

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY

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SUPERIOR COURT DIVISION

NO. 13 CV 11340

WAKE CO., C.S.C.

STATE OF NORTH CAROLINA *ex rel.*)

ROY COOPER, Attorney General,)

Plaintiff,)

vs.)

R.A.NORTH DEVELOPMENT, INC., R.A.)

NORTH DEVELOPMENT I, L.L.C.,)

SOUTHEASTERN WATERFRONT)

MARKETING, INC., WILLIAM GARITH ALLEN,)

RANDOLPH M. ALLEN, R. DOUGLAS)

THERRELL, KENNETH BEDNAR, MICHAEL)

WOOLARD,)

Defendants.)

CONSENT JUDGMENT AS TO
DEFENDANTS RANDOLPH M.
ALLEN, WILLIAM GARITH
ALLEN, R.A. NORTH
DEVELOPMENT, INC., R.A.
NORTH DEVELOPMENT I, L.L.C.,
SOUTHEASTERN WATERFRONT
MARKETING, INC., R. DOUGLAS
THERRELL, KENNETH BEDNAR,
AND MICHAEL WOOLARD

This cause coming on to be heard and being heard before the undersigned Superior Court Judge in Wake County for entry of a Consent Judgment at the joint request of plaintiff State of North Carolina, by and through Attorney General Roy Cooper, and defendants Randolph M. Allen, William Garith Allen, R.A. North Development, Inc. (R.A. North), R.A. North Development I, L.L.C. (R.A. North I), Southeastern Waterfront Marketing, Inc. (Southeastern), R. Douglas Therrell, Kenneth Bednar, and Michael Woolard, the Court, with the consent of plaintiff and defendants makes the following:

FINDINGS OF FACT

1. Plaintiff is the State of North Carolina, acting on the relation of Roy Cooper, Attorney General, pursuant to authority granted in Chapters 75 and 114 of the General Statutes of North Carolina.

2. Defendant R.A. North is a North Carolina corporation with its principal place of business at 3129 Springbank Lane, Charlotte, North Carolina. It was the corporate developer for Cannonsgate at Bogue Sound (Cannonsgate), a subdivision in Carteret County, North Carolina.

3. Defendant R.A. North I is a North Carolina limited liability corporation with its principal place of business at 3129 Springbank Lane, Charlotte, North Carolina. It was the corporate developer for Summerhouse at Everett Bay (Summerhouse), a subdivision in Onslow County, North Carolina.

4. Defendant Southeastern is a North Carolina corporation with its principal place of business at 3129 Springbank Lane, Charlotte, North Carolina, retained by R.A. North and R.A. North I to market and sell their residential lots.

5. Defendant Randolph (Randy) M. Allen is a North Carolina resident who managed and controlled the operations of R.A. North and R.A. North I.

6. Defendant William Garith (Gary) Allen is a Florida resident who managed and controlled the operations of defendant Southeastern.

7. Defendant Kenneth Bednar is a Nevada resident who participated in the sales operations at Cannonsgate and Summerhouse, and purchased a residential lot in Cannonsgate.

8. Defendant Michael Woolard is a South Carolina resident who participated in the sales operations at Cannonsgate and Summerhouse and supervised defendant Southeastern's administrative staff.

9. Defendant R. Douglas Therrell is a North Carolina resident who purchased a residential lot in Cannonsgate.

10. Plaintiff alleges the following:

(a) starting in 2005, defendant R.A. North hired defendant Southeastern to handle the sales and marketing of residential lots at Cannonsgate. Cannonsgate consisted of a total of 525 residential lots, and defendant Southeastern began marketing the Cannonsgate parcels to the public in approximately June 2005;

(b) starting in 2006, defendant R.A. North I hired defendant Southeastern to handle the sales and marketing of residential lots at Summerhouse. Summerhouse consisted of a total of 1029 parcels of real property, and defendant Southeastern began marketing Summerhouse parcels to the public in approximately April 2006;

(c) in connection with the sales and marketing of residential lots in Cannonsgate and Summerhouse, some of defendant Southeastern's sales agents marketed the parcels of real property in the subdivisions as having good investment potential, unfairly resulting in some consumers believing that they were purchasing real property that could be sold in a short period of time for a substantial profit. Defendants, as a sales incentive, agreed for lending institutions to escrow at the closing of the lot a sufficient amount of money to make the interest payments on the interest-only loans for a period of one year while the property was expected to be appreciating in value;

(d) on some occasions, Southeastern's sales agents:

(i) at both off-site and on-site sales presentations, created an unfair sense of urgency by using sales techniques intended to imply that purchasers should purchase residential lots as soon as possible before they became unavailable; and

(ii) advertised that the sales prices of the residential lots were "developer pricing" incorrectly giving the impression that the value of the property was discounted in some way and would increase in value over time or upon completion of infrastructure or amenities; and

(e) on some occasions, Southeastern's agents were involved in simultaneous "flip" transactions where the third-parties purchasing from defendants R.A. North and R.A. North I were simultaneously buying the residential lots and selling to consumers for a substantial profit and using the funds from the consumers' purchases to fund the initial purchase from defendants R.A. North and R.A. North I.

11. Defendants' actions in connection with the practices set out above were in or affecting commerce in North Carolina.

12. Defendants deny the State's allegations in Paragraph 10 but desire to resolve this controversy without further proceedings and agree to the entry of this Consent Judgment. Defendants deny any violation of law or wrongdoing in connection with the development, marketing and sale of residential lots in Cannonsgate and Summerhouse.

CONCLUSIONS OF LAW

1. The court has jurisdiction over the parties and the subject matter.
2. Entry of this Consent Judgment is just and proper.
3. The parties have agreed to resolve their differences by this agreement. The court approves of the terms of the parties' agreement and adopts them as its own determination of their respective rights and obligations and for the entry of this Consent Judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Defendants Randolph M. Allen, William Garith Allen, R.A. North, R.A. North I, Southeastern, R. Douglas Therrell, Kenneth Bednar, and Michael Woolard are permanently enjoined from engaging, either directly or indirectly through agents, representatives, assigns, or persons acting in concert with them, in the development, marketing, and sale of residential lots in North Carolina in which:

- (a) defendants, their agents, or entities controlled by defendants make contact with an appraiser employed by a lender or an affiliate or subsidiary of the lender to seek to influence the appraiser or otherwise encourage a targeted value in order to facilitate the making or pricing of a sale of one or more residential lots;
- (b) defendants or entities managed, controlled, or owned by defendants close on any cash or seller-financed residential lots in any phase of any subdivision until at least fifteen sales in the phase of the

subdivision have closed and the deeds and deeds of trust have been filed on the public record in the county where the subdivision is located;

(c) any subdivision where the lot is located, if required by law, is not registered with the United States Department of Housing and Urban Development pursuant to the requirements of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701, *et seq.*;

(d) defendants, their employees, their agents, or individuals or entities controlled by or acting in concert with the defendants, their employees, or their agents, offer the purchaser the opportunity to postpone one or more mortgage or promissory note payments on the parcel of real property;

(e) defendants, their employees, their agents, or individuals or entities controlled by or acting in concert with the defendants, their employees, or their agents, offer to make one or more mortgage or promissory note payments for the purchaser;

(f) defendants, their employees, their agents, or individuals or entities controlled by or acting in concert with the defendants, their employees, or their agents loan the purchaser any portion of the down payment on the purchase of the parcel of real property;

(g) defendants, their employees, their agents, or individuals or entities controlled by or acting in concert with the defendants, their employees, their agents, or business associates controlled by defendants, directly or indirectly, offer to make interest payments for some period of time during the term of the loan;

(h) defendants, their employees, their agents, or individuals or entities controlled by or acting in concert with the defendants, their employees, or their agents to use, as a sales inducement, that any lot has good investment potential or will increase in value unless it can be established in writing that:

i. comparable lots or parcels in the subdivision have, in fact, been resold by their owners on the open market at a profit, or;

ii. there is a factual basis for the represented future increase in value and the factual basis is certain, and

iii. the sales price of the offered lot does not already reflect the anticipated increase in value due to any promised facilities or amenities;

(i) defendants, their employees, their agents, or individuals or entities controlled by or acting in concert with the defendants, their employees, or their agents, create a false sense of urgency during the sales presentations by representing that the residential lots will not be available unless they are immediately purchased;

(j) defendants, their agents, or entities controlled by or acting in concert with defendants, either through direct sales or assisting in resales of residential lots, facilitate or participate in simultaneous closings on residential lots in North Carolina where the seller in the second part of the transaction does not have title at the time of the closing and is using proceeds from the second closing to fund the purchase in the first part of the closing. This provision is not intended to interfere with a Section 1031 tax-deferred exchange;

(k) defendants, their agents, or entities controlled by or acting in concert with the defendants collect any funds from consumers in connection with the sale of any residential lots until such time as all infrastructure shown in any advertising materials or orally described or explained during sales presentations and necessary to make the lot buildable are built or are bonded at no less than one-hundred percent of either:

(i) in those counties with a construction bond ordinance, the cost to complete the infrastructure as estimated by the county or city engineer, or

(ii) in those counties without a construction bond ordinance, the contracted price to complete the promised infrastructure;

(l) defendants, their agents, or entities controlled by or acting in concert with defendants make false or deceptive representations regarding advertised amenities or the building or completion of such amenities;

(m) defendants, their agents, or entities controlled by or acting in concert with defendants advertise, directly or indirectly, that the sales prices of the residential lots are “developer pricing” or “pre-development” pricing, or in any way represent that the value of the property is discounted in some way and will increase in value over time or upon completion of infrastructure or amenities; and

(n) defendants, their agents, or entities controlled by or acting in concert with defendants fail to ensure that any deeds or other documents that are filed on the public record in connection with defendants’ sale of real property accurately reflect the purchase price less any discounts to the purchase price given to any customer, including employees, agents, and family members.

2. Defendants shall provide a copy of this Consent Judgment to all officers, managerial employees, and each and every employee or agent involved in the marketing or sale of residential lots, and all such employees or agents hired for five years after the entry of this Consent Judgment. Proof of compliance with this provision shall be demonstrated by defendants Gary and Randy Allen having every such employee sign a document indicating that they have read a copy of the Consent Judgment in its entirety and understood it, and keeping a copy of that document in the companies’ files open for inspection by a representative of the Attorney General’s Office.

3. Defendants Gary and Randy Allen, R.A. North, R.A. North I, Southeastern, Bednar, Woolard, and Therrell shall pay the North Carolina Department of Justice \$2,280,000.00 as restitution to compensate consumers and the State of North Carolina. These funds shall be used by the North Carolina Attorney General’s office for consumer restitution purposes and consumer protection purposes, including but not limited to, defraying the costs of the investigation leading to this settlement, and consumer education, at the

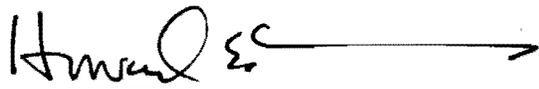
discretion of the Attorney General. The parties acknowledge that the payment described herein is not a fine, penalty, or payment in lieu thereof.

4. Any consumer who agrees to accept restitution under this Consent Judgment shall sign a general release to the defendants prior to receiving such restitution. Otherwise this Consent Judgment shall not affect the rights of any private party to pursue any remedy or remedies allowed pursuant to the laws of the State of North Carolina.

5. This Consent Judgment shall not bind any other offices, boards, commissions, or agencies of the State of North Carolina.

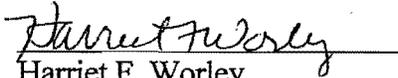
6. Nothing in this Consent Judgment may be taken or construed to be an admission or concession of any violation of law or regulation on the part of defendants Randy and Gary Allen, Bednar, Therrell, Woolard, R.A. North, R. A. North I, or Southeastern. This Consent Judgment resolves all civil claims that the North Carolina Attorney General could have asserted against the defendants, their agents, and their employees under N.C. G. S. § 75-1.1 or otherwise in equity or law resulting from defendants' development, marketing and sale of residential lots to consumers in Cannonsgate and Summerhouse prior to the date of this Consent Judgment. This Consent Judgment shall not be admissible in other legal proceedings or binding on defendants Randy and Gary Allen, Bednar, Therrell, Woolard, R.A. North, R. A. North I, or Southeastern in any respect other than in connection with the plaintiff's enforcement of the terms of this Consent Judgment.

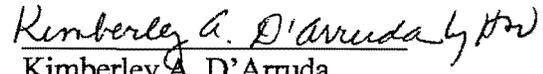
This the 30 day of August, 2013.

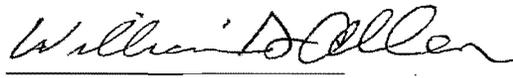


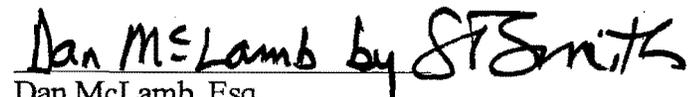
Superior Court Judge

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ATTORNEY GENERAL


Harriet F. Worley
Assistant Attorney General

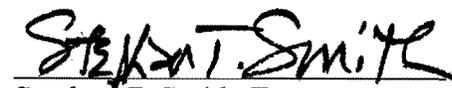

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Assistant Attorney General


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Southeastern Waterfront Marketing, Inc.

By: Rita Collins
President


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Randolph M. Allen

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R.A. North Development, Inc.

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Member Manager

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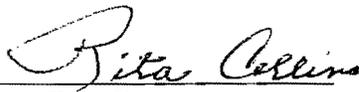
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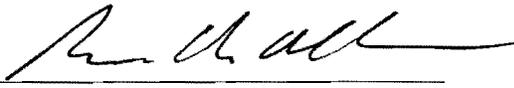
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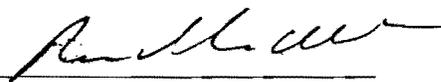


Randolph M. Allen

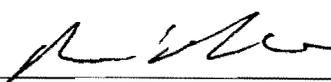
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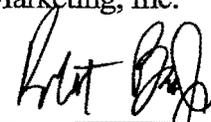
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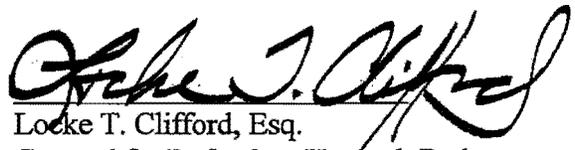
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By: Randolph M. Allen
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Kenneth Bednar



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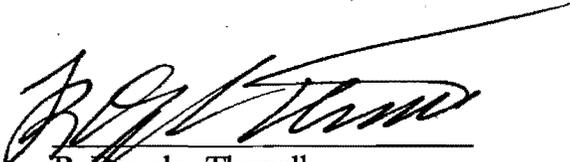
R. Douglas Therrell

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Michael Woolard

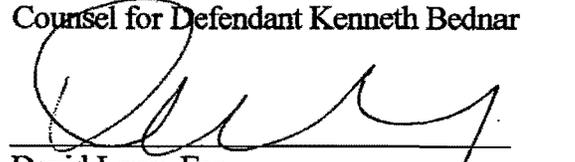
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Kenneth Bednar



R. Douglas Therrell

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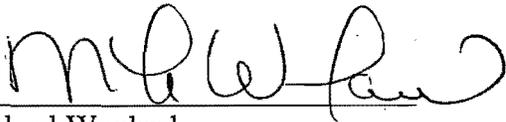
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