

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

FRANKLIN, SS.

SUPERIOR COURT
CIVIL ACTION NO.

MARK HEALY and DIANE E. HEALY,)
Plaintiffs)
)
vs.)
)
BANK OF AMERICA and BAC HOME LOANS)
SERVICING, L.P. f/k/a COUNTRYWIDE HOME)
LOANS SERVICING, L.P.,)
Defendants)

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

The Defendant, Bank of America, was the recipient of Troubled Asset Relief Program (“TARP”) funds. Among the federal mandates imposed on recipients of TARP funds was participation in programs intended to minimize foreclosures and to facilitate alternatives to foreclosures. One alternative to foreclosure is a “short sale”. Short sales generally fetch higher prices than do foreclosures, and, as such are favored by borrowers over foreclosures because they result in smaller mortgage deficiencies.

Plaintiff, Mark Healy owns a home in Bernardston, Massachusetts. In order to finance the purchase of that home, Plaintiff, Diane E. Healy, borrowed money from, and granted a mortgage to, the predecessor in interest of Bank of America and/or BAC Home Loans Servicing, LP. The market value of that home is now less than the amount outstanding on the mortgage. The Plaintiffs have fallen behind on their mortgage payments, and BAC Home Loans Servicing, LP has commenced an action in Land Court to foreclose on the home.

Meanwhile, Mark Healy, with the assent of Diane E. Healy, has negotiated a Purchase and Sale Agreement. While the sale price contemplated by that Purchase and Sale Agreement is less than the outstanding mortgage, it is greater than the amount that would be obtained through a foreclosure. Accordingly, Mark Healy, with the assent of Diane E. Healy, requested short sale approval from the Defendants. The Defendants have failed to process and grant such request in a timely manner and the Plaintiffs now run the risk of losing the sale. By failing to act in a timely manner on the Plaintiffs request for short sale approval, the Defendants have breached duties owing to the Plaintiffs, and Bank of America has breached duties imposed on it as the recipient of TARP funds.

In order to prevent the loss of that sale, the Plaintiffs seek an Order from this Court compelling the Defendants to process and grant their request for short sale on or before April 15, 2010.

II. PARTIES

1. The Plaintiff, Mark Healy, is an individual with a usual place of residence at 91 West Mountain Road, Bernardston, Franklin County, Massachusetts.

2. The Plaintiff, Diane E. Healy, is an individual with a usual place of residence at 168 Brace Road, West Hartford, Connecticut.

3. The Defendant, Bank of America, is a duly organized banking institution with a principal place of business at 208 Federal Street, Greenfield, Massachusetts.

4. The Defendant, BAC Home Loans Servicing, L.P. f/k/a Countrywide Home Loans Servicing, L.P. (“BAC Home Loans”), is a duly organized foreign corporation which does business

in Massachusetts and which has a usual place of operation at 6400 Legacy Drive, Plano, Texas.

III. FACTUAL ALLEGATIONS

5. On or about December 27, 2004, Diane E. Healy purchased a home at 91 West Mountain Road in Bernardston (“the Mortgaged Premises”) for herself and her then husband, Mark Healy.

6. She paid a total of for \$342,000 for the Mortgaged Premises.

7. She financed part of the purchase price of the Mortgaged Premises with a mortgage in the amount of \$273,600 from Countrywide Home Loans, Inc. (“the Mortgage”).

8. On information and belief, Bank of America and/or BAC Home Loans are the successors-in-interest to Countrywide Home Loans, Inc. with respect to said Mortgage.

9. On or about January 15, 2005, Diane E. Healy conveyed the Mortgaged Premises to herself and her husband, Mark Healy.

10. Later, on or about October 6, 2006, Mark Healy and Diane E. Healy separated and Diane E. Healy filed a complaint for divorce.

11. In connection with such divorce filing, Diane E. Healy agreed to convey all right, title and interest in the Mortgaged Premises to Mark Healy.

12. By deed dated December 21, 2007, she did so.

13. Thereafter, on or about August 18, 2008, Mark Healy listed the Mortgaged Premises for sale.

14. Then, on or about November 9, 2009, BAC Home Loans filed a notice in the Franklin Country Registry of Deeds that indicated that it had commenced foreclosure proceedings on the Mortgaged Premises in Massachusetts Land Court.

15. Shortly thereafter, on or about December 18, 2009, Mark Healy, with the consent of Diane E. Healy, entered into a purchase and sale agreement pursuant to which he agreed to sell the Mortgaged Premises for \$260,000 (the "Purchase & Sale Agreement") to a ready willing and able purchaser (the "Purchaser").

16. Subsequently, on January 19, 2010, again, with the assent of Diane E. Healy, Mark Healy requested approval from Bank of America for a "short sale".

17. In support of his request for short sale approval, Mark Healy provided Bank of America detailed information regarding the proposed short sale and the circumstances leading thereto.

18. A short sale is a sale wherein the purchase price is less than the amount of the outstanding mortgage.

19. In situations like that present in the instant case, short sales are in the best interest of borrowers and lenders because they typically result in higher sale prices than do foreclosures.

20. Bank of America did not respond in any way to Mark Healy's request for short sale approval for more than two months.

21. Then, on or about March 26, 2010, Bank of America sent two contradictory messages to Mark Healy relative to his request for short sale approval: the first requested that a financial worksheet and hardship reason worksheet be completed in two business days; and, the second indicated that the short sale request was being denied.

22. The Purchaser agreed to postpone the date of the closing set forth in the Purchase & Sale Agreement.

23. The Purchaser, however, will not wait on Bank of America indefinitely.

24. The Purchaser has recently sold his own home and need to find a place to live as soon as possible.

25. On information and belief, Diane E. Healy and/or Mark Healy will be liable to Bank of America for the deficiency between the amount of the Mortgage and the sale price of the Mortgaged Premises – whether that sale price is obtained through foreclosure or through a market rate sale like that contemplated by the Purchase & Sale Agreement.

26. If the Mortgaged Premises goes into foreclosure, the price that it will fetch at a foreclosure will almost certainly be less than the \$260,000.00 that the Purchaser has agreed to pay pursuant to the Purchase & Sale Agreement.

27. If the Purchaser runs out of patience before Bank of America grants Mark Healy's request for short sale approval, Mark Healy and Diane Healy will miss out on the opportunity to minimize the deficiency owing to Bank of America.

28. Bank of America was the recipient of Troubled Asset Relief Program ("TARP"), 12 U.S. C. §5211 funds.

29. By taking TARP funds, Bank of America agreed that it would participate in one or more programs that TARP authorized the Secretary of the Treasury to establish in order to minimize foreclosures.

30. One such program authorized by the Secretary of the Treasury is the Home Affordable Modification Program ("HAMP").

31. HAMP is a detailed program designed to stem the foreclosure crisis by providing affordable mortgage loan modifications and other alternatives to foreclosure to eligible borrowers.

32. Short sales are an alternative to foreclosures.

33. By failing to promptly process and grant Mark Healy's request for short sale approval, Bank of America has breached its obligations under TARP and duties it owes to Mark Healy and Diane E. Healy under TARP and otherwise.

COUNT I - BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

34. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 33 of their Complaint and incorporate them herein by reference.

35. A covenant of good faith and fair dealing is incorporated by law in every contract in Massachusetts.

36. The Mortgage is a contract.

37. By failing to respond for more than two months to a request for approval of short sale and by continuing to fail to process and grant such request, the Defendants have violated such covenant of good faith and fair dealing.

38. As a result of the Defendants' breach, the Plaintiffs have sustained and will continue to sustain financial injuries.

WHEREFORE, for the foregoing reasons, the Plaintiffs demand judgment against the Defendants for their damages, interest, costs and attorneys' fees, and for such other and further relief as this Honorable Court may deem just and proper under the circumstances.

COUNT II - INTERFERENCE WITH ADVANTAGEOUS BUSINESS/CONTRACTUAL RELATIONS

39. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 38 of their Complaint and incorporate them herein by reference.

40. By the conduct described above, the Defendants have interfered with Mark Healy's business and contractual relations with the Purchaser.

41. The Defendants' conduct described above was intentional, willful and taken in disregard for the rights of others.

42. As a result of such interference, the Plaintiffs have sustained and will continue to sustain financial damages.

WHEREFORE, for the foregoing reasons, the Plaintiffs demand judgment against the Defendants for their damages, interest, costs and attorneys' fees, and for such other and further relief as this Honorable Court may deem just and proper under the circumstances.

COUNT III - VIOLATION OF CHAPTER 93A

43. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 42 of their Complaint and incorporate them herein by reference.

44. The Plaintiffs and Defendants, at all times relevant to this Complaint, were engaged in commerce.

45. The actions and/or omissions of the Defendants described above constitute unfair and deceptive trade practices which violate M.G.L. c. 93A.

46. The conduct of the Defendants outlined above constitutes a willful and knowing violation of Chapter 93A.

47. As a direct and proximate result of the Defendants' violation of Chapter 93A, the Plaintiffs have sustained, and will continue to sustain, damages.

WHEREFORE, for the foregoing reasons, the Plaintiffs demand judgment against the Defendants for their damages, interest, costs and attorneys' fees, and for such other and further relief

as this Honorable Court may deem just and proper under the circumstances.

COUNT IV - NEGLIGENCE

48. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 47 of their Complaint and incorporate them herein by reference.

49. The Defendants owed a duty of care to the Plaintiffs to process and grant Mark Healy's request for a short sale approval in a timely manner.

50. By the conduct described above, the Defendants have breached duties of care which they owe to the Plaintiffs, including, but not limited to, duties imposed as a result of Bank of America's acceptance of TARP funds.

51. As a result of the Defendants' breach of such duties, the Plaintiffs have sustained and will continue to sustain financial damages.

WHEREFORE, for the foregoing reasons, the Plaintiffs demand judgment against the Defendants for their damages, interest, costs and attorneys' fees, and for such other and further relief as this Honorable Court may deem just and proper under the circumstances.

COUNT V - EQUITABLE RELIEF

52. The Plaintiffs repeat and reallege the allegations contained in Paragraphs 1 through 51 of their Complaint and incorporate them herein by reference.

53. In order to ensure that Mark Healy and Diane E. Healy not lose the benefit of the sale which was negotiated as part of the Purchase & Sale Agreement, this Court should order Bank of America to approve the Plaintiffs' request for approval of a short sale on or before April 15, 2010.

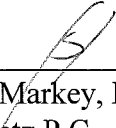
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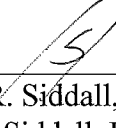
Defendants for their damages, interest, costs and attorneys' fees, and for such other and further relief as this Honorable Court may deem just and proper under the circumstances.

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Respectfully submitted,
THE PLAINTIFFS,
MARK HEALY and DIANE E. HEALY

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