

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION,
Plaintiff

v.

CAPITAL CITY MORTGAGE CORP.,
a Maryland Corporation, MARCIA C. FIDIS
in her capacity as representative of the
ESTATE OF THOMAS K. NASH, and
ERIC J. SANNE,

Defendants, and

THOMAS K. NASH FAMILY TRUST and
ALAN W. NASH in his capacity as trustee,
and NASH MARITAL TRUST UNDER WILL
OF THOMAS K. NASH and MARCIA C.
FIDIS and CAROLINE KOESTNER NASH
in their capacities as co-trustees,

Relief Defendants.

Civil Action No.98CV-237 (GK/AK)

**FEDERAL TRADE COMMISSION'S NOTICE OF FILING OF [Proposed]
SETTLEMENT AGREEMENT, STIPULATED INJUNCTION, RELEASE, AND FINAL
ORDER AS TO DEFENDANTS CAPITAL CITY MORTGAGE CORPORATION,
MARCIA C. FIDIS IN HER CAPACITY AS REPRESENTATIVE OF THE ESTATE OF
THOMAS K. NASH, THOMAS K. NASH FAMILY TRUST AND ALAN W. NASH IN
HIS CAPACITY AS TRUSTEE, AND NASH MARITAL TRUST UNDER WILL OF
THOMAS K. NASH AND MARCIA C. FIDIS AND CAROLINE KOESTNER NASH IN
THEIR CAPACITIES AS CO-TRUSTEES**

Plaintiff Federal Trade Commission provides notice of filing of [Proposed] Settlement
Agreement, Stipulated Injunction, Release, and Final Order as to Defendants Capital City
Mortgage Corporation, Marcia C. Fidis in her capacity as representative of the Estate of Thomas

K. Nash, Thomas K. Nash Family Trust and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash and Marcia C. Fidis and Caroline Koestner Nash in their capacities as co-trustees, a copy of which is attached as Exhibit A.

Respectfully submitted,

February 23, 2005



Alain Sheer
D.C. Bar No 411092

Federal Trade Commission
Bureau of Consumer Protection
Credit Practices
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
(202) 326-3321

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of **PLAINTIFF FEDERAL TRADE COMMISSION'S NOTICE OF FILING OF [Proposed] SETTLEMENT AGREEMENT, STIPULATED INJUNCTION, RELEASE, AND FINAL ORDER AS TO DEFENDANTS CAPITAL CITY MORTGAGE CORPORATION, MARCIA C. FIDIS IN HER CAPACITY AS REPRESENTATIVE OF THE ESTATE OF THOMAS K. NASH, THOMAS K. NASH FAMILY TRUST AND ALAN W. NASH IN HIS CAPACITY AS TRUSTEE, AND NASH MARITAL TRUST UNDER WILL OF THOMAS K. NASH AND MARCIA C. FIDIS AND CAROLINE KOESTNER NASH IN THEIR CAPACITIES AS CO-TRUSTEES** was served by email upon:

Philip M. Musolino
Musolino & Dessel
1615 L Street N.W. #440
Washington, D.C. 20036

Lawrence B. Bernard
Venable, LLP
575 7th Street, N.W.
Washington, D.C. 20005

Executed this 23rd day of February, 2005
in Washington, D.C.



Alain Sheer
Attorney for Plaintiff Federal Trade Commission
600 Pennsylvania Avenue, N.W., NJ-3137
Washington, D.C. 20004

Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FEDERAL TRADE COMMISSION,	:	
Plaintiff,	:	
v.	:	Civil Action No.: 98-237 (GK/AK)
CAPITAL CITY MORTGAGE CORP.,	:	
a Maryland Corporation, MARCIA C. FIDIS,	:	
in her capacity as representative of	:	
the ESTATE OF THOMAS K. NASH, and	:	
ERIC J. SANNE,	:	
Defendants,	:	
and	:	
THOMAS K. NASH FAMILY TRUST and	:	
ALAN W. NASH in his capacity as trustee,	:	
and NASH MARITAL TRUST UNDER WILL	:	
OF THOMAS K. NASH and MARCIA C.	:	
FIDIS and CAROLINE KOESTNER NASH,	:	
in their capacities as co trustees,	:	
Relief Defendants.	:	

**SETTLEMENT AGREEMENT, STIPULATED INJUNCTION,
RELEASE, AND FINAL ORDER**

WHEREAS, Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), has filed a Second Amended Complaint for Injunctive and Other Equitable Relief pursuant to Sections 5(a), 5(m)(1)(A), 9, 13(b), 16(a), and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a), 45(m)(1)(A), 49, 53(b), 56(a), and 57b, Section 108(c) of the Truth in Lending Act (“TILA”), 15 U.S.C. § 1607(c), Section 814(a) of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692l(a), Section 704(c) of the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. § 1691c(c);

WHEREAS, the Defendants have denied the allegations of the Second Amended Complaint;

WHEREAS, Plaintiff and Defendants Capital City Mortgage Corporation (“Capital City”), Marcia C. Fidis in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust, and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash and Marcia C. Fidis and Caroline Koestner Nash in their capacities as co-trustees, by and through their respective attorneys, have agreed to settle all matters in dispute between them in this action upon the following terms and conditions, without further adjudication of any issue of fact or law or discovery and without the foregoing defendants or relief defendants admitting liability for any of the matters alleged in the Complaint and the First and Second Amended Complaints; and

WHEREAS, Defendants may seek relief under F.R. Civ. P. 26 on the basis of any grounds provided therefor. Nothing in this Order shall be construed to preclude the Defendants from objecting to discovery on the basis of any appropriate grounds, including without limitation the following: the discovery request is unduly burdensome; the discovery request is not likely to lead to the discovery of admissible evidence; the discovery request is not permitted by the terms of this Order; or the discovery request does not relate to Sections I to V or VI to VIII of this Order.

NOW THEREFORE, on the joint motion of Plaintiff the FTC and Defendants Capital City, Marcia C. Fidis in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust, and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, this matter be and is hereby marked as SETTLED, each party to bear its own fees and costs, and it is further hereby ORDERED,

ADJUDGED, and DECREED as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter and of the parties. Venue is proper in the United States District Court for the District of Columbia.
2. The Second Amended Complaint states a claim upon which relief may be granted against Defendants Capital City and Marcia C. Fidis in her capacity as personal representative of the Estate of Thomas K. Nash, under Sections 5(a), 5(m)(1)(A), 9, 13(b), 16(a), and 19 of the FTC Act, 15 U.S.C. §§ 45(a), 45(m)(1)(A), 49, 53(b), 56(a), and 57b; Section 108(c) of TILA, 15 U.S.C. § 1607(c); Section 814(a) of FDCPA, 15 U.S.C. § 1692l(a); Section 704(c) of ECOA, 15 U.S.C. § 1691(c), and against the Thomas K. Nash Family Trust, and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash, and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, as Relief Defendants, and the Commission has the authority to seek the relief it has requested.
3. The activities of Defendants Capital City and the Estate of Thomas K. Nash, and Marcia C. Fidis in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust, and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash, and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, are in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
4. Defendants Capital City, Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust, and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash, and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, have been properly served in this action.

5. Defendants Capital City, Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust, and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash, and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, waive all rights to seek appellate review, or otherwise challenge the validity of this Settlement Agreement, Stipulated Injunction, Release, And Final Order (“Order”) and further waive and release any claims they may have against the FTC, its employees, representatives, or agents.

6. Plaintiff the FTC waives all rights to seek appellate review, or otherwise challenge the validity of this Settlement Agreement, Stipulated Injunction, Release, And Final Order. The FTC, hereby for itself, its agents, servants, employees, attorneys and anyone claiming by or through them, remise, release and forever discharge Releasees (as defined herein) from any and all causes, rights, actions, suits, proceedings, debts, rents, notes, charges, fees, dues, contracts, damages, claims and demands of whatsoever kind and nature, direct or indirect, whether known or unknown in law or in equity which they now have, have had or may at any time hereafter have by reason of, or related to, arising out of, as a consequence of, for or by reason of, resulting from, or relating in any way to all claims brought in, or that could have been brought in, this action, and including but not limited to claims relating to the origination or servicing of loans by Capital City, the investment in or receipt of funds from loans originated by Capital City or serviced by Capital City, and all acts and practices alleged in the Second Amended Complaint.

7. Defendants Capital City, Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust, and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of

Thomas K. Nash and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, agree that this Order does not entitle them to seek or obtain attorneys' fees as prevailing parties under the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended by Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and further waive any rights to attorneys' fees that may arise under said provision of law.

8. Plaintiff FTC agrees that this Order does not entitle it to seek or obtain any relief other than the relief specifically set out in this Order. Nothing in the preceding sentence limits the FTC's right to any other relief otherwise available to it for conduct that is not in violation of this Order.

9. Entry of this Order resolving this matter is in the public interest.

DEFINITIONS

As used in this Order:

1. "Borrower" shall mean a person whose loan was originated or serviced by Capital City Mortgage Corporation, or any person acting on his/her behalf, except that nothing in this Order shall apply to any actions taken by any person who services such loans except for Capital City.

2. "Capital City" shall mean Capital City Mortgage Corporation, a Maryland corporation, and its successors, if any, as well as all persons or entities in active concert or participation with any of them who received actual notice of this Order by personal service or otherwise. Nothing in this definition shall immunize Capital City from responsibility where appropriate under District of Columbia law for the acts of its officers, directors, agents, representatives, employees, subsidiaries, or affiliates. Nothing in this Order shall subject Capital City employees to a money judgment either pursuant to the provisions of the Order or for violations of the provisions of the Order.

3. “Clear and conspicuous” or “clearly and conspicuously” shall mean that information is displayed in a manner that is readily noticeable, readable, and understandable.

4. “Closing” or “consummation” shall mean the time that a borrower becomes contractually obligated on a loan.

5. “Competent and reliable evidence” shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

6. “Defendants” shall mean Defendants Capital City, and Marcia C. Fidis, in her capacity as a representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust, and Alan W. Nash in his capacity as trustee, and the Nash Marital Trust Under Will of Thomas K. Nash, and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, and any successor trustees.

7. “ECOA” shall mean the Equal Credit Opportunity Act, 15 U.S.C. § 1691-1691f, as amended and its implementing Regulation B, 12 C.F.R. § 202, as amended.

8. “FDCPA” shall mean the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1601-1692, as amended.

9. “Fees” shall mean all fees, charges and penalties, including, but not limited to fees for: paying in person, late payments, property inspections, courier services, appraisals, title reviews, legal services, loan reinstatement, not having insurance, fees imposed by Capital City for instituting foreclosure (but not the costs of foreclosure paid to third parties, such as attorneys’ fees, advertising fees, or auction fees, for example), Capital City paying real estate taxes from borrower escrow accounts, and other penalties and fees a borrower is or was assessed by Capital City in connection with the servicing of any loan.

10. "Final offer" of credit shall mean the last offer made to the borrower prior to consummation.

11. "Force placed insurance" shall mean insurance obtained by Capital City at the borrower's expense, insuring the security for the borrower's loan, and without the consent of the borrower at the time the insurance is placed.

12. "FTC Act" shall mean the Federal Trade Commission Act, 15 U.S.C. §§ 41-58, as amended.

13. "Home secured loan" shall mean any loan that is secured by a consumer's principal dwelling other than a "residential mortgage transaction" as defined in Section 226.2(a)(24) of Regulation Z, 12 C.F.R. § 226.2(a)(24).

14. "Investigate a disputed amount" shall mean to conduct a good-faith investigation of a fee or charge that a borrower has disputed.

15. "Loan instruments" shall mean the mortgage, deed of trust and/or promissory note signed by a borrower to consummate his or her loan.

16. "Loan origination activities" shall mean extending business credit or consumer credit as those terms are defined by Sections 202.2(g) and (h) of Regulation B, 12 C.F.R. § 202.

17. "Loan servicing activities" or "servicing" shall mean receiving any payments from (or for) a borrower pursuant to the terms of any loan, including amounts for escrow accounts, and making the payments of principal and interest and such other payments with respect to the amounts received from (or for) the borrower as may be required pursuant to the terms of the loan. "Servicing" shall also include any related loan servicing activity such as the administration of loan accounts, sending periodic billing statements to a borrower, maintaining records of the status of the borrower's loan accounts, providing information to and resolving disputes with the borrower regarding loan accounts the collection of loan payments, the

foreclosure of real property or acceptance of a deed in lieu of foreclosure from the borrower, and the collection or imposition of fees in relation to any of the foregoing.

18. “Loan servicing records” shall mean full and complete LoanLedger, Mortgage Office or other accounting records that reasonably detail the loan origination and servicing history for a borrower.

19. “Monthly payment” shall mean a monthly or other periodic payment a consumer must make under the loan instruments to repay the loan principal, pay interest on the principal, and, if necessary, fund escrow accounts for insurance and/or real estate taxes or pay fees.

20. “Originating” or “making” a loan shall mean any step or process related to the lender’s decision to deny or to extend credit.

21. “Person” shall mean any individual, group, unincorporated association, limited or general partnership, corporation, trust, or other business entity.

22. “Property inspection” shall mean an inspection of the property securing a loan to determine the property’s physical condition and occupancy status.

23. “Releasees” means the Defendants and their agents, servants, employees, heirs, executors, administrators, successors, assigns, principals, general partners, limited partners, trustees, fiduciaries, and attorneys, and shall specifically include all trusts established by Thomas K. Nash; the Capital City Mortgage Corporation Profit Sharing Plan Trust; First Investment Annuity Company; Apple LLC, Balsam LLC, Cypress LLC, and Dogwood LLC; all members of Thomas K. Nash’s immediate family, including his parents, children, and wife; all investors in loans originated or serviced by Capital City; Leticia M. Watson, Stephen W. Kuhn, Charles H. Acker III, Alan W. Nash, Philip M. Musolino, Rena K. Schild, the law firm of Musolino & Dessel, Lawrence B. Bernard, Venable LLP, Marcia C. Fidis, Pasternak & Fidis, P.C., David F. Graling, Gelman, Rosenberg & Freedman; and their agents, servants, employees, heirs,

executors, administrators, successors, assigns, principals, general partners, limited partners, trustees, fiduciaries, and attorneys.

24. "TILA" shall mean the Truth In Lending Act, 15 U.S.C. §§ 1601-1666j, as amended, and its implementing Regulation Z, 12 C.F.R. § 226, as amended.

ORDER

INJUNCTIVE RELIEF

I.

IT IS THEREFORE ORDERED that Capital City is hereby permanently restrained and enjoined, in connection with originating any loan, from in any manner, directly or indirectly:

A. Misrepresenting, expressly or by implication, that material terms of a final offer of credit accepted by a borrower will be incorporated without change in that borrower's loan instruments;

B. Misrepresenting, expressly or by implication, the amount, nature, or terms of any fee or other condition or requirement of any loan; and

C. Failing to disclose clearly and conspicuously to each borrower at least three days before loan closing all fees and charges the borrower can be required to pay under the loan instruments unless the borrower signs a written consent agreeing to less time because of a bona fide financial emergency. This disclosure requirement is in addition to and not in lieu of any other disclosure that may be required under federal, state, or local law.

II.

IT IS FURTHER ORDERED that Capital City is hereby permanently restrained and enjoined, in connection with the servicing of any loan, from in any manner, directly or indirectly:

A. Misrepresenting, expressly or by implication, that any payment or fee due on a loan is allowed under the loan instruments or permitted by law;

B. Misrepresenting, expressly or by implication, the amount of any payment or fee due on a loan;

C. Misrepresenting, expressly or by implication, that Capital City will not attempt to take or take title to secured property while the borrower is complying with his or her obligations under the loan instruments;

D. Misrepresenting, expressly or by implication, the specific priority order in which a payment on a loan will be applied to the loan's principal, interest, escrow accounts, deferred amounts and fees;

E. Misrepresenting, expressly or by implication, that it will maintain accurate loan servicing records and will make these records available to borrowers; and

F. Representing, expressly or by implication, that the amount of a monthly payment or fee, charge, and/or loan payment that a borrower owes is accurate unless, at the time it makes the representation, it possesses and relies on competent and reliable evidence that substantiates any such representation.

III.

IT IS FURTHER ORDERED that Capital City is hereby permanently restrained and enjoined, in connection with the servicing of any loan, from in any manner, directly or indirectly:

A. Assessing and/or collecting any fee unless it is either for services actually rendered or a fee imposed for late payment or delinquency, and is: (1) expressly authorized, and clearly and conspicuously disclosed by the loan instruments and not prohibited by law; (2) expressly permitted by law and not prohibited by the loan instruments; (3) a reasonable fee for a specific service requested by a borrower that is assessed and/or collected only after clear and conspicuous disclosure of the fee is provided to the borrower and explicit consent is obtained from the borrower to pay the fee in exchange for the service, and such fee is not otherwise

prohibited by law or the loan instruments; or (4) a fee that Capital City or the borrower is required to pay by operation of law;

B. Charging a borrower: (1) interest on loan funds not yet disbursed to the borrower without the borrower's explicit consent; (2) interest on a fee for late payment when the late payment is also included in the principal balance on which periodic interest is calculated; (3) a late fee after the loan has been accelerated; or (4) real estate taxes and interest for any pre-settlement period without the borrower's explicit consent;

C. Attempting to take or taking title to secured property from a borrower while the borrower is complying with his or her obligations under the loan instruments. Capital City may only attempt to take or take title if it possesses and relies on competent and reliable evidence that substantiates that the borrower is not complying with his or her obligations under the loan instruments;

D. When the borrower agrees that Capital City will escrow for insurance, real estate taxes and/or other fees: (1) failing to require escrow amounts that will be sufficient to pay reasonably anticipated insurance premiums and/or real estate taxes without the borrower's explicit consent; (2) failing to make timely disbursements of escrow funds for insurance, real estate taxes, and other fees from escrow amounts that have been collected from the borrower; and (3) maintaining a balance (net of reasonably anticipated insurance premiums and real estate taxes in the insurance and real estate taxes escrow accounts respectively and net of actual current obligations of the borrower in all other escrow accounts) in any escrow account of more than one-sixth of the estimated amount of a borrower's estimated payments for insurance and real estate taxes for more than sixty (60) days without: (a) returning the balance to the borrower in cash or (b) with the borrower's explicit consent, applying the balance to the borrower's existing obligations;

E. When Capital City force places insurance on a borrower's property, failing: (1) to take reasonable actions to determine whether insurance is already in place; (2) to mail, at no cost to the borrower, at least two (2) clear and conspicuous notices of the procedures by which a borrower can demonstrate that the borrower already has insurance coverage and to provide at least thirty (30) days from the mailing (by first class mail) of the first notice and, after the thirty (30) day first notice period has expired, twenty (20) days from the mailing (by certified mail) of the second notice for the borrower to demonstrate coverage before charging the borrower the cost of force placed insurance; (3) to obtain the borrower's explicit consent to insurance coverage over the outstanding loan balance before charging the borrower the cost of force placed insurance coverage above the cost of insurance coverage in the amount of the borrower's outstanding loan balance; (4) to accept any reasonable form of confirmation from a borrower of existing insurance coverage, including verbal confirmation of the existing insurance policy number along with the identity of the insurance company or agent, in cases where force placed insurance is contemplated; and (5) within fifteen (15) days of receipt of confirmation of a borrower's existing insurance coverage, to request a refund from the insurance agency or company of all force placed insurance premiums paid during the overlapping coverage period, and to refund to the borrower any refunds received from the insurance agency or company and any related fees charged to the borrower's account during the overlapping coverage period. Nothing herein will prohibit foreclosure or legal action if a borrower has failed to obtain insurance or pay taxes; and

F. After a loan has been consummated: (1) increasing without the borrower's explicit consent the loan's principal amount for any reason, unless the increase is a construction loan disbursement, except that this section does not prohibit Capital City from charging compound interest, or (2) requiring additional security for a loan from a borrower, unless the

borrower and Capital City have agreed that the additional security is for the purpose of an increase in the principal amount of the loan.

IV.

IT IS FURTHER ORDERED that Capital City is hereby permanently restrained and enjoined, in connection with the servicing of any loan, from in any manner, directly or indirectly:

A. Failing to disburse loan proceeds to a borrower when the borrower has complied with terms of the loan instruments;

B. Failing to release a lien on property securing a loan within thirty (30) days of loan pay-off or as otherwise provided by law; and

C. Threatening to cause an impairment or clouding of the title to the property securing the loan or loss of the property for the purpose of requiring a borrower to pay amounts not due by operation of law or under the loan instrument. Capital City may only take such action if it possesses and relies on competent and reliable evidence that substantiates its action is allowed by both the operation of law and the loan instrument.

V.

IT IS FURTHER ORDERED that nothing in this Order shall permit Capital City to impose any fee or take any other action that is prohibited by any federal, state, or local law or regulation and/or prohibited by the loan instruments and/or other contractual agreement with the borrower.

VI.

IT IS FURTHER ORDERED that, in connection with offering or extending credit to consumers, Capital City is hereby permanently restrained and enjoined, from directly or indirectly:

- A. Failing to identify the creditor, if such failure is in violation of § 128 of the TILA, 15 U.S.C. § 1638, and § 226.18(a) of Regulation Z, 12 C.F.R. § 226.18(a);
- B. Stating a rate of finance charge without identifying the “annual percentage rate” or “APR,” if by its failure to identify the annual percentage rate or APR Capital City is in violation of § 144 of the TILA, 15 U.S.C. § 1644, and § 226.24(b) of Regulation Z, 12 C.F.R. § 226.24(b);
- C. Failing to make required TILA disclosures before consummating a consumer credit transaction, if such failure is in violation of §§ 121 and 128 of the TILA, 15 U.S.C. §§ 1631 and 1638, and §§ 226.17 and 226.18 of Regulation Z, 12 C.F.R. § 226.17 and 226.18;
- D. Failing to make required TILA disclosures in the required manner and form before consummating a consumer credit transaction if such failure is in violation of §§ 121 and 128 of the TILA, 15 U.S.C. §§ 1631 and 1638, and §§ 226.17 and 226.18 of Regulation Z, 12 C.F.R. §§ 226.17 and 226.18;
- E. Failing in a timely manner to make or correct certain “good faith” disclosures if such failure is in violation of § 226.19 of Regulation Z, 12 C.F.R. § 229.19;
- F. Understating the disclosed finance charge if such understatement is in violation of § 128 of the TILA, 15 U.S.C. § 1638, and § 226.18(d) of Regulation Z, 12 C.F.R. § 226.18(d);
- G. Overstating the amount financed if such overstatement is in violation of § 128 of the TILA, 15 U.S.C. § 1638, and § 226.18(b) of Regulation Z, 12 C.F.R. § 226.18(b);
- H. Understating the disclosed annual percentage rate if such understatement is in violation of § 128 of the TILA, 15 U.S.C. § 1638, and § 226.18(e) of Regulation Z, 12 C.F.R. § 226.18(e);
- I. Failing to disclose or to disclose accurately the “payment schedule” or the “total of payments,” including but not limited to failing to disclose a balloon payment, if such failure is

in violation of § 128 of the TILA, 15 U.S.C. § 1638, and § 226.18(g) and (h) of Regulation Z, 12 C.F.R. § 226.18(g) and (h);

J. Making disclosures that do not reflect accurately the legal obligation between the Parties by incorrectly disclosing any fees or penalties for late payments, if such incorrect disclosure is in violation of § 128 of the TILA, 15 U.S.C. § 1638, and § 226.17(c) of Regulation Z, 12 C.F.R. § 226.17(c);

K. Failing to include in the finance charge, as defined in Section 226.4 of Regulation Z, 12 C.F.R. § 226.4, reasonably anticipated fees and charges, including, but not limited to, courier fees, inspection fees and certified check fees if monthly payments are required to be made by certified check, if by failing to include such amounts in the finance charge, as defined in Section 226.4 of Regulation Z, 12 C.F.R. § 226.4, Capital City is in violation of the TILA. Notwithstanding the foregoing, the parties agree that for the purposes of this Order an estimate of two (2) inspection fees are reasonably anticipated inspection fees and charges. Both parties may file a motion to modify the immediately preceding sentence on the basis of statistical evidence; and

L. Failing to comply in any other respect with the TILA and Regulation Z, as amended, or as they may be amended in the future.

VII.

IT IS FURTHER ORDERED that, in connection with offering and extending credit to consumers, Capital City is hereby permanently restrained and enjoined, from directly or indirectly:

A. Misrepresenting the status of a Capital City employee as that of an independent attorney or third party debt collector or making any false or misleading representation in a communication with a borrower about the character, amount, or legal status of any payment due for the purpose of collecting a debt, if such misrepresentation is in violation of Section 807 of the FDCPA, 15 U.S.C. § 1692(e);

B. Collecting or attempting to collect any amount (including any interest or fee incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law, if such collection or collection attempt is in violation of Section 808(1) of the FDCPA, 15 U.S.C. § 1692f(1); and

C. Failing to comply in any other respect with the FDCPA, as amended, or as may be amended in the future.

VIII.

IT IS FURTHER ORDERED that, in connection with taking applications for credit or offering or extending credit, Capital City is hereby permanently restrained and enjoined, from directly or indirectly:

A. Failing to take a written application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, if such failure is in violation of § 202.5(e) of Regulation B, 12 C.F.R. § 202.5(e);

B. Taking a written application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit would be secured by the dwelling, but failing to do the following, if such failure is in violation of §§ 202.13(a), (b), and (c) of Regulation B, 12 C.F.R. §§ 202.13(a), (b), and (c):

1. request as part of the application the following information about the applicant(s):
 - a. race, using the categories American Indian or Alaska native; Asian; Black or African American; Native Hawaiian or Other Pacific Islander; or White;
 - b. ethnicity, using the categories Hispanic or Latino and Not Hispanic or Latino;
 - c. sex;
 - d. marital status, using the categories Married, Unmarried, and Separated; and
 - e. age;
2. list questions regarding race, ethnicity, sex, marital status, and age on the application form or on a separate form that refers to the application;
3. note the race, ethnicity and sex of the applicant(s) on the basis of visual observation or surname when the applicants chose not to provide the information or any part of it; or
4. inform the applicant(s) that:
 - a. the information regarding race, ethnicity, sex, marital status, and age is being requested by the federal government for the purpose of monitoring compliance with federal statutes that prohibit creditors from discriminating against applicants on those bases; or
 - b. if the applicant(s) chooses not to provide the information, the creditor is required to note the race, ethnicity, and sex of the applicant(s) on the basis of visual observation or surname;

C. Failing to provide applicant(s) for credit with written notification of adverse action on an application, if such failure is in violation of § 701(d) of the ECOA, 15 U.S.C. § 1691(d), and § 202.9(a) of Regulation B, 12 C.F.R. § 202.9(a);

D. Providing written notification of adverse action on an application for credit, but failing to provide the applicant(s) with: (1) the correct principal reasons for the action taken; or (2) the correct name and address of the federal agency that administers compliance with the ECOA with respect to Capital City, if such failure is in violation of § 701(d) of the ECOA, 15

U.S.C. § 1691(d), and §§ 202.9(a) and (b) of Regulation B, 12 C.F.R. §§ 202.9(a) and (b); and

E. Failing to comply in any other respect with the ECOA and Regulation B, as amended, or as they may be amended in the future.

IX.

ACCOUNTING RECORDS AND DISPUTE RESOLUTION

IT IS FURTHER ORDERED that Capital City shall, in connection with the servicing of any loan, provide borrowers with the following at no cost to the borrower for each loan that Capital City owns or services:

A. A monthly statement that clearly and conspicuously and in a timely manner: (1) accurately discloses the total amount of the next payment owed (including all outstanding fees) and itemizes each component thereof by amount, purpose, and status; (2) identifies the way in which the immediate prior payment by the borrower was applied to amounts due; (3) identifies by name, address, and telephone number the person to whom a borrower can dispute the amount of the payment or any component of it; and (4) establishes an informal dispute resolution procedure under which: (a) the borrower shall have eighteen (18) days from the mailing of a monthly statement to dispute any amount on the statement; (b) the borrower may dispute an amount in writing (by note, letter, fax, or email); and (c) if the borrower disputes an amount, Capital City shall investigate the disputed amount and respond to the borrower in writing within ten (10) days of notice of the disputed amount, fully explaining its reason for assessing the disputed amount, addressing any information provided by the borrower in disputing the amount, and, if Capital City agrees that the borrower's complaint is valid, informing the borrower of the adjustments Capital City has made to the borrower's loan servicing account with respect to the disputed amount. Until all the above steps of the informal dispute resolution procedure have been completed in full, Capital City shall not put the borrower's loan into default, assess late

fees, or initiate foreclosure proceedings solely due to nonpayment of a disputed amount. Neither a borrower's failure to dispute an amount nor Capital City's participation in this informal dispute resolution procedure waives any remedies that otherwise would be available to the borrower or Capital City;

B. An annual accounting of the status of the loan as of December 31st of each year to be provided by January 31st of the following year. This accounting shall include the following information for the preceding year: (1) an identification of amounts credited toward repayment of interest and principal; (2) identification of amounts credited to any other purpose such as late fees; and (3) the status of any escrow account, including, but not limited to: the purpose of the escrow account, *e.g.*, whether to pay the borrower's property taxes or insurance or for some other purpose; the amount the borrower must pay to keep the escrow account current; whether or not a deficit exists in the escrow account balance; and whether, when, for what purpose, and in what amounts Capital City has made payments from the escrow account;

C. At the borrower's request, accounting and loan servicing records sufficient to document any fee identified in subsections A or B above; and

D. At the borrower's request, a good faith estimate of the amount required to repay the loan in full, but such estimates are required to be provided without charge no more than two times in any twelve month period.

X.

FORMS

IT IS FURTHER ORDERED that Capital City will use as a basic form, to the greatest extent practicable, Fannie Mae or Freddie Mac standard loan forms or such other loan forms as shall become the mortgage industry standard in the future, including application forms,

promissory notes and mortgages or deeds of trust for consumer loans, as defined in the TILA, it originates for itself or others.

XI.

MONETARY PAYMENT

IT IS FURTHER ORDERED that:

A. Capital City agrees to pay to the Plaintiff Federal Trade Commission the amount of \$750,000 (Seven Hundred Fifty Thousand Dollars). On or before one year after the date of entry of this Order, Capital City shall wire three hundred and seventy-five thousand dollars (\$375,000) to the FTC or such agent as the FTC may direct, pursuant to instructions provided by the FTC. The remaining sum of three hundred and seventy-five thousand dollars (\$375,000) shall be payable to the FTC or such agent as the FTC may direct on or before two years after the entry date of this Order;

B. All sums paid pursuant to this Section shall be deposited into a fund administered by the FTC or its agent to be used for equitable relief, including, but not limited to, redress to borrowers and any attendant expenses for the administration of any redress fund. The FTC shall have sole discretion in choosing an independent administrator to administer any redress program. The FTC shall determine which borrowers are eligible for redress as well as the amounts to be paid. If the FTC determines in its sole discretion that direct redress to borrowers is wholly or partially impracticable or funds remain after redress is completed, the FTC in its sole discretion may apply the funds for such other equitable relief (including information remedies) as it determines to be reasonably related to Defendants' practices as alleged in the Complaint and First and Second Amended Complaints. Any funds not used for such equitable relief shall be deposited into the United States Treasury. Upon written request, the FTC will provide Defendants with a list of borrowers who received redress from the FTC,

along with the date and redress amount. The Defendants shall have no right to challenge the FTC's exercise of discretion with respect to the choice of remedies under this paragraph;

C. Upon entry of this Order, Capital City shall immediately deliver to the FTC a deed of trust executed by the owner(s) of the Pledged Property, in a form approved prior to the filing of this Order by Capital City and the FTC, securing the payment of the \$750,000 ordered in this Section and the Performance Fund, as ordered in Section XIV below. The FTC's interest will be a first deed of trust on the property listed in Appendix A or substituted security acceptable to the Commission ("Pledged Property") up to the amount of the Monetary Payment and the Performance Fund set forth in section XIV below. Capital City represents and acknowledges that the FTC is relying on its material representation that the value of the Pledged Property, or any asset subsequently substituted with the permission of the FTC, less encumbrances, liens and estimated selling costs, does and shall thereafter at all times exceed the combined amount of any portion of the \$750,000 still owed and the Performance Fund. Capital City agrees that, as of the date it signs this Settlement Agreement, Stipulated Injunction, Release, And Final Order, it shall not further encumber the Pledged Property with any liens that have prior or equal priority to the lien of the Federal Trade Commission. This section does not prohibit encumbering the Pledged Property with liens that are junior or subordinate to the FTC's lien, provided that the junior lienholder is informed of the existence and priority of the FTC's lien. The FTC agrees to release its lien to the extent of any payments made, monies disbursed, or attachments effected, pursuant to this section or section XIV, and such release shall be made within 30 days of any payment, distribution, or execution;

D. In the event that Capital City defaults on any obligation to make a payment set forth in this Order, the entire unpaid amount together with interest, computed pursuant to 28 U.S.C. § 1961(a) from the date of default to the date of payment, shall immediately become due

and payable. Notwithstanding any other provision of this Order, Capital City agrees that if it fails to meet any payment obligation set forth in this Order, it shall be liable for the costs and attorneys' fees incurred by Plaintiff, the FTC, or its agents in any attempts to collect amounts due pursuant to this Order; and

E. Capital City further agrees in any subsequent litigation filed by Plaintiff, the FTC, to enforce its rights pursuant to this Order, including but not limited to, a nondischargeability complaint in any subsequent bankruptcy case, Capital City shall not raise as a defense any challenge to or dispute with the allegations of the Complaint, or the First and Second Amended Complaints.

XII.

DATA

IT IS FURTHER ORDERED that to facilitate redress under Section XI above, the Commission will provide Capital City with: (1) a list of all borrowers whose loans were serviced by Capital City that are known to the Commission (the "FTC List") and (2) a designation of borrowers on the FTC List for whom the Commission's information for redress purposes is incomplete, including identifying the loan servicing records the Commission already has for these borrowers. For borrowers designated on the FTC List as incomplete and for borrowers not on the FTC List that are known to Capital City, Capital City shall provide the Commission or its agent, within sixty (60) days of receiving the designated FTC List, data for each loan that will include, but are not limited to: name of borrower(s), loan number, last known residential or billing address(es), address of security for the loan if different than residential address(es), last known residential and business telephone number(s), social security number(s), date of loan consummation, loan amount, monthly payment amount, date that the loan was terminated, sold or paid off, and amount recovered on the loan through payoff or foreclosure (collectively, the

“Capital City List”). At the same time, Capital City will also provide the Commission or its designated agent with loan servicing records the Commission does not already have for all borrowers on the “Capital City List.” If Capital City’s List and the loan servicing records are in electronic format, the information will be produced electronically in a manner that is usable by the Commission. The Commission may submit the FTC List to Capital City as soon as this Order is entered by the Court.

XIII.

BAN ON MAKING OR SERVICING HOME SECURED LOANS

IT IS FURTHER ORDERED that as of the date of entry of this Order, and continuing thereafter, Capital City, whether acting directly or indirectly through any persons or entities under its control, is permanently restrained and enjoined, from engaging, participating, or assisting in any manner or in any capacity whatsoever, whether directly or indirectly, in making and/or servicing any home secured loan, aside from the one home secured loan it is currently servicing.

XIV.

**PERFORMANCE FUND REQUIREMENT FOR
LOAN ORIGINATION AND SERVICING**

IT IS FURTHER AGREED that Capital City shall provide the FTC with Pledged Property (as defined in Section XI) that will secure the Performance Fund and the Monetary Payment, as ordered in Section XI. The terms and conditions of the Performance Fund are as follows:

A. During the term of the Performance Fund, the principal sum of the Performance Fund must at all times exceed \$350,000, less any distributions or payments made in satisfaction of any obligation made pursuant to subsection C below or Section XV below;

B. The Performance Fund shall be deemed continuous and remain in full force and effect for seven (7) years, beginning 30 days from the date of this Order. The Performance Fund shall provide surety thereunder for the benefit of the FTC or borrowers for payments required by subsection C below or Section XV below;

C. Should the FTC obtain in this Court, or a borrower alleging law violations substantially similar to those alleged in the Complaint and First and Second Amended Complaints in this matter obtain in any court, a final judgment against Capital City that includes monetary relief for violations substantially similar to those set out in sections I, II, III, IV, VI, VII, and VIII herein the assets securing the amount of the Performance Fund shall be liquidated to the extent necessary to pay that final judgment, unless the judgment is otherwise paid or satisfied. Under no circumstances may the Performance Fund be used for the payment of attorneys' fees or costs. Except as set forth in paragraph 6 of the Findings above, and except to the extent that the FTC has explicitly waived, compromised, or settled herein any claims to additional redress, nothing in this Order limits the rights of the FTC or a borrower to seek additional redress from a source of funds other than the Performance Fund;

D. The Performance Fund required pursuant to this Section is in addition to, and not in lieu of, any other bonds required by federal, state, or local law; and

E. Thirty (30) days after Capital City provides notice to the FTC that it has it has ceased engaging in any loan origination and/or servicing activities the FTC shall provide to the Defendants whatever documents are necessary to cancel any liens or other encumbrances in favor of the FTC other than those necessary to secure the Monetary Payment.

XV.

RIGHT TO REOPEN

IT IS FURTHER ORDERED that:

A. The FTC's agreement to, and the Court's approval of, this Order is expressly premised upon the truthfulness, accuracy, and completeness of the declaration of Alan W. Nash dated as of Defendants' signature date on this Order and the financial records attached thereto (designated collectively as the "Financial Statements"), which contain material information relied upon by the FTC in negotiating and agreeing to the terms of this Order. If, upon motion by the FTC, this Court should find that Capital City made a material misrepresentation or omitted material information concerning the value of any asset, or made any other material misrepresentation in or omission from the financial statements provided to the FTC, then the Court shall enter a modified judgment directing Capital City and/or the owner(s) of the Pledged Property to forfeit the Pledged Property to the Commission, or pay the Commission the fair market value of the Pledged Property. All amounts shall immediately be due and payable, and interest computed at the rate prescribed under 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance;

B. Capital City further agrees in any subsequent litigation filed by Plaintiff, the FTC, to enforce its rights pursuant to this Section, including but not limited to, a nondischargeability complaint in any subsequent bankruptcy case, Capital City shall not raise as a defense any challenge to or dispute with the allegations of the Complaint, or the First and Second Amended Complaints; and

C. Any proceedings instituted under this section are in addition to, and not in lieu of any other civil or criminal remedies as may be provided by law, including any other proceedings that the FTC may initiate to enforce this Order.

XVI.

COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Capital City shall: submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in its possession or direct or indirect control to inspect the business operation, provided that Capital City, after attempting to resolve a dispute without court action and for good cause shown, may file a motion with this Court seeking an order including one or more of the protections set forth in Fed.R.Civ.P. 26(c);

B. In addition, the Commission is authorized to monitor compliance with this Order by all other lawful means, including but not limited to the following:

1. obtaining discovery from any person, without further leave of court, using the procedures proscribed by Fed. R. Civ. P. 26, 30, 31, 33, 34, 36 and 45;
2. posing as consumers and suppliers to Capital City, Capital City's employees, or any other entity managed or controlled in whole or in part by Capital City, without the necessity of identification or prior notice; and

C. Capital City shall permit representatives of the Commission to interview any employee, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to conduct subject to this Order. The person interviewed may have counsel present. Provided, however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the

meaning of 15 U.S.C. § 45(a)(1), provided that such acts have occurred after the date of entry of this Settlement Agreement, Stipulated Injunction, Release, And Final Order.

XVII.

COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order, Capital City shall notify the Commission of any changes in corporate structure of Capital City that may affect compliance obligations arising under this Order, including, but not limited to: a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; the filing of a bankruptcy petition; or a change in the corporate name or address, at least thirty (30) days prior to such change, provided that, with respect to any proposed change about which Capital City learns less than thirty (30) days prior to the date such action is to take place, Capital City shall notify the Commission as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Order, Capital City shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form it has complied and is complying with this Order. This report shall include, but not be limited to:

1. A copy of each acknowledgment of receipt of this Order, obtained pursuant to Section XXI;
2. Any other changes required to be reported under subparagraph A of this Section;

C. For the purposes of this Order, Capital City shall, unless otherwise directed by the Commission's authorized representatives, mail all written notifications to the Commission to:

Associate Director for Financial Practices
Federal Trade Commission
600 Pennsylvania Avenue, N.W., NJ-3158
Washington, D.C. 20580
Re: FTC v. Capital City Mortgage Corp. et al, No. 98-CV-237
(GK/AK); and

D. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with the general counsel for Capital City.

XVIII.

RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, Capital City is hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting and loan servicing activity records that reflect:
1. for each loan serviced by Capital City, payments by borrowers of fees and charges assessed and the allocation of payments to principal, interest, escrows and other fees and charges; and
 2. for each investor in a loan serviced by Capital City, general ledgers and other records of revenues received and expenses incurred;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity relating to loan servicing or origination by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if such termination related to any acts that are believed to be in violation of this order;
- C. Files containing the names, addresses, phone numbers of borrowers, dollar amount for loans and loan servicing records to the extent such information is obtained in the

ordinary course of business;

D. Complaints in lawsuits or administrative actions, or pursuant to the informal dispute resolution process set forth in this Order (whether received directly, indirectly or through any third party) and any responses to those complaints or disputes, and any resolution pursuant to Section IX;

E. Copies of all training materials and policy manuals; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order, required by Section XXI, and all reports submitted to the FTC pursuant to Section XVI and XVII.

XIX.

DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order:

A. Capital City must deliver a copy of this Order to all of its principals, officers, directors, and managers. Capital City also must deliver copies of this Order to all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Order. For current personnel, delivery shall be within (5) days of service of this Order upon Capital City. For new personnel, delivery shall occur prior to them assuming their responsibilities; and

B. Capital City must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

XX.

TAX IDENTIFICATION NUMBER

IT IS FURTHER ORDERED that the Defendants shall, in accordance with 31 U.S.C. § 7701, furnish to the FTC their taxpayer identification number (social security number or employee identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of its relationship with the government.

XXI.

ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that within five (5) business days of receipt of this Order as entered by the Court, Capital City and Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust, Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash, and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, must each submit to the FTC a truthful sworn statement acknowledging receipt of this Order.

XXII.

RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

The Federal Trade Commission and Defendants Capital City, and Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, by their respective counsel, hereby consent to the terms and conditions of the Order as set forth and consent to the entry thereof.

FOR THE FEDERAL TRADE COMMISSION

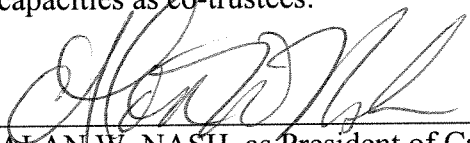
By: JOEL WINSTON
Associate Director for Financial Practices



BRADLEY H. BLOWER D.C. Bar No. 421112
SANDRA M. WILMORE D.C. Bar No. 170738
ALAIN SHEER D.C. Bar No. 411092
Attorneys
Federal Trade Commission
601 New Jersey Avenue, N.W., NJ-3158
Washington, D.C. 20580
Telephone: (202) 326-2646

The Federal Trade Commission and Defendants Capital City, and Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, by their respective counsel, hereby consent to the terms and conditions of the Order as set forth and consent to the entry thereof.

FOR DEFENDANTS Capital City, and Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees:

By: 
ALAN W. NASH, as President of Capital City Mortgage Corporation, and in his capacity as Trustee of the Thomas K. Nash Family Trust

By: _____
MARCIA C. FIDIS, in her capacity as personal representative of the Estate of Thomas K. Nash and Co-Trustee of the Nash Marital Trust Under Will of Thomas K. Nash

By: _____
CAROLINE KOESTNER NASH, in her capacity as Co-Trustee of the Nash Marital Trust Under Will of Thomas K. Nash

The Federal Trade Commission and Defendants Capital City, and Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, by their respective counsel, hereby consent to the terms and conditions of the Order as set forth and consent to the entry thereof.

FOR DEFENDANTS Capital City, and Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees:

By:

ALAN W. NASH, as President of Capital City Mortgage Corporation, and in his capacity as Trustee of the Thomas K. Nash Family Trust

Date: 11-29-04

By:

Marcia C. Fidis
MARCIA C. FIDIS, in her capacity as personal representative of the Estate of Thomas K. Nash and Co-Trustee of the Nash Marital Trust Under Will of Thomas K. Nash

By:

CAROLINE KOESTNER NASH, in her capacity as Co-Trustee of the Nash Marital Trust Under Will of Thomas K. Nash

The Federal Trade Commission and Defendants Capital City, and Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, by their respective counsel, hereby consent to the terms and conditions of the Order as set forth and consent to the entry thereof.

FOR DEFENDANTS Capital City, and Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees:

By:

ALAN W. NASH, as President of Capital City Mortgage Corporation, and in his capacity as Trustee of the Thomas K. Nash Family Trust

By:

MARCIA C. FIDIS, in her capacity as personal representative of the Estate of Thomas K. Nash and Co-Trustee of the Nash Marital Trust Under Will of Thomas K. Nash

By:



CAROLINE KOESTNER NASH, in her capacity as Co-Trustee of the Nash Marital Trust Under Will of Thomas K. Nash

The Federal Trade Commission and Defendants Capital City, and Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash and Marcia C. Fidis and Caroline Koestner Nash, in their capacities as co-trustees, by their respective counsel, hereby consent to the terms and conditions of the Order as set forth and consent to the entry thereof.

COUNSEL FOR Defendants Capital City, and Marcia C. Fidis, in her capacity as personal representative of the Estate of Thomas K. Nash, and Relief Defendants Thomas K. Nash Family Trust and Alan W. Nash in his capacity as trustee, and Nash Marital Trust Under Will of Thomas K. Nash, and Marcia C. Fidis and Caroline Koestner Nash, in their capacity as co-trustees.

By:



PHILIP M. MUSOLINO D.C. Bar No. 294652
Musolino & Dessel
1615 L Street, N.W., Suite 440
Washington, D.C. 20036
Telephone: (202) 466-3883

By:



LAWRENCE B. BERNARD D.C. Bar No. 181636
Venable LLP
575 7th Street, N.W.
Washington, D.C. 20004-1601
Telephone: (202) 344-4854

VACATUR OF ORDERS

IT IS FURTHER ORDERED this Court's order of April 29, 2002, as modified by the Order of May 1, 2002, is hereby vacated.

IT IS SO ORDERED.

Dated: _____

Gladys Kessler, JUDGE

copies to:

Lawrence B. Bernard
Venable, LLP
557 7th St., N.W.
Washington, D.C. 20004

Philip M. Musolino
Rena Schild
Musolino & Dessel
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Suite 440
Washington, D.C. 20036

Charles H. Acker, III, Esquire
Capital City Mortgage Corporation
1223 11th Street, N.W.
Washington, D.C. 20001

Bradley H. Blower
Alain Sheer
Sandra Wilmore
Federal Trade Commission
Bureau of Consumer Protection
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

**APPENDIX A TO SETTLEMENT AGREEMENT,
STIPULATED INJUNCTION, RELEASE, AND FINAL ORDER**

2100 Fendall Street, S.E., Washington, D.C., known for taxation purposes as
Square 5778, Lot 0157.