

FILED
LUCAS COUNTY

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COMMON PLEAS COURT
BERNIE QUILTER
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IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

State of Ohio, ex rel.)
Attorney General Michael DeWine)
30 E. Broad St., 14th Floor)
Columbus, Ohio 43215)

Plaintiff,)

v.)

N.M.M.S.R. Incorporated)
d/b/a Making Home Affordable USA)
120 10th Street)
Toledo, Ohio 43604,)

and)

Jason Keating)
1610 River Road)
Maumee, Ohio 43537)

Defendants.)

Case No. **CI0201302738**

Judge
Assigned to Judge Franks

**COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF,
CONSUMER RESTITUTION, AND
CIVIL PENALTY**

JURISDICTION

1. Michael DeWine, Attorney General of Ohio, having reasonable cause to believe that violations of Ohio's consumer protection laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by R.C. 1345.01 et seq., the Ohio Consumer Sales Practices Act.

2. The actions of Defendants, hereinafter described, have occurred in the State of Ohio, in Lucas County and other counties in Ohio and, as set forth below, are in violation of the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq.
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3), in that Defendants reside in Lucas County, conducted activity giving rise to these claims in Lucas County, and some of the transactions complained of herein, and out of which this action arose, occurred in Lucas County.

DEFENDANT

5. Defendant N.M.M.S.R. Incorporated d/b/a Making Home Affordable USA (hereinafter “Defendant MHAUSA”) is a loan modification company with its principal place of business located at 120 10th Street, Toledo, Ohio 43604.
6. Defendant Jason Keating (hereinafter “Defendant Keating”) is a natural person residing at 1610 River Road, Maumee, Ohio 43537.
7. Defendant Keating is, or at all times relevant to this action, was the owner of Defendant MHAUSA.
8. Defendant MHAUSA, as described below, is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant MHAUSA was, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting and selling loan modification services to consumers in the State of Ohio for purposes that were primarily for personal, family or household use, within the meaning specified in R.C. 1345.01(A) and (D).

9. Defendant Keating, as described below, is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant Keating was, at all times relevant herein, engaged in the business of effecting consumer transactions by soliciting and selling loan modification services to consumers in the State of Ohio for purposes that were primarily for personal, family or household use, within the meaning specified in R.C. 1345.01(A) and (D).
10. Defendant Keating, by virtue of his position as owner of Defendant MHAUSA, alone or in conjunction with others, caused, participated in, controlled, directed, ratified and/or ordered the violations of law alleged in this Complaint.

STATEMENT OF FACTS

11. Defendants solicit consumers who are facing foreclosure for its loan modification and foreclosure assistance services by telephone.
12. Defendants are not registered as telephone solicitors in the State of Ohio.
13. Defendant MHAUSA’s name and its website, www.makinghomeaffordableusa.com, closely resemble the federal government’s Making Home Affordable program name and website. This has the capacity to deceive and mislead the consumer that the Defendants are the federal government, that the Defendants are an agency of the federal government, or that the Defendants’ program is funded and/or operated by the federal government when such in fact is not true.
14. Defendants’ told consumers that they were eligible for mortgage relief through the National Mortgage Stimulus Relief Program Home Saver Program.
15. Consumers were directed by the Defendants to stop making their mortgage payments. The consumers were told that banks and lenders would not negotiate unless the consumers were behind on their payments.

16. The paperwork that the Defendants sent to consumers suggested that the consumers could use the money that would have otherwise gone to the mortgage company to “catch up on other expenses that they have accrued, or bills that have fallen behind.” (See State’s Exhibit A, attached.)
17. Exhibit A states that as a part of the Defendants’ Home Saver program, consumers will only need to make a percentage of their mortgage payment to the Defendants. This amount is between 60% - 65% of the consumers’ current mortgage payment.
18. Exhibit A states that even homeowners who are current on their payments are eligible for the Defendants’ program and once the consumers are accepted, they will pay just 65% of their normal payment until the modification review is complete. The paperwork then states that these homeowners who were once current “gain considerable benefit when it becomes evident to their lender that they are having a hard time making the full payment, and apparently are in substantial hardship.”
19. Exhibit A also states that if a consumer’s modification is denied permanently, with no chance of any program being granted, the homeowner will be returned to the original loan and monthly payment they had prior to the beginning of the process, starting at the beginning of the next month after the mutual conclusion.” This leads the consumer to believe that there would be no harm in trying the Defendants’ program.
20. Instead of making monthly mortgage payments to their lenders, consumers make the monthly mortgage payments to Defendants by check, wire transfer, or by depositing funds into an account number given to them. The Defendants assure consumers that these funds will be held in escrow and submitted to the consumers’ lenders to use in negotiating a modification for them.

21. Consumers are told that the Defendants do not take payment for modification assistance until the modification is approved. Consumers are told that the Defendants' fee is \$599.00-\$695.00.
22. Consumers have paid thousands of dollars to the Defendants, believing that this money is being held in escrow for their lenders. However, the Defendants do not forward the consumers' monthly payments to their lenders and instead keep the consumers' money.
23. Though some consumers have reported that they ultimately received a loan modification, they state that when they checked with their lenders, the lender never received any of the funds that consumers had paid into the Defendants' Home Savers Account. At least one consumer inquired as to the status of the funds he paid to the Defendants and was told by an employee that Defendants keep the funds paid to them as a bonus for getting consumers a good loan modification.
24. Defendant accepted monies from consumers for services, and made no attempts to contact consumers' lenders or had no meaningful communication with their lenders.
25. Defendant failed to deliver the services for which consumers paid and failed to make refunds.

PLAINTIFF'S CAUSES OF ACTION

COUNT I **FAILURE TO DELIVER**

26. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-five (1-25) of this Complaint.
27. Defendants committed deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) and Ohio Adm. Code 109:4-3-09, by accepting money from consumers for services and failing to make full delivery or provide a refund.

COUNT II
UNFAIR OR DECEPTIVE ACTS OR PRACTICES

28. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-five (1-25) of this Complaint.
29. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(1) by representing that the Defendants loan modification services had performance characteristics, accessories, uses, or benefits that they did not have.
30. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III
UNFAIR OR DECEPTIVE ACTS OR PRACTICES

31. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-five (1-25) of this Complaint.
32. Defendants committed unfair or deceptive acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.02(B)(9) by representing that the Defendants had sponsorship, approval, or affiliation that they did not have.
33. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT IV
UNCONSCIONABLE ACTS OR PRACTICES

34. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-five (1-25) of this Complaint.

35. Defendants committed unconscionable acts or practices in violation of the CSPA, R.C. 1345.031(A) and R.C. 1345.031(B)(6) by recommending or encouraging consumers to default on their mortgages.

36. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT IV
UNFAIR AND DECEPTIVE ACTS AND PRACTICES
TELEPHONE SOLICITATION SALES ACT

37. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty-five (1-25) of this Complaint.

38. Defendants committed unfair or deceptive acts or practices in violation of R.C. 4719.02(A) and R.C. 1345.02 by engaging in telephone solicitations in Ohio while failing to obtain a certificate of registration as a telephone solicitor from the Ohio Attorney General.

39. Such acts and practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Court:

1. DECLARE that each act or practice complained of herein violates the CSPA and the Ohio Administrative Code in the manner set forth in the Complaint.
2. ISSUE PERMANENT INJUNCTIVE RELIEF, pursuant to R.C. 1345.07, enjoining Defendants and their agents, servants, representatives, salespeople, employees, independent contractors, successors and assigns and all persons acting in concert or participating with

them, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from further violating the CSPA, R.C. 1345.01 et seq.

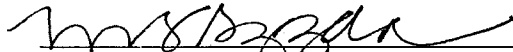
3. ISSUE PERMANENT INJUNCTIVE RELIEF, pursuant to R.C. 1345.07, enjoining Defendants from engaging in business as a supplier in any consumer transactions in the State of Ohio until all sums due under all judgments are paid in full, whether those judgments are issued by this Court or any other court against Defendants in favor of consumers who were harmed as a result of the Defendants' violations of the CSPA.
4. GRANT A JUDGMENT against Defendants, jointly and severally, in an amount sufficient to reimburse all consumers found to have been damaged by the Defendants' unfair, deceptive and unconscionable acts and practices, including, but not limited to, making restitution to consumers who entered into contracts with Defendants and never received the services contracted for and never received a refund of the money they paid to the Defendants.
5. ASSESS, FINE, and IMPOSE upon the Defendants, jointly and severally, a civil penalty in the amount of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D).
6. ORDER the Defendants, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, to maintain in their possession and control for a period of five (5) years, and in a manner designed to secure the privacy of all consumers' personal information, all business records relating to Defendants' loan modification services.
7. ORDER the Defendants to cooperate with the Ohio Attorney General or his representative by providing the Attorney General, upon his request and upon reasonable twenty-four (24) hour notice, copies of any and all records necessary to establish compliance with the law and any

court order granted herein, or to permit the Ohio Attorney General or his representative to inspect and/or copy any and all such records.

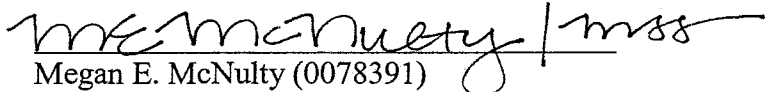
8. GRANT the Ohio Attorney General his costs in bringing this action.
9. ORDER the Defendants to pay all court costs.
10. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Attorney General of Ohio



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