

FILED

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
WINNEBAGO COUNTY, ILLINOIS

Date: 11/17/08

Marshall A. Klein
Clerk of the Circuit Court

By:  Deputy

COPY

THE PEOPLE OF THE STATE OF ILLINOIS,)
)
)
 Plaintiff,)

-vs-

NO. 08 CH 1932

ABBOTSFORD, LLC d/b/a StopMyForeclosure.net,)
 And Rhonda Poshka, Individually)
)
 Defendants.)

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

NOW COMES Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by
LISA MADIGAN, Attorney General of the State of Illinois, bringing this action
complaining of Defendants, ABBOTSFORD, LLC d/b/a StopMyForeclosure.net
and Rhonda Poshka and states as follows:

JURISDICTION AND VENUE

1. This action is brought for and on behalf of THE PEOPLE OF THE
STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of
Illinois, pursuant to the provisions of the Mortgage Rescue Fraud Act, 765 ILCS
940/1 *et seq.*, the Illinois Consumer Fraud and Deceptive Business Practices Act,
815 ILCS 505/1 *et seq.* ("Consumer Fraud Act"), and her common law authority
as Attorney General to represent the People of the State of Illinois.

2. Venue for this action properly lies in Winnebago County, Illinois,
pursuant to Sections 2-101 and 2-102(a) of the Illinois Code of Civil Procedure,
735 ILCS 5/2-101, 735 ILCS 5/2-102(a), in that the Defendants' business is
located in Rockford, Winnebago County, Illinois.

PARTIES

3. Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, is charged, *inter alia*, with the enforcement of the Mortgage Rescue Fraud Act, 765 ILCS 940/1 *et seq.*, and the Consumer Fraud Act, 815 ILCS 505/1 *et seq.*

4. Defendant, ABBOTSFORD, LLC d/b/a StopMyForeclosure.net, is an Illinois Limited Liability Company with its principal place of business at 3914 Abbotsford Rd., Rockford, Winnebago County, Illinois. ABBOTSFORD, LLC d/b/a StopMyForeclosure.net offers homeownership consultation and mortgage foreclosure rescue services to consumers in the State of Illinois and is therefore engaged in the business of distressed property consulting, as that term is defined in Section 5 of the Mortgage Rescue Fraud Act, 765 ILCS 940/5.

5. Defendant Rhonda Poshka resides at 31379 N. Shale Dr., Queen Creek, Pinal County, Arizona. Ms. Poshka is the listed Registrant for the domain: StopMyForeclosure.net and conducts business in the State of Illinois through StopMyForeclosure.net.

6. For purposes of this Complaint for Injunctive and Other Relief, any references to the acts and practices of Defendants shall mean that such acts and practices are by and through the acts of the officers, members, owners, directors, employees, or other agents of ABBOTSFORD, LLC d/b/a StopMyForeclosure.net.

COMMERCE

7. Section 1(f) of the Consumer Fraud Act, 815 ILCS 505/1(f), defines "trade" and "commerce" as follows:

The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

8. Defendants ABBOTSFORD, LLC d/b/a StopMyForeclosure.net and Rhonda Poshka were at all times relevant hereto engaged in trade and commerce in the State of Illinois by advertising, soliciting, offering for sale and selling distressed property consulting services, which consist of homeownership counseling and mortgage foreclosure rescue services, to the general public of the State of Illinois.

DEFENDANTS' COURSE OF CONDUCT

9. Since at least March 26, 2008, and continuing to date, Defendants have been engaged in, and are presently engaged in, advertising, offering for sale, and selling consulting services to homeowners whose mortgage payments are outstanding, are in foreclosure, and are facing financial hardship.

10. Since at least March 26, 2008, and continuing to date, Defendants promote these services to consumers throughout the United States, including Illinois consumers, through its website: <http://www.StopMyForeclosure.net>.

11. Defendants promise to help consumers stop the foreclosure process regardless of the stage it is in. Defendants' website states:

"StopMyForeclosure will help you save your home and stop the foreclosure process immediately!" and "In fact, we will weigh your financials and prove to the mortgage company that you can afford your home and stop the foreclosure process."

12. Defendants advertise their "...combined 25 years of real estate, financial and lending experience gives us and our superior negotiators the knowledge needed"; "In this business it's nice to have a friend you can count on. We are a credible, honest and ethical foreclosure prevention service company..." and that "...we guarantee our services..."

13. Defendants claim "Our proven track record of a 97% success rate speaks for itself!".

14. Defendants' website lists several foreclosure options including restructuring the loan, refinancing, bankruptcy, short sale, and arrearages/back payments due on mortgage.

15. Defendants' website instructs consumers to call a toll free number or complete a short online application for a free no obligation consultation.

16. The online application requests the consumer's name, phone number, email address, city, state, lender, and description.

17. The Defendants' website has links to various states' foreclosure laws stating "Each state foreclosure page includes a summary of your state foreclosure law as well as links to other foreclosure law resources." The link to Illinois Foreclosure laws includes a summary of Illinois foreclosure laws and a link to the Illinois General Assembly website. It does not cite to any statutes and

fails to mention the Illinois Mortgage Rescue Fraud Act, 765 ILCS 940/1 *et seq.*, which strictly regulates the conduct of distressed property consultants such as Defendants.

18. Once a consumer makes contact with the Defendants, the consumer is told they have to pay some amount of money via Visa, Mastercard, American Express, Discover, Pre-paid credit card or Money Gram as an initial deposit, in violation of Section 50 of the Mortgage Rescue Fraud Act, 765 ILCS 940/50. Consumers are required to execute a document authorizing this payment. See Credit Card Processing Authorization Letter (Exhibit A).

19. Consumers are required to enter into a "StopMyForeclosure Agreement" in which the consumers agree: (1) if the Agreement is terminated by their action or lack of action then they forfeit any fees paid, (2) that the consumer has a right to cancel the Agreement within 3 days of the date of the Agreement and receive a partial rebate of the fees paid, and (3) should efforts not secure an offer from the mortgage company, StopMyForeclosure.net will rebate up to one-half of the fee. All of these terms are contrary to the provisions of Section 15 of the Mortgage Rescue Fraud Act, 765 ILCS 940/15, which provides consumers a right to cancel the transaction at any time until after the distressed property consultant has performed all services contracted for in the consultant contract. See StopMyForeclosure Agreement (Exhibit B).

20. The agreements used by the Defendants do not contain the "Notice Required by Illinois Law" or "Notice of Cancellation," as set forth in Section 10 of the Mortgage Rescue Fraud Act, 765 ILCS 940/10. (Exs. A-B)

21. More specifically, but not by way of limitation, the following allegations in paragraph 22 through 33 are pled as illustrations of Defendants' unlawful business practices and are not meant to be exhaustive. Plaintiff reserves the right to prove that other consumers have been injured as a result of Defendants' unlawful practices.

Albert Ekl

22. Consumer Albert Ekl obtained a loan from Countrywide for his single family home in Bridgeview, Cook County, Illinois.

23. In March 2008, after falling behind in his mortgage payments and finding the website "www.stopmyforeclosure.net", Mr. Ekl sought the help of Defendants to renegotiate the terms of his mortgage and keep his home.

24. After speaking with a representative by phone, Mr. Ekl received a packet of forms in the mail to complete and return including: an expense worksheet, hardship letter, authorization agreement, and a request for his W2's, Social Security number and bank account statements.

25. The Defendants told Mr. Ekl he had to come up with some amount of money up front as a deposit and they could set up payments arrangements for the remainder.

26. On March 26, 2008, Mr. Ekl completed and signed the Credit Card Processing Authorization Letter and the StopMyForeclosure Agreement. (Exs. A & B) and mailed them to the Defendants at 3914 Abbotsford Rd, Rockford, Illinois.

27. The Defendants then debited \$300.00 from Mr. Ekl's bank account prior to completing any services in violation of the provisions of Section 50 of the Mortgage Rescue Fraud Act, 765 ILCS 940/50.

28. The documents executed by Mr. Ekl did not contain the "Notice Required by Illinois Law" or "Notice of Cancellation," as set forth in Section 10 of the Mortgage Rescue Fraud Act, 765 ILCS 940/10.

29. The documents executed by Mr. Ekl did not contain the total amount and terms of compensation for Defendants' services in violation of the provisions of Section 10 of the Mortgage Rescue Fraud Act, 765 ILCS 940/10.

30. The StopMyForeclosure Agreement that Mr. Ekl executed required him to agree: (1) if the Agreement is terminated by Mr. Ekl's action or lack of action then he forfeits any fees paid, (2) that Mr. Ekl has a right to cancel the Agreement within 3 days of the date of the Agreement and receive a partial rebate of the fees paid, and (3) should efforts not secure an offer from the mortgage company, StopMyForeclosure.net will rebate up to one-half of the fee. All of these terms are contrary to the provisions of Section 15 of the Mortgage Rescue Fraud Act, 765 ILCS 940/15, which provides consumers a right to cancel the transaction at any time until after the distressed property consultant has performed all services contracted for in the consultant contract.

31. After making the deposit as required, Defendants assigned a "negotiator" named Crystal Larson to Mr. Ekl's case.

32. The StopMyForeclosure Agreement executed by Mr. Ekl states "It is understood that StopMyForeclosure.net will work with lender on

HOMEOWNER's behalf to analyze loan and find a workable solution to stop foreclosure proceedings and offer a plan to bring HOMEOWNER current with payments." Representatives of Defendants told Mr. Ekl that if the plan was not satisfactory, they would renegotiate on his behalf. A plan was offered through Defendants that was not satisfactory to Mr. Ekl.

33. Mr. Ekl called Defendants' representatives, Crystal Larson, Roger Gates, Rachel Brouwer, and Rhonda Poshka, repeatedly to inquire as to the status of his case and was told they were getting tired of him calling.

34. After terminating Defendants' services, Mr. Ekl was able to negotiate directly with Countrywide and obtained a satisfactory plan.

APPLICABLE STATUTES

35. Section 5 of the Mortgage Rescue Fraud Act, 765 ILCS 940/5, provides in relevant part:

"Distressed property" means residential real property consisting of one to 6 family dwelling units that is in foreclosure or at risk of loss due to nonpayment of taxes, or whose owner is more than 90 days delinquent on any loan that is secured by the property".

"Distressed property consultant" means any person who, directly or indirectly, for compensation from the owner, makes any solicitation, representation, or offer to perform or who, for compensation from the owner, performs any service that the person represents will in any manner do any of the following:

- (1) stop or postpone the foreclosure sale or the loss of the home due to nonpayment of taxes;
- (2) obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;
- (3) assist the owner to exercise any right of reinstatement or right of redemption;
- (4) obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;

- (5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;
- (6) assist the owner in foreclosure, loan default, or post-tax sale redemption, period to obtain a loan or advance of funds;
- (7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale or tax sale; or
- (8) save the owner's residence from foreclosure or loss of home due to nonpayment of taxes.

36. Section 10 of the Mortgage Rescue Fraud Act, 765 ILCS 940/10, provides that:

- (a) A distressed property consultant contract must be in writing and must fully disclose the exact nature of the distressed property consultant's services and the total amount and terms of compensation.
- (b) The following notice, printed in at least 12-point boldface type and completed with the name of the distressed property consultant, must be printed immediately above the statement required by subsection (c) of this Section:

NOTICE REQUIRED BY ILLINOIS LAW

.....(Name) or anyone working for him or her CANNOT:

- (1) Take any money from you or ask you for money until(NAME) has completely finished doing everything he or she said he or she would do; or
- (2) Ask you to sign or have you sign any lien, mortgage, or deed.

(c) A distressed property consultant contract must be written in the same language as principally used by the distressed property consultant to describe his or her services or to negotiate the contract, must be dated and signed by the owner, and must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 12-point boldface type, as follows:

You, the owner, may cancel this transaction at any time until after the distressed property consultant has fully performed each and every service the distressed property consultant

contracted to perform or represented he or she would perform. See the attached notice of cancellation form for an explanation of this right.

(d) A distressed property contract must contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

- (1) the name and address of the distressed property consultant to which the notice of cancellation is to be mailed; and
- (2) the date the owner signed the contract.

(e) A distressed property consultant contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which must be attached to the contract, must be easily detachable, and must contain, in at least 12-point boldface type, the following statement written in the same language as used in the contract:

NOTICE OF CANCELLATION

.....
(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, at any time until after the distressed property consultant has fully performed each and every service the distressed property consultant contracted to perform or represented he or she would perform.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice to:

.....(Name of distressed property consultant)
at(Address of distressed
property consultant's place of business) I hereby
cancel this transaction on.....(Date)
.....(Owner's signature).

(f) The distressed property consultant shall provide the owner with a copy of a distressed property consultant contract and the attached notice of cancellation immediately upon execution of the contract.

37. Section 15 of the Mortgage Rescue Fraud Act, 765 ILCS 940/15, states:

- (a) In addition to any other legal right to rescind a contract, an owner has the right to cancel a distressed property consultant contract at any time until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented he or she would perform.
- (b) Cancellation occurs when the owner gives written notice of cancellation to the distressed property consultant at the address specified in the distressed property consultant contract.
- (c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice by certified mail, return receipt requested, addressed to the address specified in the distressed property consultant contract, shall be conclusive proof of notice of service.
- (d) Notice of cancellation given by the owner need not take the particular form as provided with the distressed property consultant contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

38. Section 50 of the Mortgage Rescue Fraud Act, 765 ILCS 940/50, states in relevant part:

- (a) It is a violation for a distressed property consultant to:
 - (1) claim, demand, charge, collect, or receive any compensation until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented he or she would perform;
 - (2) claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason that exceeds 2 monthly mortgage payments of principal interest or the most recent tax installment on the distressed property, whichever is less;
 - (3) take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;
 - (4) receive any consideration from any third party in connection with services rendered to an owner unless the consideration is first fully disclosed to the owner;
 - (5) acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate in a distressed property from an owner with whom the distressed property consultant has contracted;
 - (6) take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or

(7) induce or attempt to induce an owner to enter a contract that does not comply in all respects with Sections 10 and 15 of this Act.

VIOLATIONS OF THE MORTGAGE RESCUE FRAUD ACT

39. Defendants are "distressed property consultants" as that term is defined under Section 5 of the Mortgage Rescue Fraud Act, 765 ILCS 940/5, since they advertise and offer to perform services to stop or postpone the foreclosure sale and/or obtain any forbearance from any beneficiary or mortgagee.

40. Defendants have violated Section 10 of the Mortgage Rescue Fraud Act, 765 ILCS 940/10, by:

- a. failing to fully disclose the total amount and terms of compensation in their Credit Card Processing Authorization Letter or StopMyForeclosure Agreement;
- b. failing to provide the requisite "Notice Required by Illinois Law" in their Credit Card Processing Authorization Letter or StopMyForeclosure Agreement;
- c. failing to include the name and address of the distressed property consultant in their Credit Card Processing Authorization Letter or StopMyForeclosure Agreement; and
- d. failing to provide the requisite "Notice of Cancellation" in their Credit Card Processing Authorization Letter or StopMyForeclosure Agreement.

41. Defendants have violated Section 15 of the Mortgage Rescue Fraud Act, 765 ILCS 940/15, by including a forfeiture clause in their contract that allows Defendants to retain consumers' payment if they violate any terms of the StopMyForeclosure Agreement. Section 15 of the Mortgage Rescue Fraud Act provides consumers a right to cancel a foreclosure contract at any time, until the distressed property consultant has performed all the services as contracted. Defendants' forfeiture clause attempts to prohibit consumers from exercising that right.

42. Defendants have violated Section 50 of the Mortgage Rescue Fraud Act, 765 ILCS 940/50, by demanding, charging, collecting and/or receiving compensation from consumers for their foreclosure rescue services before fully performing the services it contracted to perform.

REMEDIES UNDER THE MORTGAGE RESCUE FRAUD ACT

43. Section 55 of the Mortgage Rescue Fraud Act, 765 ILCS 950/55, provides that:

A violation of any of the provisions of this Act constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. All remedies, penalties, and authority granted to the Attorney General or State's Attorney by the Consumer Fraud and Deceptive Business Practices Act shall be available to him or her for the enforcement of this Act.

44. Section 7 of the Consumer Fraud Act, 815 ILCS 505/7, provides:

a. Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by the Act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name

of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction, revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.

b. In addition to the remedies provided herein, the Attorney General may request and this Court may impose a civil penalty in a sum not to exceed \$50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed \$50,000 per violation.

45. Section 10 of the Consumer Fraud Act, 815 ILCS 505/10, provides:

In any action brought under the provisions of this Act, the Attorney General is entitled to recover costs for the use of this State.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

- A. A finding that Defendants are distressed property consultants under the Mortgage Rescue Fraud Act;
- B. A finding that Defendants have violated Sections 10, 15, and 50 of the Mortgage Rescue Fraud Act;
- C. A finding that in violating Sections 10, 15, and 50 of the Mortgage Rescue Fraud Act, Defendants have, thereby, violated the Consumer Fraud Act;
- D. An order preliminarily and permanently enjoining Defendants from the use of acts or practices that violate the Mortgage Rescue Fraud Act,

including but not limited to, the unlawful acts and practices specified herein above;

E. An order declaring that all contracts entered into between the Defendants and Illinois consumers by the use of methods and practices declared unlawful are rescinded and requiring that restitution be made to such consumers;

F. An order revoking, forfeiting, or suspending any and all licenses, charters, franchises, certificates or other evidence of authority of the Defendants to do business in the State of Illinois;

G. An order assessing a civil penalty in the amount of Fifty-Thousand Dollars (\$50,000) per violation of the Illinois Consumer Fraud Act found by the Court to have been committed by Defendants with intent to defraud. If the Court finds Defendants have engaged in methods, acts, or practices declared unlawful by the Illinois Consumer Fraud Act, without intent to defraud, then assessing a statutory civil penalty of Fifty Thousand Dollars (\$50,000) all as provided in Section 7 of the Illinois Consumer Fraud Act;

H. An order requiring Defendants to pay the costs of the investigation and prosecution of this action as provided under Section 10 of the Illinois Consumer Fraud Act; and

I. An order granting such other relief as this Honorable Court deems just and proper.

