

LAWRENCE G. WASDEN
Attorney General

A. RENÉ MARTIN – I.S.B. #3188
Deputy Attorney General
State of Idaho
Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031
Telephone: (208) 332-8092
Facsimile: (208) 332-8016
rene.martin@finance.idaho.gov

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO**

STATE OF IDAHO, DEPARTMENT OF)	
FINANCE, CONSUMER FINANCE)	Docket No. 2009-9-15
BUREAU,)	
)	
Complainant,)	CONSENT ORDER
)	
vs.)	
)	
VICTOR J. CARLINO, dba IDAHO)	
CAPITAL GROUP,)	
)	
<u>Respondent.</u>)	

The Director of the State of Idaho, Department of Finance, Consumer Finance Bureau (Director) has conducted a review of the Idaho debt or credit counseling activities of Victor J. Carlino, dba Idaho Capital Group (the Respondent). Pursuant to said review, it appears to the Director that the Respondent has violated provisions of the Idaho Collection Agency Act, Idaho Code § 26-2221 *et seq.* (the Act), and the Rules Pursuant to the Idaho Residential Mortgage Practices Act. The Director and the Respondent have agreed to resolve such matter through this Consent Order, rather than through a formal administrative or civil action. Therefore, the

Director deems it appropriate and in the public interest that this Consent Order be entered. The Respondent voluntarily consents to the entry of this Consent Order.

RESPONDENT

1. The Respondent is an Idaho corporation formed on or about August 22, 2008. The Respondent's business address is 502 East Miles Avenue, Hayden, Idaho 83835. Victor J. Carlino is the Respondent's owner. The Respondent has held Idaho Mortgage Broker/Lender License No. MBL-6890 since November 3, 2008. The Respondent has never applied for, nor has the Idaho Department of Finance (Department) ever issued to the Respondent, a license under the Idaho Collection Agency Act authorizing the Respondent to engage in activities covered by that act, to include conducting business as a debt counselor or credit counselor.

FACTS

2. On or about May 18, 2009, the Department received a consumer complaint submitted by A.W., an Idaho resident, asserting that she had engaged the Respondent to modify her residential mortgage loan but had not received the services she had paid for.

3. On May 19, 2009, a Department representative sent a letter to the Respondent informing it of the complaint submitted by A.W., and requesting information concerning the Respondent's debt and credit counseling activities in Idaho.

4. On or about June 10, 2009, the Department received information from the Respondent indicating that the Respondent had engaged in the business of modifying or attempting to modify a residential mortgage loan in Idaho, specifically the residential mortgage loan of A.W.

FINDINGS OF VIOLATION

*COUNT ONE: UNLICENSED DEBT OR CREDIT COUNSELING ACTIVITY
IN VIOLATION OF THE IDAHO COLLECTION AGENCY ACT*

5. The allegations set forth in paragraphs 1 through 4 above are fully incorporated herein by this reference.

6. Idaho Code § 26-2223 provided as follows, in pertinent part:

26-2223. Collection agency, debt counselor, credit counselor, or credit repair organization – License required. – No person shall without complying with the terms of this act and obtaining a license from the director:

(1) Operate as a collection agency, debt counselor, credit counselor, or credit repair organization in this state.

...

7. Idaho Code § 26-2222(9) defines “debt counselor” or “credit counselor” as any person engaged in any of the activities set forth in Idaho Code § 26-2223(7).

8. The activities referenced in Idaho Code § 26-2223(7) relevant to this matter are, in pertinent part: “engag[ing] or offer[ing] to engage in this state in the business of providing counseling or other services to debtors in the management of their debts, or contracting with the debtor to effect the adjustment, compromise, or discharge of any account, note or other indebtedness of the debtor.”

9. The Respondent’s act of engaging in the business of assisting an Idaho debtor in modifying or attempting to modify her residential mortgage loan, as referenced in paragraphs 2 through 4 above, constitutes “debt counseling” or “credit counseling” within the meaning of Idaho Code §§ 26-2222(9) and 26-2223(7).

10. The Respondent’s act of engaging in debt counseling or credit counseling activity in Idaho, while it failed to hold a license under the Idaho Collection Agency Act authorizing it to

do so, constituted unlicensed debt counseling or credit counseling activity in violation of Idaho Code § 26-2223(1).

COUNT TWO: VIOLATION OF RULE 60 OF THE RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

11. The allegations set forth in paragraphs 1 through 4 above are fully incorporated herein by this reference.

12. Rule 60.01.f. of the Rules Pursuant to the Idaho Residential Mortgage Practices Act, located at IDAPA 12.01.10.060.01.f., provides as follows, in pertinent part:

060. PROHIBITED PRACTICES (RULE 60).

01. Prohibited Practices. It shall be a prohibited practice for any licensee, or person required to be licensed under the Act, to:

...
f. Provide or offer to provide any services, for compensation or gain, such as ... credit or debt counseling, ... unless the person offering such services has first obtained a license or approval required by the appropriate licensing authority to engage in the offering of such services.

13. As set forth above, the Respondent holds an Idaho Mortgage Broker/Lender license issued by the Department under the Idaho Residential Mortgage Practices Act. While holding a mortgage broker/lender license under the Idaho Residential Mortgage Practices Act, the Respondent's act of providing or offering to provide mortgage loan modification services in Idaho while it failed to hold a license issued by the Department under the Idaho Collection Agency Act authorizing it to do so constitutes a prohibited practice under Rule 60.01.f. of the Rules Pursuant to the Idaho Residential Mortgage Practices Act, and a violation of the Idaho Residential Mortgage Practices Act.

REMEDIES

14. The Respondent admits to the allegations contained in this Consent Order.

15. Upon the execution of this Consent Order, the Respondent agrees to pay to the Department an administrative penalty in the amount of five hundred dollars (\$500), and the amount of five hundred dollars (\$500) for investigative expenses and attorney fees incurred by the Department in pursuing this matter, for a total payment to the Department for penalties, attorney fees and investigative expenses in the amount of one thousand dollars (\$1,000).

16. The Respondent further agrees to pay to the Department the additional amount of eleven hundred twenty dollars (\$1,120) constituting restitution to A.W. for charges, fees, and other expenses incurred by her through her use of the Respondent's unlicensed mortgage loan modification services.

17. The Respondent agrees that it will pay to the Department the total sum of two thousand one hundred and twenty dollars (\$2,120) due under this Consent Order in three (3) monthly payments of seven hundred six dollars and sixty-seven cents (\$706.67), with the first payment due by no later than September 18, 2009, and each of the two (2) remaining payments due on the 18th day of each month thereafter, until the amount due is paid in full.

18. The Respondent represents to the Department that it has engaged in no other debt or credit counseling activities in Idaho, other than as to A.W., as set forth above. This Consent Order is entered into by the Department in reliance upon the truth of such representation.

19. The Respondent agrees to cease engaging in the business of debt or credit counseling activities in Idaho until such time as it is properly licensed to do so under Idaho law.

20. Once the Respondent has complied with all terms of this Consent Order, the Respondent's unlicensed debt or credit counseling activity as to A.W., as referenced above, is resolved.

21. The Respondent agrees to abide by all provisions of the Idaho Collection Agency Act and the Idaho Residential Mortgage Practices Act and rules promulgated thereunder at all times in the future, and any subsequently enacted Idaho law pertaining to such acts.

22. The Respondent agrees that the findings of fact and violations contained herein may be used in any subsequent proceeding brought by the Department alleging that the Respondent breached any term of this Consent Order; that the Respondent engaged in other violations of the Idaho Collection Agency Act or the Idaho Residential Mortgage Practices Act; that the Respondent engaged in violations of any rule promulgated under either of such acts; that the Respondent violated any federal law or rule related to either of such acts; or that the Respondent violated any subsequently enacted Idaho law pertaining to either of such acts.

23. The Department agrees not to seek further penalties or fees for the violations identified in this Consent Order other than as set forth above, as long as the Respondent fully complies with the terms of this Consent Order.

24. The Respondent acknowledges and understands that this Consent Order is an administrative order and action that must be disclosed to the Department on future licensing and renewal forms. The disclosure requirements of other states may also require disclosure of the same.

25. The Respondent acknowledges and agrees that it has entered into this Consent Order voluntarily with access to the advice of counsel, and in doing so, waives its right to a hearing under the Idaho Administrative Procedure Act.

DATED this 15 day of SEPT., 2009.

VICTOR J. CARLINO, dba
IDAHO CAPITAL GROUP

By: [Signature]

Victor J. Carlino
Printed Name

OWNER
Title

DATED this 18th day of SEPT, 2009.

STATE OF IDAHO
DEPARTMENT OF FINANCE

[Signature] For Mike Larsen
MICHAEL LARSEN
Consumer Finance Bureau Chief

IT IS SO ORDERED.

DATED this 21st day of September, 2009.

STATE OF IDAHO
DEPARTMENT OF FINANCE



[Signature] FOR GAVIN M. GEE
GAVIN M. GEE, Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21 day of September, 2009,
I caused a true and correct fully-executed copy of the foregoing CONSENT ORDER to be
served on the following by the designated means:

Victor J. Carlino, dba
Idaho Capital Group
502 East Miles Avenue
Hayden, Idaho 83835

- U.S. mail, postage prepaid
- certified mail
- facsimile _____
- overnight delivery



Paralegal