

Terms Completed

ORDER SUMMARY – Case Number: C-19-2740

Name: Omni-Fund, Inc.

Order Number: C-19-2740-20-CO01

Effective Date: 1/16/2020

License Number: NMLS# 4869
Or NMLS Identifier [U/L]

License Effect: N/A

Not Apply Until: N/A

Not Eligible Until: N/A

Prohibition/Ban Until: N/A

Investigation Costs	\$ 1,369.85		Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date
Fine	\$ 27,500.00		Paid <input checked="" type="checkbox"/> Y <input type="checkbox"/> N	Date

Comments:

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **DIVISION OF CONSUMER SERVICES**

4 IN THE MATTER OF DETERMINING
5 WHETHER THERE HAS BEEN A VIOLATION
6 OF THE CONSUMER LOAN ACT OF
7 WASHINGTON BY:

No. C-19-2740-20-CO01

CONSENT ORDER

8 OMNI-FUND, INC.,
9 NMLS# 4869,

Respondent.

10 COMES NOW the Director of the Department of Financial Institutions (Director), through
11 his designee Lucinda Fazio, Division of Consumer Services Director, and Omni-Fund, Inc.
12 (Respondent), and finding that the issues raised in the above-captioned matter may be economically
13 and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered
14 pursuant to chapter 31.04 of the Revised Code of Washington (RCW), and RCW 34.05.060 of the
15 Administrative Procedure Act, based on the following:

16 **AGREEMENT AND ORDER**

17 The Department of Financial Institutions, Division of Consumer Services (Department) and
18 Respondent have agreed upon a basis for resolution of the matters alleged in Statement of Charges
19 No. C-19-2740-19-SC01 (Statement of Charges), entered September 13, 2019 (copy attached hereto).
20 Pursuant to chapter 31.04, the Consumer Loan Act (Act), and RCW 34.05.060 of the Administrative
21 Procedure Act, Respondent hereby agrees to the Department's entry of this Consent Order and further
22 agrees that the issues raised in the above-captioned matter may be economically and efficiently
23 settled by entry of this Consent Order. The parties intend this Consent Order to fully resolve the
24 Statement of Charges. Respondent is agreeing not to contest the Statement of Charges in
consideration of the terms of this Consent Order.

1 Based upon the foregoing:

2 **1. Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject
3 matter of the activities discussed herein.

4 **2. Waiver of Hearing.** It is AGREED that Respondent has been informed of the right to
5 a hearing before an administrative law judge, and hereby waives its right to a hearing and any and all
6 administrative and judicial review of the issues raised in this matter, or of the resolution reached
7 herein. Accordingly, Respondent, by the signatures of its representatives below, withdraws its appeal
8 to the Office of Administrative Hearings.

9 **3. No Admission of Liability.** The parties intend this Consent Order to fully resolve the
10 Statement of Charges and agree that Respondent does not admit or deny any wrongdoing by its entry.

11 **4. Compliance with the Consumer Loan Act and Federal Law Regulations.** It is
12 AGREED that Respondent shall comply with the Act and any applicable federal laws related to the
13 activities governed by the Act.

14 **4. Fine.** It is AGREED that Respondent shall pay a fine to the Department in the amount
15 of \$27,500.00, in the form of a cashier's check made payable to the "Washington State Treasurer,"
16 upon entry of this Consent Order.

17 **5. Investigation Fee.** It is AGREED that Respondent shall pay to the Department an
18 investigation fee of \$1,369.85, in the form of a cashier's check made payable to the "Washington
19 State Treasurer," upon entry of this Consent Order. The Fine and Investigation Fee may be paid
20 together in one \$28,869.85 cashier's check made payable to the "Washington State Treasurer."

21 **6. Authority to Execute Order.** It is AGREED that the undersigned authorized
22 representatives have represented and warranted that they have the full power and right to execute this
23 Consent Order on behalf of Respondent.

1 **7. Non-Compliance with Order.** It is AGREED that Respondent understands that
2 failure to abide by the terms and conditions of this Consent Order may result in further legal action
3 by the Director. In the event of such legal action, Respondent may be responsible to reimburse the
4 Director for the cost incurred in pursuing such action, including but not limited to, attorney fees.

5 **8. Voluntarily Entered.** It is AGREED that Respondent has voluntarily entered into
6 this Consent Order, which is effective when signed by the Director's designee.

7 **9. Completely Read, Understood, and Agreed.** It is AGREED that Respondent's
8 representative has read this Consent Order in its entirety and fully understands and agrees to all of the
9 same.

10 **10. Counterparts.** This Consent Order may be executed by the parties in any number of
11 counterparts, including by facsimile or e-mail of a .pdf or similar file, each of which shall be deemed
12 to be an original, but all of which, taken together, shall constitute one and the same Consent Order.

13
14 **RESPONDENT:**

Omni-Fund, Inc.

15 By:

16 /s/ _____
17 Jitendera Kandola
18 NMLS# 5049
19 President

1/14/2020

Date

19 **APPROVED FOR ENTRY:**

20 By:

21 /s/ _____
22 Ronald Gapp
23 Attorney for Respondent
24 Ronald Gapp, Esq.

1/10/2020

Date

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DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS 16th DAY OF January, 2020.

/s/
Lucinda Fazio, Director
Division of Consumer Services
Department of Financial Institutions

Presented by:

/s/
JEANJU CHOI
Financial Legal Examiner

Approved by:

/s/
STEVEN C. SHERMAN
Enforcement Chief

1 **STATE OF WASHINGTON**
2 **DEPARTMENT OF FINANCIAL INSTITUTIONS**
3 **DIVISION OF CONSUMER SERVICES**

4 IN THE MATTER OF DETERMINING
5 WHETHER THERE HAS BEEN A VIOLATION
6 OF THE CONSUMER LOAN ACT OF
7 WASHINGTON BY:

8 OMNI-FUND, INC.,
9 NMLS #4869,

10 Respondent.

No. C-19-2740-19-SC01

11 STATEMENT OF CHARGES and
12 NOTICE OF INTENT TO ENTER AN
13 ORDER TO CEASE AND DESIST, IMPOSE
14 FINE, COLLECT INVESTIGATION FEE and
15 RECOVER COSTS AND EXPENSES OF
16 PROSECUTION

17 **INTRODUCTION**

18 Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial
19 Institutions of the State of Washington (Director) is responsible for the administration of chapter
20 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to
21 RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the
22 Director, through his designee, Division of Consumer Services Acting Director Richard St. Onge,
23 institutes this proceeding and finds as follows:

24 **I. FACTUAL ALLEGATIONS**

25 **1.1 Respondent Omni-Fund, Inc.** was licensed by the Department of Financial Institutions of
26 the State of Washington (Department) to conduct business as a consumer loan company on or about
27 June 1, 2011, and continues to be licensed to date.

28 **1.2 Direct Mail Solicitation.** On April 11, 2019, and May 29, 2019, Respondent mailed
29 approximately 8,481 copies of a solicitation to Washington State residents. The solicitation
30 contained similar offers related to the Veteran Affairs (VA) refinance loans.

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1 **1.3 Misleading Use of Current Lender’s Name.** The top left corner of the solicitation states the
2 recipient’s current residential mortgage lender. At the bottom of the solicitation, it states, “This offer
3 is made by Omni-Fund, Inc. who is not affiliated with your current lender.”

4 **1.4 Unfair or Deceptive Use of Current Loan Information.** The solicitation includes the name
5 the company that originated the recipient’s loan and mortgage principal amount, but does not name of
6 the source of the recipient’s information.

7 **1.5 Failed to Clearly and Conspicuously Disclose Discount Rate and Cost of Discount.** The
8 front page of the solicitation states a fixed interest rate and the annual percentage rate (APR). The
9 solicitation does not disclose that the stated rate is a discounted rate. On the back page of the
10 solicitation in smaller font, it states that the offered fixed interest rate “may include up to 1 point
11 origination and 2 discount points.”

12 **1.6 Failed to Provide Additional Disclosures.** The solicitation states the fixed interest rate and
13 APR the borrower would receive for a 30-year loan, and the estimated new payments. The
14 solicitation contains triggering terms that require clear and conspicuous additional disclosures. On
15 the back page of the solicitation, and in smaller font, it states that the fixed rate is amortized over 360
16 payments with a discount and origination fee.

17 **1.7 On-Going Investigation.** The Department’s investigation into the alleged violations of the
18 Act by Respondent continues to date.

19 II. GROUNDS FOR ENTRY OF ORDER

20 **2.1 Misleading Use of Borrower’s Current Loan Information.** Based on the Factual
21 Allegations set forth in Section I, Respondent is in apparent violation of RCW 31.04.027(1)(b), WAC
22 208-620-550(5), and WAC 208-620-630(7) for directly or indirectly engaging in any unfair or
23 deceptive practice by using an advertisement that included information about a borrower’s current

1 loan that Respondent did not obtain from a solicitation, application, or loan, without providing the
2 borrower with the name of the source of the information.

3 **2.2 False or Deceptive Statement or Representation Regarding Financing Terms or**
4 **Conditions.** Based on the Factual Allegations set forth in Section I, Respondent is in apparent
5 violation of RCW 31.04.027(1)(g), RCW 31.04.135, and WAC 208-620-630(9) for advertising, in
6 any manner whatsoever, any statement or representation with regard to the rates, terms, or conditions
7 for the lending of money that is false, misleading, or deceptive, and by being in apparent violation of
8 WAC 208-620-550(22).

9 **2.3 Violations of Applicable Federal Law and Regulations.** Based on the Factual Allegations
10 set forth in Section I, Respondent is in apparent violation of RCW 31.04.027(1)(m) and WAC 208-
11 620-640 for violating any applicable federal laws relating to the activities governed by the Act,
12 including those contained in the Federal Trade Commissions Act, 15 U.S.C. §§ 41-58; the Truth in
13 Lending Act, 15 U.S.C. §1601 *et seq.* and Regulation Z, 12 C.F.R. Part 1026; and the Mortgage Acts
14 and Practices – Advertising (MAP) rule, Regulation N, 12 C.F.R. Part 1014.

15 **III. AUTHORITY TO IMPOSE SANCTIONS**

16 **3.1 Authority to Issue an Order to Cease and Desist.** Pursuant to RCW 31.04.093(5)(a), the
17 Director may issue an order directing a licensee, or other person subject to the Act, to cease and
18 desist from conducting business in a manner that is injurious to the public or violations any provision
19 of the Act.

20 **3.2 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of
21 up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or
22 any other person subject to the Act for any violation of the Act or failure to comply with any order or
23 subpoena issued by the Director under the Act.

1 **3.3 Authority to Charge Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-
2 590, WAC 208-620-610(7), every licensee examined or investigated by the Director or the Director's
3 designee shall pay for the cost of the examination or investigation, calculated at the rate of \$69.01 per
4 staff hour devoted to the examination or investigation, and shall pay travel costs if the licensee
5 maintains its records outside the state.

6 **3.4 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director
7 may recover the state's costs and expenses for prosecuting violations of the Act.

8 **IV. NOTICE OF INTENT TO ENTER ORDER**

9 Respondent's violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,
10 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
11 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, RCW
12 34.04.202, and RCW 31.04.205. Therefore, it is the Director's intent to ORDER that:

13 **4.1** Respondent Omni-Fund, Inc. cease and desist directly or indirectly engaging in any
14 unfair or deceptive practice toward any person, and cease and desist distributing any
15 false, deceptive, or misleading advertising related to its business activities as a
licensee in Washington State.

16 **4.2** Respondent Omni-Fund, Inc. pay a fine. As of the date of this Statement of Charges,
17 the fine totals \$75,000.00.

18 **4.3** Respondent Omni-Fund, Inc. pay costs of investigation. As of the date of this
Statement of Charges, the cost of the investigation totals \$879.88.

19 **4.4** Respondent Omni-Fund, Inc. pay the Department's costs and expenses for prosecuting
20 violations of the Act in an amount to be determined at hearing, or in the event of
default by Respondent, by declaration with supporting documentation.

21 //

1 **V. AUTHORITY AND PROCEDURE**

2 This Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist,
3 Require Affirmative Action, Impose Fine, Collect Examination Fee, and Collect Investigation Fee
4 and Recover Costs and Expenses of Prosecution (Statement of Charges) is entered pursuant to the
5 provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202, and RCW 31.04.205, and is subject
6 to the provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may
7 make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY FOR
8 ADJUDICATIVE HEARING AND TO DEFEND accompanying this Statement of Charges.
9

10 Dated this 13th day of September, 2019.

11
12 /s/
13 RICHARD ST. ONGE
14 Acting Director
15 Division of Consumer Services
16 Department of Financial Institutions

17 Presented by:

18
19 /s/
20 JEANJU CHOI
21 Financial Legal Examiner

22 Approved by:

23 /s/
24 STEVEN C. SHERMAN
Enforcement Chief