



Housing Discrimination Project

November 4, 2008

Lender
0000 Corporate Drive
Anywhere, MD. 21703

IN RE: Client (Loan no: 000000)

Dear Madam or Sir:

Please accept this **Letter of Demand** pursuant to the provisions of M.G.L.C. 93A Section 9 (3), on behalf of Mr. Client, of 61 John Street, Helloville, MA. 01013. Despite a history of good faith compliance with his obligations as a mortgagee/customer of Lender, Mr. Client was recently foreclosed upon and is now being subjected to a summary process action (eviction) in the Hampden County Housing Court. As the following history indicates, the facts establish a pattern of bad-faith and predatory conduct in violation of state and federal law.

Mr. Client is a 54 year old disabled man who has been adjudicated by the United States Social Security Administration as permanently disabled. As such, he lives on a fixed income provided by SSDI. The property at issue was previously owned by the parents of Client, and thus, has been Mr. Client's primary residence his entire life.

As the attached modification documents indicate, Mr. Client's recent problems were the result of a dramatic rise in the escrow amount required by Lender. This increase in the escrow amount was solely the result of accounting mistakes by Lender, and resulted in unilateral increases in the monthly amount the Client was required to pay. Due to his limited and set income, he was unable to sustain the new total amount required. The evidence in this matter will establish a series of good faith attempts by Client to contact Lender and address these concerns. Client will testify that he never received a response to his request for assistance. Nonetheless, Lender foreclosed on Client's property and purchased his home at auction.

In August, 2008, after seeking the assistance of the Mass. Fair Housing Center and at the request of Lender, a formal request for modification was submitted explaining the history of these events and making clear the ability and intent of the Client to continue to pay his mortgage as per the terms of their agreement. To date, Lender has not responded to that request despite assurances from their representatives that a decision would be forthcoming. We believe the evidence will establish that the Client would be able to fully meet his obligations with a reasonable and appropriate modification requested allowed. It is our belief, that the company's conduct in this matter, which includes its failure to respond to Client's communications in a consistent and good-faith manner as well as the failure of the company to give any serious consideration to the requested modification constitutes bad-faith and fraudulent conduct in violation of state and federal laws.

In interpreting the provisions of the Foreclosure statute, M.G.L.C. 183c, Massachusetts courts have accounted for thirty years of M.G.L.C. 93A jurisprudence. The decisions have long held that if a practice is "within at least the penumbra of some common-law, statutory or other established concept of unfairness" it is within the scope of Chapter 93A. PMO Assos 366 Mass 596; Datacomm Interface, Inc. v Computerworld, Inc., 396 Mass 760, 778 (1986). See Also Milliken & Co. v Duro Textiles, LLC, 451 Mass. 547, 5662 (2008) (reiterating that the PMP Associates test still determines whether a practice is unfair or deceptive in violation of Chapter 93A.).

In addition, Massachusetts courts have long rejected a narrow view of Chapter 93A. See Schubach, 375 Mass.; Lowell Gas Co. v Attorney General, 377 Mass. 37, 50-52 (1979). Chapter 93A employs an evolving concept of commercial unfairness that is dynamic and able to adapt to changing circumstances. See Kattar v Demoulas, 433 Mass. 1, 12-13 (2000). From its origin Chapter 93A was designed to be flexible and responsive, and is not limited to addressing conduct that other laws or prior statutes already proscribe. Nei v Burley, 388 Mass. 307, 313 (1983) (“This flexible set of guidelines as to what should be considered lawful or unlawful under c. 93A suggests that the legislature intended the terms “unfair and deceptive” to grow and change with the times.”); DejCotis, 3676 Mass. At 242 (Chapter 93A’s federal counterpart, the Federal Trade Commission act, also intended to permit, “by the gradual process of judicial inclusion and exclusion, a new definition of what is unfair, “thus avoiding a narrow, common-law approach to unfairness).

The facts in this matter concern the unilateral and we believe, bad faith conduct of a lender, who responds to administrative mistakes it has made by handing them off on the borrower/homeowner, with no concern or interest in how it will affect their ability to repay the mortgage. While no Massachusetts court has addressed this circumstance, the general direction the law has taken makes clear that lending without regard for a borrower’s ability to repay is evidence of predatory conduct and contrary to well-established state and federal concepts of unfairness. The basic concept of fair lending that lenders should extend that they believe borrowers are able to repay is well-established under Massachusetts law. See Billingham v Dornemann, 55 Mass. App. Ct 166, 177-179 (2002) (where lender knows of borrower’s inability to make payments according to the contract, lender may be liable for treble damages for its unfair conduct); M.G.L.C 183 sect. 4 and 28C (requiring that a borrower benefit when refinancing). Federal laws, regulations, and other applicable guidance repeat the requirement that lenders should only extend loans that they believe borrowers are able to repay. See 15 U.S.C. sect. 1639(h)(September 23, 1994) (Home Ownership and Equity Protection Act “HOEPA”) prohibits lenders from lending high cost loans based on borrower’s collateral without regard to the borrower’s repayment ability); 12 C.F.R. 34.3. Federal agencies that enforce federal consumer protection laws have long viewed lending without regard for the borrower’s repayment ability as predatory and a violation of the consumer protection laws. See e.g., FTC v Capital City Mortgage Corp., No. 98CV00237, Para. (D.D.C. second amended complaint filed January 29, 1998) (alleging home-secured loans were based on equity in homes, not the borrowers’ ability to pay); United States v Delta Funding Corp., No 00-1982, Para. 17 E.D.N.Y. filed Mar. 30, 2000, complaint, settled by consent decree (April, 2000 (alleging that subprime lender often approved loans without regard to a borrower’s ability to repay and approved loans based on unverified income with no reasonable basis for believing that such income existed). Thus, Massachusetts and federal law are clear: extending loans without regard for the borrower’s repayment ability violates basic concepts of fairness and anti-predatory lending standards, as well as Chapter 93A. We believe that Massachusetts courts will extend these principles to apply to lender conduct of a predatory nature involving the servicing of loans.

The damages the Lender has suffered include but are not limited to the foreclosure of the family home in violation of state and federal law. In addition, they have suffered from extreme pain and suffering due to the fear and upset they have experienced throughout. In order to resolve this matter we therefore request that the lender immediately rescind the foreclosure of the property and return ownership to Mr. Client per a modified agreement that takes into account their income. In addition, we seek \$200,000.00 in damages for the pain and suffering they have experienced. As you know, should this matter to proceed to court, the Massachusetts Fair Housing Center will be seeking reasonable attorneys for time expended in this matter.

Please contact me with any questions. Thank you in advance for your prompt attention to this matter.

Sincerely,

Jerrold S. Levinsky

Cc: Opposing Counsel