

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 12-cv-00390-JLK-MEH

UNITED STATES OF AMERICA, and
STATE OF COLORADO, *ex rel.* John W. Suthers, Attorney General,

Plaintiffs,

v.

BELLA HOMES, a Delaware limited liability company,
MARK STEPHEN DIAMOND, an individual,
DANIEL DAVID DELPIANO, an individual,
MICHAEL TERRELL, an individual,
DAVID DELPIANO, an individual, and
LAURA C. TABRIZIPOUR, an individual, actually named as Relief-Defendant,

Defendants.

STIPULATED CONSENT JUDGMENT AND PERMANENT INJUNCTION

Plaintiffs, the United States of America, by United States Attorney John F. Walsh, and the State of Colorado, upon relation of John W. Suthers, Attorney General (the “Government”), and Defendants Bella Homes, LLC, Mark Stephen Diamond, Daniel David Delpiano, Michael Terrell, David Delpiano (“Defendants”), and Relief Defendant Laura C. Tabrizipour (collectively the “Parties”), state that they have fully and finally resolved all civil claims alleged in the Complaint filed on February 14, 2012 [Doc. 1].

Defendant Bella Homes, LLC admits the allegations in the Complaint and acknowledges its role in defrauding homeowners who signed over title to their homes to Bella Homes. Bella

Homes has admitted that all deed transactions into which it entered should be deemed void *ab initio*. The Court will enter a separate order voiding the deeds consistent with this Consent Judgment.

The individual Defendants confess liability to Counts Six and Seven of the Complaint. The individual Defendants do not admit liability for any other claims. Relief Defendant Tabrizipour does not admit liability to any claims but will return proceeds received from Bella Homes as set forth below. The parties acknowledge that this matter is being settled to avoid the uncertainty of litigation arising from the claims that are disputed.

As such, the Parties present to the Court this Consent Judgment and Permanent Injunction (“Consent Judgment”). By their authorized signatures, the Defendants and Relief Defendant stipulate to the Court that they understand and agree to the terms of this Consent Judgment; that they have had an opportunity to consult with legal counsel concerning this Consent Judgment; that they accept the legal consequences involved in agreeing to this Consent Judgment; that they knowingly and voluntarily waive all rights of appeal from this Consent Judgment; that they are aware of the duties placed upon them by the Consent Judgment and are desirous and capable of carrying out their duties in full; and that this Consent Judgment represents a compromise and settlement of the civil claims alleged by the Government in the Complaint filed on February 14, 2012 [Doc. 1].

The Parties submit to the jurisdiction of this Court and venue in the District of Colorado, and do not contest the entry of this Consent Judgment.

As all Parties have approved and agreed to entry of this Consent Judgment by their authorized signatures below, the Court, after being fully advised in this matter, FINDS,

CONCLUDES AND ORDERS:

That it has jurisdiction over the Parties and subject matter of this suit under the grounds alleged in the Complaint;

That venue is proper; and

That Defendants and Relief Defendant shall be subject to the following permanent injunctive and monetary provisions, as follows:

PERMANENT INJUNCTION

1. Defendants Bella Homes, LLC, and any assigns, agents, successors, subsidiaries, holding companies, and related entities, Mark Stephen Diamond, Daniel David Delpiano, Michael Terrell, and David Delpiano, and any other persons or entities under their control or in concert or participation with them, now or in the future, shall be permanently enjoined in the United States, and its territories, from participating in mortgage and/or residential real estate related business as specifically provided below:

(a) Engaging, assisting, or otherwise participating, directly or indirectly, in mortgage loan origination, mortgage brokerage activity, mortgage assistance, mortgage relief, principal reductions, mortgage purchases or negotiations, foreclosure consulting, loan modifications, residential real estate, appraisals, title services, underwriting, lending, or loan or forensic audits in any capacity. This prohibition does not apply to Defendant Terrell to the extent he prepares and conducts closings of properties that are sold or purchased by third parties;

(b) Soliciting, advertising, selling, marketing, displaying, offering, performing, or accepting or receiving payment for, directly or indirectly, services, including lead

generation and product sales, relating to mortgage loan origination, mortgage brokerage activity, mortgage assistance, mortgage relief, principal reductions, mortgage purchases or negotiations, foreclosure consulting, loan modifications, residential real estate, appraisals, title services, underwriting, lending, or loan or forensic audits; and

(c) Publishing, distributing or disseminating any information, including written, oral, or video, directly or indirectly, in exchange for money or anything of value, relating to mortgage loan origination, mortgage brokerage activity, mortgage assistance, mortgage relief, principal reductions, mortgage purchases or negotiations, foreclosure consulting, loan modifications, residential real estate, appraisals, title services, underwriting, lending, or loan or forensic audits.

Subject to the injunctive terms above, the individual Defendants and Relief Defendant are not prohibited from buying or selling property for their personal use, or for business purposes unrelated to a mortgage or residential real estate business as described above.

2. All vehicles in the possession of the individual Defendants that are leased by Bella Homes, Mark Diamond, Diamond and Associates, or Diamond Corporation, must be surrendered to the responsible party pursuant to the leasing agreement within 15 days of execution of the Consent Judgment, and each individual Defendant must personally resolve any outstanding amounts owed or any other outstanding obligations on such leases.

MONETARY PROVISIONS

Final Judgment

3. Defendant Bella Homes, LLC, and any assigns, successors, subsidiaries, holding companies, and related entities, hereby consents to a final judgment against it, as a debt for a fine, penalty, or forfeiture, payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss, for ten million dollars (\$10,000,000), which shall be suspended and which the Government agrees not to enforce unless and until Defendant Bella Homes, LLC, and any assigns, successors, subsidiaries, holding companies, and related entities, violates any of the injunctive provisions above or if any Defendant or Relief Defendant violates any of the payment obligations below in paragraphs 11 through 13. Upon payment in full of the amounts required by this Consent Judgment by Defendants and Relief Defendant set forth below, Plaintiffs will enter a satisfaction of monetary judgment for this Defendant.

4. Defendant Mark Stephen Diamond hereby consents to a final judgment, as a debt for a fine, penalty, or forfeiture, payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss, for five hundred thousand dollars (\$500,000), which shall be suspended and which the Government agrees not to enforce unless and until Defendant Mark Stephen Diamond violates any of the injunctive provisions above or the payment obligations below in paragraphs 11 and 12(a). Upon payment in full of the amounts required by this Consent Judgment by this Defendant set forth below, Plaintiffs will enter a satisfaction of monetary judgment for this Defendant.

5. Defendant Daniel David Delpiano hereby consents to a final judgment against him, as a debt for a fine, penalty, or forfeiture, payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss, for two million five hundred dollars (\$2,500,000), which shall be suspended and which the Government agrees not to enforce unless and until Defendant Daniel David Delpiano violates any of the injunctive provisions above or any Defendant or Relief Defendant violates any of the payment obligations below in paragraphs 11 through 13. Upon payment in full of the \$1,207,726.58 required by this Consent Judgment from Defendants and Relief Defendant set forth below, Plaintiffs will enter a satisfaction of monetary judgment for this Defendant.

6. Defendant Michael Terrell hereby consents to a final judgment against him, as a debt for a fine, penalty, or forfeiture, payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss, for five hundred thousand dollars (\$500,000), which shall be suspended and which the Government agrees not to enforce unless and until Defendant Michael Terrell violates any of the injunctive provisions above or the payment obligations below in paragraph 12(c). Upon payment in full of the amounts required by this Consent Judgment by this Defendant set forth below, Plaintiffs will enter a satisfaction of monetary judgment for this Defendant.

7. Defendant David Delpiano hereby consents to a final judgment against him, as a debt for a fine, penalty, or forfeiture, payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss, for five hundred thousand dollars (\$500,000), which shall be suspended and which the Government agrees not to enforce unless and until Defendant David Delpiano violates any of the injunctive provisions above or the payment obligations below in

paragraph 12(b). Upon payment in full of the amounts required by this Consent Judgment by this Defendant set forth below, Plaintiffs will enter a satisfaction of monetary judgment for this Defendant.

8. Relief Defendant Laura C. Tabrizipour hereby consents to a final judgment against her, as a debt for a fine, penalty, or forfeiture, payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss, for one hundred thousand dollars (\$100,000), which shall be suspended and which the Government agrees not to enforce unless and until Relief Defendant Laura C. Tabrizipour violates any of the payment obligations below in paragraph 12(d). Upon payment in full of the amounts required by this Consent Judgment by this Relief Defendant set forth below, Plaintiffs will enter a satisfaction of monetary judgment for this Relief Defendant.

Payment Obligations

9. The Defendants and the Relief Defendant agree to immediately surrender all rights and claims to the \$707,726.58 currently held in trust by the State of Colorado. The proceeds already received from Defendants and held in trust by the Government under the Stipulated Preliminary Injunction in the amount of \$707,726.58 shall be permanently released to the State of Colorado on entry of the Consent Judgment and shall be used for purposes of making restitution to the current and former homeowners harmed by the conduct alleged in the Complaint, and such funds shall be distributed by and at the sole discretion of the State of Colorado.

10. Defendants and Relief Defendant agree to pay an additional sum of \$497,500 to the Colorado Department of Law, as set forth below in paragraphs 11 and 12, which shall be used for purposes of making restitution to the current and former homeowners harmed by the conduct

alleged in the Complaint, and such funds shall be distributed by and at the sole discretion of the State of Colorado.

11. For the payment obligation of \$497,500 described in paragraph 10, Defendant Mark Diamond is obligated to pay and personally guarantee \$300,000 to the Colorado Department of Law within 90 days of execution of this Consent Judgment, unless the parties mutually agree to an extension of time. Defendant Diamond agrees to use his best efforts to accomplish this payment within 90 days. It is understood that the single mortgage presently owned by Bella Homes, or its subsidiary, may be sold in order to satisfy this financial obligation. It is further understood that this property is released from the current injunction in order to permit the sale. The funds from the sale will be placed in the escrow account of Bella Homes' counsel, who will write a check payable to the Colorado Department of Law once the funds clear to satisfy the \$300,000 obligation.

12. For the payment obligation of \$497,500 described in paragraph 10, \$197,500 will be paid (not jointly and severally) to the Colorado Department of Law as follows:

- (a) Mark S. Diamond: \$150,000
- (b) David Delpiano: \$12,500
- (c) Michael Terrell: \$25,000
- (d) Laura C. Tabrizipour: \$10,000

13. The respective payment obligations described in paragraph 12 will be paid pursuant to an annual payment schedule as follows:

- i. On or before December 31 of each year, starting in the year 2012, the individual Defendants and Relief Defendant identified as (a)-(d) in paragraph 12 will pay one-fifth of

their respective total amount identified in (a)-(d) in paragraph 12. Payments shall be made payable and delivered to:

Colorado Department of Law
Attn: Consumer Protection Section
1525 Sherman Street
Denver, Colorado 80203

ii. In the event an individual Defendant or Relief Defendant experiences temporary financial hardship and is unable to make the full annual payment, the individual Defendant or Relief Defendant must (1) contact the Government in writing no later than 30 days before the annual payment deadline to explain and document the hardship; and (2) if requested by the Government, complete and submit to the Government a Financial Statement under oath and any other documents or information requested by the Government, including signed authorizations for release of financial and personal information.

iii. In the event of a sufficiently documented financial hardship, the annual payment obligation may be deferred for one year, provided that the deferred payment will be due in full the following year with that year's required payment. Each individual Defendant or Relief Defendant may only obtain one deferral over the five-year repayment period. In the event that the deferral is requested for the final payment, the payment schedule may be extended for a one-year period to obtain the final payment. If such Defendant or Relief Defendant does not cure the deficiency within one year, Plaintiffs may declare default and execute on the confessed judgment for that Defendant or Relief Defendant.

iv. If any Defendant or Relief Defendant does not cure the deficiency as provided in section iii. above, Plaintiffs shall provide written notice of default by United States mail to Defendant Daniel David Delpiano at his last known address providing him 30 days from mailing a right to cure any deficiency before Plaintiffs may declare default and execute on the confessed judgment against Defendant Daniel David Delpiano.

14. All funds received from Defendants and Relief Defendant, and any interest thereon, shall be held in trust by the State of Colorado for purposes of making restitution to the current and former homeowners harmed by the conduct alleged in the Complaint. Such funds shall be distributed by and at the sole discretion of the State of Colorado, and can be distributed without awaiting the satisfaction of all payments.

15. All payments required by the Consent Judgment shall be deemed a debt for a fine, penalty, or forfeiture, payable to and for the benefit of a governmental unit, and not compensation for actual pecuniary loss, pursuant to 11 U.S.C. § 523(a)(7) of the Bankruptcy Code.

16. Defendant Bella Homes, LLC, and any assigns, subsidiaries, holding companies, agents, or related entities, will as soon as practicable sell, trade, liquidate, and otherwise convert to cash all assets, receivables, interests, personal and real property, notes, obligations, security, collateral, accounts, tangible items, and shares in order to reimburse accounts that originally paid for the office furnishings and equipment or to fund part or all of the payments due herein.

17. Absent authorized consent by the Government, if Defendants or Relief Defendant make a partial payment under this Consent Judgment, the Government's acceptance of a partial payment does not prevent it from declaring the Consent Judgment breached, declaring one or more

of the Defendants or Relief Defendant in default, and collecting the full amount due and seeking other remedies, including contempt and enforcing the suspended judgment.

VIOLATIONS OF THE CONSENT JUDGMENT

18. If the Government discovers that any Defendant or Relief Defendant made a material misrepresentation regarding information on any Financial Statement or related documents provided to the Government, then the Government may provide written notice to the Court and the affected Defendant or Relief Defendant describing the alleged material misrepresentation. Upon receiving such notice, the affected Defendant or Relief Defendant shall have 14 days to respond to the Government's allegations of a material misrepresentation. If the Court finds a material misrepresentation in the information as described on the Financial Statement, it shall constitute a default of the Consent Judgment and the Government may commence enforcement of the final judgment against that Defendant or Relief Defendant.

19. The obligations set forth in this Consent Judgment are continuing.

OTHER TERMS AND CONDITIONS

20. ***Enforcement and Collection.*** This Court shall retain jurisdiction over this matter for the purposes of (a) enabling the Government to apply, at any time, for enforcement of any provision of this Consent Judgment and for sanctions or other remedies for any violation of this Consent Judgment, including contempt and enforcement of the judgment; (b) enabling any party to this Consent Judgment to apply, upon giving 30 days' written notice to all other Parties, for such further orders and directions as might be necessary or appropriate either for the construction or enforcement of this Consent Judgment or for the modification or termination of one or more injunctive provisions; and (c) enabling the Government to collect or enforce any judgment

rendered pursuant to the Consent Judgment.

21. **Cooperation.** Defendants and Relief Defendant agree to cooperate with all investigations and other proceedings that the Government may bring to enforce the terms of this Consent Judgment, including the obligations to:

- (a) Appear at the request of the Government for hearings, depositions, and trial and provide testimony. All such testimony shall be truthful;
- (b) Produce documents, records, electronic records, or any other tangible things in response to a subpoena or other written request issued by the Government; and
- (c) Accept a subpoena from the Government without need for service of process.

22. **No Third Party Beneficiaries Intended.** This Consent Judgment is not intended to confer upon any person any rights or remedies, including rights as a third-party beneficiary. This Consent Judgment is not intended to create a private right of action on the part of any person or entity other than the Parties hereto.

23. **Private Parties Retain Rights.** This Consent Judgment does not affect the rights of any private party to pursue remedies against Defendants or Relief Defendant under any other statute or common law.

24. **Civil Liability Only.** The Consent Judgment only addresses civil liability for the claims brought in the Complaint.

25. **No Other Release.** The Defendants and Relief Defendant waive and shall not assert any defenses they may have to any criminal prosecution, if any, related to the allegations in the Complaint that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause

in the Eighth Amendment of the Constitution, the Consent Judgment bars a remedy sought in such criminal prosecution.

26. *Service of Notices and Process.* Service of notices or process required or permitted by this Consent Judgment shall be in writing and delivered by United States mail on the following:

To Defendants and Relief Defendant:

Bella Homes, LLC:
Via counsel of record

Mark Stephen Diamond:
8275 East Wood Drive
Scottsdale, Arizona 85260

Michael Terrell:
465 Kirkstall Trail
Alpharetta, Georgia 30222

David Delpiano:
2616 Long Pointe
Roswell, Georgia 30076

Daniel David Delpiano:
10450 Belladrum Drive
Alpharetta, Georgia 30022

Laura C. Tabrizipour:
2616 Long Pointe
Roswell, Georgia 30076

To the Government:

Shelly-Jean Sartor, Investigator
Consumer Protection Section
Colorado Department of Law
1525 Sherman Street
Denver, Colorado 80203
Tel: 303-866-5079

United States Attorney's Office
District of Colorado
1225 17th Street, Suite 700
Denver, Colorado 80202
Tel: 303-454-0100

If any of the Defendants or Relief Defendant change their address or telephone number, they must notify the Government in writing of the new address and telephone number within 30 days of the change.

27. ***Waiver.*** The failure of any party to exercise any rights under this Consent Judgment shall not be deemed a waiver of any right or any future rights.

28. ***Severability.*** If any part of this Consent Judgment shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder hereof, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein

29. ***Counterparts.*** This Consent Judgment may be signed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute the Consent Judgment. Facsimile and electronic copies of this Consent Judgment and the signatures hereto may be used with the same force and effect as an original.

30. ***Integration.*** This Consent Judgment constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understanding relating to the subject matter hereof. There are no other representations, agreements or understandings between Defendants/Relief Defendant and the Government that are not stated in writing herein.

31. ***Amendment.*** This Consent Judgment may be amended solely by written

agreement signed by the Government and by all the Defendants/Relief Defendant and approved by the Court, except that any modifications to the payment schedule may be approved by the Government without the Court's approval.

32. ***Superseding Preliminary Injunction:*** The Consent Judgment supersedes the stipulated preliminary injunction entered in this case on February 22, 2012, and controls all obligations of the parties.

APPROVED AND ENTERED ON THIS ____ DAY OF _____, 2012.

BY THE COURT

Dated this 19th day of March, 2012.

s/ Arthur W. Leach
Bella Homes, LLC,
by its authorized representative, Arthur W. Leach.

Dated this 19th day of March, 2012.

s/ Mark Stephen Diamond
Mark Stephen Diamond

Dated this 18th day of March, 2012.

s/ Daniel David Delpiano
Daniel David Delpiano

Dated this 19th day of March, 2012.

s/ David Delpiano
David Delpiano

Dated this 19th day of March, 2012.

s/ Michael Terrell
Michael Terrell

Dated this 19th day of March, 2012.

s/ Laura C. Tabrizipour
Laura C. Tabrizipour

APPROVED AS TO FORM:

Dated this 19th day of March, 2012.

For the United States:

John F. Walsh, United States Attorney

s/ Jamie L. Mendelson
Jamie L. Mendelson
Assistant United States Attorney

s/ J. Chris Larson
J. Chris Larson
Assistant United States Attorney

For the State of Colorado:

John W. Suthers, Attorney General

s/ Erik R. Neusch
Erik R. Neusch
Assistant Attorney General

For Bella Homes:

s/ Arthur W. Leach
Arthur W. Leach

For Daniel David Delpiano:

s/ John M. Richilano
John M. Richilano

For Mark Stephen Diamond:

s/ Richard L. Tegtmeier
Richard L. Tegtmeier

For Michael Terrell, David Delpiano, and
Laura C. Tabrizipour:

s/ Patrick L. Ridley
Patrick L. Ridley