

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA**

STATE OF FLORIDA,
OFFICE OF THE ATTORNEY GENERAL,

Plaintiff,

v.

Case No. _____

NATIONAL FORECLOSURE COUNSELING
SERVICES CORP., RAYMOND PAULK and
ROBERT V. DALLAVIA D/B/A NATIONAL
FORECLOSURE COUNSELING SERVICES
and AMERICAN FORECLOSURE
COUNSELING CENTER,

Defendants.

_____ /

COMPLAINT

Plaintiff, STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, ("the Attorney General") sues Defendants NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA, and alleges:

1. This is an action for injunctive relief, damages on behalf of consumers, civil penalties, attorney's fees and costs and other relief pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2008); Florida's foreclosure-rescue statute, Section 501.1377, Florida Statutes (2008); and Florida's misleading-advertising statutes, Sections 817.06(1) and 817.41(1), Florida Statutes (2008).

PARTIES AND JURISDICTION

2. The Attorney General is an enforcing authority of the Florida Deceptive and

Unfair Trade Practices Act.

3. NATIONAL FORECLOSURE COUNSELING SERVICES CORP. is a Delaware corporation doing business at 4043 Baymeadows Road, Jacksonville FL 32217 and 7954 Baymeadows Road, Jacksonville FL 32217.

4. RAYMOND PAULK and ROBERT V. DALLAVIA are directors of NATIONAL FORECLOSURE COUNSELING SERVICES CORP.

5. The injurious business activities of NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA affect consumers in more than one Florida judicial circuit as well as throughout the United States.

6. At all pertinent times, NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA engaged in trade or commerce as defined by Section 501.203(8).

7. The Attorney General has determined that this enforcement action serves the public interest as required by Section 501.207(2).

8. This court has jurisdiction pursuant to Section 501.207(3).

9. Venue in Duval County, Florida, is proper.

THE DEFENDANTS' BUSINESS PRACTICES

Foreclosure-Rescue Services

10. NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA market foreclosure-rescue services to homeowners under the fictitious names "National Foreclosure Counseling Services" and "American Foreclosure Counseling Center."

11. Homeowners become aware of the purported services of NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA by means of promotional letters sent by the Defendants and/or websites maintained by the Defendants, including www.nfcscorp.com and www.afcccorp.com.

12. The Defendants' promotional materials and websites prompt homeowners to call NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA to inquire about their services.

13. Before accepting a homeowner as a client, NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA require the homeowner to pay them up-front fees.

14. A "working agreement" that NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA have required homeowners to sign since October 1, 2008, sets forth an up-front "retainer fee" to be paid by the homeowner, along with an up-front "processing fee" of \$200 and a third, hourly fee of \$125 for future services.

15. Another version of the "working agreement" that NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA have required homeowners to sign since October 1, 2008, sets forth a "retainer fee" to be paid by the homeowner, along with a "processing fee" and states explicitly that the funds are to be placed by the homeowner in an American Foreclosure Counseling Center account.

16. The up-front "retainer fee" charged by NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA is

equivalent to the monthly mortgage payment made by the homeowner to the homeowner's lender and consists of an amount averaging approximately \$1,800.

17. NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA do not inform the homeowner that Florida law prohibits up-front fees for foreclosure-rescue services.

18. In at least one instance, a homeowner who had made a partial initial payment to the Defendants lost his home to foreclosure while the Defendants waited for him to complete the payment before engaging in any work on his behalf.

19. When homeowners telephone NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA to ask about their services will cost, the Defendants' representatives fail to clearly and conspicuously disclose the existence of an up-front fee, telling the callers that an amount equivalent to a monthly mortgage payment will be "held in escrow."

20. When homeowners telephone NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA to ask about their services, the Defendants' representatives tell them that the Defendants can stop foreclosure proceedings, reverse negative credit ratings and lower the homeowner's monthly mortgage payments by substantial amounts.

21. Some of the "working agreements" that homeowners must sign to obtain the Defendants' purported services state that National Foreclosure Counseling Services "guarantees the success of its efforts ... to avoid the loss of possession of the mortgagee's home through a foreclosure...."

22. NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA have failed since October 1, 2008, to execute written agreements with homeowners that specify the exact nature of the services to be performed and disclose to homeowners in language substantially similar to the language required by statute or in the location required by statute that the homeowners have the right to cancel their agreements with the Defendants.

23. NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA have since October 1, 2008, required homeowners to agree in writing not to negotiate with anyone, including their lenders, about their mortgages without notifying the Defendants.

24. NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA have refused to provide refunds to any client who is able to obtain improved mortgage terms on his or her own, without the involvement of the Defendants.

25. After accepting fees from homeowners, NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA have failed to provide the agreed-upon services.

26. NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA have since October 1, 2008, required homeowners who want their services to sign statements asserting that they are not "IN ANY WAY CONFUSED ABOUT ANY PART OF THE WORKING AGREEMENT," that they are not victims of the Defendants under the Florida Deceptive and Unfair Trade Practices Act, that they are "CONFIDENT THEY [ARE] NOT BEING VICTIMIZED ... IN ANY WAY WHAT-SO-

EVER" and that the Defendants are "NOT ATTEMPTING TO DUPE , MISLEAD, SWINDLE, OR CHEAT" them.

27. NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA employ a sales force of approximately 140 persons and bring in approximately \$500,000 in fees each month.

The Defendants' Advertising Practices

28. Mailings sent to homeowners by NATIONAL FORECLOSURE COUNSELING SERVICES CORP., RAYMOND PAULK and ROBERT V. DALLAVIA give the impression that they come from a government agency.

29. The Defendants' mailings refer to National Foreclosure Counseling Services and the American Foreclosure Counseling Center as "housing counseling community service[s]."

30. The mailings state that the homeowner's property "has been selected for special programs by the Government Insured Institutions."

31. The mailings tell the recipients to contact an "Advisor for Duval County" or another Florida county, and that a "representative for Duval [or other] County is available" to talk to the homeowner.

32. The mailings state that they are an "urgent notification" and constitute a "last attempt to assist you."

33. The mailings also state that the property in question "qualifies" for loan modification.

COUNT ONE
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

34. Plaintiff re-alleges Paragraphs 1 through 33.

35. The Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2008), states that "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

36. By engaging in the deceptive, unfair and unconscionable acts and practices described herein in connection with purported foreclosure-rescue services, the Defendants have violated and continue to violate the Florida Deceptive and Unfair Trade Practices Act.

COUNT TWO
VIOLATIONS OF SECTION 501.1377(3)(a) and (b), FLORIDA STATUTES
VIOLATIONS INVOLVING HOMEOWNERS DURING THE COURSE OF
RESIDENTIAL FORECLOSURE PROCEEDINGS
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

37. Plaintiff re-alleges Paragraphs 1 through 33.

38. Section 501.1377(3)(a), Florida Statutes (2008), "Violations Involving Homeowners during the Course of Residential Foreclosure Proceedings," which went into effect on October 1, 2008, states:

In the course of offering or providing foreclosure-related rescue services, a foreclosure-rescue consultant may not:

(a) Engage in or initiate foreclosure-related rescue services without first executing a written agreement with the homeowner for foreclosure-related rescue services....

Section 501.1377(3)(a).

39. Section 501.1377(3)(b), Florida Statutes (2008), "Violations Involving Homeowners during the Course of Residential Foreclosure Proceedings," states:

In the course of offering or providing foreclosure-related rescue services, a foreclosure-rescue consultant may not:

(b) Solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services before completing or performing all services contained in the agreement for foreclosure-related rescue services.

40. Section 501.1377(7) states, "A person who violates any provision of this section commits an unfair and deceptive trade practice as defined in part II of this chapter [the Florida Deceptive and Unfair Trade Practices Act]. Violators are subject to the penalties and remedies provided in part II of this chapter, including a monetary penalty not to exceed \$15,000 per violation."

41. By failing to execute a written agreement with homeowners and charging homeowners seeking foreclosure-rescue services up-front fees as described herein, the Defendants have violated and continue to violate Section 501.1377(3)(b) and the Florida Deceptive and Unfair Trade Practices Act.

COUNT THREE
VIOLATIONS OF SECTION 501.1377(4)(a) and (c), FLORIDA STATUTES
VIOLATIONS INVOLVING HOMEOWNERS DURING THE COURSE OF
RESIDENTIAL FORECLOSURE PROCEEDINGS
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

42. Plaintiff re-alleges Paragraphs 1 through 33.

43. Section 501.1377(4)(a), Florida Statutes (2008), "Violations Involving Homeowners during the Course of Residential Foreclosure Proceedings," states:

The written agreement for foreclosure-related rescue services must be printed in at least 12-point uppercase type and signed by both parties. The agreement must include the name and address of the person providing foreclosure-related rescue services, the exact nature and specific detail of each service to be provided, the total amount and terms of charges to be paid by the homeowner for the services, and the date of the agreement.

44. Section 501.1377(4)(c), Florida Statutes (2008), "Violations Involving Homeowners during the Course of Residential Foreclosure Proceedings," states:

An agreement for foreclosure-related rescue services must contain, immediately above the signature line, a statement in at least 12-point uppercase type that substantially complies with the following:

HOMEOWNER'S RIGHT OF CANCELLATION

YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY YOU.

THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED (POSTMARKED) OR DELIVERED TO (NAME) AT (ADDRESS) NO LATER THAN MIDNIGHT OF (DATE).

IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR A RESTRUCTURING WITH YOU FREE OF CHARGE.

45. Section 501.1377(7) states, "A person who violates any provision of this section commits an unfair and deceptive trade practice as defined in part II of this chapter [the Florida Deceptive and Unfair Trade Practices Act]. Violators are subject to the penalties and remedies provided in part II of this chapter, including a monetary penalty not to exceed \$15,000 per violation."

46. By failing to execute a written agreement specifying the exact services to be performed and failing to inform homeowners of their right to cancel as described herein, the

Defendants have violated and continue to violate Section 501.1377(4)(c) and the Florida Deceptive and Unfair Trade Practices Act.

COUNT FOUR
VIOLATIONS OF SECTION 817.06(1), FLORIDA STATUTES
MISLEADING ADVERTISING
VIOLATIONS OF CHAPTER 501, PART II, FLORIDA STATUTES
DECEPTIVE AND UNFAIR TRADE PRACTICES

47. Plaintiff re-alleges Paragraphs 1 through 33.

48. Section 817.06(1), Florida Statutes (2008), proscribes the dissemination of unfair, deceptive or misleading advertising, and states:

No person... shall, with intent to offer or sell or in anywise dispose of merchandise, . . . service or anything offered by such person... directly or indirectly, to the public, for sale or distribution or issuance, or with intent to increase the consumption or use thereof, or with intent to induce the public in any manner to enter into any obligation relating thereto, . . . knowingly or intentionally make, publish, disseminate, circulate or place before public, or cause, directly or indirectly, to be made, published, disseminated or circulated or placed before the public in this state in a newspaper or other publication or in the form of a book, notice handbill, poster, bill, circular, pamphlet or letter or in any other way, an advertisement of any sort regarding such . . . service or anything so offered to the public, which advertisement contains any assertion, representation or statement which is untrue, deceptive, or misleading.

49. Section 501.203(3)(c) states that a violation of the Florida Deceptive and Unfair Trade Practice Act may be based upon '[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.'

50. By sending homeowners deceptive mailings as described herein, the Defendants have violated and continue to violate Section 817.06(1) and the Florida Deceptive and Unfair Trade Practices Act.

COUNT FIVE
VIOLATIONS OF SECTION 817.41(1), FLORIDA STATUTES,
MISLEADING ADVERTISING
VIOLATIONS OF FLORIDA STATUTES, CHAPTER 501, PART II,
DECEPTIVE AND UNFAIR TRADE PRACTICES

51. Plaintiff re-alleges Paragraphs 1 through 33.

52. Section 817.41(1) proscribes misleading advertising, and states:

(1) It shall be unlawful for any person to make or disseminate or cause to be made or disseminated before the general public of the state, or any portion thereof, any misleading advertisement. Such making or dissemination of misleading advertising shall constitute and is hereby declared to be fraudulent and unlawful, designed and intended for obtaining money or property under false pretenses.

53. Section 501.203(3)(c) states that a violation of the Florida Deceptive and Unfair Trade Practices Act may be based upon "[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices."

54. By sending homeowners deceptive mailings as described herein, the Defendants have violated and continue to violate Section 817.41(1) and the Florida Deceptive and Unfair Trade Practices Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, State of Florida, Office of the Attorney General, asks for judgment:


A. Permanently enjoining the Defendants from violating the Florida Deceptive and Unfair Trade Practices Act;

B. Permanently enjoining the Defendants from violating Section 501.1377(3-4), "Violations Involving Homeowners during the Course of Residential Foreclosure Proceedings";

C. Permanently enjoining the Defendants from violating Section 817.06(1);

- D. Permanently enjoining the Defendants from violating Section 817.41(1);
- E. Awarding the Plaintiff actual damages and interest on behalf of consumers injured by the acts and practices of the Defendants pursuant to Section 501.207(1)(c) and as may be allowed by other applicable statutes;
- F. Requiring disgorgement of all of the Defendants' profits generated by their unlawful acts and practices;
- G. Assessing the Defendants civil penalties in the amount of \$10,000 for each violation of the Florida Deceptive and Unfair Trade Practices Act, pursuant to Section 501.2075;
- H. Awarding the Plaintiff attorney's fees and costs pursuant to Sections 501.2105 and 501.2075 and as may be allowed by other applicable statutes; and
- I. Granting such other relief as the court deems proper and just.

Respectfully submitted,
BILL MCCOLLUM
ATTORNEY GENERAL


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