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FILED

MAY 29 2020

Clerk of Courts
Cuyahoga County, Ohio

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

PATRICK W. CANTLIN, ET AL.
Plaintiff

Case No: CV-12-790865

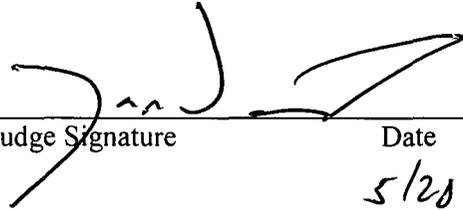
Judge: JOHN P O'DONNELL

SMYTHE CRAMER CO.,
Defendant

JOURNAL ENTRY

ORDER GRANTING THE PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND AWARD OF FEES, COSTS AND INCENTIVE COMPENSATION. (EIGHT PAGES INCLUDING ATTACHMENTS.)

O.S.J.

Judge Signature	Date
	5/28/2020

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

PATRICK W. CANTLIN, <i>et al.</i>	:	CASE NO. CV 12 790865
	:	
Plaintiffs,	:	Judge John P. O'Donnell
	:	
v.	:	
	:	
SMYTHE CRAMER CO.,	:	
	:	
Defendant.	:	
	:	

**ORDER GRANTING PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT
AND AWARD OF FEES, COSTS AND INCENTIVE COMPENSATION**

On, May 28, 2020, the Court held a hearing to consider the Plaintiffs' Motion for Final Approval of the Class Action Settlement in this case, and the Motion for Attorney Fees, Costs and Incentive Compensation. After review of the motions, the supporting briefs and materials, and after a consideration of the information presented at the hearing, the Court hereby **GRANTS** the Plaintiffs' Motion for Final Approval and finally approves the class action settlement and all its terms pursuant to Rule 23 of the Ohio Rules of Civil Procedure, and **GRANTS** the Motion for Attorney Fees, Costs and Incentive Compensation, based upon the following chronology and findings:

1. The Plaintiffs and the Defendant entered into a Settlement Agreement dated March 3, 2020 ("Settlement Agreement"), which sets forth the terms and conditions for a proposed class action settlement and dismissal of this case on the merits and with prejudice.

2. The Court preliminarily approved the Settlement Agreement on March 9, 2020.

3. The preliminary approval order outlined the form and manner by which the Plaintiffs and Defendant were to provide the Class with notice of the settlement, the fairness hearing and related matters. The notice program included mailing short form notices to potential class members, use of publication notice, the creation of a settlement website which contained additional information including a long form notice, a claim form and a process for on-line submission of claims.

4. The Administrator has verified that the mailing, publication and affixed notices conformed to the preliminary approval order. The Court finds that the notice program fully complied with Rule 23 of the Ohio Rules of Civil Procedure and the requirements of due process, providing to the Class the best notice practicable under the circumstances. Further, the Administrator has confirmed that it received no objections to the Settlement or the application for Fees, Costs and Incentive compensation, and the Court notes none were filed with the Clerk.

5. The Court hereby grants final approval of the Settlement on the basis that the settlement is fair, reasonable, and adequate to the Settlement Class. *See* Ohio R. Civ. P. 23(e).

6. The Court believes that the Settlement provides substantial and meaningful monetary and non-monetary relief to the Class.

7. The Court is also satisfied that the Settlement was fairly and honestly negotiated as it was the result of vigorous arms-length negotiations which were undertaken in good faith by capable and experienced counsel, and a portion of which the Court participated in as a mediator.

8. The Court finds that the prerequisites for the Settlement Class to be certified under Ohio Rules of Civil Procedure 23(A) and (B)(3) have been satisfied in that: that (a) the number of Settlement Class Members is so numerous that joinder of all class members is impracticable; (b) there are questions of law and fact common to each member of the Settlement Class; (c)

Representative Plaintiffs' claims are typical of the claims of the Settlement Class they seek to represent; (d) the Representative Plaintiffs will fairly and adequately represent the interests of the Settlement Class; (e) common questions of law and fact predominate over any individualized questions; and (f) all other factors bearing on class actions support certification.

9. The Court hereby approves the Settlement and certifies the following two Classes of individuals under Civil Rules 23(A) and (B)(3):

(a) an Administrative Fee Class consisting of all individuals in the state of Ohio who, between September 18, 2005 through December 31, 2009 ("the Administrative Fee Class Period"), paid Defendant an Administrative Fee or Administrative Service Fee pursuant to the Exclusive Right to Sell Agreement, Exclusive Buyer Representation Agreement, Offer to Purchase Agreement, or Purchase Agreement; and

(b) a Brokerage Services Fee Class consisting of all buyers of real estate in Ohio who paid the Defendant a Brokerage Services Fee between March 1, 2009 and August 1, 2019 (the Brokerage Services Class Period), and who did *not* have an exclusive buyer representation agreement with Defendant dated May 2009 or later.

Excluded from the Settlement Classes are: Defendant, Defendant's personal representatives, affiliates, and parent and each of their current or former directors, officers, and employees, sales agents/associates, legal representatives, successors, and assigns; any other entity in which the Defendant has a controlling interest; any Judge to whom the Action is assigned and all members of his immediate family; and all Persons who timely and validly Opt-Out pursuant to the Class Notice disseminated in accordance with the Preliminary Approval Order.

10. Pursuant to Civil Rule 23, the Representative Plaintiffs were and continue to be certified as the class representatives on behalf of the Settlement Class and Class Counsel

Patrick J. Perotti of Dworken & Bernstein Co., and James A. DeRoche of Garson Johnson LLC were and continue to be appointed as Class Counsel for the Settlement Classes and Class Counsel's Motion for Attorneys' Fees.

11. The persons identified on Exhibit 1 requested exclusion from the Settlement Class and are therefore excluded from this Settlement. These persons identified on Exhibit 1 are not included in or bound by this Order and may individually pursue claims (if any) against Defendant. Those persons are not entitled to any recovery from the Settlement proceeds obtained through this Settlement.

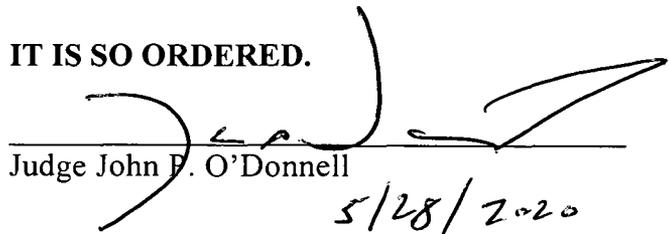
12. Class Counsel's application for Attorneys' Fees and Costs and for Representative Plaintiff Incentive Awards is hereby granted. Defendant is hereby ordered to pay such Attorneys' Fees, Costs, and Incentive Awards in the amount of \$8,500,000 in attorney fees and costs jointly to Dworken & Bernstein Co., L.P.A. and Garson and Johnson; and in the further amount of incentive awards of \$5,000 to Plaintiff Rita Noall, \$5,000 to Plaintiff Cindy Miller, \$5,000 to Plaintiff Patrick Cantlin and \$5,000 to Plaintiff Elizabeth Hong nka Haggerty. Defendant is further ordered, in cooperation with the Administrator, to pay all Valid Claims as determined by the Administrator per the terms of the Settlement Agreement; as agreed by the Parties; and/or as directed by this Court. Defendant is further ordered to tender to Class Counsel the checks to make the required *cy pres* payments, totaling \$200,000, in the amounts and to the charities identified in writing pursuant to the Settlement Agreement, when requested by Class Counsel. The foregoing activities by Defendant and the Administrator shall be made pursuant to the terms and time periods set out in the Settlement Agreement. Finally, Defendant is ordered to comply with the terms of the Court's separately issued Order Regarding Stipulated Injunctive Relief.

13. The Court also orders that on the Effective Date of the Settlement Agreement the Released Claims of the Settlement Classes against the Released Parties are released and the class claims dismissed with prejudice.

14. Nothing in the Settlement Agreement, this Order, or the claims process creates a claim by any Person against the Settlement Administrator based on any determination of a Valid Claim, distributions, or awards made in accordance with the Agreement, this Order, or the claims process, and all relief shall be solely as provided in the Settlement Agreement, this Order, and the Claim process is solely pursuant to the Claims process administered by the Settlement Administrator. Neither Plaintiffs nor Defendant, nor their counsel, shall have any liability whatsoever for any act or omission of the Settlement Administrator.

15. Without affecting the finality of this Order, the Court retains exclusive jurisdiction over the action to consider all further matters arising out of, or connected with, the Settlement or the administration of this order.

IT IS SO ORDERED.



Judge John F. O'Donnell

May 28, 2020

5/28/2020

Consented to by:

/s/ Jay N. Varon

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Plaintiffs' Counsel and Class Counsel

EXHIBIT 1

OPT-OUTS

1. Gene Glevdura
2. Jeffrey Johnson
3. John Canning
4. Xiaovi Yu