

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PAMELA GOLDSTEIN,
ELLYN & TONY BERK, as
Administrators of the Estate of Winifred
Berk, and PAUL BENJAMIN, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

HOULIHAN/LAWRENCE INC.,

Defendant.

Index No. 60767/2018

Hon. Linda S. Jamieson, J.S.C.

**~~{JOINT-PROPOSED}~~ ORDER
GRANTING PRELIMINARY
APPROVAL OF SETTLEMENT
WITH HOULIHAN LAWRENCE**

Before the Court is Plaintiffs’ Motion for Preliminary Approval of
Settlement with Houlihan Lawrence (together with Plaintiffs, the “Settling
Parties).

without opposition, despite proper service.

Upon review, the Motion is GRANTED. The Court hereby ORDERS as
follows:

1. The Court finds that preliminary approval is appropriate and hereby
grants preliminary approval of the Settlement subject to final determination
following notice and a hearing.

2. The Court finds that the proposed Settlement with Houlihan
Lawrence, as set for the Settlement Agreement, which is attached as Exhibit 1 to
the of Affidavit of Jeremy Vest, is fair, reasonable and adequate, the Class
representatives have adequately represented the class, the Settlement Agreement
was negotiated ~~at arm’s length~~ ^{vigorously} by experienced counsel acting in good faith, and
the Settlement Agreement was reached as a result of those negotiations; there has

been adequate opportunity for discovery and for experienced counsel to evaluate the claims and risks at this stage of the litigation; and the Court will likely be able to approve the Settlement pursuant to CPLR 4547.

3. For purposes of settlement of the claims against Houlihan Lawrence, the Court provisionally certifies the following class (the "Settlement Class"):

All home buyers and sellers of residential real estate in Westchester, Putnam, and Dutchess counties from January 1, 2011 to July 14, 2018 in which Houlihan/Lawrence represented both buyer and seller in the same transaction.

For the avoidance of doubt, the Settlement Class encompasses all persons who were party to dual-agent transactions brokered by Houlihan Lawrence during the relevant time period, regardless of whether they signed arbitration agreements with Houlihan Lawrence.

4. The Court finds that provisional certification of the Settlement Class is warranted in light of the proposed Settlement under the prerequisites of CPLR §§ 901 and 902 because: (1) the members of the Settlement Class are so numerous that joinder is impracticable; (2) there are issues of law and fact common to the Settlement Class; (3) Plaintiffs' claims are typical of the claims of the Settlement Class Members; and (4) Plaintiffs and Co-Lead Counsel will fairly and adequately represent the interests of the Settlement Class Members.

5. The Court finds that provisional certification of the Settlement Class is warranted in light of the proposed Settlement under CPLR §§ 901 and 902 because common issues predominate over any questions affecting only individual

members of the Settlement Class, and settlement of this action on a class basis is superior to other means of resolving the Action.

6. The Court hereby appoints Plaintiffs Pamela Goldstein, Tony Berk, and Paul Benjamin as the Settlement Class Representatives. The Settlement Class Representatives will fairly and adequately protect the interests of the Settlement Class because: (1) the interests of the Settlement Class Representatives are consistent with those of Settlement Class Members; (2) there appears to be no conflicts between or among the Settlement Class Representatives and the other Settlement Class Members; (3) the Settlement Class Representatives have been and appear to be capable of continuing to be active participants in both the prosecution and the settlement of this litigation; and (4) the Settlement Class Representatives and Settlement Class Members are represented by qualified, reputable counsel who are experienced in preparing and prosecuting large, complicated class action cases.

7. In making these preliminary findings, the Court has considered among other things, (1) the interests of the Settlement Class Members in individually controlling the prosecution or defense of separate actions; (2) the impracticality or inefficiency of prosecuting or defending separate actions; (3) the extent and nature of any litigation concerning these claims already commenced; and (4) the desirability of concentrating the litigation of the claims in a particular forum.

8. The Court has also specifically considered that Settlement Class Counsel seeks an award of attorneys' fees and reimbursement of out-of-pocket costs equal to \$9 million, which, if granted, will result in no monetary distribution to the Settlement Class.

9. The requirements of CPLR §§ 901 and 902 are met, and the Court hereby appoints the law firms of Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C. ("Mintz"), Ohlemeyer Law PLLC, and Boies Schiller Flexner LLP ("BSF"), as Co-Lead Counsel for the Settlement Class.

10. JND Legal Administration ("JND") is hereby appointed as the Settlement Administrator to implement the terms of the proposed Settlement Agreement. The Settlement Administrator is authorized to implement the parties' Class Notice Plan in a form substantially similar to the notices exhibited to the Declaration of Gino Intrepido-Bowden. The Court also authorizes the Settlement Administrator to carry out other such responsibilities as are provided for in the Settlement Agreement or as may be agreed to by counsel for the Parties. The Court finds the notice plan to constitute the best notice practicable and to satisfy the requirements of due process.

11. The Court approves the establishment of the Escrow Account under the Settlement Agreement as a qualified settlement fund ("QSF") as defined in Section 1.468B-1(a) of the U.S. Treasury Regulations and retains continuing jurisdiction as to any issue that may arise in connection with the formation or administration of the QSF. Co-Lead Counsel are, in accordance with the

Settlement Agreement, authorized to withdraw up to the amounts allowed by the Settlement Agreement out of the Escrow Account upon the Court's approval of the notice plan.

12. Any Settlement Class Member who complies with the requirements of this paragraph may object to any aspect of the proposed Settlement Agreement either on his or her own or through an attorney hired at his or her expense. Any Settlement Class Member who objects to the proposed Settlement Agreement must file with the Court, and serve on Class Counsel and Counsel for Houlihan Lawrence, at the addresses set forth in the Settlement Agreement or the Court's docket, a written statement of objection postmarked no later than sixty (60) calendar days after the Notice is mailed to the Settlement Class and posted to the Settlement Administrator's website.

13. The written objection must include: (a) the full name, address, telephone number and email address, if any, of the Settlement Class member; (b) the address of the home sold and the date of the sale; (c) a specific statement of all grounds for the objection and, if applicable, any legal support for the objection; (d) a statement whether the objection applies only to the objector, to a specific subset of the Settlement Class, or to the entire Settlement Class; (e) a statement whether the objection applies to the Settlement addressed in this order; (f) the name and contact information of any and all attorneys representing, advising, or in any way assisting the objector in connection with the preparation or submission of the objection or who may profit from the pursuit of the objection; (g) a list of all

class action settlements to which the Settlement Class Member has objected in the past five (5) years, if any; (h) copies of any papers, briefs, or other documents upon which the objection is based; (i) a statement of whether the Settlement Class Member intends to appear at the Fairness Hearing either personally or through counsel; and (j) the signature of the Settlement Class Member.

14. Any Class Member shall have the right to opt out of the Settlement Class for this Settlement. In order to exercise this right, a Class Member must timely deliver a written request for exclusion to the Settlement Administrator's address, which will be listed in the Mailed Notice and on the Settlement Website. The written request must be postmarked no later than the Opt-Out/Objection Deadline, which deadline shall be specified in the Mailed Notice and on the Settlement Website. No person shall be deemed opted-out of the Settlement Class through any purported "mass" or "class" opt-outs. So-called "mass" or "class" opt-outs shall not be allowed. To be effective, the Request for Exclusion must include the name of the Settlement Class Member, the address of the home sold, the approximate date of sale and signature of the Settlement Class Member.

15. Any Settlement Class Member who properly requests to be excluded from the Settlement Class shall not: (a) be bound by any orders or judgments entered in the case relating to the Settlement Agreement; (b) be entitled to relief under, or be affected by, the Settlement Agreement; (c) gain any rights by virtue of the Settlement Agreement; or (d) be entitled to object to any aspect of any of the Settlement Agreement. Any Settlement Class Member who obtains relief pursuant

to the terms of this Settlement Agreement after the receipt of the Notice gives up the right to exclude him or herself from this Settlement.

16. A final approval hearing will be held on 90 days after entry of this Order, on June 18, 2025 at ~~1:30 p.m.~~ ^{11:00 a.m.} in Courtroom 103, 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601.

17. If the Settlement is validly terminated as provided for in the Settlement Agreement, all proceedings had in connection with the Settlement and any orders regarding the Settlement shall be null and void, except insofar as expressly provided to the contrary in the Settlement Agreement, and without prejudice to the status quo ante rights of the Parties and Settlement Class Members.

18. In the event that a Settlement does not become final and effective for any reason, nothing in that Settlement Agreement, this Order, or proceedings or orders regarding the Settlement shall be construed to prejudice any position that any of the parties may assert in any aspect of this litigation.

19. The Action is stayed except as provided for in the Settlement Agreement and to the extent necessary to obtain final approval of the Settlement.


20. Members of the Settlement Class, unless they exclude themselves from the Settlement Class, are hereby temporarily enjoined from filing, commencing, prosecuting, intervening in, or pursuing as a plaintiff or class member any claims against Houlihan Lawrence that arise from or relate to conduct that was alleged or could have been alleged in the Actions based on any or

all of the same factual predicates for the claims alleged in the Actions, including but not limited to commissions negotiated, offered, obtained, or paid to Houlihan Lawrence in connection with the sale of any residential home, pending completion of the notice and claims process (including the opportunity for members of the Settlement Class to opt out of the Settlement) and this Court's ruling on a motion for final approval of the Settlement. *See Bank of Am., N.A. v. UMB Fin. Servs., Inc.*, 618 F.3d 906, 914 (8th Cir. 2010) (noting that "the district court has the inherent ability to protect its own jurisdiction over the dispute pending before it"); *Simerlein v. Toyota Motor Corp.*, 2019 U.S. Dist. LEXIS 63397, at *56 (D. Conn. Jan. 14, 2019) (entering injunction pending final approval); *Melito v. Am. Eagle Outfitters, Inc.*, 2017 U.S. Dist. LEXIS 10410, at *11-*12 (S.D.N.Y. Jan. 24, 2017).

IT IS hereby

ORDERED, that Plaintiffs' motion for an Order preliminarily approving the settlement agreement is GRANTED.

By the Court:



Hon. Linda S. Jamieson, J.S.C.