

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO.: 8:13-cv-1647-T-23TGW

MORTGAGE INVESTORS  
CORPORATION OF OHIO, INC.,

Defendant.

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**ORDER**

The United States sues (Doc. 1) and alleges violations of Sections 13(b), 19, and 16(a)(1) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. §§ 53(b), 57b, and 56(a)(1). The parties move for a stipulated judgment and permanent injunction. The motion (Doc. 2) is **GRANTED**.

**FINDINGS**

The complaint alleges that Mortgage Investors Corporation of Ohio, Inc., participated in deceptive and unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, the Telemarketing Sales Rule (TSR), 16 C.F.R. Part 310, and the Mortgage Acts and Practices - Advertising Rule (MAP Rule), 16 C.F.R. Part 321, codified as Mortgage Acts and Practices (Regulation N), 12 C.F.R.

Part 1014, while telemarketing, advertising, marketing, promoting, offering for sale, or selling mortgage credit products. Except as specifically stated in this order, Mortgage Investors neither admits nor denies the allegations of the complaint. For the purpose of this action, Mortgage Investors admits the facts necessary to establish personal jurisdiction. Mortgage Investors waives any claim under the Equal Access to Justice Act, 28 U.S.C. § 2412, about the prosecution of this action through the day of this order and agrees to bear its own costs and attorney fees.

#### **DEFINITIONS**

"Assisting others" includes, but is not limited to, (a) performing customer service functions, including receiving or responding to consumer complaints; (b) formulating or providing, or arranging for the formulation or provision of, commercial communication about a mortgage credit product; and (c) providing names of, or assisting in the generation of, potential customers.

"Commercial Communication" means a written or oral statement, illustration, or depiction designed to effect a sale or to create an interest in purchasing goods or services, whether the Commercial Communication appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, on-hold

script, upsell script, training material provided to telemarketing firms, program-length commercial (infomercial), the internet, cellular network, or any other medium.

"Mortgage Investors" means Mortgage Investors Corporation of Ohio, Inc., whether doing business as Mortgage Investors Corporation, AmeriGroup Mortgage Corporation, Veterans Information Department, Veterans Home Loans, or another assumed name, and the successor or assign of any of the above.

"Do Not Call Request" means a person's statement that he or she wishes neither to receive telephone calls initiated to induce the purchase of a good or a service nor to receive telephone calls initiated to solicit charitable contributions.

"Entity-Specific Do Not Call List" means a list of telephone numbers created to comply with Do Not Call Requests.

"Established Business Relationship" means a relationship between the seller and a person based on (a) the person's purchase, rental, or lease of the seller's goods or services or a financial transaction between the person and seller within eighteen months immediately preceding the telemarketing call or (b) the person's inquiry or application regarding a product or service offered by the seller within three months immediately preceding a telemarketing call.

"Express Agreement to Call" means a written agreement that has not been rescinded by the consumer and that clearly evidences the consumer's consent to receive calls made by or on behalf of a specific party and contains both the telephone number to which calls may be placed and the consumer's signature (which may

include an electronic or a digital signature, if state or federal law recognizes the form of signature).

"Mortgage Credit Product" means a form of credit secured by real property or a dwelling and offered or extended to a consumer primarily for personal, family, or household purposes.

"National Do Not Call Registry" means the National Do Not Call Registry maintained by the Federal Trade Commission (Commission) under 16 C.F.R. § 310.4(b)(1)(iii)(B).

"Outbound Telephone Call" means a telephone call initiated by a telemarketer to induce the purchase of a good or a service or to induce a charitable contribution.

"Person" means any natural person, organization, or other legal entity, and includes a corporation, partnership, proprietorship, association, co-operative, or other business entity.

"Telemarketing" means a plan, program, or campaign involving more than one interstate phone call and conducted either to induce the purchase of a good or a service or to induce a charitable contribution.

#### **PROHIBITION AGAINST ABUSIVE TELEMARKETING PRACTICES**

Mortgage Investors; Mortgage Investors' officers, agents, servants, employees, and attorneys; and any other person in active concert or participation in connection with telemarketing, who receive actual notice of this order, are enjoined from:

A. Denying or interfering with a person's right to be placed on an Entity-Specific Do Not Call List (1) by failing to place on an Entity Specific Do Not Call List the telephone number of any person who makes a Do Not Call Request or (2) by requiring any person who makes a Do Not Call Request to repeat the request to a sales manager or other person who attempts to deliver a sales solicitation before complying with the request;

B. Initiating an Outbound Telephone Call to a person who made a Do Not Call Request;

C. Initiating an Outbound Telephone Call to a telephone number on the National Do Not Call Registry unless (1) Mortgage Investors has obtained an Express Agreement to Call the number listed with the National Do Not Call Registry or (2) Mortgage Investors has an Established Business Relationship with the person and that person has not made a Do Not Call Request to Mortgage Investors; or

D. Aiding or abetting another's accomplishing the acts prohibited in paragraphs A through C of this section.

### **PROHIBITION AGAINST MISREPRESENTATIONS**

Mortgage Investors; Mortgage Investors' officers, agents, servants, employees, and attorneys; and any other person in active concert or participation who receive actual notice of this order are enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication, a material fact while advertising,

marketing, promoting, offering for sale, or selling a Mortgage Credit Product. A material fact includes (1) a term or rate for a Mortgage Credit Product; (2) the closing cost or fee of a Mortgage Credit Product; (3) any savings associated with the Mortgage Credit Product or the length of time that the savings will be available; (4) the variability of interest, payments, or another term of a Mortgage Credit Product; (5) a comparison of a rate or payment for a term that is less than the full term of the Mortgage Credit Product; (6) an association of the Mortgage Credit Product or the provider of the product with any other person or program, including misrepresenting that a Mortgage Credit Product or the provider of that Mortgage Credit Product is affiliated with a governmental entity, including the U.S. Department of Veterans Affairs.

#### **CIVIL PENALTY**

Mortgage Investors is ordered to pay the judgment to the Treasurer of the United States. Mortgage Investors must pay within fourteen days after entry of the judgment and by an electronic-fund transfer in accord with instruction provided by the United States or the Commission.

#### **ADDITIONAL MONETARY PROVISIONS**

Mortgage Investors relinquishes dominion and all legal and equitable right, title, and interest in the assets transferred under this order and may not seek the

return of an asset. In a subsequent civil litigation by or on behalf of the United States or the Commission to enforce the right to a payment or judgment under this order, the facts alleged in the complaint will be accepted without further proof. Mortgage Investors' must submit the applicable 31 U.S.C. § 7701 Taxpayer Identification Number (Employer Identification Number) to the Commission, which may use the number for collecting and reporting a delinquent amount.

### **ORDER ACKNOWLEDGMENTS**

Within seven days after entry of this order, Mortgage Investors must submit to the Commission a sworn acknowledgment of receipt of this order.

For five years after entry of this order, Mortgage Investors must deliver a copy of this order (1) to all principals, officers, directors, managers, and members; (2) to all employees, agents, and representatives who participate in the telemarketing, advertising, marketing, promoting, offering for sale, or selling of a Mortgage Credit Product; and (3) to any business entity resulting from any change in structure as set forth in the section titled "Compliance Reporting." Delivery must occur within fourteen days of entry of this order for current personnel. For all others, delivery must occur before the others assume responsibility.

From each individual or entity to which Mortgage Investors delivers a copy of this order, Mortgage Investors must obtain within thirty days a signed and dated acknowledgment of receipt of this order.

## COMPLIANCE REPORTING

A year after entry of this order, Mortgage Investors must submit a compliance report, sworn under penalty of perjury, (1) identifying the primary physical, postal, and e-mail address and telephone number, which the Commission and the United States may use to communicate with Mortgage Investors; (2) identifying Mortgage Investors' businesses by their names, telephone numbers, and physical, postal, e-mail, and internet addresses; (3) describing the activities of each business, including each good and service offered and the means of advertising, marketing, and selling; (4) describing whether and how Mortgage Investors complies with each section of this order; and (5) providing a copy of each order acknowledgment required by this order, unless the acknowledgment was previously submitted to the Commission.

For ten years after entry of this order, Mortgage Investors must submit a sworn compliance notice within thirty days of a change in (1) a designated point of contact or (2) the structure of Mortgage Investors or an entity that Mortgage Investors owns controls that may affect a compliance obligation under this order.

Mortgage Investors must submit to the Commission a notice of the filing of a bankruptcy petition, insolvency proceeding, or a similar proceeding by or against Mortgage Investors within thirty days of the filing.

A submission to the Commission required by this order to be sworn under penalty of perjury must comply with 28 U.S.C. § 1746 by concluding, "I declare under penalty of perjury under the laws of the United States of America that the



foregoing is true and correct. Executed on \_\_\_\_\_." The submission must include the date, signatory's full name, title, and signature.

Unless otherwise directed by the Commission in writing, a submission to the Commission must be e-mailed to DEbrief@ftc.gov or sent by overnight courier to the Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin, "U.S. v. Mortgage Investors Corporation of Ohio, Inc., Matter No. 1223084."

### **RECORDKEEPING**

Mortgage Investors must create the below records for ten years after entry of this order and must retain each record for five years after the record's creation. Specifically, for Telemarketing or a Commercial Communication about a Mortgage Credit Product, Mortgage Investors must create and retain (1) accounting records showing the revenue from goods or services sold, the cost incurred in generating the revenue, and the resulting net profit or loss; (2) for each person (whether an employee or otherwise) providing services, personnel records showing the person's name, addresses, telephone numbers, job title, dates of service, and (if applicable) the reason for termination; (3) records of each consumer complaint, whether received directly or indirectly, and any response to the complaint; (4) records necessary to demonstrate full compliance with each provision of this order, which provisions include each

required submission to the Commission; and (5) a copy of each unique Commercial Communication about a Mortgage Credit Products.

### **COMPLIANCE MONITORING**

Within thirty days of receipt of a reasonable written request from a representative of the Commission or the United States, Mortgage Investors must (1) submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; (2) appear for depositions; and (3) produce documents for inspection and copying. The Commission and the United States are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Rules 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69, Federal Rules of Civil Procedure.

For matters concerning this order, the Commission and the United States are authorized to communicate directly with Mortgage Investors through its General Counsel or, if Mortgage Investors has no General Counsel, with any of Mortgage Investors' executive officers. Mortgage Investors must permit representatives of the Commission and the United States to interview any employee or other person affiliated with Mortgage Investors who has agreed to such an interview. The person interviewed may have counsel present.

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Jurisdiction is retained to construe, modify, and enforce this injunction. The Clerk is directed (1) to enter as a civil penalty a judgment in favor of the United States and against Mortgage Investors Corporation of Ohio, Inc., for \$7,500,000; (2) to terminate any pending motion; and (3) to close the case.

ORDERED in Tampa, Florida, on July 17, 2013.



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STEVEN D. MERRYDAY  
UNITED STATES DISTRICT JUDGE