

1 Terry Goddard
2 Attorney General
3 Firm Bar No. 14000
4 Robert A. Zumoff
5 Assistant Attorney General
6 State Bar No. 006517
7 1275 W. Washington Street
8 Phoenix, Arizona 85007-2997
9 Telephone: (602) 542-7722
10 Fax: (602) 542-4377
11 Consumer@azag.gov
12 Attorneys for the State of Arizona

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, *ex rel.* TERRY
11 GODDARD, Attorney General, and RICHARD C.
12 HOUSEWORTH, Superintendent of Banks,

12 Plaintiffs,

13 v.

14 VIRTUAL REALTY FUNDING COMPANY,
15 L.L.C., *et al.*

15 Defendants.

16 VIRTUAL REALTY FUNDING COMPANY,
17 L.L.C., an Arizona Limited Liability Company; *et*
18 *al.*

18 Defendants/Counterclaimants,

19 v.

20 STATE OF ARIZONA, *ex rel.* TERRY
21 GODDARD, Attorney General, and RICHARD C.
22 HOUSEWORTH, Superintendent of Banks,

21 Plaintiff/Counterdefendants.

Case No. CV2005- 008983

JUDGMENT

(Assigned to the Hon. Edward O. Burke)

23 Plaintiffs, State of Arizona *ex rel* Terry Goddard, Attorney General, and Felecia Rotellini,
24 Superintendent of the Department of Financial Institutions have filed, and the Court has granted,
25
26

1 a Motion for Partial Summary Judgment. The Court has determined that Defendants Kenneth D.
2 Perkins, Virtual Realty Funding Company, L.L.C., and James A. Busche have willfully violated
3 the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et. seq.*, and have knowingly violated state
4 banking laws requiring the licensure of mortgage brokers and mortgage bankers, A.R.S. §§ 6-
5 901 *et. seq.* and 6-941 *et. seq.*, and that the State is entitled to orders of injunction, restitution,
6 and civil penalties. The State has subsequently filed, and the Court has granted in part, a Motion
7 for Partial Summary Judgment re Monetary Remedies, and the Court has determined the
8 appropriate amounts of restitution and civil penalties.

9 Based on the foregoing and good cause appearing therefore:

10 IT IS HEREBY ORDERED:

11 1. Defendants Virtual Realty Funding Company, L.L.C., Kenneth D. Perkins and
12 James A. Busche and all of their future assigns and current and future principals, members,
13 managers, successors, partners, employees, agents, representatives, and all other persons in
14 active concert or participation with them with respect to the subject matter of this Judgment, are
15 hereby permanently enjoined from the following:

16 a. Advertising, offering, negotiating, selling, or making any mortgage loan, as
17 defined by A.R.S. § 6-901, or any mortgage banking loan, as defined by A.R.S. § 6-941,
18 regardless of how characterized, unless they have been licensed as a mortgage broker or
19 mortgage banker from the Arizona Department of Financial Institutions or are legally exempt
20 from licensing requirements, and unless all aspects of the transaction conform to the
21 requirements of all statutes and rules applicable to mortgage brokers, mortgage bankers,
22 mortgage loans and mortgage banking loans;

23 b. Engaging in or participating in any aspect of a transaction involving a
24 transfer of an interest in residential real property that is designed principally for occupancy by
25 one to four families where the following factors are present:

26 (1) at least one of the owners of the transferred interest is occupying the property at the

1 time of the transfer of interest;

2 (2) the transfer is made in whole or in part in exchange for the payment of money to one
3 of the owners or to a third party to whom the one of the owners is indebted;

4 (3) at least one of the owners of the transferred interest is permitted by written or oral
5 agreement to continue occupying the property; and

6 (4) the owner of the transferred interest has a written or oral contractual right,
7 conditional or unconditional, by option or otherwise, to reacquire the transferred interest.

8 c. Receiving or demanding any payment from any person pursuant to or
9 arising out of a "reverse sale contract" other than the amount or amounts currently due and
10 owing to one or more senior mortgage lien holders, designated as such in the reverse sale
11 contract. A "reverse sale contract" means the funding program of Virtual Realty Funding
12 Company, L.L.C., comprised of either or both contracts entitled "Agreement to Assign
13 Beneficial Interest in Real Property and Agreement to Repurchase Beneficial Interest in Real
14 Property" and "Residential Rental Agreement and Receipt for Deposit" or to any similar
15 transactions that have been described by Defendants as a reverse sale or a reverse sale and short
16 sale;

17 d. Directly or indirectly selling, assigning, encumbering or otherwise
18 conveying any interest in any reverse sale agreement or in the real property that was the subject
19 of such agreement;

20 e. Making any false, misleading or deceptive statement in connection with the
21 sale or advertisement of any product or service that is connected to a transaction involving real
22 estate, mortgages or loans.

23 2. Plaintiffs are awarded judgment against the Defendants Kenneth D. Perkins and
24 Virtual Realty Funding Company, L.L.C., for restitution in the amount of \$611,950.65. The
25 Attorney General shall promptly deposit any monies collected in a trust account with an Arizona
26 insured financial institution and shall disburse said funds to eligible consumers, based on

1 amounts shown in the summary of Defendants' records, previously submitted by the State to the
2 Court, but excluding amounts that were used to make payments to existing mortgage lien
3 holders.

4 3. If less than the full amount of restitution is received by the State, the Attorney
5 General shall distribute restitution on a pro rata basis. Distributions shall be made at such
6 intervals as the Attorney General, in his discretion, finds to be financially reasonable, in
7 consideration of the amount of money available, the amounts payable to individual consumers
8 and the costs of distribution. Any funds that the Attorney General is unable to distribute or that
9 are returned to the Attorney General because they could not be delivered by U.S. mail because
10 of insufficient address, death of a consumer, or any other reason, shall be retained by the
11 Attorney General to offset the Attorney General's costs of litigation.

12 4. Plaintiffs, are awarded judgment for civil penalties against Defendants Kenneth D.
13 Perkins and Virtual Realty Funding Company, L.L.C., in the amount of \$620,000 as follows:
14 \$310,000.00 pursuant to A.R.S. § 44-1531, to be deposited and used pursuant to A.R.S. § 44-
15 1531.01, and \$310,000.00, pursuant to A.R.S. § 6-132, to be deposited pursuant to A.R.S. § 6-
16 135.

17 5. Plaintiffs, are awarded judgment for civil penalties against Defendant James A.
18 Busche in the amount of \$10,000 as follows: \$5,000.00 pursuant to A.R.S. § 44-1531, to be
19 deposited and used pursuant to A.R.S. § 44-1531.01, and \$5,000.00, pursuant to A.R.S. § 6-132,
20 to be deposited pursuant to A.R.S. § 6-135.

21 6. Plaintiff shall allocate any monies collected under this judgment first to the
22 payment of restitution and then to the payment of civil penalties. Any monies collected as civil
23 penalties shall be allocated equally between A.R.S. § 44-1531 and A.R.S. § 6-132, and deposited
24 accordingly.

25 7. Defendant Virtual Realty Company, L.L.C., is hereby dismissed without
26 prejudice.

1 **IN COMPLIANCE** with Local Rule
2 3.2(I), stamped, self-addressed
3 envelopes addressed to each of
4 the parties/parties' counsel listed
5 below are lodged with the Court this
6 ___ day of ____, 2008, as follows:

7 Robert A. Zumoff
8 Office of the Attorney General
9 1275 W. Washington
10 Phoenix, Arizona 85007

11 Alan L. Tipton
12 8671 West Union Hills Drive, Suite 502
13 Peoria, Arizona 85382-7005
14 Attorneys for:
15 Virtual Realty Funding Co., LLC
16 Virtual Realty Co. L.L.C.
17 Kenneth D. Perkins

18 Vincent R. Mayr
19 222 South Power Road, Suite 204
20 Mesa, Arizona 85206
21 Attorney for James A. Busche
22
23
24
25
26
