

United States District Court, Northern District of Illinois

file

Name of Assigned Judge or Magistrate Judge	James B. Zagel	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 5078	DATE	11/20/2003
CASE TITLE	F.T.C. vs. OSI FINANCIAL		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

- (1) Filed motion of [use listing in "Motion" box above.]
- (2) Brief in support of motion due _____.
- (3) Answer brief to motion due _____, Reply to answer brief due _____.
- (4) Ruling/Hearing on _____ set for _____ at _____.
- (5) Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (6) Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
- (7) Trial[set for/re-set for] on _____ at _____.
- (8) [Bench/Jury trial] [Hearing] held/continued to _____ at _____.
- (9) This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
 - FRCP4(m) Local Rule 41.1 FRCP41(a)(1) FRCP41(a)(2).
- (10) [Other docket entry] **Joint motion for entry of consent decree is granted. Enter consent decree.**
- (11) [For further detail see order attached to the original minute order.]

<input type="checkbox"/>	No notices required, advised in open court.	U.S. DISTRICT COURT CLERK DEC -2 AM 7:18 FILED TO 10	number of notices	Document Number
<input type="checkbox"/>	No notices required.		DEC 02 2003 <small>Date Docketed</small>	H4
<input type="checkbox"/>	Notices mailed by judge's staff.		<i>Cyr</i> <small>docketing deputy initials</small>	
<input type="checkbox"/>	Notified counsel by telephone.		<small>date mailed notice</small>	
<input checked="" type="checkbox"/>	Docketing to mail notices.		<small>mailing deputy initials</small>	
<input type="checkbox"/>	Mail AO 450 form.			
<input type="checkbox"/>	Copy to judge/magistrate judge.			
<input type="checkbox"/>	courtroom deputy's initials			
<input type="checkbox"/>	DW			

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION)

and)

STATE OF ILLINOIS, ex rel.)
Attorney General LISA MADIGAN,)

Plaintiffs,)

v.)

OSI FINANCIAL SERVICES, INC.,)
an Illinois corporation, and)

MARK DIAMOND,)
individually and as an officer of)
OSI Financial Services, Inc.)

Defendants.)

Civil Action No. 02-C-5078

DOCKETED
DEC 02 2003

CONSENT DECREE

Plaintiffs, the Federal Trade Commission ("Commission" or "FTC") and the State of Illinois, have filed a complaint for a permanent injunction and other equitable relief pursuant to Sections 5(a)(1) and 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1) and 53(b), and Sections 7 and 10 of the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"), 815 ILCS 505/7 and 10, charging OSI Financial Services, Inc. ("OSI") and Mark Diamond ("Diamond") with deceptive acts and practices relating to Defendants' activities in connection with the soliciting and offering of credit. The Complaint alleges that Defendants' deceptive acts and practices violate Section 5(a) of the FTC Act, 15

44

U.S.C. § 45(a), and Section 505/2 of the ICFA, 815 ILCS 505/2.

The Plaintiffs and Defendants, having been represented by counsel and acting by and through such counsel, have consented to the entry of this Consent Decree ("Decree") without a trial or adjudication of any issue of law or fact herein. The Defendants have not admitted any violation of law, and entry of this Decree is not an admission of any law violation.

NOW, THEREFORE, the Plaintiffs and Defendants, having requested the Court to enter this Decree, it is **ORDERED, ADJUDGED, AND DECREED** as follows:

FINDINGS

1. This Court has jurisdiction over Defendants and the subject matter of this action. Venue in the Northern District of Illinois is proper.
2. The Complaint states a claim upon which, if proven, relief may be granted against Defendants under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), as amended, and under Section 2 of the ICFA, 815 ILCS 505/2.
3. Plaintiff Federal Trade Commission has the authority under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b), to seek the relief it has requested. Plaintiff State of Illinois has the authority under Sections 7 and 10 of the ICFA, 815 ILCS 505/7 and 10, to seek the relief it has requested.
4. The alleged activities of Defendants are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
5. Defendants, without admitting the allegations set forth in the Complaint, agree to entry of this Decree.
6. The parties shall each bear their own costs and attorneys' fees incurred in this

action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, and all rights to seek judicial review, or otherwise to challenge the validity of this Decree.

7. Entry of this Decree is in the public interest.

DECREE

DEFINITIONS

8. For purposes of this Decree, the following definitions shall apply:
 - a. "balloon loan" shall mean a loan that involves a payment schedule with regular monthly payments of principal and/or interest that are approximately equal in value and a final payment that is substantially larger than the other payments;
 - b. "balloon payment" shall mean the final payment on a balloon loan;
 - c. "brokering" shall mean engaging in the solicitation, origination, negotiation, or referral of a loan for consumers for a fee, commission or other valuable consideration;
 - d. "change date" shall mean the date on which the interest rate changes on an adjustable rate mortgage loan;
 - e. "credit" shall mean the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment;
 - f. "Defendant OSI" or "OSI" shall mean OSI Financial Services, Inc., an Illinois corporation, and its successors and assigns, by whatever names they might be known;
 - g. "Defendant Diamond" or "Diamond" shall mean Mark Diamond,

- individually and as an officer of OSI and any entity through which he does business;
- h. unless otherwise specified, the term "Defendants" shall mean, collectively, OSI and Diamond, and each of them, by whatever names each might be known;
 - i. "document" is defined as provided in Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term;
 - j. "fees" shall mean any charge imposed as an incident to or a condition of the extension of credit (except interest), including but not limited to origination fees, points, mortgage broker fees, settlement fees, and document preparation fees.
 - k. "loan consummation" shall mean the time the consumer becomes contractually obligated on the loan transaction (i.e, the time of closing and not the date the rescission period expires);
 - l. "mortgage loan" shall mean an extension of credit secured by real property; and
 - m. "person" shall mean any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

SCOPE OF DECREE

9. This Decree resolves only those claims alleged in the Complaint against the named Defendants and does not preclude the Commission or the State of Illinois from initiating further action or seeking any remedy against any other persons, including without limitation persons who may be subject to portions of this Decree by virtue of actions taken in concert or participation with Defendants and persons in any type of indemnification or contractual relationship with Defendants.

PROHIBITED BUSINESS ACTIVITIES

I.

IT IS THEREFORE ORDERED that Defendants OSI and Diamond, and each of them, their successors, assigns, officers, agents, employees, representatives, and all other persons or entities in active concert or participation with them who receive actual notice of this Decree by personal service or otherwise, are hereby permanently restrained and enjoined, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, marketing, solicitation, brokering, origination, closing, offering for sale, or sale of any loan or other extension of credit, from making any misrepresentation, expressly or by implication, about the terms, costs, or other conditions of any loan or other extension of credit, including but not limited to, misrepresenting:

- (A) the payment schedule of the loan;
- (B) the existence, nonexistence, or terms of any balloon payment, or the amount of principal that must be paid off at the end of the loan term;
- (C) the monthly payment amount, interest rate, annual percentage rate, finance charge,

loan amount, loan term, or any other term of repayment;

- (D) the amount of cash to be disbursed to the borrower out of the loan proceeds, or the amount of cash to be disbursed on behalf of the borrower to any third parties, including creditors or home improvement companies;
- (E) that the loan does not have a prepayment penalty;
- (F) that the interest rate of the loan is fixed rather than adjustable or adjustable rather than fixed; and
- (G) that the monthly payment amount includes the payment into an escrow account for property taxes and/or insurance.

OTHER EQUITABLE RELIEF

II.

IT IS FURTHER ORDERED that, in every transaction in which a Defendant offers the consumer a mortgage loan on behalf of any lender, Defendant shall furnish a disclosure substantially similar to the notice set forth in **Appendix A** ("Disclosure Statement") and a consumer education brochure to the consumer. The Disclosure Statement shall be mailed, at no cost to the consumer, either by certified mail, at least five (5) calendar days before loan consummation, or by overnight mail, at least three (3) calendar days before loan consummation. The Disclosure Statement shall be set forth in a clear and conspicuous manner, in 100% black ink against a white background, on a single page. The Disclosure Statement shall be printed in 14-point type or larger, in Times New Roman or a similar font. For any consumer where Defendant(s) have reason to believe that the consumer's primary language is Spanish, the Disclosure Statement shall be furnished in Spanish and English. The consumer education

brochure shall be the FTC's brochure entitled "Need A Loan? Think Twice About Using Your Home as Collateral," as posted on the FTC's Web site in pdf format, or another similar brochure designated by the FTC. Defendant shall retain a copy of each Disclosure Statement and proof of delivery for five (5) years from the date of loan consummation.

III.

IT IS FURTHER ORDERED that Defendants OSI and Diamond, and each of them, their successors, assigns, officers, agents, employees, representatives, and all other persons or entities in active concert or participation with them who receive actual notice of this Decree by personal service or otherwise, are hereby permanently restrained and enjoined, directly or through any corporation, subsidiary, division, or other device, from conducting any loan closing. Defendants shall ensure that an independent settlement agent conducts the closing for each loan that they broker. Defendants shall pay any cost imposed for the settlement agent to conduct the closing at the consumer's home, if the consumer so chooses.

IV.

IT IS FURTHER ORDERED that, for a period of three (3) years from the entry of this Decree, Defendants OSI and Diamond, and each of them, their successors, assigns, officers, agents, employees, representatives, and all other persons or entities in active concert or participation with them who receive actual notice of this Decree by personal service or otherwise, are hereby permanently restrained and enjoined, directly or through any corporation, subsidiary, division, or other device, from brokering, originating, closing, offering for sale, or selling any mortgage loan unless Defendants, or their agents, tape record the loan closing, preserve the tape for three (3) years and provide such tapes to the FTC or FTC staff upon request. The tape

recording shall meet the following requirements:

- (A) the tape recording shall reflect the entirety of the loan closing and any other conversations about loan terms on the day of the loan closing;
- (B) the tape recording shall clearly reflect the consumer's agreement to tape record the loan closing. If the consumer does not agree to the tape recording, the consumer's objection shall be recorded and the taping should be terminated; and
- (C) Defendants shall direct that the tape recording includes clear, complete, and understandable oral disclosures by the closing agents of all the material terms of the loan. Material terms include, but are not limited to:
 - (1) the interest rate on the loan;
 - (2) the annual percentage rate on the loan;
 - (3) the regular monthly payment amount;
 - (4) whether the loan contains a balloon payment, the date of the balloon payment, and the amount of the balloon payment;
 - (5) whether the loan has an adjustable interest rate, the first change date, the frequency of subsequent change dates, the maximum interest rate increase on any single change date, the maximum interest rate, and the minimum interest rate;
 - (6) whether the monthly payment includes payment into an escrow account for property taxes and/or insurance;
 - (7) the total amount of all fees, and the mortgage broker fee;
 - (8) the amount of cash disbursed to the consumer;

- (9) the amount of cash disbursed on behalf of the consumer to any third parties, including creditors or home improvement companies;
- (10) whether the loan contains a prepayment penalty, the length of the prepayment penalty, and the cost to the consumer if the consumer refinances or pays off the loan prior to the prepayment expiration date;
- (11) notifying the consumer of his/her right to cancel the loan within 3 days;
and
- (12) the date of the tape recording.

CONSUMER REDRESS

V.

IT IS FURTHER ORDERED that Judgment is entered in favor of the Plaintiffs and against Defendants Diamond and OSI, jointly and severally, in the amount of \$270,000 as restitution. Defendants shall wire transfer the sum of \$270,000 into an escrow account designated by the FTC, on or before five (5) calendar days after entry of this Decree. The funds paid pursuant to this Paragraph shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including but not limited to consumer redress and any attendant expenses for the administration of any redress fund. The Commission shall have sole discretion in choosing an independent administrator to administer the consumer redress plan. The FTC, in consultation with the State of Illinois, together shall have sole discretion to determine which consumers are eligible for redress as well as the amounts to be paid. In the event that direct redress to consumers is wholly or partially impracticable or funds remain after redress is completed, the Plaintiffs may apply any remaining funds for such other equitable relief

(including consumer information remedies) as they determine to be reasonably related to Defendants' practices alleged in the complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendants shall have no right to challenge the Plaintiffs' choice of remedies under this Paragraph.

VOLUNTARY CONTRIBUTION

VI.

Defendant agrees to make payment to the Illinois Attorney General "Court Ordered and Voluntary Compliance Payment Projects Fund" in the amount of Five Thousand Dollars (\$5,000.00) (U.S. Dollars). Payment shall be by wire transfer or in the form of a cashier's or certified check made payable to the "Attorney General Court Ordered and Voluntary Compliance Payment Projects Fund" and shall be delivered to the Attorney General or his agent, on or before five (5) calendar days after signing this Decree. The Attorney General shall cause this payment to be deposited in the Fund, and it shall be used by the Illinois Attorney General for law enforcement activity and consumer education programs associated with the enforcement of the Consumer Fraud Act. Defendant shall not be entitled to further accounting regarding the money deposited into the Court Ordered Fund.

VII.

Notwithstanding any other provision of this Decree, Defendants agree that if they fail to meet the payment obligations set forth in this Decree, Defendants shall pay the costs and attorneys' fees incurred by the Plaintiffs and their agents in any attempts to collect amounts due pursuant to this Decree. Defendants further agree that the facts as alleged in the Complaint filed in this action shall be taken as true in any subsequent litigation filed by the Plaintiffs to enforce

their rights pursuant to this Decree, including but not limited to, a nondischargeability complaint in any subsequent bankruptcy proceeding.

VIII.

In the event of any default in payment, interest as computed under 28 U.S.C. § 1961 shall accrue on the amount still due from the date of default until the date of payment.

IX.

IT IS FURTHER ORDERED that Defendants, and each of their successors and assigns, are hereby required, in accordance with 31 U.S.C. § 7701, to furnish to the Commission each of their taxpayer identifying number(s) (social security number(s) or employer identification number(s)), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of such person's or entity's relationship with the government.

X.

IT IS FURTHER ORDERED that Defendants will provide the Commission and/or its designated agent with loan data in the Defendants' possession concerning consumers who obtained loans from Defendants, from January 1, 1998 to July 1, 2003, that may be needed to provide redress to consumers. Such data include, but are not limited to: name of borrower, last known address, any telephone number(s) in Defendants' possession, social security number, date of loan consummation, loan amount, amount of broker fees, monthly payment amount, number of payments, interest rate, and whether the interest rate is fixed or adjustable, amount and date of any balloon payment, and amount of any refunds paid by Defendants. Defendants shall provide such data within fourteen (14) days after receiving a written request by the Commission or its designated agent, or such longer period as may be agreed upon by the Commission. The

Commission may submit a request pursuant to this Paragraph as soon as this Decree is filed with the Court (and before entry of the Decree, in which case the fourteen-day period shall begin upon entry of the Decree).

MONITORING COMPLIANCE OF SALES PERSONNEL

XI.

IT IS FURTHER ORDERED that Defendant OSI, in connection with mortgage brokering or mortgage lending, and Defendant Diamond, in connection with all businesses related to the extension of consumer credit where Defendant Diamond is the majority owner or otherwise controls the business, are hereby permanently restrained and enjoined from:

(A) Failing to take reasonable steps sufficient to monitor and ensure that all employees and independent contractors engaged in sales or other customer service functions comply with Paragraphs I, II, III, and IV of this Decree. Such steps shall include adequate monitoring of sales presentations or other calls with customers, which shall also include, at a minimum, listening to the oral representations made by persons engaged in brokering loans and establishing a procedure for receiving and responding to consumer complaints;

(B) Failing promptly to investigate fully any consumer complaint received by any business to which this Paragraph applies; and

(C) Failing to take corrective action with respect to any employee whom Defendants determine are not complying with this Decree, which may include training, disciplining, and/or terminating such individual.

COMPLIANCE REPORTING BY DEFENDANT

XII.

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this

Decree may be monitored:

- (A) For a period of five (5) years from the date of entry of this Decree, provide a monthly report to the Commission, postmarked on or before the fifteenth (15th) day of each month:
- (1) documenting, for the prior month, the name, address, and phone number(s) of each and every borrower who closed a loan through Defendants; and
 - (2) providing a copy of the mortgage note (including all riders and attachments), HUD-1 Settlement Statement, and Truth in Lending Act Disclosure of each and every borrower who closed a loan through Defendants.
- (B) For a period of seven (7) years from the date of entry of this Decree,
- (1) Defendant Diamond shall notify the Commission of the following:
 - (a) Any changes in Defendant Diamond's residence, mailing addresses, and telephone numbers, within thirty (30) days of the date of such change;
 - (b) Any changes in Defendant Diamond's employment status (including self-employment), within ten (10) days of the date of such change.Such notice shall include the name and address of each business that Defendant is affiliated with, employed by, or performs services for; a statement of the nature of the business; and a statement of Defendant's duties and responsibilities in connection with the business; and
 - (2) Defendant OSI shall notify the Plaintiffs of any changes in corporate structure that may affect compliance obligations arising under this Decree, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in

the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Decree; 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 in the corporation about which the defendant learns less than thirty (30) days prior to the date such action is to take place, Defendant OSI shall notify the Plaintiffs as soon as is practicable after obtaining such knowledge.

(C) One hundred eighty (180) days after the date of entry of this Decree, Defendants Diamond and OSI each shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Decree. This report shall include, but not be limited to:

- (1) Any changes required to be reported pursuant to subparagraph (A) above; and
- (2) A copy of each acknowledgment of receipt of this Decree obtained by Defendants pursuant to Paragraph XIV.

(D) For the purposes of this Decree, Defendants 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 Ave., N.W.
Washington, DC 20580
Re: FTC and State of Illinois v. OSI Financial Services, Inc. and Mark Diamond,
Civil Action No. 02-5078

(E) For the purposes of this Decree, Defendants shall, unless otherwise directed by the State of Illinois's authorized representatives, mail all written notifications to the State of Illinois to:

Chief, Consumer Fraud Bureau
Office of the Attorney General
100 W. Randolph Street
Chicago, IL 60601

Re: *FTC and State of Illinois v. OSI Financial Services, Inc. and Mark Diamond*,
Civil Action No. 02-5078

(F) For purposes of the compliance reporting required by this Paragraph, the Plaintiffs are authorized to communicate directly with Defendants, *provided* that the Plaintiffs furnish a copy of any written communication to an attorney for Defendants, if Defendant(s) designate one by providing written notification of the attorney's name and address to the addresses set forth in this Paragraph.

COMPLIANCE MONITORING

XIII.

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

(A) Within ten (10) business days of receipt of written notice from a representative of the Commission or the State of Illinois, Defendants Diamond and OSI each 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 such defendant's possession or direct or indirect control to inspect the business operation; provided that the Defendants, 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 Plaintiffs are authorized to monitor compliance with this Decree 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. 30, 31, 33, 34, 36, and 45;
- (2) posing as consumers to Defendant or Defendants' employees, or any other entity managed or controlled in whole or in part by Diamond and/or OSI, without the necessity of identification or prior notice;

provided that nothing in this Decree 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)).

(C) Defendants Diamond and OSI shall permit representatives of the Plaintiffs to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Decree. The person interviewed may have counsel present.

DISTRIBUTION OF ORDER BY DEFENDANT

XIV.

IT IS FURTHER ORDERED that, for a period of seven (7) years from the date of entry of this Decree,

- (A) Defendant OSI shall deliver a copy of this Decree to all principals, officers, directors, managers, employees, agents, and representatives having responsibilities with respect to the subject matter of this Decree, and shall secure from each such person a signed and dated statement acknowledging receipt of the Decree. Defendant OSI shall deliver this Decree to current personnel within

thirty (30) days after the date of service of this Decree, and to new personnel within thirty (30) days after the person assumes such position or responsibilities;

- (B) Defendant Diamond shall deliver a copy of this Decree to the principals, officers, directors, managers and employees under Defendant Diamond's control for any business that (a) employs or contracts for personal services from Defendant Diamond and (b) has responsibilities with respect to the subject matter of this Decree. Defendant Diamond shall secure from each such person a signed and dated statement acknowledging receipt of the Decree within thirty (30) days after the date of service of the Decree or the commencement of the employment relationship; and
- (C) Defendant Diamond or OSI shall deliver a copy of the synopsis of this Decree, in the form shown in **Appendix B**, to each and every independent settlement agent who conducts a loan closing on a loan brokered by Diamond or OSI, before the closing takes place, and shall secure from each such person a signed and dated statement acknowledging receipt of the synopsis.

RECORD KEEPING PROVISIONS

XV.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date of entry of this Decree, Defendant OSI, in connection with mortgage brokering activities, and Defendant Diamond, in connection with all businesses related to the extension of consumer credit where Defendant Diamond is the majority owner or otherwise controls the business, and their agents, employees, officers, corporations, successors, and assigns, and those persons in active

concert or participation with them who receive actual notice of this Decree by personal service or otherwise, are hereby restrained and enjoined from failing to create and retain the following records:

- (A) Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- (B) Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity 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 applicable;
- (C) Customer files for all closed loans containing the borrowers' names, addresses, phone numbers, dates of loan consummation, loan amounts, broker fee amounts, monthly payment amounts, interest rates, and amounts and dates of any balloon payments;
- (D) Complaints and refund requests (whether received directly, indirectly or through any third party) and any responses to those complaints or requests; and
- (E) Copies of all sales scripts, training materials, advertisements, or other marketing materials.

ACKNOWLEDGMENT OF RECEIPT OF DECREE BY DEFENDANT

XVI.

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of

receipt of this Decree as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Decree.

RETENTION OF JURISDICTION

XVII.

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

IT IS SO ORDERED.

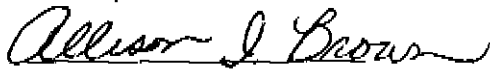
DATED: 11/20/2003


The Honorable James B. Zagel
United States District Judge

The parties hereby stipulate and agree to the terms and conditions set forth above and consent to entry of this Consent Decree.

FOR PLAINTIFF FEDERAL TRADE COMMISSION:

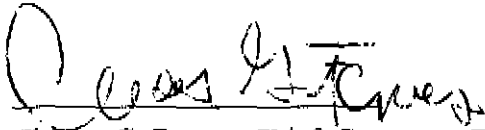
William E. Kovacic
General Counsel



John A. Krebs, Attorney
Allison I. Brown, Attorney
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-3224 (phone)
(202) 326-3768 (facsimile)

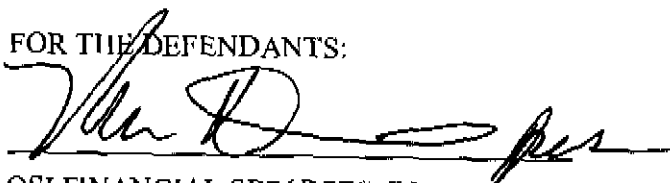
FOR PLAINTIFF STATE OF ILLINOIS:

Lisa Madigan
Attorney General of Illinois



Charles G. Fergus, Chief, Consumer Fraud Bureau
Stanley Wojciechowski, Assistant Attorney General
Office of the Attorney General
100 W. Randolph Street
Chicago, IL 60601
(312) 814-8435 (phone)
(312) 814-2593 (facsimile)

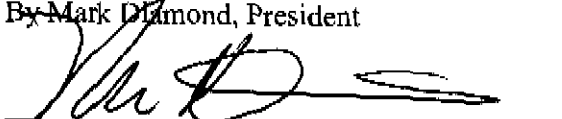
FOR THE DEFENDANTS:



DATED: 8/21/05

OSI FINANCIAL SERVICES, INC.

By Mark Diamond, President



DATED: 8/21/05

MARK DIAMOND

Individually

Approved as to Form:



DATED: 8/21/05

Dennis Both
18 West 111 73rd Place
Darien, IL 60561
Attorney for Defendants
OSI Financial Services, Inc. and Mark Diamond

APPENDIX A

IMPORTANT INFORMATION

Under a Settlement Agreement with the Federal Trade Commission, your mortgage broker (OSI Financial Services), must give you this notice at least 3 days *before* you sign your final loan papers.

You are borrowing \$ [Principal Loan Amount].

The annual percentage rate (APR) on your loan will be ____%.

The APR takes into account not only the interest rate, but also points (one point equals one percent of the loan amount), mortgage broker fees, and certain other credit charges the lender requires you to pay. The APR is expressed as a yearly rate.

The interest rate on your loan will be ____%.

Your regular [frequency] payment will be \$ _____. This payment [includes/does not include] payments for taxes and insurance. [You will be responsible for paying your own property taxes and insurance premiums.]

[At the end of your loan term, in __ years, you will have to make a \$ _____ balloon payment.]

[Your interest rate may increase, which could increase your regular payment. The highest amount your payment could be is \$ _____.]

[Your loan has a prepayment penalty. If you refinance this loan in the next __ years, you will have to pay a penalty. The highest penalty you will have to pay if you pay off or refinance your loan early is _____.]

The total of fees to get this loan is about _____. [This number includes all fees, charged by any party, except per diem interest.] The mortgage broker fee is \$ _____.

You do not have to accept this loan. For more information, please see the enclosed brochure. To file a complaint or get free information on consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261.

INFORMACIÓN IMPORTANTE

Según lo estipulado bajo un Convenio de Acuerdo con la Comisión Federal de Comercio (*Federal Trade Commission, FTC*) su agente hipotecario (OSI Financial Services), debe entregarle este aviso con por lo menos **3 días** de anterioridad a la firma final de su préstamo.

Usted está tomando un préstamo de \$ [Monto Principal del Préstamo].

La Tasa Anual Efectiva - TAE (*annual percentage rate -APR*) de su préstamo será del ____%.

La tasa APR no solamente toma en consideración la tasa de interés, sino también los puntos (un punto equivale al uno por ciento del monto del préstamo), los cargos del agente hipotecario y ciertos otros cargos de crédito que el prestador requiere que usted pague. La tasa APR está expresada en términos de tasa anual.

La tasa de interés de su préstamo será del ____%.

La cuota de sus pagos regulares [frecuencia] será de \$ _____. Este pago [incluye/no incluye] el pago de impuestos y seguro. [El pago de los impuestos inmobiliarios de su propiedad y de sus primas de seguro queda bajo su responsabilidad.]

[A la finalización del término del préstamo, en __ años, usted tendrá que hacer un pago de suma global de \$_____ .]

[La tasa de interés de su préstamo puede aumentar, lo cual podría incrementar el monto de la cuota de sus pagos regulares. El monto máximo que podría pagar será de \$_____.]

[Su préstamo tiene una multa por liquidación anticipada. Si usted refinancia este préstamo dentro de los próximos __ años, tendrá que pagar una multa o penalidad. El monto máximo de la multa que tendrá que pagar por la liquidación anticipada o por la refinanciación anticipada del préstamo es de _____.]

El total del importe de otros cargos pagaderos para obtener este préstamo es aproximadamente _____. [Este importe incluye todos los cargos, imputados por cualquiera de las partes, a excepción de los intereses diarios (*per diem*).]

Usted no está obligado a aceptar este préstamo. [En caso de que lo acepte, tiene derecho a cancelarlo dentro de los 3 días posteriores a la firma de los documentos finales del préstamo.]

Para obtener mayor información, por favor consulte el folleto adjunto. Para presentar una queja u obtener información gratuita sobre temas de interés de los consumidores, visite www.ftc.gov o llame al número telefónico de acceso gratuito 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261.

APPENDIX B

SUMMARY OF THE OSI/MARK DIAMOND CONSENT DECREE WITH THE FTC AND THE STATE OF ILLINOIS

OSI Financial Services, Inc. and Mark Diamond have entered into a settlement agreement ("Consent Decree") with the Federal Trade Commission and the State of Illinois. The Consent Decree resolves charges that OSI and Diamond engaged in deceptive practices by misrepresenting certain terms and costs of mortgage loans. OSI and Diamond do not admit that they violated the law. We are providing this summary to alert you to certain obligations you may have as an independent settlement agent closing loans that OSI and/or Diamond have brokered.

Among other things, the Decree prohibits Diamond/OSI from conducting any loan closing. Diamond/OSI must ensure that an independent settlement agent conducts the closing for each loan that they broker.

For a period of three years from the entry of the order, Diamond/OSI must tape record the loan closing for all loans they broker. The tape recording must meet the following requirements:

- (A) The tape recording must record the entire loan closing and any other conversations about loan terms on the day of the loan closing. The date of the closing must be recorded on the tape.
- (B) You must ask the borrower's permission to record the closing. If the borrower refuses, the recording must be stopped. The borrower's decision must itself be recorded.
- (C) You, the settlement agent, must tell the borrower, in clear and understandable language, all of the material terms of the loan, including:
 - (1) interest rate;

- (2) annual percentage rate;
- (3) the regular monthly payment amount;
- (4) the due date and amount of any balloon payment;
- (5) if the loan has an adjustable interest rate, the first change date, the frequency of subsequent change dates, the maximum interest rate increase on any single change date, the overall maximum interest rate, and the minimum interest rate;
- (6) whether the monthly payment includes payment into an escrow account for property taxes and/or insurance;
- (7) total amount of all fees, and the mortgage broker fee;
- (8) amount of cash disbursed to the borrower;
- (9) the amount of cash disbursed on behalf of the borrower to any third parties, including creditors or home improvement companies;
- (10) if the loan contains a prepayment penalty, the length of the penalty, and the cost to the borrower if s/he refinances or pays off the loan prior to the prepayment expiration date; and
- (11) the borrower's right to cancel the loan within 3 days.

The Decree also prohibits OSI and Diamond from misrepresenting the terms, costs, or other conditions of any loan or other extension of credit. The Decree also requires Diamond/OSI to provide a one-page written disclosure statement before the loan closing when offering a loan. The disclosure statement must be mailed at least five days before the loan closing, or sent by overnight mail at least three days before the loan closing.

You may review a full copy of the Consent Decree on the FTC's Web site, at [URL]. If you have any questions, you can contact Allison Brown at the FTC at (202) 326-3224.