

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

STATE OF OHIO, ex rel. 2009 NOV -5 A 10: 2⁰
RICHARD CORDRAY)
ATTORNEY GENERAL OF OHIO)
615 W. SUPERIOR AVE., 11TH Floor)
CLEVELAND, OHIO 44113-1899)

Complaint
TIMOTHY MCCORMICK
CV 09 708888

PLAINTIFF,

v.

AMERICAN HOME MORTGAGE
SERVICING, INC)
c/o Statutory Agent)
CT Corporation System)
1300 E. 9TH St.)
Cleveland, OH 44114)

**COMPLAINT, REQUEST
FOR DECLARATORY
AND INJUNCTIVE
RELIEF, CONSUMER
DAMAGES, CIVIL
PENALTIES AND OTHER
APPROPRIATE RELIEF**
**JURY DEMAND ENDORSED
HEREON**

JURISDICTION

1. Plaintiff, State of Ohio, by and through Counsel, the Ohio Attorney General Richard Cordray, having reasonable cause to believe Defendant American Home Mortgage Services, Inc., ("AHMSI" or "Defendant") has committed violations of Ohio's consumer protection laws, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act, R.C. § 1345.01 et seq.
2. Plaintiff, State of Ohio, by and through Counsel, Ohio Attorney General Richard Cordray brings this action on behalf of the State of Ohio based upon Defendant AHMSI's violations of the Ohio Consumer Sales Practices Act, O.R.C. § 1345.01, et. seq. (hereinafter "CSPA").

3. Defendant AHMSI, at all relevant times hereto, was a Texas corporation, with its principal place of business located at: 1525 S. Belt Line Rd. Coppell, Texas 75019-4913.
4. Defendant AHMSI, at all relevant times hereto, was licensed as a second mortgage lender, License SM.501517.000, by the Ohio Department of Commerce, Division of Financial Institutions.
5. Defendant AHMSI is a debt-collector as contemplated by the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692 et seq.
6. The actions of Defendant, hereinafter described, have occurred in the State of Ohio and Cuyahoga County and other Ohio counties.
7. At all relevant times hereto, Defendant was a “supplier” as that term is defined in R.C. § 1345.01(C) as Defendant engaged in the business of effecting consumer transactions by servicing residential mortgage loans, held by individuals residing in Cuyahoga County and other counties in the State of Ohio, for purposes that are primarily personal, family or household within the meaning specified in R.C. § 1345.01(A) and (D).
8. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. § 1345.04 of the Ohio Consumer Sales Practices Act (CSPA).
9. This Court is the proper venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Cuyahoga County, Ohio.

STATEMENT OF FACTS

10. Defendant AHMSI's mortgage servicing obligations are set forth in various contracts, commonly referred to as a Pooling and Servicing Agreements [PSA], between Defendant and the true owner of the underlying mortgage loan notes, typically a trust or pool containing thousands of securitized residential mortgage loans.
11. Defendant AHMSI services over 12,000 subprime, alt-A, and prime mortgage loans in Ohio, with most of the financed properties owner-occupied with the residential mortgage loans secured by a first mortgage lien.
12. In connection with the servicing of residential mortgage loans Defendant AHMSI accepts, applies, and distributes mortgage loan payments made by Ohio residents.
13. For many of the loans, Defendant AHMSI operates as a debt collector as that term is defined in the Federal Fair Debt Collection Practices Act, 15 U.S.C. 1692a(6).
14. In connection with the servicing of Ohio residential mortgage loans, Defendant AHMSI acquired servicing rights to residential mortgage loans already in default from third parties, including but not limited to Option One Mortgage Corporation.
15. Defendant AHMSI, among other services, offers several different loss mitigation options to borrowers in default, or on the verge of default, including repayment plans, loan modifications, security retention agreements and forbearance agreements.
16. For some borrowers in economic distress Defendant AHMSI has the borrower enter into a Loan Modification Agreement that, inter alia, contains provisions that: require the borrower to waive all legal defenses, rights to set-off, and all counterclaims against the note holder and loan servicer; require the borrower to waive any challenge or right to contest the foreclosure process, including challenges based upon acts

occurring subsequent to the agreement committed by the loan servicer, its attorneys, the foreclosure trustee or any person acting on behalf of the loan servicer; require the borrower to agree that AHMSI can terminate the agreement and recommence foreclosure proceedings without any notice to the borrower if AHMSI believes that the borrower has breached the loan modification agreement; and, reserves exclusively to AHMSI the determination as to when required payments and documents have been received. [Sample Loan Modification Agreement, with consumer information redacted, is attached as complaint Exhibit A].

17. For some borrowers in economic distress Defendant AHMSI has the borrower enter into a Forbearance Agreement that, inter alia, contains provisions that: require the borrower to agree in advance to pay any and all charges imposed by AHMSI, including charges not included in the Forbearance Agreement, and also including charges not yet incurred or billed by AHMSI, for services rendered by or on behalf of AHMSI, including attorney fees; reserves to AHMSI the “sole and absolute discretion” to increase the amounts the borrower is required to pay pursuant to the Forbearance Agreement; permits AHMSI to continue to prosecute any pending foreclosure related motions, including motions that may result in a judgment or sale order against the borrower; and, require the borrower to waive all defenses, rights to set-off and counterclaims for any and all misconduct arising at any time in connection with the origination and servicing of the mortgage loan. [Sample Forbearance Agreement, with borrower information redacted, attached as Complaint Exhibit B].
18. For some borrowers whose security instrument payment obligations on residential mortgage loans have been discharged in bankruptcy, Defendant AHMSI has

permitted them to remain in the property if the borrowers enter into a Security Retention Agreement that, inter alia; require the borrower to agree in advance to pay any and all charges imposed by AHMSI, including charges not included in the Security Retention Agreement, and also including charges not yet incurred or billed by AHMSI, for services rendered by or on behalf of AHMSI, including attorney fees; reserves to AHMSI the “sole and absolute discretion” to increase the amounts the borrower is required to pay pursuant to the Security Retention Agreement; and, require the borrower to waive all defenses, rights to set-off or counterclaims they may have related to the loan or the property. [Sample Security Retention Agreement, with borrower information redacted, attached as Complaint Exhibit C]

19. In connection with the servicing of residential mortgage loans in Ohio, Defendant AHMSI maintains a customer service department that Ohio residents are directed to call with questions or concerns about their mortgage loan. Consumers have complained to the Ohio Attorney General that Defendant’s employees or agents are unable to communicate meaningfully with consumers regarding those consumers’ accounts, and that Defendant’s call center workers do not return calls or respond to repeated inquiries.
20. In connection with the servicing of Ohio residential mortgage loans, Defendant AHMSI has engaged in the following acts and practices: provided incompetent, inadequate and inefficient customer service; lost documents submitted by borrowers requesting loss mitigation assistance; failed to respond, or timely respond, to borrower requests for assistance; failed to offer, or timely offer, affordable loss mitigation options to borrowers.

21. In connection with the servicing of Ohio residential mortgage loans Defendant AHMSI has engaged in the following acts and practices: required borrowers to sign loan modifications, forbearance agreements, and/or security retention agreements that contain illegal and unfair provisions and are unconscionably one-sided in Defendant's favor; purchased forced-place insurance to cover homeowners' dwellings, when such insurance was not necessary or justified and where such insurance was duplicative of valid insurance that existed to cover the homeowners' residences.

FIRST CAUSE OF ACTION

Violations of the Consumer Sales Practices Act

22. Plaintiff, State of Ohio, ex rel. Richard Cordray, Attorney General incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty One (1-21) of this Complaint.
23. Defendant AHMSI has engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02, 1345.03 and 1345.031 by its inadequate, incompetent, and inefficient handling of complaints, inquiries, disputes, and requests for information and assistance in connection with its servicing of Ohio residential mortgage loans, including but not limited to, i.e. the failure to respond to consumers' inquiries or the inability of Defendant's employees or out-sourced agents to communicate meaningfully with Ohioans.
24. Defendant AHMSI has engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02, 1345.03 and 1345.031, in connection with the servicing of loans for residences within the State of Ohio by, inter alia; requiring consumers to agree to

unconscionable mandatory attorney fee clauses, requiring consumers to sign agreements containing unfair and unreasonable releases and waivers of rights.

25. Defendant AHMSI has engaged in unfair and deceptive acts and practices in violation of R.C. 1345.02, 1345.03, 1345.031 in connection with presenting proposed loan modifications to borrowers who are in default or who have contacted Defendant AHMSI due to the borrower having difficulty making their loan payments: by misrepresenting the terms of offered loan modifications; requiring borrowers to sign loan modifications that are unconscionably one-sided in Defendant AHMSI's favor. Such acts and practices are unfair and deceptive and in violation of the Ohio Consumer Sales Practices Act, R.C. 1345.01, *et seq.* and in violation of the Ohio Administrative Code 109: 4-3-28 (Unconscionable Terms in Home Mortgage Loans). *Household Realty Corp. v. Dowling*, 40 Ohio Misc. 2d 4, 531 N.E.2d 786 (1988).

SECOND CAUSE OF ACTION

Unfair and Deceptive Loan Modification Terms

26. Plaintiff, State of Ohio, ex rel. Richard Cordray, Attorney General incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Twenty One (1- 21) of this Complaint.
27. Defendant AHMSI has engaged in unfair, deceptive and unconscionable acts and practices in violation of Sections 1345.02, 1345.03 and 1345.031 and Ohio Administrative Code 109:4-3-28 (C) (8) in connection with Loan Modification Agreements, Security Retention Agreements, and Forbearance Agreements entered into with Ohio consumers that contain terms that violate the Ohio Consumer Sales

Practices Act. Those terms include without limitation: requiring the borrower to waive all legal defenses, rights to set-off and all counterclaims for any and all misconduct arising at any time in connection with the origination and servicing of the mortgage loan against the note holder and loan servicer; requiring the borrower to waive any challenge or right to contest the foreclosure process; requiring the borrower to agree that AHMSI can terminate the agreement and recommence foreclosure without notice; reserving exclusively to AHMSI the determination as to when required payments and documents have been received; requiring the borrower to agree in advance to pay all charges imposed by AHMSI, including charges not included in the Forbearance Agreement or not yet incurred or billed by AHMSI, including attorney fees; reserving to AHMSI the “sole and absolute discretion” to increase the amounts the consumer is required to pay pursuant to the Forbearance Agreement; or permitting AHMSI to continue to prosecute any pending foreclosure related motions that may result in a judgment or sale order against the consumer.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. **ISSUE A PERMANENT INJUNCTION** enjoining Defendant AHMSI, its agents, servants, representatives, salespeople, employees, successors and assigns and all persons acting in concert or participating with it, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from further violating the Consumer Sales Practices Act (CSPA), R.C. 1345.01 et seq.
2. **ISSUE A PERMANENT INJUNCTION** enjoining Defendant AHMSI from enforcing any provision in any agreement it has with borrowers that the Court

determines to violate the law, and further to ORDER Defendant AHMSI to provide written notice of those unenforceable provisions to all borrowers who have entered such Agreements.

3. **ISSUE A DECLARATORY JUDGMENT** declaring that each act or practice described in Plaintiffs' Complaint violates the Ohio Consumer Sales Practices Act, R.C. 1345.01 et seq., in the manner set forth in this Complaint.
4. **ORDER** Defendant AHMSI pursuant to the R.C. 1345.07(B) to reimburse all consumers damaged by its unfair, deceptive, and unconscionable acts or practices, including non-economic damages.
5. **ORDER** Defendant AHMSI to comply with all HAMP Participating Servicer requirements, including the requirement that AHMSI perform HAMP analyses upon consumers' mortgage loan notes, and reform those mortgage loans to restrictions and conditions determined by the Court to be fair, reasonable and appropriate.
6. Further **ORDER** Defendant AHMSI to notify all of its subsidiaries, including foreign operation call centers, independent contractors, employees and agents of AHMSI of the terms and conditions of any court ordered relief in this action.
7. **ASSESS, FINE, AND IMPOSE** upon Defendant AHMSI civil penalties of Twenty Five Thousand Dollars (\$25,000.00) per violation of 1345.01 et seq. pursuant to R.C. 1345.07(D).
8. **ORDER**, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, that the Defendant AHMSI maintain in its possession and control for a period of five (5) years all business records relating to

Defendant AHMSI's servicing of residential mortgage loans in Ohio, and to permit the Ohio Attorney General or his representative, upon reasonable twenty-four (24) hour notice, to inspect and/or copy any and all such records.

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

Respectfully submitted

RICHARD CORDRAY
Ohio Attorney General



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