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

FILED

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CLERK OF COURTS
CUYAHOGA COUNTY

PATRICK W. CANTLIN, ET AL.
Plaintiff

Case No: CV-12-790865

Judge: JOHN P O'DONNELL

SMYTHE CRAMER CO.,
Defendant

JOURNAL ENTRY

THE PARTIES' JOINT MOTION FOR AN ORDER PRELIMINARILY APPROVING THE PROPOSED SETTLEMENT, APPROVING NOTICE, AND SCHEDULING A FINAL APPROVAL HEARING, FILED 3/5/2020, IS GRANTED. O.S.J.

THE FINAL APPROVAL HEARING IS SCHEDULED AS FOLLOWS:

HEARING SET FOR 05/28/2020 AT 02:30 PM. COURTROOM 18-D, JUDGE JOHN P. O'DONNELL.

Judge Signature

Date

3/7/2020

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

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

**ORDER PRELIMINARILY APPROVING
SETTLEMENT AND PROVIDING FOR NOTICE**

WHEREAS, Class Counsel and Representative Plaintiffs Patrick W. Cantlin, Elizabeth S. Hong nka Haggerty, Rita Noall and Cindy Miller, individually and as representatives of the Settlement Classes, and Defendant Smythe Cramer Co., d/b/a Howard Hanna Smythe Cramer, (“Defendant” or “Smythe Cramer”) entered into a settlement of the claims asserted in this Action, the terms of which are set forth in a Settlement Agreement and Release dated ~~February~~ ^{March} 3, 2020 (the “Agreement”);¹

WHEREAS, the Agreement, together with the exhibits thereto, sets forth the terms and conditions for the proposed settlement of the claims alleged in this Action on the merits and with prejudice;

WHEREAS, the Agreement is subject to review and approval by this Court;

¹ All Capitalized terms used herein have the same meanings set forth for such terms in the Settlement Agreement and Release.

WHEREAS, the Court, having read and considered the Agreement, the proposed Class Notices, the proposed Claim Form, and submissions made relating to the Settlement Agreement, finds that substantial and sufficient grounds exist for entering this Order;

NOW, THEREFORE, IT IS HEREBY ORDERED, this 4th day of March 2020, that:

Pursuant to Civ.R. 23(A) and (B)(3) of the Ohio Rules of Civil Procedure and for the purposes of the Settlement only, the Court certifies the following Settlement Classes, as slightly revised from the Court's previous certification order to provide ending dates: (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; 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.

1. The Court finds, preliminarily and for purposes of Settlement only, that the terms of the Agreement including Defendant's commitment to pay all Valid Claims in full and the proposed Order Regarding Stipulated Injunctive Relief are fair, reasonable and adequate.

2. The Court also finds preliminarily and for purposes of Settlement only, 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.

3. Pursuant to Rule 23 of the Ohio Rules of Civil Procedure, preliminarily and for the purposes of Settlement only, the Representative Plaintiffs are 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 are hereby appointed as Counsel for the Settlement Classes.

4. Class Counsel shall file application for the Attorneys Fees and Costs and Representative Plaintiff Incentive Awards referenced in the Agreement no later than 21 days after the entrance of this Preliminary Approval Order.

5. A hearing (the "Final Approval Hearing") pursuant to Civ.R 23(E) is hereby scheduled to be held before the Court on 5/28, 2020 at 2:30 p.m. [*ideally between 70 and 95 days following entry of this Preliminary Approval Order*] to consider:

- a) Whether the Settlement should be finally approved as fair, reasonable, and adequate, and whether the Released Claims of the Settlement Classes against the Released Parties should be dismissed with prejudice by entry of the Final Approval Order and Judgment;
- b) Any Objections filed by Settlement Class Members;

- c) Class Counsel's motion for an award of Attorneys' Fees and Costs;
- d) The Representative Plaintiff Incentive Awards; and
- e) The *Cy Pres* Payment.

5. The Court approves the form, substance, requirements of, and manner of distributing: (a) the Class Notice, including the Short Form Notice and Long Form Notice attached as Exhibits F and C, respectively, to the Agreement, the Publication Notice attached as Exhibit E to the Agreement, and (b) the Claim Form, attached as Exhibit A to the Agreement. The Settlement Administrator shall provide a simple, direct method for Class Members to submit their claims online electronically at the Settlement Website.

6. The Court appoints the Heffler Claims Group as the Settlement Administrator to fulfill those duties it thereby is undertaking, including dissemination of the Class Notice, establishment of the Settlement Website, operation of a Call Center to include voice recorded IVR and live operators, tracking Objections, and Processing Claim Forms, and determining Valid Claims, and reporting to the Court and Counsel, all as outlined in the Agreement.

7. Class Counsel has the authority to enter into the Agreement on behalf of the Settlement Class and are authorized to act on behalf of the members of the Settlement Class with respect to all acts or consents required by or that may be given pursuant to the Agreement or such other acts that are reasonably necessary to consummate the Agreement.

8. Not later than twenty one (21) days before the Final Approval Hearing, the Settlement Administrator will provide Class Counsel and Defense Counsel with an affidavit or declaration by a competent affiant or declarant, attesting that the Notices have been disseminated in accordance with this Order.

9. Defendant will cooperate with the Settlement Administrator to facilitate providing notice; to assist with establishing the Settlement website; to provide the Settlement Administrator with the list of customers who should receive notice (Notice List).

10. All Settlement Class Members who submit a Claim Form must sign, as part of the Claim Form, an attestation under penalty of perjury but not subject to notarization, that, in sum and substance, says: (i) they are a member of either the Administrative Fee Class or the Brokerage Services Fee Class; (ii) they did not receive disqualifying forms during the class period; (iii) they (as opposed to another person) actually paid the Fee themselves; (iv) submission of the Claim Form waives any Opt-Out rights that they may otherwise have; (v) that no portion of the Claim to which they may be entitled has been assigned, transferred, or conveyed in any manner; (vi) they have the legal authority to submit the Claim Form; and (vi) that the information provided on the Claim Form is truthful and accurate.

11. The Settlement Administrator shall use best efforts to determine validity of Claims within thirty (30) days of the Effective Date. In the event that validation is not practicable within sixty (60) days, the Settlement Administrator shall have an additional sixty (60) days to complete the validation of Claims. Within forty-five (45) days after Final Approval Hearing, the Settlement Administrator will provide by email to Counsel for the Parties a dated report (the "Claims Report") providing copies of those Claim Forms that were denied, any other correspondence or materials relating to same, and stating the reason(s) for the denial. Counsel for the Parties will have fourteen (14) days after the date of the Claims Report (or thirty (30) days if the number of denied claims in the Denied Claims Report exceeds 50) to dispute any such denied claims by email to the Settlement Administrator (the "Dispute Filing Period"). In the event the Parties cannot reach agreement on any claim, Class Counsel or the Claimant shall have the right, within

fourteen (14) days after the Dispute Filing Period, to submit such claim to this Court for its final, non-appealable determination.

12. Nothing in this Agreement or 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 this Agreement and the exhibits hereto, and all relief shall be solely as provided in this Agreement and by its Claim process. Neither Plaintiffs nor Defendant, nor their counsel, shall have any liability whatsoever for any act or omission of the Settlement Administrator.

13. Settlement Class Members shall be bound by all determinations and judgments in this Action, whether favorable or unfavorable, unless such persons request exclusion from the Settlement Class in a timely and proper manner, as hereinafter provided. A Settlement Class Member wishing to make such an Opt-Out request shall do so by serving, via first class mail, postage pre-paid, a written request for exclusion which must be postmarked to the address specified in the Claims Notice no later than [fourteen (14) days] before the Final Approval Hearing. Such request for exclusion must: (i) be signed by the Settlement Class Member; (ii) include the full name and address of the Person(s) requesting exclusion; (iii) be timely postmarked and mailed to the address designated in the Class Notice; and (iv) include the following statement or similar: "I/we request to be excluded from the proposed class settlement in *Cantlin v. Smythe Cramer Co.*, Case No. CV-12-790865 (Court of Common Pleas, Cuyahoga County, Ohio)." No Class Member, or any person acting on behalf of or in concert or participation with that Class Member, may exclude any other Class Member from a Settlement Class, and no Class Member shall be deemed Opted-Out of a Settlement Class through any purported "mass" or "class" Opt-Outs. Settlement Class Members requesting exclusion from the Settlement Class shall not be

entitled to receive any payment out of the Settlement Fund as described in the Settlement Stipulation and Notice.

14. Any Class Member, on his, her, or its own, or through an attorney hired at his, her, or its own expense, may Object to the terms of the Settlement, Class Counsel's motion for an award of Attorneys' Fees and Costs and/or the Representative Plaintiff Incentive Awards *so long as* the Objection is filed with the Court and served on Class Counsel and Defendant's Counsel, at the and the Settlement Administrator, at the addresses listed below at least fourteen (14) days prior to the Fairness Hearing. The Court's address is 1200 Ontario Street, Cleveland, OH 44113. Class Counsel's address is Patrick J. Perotti, Dworken & Bernstein Co., LPA, 60 South Park Place, Painesville, Ohio 44077 or pperotti@dworkenlaw.com. Defendant's Counsel is Anthony J. Coyne, Mansour Gavin, LPA, North Point Tower, 1001 Lakeside Ave, Suite 1400, Cleveland, Ohio, 44114 or ACoyne@mggmlpa.com. The Settlement Administrator's Office is 1515 Market Street, Suite 1700, Philadelphia, PA 19102 or jprutsman@hefflerclaims.com or dkaufman@hefflerclaims.com.

To be effective, any such Objection must be in writing and contain the following information: (a) reference at the beginning to *Cantlin v. Smythe Cramer Co.*, Case No. 12-790865, the Court of Common Pleas, Cuyahoga County, Ohio; (b) the name, current address, telephone number, and signature of the objecting Class Member or the Legally Authorized Representative; (c) the name, current address and phone number of all lawyers or other persons working with, representing, or advising the objecting Class Member in connection with the objection; (d) a statement of his, her, or its membership in one of the Settlement Classes, including all information required by the Claim Form; (e) the specific reasons, including any factual and legal basis for the objection; (f) copies of any papers, briefs, or other documents upon which the Objection is based;

(g) a declaration of whether the Objector intends to appear at the Final Approval hearing and if so, (i) a list containing the name, current address and phone number of all witnesses the objecting Class Member may call to testify at the Final Approval Hearing and a full summary of the proposed testimony and (ii) a description of the evidence and copies of documents the objecting Class Member may offer at the Final Approval hearing; and (h) a detailed list of any other objections to class action settlement filed by the Objector or his, her, or its counsel in any court, whether state or federal, in the United States, in the previous five (5) years or a statement that no such objections have been filed. If any objecting Class Member, or that Class Member's counsel, has objected to a class action settlement on more than three occasions, the notice of intent to object must also contain all matters described in the Settlement Agreement, generally summarized here, to wit:

- a. a list all cases in which such objections were filed and by whom;
- b. the outcome of the objections;
- c. the amount of money, if any, paid in connection with the objection to the objecting Class Member, Class Member's counsel, or to anyone else;
- d. the identity of the person or entity that made the payment;
- e. the identity of the person or entity that received the payment or any subsequent distribution of that payment; and
- f. a declaration of whether the information in subsections (c)-(e) above was disclosed to the court overseeing the proposed settlement.

15. Any Class Member who fails to file and serve timely a written Objection and notice of his or her intent to appear at the Final Approval Hearing pursuant to this Paragraph, and as detailed in the Notice, shall not be permitted to object to the approval of the Settlement at the Fairness Hearing and shall be foreclosed from seeking any review of the

Settlement or the terms of the Agreement by appeal or other means. To appeal from any provision of the order approving the Settlement as fair, reasonable and adequate, the attorneys' fees or the award of incentive payments, the Class Member must appear in person, or through counsel, or seek leave of Court excusing such appearance prior to the Final Approval Hearing, or as otherwise may be permitted by the Court at the Final Approval Hearing. Any Class Member who does not object in the manner prescribed above shall be deemed to have waived all such objections and shall forever be foreclosed from making any objection to the fairness, adequacy or reasonableness of the Settlement and the Order and Final Judgment to be entered approving the Settlement.

16. Pending final determination of whether the Settlement should be approved, all Settlement Class Members, and each of them, and anyone who acts or purports to act on their behalf shall not institute, commence or prosecute any action which asserts Released Claims against any of the Released Persons.

17. If the Settlement is finally approved, the Court will enter a Final Approval Order approving the Agreement substantially in the form and content attached to the Agreement as Exhibit B, and incorporating it as the judgment of the Court, which judgment shall be binding upon all members of the Certified Classes who did not previously exclude themselves in response to the Notice of Certification.

18. In the event that the Settlement shall not be consummated pursuant to its term or is materially modified by this Court or on any appeal or remand, the Agreement, except as otherwise provided therein, may be terminated pursuant to the Agreement Section XIII.C and if so terminated shall be null and void, of no further force or effect, and without prejudice to any party, and may not be introduced as evidence or referred to in any action or proceedings by

any person or entity, and each party shall be restored to his, her or its respective position as it existed prior to the execution of the Agreement.

19. The Court retains exclusive jurisdiction over the action to consider all further matters arising out of, or connected with, the Settlement.


20. The Parties are hereby authorized without further approval from the Court to agree upon such amendments or modifications of the Agreement and of all exhibits thereto as shall be consistent in all respects with this Order and do not limit the rights of Class Members.

Dated: March 7, 2020



Judge John P. O'Donnell

Consented to by:




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Class Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via the Court's
electronic filing system on MARCH 4, 2020.



Patrick J. Perotti (#0005481)
DWORKEN & BERNSTEIN Co., L.P.A.

One of Class Counsel