

# TERMS COMPLETE

## CONSENT ORDER SUMMARY - Case Number: C-08-005

**Name(s)** Best Rate Funding Corp., Adam Butler and Chris Russell

**Order Number** C-08-005-09-CO01

**Effective Date** September 1, 2009

**License Number** DFI: 23415

**License Effect** N/A

**Not Apply until** September 1, 2014

**Prohibition/Ban until** September 1, 2014

<b>Investigation Costs</b>	\$1,449.21	Due	Paid YES	Date: 8/27/2009
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<b>Assessment(s)</b>	\$132.89	Due	Paid YES	Date: 8/27/2009
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<b>Monetary Penalty</b>	\$6,550.79	Due	Paid YES	Date: 8/27/2009
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**Other** LATE PENALTY \$1,867.11 – has been paid in full

**Special Instructions**

STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF CONSUMER SERVICES

ENFORCEMENT UNIT  
DIVISION OF CONSUMER SERVICES  
DEPT OF FINANCIAL INSTITUTIONS

AUG 27 2009

RECEIVED  
RESPONDENT

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

NO. C-08-005-09-CO01

BEST RATE FUNDING CORP., ADAM BUTLER  
(50% Owner) and CHRIS RUSSELL (50% Owner),

CONSENT ORDER

Respondents.

COMES NOW the Director of the Department of Financial Institutions (Director), through his designee Deborah Bortner, Division Director, Division of Consumer Services, and Best Rate Funding Inc. (hereinafter Respondent Best Rate), Adam Butler, Owner (hereinafter Respondent Butler), and Chris Russell, Owner (hereinafter Respondent Russell), and finding that the issues raised in the above-captioned matter may be economically and efficiently settled, agree to the entry of this Consent Order. This Consent Order is entered pursuant to chapter 31.04 of Revised Code of Washington (RCW), and RCW 34.05.060 of the Administrative Procedure Act, based on the following:

**AGREEMENT AND ORDER**

The Department of Financial Institutions, Division of Consumer Services (Department) and Respondents have agreed upon a basis for resolution of the matters alleged in Statement of Charges No. C-08-005-09-SC01 (Statement of Charges), entered February 24, 2009, (copy attached hereto). Pursuant to chapter 31.04 RCW, the Consumer Loan Act (Act) and RCW 34.05.060 of the Administrative Procedure Act, Respondents hereby agree to the Department's entry of this Consent Order and further agree that the issues raised in the above-captioned matter may be economically and efficiently settled by entry of this Consent Order. The parties intend this Consent Order to fully resolve the Statement of Charges.

Based upon the foregoing:

CONSENT ORDER  
C-08-005-09-CO01  
BEST RATE FUNDING CORP., ADAM BUTLER  
and CHRIS RUSSELL

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DEPARTMENT OF FINANCIAL INSTITUTIONS  
Division of Consumer Services  
150 Israel Rd SW  
PO Box 41200  
Olympia, WA 98504-1200  
(360) 902-8703

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

3           **B. Waiver of Hearing.** It is AGREED that Respondents have been informed of the right to a hearing  
4 before an administrative law judge, and that they hereby waive their right to a hearing and any and all  
5 administrative and judicial review of the issues raised in this matter, or of the resolution reached herein.  
6 Accordingly, Respondents agree to withdraw their appeal and to inform the Office of Administrative Hearings in  
7 writing of their withdrawal.

8           **C. Stipulation to Facts.** It is AGREED that Respondents stipulate to the facts as outlined in the Factual  
9 Allegations in Section I of the Statement of Charges C-08-005-09-SC01, which is incorporated herein by  
10 reference.

11           **D. Report and Assessment.** It is AGREED that Respondent Best Rate shall file its 2007 Consolidated  
12 Annual Report and pay its Annual Assessment in the amount of \$132.89 in the form of a cashier's check made  
13 payable to the "Washington State Treasurer," upon entry of this Consent Order.

14           **E. Fine.** It is AGREED that Respondents shall pay to the Department a fine of \$6,550.79, in the form of  
15 a cashier's check made payable to the "Washington State Treasurer," upon entry of this Consent Order.

16           **F. Agreement Not to Apply.** It is AGREED that Respondents will not apply for any license issued by  
17 the Department for a period of 5 years from the date of entry of this Consent Order. It is further AGREED that  
18 should the Respondents apply for a license issued by the Department after the 5 year period, they will be required  
19 to comply with all licensing requirements in effect at the time of application.

20           **G. Late Penalty:** It is AGREED that Respondents shall pay to the Department a late penalty of  
21 \$1,867.11, in the form of a cashier's check made payable to the "Washington State Treasurer," upon entry of this  
22 Consent Order.

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1           **H. Investigation Fee.** It is AGREED that Respondents shall pay to the Department an investigation fee  
2 of \$1,449.21, in the form of a cashier's check made payable to the "Washington State Treasurer," upon entry of  
3 this Consent Order.

4           **I. Records Maintenance.** It is AGREED that Respondents shall maintain records in compliance with  
5 the Act.

6           **J. Future Examination.** It is AGREED that the Department may, at its discretion, conduct an  
7 examination, in the future, of Respondent Best Rate's records in a manner authorized by the Act.

8           **K. Authority to Execute Order.** It is AGREED that the undersigned Respondents have represented and  
9 warranted that they have the full power and right to execute this Consent Order on behalf of the parties  
10 represented.

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

15           **M. Voluntarily Entered.** It is AGREED that the undersigned Respondents have voluntarily entered into  
16 this Consent Order, which is effective when signed by the Director's designee.

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

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24 **RESPONDENTS:**  
**Best Rate Funding Corp.**  
25 By:

CONSENT ORDER  
C-08-005-09-CO01  
BEST RATE FUNDING CORP., ADAM BUTLER  
and CHRIS RUSSELL

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[Redacted]

Adam Butler, Owner

Date

8/20/09

Date

[Redacted]

Chris Russell, Owner

8/20/09

Date

[Redacted]

John Bley, WSBA No. 15230  
Attorney at Law  
Attorney for Respondents

8/26/09

Date

DO NOT WRITE BELOW THIS LINE

THIS ORDER ENTERED THIS 1<sup>st</sup> DAY OF September, 2009.

[Redacted Signature]

DEBORAH BORTNER  
Director  
Division of Consumer Services  
Department of Financial Institutions

Presented by:

[Redacted]

WILLIAM HALSTEAD  
Financial Legal Examiner

Approved by:

[Redacted]

JAMES R. BRUSSELBACK  
Enforcement Chief



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**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
CONSUMER SERVICES DIVISION**

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

BEST RATE FUNDING CORP., ADAM  
BUTLER (50% Owner) and CHRIS RUSSELL  
(50% Owner),

Respondents.

NO. C-08-005-09-SC01

STATEMENT OF CHARGES and NOTICE OF  
INTENTION TO ENTER AN ORDER TO REVOKE  
LICENSE, IMPOSE FINE, COLLECT ANNUAL  
ASSESSMENT, COLLECT LATE PENALTY, AND  
COLLECT INVESTIGATION FEES

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**INTRODUCTION**

Pursuant to RCW 31.04.093 and RCW 31.04.165, the Director of the Department of Financial Institutions of the State of Washington (Director) is responsible for the administration of chapter 31.04 RCW, the Consumer Loan Act (Act)<sup>1</sup>. The referenced statutes (RCW) and rules (WAC) are attached, in pertinent part. After having conducted an investigation pursuant to RCW 31.04.145, and based upon the facts available as of the date of this Statement of Charges, the Director institutes this proceeding and finds as follows:

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**I. FACTUAL ALLEGATIONS**

**1.1 Respondents.**

**A. Best Rate Funding Corp.** (Respondent Best Rate) was licensed by the Department of Financial Institutions of the State of Washington (Department) to conduct business as a Consumer Loan Company on May 24, 2002, and has continued to be licensed to date.

**B. Adam Butler** (Respondent Butler) is 50% owner of Best Rate Funding Corp.

**C. Chris Russell** (Respondent Russell) is 50% owner of Best Rate Funding Corp.

**1.2 Licensed Location:** Respondent Best Rate is licensed to conduct the business of a Consumer Lender at 2 Macarthur Place Ste. 800 Santa Ana, California 92707. Its mailing address is 17770 Cartwright Rd Ste. 400, Irvine, California 92614.

<sup>1</sup> RCW 31.04 (2001)

1 **1.3 Examination Request.** On July 6, 2007, the Department contacted Respondent Best Rate for the purpose  
2 of conducting a routine examination pursuant to the Act. On July 6, 2007, the Department sent a letter to  
3 Respondent Best Rate requesting a list of all Washington loans originated, brokered, funded, purchased, serviced, or  
4 sold between July 1, 2005 and June 30, 2007, and requesting completion of an enclosed Consumer Loan Manager's  
5 Questionnaire. Both of the requested items were to be provided to the Department by August 5, 2007. At the  
6 request of Respondent Best Rate, the Department agreed to extend the deadline to August 31, 2007. Respondent  
7 Best Rate did not provide the requested items by the deadline. The Department scheduled an examination of  
8 Respondent Best Rate to begin on December 10, 2007 and continue through December 14, 2007. As of the date of  
9 this document, the requested items have not been provided to the Department and all attempts to contact  
10 Respondents Best Rate, Adam Butler and Chris Russell have been unsuccessful. As a result, the Department has  
11 not conducted the examination of Respondent Best Rate.

12 **1.4 Office Closure.** On August 28, 2007, the Department received a letter from Respondent Best Rate which  
13 indicated it had "closed its operations." Included with the letter was the original license issued by the Department.  
14 On September 6, 2007, the Department mailed Respondents the required forms to properly close the company and  
15 surrender its license. Respondents did not respond to the letter or provide the Department with the proper closure  
16 forms.

17 On December 28, 2007, the Department sent a second letter to Respondents asking it to clarify its intent  
18 regarding its license status. Specifically, the Department inquired if Respondent Best Rate planned on continuing to  
19 operate as a Consumer Lender or if they desired to suspend its operations and surrender its license. Respondent  
20 Best Rate was instructed the surrender forms could be located on the Department's website and a link was provided.  
21 Respondent Best Rate did not respond to the letter or provide the Department with the proper closure forms.

22 On January 22, 2008, the Department sent a directive to Respondent Best Rate requesting, among other  
23 things, it complete the proper office closure/surrender forms, complete the assessment worksheet, and remit any  
24 assessment due. Respondent Best Rate was to respond by February 5, 2008. As of the date of this document,  
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1 Respondent Best Rate has not provided the requested items to the Department. Other attempts (email and phone)  
2 by the Department to contact the Respondents have been unsuccessful.

3 **1.5 Annual Report:** When a licensee ceases business, a Consolidated Annual Report is due to the  
4 Department, within 30 days of closure or by March 1, concerning the business and operations of each licensed  
5 place of business conducted during the preceding calendar year. The Consolidated Annual Report must be made  
6 under oath and must be in the form prescribed by the Director. To date, Respondents have not provided the  
7 Consolidated Annual Report relating to the 2007 calendar year, due by March 1, 2008.

8 **1.6 Annual Assessment and Late Penalty.** A calculation worksheet and an annual assessment fee are due  
9 to the Department within 30 days of closure, relating to the previous calendar year. To date, Respondents have  
10 not provided the calculation worksheet, or paid the annual assessment fee for the 2007 calendar year. The  
11 Department has calculated the 2007 annual assessment due from Respondents as \$2,332.57<sup>1</sup>, which was due on  
12 March 1, 2008.

13 **1.7 On-Going Investigation:** The Department's investigation into the alleged violations of the Act by  
14 Respondents continues to date.

## 15 II. GROUNDS FOR ENTRY OF ORDER

16 **2.1 Requirement to File Annual Report:** Based on the Factual Allegations set forth in Section I above,  
17 Respondents are in apparent violation of RCW 31.04.155 and WAC 208-620-430 for failing to provide an  
18 annual report to the Director, under oath and in the form prescribed by the Director, on or before the first day of  
19 March, concerning the business and operations of each licensed place of business conducted during the  
20 preceding calendar year.

21 **2.2 Requirement to Calculate and Pay Annual Assessment:** Based on the Factual Allegations set forth  
22 in Section I above, Respondents are in apparent violation of RCW 31.04.085, and WAC 208-620-430 and 460  
23 for failing to provide to the Director a completed annual assessment calculation worksheet and failing to pay to  
24 the Director an annual assessment fee by March 1, 2008.

25 <sup>1</sup> See WAC 208-620-430(3)(b)

1 **2.3 Requirement to File Proper Closure Forms:** Based on the Factual Allegations set forth in Section I  
2 above, Respondents are in apparent violation of WAC 208-620-475 for failing to notify the Department it  
3 closed it business by using the Consumer Loan Office Closure Form along with the annual report and  
4 worksheet, and any fees due.

5 **2.4 Requirement to Respond to Directives.** Based on the Factual Allegations set forth in Section I above,  
6 Respondents are in apparent violation of WAC 208-620-570 for failing to comply with a directive and  
7 requirement of the Department.

8 **2.5 Accounting and Record Retention Requirements:** Based on the Factual Allegations set forth in  
9 Section I above, Respondents are in apparent violation of RCW 31.04.155 for failing to make accurate and  
10 current books and records readily available to the Department until at least twenty-five months have elapsed  
11 following the effective period to which the books and records relate.

### 11 III. AUTHORITY TO IMPOSE SANCTION

12 **3.1 Authority to Revoke License:** Pursuant to RCW 31.04.093(3)(a) and (b), the Director may revoke a  
13 license if a licensee fails to pay any fee due the state of Washington, fails to maintain in effect the required bond  
14 or permitted substitute, or fails to comply with any specific order or demand of the Director, or violates any  
15 provision of the Act or any rule adopted under the Act.

16 **3.2 Authority to Impose Fine:** Pursuant to RCW 31.04.093(4), the Director may impose fines of up to one  
17 hundred dollars per day upon the licensee for any violation of the Act or failure to comply with any order or  
18 subpoena issued by the Director under the Act.

19 **3.3 Authority to Collect Annual Assessments.** Pursuant to WAC 208-620-430 every licensee is required  
20 to pay a fee based upon the amount of business conducted during the prior calendar year.

21 **3.4 Authority to Impose Late Penalties:** Pursuant to RCW 31.04.155 and WAC 208-620-430, a licensee  
22 that fails to file a report required to be filed by the Act within the time required is subject to a penalty of fifty  
23 dollars per day, per report, for each day's delay.

1 **3.5 Authority to Charge Investigation Fees:** Pursuant to RCW 31.04.145(3) and WAC 208-620-590,  
2 every licensee investigated by the Department shall pay for the cost of the examination or investigation,  
3 calculated at the rate of \$69.01 per staff hour.

4 **3.6 Authority to Issue Orders Directing Action:** Pursuant to RCW 31.04.093(5)(b), the Director may issue  
5 an order directing a licensee to take such affirmative action as is necessary to comply with the Act.

#### 6 IV. NOTICE OF INTENTION TO ENTER ORDER

7 Respondents' violations of the provisions of chapter 31.04 RCW and chapter 208-620 WAC, as set forth in  
8 the above Factual Allegations and Grounds for Entry of Order, constitute a basis for the entry of an Order under  
9 RCW 31.04.093, RCW 31.04.165 and RCW 31.04.205. Therefore, it is the Director's intention to ORDER that:

- 10 **4.1** Respondent Best Rate Funding Corp.'s license to conduct the business of a Consumer Loan  
11 Company be revoked;
- 12 **4.2** Respondents Best Rate Funding Corp., Adam Butler, and Chris Russell, jointly and severally pay a  
13 fine, which as of the date of these charges totals \$36,500;
- 14 **4.3** Respondents Best Rate Funding Corp., Adam Butler, and Chris Russell, jointly and severally pay the  
15 delinquent Annual Assessment due for the year ending December 31, 2007, which totals \$2,332.57;
- 16 **4.4** Respondents Best Rate Funding Corp., Adam Butler, and Chris Russell, provide to the Director  
17 completed a Consolidated Annual Report and Annual Assessment Worksheet, including all required  
18 supporting documentation, for the year ending December 31, 2007;
- 19 **4.5** Respondents Best Rate Funding Corp., Adam Butler, and Chris Russell, jointly and severally pay a late  
20 penalty which as of the date of this document totals \$33,900, calculated at \$50 per day per report,  
21 which continues to accrue daily, for failing to timely file Consolidated Annual Reports and Annual  
22 Assessment Worksheets;
- 23 **4.6** Respondents Best Rate Funding Corp., Adam Butler, and Chris Russell, jointly and severally pay an  
24 investigation fee, which as of the date of these charges totals \$1,035.15 calculated at \$69.01 per hour  
25 for 15 staff hours devoted to the investigation; and
- 4.7** Respondents maintain records in compliance with the Act and provide the Director with the location of  
the books, records and other information relating to Respondent Best Rate Funding Corp.'s consumer  
loan company 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 Intention to Enter an Order to Revoke License, Impose Fine,  
3 Collect Annual Assessment, Collect Late Penalty and Collect Investigation Fees is entered pursuant to the  
4 provisions of RCW 31.04.093, RCW 31.04.165, RCW 31.04.202 and RCW 31.04.205, and is subject to the  
5 provisions of chapter 34.05 RCW (The Administrative Procedure Act). Respondents may make a written  
6 request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY  
7 FOR HEARING accompanying this Statement of Charges.

8 Dated this 24<sup>th</sup> day of February, 2009.

9 [Redacted Signature]

10 DEBORAH BORTNER  
11 Director and Enforcement Chief  
12 Division of Consumer Services  
13 Department of Financial Institutions

14 Presented by:

15 [Redacted Signature]

16 WILLIAM HALSTEAD  
17 Financial Legal Examiner



18 Approved by:

19 [Redacted Signature]

20 JAMES R. BRUSSELBACK  
21 Enforcement Chief