

I.9 Action Against Mortgage Servicer for an Accounting and for Violation of RESPA and FDCPA

I.9.1 Complaint

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

[plaintiff]Andrea Consumer,
Plaintiff

[vs]

[defendant]LINTON LOAN SERVICING LP
[end caption]

COMPLAINT

1. This is an action by a low-income homeowner against a mortgage servicing company seeking a proper accounting of her mortgage and statutory damages under the Fair Debt Collection Practices Act and the Real Estate Settlement Procedures Act.

2. Jurisdiction over this matter is conferred upon this Court by 12 U.S.C. 2614, 15 U.S.C. 1692 and 28 U.S.C. 1331. The court has supplemental jurisdiction over her state law claims.

3. Venue lies in this judicial district in that the events which gave rise to this claim occurred here and the property which is the subject of the action is situated within this district.

4. Plaintiff Mrs. Consumer is a natural person residing at [Address].

5. The Defendant, Linton Loan Servicing, LP (“Linton”), is a corporation with its principal offices at 500 West Central Drive, Houston Texas. Linton is the servicing agent for the holder of Mrs. Consumer’s mortgage. The mortgage on Mrs. Consumer’s home is held by WFM Bank Minnesota, NA as the trustee for an investor-owned trust that holds a large pool of mortgage loans sold by Owens Federal Savings Bank.

6. Andrea Consumer and her husband, Joe Consumer, purchased their home in North Philadelphia in 1984.

7. In December 1998 Mr. and Mrs. Consumer refinanced their mortgage and entered into a loan with Pier, Inc., trading as Sunnyside Mortgage Company. The mortgage was later sold to Owens Federal Savings Bank, who in turn sold it to WFM Bank of Minnesota, trustee. Owens continued to service the mortgage.

8. Mrs. Consumer eventually filed a civil suit against Owens, seeking to rescind the 1998 loan and seeking other relief.

9. The civil suit against Owens was settled by a December 2000 settlement and loan modification agreement that, among other things, called for Owens to reduce the loan principal to \$25,984 and the interest rate to 8%, and for Mrs. Consumer to make monthly payments of principal and interest of \$190.66. A copy of the December 2000 loan modification agreement is attached as Exhibit “A.”

10. At some time on or about April 29, 2002 the servicing of the mortgage loan was transferred from Owens Federal Savings Bank to Defendant Linton.

11. Shortly after the servicing transfer, Linton demanded that Mrs. Consumer make monthly payments of \$394.79, which was the payment prior to the December 2000 modification.

12. On May 21, 2002, Mrs. Consumer, through her lawyer, reminded Linton of the terms of the loan modification, including the \$190.66 payment amount, enclosed another copy of the modification agreement, and asked Linton to correct Mrs. Consumer's account records accordingly.

13. Nevertheless, Linton failed and refused to revise its account records to reflect the loan modification agreement.

14. On or about July 21, 2004 Linton mailed a statement to Mrs. Consumer incorrectly asserting that the mortgage payments were delinquent.

15. On or about August 10, 2004 Mrs. Consumer wrote to Linton disputing the alleged delinquency and asking Linton to correct its account records to reflect that her payments of \$190.66 were paid up to date.

16. On August 18, 2004 Linton acknowledged Mrs. Consumer's written request for account information and adjustments. On or about October 8, 2004, Linton wrote to Mrs. Consumer acknowledging the loan modification and asserting that Linton's records had been updated to reflect the loan modification. The same letter stated that Mrs. Consumer's payment was in fact \$190.66, and was due for October 1, 2004, in other words, her payments were current.

17. Mrs. Consumer subsequently received a letter dated September 22, 2004, asserting that she had an escrow deficit of \$5285.17, and that effective November 1, 2004 her mortgage payment would increase to 455.8 (sic).

18. At about the same time in September 2004 Mrs. Consumer received her monthly statement dated September 15, 2004 showing the amount due by October 1 as \$190.66. This statement also, however, reflected an escrow deficit of \$5,285.17 and "other fees due" of \$40,927.12. No explanation was provided for the escrow deficit or the other fees.

19. In November, 2004, Mrs. Consumer received a letter from Linton asserting that her loan was past due for November and December, 2004, and that the total due was \$1461. No explanation was provided for this curious arithmetic. Meanwhile Mrs. Consumer continued sending the \$190.66 monthly payments to Linton.

20. In December 2004 Mrs. Consumer received her monthly statement dated December 15 which called for a current payment amount of \$666.96, and a total amount due by January 1 2005 of \$2,118.43. The "other fees due" had increased slightly to \$40,936.12.

21. Mrs. Consumer received another letter from Linton dated January 5, 2005 asserting that she owed three payments, and must send \$2,127.96 "today." This amount was apparently calculated on the same basis as the December statement amount, with the January 17 late fee added in advance. A copy of the January 5 letter is attached as Exhibit "B." This letter also falsely stated or implied that foreclosure was imminent and could begin "immediately" or "today" if payment was not made.

22. Also dated January 5, 2005 were two additional letters sent by Linton. One, entitled "Notice of Default and Intent to Accelerate," demanded \$2,127.96, and stated that after 45 days Linton could accelerate the mortgage balance and foreclose the property. This letter is attached as Exhibit "C."

23. The other January 5, 2005 letter, entitled "Appendix A," is similar to the notice required by Pennsylvania law prior to foreclosure. This letter is attached as Exhibit "D."

24. Exhibit D says that the monthly payments due were in the amount of \$455.80 each, contradicting the statements calling for \$666.96. Exhibit D also contains mathematically inconsistent amounts needed to be paid by Mrs. Consumer, on page three. The letter asserts that three payments of \$455.80 are due, plus \$19.06 in late charges and \$319.18 in deferred late charges. These amounts total \$1705.64. However the total amount demanded is \$2,127.96.

25. Mrs. Consumer received another letter dated January 27, 2005, purporting to respond to her attorney's written request for account information. Exhibit "E." The January 27 letter states that the payment amount is \$666.96 effective October 1, and is attributable to advances for insurance and taxes. The letter includes an escrow analysis that makes reference to an annual payment of \$417.39 for insurance, but does not explain the escrow deficit in excess of \$5,000.

26. It is mathematically impossible for annual insurance payments of \$417.39 from 2002 to 2004 to accumulate to a deficit of \$5,000. Mrs. Consumer pays her own real estate taxes, which are about \$500 per year. Even if Linton had paid the taxes from 2002 through 2004, that would account only for \$1,500 of the asserted escrow advances.

27. The January 27 letter also includes a payment history, but only from September 2004 through December 2004. The history printout included is incomprehensible, does not identify transactions as payments, advances or charges, does not begin to address the questions and concerns expressed by Mrs. Consumer and her attorney, and is completely unresponsive to her qualified written requests, which asked for an explanation of the \$5,000 escrow deficit.

28. On or about May 13, 2005 Linton, through its attorneys Utrech Law Office, P.C., mailed a "Reinstatement Quote" to Mrs. Consumer. The May 13, 2005 reinstatement is attached as Exhibit "F." The total amount claimed to be due is shown as \$47,103.60. This document calls for monthly payments of \$362.61, an amount that does not correspond to the \$190.66 payment for principal and interest, the \$666.96 payment shown on the December statement, or the \$455.80 referred to on Exhibit D.

29. Exhibit E includes a demand for payment for numerous inspections of the property, despite the fact that Mrs. Consumer has been in constant communication with Linton, has a working telephone, and Linton has no basis to believe there is any danger of the property being abandoned.

30. Exhibit E includes a demand for \$400 for a BPO, that is, a broker price opinion. This amount is not properly chargeable to Mrs. Consumer under the contract or Pennsylvania law.

31. Having no way to determine the correct amount due, Mrs. Consumer sent \$1,400 to Linton on May 6, 2005 (enough to cover the principal and interest payments due from November 2004 through May 2005) in an effort to show her good faith and desire to maintain her mortgage payments.

32. Linton has, for the past two years, provided Mrs. Consumer with inconsistent, incomprehensible statements and correspondence and has made it impossible for her to maintain her monthly mortgage payments. To the extent Linton has made advances for taxes and insurance Linton has failed to identify the amounts advanced in a clear and simple manner and to establish a reasonable plan for Mrs. Consumer to repay those amounts.

33. Mrs. Consumer has suffered severe emotional distress and anxiety as a result of Linton's conduct, and has expended money to travel to and from her attorney's office and to copy documents in her vain efforts to resolve this account dispute.

COUNT I--FAIR DEBT COLLECTION PRACTICES ACT

34. Linton was a debt collector within the meaning of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692a, at the time it became the servicing agent for Mrs. Consumer's loan, in that it regularly collects debts owed to another, and the debt was asserted by Linton to be contractually in default at the time it became the servicer of the debt.

35. Each of the letters described above incorrectly stated the amount and the status of Mrs. Consumer's debt.

36. Linton failed to provide verification of the alleged debt to Mrs. Consumer in response to her timely written request for such written verification.

37. Due to the repeated and continuing violations of the FDCPA, Mrs. Consumer is entitled to actual and statutory damages under 15 U.S.C. 1692k.

COUNT II--RESPA

38. Linton is a servicer of a federally related mortgage loan within the meaning of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2605.

39. Each of Mrs. Consumer's (and her attorney's) written requests for information about her account and correction of Linton's numerous errors were "qualified written requests" within the meaning of RESPA.

40. Linton failed to respond in a proper and timely way to Mrs. Consumer's "qualified written requests" for information about, and corrections to, her mortgage account, in violation of 12 U.S.C. § 2605(e).

COUNT III--PENNSYLVANIA ACT 6 of 1974

41. Mrs. Consumer's mortgage is a "residential mortgage obligation" covered by Pennsylvania Act 6 of 1974, 41 Pa. Stat. 101-605.

42. Linton has repeatedly failed to provide Mrs. Consumer with an accurate notice of the amount required to cure her mortgage default, as required by 41 P.S. 403, and has improperly demanded payment of improper amounts and has thwarted her right to cure her default, under 41 P.S. 404, and has applied some of her payments to amounts not due under her mortgage and Act 6.

WHEREFORE, Plaintiff requests judgment in her favor and against Linton for three times the amount of the illegal charges.

COUNT IV--PENNSYLVANIA CONSUMER PROTECTION LAW

43. Linton's conduct described above constituted unfair and deceptive acts and practices, as defined by 73 Pa. Stat. § 201-2(4).

44. Mrs. Consumer has suffered an ascertainable loss of money as a result of Linton's unfair and deceptive practices.

WHEREFORE, Plaintiff requests that the court enter judgment in her favor and against defendants, for a proper accounting and application of her mortgage payments and for actual, statutory, treble and/or punitive damages, and attorney's fees and costs, along with any other and further relief as the court deems just and proper.

Attorney for Plaintiff