

ORDER SUMMARY – Case Number: C-19-2793

Name(s): Optimus Capital Inc.
Joseph Anthony Andriacchi

Order Number: C-19-2793-20-CO01

Effective Date: November 24, 2020

License/NMLS #: Optimus Capital Inc. – NMLS #1614327
Joseph Anthony Andriacchi – NMLS #166053

License Effect: Optimus Capital Inc.’s Washington Consumer Loan Company
License to be surrendered

Not Apply Until: NA

Not Eligible Until: NA

Prohibition/Ban Until: NA

Investigation Costs:	\$1,828.76	Due: 12/31/2021	Paid: <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date:
Fine:	\$1,000.00	Due: 12/31/2021	Paid: <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date:
Restitution:	\$00.00	Due: NA	Paid: <input type="checkbox"/> Y <input type="checkbox"/> N	Date:
Costs of Prosecution:	\$2,215.05	Due: 12/31/2021	Paid: <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Date:

Comments: Total fine \$5000 (\$4000 stayed until 11/24/2022, \$1000 to be paid).

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

4 IN THE MATTER OF DETERMINING
Whether there has been a violation of the
Consumer Loan Act of Washington by:

5 OPTIMUS CAPITAL INC.,
NMLS #1614327, and
6 JOSEPH ANTHONY ANDRIACCHI, President,
Owner, and Mortgage Loan Originator,
7 NMLS #166053,

8 Respondents.

No.: C-19-2793-20-CO01

CONSENT ORDER RE:
OPTIMUS CAPITAL INC. and
JOSEPH ANTHONY ANDRIACCHI

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

15 **FINDINGS OF FACT**

16 **1.1** On or about May 23, 2017, Respondent Optimus Capital Inc. was licensed by the Department
17 of Financial Institutions of the State of Washington (Department) to conduct business as a consumer
18 loan company, and failed to renew its company license after 2019.

19 **1.2** On or about January 10, 2010, Respondent Joseph Anthony Andriacchi obtained a license
20 from the Department to conduct the business of a mortgage loan originator, and continues to be
21 licensed to date.

1 **1.3** On or about July 22, 2019, and October 30, 2019, Respondents failed to respond to the
2 Department's Directives mailed via First-Class Mail to Respondents' last known contact address as
3 reported and listed in the Nationwide Multistate Licensing System & Registry (NMLS).

4 **1.4** On or about June 30, 2019, through the date of the Statement of Charges, Respondents failed
5 to maintain a surety bond or permitted substitute.

6 **1.5** On or about the date of the Statement of Charges, Respondents failed to submit a consumer
7 loan company license surrender request through NMLS and failed to file the final consumer loan
8 closure report, the consumer loan annual assessment, the consolidated annual report, the supporting
9 list of Washington loans, and any required closure assessment fees.

10 **CONCLUSIONS OF LAW**

11 **2.1** Based on the above Findings of Fact, Respondents violated RCW 31.04.145 for failing to
12 respond to the Department's Directives.

13 **2.2** Based on the above Findings of Fact, Respondents violated RCW 31.04.045(4) for failing to
14 maintain in effect a surety bond or permitted substitute.

15 **2.3** Based on the above Findings of Fact, Respondents violated of RCW 31.04.155 and WAC
16 208-620-499 for failing to submit a license surrender request through NMLS within ten days of
17 closing the company or surrendering a license and for failing to file the final closure form, the annual
18 reports, the closure worksheet, and submit any required closure assessment fees.

19 **AGREEMENT AND ORDER**

20 The Department and Respondents have agreed upon a basis for resolution of the Findings of
21 Fact and Conclusions of Law identified in this Consent Order. Pursuant to RCW 31.04.093(7) and
22 RCW 34.05.060, Respondents and the Department agree to entry of this Consent Order and further
23 agree that the matters alleged herein may be economically and efficiently settled by the entry of this

1 Consent Order. Respondents hereby admit the Findings of Fact and Conclusions of Law identified in
2 this Consent Order.

3 Based on the foregoing:

4 **A. Jurisdiction.** It is AGREED that the Department has jurisdiction over the subject matter of the
5 activities discussed herein.

6 **B. Waiver of Hearing.** It is AGREED that Respondents hereby waive any right they have to a
7 hearing and any and all administrative and judicial review of the issues raised in this matter or the
8 resolution reached herein.

9 **C. Cease and Desist and Compliance with the Act.** It is AGREED that Respondents shall
10 cease and desist violating the Act, including, but not limited to, violating RCW 31.04.145, RCW
11 31.04.045, RCW 31.04.155, WAC 208-620-499, and WAC 208-620-520. It is FURTHER AGREED
12 that Respondents shall henceforth comply with the Act and the associated regulations found in
13 chapter 208-620 WAC.

14 **D. Consumer Loan Company License Surrender.** It is AGREED that the Department will
15 accept and process the surrender of Respondent Optimus Capital Inc.'s Washington Consumer Loan
16 Company License.

17 **E. Mortgage Loan Originator License.** It is AGREED that Respondent Joseph Anthony
18 Andriacchi shall retain his Washington Mortgage Loan Originator License in accordance with the Act
19 and the associated regulations found in chapter 208-620 WAC.

20 **F. Application for License.** It is AGREED that Respondents shall not apply to the Department
21 for a company license under the Consumer Loan Act, chapter 30.14 RCW, or the Mortgage Broker
22 Practices Act, chapter 19.146 RCW.

1 **G. Fine (Partially Stayed).** It is AGREED that Respondents shall jointly and severally pay the
2 Department a Fine in the amount of \$5,000, with \$1,000 of that amount to be paid pursuant to the
3 terms set forth in Paragraph K. The \$4,000 balance of the Fine shall be STAYED (Stayed Fine)
4 contingent upon Respondents' compliance with the terms of this Consent Order for a period of two
5 years from the date of entry of this Consent Order.

6 It is FURTHER AGREED that, contingent upon Respondents' compliance with this Consent
7 Order, the Stayed Fine amount shall be stayed for two years from the date of this Consent Order
8 unless lifted pursuant to Paragraph H. If the Department does not seek to lift the stay and impose the
9 Stayed Fine pursuant to Paragraph H, the Stayed Fine shall expire without further notice or action by
10 the Department.

11 It is FURTHER AGREED that, if Respondents fail to comply with this Consent Order, the
12 Department may lift the stay and impose the \$4,000 Stayed Fine amount pursuant to Paragraph H, at
13 which time Respondents shall pay the Stayed Fine in the form of a cashier's check made payable to
14 the "Washington State Treasurer."

15 **H. Lifting the Stay and Imposing the Stayed Fine.** It is AGREED that:

- 16 1. If the Department determines that Respondents have not complied with the terms of this
17 Consent Order to a degree sufficient to warrant imposition of the full amount of the Fine,
18 and the Department accordingly seeks to lift the stay and impose the full amount of the
19 Fine set forth in Paragraph G above, the Department will first notify Respondents in
20 writing of its determination.
- 21 2. The Department's notification will include:
- 22 a. A description of the alleged noncompliance;
 - 23 b. A statement that because of the noncompliance, the Department seeks to lift the
24 stay and impose the full amount of the Fine;
 - c. The opportunity for Respondents to contest the Department's determination of
noncompliance in an administrative hearing before an Administrative Law Judge
(ALJ) of the Office of Administrative Hearings (OAH); and

1 d. A copy of this Consent Order. The notification and hearing process provided in
2 this Consent Order applies only to this Consent Order. It is solely provided in the
3 event Respondents choose to contest the Department's determination of
4 noncompliance.

- 5 3. Respondents will be afforded twenty (20) business days from the date of receipt of the
6 Department's notification to submit a written request to the Department for an
7 administrative hearing to be held before an ALJ from the OAH.
- 8 4. Respondents, in addition to their request for hearing, may provide a written response to
9 include any information pertaining to the alleged noncompliance.
- 10 5. The scope and issues of the hearing are limited solely to whether or not Respondents are
11 in violation of the terms of this Consent Order to a degree sufficient to warrant imposition
12 of the full amount of the Stayed Fine.
- 13 6. At the conclusion of the hearing, the ALJ will issue an initial decision. Either party may
14 file a Petition for Review with the Director of the Department.
- 15 7. If Respondents do not request the hearing within the stated time, the Department will
16 impose the Stayed Fine and pursue whatever action it deems necessary to enforce the
17 Stayed Fine.

18 **I. Investigation Costs.** It is AGREED that Respondents shall jointly and severally pay to the
19 Department its investigation costs of \$1,828.76 pursuant to the terms set forth in Paragraph K.

20 **J. Prosecution Costs.** It is AGREED that Respondents shall jointly and severally pay to the
21 Department its prosecution costs of \$2,215.05 pursuant to the terms set forth in Paragraph K.

22 **K. Payment of the Fine, Investigation Costs, and Prosecution Costs.** It is AGREED that
23 Respondent Andriacchi shall pay the total amount due of \$5,043.81 in the form of installment
24 payments made to the Department according to the following schedule:

1. \$420 shall be paid on or before the last day of each month, beginning January 1, 2021,
through November 30, 2021; and
2. \$423.81 shall be paid on or before December 31, 2021.

Respondent Andriacchi shall make each payment to the Department in the form of a cashier's check
made payable to the "Washington State Treasurer" mailed to PO Box 41200, Olympia, WA 98504-

1 1200. Respondents may, at any time prior to December 31, 2021, pay the entire remaining balance of
2 the sum owed to the Department. Respondents understand and AGREE that any missed or late
3 payment is a violation of this Consent Order.

4 **L. Records Retention.** It is AGREED that Respondents, their officers, employees, and agents
5 shall maintain records in compliance with the Act and provide the Director with the location of the
6 books, records and other information relating to Respondents' consumer loan business conducted
7 prior to licensure, and the name, address and telephone number of the individual responsible for
8 maintenance of such records in compliance with the Act.

9 **M. Non-Compliance with Order.** It is AGREED that Respondents understand that failure to
10 abide by the terms and conditions of this Consent Order may result in further legal action by the
11 Director. In the event of such legal action, Respondents may be responsible to reimburse the Director
12 for the cost incurred in pursuing such action, including, but not limited to, attorney fees.

13 **N. Voluntarily Entered.** It is AGREED that Respondents have voluntarily entered into this
14 Consent Order, which is effective when signed by the Director's designee.

15 **O. Completely Read, Understood, and Agreed.** It is AGREED that Respondents have read
16 this Consent Order in its entirety and fully understand and agree to all of the same.

17 **P. Authority to Execute Order.** It is AGREED that the undersigned authorized representative
18 has represented and warranted that he has the full power and right to execute this Consent Order on
19 behalf of Respondents.

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

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24 //

1 **RESPONDENTS:**
OPTIMUS CAPITAL INC.

2 By:

3 /s/
4 JOSEPH ANTHONY ANDRIACCHI
President and Owner

11/16/2020
Date

5
6 /s/
7 JOSEPH ANTHONY ANDRIACCHI
Individually

10/5/2020
Date

8 **DO NOT WRITE BELOW THIS LINE**

9 THIS ORDER ENTERED THIS 24th DAY OF November, 2020.

10
11 /s/
12 LUCINDA FAZIO, Director
13 Division of Consumer Services
14 Department of Financial Institutions

15 Presented by:

16 /s/
17 BARBARA PENTTILA
Financial Legal Examiner

18 Approved by:

19
20 /s/
21 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 of the
6 Consumer Loan Act of Washington by:

7 OPTIMUS CAPITAL INC., NMLS #1614327,
8 and
9 JOSEPH ANTHONY ANDRIACCHI, President,
10 Owner, and Mortgage Loan Originator, NMLS
11 #166053,

12 Respondents.

No. C-19-2793-19-SC01

STATEMENT OF CHARGES and
NOTICE OF INTENT TO ENTER AN
ORDER TO REVOKE LICENSES,
PROHIBIT FROM INDUSTRY, TAKE
AFFIRMATIVE ACTION, IMPOSE FINE,
COLLECT INVESTIGATION FEE, and
RECOVER COSTS AND EXPENSES

13 **INTRODUCTION**

14 Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial
15 Institutions of the State of Washington (Director) is responsible for the administration of chapter
16 31.04 RCW, the Consumer Loan Act (Act). After having conducted an investigation pursuant to
17 RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the
18 Director, through his designee, Division of Consumer Services Acting Director Richard St. Onge,
19 institutes this proceeding and finds as follows:

20 **I. FACTUAL ALLEGATIONS**

21 **1.1 Respondents.**

22 **A. Optimus Capital Inc. (Respondent Optimus)** was licensed by the Department of
23 Financial Institutions of the State of Washington (Department) to conduct business as a consumer
24 loan company on or about May 23, 2017, and continues to be licensed to date.

B. Joseph Anthony Andriacchi (Respondent Andriacchi) is the President and Owner
of Respondent Optimus. Respondent Andriacchi was licensed by the Department to conduct business
as a loan originator on or about January 10, 2010, and continues to be licensed to date.

1 **1.2 Failed to Respond to Department’s Directives.**

2 A. On or about July 22, 2019, the Department delivered, via First-Class Mail and Federal
3 Express Overnight Delivery, a Directive to Respondents’ last known mailing address at 12704
4 Tanager DR NW, Gig Harbor, WA 98332. The Department gave Respondents until July 31, 2019, to
5 respond. As of the date of this Statement of Charges, the Department has not received a response
6 from Respondents to this Directive.

7 B. On or about October 30, 2019, the Department delivered, via First-Class Mail and
8 Certified Mail, a Directive to Respondents’ last known mailing address at 12704 Tanager DR NW,
9 Gig Harbor, WA 98332. The Department gave Respondents until November 12, 2019, to respond.
10 As of the date of this Statement of Charges, the Department has not received a complete response
11 from Respondents to this Directive.

12 **1.3 Failed to Maintain Surety Bond.** On or about May 15, 2019, the Department received an
13 Electronic Surety Bond cancellation notice for Washington International Insurance Co. (Bond
14 Number 9184100) that Respondents’ surety bond would be canceled on or about June 30, 2019 (45
15 days after notice was received by the Department). From about June 30, 2019, through the date of
16 this Statement of Charges, Respondents have not maintained a surety bond or a permitted substitute.

17 **1.4 Incomplete License Surrender and Closure.** Every licensee is required to submit a
18 surrender request through NMLS within ten days of closing the company or surrendering the license.
19 As of the date of this Statements of Charges, Respondents have failed to submit a consumer loan
20 company license surrender request through NMLS and have failed to file the final consumer loan
21 closure report and worksheet, the consumer loan annual assessment and consolidated annual report,
22 the supporting list of Washington loans, and submit any required closure assessment fees.

23 **1.5 On-Going Investigation.** The Department’s investigation into the alleged violations of the
24 Act by Respondents continues to date.

1 **II. GROUNDS FOR ENTRY OF ORDER**

2 **2.1 Requirement to Respond to Department’s Directives.** Based on the Factual Allegations set
3 forth in Section I above, Respondents are in apparent violation of RCW 31.04.145 for failing to
4 respond to the Department’s Directives.

5 **2.2 Requirement to Maintain Surety Bond.** Based on the Factual Allegations set forth in
6 Section I above, Respondents are in apparent violation of RCW 31.04.045(4) for failing to maintain
7 in effect a surety bond or permitted substitute.

8 **2.3 Requirement to File Reports with NMLS and the Department.** Based on the Factual
9 Allegations set forth in Section I above, Respondents are in apparent violation of RCW 31.04.155
10 and WAC 208-620-499 for failing to submit a license surrender request through NMLS within ten
11 days of closing the company or surrendering a license and for failing to file the final closure form, the
12 annual reports, the closure worksheet, and submit any required closure assessment fees.

13 **2.4 Requirement to Maintain Accurate and Current Books and Records.** Pursuant to RCW
14 31.04.155 and WAC 208-620-520, Respondents are required to preserve the books, accounts,
15 records, papers, documents, files, and other information relevant to a loan for at least three years after
16 making the final entry on any loan.

17 **III. AUTHORITY TO IMPOSE SANCTIONS**

18 **3.1 Authority to Revoke License.** Pursuant to RCW 31.04.093(3), the Director may revoke a
19 license for failure to pay any fee due to the state of Washington, failure to maintain the required
20 surety bond, failure to comply with any specific order or demand, or failure to comply with any
21 directive, order, or subpoena issued by the Director under the Act.

22 **3.2 Authority to Prohibit from the Industry.** Pursuant to RCW 31.04.093(6), the Director may
23 issue an order prohibiting from participation in the affairs of any licensee, any officer, principal,
24 employee, mortgage loan originator, or any other person subject to the Act for failure to comply with

1 any order or subpoena issued under this chapter or for a violation of RCW 31.04.027, RCW
2 31.04.102, RCW 31.04.155, or RCW 31.04.221.

3 **3.3 Authority to Require Affirmative Action.** Pursuant to RCW 31.04.093(5)(b), the Director
4 may issue an order directing a licensee, its employee, loan originator, or other person subject to the
5 Act to take such affirmative action as is necessary to comply with the Act.

6 **3.4 Authority to Impose Fine.** Pursuant to RCW 31.04.093(4), the Director may impose fines of
7 up to one hundred dollars per day, per violation, upon the licensee, its employee or loan originator, or
8 any other person subject to the Act for any violation of the Act or failure to comply with any order or
9 subpoena issued by the Director under the Act.

10 **3.5 Authority to Charge Investigation Fee.** Pursuant to RCW 31.04.145(3) and WAC 208-620-
11 590, WAC 208-620-610(7), every licensee examined or investigated by the Director or the Director's
12 designee shall pay for the cost of the examination or investigation, calculated at the rate of \$69.01 per
13 staff hour devoted to the examination or investigation, and shall pay travel costs if the licensee
14 maintains its records outside the state.

15 **3.6 Authority to Recover Costs and Expenses.** Pursuant to RCW 31.04.205(2), the Director
16 may recover the state's costs and expenses for prosecuting violations of the Act.

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

18 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC,
19 as set forth in the above Factual Allegations, Grounds for Entry of Order, and Authority to Impose
20 Sanctions, constitute a basis for the entry of an Order under RCW 31.04.093, RCW 31.04.165, RCW
21 34.04.202, and RCW 31.04.205. Therefore, it is the Director's intent to ORDER that:

22 **4.1** Respondent Optimus Capital Inc.'s license to conduct the business of a consumer loan
23 company be revoked.

24 **4.2** Respondent Joseph Anthony Andriacchi's license to conduct the business of a loan
originator be revoked.

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4.3 Respondents Optimus Capital Inc. and Joseph Anthony Andriacchi be prohibited from participation in the conduct of the affairs of any consumer loan company subject to licensure by the Director, in any manner, for a period of five years.

4.4 Respondents Optimus Capital Inc. and Joseph Anthony Andriacchi take the following affirmative actions to comply with the Act: submit a consumer loan company license surrender request in NMLS; file the final consumer loan closure report and worksheet, the consumer loan annual assessment and consolidated annual report, and the supporting list of Washington loans; and submit any required closure assessment fees.

4.5 Respondents Optimus Capital Inc. and Joseph Anthony Andriacchi jointly and severally pay a fine. As of the date of this Statement of Charges, the fine totals \$12,000.

4.6 Respondents Optimus Capital Inc. and Joseph Anthony Andriacchi jointly and severally pay an investigation fee. As of the date of this Statement of Charges, the investigation fee totals \$1,828.76.

4.7 Respondents Optimus Capital Inc. and Joseph Anthony Andriacchi jointly and severally pay the Department's costs and expenses for prosecuting violations of the Act in an amount to be determined at hearing or by declaration with supporting documentation in event of default by Respondents.

4.8 Respondents Optimus Capital Inc. and Joseph Anthony Andriacchi maintain records in compliance with the Act and provide the Department with the location of the books, records, and other information relating to Respondents' consumer loan business, and the name, address, and telephone number of the individual responsible for maintenance of such records in compliance with the Act.

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1 **V. AUTHORITY AND PROCEDURE**

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

9 Dated this 18th day of December, 2019.

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

13 Presented by:

14
15 /s/
16 BARBARA PENTTILA
17 Financial Legal Examiner Supervisor

17 Approved by:

18
19 /s/
20 STEVEN C. SHERMAN
21 Enforcement Chief