

FILED
CLERK OF DISTRICT COURT
EL PASO, TEXAS

2010 MAR 30 10 08 50

EL PASO COUNTY
Cause No. BY 2010-3307

STATE OF TEXAS, §
Plaintiff §
v. §
AMERICAN HOME MORTGAGE §
SERVICING, INC. §
Defendant §

PLAINTIFF'S ORIGINAL PETITION
APPLICATION FOR PERMANENT INJUNCTION AND REQUEST FOR
DISCLOSURE

COMES NOW THE STATE OF TEXAS, hereinafter referred to as Plaintiff, acting by and through the Attorney General of Texas, GREG ABBOTT, complaining of American Home Mortgage Servicing, Inc., ("American Home" or "AHMSI"), hereinafter referred to as Defendant, and for cause of action would respectfully show:

I.
DISCOVERY CONTROL PLAN

1. The discovery in this case is intended to be conducted under Level 3 pursuant to TEX. R. CIV. P. 190.3.

II.
NATURE OF THIS SUIT

2. The Attorney General, acting within the scope of his official duties under the authority granted to him under the Constitution and the laws of the State of Texas, brings this lawsuit in the name of the State of Texas through his Consumer Protection and Public Health Division against Defendant for violations of the Texas Deceptive Trade Practices - Consumer Protection Act, TEX. BUS. & COM. CODE ANN. § 17.41, *et seq.* (hereinafter "DTPA") and for violations of the Texas Debt Collection Act, TEX. FIN. CODE ANN. §392.001, *et seq.* (hereinafter "TDCA"). The DTPA grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its

provisions. TEX. BUS. & COM. CODE ANN. § 17.47. The TDCA also grants authority to the Attorney General to seek injunctive relief and civil penalties for violations of its provisions. TEX. FIN. CODE ANN. §392.403.

III. DEFENDANT

3. Defendant American Home Mortgage Servicing, Inc. is a foreign corporation with its principal offices in Dallas County, Texas, that regularly conducts business in El Paso County, Texas, and may be served with process by serving its registered agent, CT Corporation System, 350 North St. Paul, Suite 2900, Dallas, Texas 75201.

IV. JURISDICTION

4. This Court has jurisdiction over this action pursuant to § 17.47(b) of the DTPA and TEX. FIN. CODE ANN. §392.403.

V. VENUE

5. Venue of this suit lies in El Paso County, Texas for the following reasons:

- A. Under TEX. CIV. PRAC. & REM. CODE ANN. §15.002(a)(1) venue is proper because a substantial part of the events or omissions giving rise to Plaintiff's claim alleged herein occurred in El Paso County, Texas.
- B. Under the DTPA § 17.56(b)(2), venue is proper because Defendant and its authorized agents solicited transactions made the subject of the action at bar in El Paso County, Texas.
- C. Under the DTPA § 17.47(b), venue is proper because Defendant has done business in El Paso County, Texas.

VI.
PUBLIC INTEREST

6. Plaintiff, THE STATE OF TEXAS, has reason to believe that Defendant is engaging in, has engaged in, or is about to engage in, the unlawful acts or practices set forth below; that Defendant has, by means of these unlawful acts and practices, caused damage to or acquired money or property from persons, and that Defendant adversely affects the lawful conduct of trade and commerce, thereby directly or indirectly affecting the people of this State. Therefore, the Consumer Protection and Public Health Division of the Office of the Attorney General of the State of Texas believes and is of the opinion that these proceedings are in the public interest.

VII.
TRADE AND COMMERCE

7. Defendant has, at all times described below, engaged in conduct which constitutes “trade” and “commerce” as those terms are defined by §17.45(6) of the DTPA.

VIII.
ACTS OF AGENTS

8. Whenever in this petition it is alleged that Defendant did any act, it is meant that Defendant performed or participated in the act, or that the officers, managers, agents or employees of Defendant performed or participated in the act on behalf of and under the authority of Defendant.

IX.
FACTUAL ALLEGATIONS

9.1 Defendant is a loan servicing company. Defendant describes its business on its website as follows:

American Home Mortgage Servicing Inc. (AHMSI) provides services to homeowners and loan investors. Whether a borrower holds a traditional, Alt A, payment option or subprime loan, our highly trained experts are committed to providing high levels of service as they work to address each customer’s needs. Similarly, we carefully manage the loan portfolios

of investors, giving them the attentive service that they appreciate.

...

AHMSI is based in Coppell, Texas, with servicing operations in Irvine, Calif., Jacksonville, Fla., and Pune, India. It is funded by Wilbur Ross & Co. LLC., a private equity firm based in New York, and holds membership in the Mortgage Bankers Association and the HOPE NOW Alliance. Differentiated by a focus on creative solutions and innovative ideas, the company credits its success to a talented team who do the best possible job for its customers.

...

A higher level of mortgage services. A higher level of customer satisfaction.

Personalized attention is the cornerstone of our approach to mortgage services. We spend time getting to know you and understand your situation. Then we create individual solutions, walk you through your options and guide you through every step of the process.

9.2 As a home mortgage “servicer,” American Home is a debt collector under the provisions of the TDCA. It collects mortgage payments from consumers and pays them to the investors who own the loans. American Home’s employees, agents, and/or representatives have violated the provisions of the TDCA by:

- A. Repeatedly calling consumers several times on the same day;
- B. Failing to properly credit consumers for payments made;
- C. Using false claims that consumers did not make payments in order to justify the imposition of late fees and the establishment of escrow accounts;
- D. Failing to recognize that consumers’ have insurance policies in effect, and then force placing insurance policies unnecessarily;
- E. Withdrawing funds from consumers checking accounts, but failing to show the withdrawal as a payment on the mortgage;
- F. Failing to timely post consumers’ payments;
- G. Making payment for taxes on consumers’ homes when the consumers had already paid the taxes;

- H. Refusing to accept proper payments from consumers, allegedly because the consumer is in default and the payment is not large enough to cure the alleged default, thereby causing more late charges to be added and false reports made to credit bureaus;
- I. Repeatedly sending dunning letters when the loans are not in default; and
- J. The cumulative effect of American Home's violations of the TDCA is to render homeowners ostensibly in default under their home loans. This triggers American Home's obligation owed to the investors under its agreements with them to initiate and conduct foreclosure of the homes.

9.3 Among the services American Home offers to consumers are various loan modification programs. In describing its "Home Retention Team," American Home states:

American Home Mortgage Servicing, Inc. has a team of associates dedicated to helping borrowers work through financial difficulties.

...

The Home Retention Team is:

...

Empowered – to work things out directly with the borrower and make recommendations for approval.

Compassionate – they know the importance of homeownership and they want to help people get through their difficulties as successfully as possible.

Through the various modification or refinance programs, American Home promises consumers that they can apply for loan modification programs and in some cases are eligible for cessation of the foreclosure process and other benefits. However,

- A. Contrary to the provisions of some of the loan modification programs, American Home insists that consumers bring the loan current prior to becoming eligible, pay a fee to it for the modification, and agree to a release of American Home.
- B. Contrary to the above described professions of efficiency and compassion, American

Home has, on numerous occasions, agreed to receive consumers' modification applications, including financial statements, wage records, tax returns and other documents, by fax or by certified mail, and then has lost or claims not to have received such despite the proofs of receipt held by the consumers. American Home then will require the consumer to resend the modification application, in some cases as many as three or four additional times. Then, in many cases, by the time American Home acknowledges receipt of the application, it claims the information is stale and requires the consumer to resubmit the application and all documents.

- C. Consumers complain of never speaking to the same representative twice, in spite of American Home's claim that it gets to know consumers through personal attention.
- D. If the consumer's modification request is at all unusual, the initial representative must send it to the supervisor for approval, contrary to the claim that its Team members are empowered to work out problems directly with the consumer.
- E. On numerous occasions, American Home offered loan "modifications" that did nothing more than add the amounts claimed to be in default to the principal.
- F. On numerous occasions, American Home offered loan "modifications" that did not lower the consumers' monthly payment, and in many cases increased it.
- G. The cumulative effect of the foregoing acts and practices was to place more homes into foreclosure than there should have been.

X.

TEXAS DEBT COLLECTION ACT VIOLATIONS

- 10. Defendant has engaged in conduct, as alleged above, in violation of the TDCA, by:
 - a. making repeated or continuous telephone calls, with the intent to harass a person at

the called number, as prohibited by TDCA §392.202(4);

b. collecting or attempting to collect interest or a charge, fee, or expense incidental to the obligation when the interest or incidental charge, fee, or expense is not expressly authorized by the agreement creating the obligation or legally chargeable to the consumer, as prohibited by TDCA §392.303(2);

c. misrepresenting the character, extent, or amount of a consumer debt, as prohibited by TDCA §392.304(8); and

d. using other false representations or deceptive means to collect a debt, as prohibited by TDCA §392.304(19).

XI. DTPA VIOLATIONS

11. Defendant, as alleged above, has in the course of trade and commerce engaged in false, misleading and deceptive acts and practices declared unlawful in §§ 17.46(a) and (b) of the DTPA as follows:

a. By misrepresenting the services of Defendant as they relate to loan modification programs, Defendant is engaging in or has engaged in acts or practices that are false, misleading, or deceptive, in violation of §17.46(a) of the DTPA;

b. By misrepresenting the services and quality of services, and imposing requirements not allowed by the loan modification programs described on its web site, Defendant is engaging in or has engaged in acts or practices that are false, misleading, or deceptive, in violation of §§17.46(b)(5), (7), (12) and (24) of the DTPA; and

c. By violating the TDCA, Defendant is in violation of the DTPA. Section 392.404 of the TDCA provides that a person who violates the TDCA commits a false, misleading, or

deceptive act or practice within the meaning of the DTPA.

**XII.
INJURY TO CONSUMERS**

12. By means of the foregoing unlawful acts and practices, Defendants have acquired money or other property from identifiable persons to whom such money or property should be restored, or who in the alternative are entitled to an award of damages.

**XIII.
REQUEST FOR DISCLOSURE**

13. Pursuant to Rule 194, Tex.R.Civ.P., Defendant is requested to disclose the information or material described in Rule 194.2. Defendant's written responses to the requests for disclosure along with all copies of documents and other tangible items responsive to these requests shall be produced at the Office of the Attorney General, Consumer Protection and Public Health Division, 401 E. Franklin, Suite 530, El Paso, Texas 79901 except as provided by Rule 194.3, within 50 days of service of Plaintiffs' Original Petition.

**XIV.
PRAYER**

14.1 Because Defendant has engaged in the unlawful acts and practices described above, Defendant has violated the law as alleged in this petition. Unless restrained by this Honorable Court, Defendant will continue to violate the laws of the State of Texas and cause injury to the general public.

14.2 WHEREFORE, Plaintiff prays that Defendant be cited according to law to appear and answer herein; and upon notice and hearing a PERMANENT INJUNCTION be issued, restraining and enjoining Defendant, its officers, agents, servants, employees and attorneys and any other person in active concert or participation with Defendant from engaging in the following acts or practices:

- a. engaging in the acts and practices set forth in paragraph 9.2, in violation of the TDCA;
- b. misrepresenting the services of Defendant as they relate to loan modification programs, as set forth in paragraph 9.3, in violation §17.46(a) of the DTPA;
- c. misrepresenting the services, quality of services and imposing requirements not allowed by the loan modification programs described on its web site, in violation of §§17.46(b)(5), (7), (12) and (24) of the DTPA; and
- d. representing, directly or by implication, that this Court, the Texas Secretary of State, or the Office of the Texas Attorney General has approved any good or service sold or offered for sale by Defendant, or approved of any of Defendant's business practices.

14.3 Plaintiff, THE STATE OF TEXAS, further prays that this Court grant leave to conduct telephone, oral, written, and other depositions of Defendant and witnesses prior to any scheduled Temporary Injunction hearing and prior to Defendant's answer date, with reasonable shortened notice to Defendant and his attorney, if known.

14.4 In addition, Plaintiff, THE STATE OF TEXAS, respectfully prays that this Court will:

- a. Adjudge against Defendant civil penalties in favor of Plaintiff, THE STATE OF TEXAS, in an amount not to exceed \$100.00 per violation of the TDCA;
- b. Adjudge against Defendant civil penalties in favor of Plaintiff, THE STATE OF TEXAS, in an amount not to exceed \$20,000.00 per violation of the DTPA;
- c. Adjudge against Defendant civil penalties in favor of Plaintiff, THE STATE OF TEXAS, in an amount up to \$250,000 allowed by law under the DTPA, specifically,

DTPA §17.47(c)(2), due to Defendant committing acts and practices which were calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the act or practice occurred;

- d. Order Defendant to restore all money or property taken from identifiable Texas consumers by means of unlawful acts or practices, or in the alternative, award judgment for damages to compensate for such losses;
- e. Order Defendants to pay Plaintiff, THE STATE OF TEXAS, attorneys' fees and costs of court pursuant to TEX. GOV'T CODE §402.006©; and
- f. Order Defendants to pay pre-judgment interest on all awards of restitution, damages, civil penalties and attorney fees as provided by law.

14.5 Further, Plaintiff, THE STATE OF TEXAS, respectfully prays for all other relief to which Plaintiff, THE STATE OF TEXAS, may be justly entitled.

SIGNATURES ARE ON THE FOLLOWING PAGE

Respectfully submitted,

GREG ABBOTT

Attorney General of Texas

DANIEL T. HODGE

First Assistant Attorney General

BILL COBB

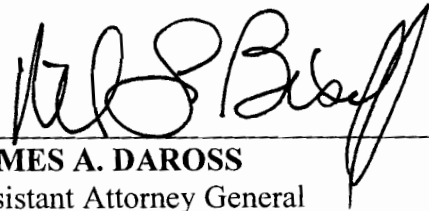
Deputy Attorney General for Civil Litigation

PAUL D. CARMONA

Division Chief,

Consumer Protection and

Public Health Division

A handwritten signature in black ink, appearing to read 'James A. Daross', is written over a horizontal line.

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