

**BEFORE THE OFFICE OF FINANCIAL REGULATION**

**IN THE MATTER OF:**

**THE BANK OF MISSOURI, successor by  
merger to MID-AMERICA BANK &  
TRUST COMPANY,**

**ATLANTICUS SERVICES  
CORPORATION**

**and**

**FORTIVA FINANCIAL, LLC,**

**Respondents**

**Case No.: CFR-FY2017-0033 (docketed  
in the Office of Administrative Hearings  
as OAH NO.: LABOR-CFR-76-21-03142  
and LABOR-CFR-76-23-28572)**

**SETTLEMENT AGREEMENT**

This matter comes before the Maryland Commissioner of Financial Regulation (“Commissioner” or “OFR”) and the Maryland State Collection Agency Licensing Board (“SCALB”) (collectively the “Agency”) as the result of a complaint about The Bank of Missouri (the “Bank”), as successor by merger to Mid-America Bank & Trust Company (“Mid-America”), Atlanticus Services Corporation (“Atlanticus”), and Fortiva Financial, LLC (“Fortiva Financial,” and together with Atlanticus, the “Atlanticus Respondents”) (collectively the “Respondents”).

On December 14, 2023, the Agency issued an Amended Statement of Charges and Order for Hearing against the Respondents alleging that the Bank’s alleged activities in Maryland violated the Credit Grantor Revolving Credit Provisions (“RCP”) and the Credit Grantor Closed End Credit Provisions (“CLEC”), Md. Code Ann., Commercial Law Article (“CL”) §§ 12-901 *et seq.* and 12-1001 *et seq.*, and that the Atlanticus Respondents’ alleged activities in Maryland violated the Maryland Collection Agency Licensing Act (“MCALA”), Md. Code Ann., Business Regulation (“BR”) § 7-101 *et seq.*, the Maryland Credit Services Business Act (“MCSBA”), CL § 14-901 *et seq.*, as well as other applicable statutes and regulations.

As a final resolution of this matter without a hearing and for the mutual benefit of the Parties, the Agency and the Respondents have agreed to enter into this Settlement Agreement effective as of the 30<sup>th</sup> day of April, 2024. The Agency and the Respondents agree and stipulate as follows:

1. The parties entered a Stipulation of Facts, which was filed with the Maryland Office of Administrative Hearings (“OAH”) on March 18, 2024, including those in paragraphs 2–23 below.

2. In 2017, the Bank acquired Mid-America, a federally insured, Missouri-chartered bank operating within the State of Missouri. The Bank and Mid-America merged in 2018. At all relevant times, the Bank has been a federally insured, Missouri-chartered bank operating in Missouri, supervised by and subject to the rules and regulations of the FDIC and the Missouri Division of Finance.

3. Atlanticus is a Georgia corporation headquartered in Atlanta.

4. Fortiva Financial is a Georgia limited liability company headquartered in Atlanta.

5. *Fortiva*® is a Registered Trademark controlled and used by the Bank as a brand name nationwide in connection with products that the Bank has branded “*Fortiva*® Credit Card,” “*Fortiva*® Credit,” and “*Fortiva*® Retail Credit.” The Bank offers loans in its own name and using certain brand names, including the *Fortiva*® brand name.

6. The Commissioner oversees OFR, an administrative agency within the Maryland Department of Labor, a principal department of the Executive Branch of Maryland State government. Md. Code Ann., Financial Institutions Article (“FI”), §§ 2-114(a)(1) and (2) authorize the Commissioner to make public or private investigations as the Commissioner considers necessary to determine whether a person has violated a provision of law, regulation, rule or order over which the Commissioner has jurisdiction; or aid in the enforcement of a law or in the prescribing of regulations, rules, and orders over which the Commissioner has jurisdiction.

7. MCALA places responsibility on SCALB to license and regulate, *inter alia*, persons engaged in collection agency activities in the State of Maryland, and otherwise enforce MCALA and the Maryland Consumer Debt Collection Act (“MCDCA”), Md. Code Ann., Commercial Law, Title 14, Subtitle 2.

8. Between 2014 and August 2016, the Bank offered and issued *Fortiva*® personal loans to Maryland consumers via direct mail solicitation. The Bank’s interest rates on those loans did not exceed 36%. The Bank ceased making personal loans to Maryland consumers in August 2016.

9. Until 2021, the Bank offered general purpose Mastercard® credit cards branded “*Fortiva*® Credit Card” to pre-selected Maryland consumers through [www.myfortiva.com](http://www.myfortiva.com). The general purpose Mastercard® credit card provided a revolving line of credit to Maryland consumers to buy goods and services at a broad universe of national, regional, and local retailers who participate in, and abide by the rules of, the Mastercard® card association.

10. At all times relevant, the Bank has used “*Fortiva*® Retail Credit” as the brand name associated with private-label store-branded credit cards offered by national, regional, and local retailers who participate in the Bank’s private-label program. The Bank’s private-label store-branded credit cards have been available to Maryland consumers at over 150 retail locations. The private-label store-branded credit cards provide revolving lines of credit with which consumers may buy goods and services at a single participating retailer. The annual interest rate has not exceeded 36% on the private-label store-branded credit cards or the general purpose credit cards.

11. The Bank is the sole lender of the above-described products and is the creditor in a debtor-creditor relationship with consumers throughout the life of all loans the Bank has offered in Maryland. The Bank's *Fortiva*® credit card programs constitute an agreement between the Bank and the consumer-cardholder. As written in the Cardholder Agreements for *Fortiva*® cards, "[t]o the extent not preempted by federal law or subject to Missouri law" and "for purposes of state law compliance," the Bank has "elected Section 12-103(a)(1) of the Interest and Usury statute and the Revolving Credit Accounts statute ["RCAL"] in Maryland (Md. Com. Law Code §12-103(a)(1) and §§12-501 et seq.)." The Bank has not elected to lend under CLEC or RCP.

12. As of January 2018, the total number of outstanding non-commercial credit accounts the Bank issued to Maryland consumers for a family, household, or personal purpose totaled 7,293 and the total balance of those accounts equaled \$7,807,270.15.

13. The Bank (and in some cases the participating retailers) directly solicits consumers for *Fortiva*® or any other credit cards. The Bank makes all loan-related representations and consumers apply for credit directly to the Bank, which has sole authority and control over every aspect of the *Fortiva*® program, including all credit and underwriting policies, loan pricing and fee structures, and loan servicing. The Bank retains ownership of its retail credit accounts as well as the debtor-creditor relationship with Maryland consumers for the life of the credit account.

14. The Bank contracted with Atlanticus to manage the Bank's loan and credit card accounts under an agreement that governs those parties' relationship. Under that agreement, the Bank had sole authority and control over every aspect of Atlanticus's work on behalf of the Bank, and Atlanticus acted at all times in accordance with the Bank's policies and procedures and under the Bank's oversight, direction, and control.

15. The Atlanticus Respondents are not lenders and do not underwrite loans or issue credit to Maryland consumers. Nor do the Atlanticus Respondents broker loans or provide credit repair services, debt negotiation services, or non-mortgage loan modification services. The Atlanticus Respondents do not have a debtor-creditor or contractual relationship with consumers.

16. The Atlanticus Respondents' representatives, agents, vendors, or sub-vendors do not hold themselves out to Maryland consumers as acting on behalf of Atlanticus or Fortiva Financial. Instead, any individuals communicating with Maryland consumers regarding the credit products that are the subject of this matter hold themselves out as representatives of: (i) the Bank; (ii) *Fortiva*® Credit Card, *Fortiva*® Credit, or *Fortiva*® Retail Credit; or (iii) both. All written communications to consumers, including account statements, indicate that the Bank is the lender; use *Fortiva*® Credit Card, *Fortiva*® Credit, or *Fortiva*® Retail Credit branding; and do not reference the Atlanticus Respondents.

17. Atlanticus does not hold, purchase, receive, acquire, or possess any interest in or title to loans made and held by the Bank to Maryland consumers. Nor does it purchase defaulted consumer debt. Atlanticus does not directly perform collection activities on behalf of the Bank.

18. In or about 2016, the Agency received a complaint made by a Maryland consumer ("Consumer A") who had obtained a \$5,000 personal loan (less a \$99 fee) originated, underwritten, and made by Mid-America and branded as a "*Fortiva*® Personal Loan," with an annual percentage

interest rate of 35.98% payable over 48 months. The initial deposit by Mid-America to Consumer A's bank account indicated it was made by "FORTIVA LN FORTIVA LN." Consumer A's payments made via ACH Transfer are credited to "FORTIVA PL PMT AUTOPAY" on Consumer A's bank statements. Consumer A alleged that the interest rate Mid-America charged exceeded the rate allowed under Maryland law.

19. Under federal law, the law of Missouri governs the rates of interest that are permissible on loans made by the Bank. Under Missouri law, the Bank charged Consumer A a proper and lawful rate of interest.

20. On or about January 17, 2017, the Agency initiated an investigation into Respondents' alleged unlicensed lending and debt collection activities. Upon completion of the investigation, the Agency issued and served on the Respondents a Statement of Charges and Order for Hearing ("Charge Letter") dated January 21, 2021 that delegated the Agency's hearing authority to the OAH.

21. None of the Respondents were licensed in any capacity by the Agency. The Agency does not allege that Respondents caused any consumer harm.

22. On April 5, 2021, the Respondents filed a Notice of Removal in the U.S. District Court for the District of Maryland ("federal court"), divesting the OAH of jurisdiction over this matter. On April 28, 2022, the federal court granted the Agency's motion to remand this matter back to the OAH for further proceedings. On July 8, 2022, the federal court denied the Respondents' motion to certify the federal court's remand order for appeal to the U.S. Court of Appeals for the Fourth Circuit.

23. On November 3, 2023, the Agency re-filed the Charge Letter with OAH and on December 14, 2023, the Agency filed an Amended Charge Letter with OAH. The Amended Charge Letter alleged that the Bank engaged in unlicensed lending in violation of CLEC and RCP. The Amended Charge Letter further alleged that the Atlanticus Respondents engaged in the unlicensed provision of advice and/or assistance to Maryland consumers with regard to obtaining an extension of credit in violation of the MCSBA; and unlicensed collection agency activities in violation of MCALEA.

24. The Parties agree and acknowledge that the Parties have a good faith dispute about the application of the cited statutes to the Respondents' activities in Maryland. Respondents deny all alleged wrongdoing set forth in the Amended Charge Letter, including that any Respondent needs or ever needed any license issued by OFR or SCALB.

25. By entering into this Settlement Agreement, Respondents expressly waive their rights to: (a) appear before an Administrative Law Judge of the Office of Administrative Hearings for an administrative hearing to defend the charges; (b) the making of Findings of Fact and Conclusions of Law by the Administrative Law Judge; (c) take exception to any adverse decision issued by the Administrative Law Judge and the Agency; and (d) seek judicial review in a court of competent jurisdiction of any Final Order issued by the Agency prior to the execution of this Settlement Agreement.

26. Having consulted with independent legal counsel regarding the negotiation and execution of this Settlement Agreement, Respondents hereby acknowledge they are entering into this Settlement Agreement knowingly, willingly, and voluntarily and with the advice of counsel.

27. The Parties agree and stipulate to the following in connection with the final resolution of this matter:

a. The Agency shall withdraw Counts 1 through 4 from the Office of Administrative Hearings pursuant to COMAR 09.01.03.07A and dismiss OAH Case Nos. LABOR-CFR-76-21-03142 and LABOR-CFR-76-23-28572 with prejudice.

b. COUNTS 1 & 2: The Bank disputes and denies that the Bank violated Maryland law by offering and/or making installment loans in Maryland without being licensed to do so and without being exempt from the licensing requirement, in violation of Md. Code Ann., Commercial Law § 12-1015 as well as Md. Code Ann., Financial Institutions, § 11-302 as alleged in the Amended Charge Letter. The Bank also disputes and denies that the Bank violated Md. Code Ann., Commercial Law, § 12-915 by offering and/or making an extension of open-ended or revolving credit, such as credit cards, under this subtitle in Maryland without being licensed to do so and without being exempt from the licensing requirement, in violation of CL § 12-915 as well as FI §§ 11-302. The Bank further denies that it has ever engaged in any activity that requires a Maryland lending license. Due to relevant information received following the filing of charges in this matter, the OFR agrees to dismiss Counts 1 and 2 with prejudice, and has determined that the Bank need not obtain a license from the OFR to continue making extensions of credit of the types at issue in this matter.

c. COUNT 3: The Atlanticus Respondents dispute and deny that they have ever engaged in any activity that requires a license under the MCSBA or that they are bound by the requirements of the MCSBA. The Agency acknowledges that a legal and factual dispute exists as to whether Atlanticus Respondents' activities triggered the licensing requirement under the MCSBA. In order to resolve this dispute and avoid the burdens of additional litigation, the OFR will dismiss Count 3 with prejudice and agrees that the Atlanticus Respondents need not obtain an MCSBA license from OFR. The Atlanticus Respondents represent that they do not and agree not to engage in the following activities prohibited by the MCSBA:

- i. With respect to the extension of credit by others, selling, providing, performing, or representing that they can or will sell, provide or perform, the following services in return for the payment of money or other valuable consideration by a Maryland consumer: (1) improving a consumer's credit record, history, or rating or establishing a new credit file or record, or providing advice or assistance to a consumer with regard to improving the consumer's credit record, history, or rating or establishing a new credit file or record; (2) providing advice to a consumer with regard to obtaining an extension of credit for the consumer; and (3) selling or attempting to sell written materials containing information representing that they will enable a consumer to establish a new credit file or record;

- ii. Providing credit repair services, debt-negotiation services, or non-mortgage loan modification services to Maryland consumers;
- iii. Receiving any money or other valuable consideration from a Maryland consumer for any of the activities described in Paragraph 27(c) (i) and/or (ii) of this Settlement Agreement unless they have secured from the Commissioner a license under Title 11, Subtitle 3 of the Financial Institutions Article;
- iv. Receiving from any Maryland consumer money or other valuable consideration solely for referral of any Maryland consumer to a retail seller or to any other credit grantor who will or may extend credit to the consumer, if the credit extended to the consumer is on substantially the same terms as those available to the general public;
- v. Making, assisting, or advising any Maryland consumer to make any false or misleading statement or other representation, which by the exercise of reasonable care should be known to be false or misleading, to a consumer reporting agency, government agency, or person to whom the Maryland consumer applies or intends to apply for an extension of credit, regarding a consumer's creditworthiness, credit standing, credit capacity, or true identity;
- vi. Making or using any false or misleading representations in the offer or sale of its services;
- vii. Engaging, directly or indirectly, in any act, practice, or course of business which operates as a fraud or deception on any person in connection with the extension of credit;
- viii. Charging or receiving any money or other valuable consideration from a consumer prior to fully and completely performing any of the activities described in Paragraph 27(c) (i) and/or (ii) of this Settlement Agreement that they have agreed to perform on a consumer's behalf;
- ix. Creating or assisting a consumer to create, or providing a consumer with information on how to create a new consumer report, credit file, or credit record by obtaining and using a different name, address, telephone number, Social Security number, or employer tax identification number; and
- x. Communicating with consumers to assist a consumer in securing an extension of credit without clearly and conspicuously identifying themselves in any such communication.

d. COUNT 4: The Atlanticus Respondents dispute and deny that they have ever engaged in any activity that requires a license under MCALA, or that they are bound by the requirements of MCALA. To resolve this matter and avoid the burdens of additional litigation, the OFR will dismiss Count 4 with prejudice, and the Atlanticus Respondents

agree that they will not engage in the conduct that is the subject of Count 4 and shall promptly cause a corporate affiliate to apply for a license to do business as a collection agency in Maryland in order to clearly delineate between the affiliate and Atlanticus Respondents and their functions. The affiliate, once licensed in Maryland, shall promptly contract with the Bank to be the sole Atlanticus-affiliated entity that may engage in the conduct that is the subject of Count 4.

e. The Respondents further agree that the Bank's name and contact information shall be clearly and conspicuously provided in all advertisements, solicitations, notices, correspondence, and other communications related to the Bank's offer and issuance of credit to Maryland consumers.

f. Nothing in this Agreement shall affect the validity or enforceability of any of the loans or extensions of credit at issue in this matter.

g. To resolve the matter and avoid the burdens of additional litigation, the Atlanticus Respondents agree to pay the Agency a \$50,000 investigative fee and a \$225,000 administrative payment within fourteen (14) days of the date of the execution of this Agreement, for which OFR will promptly provide payment and/or wire instructions upon the execution of this Settlement Agreement. The Agency does not assess a fine or civil penalty.

28. In consideration of the foregoing obligations, the Agency agrees to accept this Settlement Agreement as the full and final resolution of Agency Case No. CFR-FY2017-0033 (docketed at the OAH as OAH Case Nos. LABOR-CFR-76-21-03142 and LABOR-CFR-76-23-28572) and agrees not to pursue any further administrative enforcement action against the Respondents based on the alleged conduct supporting the charges in the Charge Letter or Amended Charge Letter unless the Respondents fail to perform their obligations under this Settlement Agreement. The Parties agree that within five (5) business days of the date of Respondents executing this Agreement, the Agency shall withdraw its delegation of authority to the OAH and the scheduled hearing in OAH Case Nos. LABOR-CFR-76-21-03142 and LABOR-CFR-76-23-28572 pursuant to COMAR 09.01.03.07A. The Parties also agree that upon full execution of the Settlement Agreement by the Parties, the Atlanticus Respondents will make the payment as described in paragraph 27(g) of this Settlement Agreement. The Parties further agree that within five (5) business days of the Agency's receipt of the Atlanticus Respondents' full payment, the Agency shall dismiss the charges in the Charge Letter and the Amended Charge Letter with prejudice.

29. This Settlement Agreement is intended to resolve all matters identified by the Agency in its investigation of Respondents, including all administrative, judicial, or other legal actions that the Agency could have brought against Respondents and their affiliates prior to the execution of this Agreement based on the facts, circumstances, extensions of credit, and loans that formed the basis of this matter. The Agency fully and finally releases, acquits, and forever discharges Respondents, as well as Respondents' predecessors, successors, subsidiaries, affiliates, parents, shareholders, current and former directors, officers, and employees, from any claim, action, suit, or proceeding, whether civil or administrative, the Agency has for conduct occurring prior to the date that this Agreement is fully executed and which relates to the facts, circumstances, extensions of credit, or loans that formed this basis of this matter. Respondents, in turn, fully and



finally release, acquit, and forever discharge OFR from any claim, action, suit, or proceeding, that Respondents have for conduct occurring prior to the date that this Agreement is fully executed and that relates to any allegation that OFR failed to comply with the Maryland Administrative Procedure Act in connection with this matter.

30. The Parties acknowledge and agree that this Settlement Agreement shall be admissible, binding, and enforceable in a court of competent jurisdiction should either party fail to perform its obligations under this Settlement Agreement and shall be admissible in any court proceedings to which the Agency is a party, and shall be binding upon and run to the benefit of the Respondents' present and future owners, principals, directors, officers, members, partners, managers, agents, affiliates, successors, and assigns. The Parties further acknowledge and represent that the undersigned have express and/or implied authority to execute this Settlement Agreement on behalf of the Respondents and bind the Respondents to the terms, conditions, and provisions of this Settlement Agreement.

31. The Parties further acknowledge and agree that this Settlement Agreement does not in any way relate to, impact, or otherwise affect the legal rights of, or preclude the Agency from bringing or continuing actions against, persons not parties or affiliates of parties to this Settlement Agreement.

32. All notices or correspondence sent with respect to this Settlement Agreement shall be in writing and forwarded to the following addresses, unless such addresses have been changed in writing, via First Class United States Mail, postage prepaid, and by electronic mail as follows:

A. To the Office of Financial Regulation:

Office of the Commissioner of Financial Regulation  
Maryland Department of Labor  
1100 N. Eutaw Street, Suite 611  
Baltimore, MD 21201  
Attn: Dana Allen, Director of Enforcement  
Email: [dana.allen@maryland.gov](mailto:dana.allen@maryland.gov)

*AND*

Kevin M. McGivern  
Assistant Attorney General  
Office of the Attorney General of Maryland Department of Labor  
1100 N. Eutaw St., Room 605  
Baltimore, Maryland 21201  
Email: [kevin.mcgivern@maryland.gov](mailto:kevin.mcgivern@maryland.gov)



B. To Respondents:

Jonathan M. Watkins, Esq.  
Cadwalader, Wickersham & Taft LLP  
200 Liberty Street  
New York, NY 10281  
Email: jonathan.watkins@cwt.com

*AND*

Rosalind T. Drakeford  
General Counsel  
Atlanticus Services Corporation  
Five Concourse Parkway, Suite 300  
Atlanta, Georgia 30328  
Email: rosalind.drakeford@atlanticus.com

Any notices hereunder shall be effectively “delivered” when sent via overnight delivery or certified mail.

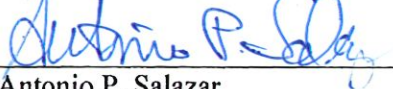
33. This Settlement Agreement shall constitute a public record and Final Order of the Maryland Commissioner of Financial Regulation and the State Collection Agency Licensing Board and the Agency may consider this Settlement Agreement and the facts set forth herein in connection with, and in deciding, any action or proceeding before the Agency; and this Settlement Agreement may, if relevant, be admitted into evidence in any matter before the Agency, the Office of Administrative Hearings, or a court of competent jurisdiction in which the Agency is a party.

34. The Parties shall adhere to all terms of this Settlement Agreement.

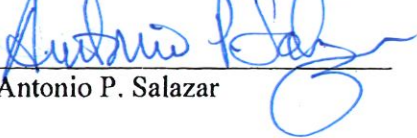
35. In the event Respondents violate any provision of this Settlement Agreement, the Agency may, at the Agency’s discretion, bring an enforcement action against Respondents pursuant to the Agency’s authority under applicable Maryland law; such enforcement actions may include the issuance of an order to cease and desist, the imposition of civil money penalties, an order to provide restitution of money or property to any aggrieved persons, an action for relief in the Circuit Court of Maryland, and/or referral for criminal prosecution.

IN WITNESS WHEREOF, this Settlement Agreement is executed on the day and year first above written.

**MARYLAND COMMISSIONER OF  
FINANCIAL REGULATION**

BY:   
Antonio P. Salazar


**MARYLAND STATE COLLECTION  
AGENCY LICENSING BOARD**

BY:   
Antonio P. Salazar


**ATLANTICUS SERVICES  
CORPORATION**

By:   
David Maslia

**THE BANK OF MISSOURI**

By:   
Mark Barker (Apr 24, 2024 15:27 CDT)

**FORTIVA FINANCIAL, LLC**

By:   
Mitchell C. Saunders