

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-CHANCERY DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS,)

Plaintiff,)

-vs-)

HOMESTEAD PROTECTION SERVICES, LLC,)

Defendant.)

08CH43262
NO.

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 Defendant, HOMESTEAD PROTECTION SERVICES, LLC, 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 Cook 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 Defendant is doing business in Cook 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 HOMESTEAD PROTECTION SERVICES, is a foreign limited liability company with its principal place of business at 151 Southhall Lane, Suite 210, Maitland, Florida. Defendant is not admitted by the Illinois Secretary of State to transact business in the State. HOMESTEAD PROTECTION SERVICES 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. For purposes of this Complaint for Injunctive and Other Relief, any references to the acts and practices of Defendant shall mean that such acts and practices are by and through the acts of said HOMESTEAD PROTECTION SERVICES officers, members, owners, directors, employees, or other agents.

COMMERCE

6. 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.

7. Defendant HOMESTEAD PROTECTION SERVICES, was at all times relevant hereto engaged in trade and commerce in the State of Illinois by advertising, soliciting, and 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.

DEFENDANT'S COURSE OF CONDUCT

8. Since at least July 11, 2005 and continuing to date, Defendant has been engaged in, and is presently engaged in the trade or commerce of advertising, offering for sale, and selling consulting services to homeowners whose mortgage payments are outstanding and are facing financial hardship.

9. Since at least July 11, 2005 and continuing to date, Defendant promotes these services to consumers throughout the United States, including to Illinois consumers, through its website <http://www.ushomestead.com/index.aspx>.

10. Defendant promises to help consumers with foreclosure prevention. For example, Defendant's website states, "[f]ast acting lender contact and negotiation is the key to safeguarding your home from foreclosure. No time is wasted as our skilled and professional Loss Mitigation Specialists determine how best to solve your case. As our client, your lender is contacted, determinations are made, negotiations begin, and you're quickly advised about the various options available to stop the foreclosure proceedings on your home. We understand, we care, and we can help!"

11. Defendant warns consumers that, "[y]ou may be unaware of what you're entitled to as a homeowner in America. Act now before your house could be sold at auction and the sheriff evicts you and your family from your home."

12. Defendant also promotes its services as educational, stating, “Homestead Protection Services is a community counseling organization that helps homeowners solve their financial hardships...”

13. Defendant’s website directs consumers to call a toll free number at “877-719-STOP.”

14. Once a consumer calls the toll free number, Defendant asks a series of questions, including the consumer’s name, number of mortgage payments behind, amount of arrearage, reason for hardship, and name of lender.

15. Defendant tells consumers that they pre-qualify for assistance and that Defendant could help in one of various ways:

- a. loan modification;
- b. VA loan modification refunding;
- c. short sale;
- d. repayment plan;
- e. special forbearance;
- f. partial claim; or
- g. deed in lieu of foreclosure.

16. Defendant’s website purports to contain information related to state-specific foreclosure laws. The website has information regarding Illinois foreclosure laws, but entirely fails to mention the Illinois’ Mortgage Rescue Fraud Act, 765 ILCS 940/1 *et seq.* The Mortgage Rescue Fraud Act strictly regulates conduct of distressed property consultants, such as Defendant.

17. Once a consumer completes an online consultation request, Defendant contacts the consumer. Defendant then asks the consumer a series of questions related to the consumer's mortgage and finances.

18. During the call, consumers are told that there will be an up-front cost to initiate services. Consumers are required to enter into a service agreement and send a good faith payment through a cashier's check or money order. Demanding an up-front cost prior to completing services violates Section 50 of the Mortgage Rescue Fraud Act, 765 ILCS 940/50. Half of the payment is due immediately and the remainder is due in three weeks. See Homestead Protection Services, L.L.C.'s Service Agreement (Ex.1).

19. Consumers are also required to enter into a Client Disclosure Information agreement that requires consumers to waive their right to a jury trial. See Client Disclosure Information agreement (Ex.2).

20. Consumers are required to enter into a Client Representations and Client Responsibilities agreement in which the consumers agree: (a) to provide accurate information, (b) to not compromise or make any agreement with the mortgage lender without first notifying HOMESTEAD PROTECTION SERVICES, (c) to save deposits that equal the amount of the consumer's monthly mortgage payment until the situation is resolved and to save additional funds, (d) to claim any certified mail received during HOMESTEAD PROTECTION SERVICES' involvement, and to immediately forward any correspondence and court papers in connection to the consumer's mortgage to HOMESTEAD PROTECTION SERVICES, (e) to immediately inform HOMESTEAD PROTECTION SERVICES if the consumer's current financial situation changes, and (f) to keep in constant contact with HOMESTEAD PROTECTION SERVICES. Consumers must respond within 48 hours upon receiving a

voicemail or email from HOMESTEAD PROTECTION SERVICES. Any failure on the consumers' part to abide by the Client Representations and Client Responsibilities agreement would result on the consumers' forfeiting all fees and deposits in trust paid to HOMESTEAD PROTECTION SERVICES. Such a statement is 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 Client Representations and Client Responsibilities agreement (Ex. 3).

21. None of the contracts used by Defendant, 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. 1-3).

22. In many instances, Defendant fails to negotiate an appropriate plan with consumer's lender, yet they fail to refund the consumer's money.

23. Defendant fails to provide consumers with an education regarding the foreclosure process.

24. More specifically, but not by way of limitation, the following allegations in paragraph 25 through 35 are pled as illustrations of Defendant's 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 Defendant's unlawful practices.

Monica F. Garner

25. On or about February 7, 2007, consumer Monica F. Garner obtained a loan in the amount of \$66,000 for a single family home in Chicago, Cook County, Illinois.

26. Sometime after obtaining her loan, Ms. Garner fell more than 90 days behind in making her monthly mortgage payments of \$573.11.

27. Ms. Garner called HOMESTEAD PROTECTION SERVICES and was told that they could help in these ways:

- a. loan modification;
- b. VA loan modification refunding;
- c. short sale;
- d. repayment plan;
- e. special forbearance;
- f. partial claim; or
- g. deed in lieu of foreclosure.

28. During the call, a representative from HOMESTEAD PROTECTION SERVICES, JR Kroll, asked Ms. Garner a series of questions, including the consumer's name, number of mortgage payments behind, amount of arrearage, reason for hardship, and name of lender.

29. After the call, JR Kroll sent Ms. Garner an email stating that Ms. Garner's application was approved for their assistance.

30. JR Kroll instructed Ms. Garner to complete an Authorization Form and to send a cashier's check or money order in the amount of \$997 made out to HOMESTEAD PROTECTION SERVICES.

31. The \$997 was a deposit and the remaining half was due three weeks later.

32. Contrary to the provisions of Section 50 of the Mortgage Rescue Fraud Act, 765 ILCS 940/50, Defendant requested and collected from Ms. Garner a \$997 administration fee before it completed the services.

33. None of the contracts that Ms. Garner received contained 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.

34. The Client Representations and Client Responsibilities agreement that Ms. Garner entered into required that she agree: (a) to provide accurate information, (b) to not compromise or make any agreement with the mortgage lender without first notifying HOMESTEAD PROTECTION SERVICES, (c) to save deposits that equal the amount of the consumer's monthly mortgage payment until the situation is resolved and to save additional funds, (d) to claim any certified mail received during HOMESTEAD PROTECTION SERVICES' involvement, and to immediately forward any correspondence and court papers in connection to the consumer's mortgage to HOMESTEAD PROTECTION SERVICES, (e) to immediately inform HOMESTEAD PROTECTION SERVICES if the consumer's current financial situation changes, and (f) to keep in constant contact with HOMESTEAD PROTECTION SERVICES. Consumers must respond within 48 hours upon receiving a voicemail or email from HOMESTEAD PROTECTION SERVICES. Any failure of Ms. Garner to abide by the Client Representations and Client Responsibilities agreement would result on her forfeiting all fees and deposits in trust paid to HOMESTEAD PROTECTION SERVICES. Such a statement is 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.

35. Ms. Garner eventually hired another company to prevent losing her home to foreclosure.

APPLICABLE STATUTES

36. 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.

37. 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.

38. 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.

39. 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.

40. Section 45-45(d) of the Limited Liability Company Act states:

A foreign limited liability company that transacts business in this State without being admitted to do so shall be liable to the State for the years or parts thereof during which it transacted business in this State without being admitted in an amount equal to all fees that would have been imposed by this Article upon that limited liability company had it been duly admitted, filed all reports required by this Article, and paid all penalties imposed by this Article. If a limited liability company fails to be admitted to do business in this State within 60 days after it commences transacting business in Illinois, it is liable for a penalty of \$2,000 plus \$100 for each month or fraction thereof in which it has continued to transact business in this State without being admitted to do so. The Attorney General shall bring proceedings to recover all amounts due this State under this Article.

COUNT I

VIOLATIONS OF THE MORTGAGE RESCUE FRAUD ACT

41. Defendant is a "distressed property consultant" as that term is defined under Section 5 of the Mortgage Rescue Fraud Act, 765 ILCS 940/5, because it advertises and offers to perform services to stop or postpone the foreclosure sale and/or obtain any forbearance from any beneficiary or mortgagee.

42. Defendant has violated Section 10 of the Mortgage Rescue Fraud Act, 765 ILCS 940/10, by:

- a. failing to provide the requisite "Notice Required by Illinois Law" on their Mitigation Reinstatement Service Agreement, Owner Obligation contract, or Agency Agreement contract and
- b. failing to provide the requisite "Notice of Cancellation" on their Mitigation Reinstatement Service Agreement, Owner Obligation contract, or Agency Agreement contract.

43. Defendant has violated Section 15 of the Mortgage Rescue Fraud Act, 765 ILCS 940/15, by including a forfeiture clause in their contract that allows Defendant to retain consumers' payment if they violate any terms of the Client Representation and Client Responsibilities 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. Defendant's forfeiture clause attempts to prohibit consumers from exercising that right.

44. Defendant has 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

45. 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.

46. 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.

c. In addition to any other civil penalty provided in this Section, if a person is found by the court to have engaged in any method, act, or practice declared unlawful under this Act, and the violation was committed against a person 65 years of age or older, the court may impose an additional civil penalty not to exceed \$10,000 for each violation.

47. 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 Defendant is a distressed property consultant under the Mortgage Rescue Fraud Act;
- B. A finding that Defendant has 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, Defendant has, thereby, violated the Consumer Fraud Act;

D. An order preliminarily and permanently enjoining Defendant from the use of acts or practices that violated 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 Defendant 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 Defendant to do business in the State of Illinois;

G. An order assessing a civil penalty in the amount of Fifty-Thousand Dollars (\$50,000.00) per violation of the Illinois Consumer Fraud Act found by the Court to have been committed by Defendant with intent to defraud. If the Court finds Defendant has 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 (\$50,000.00) all as provided in Section 7 of the Illinois Consumer Fraud Act;

H. An order requiring Defendant 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.

COUNT II

VIOLATIONS OF THE LIMITED LIABILITY COMPANY ACT

48. Defendant has violated Section 45-45 of the Limited Liability Company Act, 805 ILCS 180/45-45, by transacting business in Illinois without being admitted to do so by the

Illinois Secretary of State, and failing to be admitted to do business in Illinois within 60 days after it commenced transacting business in Illinois.

REMEDIES UNDER THE LIMITED LIABILITY COMPANY ACT

49. Section 45-45(d) of the Limited Liability Company Act states in part:

The Attorney General shall bring proceedings to recover all amounts due this State under this Article.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. A finding that Defendant has violated Section 45-45 of the Limited Liability Company Act; and

B. An order assessing a penalty in the amount of Two-Thousand Dollars (\$2,000) plus One-Hundred Dollars (\$100) for each month or fraction thereof in which Defendant has continued to transact business in Illinois without being admitted to do so by the Illinois Secretary of State.

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

Respectfully Submitted,

THE PEOPLE OF THE STATE OF
ILLINOIS, by LISA MADIGAN,
ATTORNEY GENERAL OF ILLINOIS

Attorney #99000
LISA MADIGAN
Attorney General of Illinois

JAMES D. KOLE
Chief, Consumer Fraud Bureau

BY: _____



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