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IN RE

BOMBARDIER CAPITAL INC.

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IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

ASSURANCE OF VOLUNTARY COMPLIANCE

COMES NOW, THE STATE OF TEXAS, acting by and through ATTORNEY GENERAL GREG ABBOTT, and the Texas Department of Housing and Community Affairs, Manufactured Housing Division, an agency of the State of Texas, and BOMBARDIER CAPITAL INC. ("BCI") and respectfully submit and present the following Assurance of Voluntary Compliance ("AVC") for the Court's approval and filing in accordance with the Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COMM. CODE ANN. §17.58.

A. PARTIES

1. The Consumer Protection and Public Health Division of the Office of the Texas Attorney General ("OAG") is authorized to investigate and bring actions for the State of Texas for violations of the Deceptive Trade Practices - Consumer Protection Act ("DTPA"), TEX. BUS. & COM. CODE ANN. §17.41 *et seq.* and the Texas Manufactured Housing Standards Act, ("TMHSA") TEX. OCC. CODE §1201.001, *et seq.*

2. The Texas Department of Housing and Community Affairs, Manufactured Housing Division ("Department") is the agency authorized to enforce and administer the TMHSA and to regulate the manufactured home industry.

3. Respondent Bombardier Capital Inc. ("BCI") is a foreign business corporation, organized and existing under the laws of the State of Massachusetts. BCI has engaged in the business of originating, purchasing, and/or servicing loans secured by a security interest in manufactured homes located in counties throughout Texas.

B. AGREED FACTS

4. BCI originated and/or purchased, individually or in bulk, loans and/or installment sales contracts on manufactured homes (collectively referred to herein as "Contracts") that were secured by a security interest in the manufactured home. These Contracts may have originated in the name of BCI, or by a third party manufactured housing retailer or broker, in either case, with funds provided by BCI.

5. BCI serviced the Contracts that it originated or purchased. Whenever the Contracts were sold, BCI retained servicing responsibilities with respect to such Contracts.

6. As servicing agent, BCI engaged in the collection of debt obligations, arising from the Manufactured Housing Contracts, that were due, or past due, from its customers. BCI's collection procedures included the repossession and resale of the manufactured homes that serve as collateral for the defaulted Contracts. As reported in the Prospectus of Bombardier Capital Mortgage Securitization Corporation, dated January 25, 2001, it is "BCI's general policy to institute repossession procedures promptly after collection personnel determine that it is unlikely that a defaulted contract will be brought current, and thereafter to diligently pursue the resale of such manufactured homes." Prospectus at 47. In the course of its collection activity, BCI has repossessed and resold a large number of manufactured homes from customers who had defaulted under their Contracts.

7. From May 21, 2003, to May 21, 2006, BCI held a broker's license issued by the Department pursuant to the TMHSA, and from May 4, 2001, to May 4, 2003, BCI held a retailer's license issued by the Department pursuant to the TMHSA. BCI does not have a physical presence in Texas and has never had, a licensed, bonded, location within the State of Texas from which it was authorized to sell manufactured homes in accordance with TMHSA.

8. This case and controversy arose from the aforementioned business activities of BCI, in general, and the sale of repossessed manufactured homes, in particular, that BCI acquired in the operation of its business. The parties agree and stipulate to the facts stated in Section B of this AVC.

C. STATE'S ALLEGATIONS

9. Based on the results of its investigation, the Department and the OAG (hereafter collectively referred to as "the State") have found that BCI has engaged in acts or practices as alleged below.

10. Beginning in 2001, BCI sold a significant number of the repossessed manufactured homes directly to "consumers," as defined by TMHSA §1201.003(6), or through "an unauthorized third party" (as used herein, "an unauthorized third party" means a person or entity who was acting as a manufactured home retailer without possessing the required license).

11. Beginning in 2001, in the course of disposing of the repossessed manufactured homes, BCI showed, offered for sale, or sold a significant number of the repossessed manufactured homes from locations where the defaulting owner had the manufactured home situated at the time of default and repossession and from which the home was not removed at repossession or prior to sale.

12. The sale of repossessed manufactured homes by BCI to consumers directly and/or through unauthorized third parties has occurred for one or more of the following reasons:

- a. BCI did not verify that the person to or through whom it was selling such homes held a valid retailer's license at the time of the sale;
- b. BCI's sales agents sold manufactured homes in disregard of the purchaser's status as a consumer or as a person without a retailer's license; or
- c. persons seeking to buy manufactured homes from BCI masqueraded as licensed retailers and BCI used these unlicensed retailers to sell the manufactured homes.

13. In effectuating the sales of the repossessed manufactured homes through unauthorized third parties, BCI sometimes used a titling practice by which the name of the purchaser on an application ("Form A") for the Statement of Location ("SOL")¹ was left "open" or "blank." By leaving the purchaser's name in blank on Form A, BCI does not disclose the name of the unauthorized third party as a purchaser being in the chain of title to the manufactured home. Instead, the unauthorized third party could resell the home and simply insert the name of the ultimate consumer in the blank before submitting the form to the Department for titling purposes. An SOL issued by the Department under these circumstances made it appear, inaccurately, as if the ownership of and title to the manufactured home had been transferred directly from BCI to the ultimate consumer. This skipped transfer in the chain of title deprived the State of statutory fees due upon the transfer of title and created a gap in official state title records. In addition, because title does not pass until an application for an SOL is filed with the Department, the unauthorized third party did not in fact

¹ The "SOL" is the document which serves as the official record of ownership of a manufactured home and reflects other matters such as the location of the home and liens encumbering the home. The use of properly completed "SOL" applications for sales transactions allows the Department to regulate the manufactured housing industry, maintain accurate and current records on manufactured homes in Texas, and collect transfer fees on property which, by its very nature, is mobile.

possess good title at the time the third party resold the manufactured home. In all the foregoing particulars, this practice was not in compliance with the TMHSA and worked a deception on the ultimate consumer-purchasers.

14. In the course of servicing non-performing or defaulted loans secured by a manufactured home, BCI elected at times to take no further legal action after it has given notice of default/repossession to the defaulting owner or after it had filed lawsuit. In these instances, BCI had determined that the costs to be incurred in taking possession (e.g., cost of unpaid lot rent, unpaid taxes, repairs, and relocation of the home) would have been greater than the resale value of the repossessed manufactured home. Rather than accept liability and take further losses on the manufactured home, BCI chose not to enforce (or release) its lien or to exercise its right to repossession of the collateral and simply left the collateral on the premises where the defaulting owner had the manufactured home situated at the time of default. As a result, these manufactured homes were abandoned by the defaulting owners and became inventory in a black market for the sale of these homes. Specifically, they were picked up or marketed by unscrupulous and unlicensed retailers, brokers, or movers who often stripped the home of any valuable appliances and then sold them to unwary consumers without applying for the SOL, without providing the statutory disclosures and warranties, and without making the repairs necessary to make the home habitable.

15. As a result of the business practices alleged above, innocent consumers were offered or sold manufactured home:

- a. without the benefit of notice of the consumer protections afforded by the TMHSA;
- b. without benefit of their right to rescission;
- c. with a defective title which prevented them from enjoying all of the benefits of home

ownership, including the right to resell the manufactured home and the right to apply for a homestead exemption²;

- d. that was defective or uninhabitable;
- e. that would never be delivered or conveyed, often involving unrefunded partial or full payment; and/or
- f. without recourse to the Manufactured Home Owner's Recovery Trust Fund.

D. ALLEGED TMHSA VIOLATIONS

16. Respondent BCI, as alleged above, has in the course of trade and commerce violated Chapter 1201 of the Texas Occupation Code, TEX. OCC. CODE §1201.051, *et seq.* (known as the "Texas Manufactured Housing Standards Act" or "TMHSA"), as follows:

- a. By showing or offering for sale repossessed manufactured homes to consumers at locations that were not bonded, BCI is in violation of TMHSA § 1201.107;
- b. By selling used manufactured homes to consumers without transferring good and marketable title to all the homes, BCI is in violation of TMHSA § 1201.451;
- c. By selling used manufactured homes to consumers for use as a dwelling without providing a written warranty that the manufactured homes are habitable, BCI is in violation of TMHSA § 1201.455;
- d. By selling manufactured homes to consumers without delivering to the consumers a formaldehyde health notice, BCI is in violation of TMHSA § 1201.153;
- e. By selling covered manufactured homes to consumers without giving the consumers

² Such title defects often included unpaid ad valorem taxes, the pursuit of collection of which forced the innocent purchasers to lose their homes to tax foreclosure unless they could and would pay these taxes, together with penalties and interest.

notice of wind zone regulations before the execution of the sales agreement or retail installment sales contract, BCI is in violation of TMHSA § 1201.256;

f. By selling manufactured homes to consumers without giving the consumer the required disclosures, including notice of a right to rescission, BCI is in violation of TMHSA §§ 1201.162 - .163; and

g. By failing to deliver the installment contract to consumers at least 24 hours before the installment contract was fully executed, BCI is in violation of TMHSA § 1201.164.

E. ALLEGED DTPA VIOLATION

17. Respondent BCI, as alleged above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§ 17.46(a) of the DTPA, by violating Chapter 1201 of the Texas Occupation Code, TEX. OCC. CODE §1201.051, *et seq.* (known as the “Texas Manufactured Housing Standards Act” or “TMHSA”). Section §1201.603(a) of the Texas Manufactured Home Standards Act provides that a violation of the Act is a deceptive trade practice actionable under the DTPA.

F. RESPONDENT’S DENIAL

18. Respondent BCI does not admit to any violations of law or liability for any alleged acts by entering into this AVC, but enters this AVC in the interest of avoiding the time, expense, and uncertainty of litigation and in the interest of settling and compromising the case and controversy raised by the State’s allegations.

G. PARTIES’ STIPULATIONS

19. The parties stipulate that this case or controversy is governed by and subject to Texas law, including, but not limited to, the TMHSA and DTPA and further stipulate to the jurisdiction of the

District Courts in Travis County, Texas, for purposes of approving and enforcing this AVC.

20. The parties stipulate that this AVC represents a full and final compromise and settlement of all matters arising out of the facts alleged by the State in this matter.

H. ASSURANCES

21. In response to the State's allegations, but without admitting the truth or falsity of these allegations, Respondent BCI hereby agrees and voluntarily assures the Office of the Texas Attorney General and the Texas Department of Housing and Community Affairs, Manufactured Housing Division, that from the date of the signing of this AVC, which shall be filed with the appropriate Court, Respondent BCI, its officers, directors, agents, employees, and representatives shall refrain from:

- a. Selling, exchanging, or lease-purchasing a used or repossessed manufactured home unless the sale, exchange, or lease-purchase is to or through a licensed retailer in good standing with the Department and, if done by BCI, unless the sale, exchange, or lease-purchase complies with the TMHSA and Department rules;
- b. Selling, exchanging, or lease-purchasing a used or repossessed manufactured home if the manufactured home has pending or outstanding unpaid back taxes or unpaid lot rent or any other lien, charge, or encumbrance that would result in the consumer not receiving good and marketable title;
- c. Selling, exchanging, or lease-purchasing a used or repossessed manufactured home without first making the home habitable;
- d. Selling, exchanging, or lease-purchasing a used or repossessed manufactured home from an unbonded or unlicensed location except as authorized by Tex. Occ. Code §

1201.107(d); and

e. Issuing "open" or "blank" applications for Statements of Ownership and Location or ones that do not properly and accurately contain the name(s) of the person(s) or licensed retailer, who is purchasing the manufactured home from BCI.

22. Respondent BCI further assures the Office of the Texas Attorney General and the Texas Department of Housing and Community Affairs, Manufactured Housing Division, that it shall comply with the TMHSA, the DTPA and such other laws and regulations of the State of Texas that are applicable to the sale of repossessed manufactured homes.

23. Respondent BCI understands and agrees that the State's execution of this AVC does not constitute an approval by the State of Texas of any good or service sold or offered for sale by Respondent or of any business practice of Respondent. Therefore, Respondent BCI voluntarily assures the Office of the Attorney General that Respondent, its officers, directors, agents, employees, representatives, and all persons acting in concert with Respondent shall not represent, directly or by implication, that this Court or the Attorney General has approved any good or service sold or offered for sale by Respondent, or has approved any business practice of Respondent.

I. CONSUMER REDRESS

24. The acceptance of this AVC is conditioned upon payment by Respondent to the STATE OF TEXAS of the amount of \$133,500.00 as consumer redress, in order to address claims of persons who were sold a repossessed manufactured home by Respondent, or through an unauthorized third party, in violation of TMHSA or DTPA, as alleged above.

25. Respondent shall publish notice of the availability of consumer redress in newspapers of general circulation in the metropolitan markets of Dallas, Houston, San Antonio, Austin, El Paso,

Tyler, and the Rio Grande Valley, as follows:

- a. The notice must be directed to persons who may be eligible for consumer redress and must appear within 14 days from the entry of the court order approving this AVC;
- b. The notice must be published in the English and Spanish language, must concisely and clearly state in plain, easily understood language the action required in order to submit a claim for consumer redress, and must be in a form approved by the Department and/or Consumer Protection Division of the Attorney General of Texas; and
- c. The newspaper notice must be published for at least 7 consecutive days, must be written in standard text type or larger, and must bear a bolded legend of a minimum size of 14 points; provided, however, that the notice appearing in the Rio Grande Valley market may be published one time per week for four consecutive weeks in a periodical publication of Valley-wide distribution.

Proof of the publication of the notice required by this section shall be made by affidavit of the attorney for Respondent or of the person publishing same.

26. The State shall be responsible for, and bear the cost of, processing claims of consumers seeking to obtain redress arising out of the unlawful sales of repossessed manufactured homes as alleged above. It is understood and agreed that with respect to the amount of consumer redress paid by Respondent to the STATE OF TEXAS pursuant to this section, the review, determination and allocation of amounts of money to be restored to identifiable persons shall be, upon final order by the Court approving this AVC, within the sole discretion of the Department and/or Consumer Protection Division of the Attorney General of Texas; provided, however, that nothing herein shall obligate the Department and/or Consumer Protection Division of the Attorney General of Texas to

pay any claim or claims, individually or in the aggregate, in an amount in excess of the amount allowed under the Texas Manufactured Homeowners' Recovery Fund.

27. In the event that any portion of the amount of consumer redress paid by Respondent remains unclaimed after a reasonable period of time, the remaining portion shall revert to the STATE OF TEXAS as civil penalties.

J. ATTORNEY'S FEES

28. In addition, the acceptance of this AVC is conditioned upon payment by Respondent to the STATE OF TEXAS of the amount of \$40,000.00 as reasonable attorney's fees incurred by the STATE OF TEXAS in the in pursuit and resolution of this matter.

K. METHOD OF PAYMENT

29. The sum of \$173,500.00, consisting of consumer redress and attorney's fees, shall be due at the time of signing of this AVC and made payable to the STATE OF TEXAS by certified check. The certified check shall bear the identifying number "AG No. 03-1874381" and shall be delivered to the Office of the Attorney General, Consumer Protection Division, 3201 North McColl Road, Suite B, McAllen, Texas 78501.

30. It is further understood and agreed that all costs of court herein are assessed against Respondent.

L. ACKNOWLEDGMENTS

31. As set forth in TEX. BUS. & COM. CODE ANN. § 17.58(c), both the STATE OF TEXAS and Respondent BCI acknowledge that unless this AVC has been rescinded by agreement of the parties or voided by the Court for good cause, subsequent failure to comply with the terms of this AVC is *prima facie* evidence of a violation of Texas Deceptive Trade Practices - Consumer Protection Act

§ 17.41 *et seq.* and is actionable thereunder.

32. Payment of the sum of \$173,500.00, consisting of consumer redress and attorney's fees, is in full and final satisfaction of the State's allegations as set forth in sections C, D, and E above. It is agreed and understood by the parties that this AVC does not affect individual rights of action.

33. The parties agree that they will submit this AVC to a Court of competent jurisdiction in Travis County, Texas, and request that the Court approve and enter this AVC pursuant to the terms set forth in this AVC. This AVC shall be governed by TEX. BUS. & COM. CODE § 17.58.

34. The parties have read and understand the terms of this AVC, approve it as to form and substance and consent to its entry.

Signed on this the ____ day of _____, 2007.

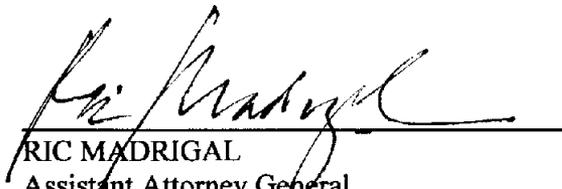
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

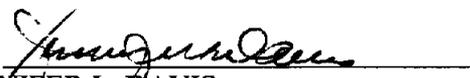
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