration of the three-year period. *In re Krafft-Murphy Co., Inc.*, 82 A.3d 696, 710 (Del. 2013).

23. The three-year period after the dissolution of Aegis Mortgage Corporation ended in November of 2015.

24. In July 2014, the Maine Supreme Judicial Court decided *Bank of America, N.A. v. Greenleaf*, 2014 ME 89, 96 A.3d 700. The Court held, among other things: (a) that standing to foreclose on a mortgage requires a plaintiff's interest in both a promissory note and a mortgage securing the note, and (b) that, notwithstanding reference in a mortgage to MERS as a nominee of the lender and the "mortgagee of record," MERS had only the right to record the mortgage. *See Greenleaf*, 2014 ME 89 ¶¶ 9 and 14, 15, 96 A.3d 700.

25. After July 2014, OLS executed quitclaim assignments of mortgages as "Aegis Lending Corporation by its Attorney in Fact Ocwen Loan Servicing, LLC" and "Aegis Funding Corporation by its Attorney in Fact Ocwen Loan Servicing, LLC." Those assignments were filed in various registries of deeds in the State of Maine and filed in and relied on in support of foreclosure actions in the courts of the State of Maine. Although Aegis Lending Corporation merged into Aegis Mortgage Corporation on March 13, 2012 and Aegis Funding Corporation merged into Aegis Lending Corporation on December 28, 2010, Ocwen Financial asserts that OLS nevertheless had a legal basis for executing documents as an "Attorney in Fact" for Aegis Lending Corporation, Aegis Funding Corporation, and other Aegis entities.

26. Ocwen Financial represents that after July 2014 OLS filed 24 cases in Maine courts seeking foreclosure of loans originated by Aegis and which relied on an Assignment of Mortgage executed utilizing an Aegis Power of Attorney. Ocwen Financial further represents that it has identified Four Thousand Six Hundred Thirty-Five Dollars (\$4,635.00) in attorneys' fees that were paid utilizing borrowers' funds or capitalized into loan modifications (including interest charged thereon) and an additional Forty-Nine Thousand Four Hundred Twenty-Four Dollars (\$49,424.00) that has been assessed to borrowers' accounts but not yet paid.

27. OLS's foreclosure actions were filed in the names of the trustees of the securitized trusts allegedly owning the mortgages and notes, but the address listed on the courts' records is "c/o Ocwen Loan Servicing, LLC, 1661 Worthington Road,

Suite 100, West Palm Beach, FL 33409,” indicating that OLS was the entity controlling the actions.

28. During Aegis Mortgage Corporation’s statutory wind-up period, OLS settled claims relating to its mortgage servicing practices with a consent judgment entered by the U.S. District Court for the District of Columbia on February 26, 2014. *Consumer Financial Protection Bureau, et al. v. Ocwen Financial Corporation and Ocwen Loan Servicing, LLC*, No. 1:13-cv-02025.

29. In the 2014 consent judgment, OLS covenanted to the federal Consumer Financial Protection Bureau and 49 plaintiff states, including Maine:

Servicer shall ensure that mortgage assignments executed by or on behalf of Servicer are executed with appropriate legal authority, accurately reflective of the completed transaction and properly acknowledged.

*Id.*, its Exhibit A, § I.C.6.

30. In September 2017, OLS consented to a Bureau Cease and Desist Order restricting for several months OLS’s acquisition of residential mortgage servicing rights.

31. In June 2018, the Bureau received a formal complaint against OLS’s execution of documents as an “Attorney in Fact” for legal entities which have had no corporate existence since March 13, 2012 at the latest and the use of those documents in foreclosure proceedings against Maine consumers. There followed discussions culminating in a November 28, 2018 meeting attended by counsel for Ocwen Financial, a Bureau Staff Attorney, and two Assistant Attorneys General.

32. At the parties’ November 28, 2018 meeting, OLS represented that, in order to obtain an outcome which might be acceptable to the Bureau, it would petition the Delaware Chancery Court to appoint a receiver to facilitate the “unfinished business” of the Aegis entities.

33. On January 7, 2019, OLS filed its “Petition for Appointment of Receiver Pursuant to 8 Del. Code 279,” Delaware Chancery Court Case No. 2019-0009-. By the Petition, OLS sought appointment of a receiver “to complete the unfinished business of Aegis,” which would include having “transfer and release documents executed”

with respect to mortgages originated by Aegis entities. The Chancery Court appointed a receiver July 16, 2019.

34. At the parties' November 28, 2018 meeting, OLS represented to the Bureau in writing that it had suspended the referral of all foreclosure actions related to Aegis entities pending the outcome of the parties' discussion.

35. Notwithstanding OLS's representations to the Bureau in November 2018, on January 16, 2019, it caused to be recorded in Maine's Androscoggin County Registry of Deeds the document whose copy is Exhibit A hereto, which is purportedly an appointment of OLS as attorney in fact for Aegis Lending Corporation.

36. Notwithstanding OLS's representations to the Bureau in November 2018, on January 16, 2019, it caused to be recorded in Maine's Androscoggin County Registry of Deeds the document whose copy is Exhibit B hereto, which is purportedly a December 2018 quitclaim assignment of a mortgage originated by Aegis Lending Corporation and designating MERS as Aegis's nominee. Though the "assignment" refers to MERS as the "mortgagee of record," MERS never had any ownership interest in the mortgage, *see Bank of America, N.A. v. Greenleaf*, 2014 ME 89, ¶¶ 14-15, 96 A.3d 700, and Aegis Lending Corporation merged into Aegis Mortgage Corporation on March 13, 2012.

37. Notwithstanding OLS's representations to the Bureau in November 2018, on or about January 28, 2019, its counsel filed in Lewiston, Maine District Court and recorded in the Androscoggin County Registry of Deeds, the Complaint for Foreclosure by Civil Action whose copy is Exhibit C hereto. The Complaint for Foreclosure relies on a quitclaim assignment of mortgage naming MERS "mortgagee of record" as nominee for Aegis Funding Corporation. *See* the Complaint, ¶ 15 and its Exhibit E. Aegis Funding Corporation merged into Aegis Lending Corporation on December 28, 2010, and MERS never had any ownership interest in the mortgage.

38. Ocwen Financial asserts that OLS's filings of documents whose copies are Exhibits A, B, and C hereto were inadvertent.

39. On June 1, 2019, OLS merged with and into PHH Mortgage Corporation ("PHH"), a financial services corporation organized under the laws of the State of New Jersey, such that PHH is the surviving entity of the merger with OLS. PHH had become a wholly-owned subsidiary of Ocwen Financial on October 4, 2018 and is licensed by the Bureau as a supervised lender, License No. NLC 657651.

## COVENANTS

40. Ocwen Financial executes this Consent Agreement as parent of OLS and PHH. The term "Ocwen Financial" in this Consent Agreement means Ocwen Financial Corporation and all persons owned or controlled by Ocwen Financial Corporation and servicing mortgages in Maine, including without limitation PHH, OLS, and all assigns and successors in interest of OLS.

41. Ocwen Financial admits the facts set forth above in Paragraphs 9 through 39.

42. The Bureau finds that OLS had no authority to execute documents as an "Attorney in Fact" for legal entities which have had no corporate existence since March 13, 2012 at the latest and that OLS's uses of those documents constitute violations of 32 M.R.S. § 11013(2).

43. In servicing Maine mortgages, Ocwen Financial shall immediately cease and desist from recording documents as "Attorney in Fact" for any Aegis entity. Ocwen Financial shall not represent that it possesses a power of attorney from any Aegis entity authorizing it to act on that entity's behalf, when servicing Maine mortgages; when hiring Maine counsel; or when prosecuting or responding to foreclosure, quiet title, or declaratory judgment actions.

44. In servicing Maine mortgages, Ocwen Financial shall immediately cease and desist from recording documents identifying MERS as the "mortgagee of record" with respect to Aegis-originated loans, unless the filing includes a valid assignment from the mortgage originator or subsequent mortgagee.

45. Within 30 days after signing this Consent Agreement, Ocwen Financial shall reimburse the Bureau Ten Thousand Dollars (\$10,000.00) for the costs of investigating OLS's conduct. Reimbursement shall be paid by certified check made out to "Treasurer, State of Maine" and remitted to Mark E. Susi, Esq., Maine Bureau of Consumer Credit Protection, 35 State House Station, Augusta, Maine 04333-0035.

46. Within 45 days after signing this Consent Agreement, Ocwen Financial shall identify to the Bureau and to the Attorney General, by parties' names and court docket numbers, the above-referenced foreclosure actions (and any other such actions Ocwen Financial identifies) which relied on an assignment of mortgage executed utilizing an Aegis Power of Attorney after that entity had merged into another entity (or, in the case of Aegis Mortgage Corporation, after November 2, 2015). With respect

to each of those actions for which OLS utilized such a power of attorney, Ocwen Financial shall:

- a. Pay a civil penalty in the amount of One Thousand Dollars (\$1,000.00). Payment shall be by certified check made out to "Treasurer, State of Maine" and remitted to Mark E. Susi, Esq., Maine Bureau of Consumer Credit Protection, 35 State House Station, Augusta, Maine 04333-0035; and
- b. Submit to the Bureau for approval an accounting and formal plan for restitution of all attorneys' fees collected from borrowers or remaining on borrowers' accounts in connection with such actions. The plan's terms shall include requirements that the Bureau receive copies of all correspondence with persons due restitution, that the Bureau receive proof of payment of restitution or proof of waiver of payment of fees assessed but not yet paid, and that restitution be complete in all cases no later than 21 days after the date Ocwen Financial receives the Bureau's approval of such plan. For any instance in which payment of restitution is not possible, Ocwen Financial shall provide the Bureau with a written explanation for the impossibility and forfeit to the State of Maine the full amount of the attorneys' fees and interest thereon charged by OLS for which it was impossible to make restitution. Payment of such forfeited fees and interest shall be by certified check made out to "Treasurer, State of Maine" and remitted to Mark E. Susi, Esq., Maine Bureau of Consumer Credit Protection, 35 State House Station, Augusta, Maine 04333-0035.

47. Immediately after receiving a fully-executed copy of this Consent Agreement, Ocwen Financial shall distribute copies of the document to every individual attorney who represents it in a foreclosure action in State or federal court in Maine as of the date of this Consent Agreement or in any future foreclosure action in those courts involving an Aegis-originated loan. No later than 30 days thereafter, Ocwen Financial shall provide the Bureau with acknowledgements from those attorneys that they have received a copy of this Consent Agreement. Ocwen Financial shall condition every individual attorney's continued or future initial retention or employment on Ocwen Financial's receipt of such an acknowledgement from the attorney.

48. In servicing Maine mortgages, Ocwen Financial shall ensure that mortgage assignments executed by or on behalf of it are executed with appropriate legal



authority, are accurately reflective of the completed transaction, and are properly acknowledged.

49. In servicing Maine mortgages, Ocwen Financial shall maintain processes to ensure that it or the foreclosing entity has a documented enforceable interest in the promissory note and mortgage (or deed of trust) under applicable Maine law and that it is otherwise a proper party to the foreclosure action.

50. This Consent Agreement is enforceable in Maine Superior Court.

51. Ocwen Financial's violation of any term or condition of this Consent Agreement may be found by the Bureau to be grounds for additional discipline against its licenses including without limitation monetary penalties, license suspension, or license revocation. The Bureau will provide Ocwen Financial with an opportunity to discuss and attempt to resolve any allegations that Ocwen Financial has violated this Consent Agreement, seven calendar days before taking any action to enforce this Consent Agreement.

52. In considering possible discipline for any proven violation this Consent Agreement or possible discipline for any proven future violation of Title 9-A M.R.S., the Bureau will consider OLS's conduct discussed above in Paragraphs 25 through 37 to be an aggravating factor.

53. This Consent Agreement is not appealable and is effective until amended or rescinded in writing by agreement of all the parties hereto. This Consent Agreement cannot be amended verbally.

54. Requests for amendment of this Consent Agreement must be made in writing and submitted to the Bureau. The Bureau may deny such a request, grant such a request, or grant such a request in part. A Bureau decision regarding a request to modify this Consent Agreement need not be made pursuant to a hearing and is not appealable to any court.

55. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402(3) and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408-A.

56. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

57. The Bureau agrees that, provided Ocwen Financial complies with the terms of this Consent Agreement, it will not seek additional penalties related to the allegations contained in Paragraphs 25 through 37 above. However, nothing in this Consent Agreement prohibits the Bureau from acting on new issues discovered during the pendency of this Consent Agreement or thereafter.

58. This Consent Agreement does not relieve Ocwen Financial of liability for any misconduct involving a foreclosure action not identified pursuant to Paragraph 46 above.

59. Nothing in this Consent Agreement relieves Ocwen Financial of its obligations to comply with all State and federal law.

60. This Consent Agreement constitutes the entire agreement between and among the parties.

61. If any provision of this Consent Agreement is for any reason determined to be invalid, the effectiveness and enforceability of all other provisions of the Consent Agreement shall not be affected by such determination.

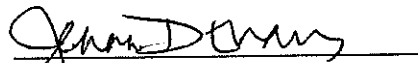
62. This Consent Agreement becomes effective on the date of the last signature hereto.

63. Ocwen Financial acknowledges by the signature of its duly-authorized representative that it has consulted with counsel before signing this Consent Agreement, that it executes the Consent Agreement willingly, and that it agrees to abide fully with all terms and conditions set forth herein.

#### SIGNATURES

OCWEN FINANCIAL CORPORATION

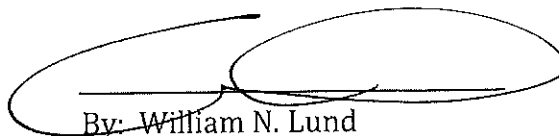
Dated: July 23, 2019



By: Jenna D Evans  
Senior Vice President and Deputy General  
Counsel

MAINE BUREAU OF CONSUMER  
CREDIT PROTECTION

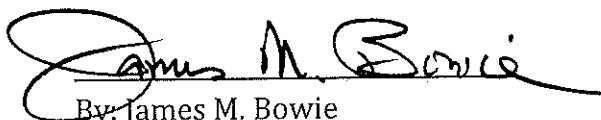
Dated: July 31, 2019



By: William N. Lund  
Superintendent

OFFICE OF THE ATTORNEY GENERAL

Dated: July 31, 2019



By: James M. Bowie  
Assistant Attorney General