

UNITED STATES OF AMERICA
Before the
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2013-CFPB-0002

In the Matter of:

3D Resorts-Bluegrass, LLC

CONSENT ORDER

The Consumer Financial Protection Bureau (the “Bureau” or “CFPB”) filed a Notice of Charges against 3D Resorts-Bluegrass, LLC (the “Respondent” or “3D Resorts-Bluegrass”) on June 14, 2013, for violations of the Interstate Land Sales Full Disclosure Act (“ILSA”), 15 U.S.C. §§ 1701-1720, and its implementing regulations.

The Respondent, by and through Thomas M. Duddy, the Chapter 11 Trustee for the bankruptcy estate of 3D Resorts-Bluegrass, LLC, has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated November 29, 2013 (the “Stipulation”), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order (“Consent Order”) by the Bureau under sections 1053 and 1055 of the Consumer Financial Protection Act of 2010 (“CFPA”), 12 U.S.C. §§ 5563, 5565. Respondent admits the Bureau’s jurisdiction over Respondent and the subject matter of this Consent Order.

The CFPB hereby issues, pursuant to 12 U.S.C. §§ 5563 and 5565, this Consent Order.

I. CFPB CHARGES

The CFPB filed its Notice of Charges in this proceeding asserting the following:

1. The CFPB has jurisdiction over this matter pursuant to Sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565.

2. The Respondent is a limited-liability company organized under the laws of Kentucky.

3. Respondent is the owner and operator of property located in the Commonwealth of Kentucky commonly known as the Green Farm Resort or The Falls Resort & Golf Club (the “Resort Property”), a golf and recreation facility with hundreds of individual lots spread over several different development phases.

4. The Respondent is, and at all times relevant to this proceeding has been, a “developer,” as that term is defined under ILSA, 15 U.S.C. § 1701(5), because it directly or indirectly sold, offered to sell, or advertised for sale lots on the Resort Property.

5. The Resort Property is, and at all times relevant to this proceeding has been, a “subdivision,” as that term is defined under ILSA, 15 U.S.C. § 1701(3).

6. Each lot sold and offered for sale on the Resort Property constituted a “lot” within the meaning of the regulations implementing ILSA, 12 C.F.R. § 1010.1(b), and was not exempt under 15 U.S.C. § 1702 or any subsection thereunder.

7. On November 16, 2011, the Respondent filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Western District of Texas.

8. On December 8, 2011, the United States Bankruptcy Court for the Western District of Texas entered an order converting the case to a Chapter 11 bankruptcy, and

transferring the case to the United States Bankruptcy Court for the Western District of Kentucky. On January 11, 2012, Thomas M. Duddy was appointed to be the Chapter 11 Trustee for the bankruptcy estate of the Respondent, and continues to serve as the trustee of the Respondent's bankruptcy estate.

9. The Respondent is the debtor in a bankruptcy currently pending in the United States Bankruptcy Court in the Western District of Kentucky (the "Bankruptcy Court"), *In re 3D Resorts-Bluegrass, LLC*, Case Number 11-41599.

10. Since late 2008, 3D Resorts-Bluegrass has been engaged in the development of the Resort Property, and by February 2009, 3D Resorts-Bluegrass was marketing and selling lots on the Resort Property.

11. There were four sections in which lots were available for purchase, identified as Sections 1, 2, 3, and 4. Lots were marketed as properties on which purchasers could build "vacation homes" and enjoy the golf course and other amenities of the Resort Property.

12. 3D Resorts-Bluegrass, directly and through its agents, also engaged in the origination of mortgages by providing financing for the sales of lots on the Resort Property and serviced such mortgages. Additionally, 3D Resorts-Bluegrass collected debts on the notes, including allegedly delinquent notes.

13. 3D Resorts-Bluegrass, directly and through its agents, advertised and marketed the sale of lots on Resort Property through the mail, newspaper advertisements, the internet, and trade shows, and hosted promotional dinners or other events, made phone call solicitations, and used other instruments of transportation and communication in interstate commerce and the mails.

14. 3D Resorts-Bluegrass, directly or indirectly, used the mail, newspaper advertisements, and the internet; participated in trade shows; hosted promotional dinners or other events; made phone call solicitations; and used other instruments of transportation and communication in interstate commerce and the mails with respect to the sale of lots and offers to sell lots on the Resort Property, and such activity constitutes “use of any means or instruments of transportation or communication in interstate commerce, or of the mails” under 15 U.S.C. § 1703(a).

15. On or about October 29, 2010, 3D Resorts-Bluegrass entered into a Management Agreement with National Resort Marketing Corp. (“NRMC”) pursuant to which NRMC, as an agent of 3D Resorts-Bluegrass, became involved in the marketing and sale of lots on the Resort Property, as well as the operation and development of the Resort Property.

16. In marketing the Resort Property, 3D Resorts-Bluegrass, directly and through its agents, made material misrepresentations and material omissions in the Property Reports distributed to purchasers and prospective purchasers.

17. On or about January 29, 2009, 3D Resorts-Bluegrass filed with the United States Department of Housing and Urban Development (“HUD”), as part of its Statement of Record, a Property Report dated February 26, 2009 (“February 26, 2009 Property Report”). 3D Resorts-Bluegrass distributed the February 26, 2009 Property Report to purchasers and prospective purchasers. The February 26, 2009 Property Report contains numerous untrue statements of material fact or omits material facts, which are set forth in the Notice of Charges.

18. In or about January 2010, 3D Resorts-Bluegrass filed with HUD, as part of its consolidated and amended Statement of Record, a Property Report dated January 13, 2010 (“January 13, 2010 Property Report”). 3D Resorts-Bluegrass distributed the January 13, 2010

Property Report to purchasers and prospective purchasers. The January 13, 2010 Property Report also contains untrue statements of material fact or omits material facts, which are set forth in the Notice of Charges.

19. On or before March 22, 2010, 3D Resorts-Bluegrass made several material changes to the January 13, 2010 Property Report, but this Property Report retained the January 13, 2010 date on its cover (the "March 22, 2010 Property Report"). 3D Resorts-Bluegrass did not file this Property Report with HUD, but did distribute it to purchasers and prospective purchasers from on or about March 22, 2010 forward as the effective property report for the Resort Property. The March 22, 2010 Property Report contains untrue statements of material fact or omitted material facts, which are set forth in the Notice of Charges.

20. Further, the March 22, 2010 Property Report was provided to purchasers and prospective purchasers with the false implication that it was the official Property Report that had been filed with HUD and was effective, despite 3D Resorts-Bluegrass never filing this document with HUD.

21. 3D Resorts-Bluegrass sold lots on the Resort Property after providing the February 26, 2009 Property Report, the January 13, 2010 Property Report, and the March 22, 2010 Property Report, which contained untrue statements of material fact or omitted material facts required to be stated therein pursuant to 15 U.S.C. §§ 1704-1707 or the regulations implementing ILSA. 3D Resorts-Bluegrass, therefore, violated 15 U.S.C. § 1703(a)(1)(C). Those violations were knowing and material.

22. The March 22, 2010 Property Report was provided to purchasers and prospective purchasers with the false implication that it was the official Property Report that had been filed with HUD and was effective, despite 3D Resorts-Bluegrass never filing this document with

HUD. 3D Resorts-Bluegrass, therefore, violated 15 U.S.C. §§ 1703(a)(1)(B) and 1707(b). Those violations were knowing and material.

23. 3D Resorts-Bluegrass, directly and indirectly through its agents, made material misrepresentations to purchasers and potential purchasers in advertisements, marketing materials, sales pitches, oral communications, demonstratives, and other promotional materials pertaining to the infrastructure and amenities available to the lot or on the Resort Property to induce consumers to purchase lots on the Resort Property. These material misrepresentations are set forth in the Notice of Charges.

24. In making these misrepresentations, 3D Resorts-Bluegrass and its agents employed devices, schemes, or artifices to defraud, and obtained money by means of untrue statements of material fact, and by means of omissions of material facts necessary to make the statements not misleading. Additionally, in making these representations and omissions, 3D Resorts-Bluegrass engaged in a transaction, practice, or course of business which would operate as a fraud or deceit upon purchasers. These misrepresentations were material and had a natural tendency to influence, and were capable of influencing, the decisions of purchasers and prospective purchasers. 3D Resorts-Bluegrass, therefore, violated 15 U.S.C. § 1703(a)(2)(A), (B), and (C). Those violations were knowing and material.

25. On or about April 19, 2011, HUD served a suspension notice (the "Suspension Notice") on 3D Resorts-Bluegrass and its agents, pursuant to 15 U.S.C. § 1706(b) and its implementing regulations. The Suspension Notice advised that HUD had conducted a review of 3D Resorts-Bluegrass' consolidation and amendment to the filed Statement of Record, including the January 13, 2010 Property Report, and found it deficient in certain material respects.

26. Based upon these deficiencies and the denial of the consolidation and amendment to the Statement of Record, the Suspension Notice provided that the Statement of Record for the Resort Property was considered suspended until such time that HUD granted 3D Resorts-Bluegrass an effective date for the Statement of Record, and that the sale of lots on the Resort Property, unless exempt, would violate ILSA and potentially subject 3D Resorts-Bluegrass and others to penalties.

27. The Suspension Notice prohibited 3D Resorts-Bluegrass and its agents from selling or leasing any lot until the Statement of Record was amended and the Suspension Notice was lifted. Neither 3D Resorts-Bluegrass nor others have taken the appropriate corrective actions with respect to the deficiencies cited in the Suspension Notice, which remains in effect.

28. As a result of the Suspension Notice, there was no longer an effective Statement of Record for the Resort Property, and under such circumstances, ILSA prohibits the sale of any lot on the Resort Property pursuant to 15 U.S.C. § 1703(a)(1)(A).

29. From approximately April 22, 2011 through approximately August 1, 2011, notwithstanding the Suspension Notice and the statutory prohibition, 3D Resorts-Bluegrass and its agents conducted twenty-eight tours of the Resort Property (and scheduled an additional fifty-five such tours); marketed the Resort Property and the lots to prospective purchasers through interstate mailers; engaged in the same marketing and solicitation activities as it had prior to the suspension date; and sold two lots on the Resort Property. In selling and offering to sell such lots, 3D Resorts-Bluegrass falsely claimed that the subdivision was registered with HUD, and failed to disclose that its effective date and registration in fact had been suspended as of April 19, 2011. 3D Resorts-Bluegrass, therefore, violated 15 U.S.C. § 1703(a)(2)(A), (B), and (C). Those violations were knowing and material.

30. After service of the Suspension Notice, 3D Resorts-Bluegrass, through its agents, directly or indirectly, sold Lot Number 955 and Lot Number 970, and each sale was a violation of 15 U.S.C. § 1703(a)(1)(A). Those violations were knowing and material.

31. 3D Resorts-Bluegrass and its agents also failed to comply with several registration and filing requirements mandated by ILSA and its implementing regulations.

32. Pursuant to 24 C.F.R. § 1710.310 (now 12 C.F.R. § 1010.310), 3D Resorts-Bluegrass is required to file the annual reports of activity on any initial or consolidated Statement of Record that is not under suspension within thirty days of the annual anniversary of the effective date of the initial Statement of Record. The effective date for the initial Statement of Record was February 26, 2009. 3D Resorts-Bluegrass failed to timely file the annual reports of activity and pay the corresponding filing fee that was due in March 2010 and March 2011. Beginning on or about March 28, 2010, and continuing until April 19, 2011, 3D Resorts-Bluegrass violated 24 C.F.R. § 1710.310 (now codified at 12 C.F.R. § 1010.310). These violations were knowing and material.

33. Each year after the initial effective date, 3D Resorts-Bluegrass must submit a copy of its latest financial statements, and to date, it has failed to timely file annual financial statements, in violation of 24 C.F.R. § 1710.212 (now codified at 12 C.F.R. § 1010.212). 3D Resorts-Bluegrass failed to submit a copy of its financial statements for fiscal years 2010, 2011, and 2012, which remain outstanding and overdue. 3D Resorts-Bluegrass, therefore, violated 24 C.F.R. § 1710.212 (now codified at 12 C.F.R. § 1010.212). These violations were knowing and material.

34. 3D Resorts-Bluegrass and its agents failed to timely file amendments disclosing changes to material facts required to be in the Statement of Record. The Management Agreement

dated October 29, 2010, by and between 3D Resorts and NRMC is a material change required to be disclosed no later than 15 days after the contract was executed. Further, on February 6, 2010, the General Store located on the Resort Property was destroyed in a fire. The destruction of the General Store constituted a material change required to be disclosed no later than 15 days after the General Store was destroyed. In both instances, 3D Resorts-Bluegrass failed to file a timely amendment to the Statement of Record, and violated 24 C.F.R. § 1710.23 (now codified at 12 C.F.R. § 1010.23). These violations were knowing and material.

35. The CFPB alleges, by and through the conduct set forth above, 3D Resorts-Bluegrass harmed purchasers of lots on the Resort Property. Purchasers affected by the conduct of 3D Resorts-Bluegrass and its agents are any individuals or entities—and their successors who acquired a lot by inheritance, divorce, annulment, succession, or trust transfer—that purchased one or more lots on the Resort Property from 3D Resorts-Bluegrass or its agents, including but not limited to NRMC and Double Diamond, Inc. (“Affected Purchasers”).

36. The CFPB further alleges, the harm incurred by any such Affected Purchaser includes amounts that the Affected Purchaser, or someone on the Affected Purchaser’s behalf, paid to 3D Resorts-Bluegrass or its agents towards the purchase of a lot or other charges imposed by the real estate sales contract, and amounts that the Affected Purchaser has paid or is obligated to pay towards any loan that 3D Resorts-Bluegrass or its agents provided the Affected Purchaser to finance the purchase of a lot, minus the value of the lot. These amounts include: (1) the purchase price of the lot, including down payments and principal mortgage payments that the Affected Purchaser has paid, as well as remaining principal mortgage balances that the Affected Purchaser is obligated to pay; (2) mortgage interest paid under any loan originated by 3D Resorts-Bluegrass or its agents; (3) utility or infrastructure connection fees required by the real

estate sales contract; and (4) any other payments or fees paid to 3D Resorts-Bluegrass or its agents required by the real estate sales contract. (Collectively, such harm shall be referred to as “Affected Purchaser Harm.”)

II. ORDER TO CEASE AND DESIST, PAY CIVIL MONEY PENALTIES, AND TO TAKE OTHER AFFIRMATIVE ACTION

IT IS ORDERED, pursuant to sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565, that:

37. 3D Resorts-Bluegrass shall permanently cease and desist from engaging in interstate land sales and any other activity governed by ILSA.

38. A judgment for equitable monetary relief is hereby entered in favor of the Bureau and against 3D Resorts-Bluegrass, and 3D Resorts-Bluegrass is ordered to fully compensate Affected Purchasers for the Affected Purchaser Harm identified in paragraph 36 of this Consent Order; provided, however, that in consideration of 3D Resorts-Bluegrass’ demonstrated inability to pay and its status as a debtor in bankruptcy, full payment of this judgment for equitable monetary relief shall be suspended upon satisfaction of the obligations set forth in paragraph 40 of this Consent Order and paragraphs III.1.d.i – III.1.d.vii of the Settlement Agreement and Release entered into by and between the Bureau, the Respondent, PlainsCapital Bank, PCB-ARC, Inc., and the Office of the Attorney General for the Commonwealth of Kentucky (the “Settlement Agreement”).

39. Pursuant to section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law alleged in the Notice of Charges, and taking into account the factors set forth in 12 U.S.C. § 5565(c)(3), including 3D Resorts-Bluegrass’ demonstrated inability to pay a higher amount, 3D Resorts-Bluegrass shall also pay \$1 in civil money penalties. The civil money

penalty paid pursuant to this Consent Order shall be deposited in the Civil Penalty Fund of the Bureau in accordance with 12 U.S.C. § 5497(d).

40. Within three (3) days of the Effective Date, 3D Resorts-Bluegrass shall withdraw its objection to the CFPB's proof of claim in *In re Resorts-Bluegrass, LLC*, Bankr. No. 11-41599 (Bankr. W.D. Ky. filed Nov. 16, 2011), and shall allow an unsecured claim in the amount of \$500,000, subject to the pro rata basis distribution made in accordance with the Bankruptcy Code, to be paid towards satisfying the judgment for equitable monetary relief imposed in paragraph 38 and the judgment for a civil money penalty imposed in paragraph 39, provided that such claim will receive distributions pursuant to the Bankruptcy Code and Bankruptcy Rules until such time as \$50,000 of distributions have been made on account of such claim, at which point no more distributions will be made.

41. Any funds, aside from \$1 paid in satisfaction of the judgment for civil money penalties, received by the Bureau in satisfaction of the proof of claim described in paragraph 39 of this Consent Order shall be deposited into a fund or funds administered by the Bureau or its agent in accordance with applicable statutes and regulations to provide the redress described in paragraph 38 of this Consent Order, and for any attendant expenses for the administration of any such redress.

42. If the CFPB determines, in its sole discretion, that providing redress to consumers is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the administration of redress is completed, the CFPB may apply any remaining funds for such other equitable relief (including consumer information remedies) as determined to be reasonably related to the violations described in Section I of this Consent Order. Any funds not used for such equitable relief shall be deposited in the U.S. Treasury as disgorgement. Respondent shall

have no right to challenge the CFPB's choice of remedies under this Section, and shall have no right to contest the manner of distribution chosen by the CFPB.

43. Redress provided under this Consent Order shall not limit Affected Purchasers' rights in any way.

44. With regard to the equitable monetary relief and civil money penalty paid by 3D Resorts-Bluegrass, 3D Resorts-Bluegrass may neither seek nor receive, directly or indirectly, any reimbursement or indemnification from any insurance policy, and shall treat such payments for such equitable monetary relief in the ordinary course for tax purposes and may claim lawful deductions but shall not seek any extraordinary tax credit or other treatment.

45. 3D Resorts-Bluegrass shall relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law, and no part of the funds shall be returned to the Respondent.

III. COOPERATION

IT IS FURTHER ORDERED that:

46. Within 30 days after the entry of this Consent Order, 3D Resorts-Bluegrass shall provide to the CFPB information in its or its agents' possession, custody, or control regarding the identity and location of, and the amount of injury sustained by, each Affected Purchaser.

IV. ADMINISTRATIVE PROVISIONS

47. In accordance with 31 U.S.C. § 7701, Respondent, unless it already has done so, shall furnish to the CFPB its taxpayer identifying numbers, which shall be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

48. Unless otherwise directed in writing by a CFPB representative, all submissions, requests, communications, consents or other documents relating to this Order shall be in writing

and shall be sent by overnight courier (not the U.S. Postal Service), as follows:

Enforcement Director
Consumer Financial Protection Bureau
ATTENTION: Office of Enforcement
1700 G Street, N.W.
Washington, D.C. 20552

Provided, however, that Respondent may send such reports or notifications by first-class mail, but only if Respondent contemporaneously sends an electronic version of such report or notification to Enforcement_Compliance@cfpb.gov.

49. This Consent Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 5563(b).

50. This Consent Order shall be effective on the date of issuance (the “Effective Date”).

51. The provisions of this Consent Order shall be binding upon 3D Resorts-Bluegrass, and, until their discharge by the Bankruptcy Court, upon the Chapter 11 Trustee or any subsequent Chapter 7 trustee that may be appointed in the Respondent’s bankruptcy case. This Consent Order shall remain in full force and effect notwithstanding any dismissal or conversion of the Respondent’s bankruptcy case.

52. Calculation of time limitations shall be based on calendar days, unless otherwise noted.


53. The provisions of this Consent Order shall be enforceable by the Bureau. Any violation of this Consent Order may result in the imposition by the Bureau of the maximum

amount of civil money penalties allowed under section 1055(c) of the CFPB, 12 U.S.C. § 5565(c).

54. This Consent Order and the accompanying Stipulation and the Settlement Agreement contain the complete agreement between the Bureau and 3D Resorts-Bluegrass. No promises, representations, or warranties other than those set forth in this Consent Order and the accompanying Stipulation have been made by and between the Bureau and 3D Resorts-Bluegrass. This Consent Order and the accompanying Stipulation and the Settlement Agreement supersede all prior communications, discussions, or understandings, if any, of the Bureau and 3D Resorts-Bluegrass, whether oral or in writing.

55. Nothing in this Consent Order or the accompanying Stipulation shall be construed as allowing the Respondent, officers, or employees to violate any law, rule, or regulation.

IT IS SO ORDERED, this 2nd day of December 2013.


Richard Cordray
Director
Consumer Financial Protection Bureau