

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

<p>TINA JACKSON (acting as representative for Hattie Mae Smith),</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>RODNEY BYRD, et al.,</p> <p style="text-align: center;">Defendants.</p>
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Civil Action No. 01-ca-825

Calendar 16

Judge Joan Zeldon

MEMORANDUM AND ORDER

I. INTRODUCTION

At trial in this case Plaintiff, the grandchild and personal representative of the deceased Hattie Smith, pursued four causes of action against Defendant Rodney Byrd for his conduct in getting Smith to sign documents resulting in the sale of her home to a partnership he controlled.¹ The four causes of action are: (1) violations of the D.C. Consumer Protection Procedures Act (“CPPA”), codified at D.C. Code § 28-3904 (2003);

¹ Originally, there were other defendants who were involved with Byrd; however, by the time of trial all had settled except Rodney Byrd, Terrence Boykins and John Mudd. Boykins settled with Plaintiff after the trial. John Mudd defaulted because he did not answer the Complaint. Plaintiff seeks disgorgement of the money Mudd received; however, it is by no means clear what, if anything, he actually received.

(2) common law fraud; (3) negligence and (4) intentional infliction of emotional distress.

The trial, which was limited to the issue of liability only, occurred January 12-15, 2004. Given the volume and complexity of evidence introduced at trial, the Court took the matter under advisement. In this Memorandum and Order, the Court finds Defendant Rodney Byrd liable for several violations of the CPPA.

II. THE FACTS

A. Hattie Smith

By the summer of 1999, Hattie Smith, an elderly² ailing widow and retired government employee, had fallen behind in payments due on a \$12,000 mortgage loan³ she had on her home at 1430 Monroe Street, N.W., Washington, D.C., where she had lived for about twenty-five years. In August 1999, the first of several notices of foreclosure sale was issued on behalf of PNC Bank.⁴

² She was in her late sixties or early seventies when Defendant Byrd obtained her signature on documents conveying her home to an entity he controlled. Testimony of Tina Jackson; Plaintiff's Exhibit 46 (hereafter "P Ex. __") ¶1 (First Amended Complaint, verified by Hattie Smith on January 31, 2001).

³ Though she had two mortgages, she fell behind in payments on only one. Specifically, she was in arrears approximately \$2300 on a \$12,309.11 mortgage with PNC Bank. (P Ex. 92)(August 1999 Foreclosure Notice). Her other mortgage with Countrywide had a balance of \$38,711.20 on June 30, 2000. (P Ex. 37, line 104).

⁴ P Ex. 92.

By October 16, 1999, Hattie Smith was so ill with circulatory problems that she was hospitalized. At the time of her hospitalization she had almost no circulation in the lower half of her body. Her hospital physician, Dr. Wilton O'Reilly Nedd, a cardiovascular surgeon, operated on her to provide more circulation in her lower extremities. She suffered from cognitive problems throughout her hospital stay; she was in and out of periods of confusion. Physically, she was emaciated. Her ribs prominently protruded because of wasting muscles. (According to Plaintiff, even before her illness Smith weighed under one hundred pounds.)

When Smith was ready for discharge in mid-November 1999, Dr. Nedd wanted to put her in a rehabilitation facility. He knew she would have great difficulty caring for herself. Unfortunately, she declined his advice, and notwithstanding her poor circulation and the ulcer on the back of her pelvic bone, she went home around November 15, 1999, to her bedroom equipped with a wheelchair, a hospital bed and a walker to get to the bathroom. She lived in her home with a relative named Victoria Johnson, who worked outside the home, Victoria's children⁵ and her grandchild Tyreisha Coleman, who is the sister of Plaintiff Tina Jackson.

⁵ The Court was informed by Plaintiff's counsel that the family did not know the whereabouts of Victoria or her children, and consequently she did not testify at trial.

From the time she came home from the hospital until her death in January 2002, Hattie Smith was unable to eat regular food. She received nourishment through a feeding tube coming out of her side. Her grandchild, Plaintiff Tina Jackson,⁶ visited her once and sometimes twice a week after she came home from the hospital. At times (but not always) Smith was disoriented and did not even recognize Plaintiff. Smith would ask Jackson whose daughter she was and what was her name. As the months passed, Smith, who was taking unidentified medications, became smaller and even more frail than before. Plaintiff purchased bedpans for Smith and never saw her use the walker to go to the bathroom. If Smith left the house, she had to travel in a wheelchair. She wore glasses, which she took off only to sleep. She watched a lot of television. At times she talked to the television as if there were someone there.

B. Defendant Byrd Contacts Hattie Smith

Sometime in the late fall of 1999, Defendant Rodney Byrd mailed Hattie Smith a notice advising her of the services offered by Creative Investment Company (hereafter “CIC”). Rodney Byrd solely owns and manages CIC.⁷ The kind of notice Byrd or CIC typically sends states: “We are foreclosure

⁶ The Court credits the testimony of Plaintiff Tina Jackson.

⁷ See P Ex. 52, ¶29. CIC is a trade name under which Byrd does business and is not a corporate entity. (Order by Judge Herbert Dixon, filed April 16, 2003, ¶3)

specialists...[who] offer a number of creative programs that will allow you to keep your home.”⁸ It assures recipients: “We have helped many homeowners that have experienced what you are going through.”⁹

At trial Jerry Thomas, a former CIC salesman, testified that Byrd was in the business of helping people keep their homes.¹⁰

Despite the lip service given by Byrd and CIC to helping people keep their homes, Byrd, the “foreclosure specialist,” knocked on Hattie Smith’s door for the purpose of acquiring her home¹¹ for a pittance.

It is not difficult for the Court to understand how the elderly and frail Hattie Smith would have trusted Byrd. Although he did not testify at trial,¹² the Court observed him and his demeanor throughout the trial. After the

⁸ P Ex. 1; Testimony of Jerry Thomas.

⁹ P Ex. 1.

¹⁰ Specifically, Thomas testified that helping people keep their homes was one of the “principal functions” of CIC. An appraiser also testified that Byrd “assisted people in danger of foreclosure ...[and] helped people avoid foreclosure.”

¹¹ See e.g., (1) P Ex. 52 (Byrd Answer to Interrogatory 15); (2) P Ex. 73 (In January 2000 in Crockett v. Byrd, Judge Rafael Diaz issued a default judgment against Byrd and John Mudd for fraud committed on an 82 year old women suffering dementia from whom they extracted title to her property.); and (3) P Ex. 96 (judgment issued against Byrd and CIC involving Byrd’s acquisition of property following misrepresentations of material facts to a personal representative Byrd knew lacked capacity to convey title).

¹² As a result of a motion filed by Plaintiff in June 2002, Judge Herbert Dixon prohibited Byrd from testifying at trial because during his deposition Byrd invoked the 5th Amendment right to remain silent. (The Court has not been made aware of any pending criminal case or investigation.) Consequently, Plaintiff was unable to obtain any meaningful discovery from Byrd. Moreover, at a subsequent pretrial conference before the Court in 2003, Judge Dixon noted that Byrd represented “that he continues to invoke the 5th Amendment and refuse[s] to testify at any future proceeding.” Order Granting Plaintiff’s Motion in Limine to Preclude Byrd’s Testimony at Trial, docketed April 3, 2003.

trial in a hearing before this judge on a Motion to Withdraw filed by two out of his three attorneys, Byrd spoke to the Court. He handled himself with great self-assurance and even charm. He is youthful, attractive and dresses very well. He appears outwardly to be a respectable person. Indeed, he has the appearance of a professional, educated person.

Smith's niece Tyreisha Coleman, then in the eleventh grade, credibly described the night Byrd first called on Smith. He met with Smith alone. By the time he left that evening, Tyreisha, even though she was not in the room with Byrd and Smith, feared that Byrd was trying to get her grandmother to sell the house. Either the same night or the next day Tyreisha asked her grandmother whether she would sell the house, and her grandmother said she would not sell her home.

C. Hattie Smith's "Pro Se" Bankruptcy Petition

The first thing Byrd did to "help" Hattie Smith was to assist this elderly bedridden woman in filing a pro se bankruptcy petition.¹³ Evidence in the

¹³ The Court draws the inference that Byrd assisted the bedridden Hattie Smith in filing a pro se bankruptcy petition from:

- (1) the fact that CIC (which Byrd controlled) advertised itself as offering to "file Bankruptcy (even up to one hour before auction)" (P Ex. 1) and
- (2) Judge S. Martin Teel's Consent Order issued in November 2001 in McDow v. Byrd, consolidated with In Re: Victor Lamar (P Ex. 76).

In those consolidated cases, Judge Teel stated, as a fact, that Byrd as well as CIC are bankruptcy petition preparers under federal law. Significantly, Judge Teel notes in words that could be used to describe Smith's "pro se petition": "The bankruptcy petition and list of creditors filed with the court provided no information that would indicate that the papers were prepared by anyone other

form of a docket sheet from the United States Bankruptcy Court for the District of Columbia shows the bedridden Hattie Smith filed a pro se bankruptcy petition on December 15, 1999.¹⁴ The filing of this petition stayed all collections and prevented PNC Bank from foreclosing during the pendency of the case. Debtors with equity in their property (like Smith)¹⁵ generally are able to work out a payment plan with a mortgage company either before or during the bankruptcy, according to witness Kevin Judd, Esq. (eventual purchaser of Smith's home) who specializes in bankruptcies.¹⁶ However, by March 31, 2000, Smith's petition was dismissed "with prejudice" after Smith failed to file Court ordered Schedules, Statements and a Chapter 13 Plan.¹⁷

Under the Bankruptcy Law, the dismissal with prejudice prevented Smith from filing another bankruptcy petition for at least 180 days.¹⁸ Thus, Smith could no longer continue to avail herself of the protection of the Bankruptcy

than the debtor." After finding that the debtor "with Mr. Byrd" had in fact executed the bankruptcy petition, Judge Teel enjoined Byrd, CIC and their present and future employees, agents or independent contractors from (1) preparing and assisting in the filing, of any bankruptcy petitions, and (2) engaging in the unauthorized practice of law in this jurisdiction.

These two consolidated bankruptcy cases demonstrate how Byrd operates in assisting individuals with filing pro se bankruptcy petitions.

¹⁴ P Ex. 94.

¹⁵ She had roughly \$150,000 equity in the home. See note 3 and text p. 13, infra.

¹⁶ The record contains evidence that Smith, the retired government employee, received a monthly income, and at her age, she would have been eligible for social security payments.

¹⁷ P Ex. 94.

¹⁸ See 11 U.S.C. § 109(g)(1) (2003).

Court. She had lost any leverage she had in shielding herself from or negotiating with creditors, and there was nothing to prevent creditors from foreclosing. It is fair to say that when foreclosure specialist Byrd failed to assist her with pursuing required Schedules, Statements and a Chapter 13 Plan, he hurt rather than helped the ailing Hattie Smith.¹⁹ Smith's failure to file Court ordered papers left her fully vulnerable to her creditors.

D. The Appraisal Process

In early 2000 Byrd mentioned to Kevin Judd, to whom he owed \$20,000, a possible deal involving 1430 Monroe Street. Byrd said he would buy it at foreclosure and flip it to Judd. Judd said he would like to know what the property was worth before he got involved in the deal. Judd wanted to be sure there was at least \$20,000 equity in the house. Byrd next proceeded to obtain an appraisal.

The Court credits the trial testimony of appraiser Scott Begab on the basis of which the Court describes the appraisal process, as manipulated by Byrd. This process started in February 2000 when Byrd telephoned Begab and asked him to do an appraisal on 1430 Monroe Street. Byrd told Begab he thought the property was worth between \$150,000-\$160,000.²⁰ Byrd was

¹⁹ Assuming arguendo that he did not help her file her pro se bankruptcy petition, Byrd could have helped her pursue rather than abandon her rights in bankruptcy.

²⁰ P Ex. 2 (Appraisal Intake Order Form) ("Value estimated by Mr. Byrd \$150-\$160,000. Does not know its true value.")

vague about who was retaining Begab. After some preliminary research, Begab concluded the house would have a higher value because the houses on Smith's block are exceptionally large.

Begab and Byrd spoke two or three times before they met to inspect the house. Begab knew that the tax records showed that the house was owned by H. Smith and her husband (deceased). However, because he also knew that such records often were out of date, the owner's name given on tax records did not mean much to Begab. The first time Begab asked Byrd for the name of the owner, which he needed to complete the appraisal, Byrd was silent.

On or about February 24, 2000, Byrd met Begab at Hattie Smith's property. Byrd falsely represented to Begab that the purpose of the appraisal was to obtain refinancing for the property. Before they entered the house, Byrd instructed Begab not to speak with anyone in the house and that there "might" be an ill person in one of the bedrooms. As instructed, during his inspection, which lasted approximately fifteen minutes, Begab did not enter one particular bedroom pointed out by an unidentified person. The Court infers that this was the bedroom of the ill Hattie Smith, whose house was being appraised.

Shortly after the inspection of the property, Begab and Byrd again discussed the value of the property. The appraisal as of February 26, 2000, shows the property, which was in average to good overall condition,²¹ was worth \$200,000.

Several times after they met at the house on February 24, Begab asked Byrd the names of the owner and lender, but Byrd declined to answer. Begab put the appraisal on hold for a time. Finally, around April 18, 2000 (after Smith had signed documents selling her home), Byrd told Begab that Kevin Judd was the “owner” and “borrower.” Actually, Judd did not own the home until the end of June 2000, more than two months later. Upon receiving from Byrd misinformation on the name of the owner of the house, Begab completed the appraisal, which he back-dated to February 26, 2000. On April 18, 2000 Begab had the appraisal, with Judd’s name on it as owner, delivered to CIC at its business address.

Throughout this appraisal period Begab was unaware that Byrd was trying to buy the property. Begab testified credibly that he would have expected Byrd to give him that information. Instead, Byrd lied to Begab by telling him not only that the appraisal was for a refinancing, but also that the house belonged to Judd rather than Smith. Furthermore, in Begab’s

²¹ See P Ex. 4. Specifically, the appraisal states: “There are no adverse factors that affect marketability.”

experience it was “unusual” for Byrd to withhold the name of the owner.

The reason for Byrd’s deceptive behavior and secrecy will become clear as the Court describes how Byrd purchased Hattie Smith’s property for \$33,000 and flipped it to Judd for \$150,000 from which Byrd recovered substantial money.

E. Byrd’s Purchase of Smith’s Residence

By April 4, 2000, when the notice of dismissal with prejudice of her bankruptcy petition was mailed, Smith became vulnerable to foreclosure. (See text at pp. 6-8, supra). As described above, Byrd had brought Smith to this point by “helping” her file a pro se bankruptcy petition and then not helping her pursue the required Schedules, Statements, and a Chapter 13 Plan. Byrd moved quickly to obtain her home.

On April 5, 2000, Byrd created on paper the B&B General Partnership (hereafter “B&B”) in which Kevin Judd and Jerry Thomas ostensibly were partners and Terrence Boykins was the managing partner.²² According to the general partnership agreement (P Ex. 5), each contributed money.²³ Contrary to what the general partnership agreement says, the reality is that Jerry Thomas had never even heard of B&B, and Kevin Judd had no idea

²² Byrd asserted in his response to interrogatory’s that he was “the general partner” in the B&B General Partnership, but the partnership agreement in evidence does not show Byrd’s name. See P Exs. 5 & 52 ¶6.

²³ The partnership agreement states that Judd contributed \$25,000, Thomas contributed \$8000 and Boykins contributed \$16,800.

that his name was on this agreement. Neither contributed any money. (The Court does not have Boykins' story because he did not testify at trial.) This document was the beginning of Byrd's orchestration of the sale of the property worth \$200,000 to B&B, an entity that he controlled, for \$33,000. Following the sale Byrd would flip the property to Kevin Judd for \$150,000 from which Byrd would take substantial money.

Four days later on April 9, 2000, Byrd got the ailing Hattie Smith to sign several documents transferring her home to B&B. Specifically, she signed (1) a Deed granting her home to B&B for \$10 (P Ex. 6); (2) a Single Family Home Sales Contract with small print (P Ex. 7); and (3) a Real Property Deed Recordation Tax and Real Property Transfer form (hereafter "tax form") showing the grantee to be B&B (P Ex. 8). The purchase price was only \$33,000, of which Smith ostensibly was to receive \$15,000 in cash. The remaining \$18,000 was allocated to the assumption of the first trust. No provision was made for assumption or payment of the second trust.

Although Byrd claims he transferred \$1000 to Smith --but no more--²⁴ there is no other evidence that she actually received even this small amount of money. Given Byrd's deceptive behavior described in this Memorandum and Order, the Court concludes that Byrd never actually paid Smith

²⁴ P Ex. 52 (Byrd's Answer to Interrogatory 21).

anything. As previously described, the appraised value of the property was \$200,000. It was encumbered only by two mortgages, which together totaled around \$50,000.²⁵ (As previously mentioned, Smith had been in arrears on only one mortgage.) The parties stipulated that at the time of the sale, the cure amount for her arrearage was between \$3000-\$5000.

Smith was frail on April 9, 2000 when she signed her home over to B&B. She was in her bedroom in a hospital bed in a reclining position with the covers up to “maybe her shoulders.”²⁶ The individuals in the room were Byrd, Lois Hackey (the notary), her friend Kenneth Carter (who had driven her to the Smith home) and an unidentified woman who opened the front door for the others. Hackey does not remember Smith wearing glasses.

Carter, who remained in the room during the signing and notarization of documents, credibly testified that the whole signing process took about ten minutes, including small talk at the beginning and end.²⁷ It is undisputed that no one at the signing described or explained to Smith what the documents she was signing were, and no one read them to her.²⁸ The notary

²⁵ P Ex. 37, Line 104 (showing as of June 30, 2000 a second mortgage with Countrywide for \$38,711.20); P Ex. 92 (showing a balance on the PNC Bank mortgage of \$12,610.21 as of November 1999).

²⁶ Testimony of eye witness Kenneth Carter.

²⁷ The Court does not credit notary Hackey’s testimony on the length of the signing process because of her defensive demeanor. Hackey was trying to defend herself as best she could since she had no authority to perform the notarization in the first place.

²⁸ Testimony of eye witnesses Lois Hackey and Kenneth Carter.

simply asked Smith if she understood the documents, and Smith answered yes. Carter credibly testified that he had no idea he was observing the sale of her home. For all Carter knew, Smith could have been signing her Will.

The only signature Hackey notarized was the signature of Hattie Smith. The “B&B signature,” which appears on the Sales Contract and again on the tax form were not on the documents notarized by Hackey.²⁹ The Court infers that Defendant Byrd or his agent added the signature “B&B General Partnership” sometime later after Smith signed the documents in the presence of notary Hackey.

The next day, April 10, 2000, Rodney Byrd, purporting to act as General Partner of B&B,³⁰ executed a sham document. It purported to place the Smith property in trust (with a “Eugene Byrd”³¹ as trustee); the property was collateral for a \$20,000 promissory note B&B supposedly gave John Mudd the same day. (P Ex. 10)

Mudd gave the following deposition testimony about Rodney Byrd:

“There were so many things that he started to do that were kind of deceptive.” Mudd further testified: “I don’t know half the stuff he did and

²⁹ The Court credits Hackey’s testimony about the absence of the “B&B signature” on the documents she notarized.

³⁰ As previously stated, he was not a B&B partner, according to the partnership agreement described on pp. 11-12, *supra*.

³¹ Whether a Eugene Byrd exists is a question not addressed by the evidence in this case.

half the stuff he didn't do." Mudd also said Byrd owed him money and told Mudd he had a house that he owned and would put his name on it.

However, Mudd testified in his deposition that he never heard any more about the house. He stated: "That's the last I heard of it . . . that's Byrd. . . that's the way he kind of does business sometimes and I found these things out."

The real purpose of that trust document was to create a record of a \$20,000 debt owed Mudd that could go on the Settlement Statement at the closing when Byrd flipped the property to Judd. This would enable Byrd to collect \$20,000 at settlement, which Mudd never saw. However, this gets ahead of the story; the settlement did not occur for another two months.

The April 9 signing was invalid. The notary Byrd obtained and whose credentials he did not check was licensed only in Maryland and not in the District of Columbia. Several days after April 9 when Byrd called notary Hackey to request her services again, Hackey informed Byrd that because she was licensed only in Maryland, the documents she notarized on April 9 were invalid. Byrd told her he would take care of "it."

Byrd recorded the April 9 Deed of Sale with the D.C. Recorder of Deeds on April 10, 2000 (P Ex. 6, p.2). After learning that the Maryland notary was not authorized to notarize the documents Smith signed, Byrd on

April 19, 2000 went back to Smith's home and got her to sign a "Corrective and Confirmatory Deed," reaffirming her April 9 Deed. The "Corrective and Confirmatory Deed" explicitly acknowledges that the April 9 Deed did not contain a proper notary acknowledgment and signature. However, the new Corrective and Confirmatory Deed was signed by Smith in her home and improperly notarized by Vivian Gatling in Gatling's office without Smith ever appearing before Gatling. Nevertheless, the Corrective and Confirmatory Deed further states that the April 9 recorded Deed "is hereby corrected to contain a proper notary acknowledgment and signature." (P Ex. 13)

Having done the first notarization wrong, one would have thought Byrd would strive to get it right the second time around. This was not the case. Rather, as previously described, the second notarization orchestrated by Byrd on April 19, 2000, was entirely by telephone. Gatling testified she had notarized documents for Byrd before, including at least one where the party whose signature she notarized did not appear before her.³² Notarizing the

³² Trial Testimony of Vivian Gatling. See also, P Ex. 76 (In the Lamar Bankruptcy case, described in text p.23 infra, Judge S. Martin Teel describes how Gatling could not remember whether the Lamars were present when she notarized the deed which contained the Lamars' signatures).

signature of an individual who does not appear before the notary is “absolutely” prohibited.³³

The only question Gatling asked Smith via telephone is whether the signature on the document was hers. Smith said it was her signature. There was no discussion between Gatling and Smith about the nature of the document being notarized. Like the April 9 documents, the April 19 document (P Ex. 13) did not have the signature of B&B at the time Gatling notarized it.

After he brought the Corrective and Confirmatory Deed (P Ex. 13) to Gatling at her office on April 19 for notarization of Smith’s signature, Byrd moved swiftly to record it the same day. He also recorded on that day the Deed of Trust acknowledging an alleged promissory note for \$20,000 to John Mudd (P Ex. 10).

Unfortunately, no legal challenge to the Corrective and Confirmatory Deed (P Ex. 13) occurred until it was too late. Judge Herbert Dixon by Order, dated August 25, 2003, ruled that in light of D.C. Code § 42-403,³⁴

³³ P Ex. 57 (Handbook for Notaries Public of the District of Columbia 1997 ed.), p. 74. Ms. Gatling acknowledged at trial that notarizing Hattie Smith’s signature as if Smith had “personally appeared” before her “was inappropriate.”

³⁴ That provision reads:

“Any instrument recorded in the Office of the Recorder of Deeds on or after April 27, 1994, shall be effective notwithstanding the existence of 1 or more of the failures in the formal requisites listed in § 42-404 (2003), unless the failure is challenged in a judicial proceeding commenced within 6 months after the

Plaintiff's challenge to the validity of the Corrective and Confirmatory Deed was untimely.

F. The Sale to Kevin Judd

Byrd continued his deceptive behavior in the course of flipping the property to Kevin Judd to whom Byrd sent the Appraisal showing the property was worth \$200,000. On May 12, 2000, at Byrd's Office on Wisconsin Avenue, Byrd signed over his (nonexistent) general partnership interest in B&B³⁵ to Judd in return for Judd's releasing Byrd from a \$20,000 debt (P Ex. 17). Actually, Judd already was listed on the partnership agreement as a general partner who had contributed \$25,000 to the partnership when Byrd created it to buy the Smith property. (P Ex. 5) However, Judd had no idea his name was on the partnership agreement, and he never contributed any money to it. (The Court credits this part of Judd's testimony.)

Next, on May 28, 2000, Byrd filled out a Single Family Sales Contract (P Ex. 19) showing sale of the property by B&B, through Jerry Thomas, general partner, to Kevin Judd for only \$48,000. Judd testified that this

instrument is recorded." (One of the failures in the formal requisites that may be challenged within six months is: "(1) . . . a defective or improper acknowledgment . . ." D.C. Code § 42-404(1) (2003)).

³⁵ Even after Byrd signed over his nonexistent general partnership interest to Judd on May 12, 2000 (P Exs. 5 & 52), Byrd continued to do business as B&B General Partnership in an unrelated transaction dated May 19, 2000. P Ex. 85a.

document is wrong. The real price to Judd was \$150,000 (\$130,000 obtained by Judd at closing through a loan from First Guaranty Mortgage Company plus forgiveness on Byrd's \$20,000 debt to Judd). At trial Thomas testified credibly that he knew nothing about this document (P Ex. 19) and he did not authorize Byrd to put his name on it.

On June 27, 2000, Byrd executed a Deed (P Ex. 28) in which B&B conveyed the former Smith property to Judd for \$10.00. Although a signature reading "Jerry Thomas, GP" appears on the document, it was notarized by Gatling who testified that only Byrd and no one else appeared before her. She testified the name Jerry Thomas was not on the document she notarized. In any event, Thomas did not sign or authorize his signature on this document. The Deed was filed with the Recorder of Deeds the morning of June 28, 2000. At this point Kevin Judd formally owned the Smith property.

Two days later, on June 30 a "closing" took place on the purported sale to Judd³⁶, at which Judd borrowed \$130,000. This event was awash with deceptive behavior by Byrd. It is undisputed that Byrd paid Thomas \$1000 to attend the closing and sign whatever documents were put in front of him. One of the documents Thomas signed was an "Affidavit" (not notarized by

³⁶ Judd's purchase of the property was subject to a mortgage held by First Guaranty Mortgage which loaned Judd the money to make the purchase.

anyone). This “Affidavit” authorized disbursements by Lenore Fitzgerald, the settlement agent, of “my proceeds of \$30,000.” Some \$12,200 supposedly was to go to Judd’s escrow agent, Martha Hamilton³⁷; \$15,800 was for Byrd and the balance was a check to Thomas for \$2000 which check Thomas “authorized” Fitzgerald to disburse to Byrd. (P Ex. 32) Thus, Byrd picked up at least \$17,800 from Thomas (P Ex. 31) in return for a \$1000 payment to Thomas. Byrd also admits receiving the \$15,000 purportedly allocated to Boykins at the closing.³⁸ (However, P Ex. 31 says Byrd was to pick up \$20,000 allocated to Boykins.)

Additionally the closing documents falsely indicate that monies were disbursed to John Mudd. One document shows Mudd was to receive \$15,000 and “Rodney Byrd will pick up ...[the] check[s].” (P Ex. 31) The settlement statement itself (P Ex. 37) shows John Mudd was to receive \$20,000 (a sum previously recorded as owed Mudd by B&B). (P Ex. 10) What happened to the extra \$5000 is unknown. In any event, John Mudd never attended the settlement and received no money generated by the settlement.³⁹ The Court infers that Rodney Byrd collected the money

³⁷ P Ex. 31; Testimony of Kevin Judd. The Court cannot resolve whether the escrow agent ever got the \$12,200 or if the money instead went to Byrd.

³⁸ P Exs. 31, 37 & 52 ¶9.

³⁹ Deposition Testimony of John Mudd.

designated for Mudd – either \$15,000 or \$20,000. Thus, Byrd collected at least \$47,800 in cash as a result of the “closing.”⁴⁰

Finally, the day before the closing Kevin Judd drove by the house and observed that there were occupants on the property. When he asked Byrd about the occupants at the closing, Byrd lied to him, stating that he was collecting rent from them and that after the sale Byrd would collect the rent and give it to Judd. Byrd also falsely told Judd that he would pay the tenants a sum to leave and they would leave. Judd, knowing Byrd, did not fully believe him so he reserved extra money in escrow for eviction proceedings in case he had to evict the tenants. Perhaps it is needless to say, Byrd never collected any rent from Hattie Smith or anyone else in her home and never offered them money to leave.

G. Kevin Judd Asserts Ownership of Smith’s Home

Sometime in September 2000 Judd went to the property to address rent and departure with the occupants. He never got further than the screen door. He learned from whoever answered the door that the occupants had no knowledge that he owned the home. They were hostile and acted very upset. One young lady yelled at him through the screen door and then closed the front door to exclude him.

⁴⁰ As explained in the text, Byrd received \$17,800 from Thomas, \$15,000 from Boykins, and \$15,000 or \$20,000 from John Mudd.

Smith's grandchild, Tyreisha Coleman, called her sister Plaintiff Tina

Jackson to come to the house. It was Tina Jackson who told Hattie Smith that Kevin Judd owned her property. Hattie Smith became hysterical.

Between tears she exclaimed: "You know I would never sell my house to anyone! You know I would never do this! Why are you saying this to me? Someone is trying to do this to me!" According to Plaintiff, "Her home was everything she and her husband worked for. It was her everything."

On September 21, 2000, Kevin Judd's attorney sent Hattie Smith a formal notice stating that Kevin Judd owned the property and she had thirty days to vacate. In October 2000, Plaintiff took Smith, who could only travel in a wheelchair, to the AARP, where she asked for help. (See P Ex. 90) On October 31, 2000, Judd filed a Complaint for Possession. (P Ex. 61)

Sometime after the Complaint for Possession was filed, Hattie Smith left her home and went to live with Plaintiff Tina Jackson and Jackson's three children. She stayed there until she died in January 2002. After her death the extended family disintegrated. Plaintiff has not seen her cousin Victoria Johnson or Victoria's children since Smith's funeral. Previously, they were close.

H. Rodney Byrd's Other Contacts with Courts

Defendant Rodney Byrd is not unknown to the courts. The record contains evidence of three other cases showing similar conduct by Byrd.

First, as described earlier, in In Re: Victor Lamar (P Ex. 76) Byrd and his company CIC were banned from practicing law and assisting anyone filing in the U.S. Bankruptcy Court nationwide after he assisted a debtor and his wife in filing a pro se bankruptcy petition and then got them to sign a deed, contract of sale and a transfer tax form transferring ownership of their home to a general partnership (P Ex. 76). The documents were notarized by Gatling who did not remember whether the debtor and his wife were present when she notarized the documents. The couple acknowledged signing the documents but it was not their intent to sell the property. Byrd recorded the deed in land records after he was informed explicitly by the debtor that he did not want to sell his home.

Second, in Crockett v. Byrd (Civ. Action No. 98-1584), a default judgment was entered against Defendant Byrd for fraudulent conduct similar to the conduct in this case (P Ex. 73).⁴¹ Elizabeth Reed was an eighty-two year old widow suffering from dementia when Byrd approached her and offered, through CIC, to help her keep her home. As part of his scheme to

⁴¹ The court takes judicial notice of matters set forth in the First Amended Complaint that are relied upon by Judge Diaz's Default Judgment and Order of Final Judgment, which is in evidence as P Ex.73.

defraud Ms. Reed, Byrd represented to acquaintances and the agents of the company servicing Ms. Reed's mortgage that he was Ms. Reed's grandson.

Judge Rafael Diaz found that Byrd falsely represented to Ms. Reed that he would help her keep her home. Byrd's actual plan was to obtain Plaintiff's home and borrow heavily against the equity to obtain cash.⁴²

Judge Diaz also found that Byrd misrepresented to Ms. Reed that he would pay her \$56,000 for her home. Byrd signed a sales contract with Ms. Reed, even though he had no intention of paying Ms. Reed for her home and there was no evidence that he ever paid Ms. Reed anything for her home.

Third, in Cole v. Herbert (Civ. Action No. 98-9252), Judge William Jackson found Byrd and CIC liable for intentional misrepresentation of material facts in connection with an invalid purchase for \$8000 of a house worth \$120,000. The purchaser was an entity in which Byrd was general partner. (P Ex. 96) Significantly, Judge Jackson assessed Byrd and CIC \$75,000 in punitive damages.

⁴² After obtaining Ms. Reed's home, Byrd borrowed heavily against the equity in the house with a loan from another Defendant, Robert Goldsten. Byrd defaulted on the mortgage by failing to make the first mortgage payment, and Goldsten foreclosed on the property.

III. LEGAL ANALYSIS

A. Introduction

In applying the law to the facts of this case, the Court was mindful that the record contains no direct evidence from the decedent, Hattie Smith, who died without her deposition having been taken. The Court will not resolve the issue of whether Smith knew what she was signing. There is no evidence that she understood the nature and consequences of what she signed or that she read the documents she signed or that anyone explained them to her. However, there also is no direct evidence of what she thought she was signing.

There is solid evidence that Smith did not intend to sell her home. She told Tyreisha Coleman the night Byrd first visited that she would not sell her home; many months later upon being told the home was sold, Smith became tearful and repeated that she “would not sell her house to anyone.” The terms and circumstances of the transaction also evidence that Smith was unaware she was selling her house. Byrd’s failure to pay Smith any money also is consistent with the absence of any sale.⁴³

⁴³ Assuming arguendo that he paid her \$1000, as he claims, that too supports the inference of a refinancing rather than a sale.

The absence of testimony by Hattie Smith in any form prevents the Court from addressing all theories of liability pursued by Plaintiff at trial.⁴⁴

Rather, the Court will address only certain violations of the CPPA. Even in the absence of her testimony, the record provides ample evidence upon which to find Byrd liable for violations of the CPPA. The Court will not address common law fraud because that cause of action is duplicative of the CPPA provisions on the basis of which the Court holds Byrd liable.

B. Consumer Protection Procedures Act

1. Fraud

Plaintiff claims that Byrd violated D.C. Code § 28-3904(f) (2003), which states that “[i]t shall be a violation of this chapter, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to . . . fail to state a material fact if such failure has a tendency to mislead.”

Under the CPPA, Plaintiff must prove each such claim by clear and convincing evidence. Osbourne v. Capital City Mort. Corp., 727 A.2d 322, 326 (D.C. 1999). The Court finds that there is clear and convincing evidence that Byrd failed to state three material facts each of which had a

⁴⁴ Additionally, the Court did not find Plaintiff’s arguments on negligence persuasive.

tendency to mislead Hattie Smith.⁴⁵ The failure to disclose any one of these three facts is sufficient to justify a finding of violation of the CPPA.

A. Byrd Failed to Tell Smith the Value of her Home.

Byrd did not tell Smith her home was worth \$200,000 when he induced her to sign papers that evidence sale of her home for only \$33,000 to an entity controlled and managed by him. Using common sense, the Court finds that if Smith knew that her house was worth \$200,000 she would not have signed papers selling it for \$33,000.

When Begab appraised Smith's home, Byrd declined to give him the name of the owner. Byrd also told Begab not to go into Smith's bedroom when Begab entered her home to inspect it as part of the appraisal process. Obviously, Byrd did not want Smith to know about Begab and his appraisal, and he did not want Begab to know that Smith was the owner of the house he appraised.⁴⁶ By keeping Begab away from Smith and ignorant of her ownership of the house, Byrd eliminated the possibility Begab might converse with Smith.

⁴⁵ This provision appears to codify common law fraud. "Nondisclosure or silence, as well as active misrepresentation, may constitute fraud." Bennett v. Kiggins, 377 A.2d 57, 59 (D.C. 1977). "The concealment of a fact that should have been disclosed is also a misrepresentation." Sage v. Broad. Publ'n Inc., 997 F.Supp. 49, 52 (D.D.C. 1998). "Where a Court finds that a party had a duty to disclose material information, and failed to do so, there is an even greater likelihood that the nondisclosure will constitute fraud." See Sage v. Broadcasting Publications, Inc., 997 F.Supp. 49, 52 (D.D.C. 1998).

⁴⁶ Additionally, Byrd falsely told Begab the appraisal was for refinancing. After Smith signed papers selling her home to B&B, Byrd falsely told Begab that Judd was the owner.

If Smith had been informed of Begab's appraisal, she would have been told that her home was worth \$200,000. Byrd was covering his tracks as he proceeded to acquire and then flip Smith's home for his own profit. The Court concludes Byrd intentionally concealed from Smith the value of her home as part of his plan to acquire it for a fraction of its value.⁴⁷ Byrd's failure to disclose to Smith the correct value of her home led Smith to sign documents selling her home for a price of \$33,000— a pittance compared to its actual value.

B. Byrd Did Not Disclose How He Would Benefit From The Transaction.

Byrd did not tell Smith that an entity he controlled entirely was the other contracting party and that he would make tens of thousands of dollars from the papers she was signing.⁴⁸ Four facts clearly and consistently show Byrd's design to avoid disclosing how he personally would benefit from papers he got Smith to sign.

First, Byrd created B&B Partnership so that he could purchase Smith's home without disclosure to her that he was profiting from the sale. (See P

⁴⁷ The record shows Byrd initially believed the home was worth between \$150,000-\$160,000. (P Ex. 2) However, he knew that Begab appraised it at \$200,000 after he talked with Begab shortly after the inspection on February 24, 2000, which is before he had Smith sign papers that sold her home to B&B for \$33,000.

⁴⁸ Byrd made at least \$47,800 when he sold Smith's home to Judd. (See text p. 21, supra). He also made money when he acquired her home ostensibly for \$33,000. There is no evidence he ever paid her any cash. Given the totality of the facts described above, the Court does not credit Byrd's uncorroborated interrogatory response claiming he paid Smith \$1000 in cash.

Exs: 5 & 52 ¶ 6) Second, even the B&B partnership document itself (P Ex. 5) does not disclose the name Rodney Byrd. Instead, it contains at least three other names, two of which (Judd and Thomas) were used without the knowledge or permission of the named individuals.⁴⁹ Third, the name B&B as it appears in the text of two documents signed by Smith (P Exs. 6 & 13) does not reflect in any way Byrd's connection to B&B. Fourth, Byrd or his agent signed the name "B&B General Partnership" to P Exs. 7 & 8 sometime after Smith signed documents conveying her home to B&B. (The Court credits the statements of both notaries that the signature of the purchaser B&B was not on the documents Smith signed and they notarized first on April 9, 2000 and again on April 19, 2000.)

Byrd went through all this effort to obscure his involvement in the purchase of the Smith home to ensure that Smith would not discover how he personally would profit from the sale. Not knowing that Byrd would profit handsomely from her signing the documents he gave her led Smith to trust Byrd as a result of which she signed and re-signed the papers he brought her, first on April 9, 2000, and again on April 19, 2000 (P Exs. 6, 7, 8 & 13).

⁴⁹ There is no evidence as to whether the third "partner," Terrence Boykins, knew his name was on the partnership document.

C. After Guiding Her Into Bankruptcy, Byrd Did Not Tell Her How to Protect Herself in Bankruptcy.

After assisting Smith in filing her bankruptcy petition, Byrd did not tell her how to act to protect her interests so that she could keep her home. She was relying on Byrd, the self-proclaimed foreclosure specialist, to help her because he held himself out to her as a specialist who could offer her “a number of creative programs that would allow you to keep your home.” (P Exs. 1, 48 ¶18 & 49 ¶18)

Specifically, what he failed to tell her was that she (or her agent) should negotiate refinancing with a mortgage company and that she (or her agent) should file required Schedules, Statements and a Chapter 13 Plan with the Bankruptcy Court to avoid dismissal of the proceedings. When she failed to do anything to protect her interests, the bankruptcy petition was dismissed with prejudice (P Ex. 94), and she was prevented from seeking protection from her creditors for 180 days.⁵⁰ Byrd then moved quickly to acquire her home through an entity he controlled. It is clear that his failure to tell her material facts about how to protect herself during bankruptcy had the tendency to mislead her into inaction towards her creditor and the Bankruptcy Court, which ultimately resulted in the loss of her home.

⁵⁰ From all the facts and circumstances described in this Memorandum and Order the Court infers that Byrd was motivated not to help Smith while she was in bankruptcy so he could proceed with acquiring her home.

2. Advertising

Plaintiff also claims that Byrd violated D.C. Code § 28-3904(h) (2003) which states that “[i]t shall be a violation of this chapter, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to . . . advertise or offer . . . services without the intent to sell them or without the intent to sell them as advertised or offered.” Plaintiff is required to prove this claim by clear and convincing evidence because she is claiming that Byrd intentionally misrepresented the services he was offering to Smith. See Osbourne, 727 A.2d 326 (claims of intentional misrepresentation under the CPPA must be proved by clear and convincing evidence).

In her First Amended Verified Complaint, Plaintiff claimed that Byrd provided Smith with marketing material from CIC that “represented him as a foreclosure specialist offering ‘creative programs that will allow you to keep your home.’” (P Ex. 48 ¶18) Byrd, in his Answer, admitted that he sent Smith CIC marketing material offering “creative programs that will help you keep your home.” (P Ex. 49 ¶18) The above quoted language from the First Amended Verified Complaint (admitted by Byrd) is identical to language in P Ex. 1, which is a document advertising or offering the services of CIC. Former CIC salesman Thomas testified that P Ex. 1 was used by CIC to

solicit business when Thomas worked for Byrd. The Court infers that Byrd sent Smith a copy of P Ex. 1.

The Court is mindful that Byrd theoretically could have sent Smith some other promotional material with the same language. In light of this possibility, the Court notes that it is not important whether Byrd provided Smith with P Ex. 1 or some other promotional material offering “creative programs that will allow you to keep your home.” The advertised purpose of CIC, Byrd’s business, was to help people keep their homes.

As the Court will now explain, Byrd had no intention of helping Smith keep her home. Despite the advertising put out by CIC and the mythology articulated by the former CIC salesman Thomas, the real purpose of Byrd’s business was to buy the homes of sick elderly people in foreclosure for an insignificant sum of money. When asked to identify each visit he made to Smith’s home, Byrd stated that he visited Smith’s home several times for the “purpose of negotiating the purchase from plaintiff [Smith].”⁵¹ (P Ex. 52, Answer to Interrogatory 15). Thus, Byrd himself virtually admits that his intent in visiting Smith was to purchase her home, not to help her save her home as he advertised or offered when he solicited her business. Further-

⁵¹ Though the question and answer stated January 1999, Byrd and Plaintiff stipulated at trial that the answer meant January 2000. Regardless of the year, Byrd in his response to Interrogatories never describes any visit to Smith’s home for a purpose other than to negotiate the purchase of her property.

more, in early 2000 Byrd discussed with Judd buying Smith's home at foreclosure and flipping it to Judd. Judd responded that he wanted an appraisal before he got into "the deal."⁵² (The Court credits this testimony from Judd.) Thus, Byrd was pitching Smith's house to Judd in early 2000 before Byrd proceeded with an appraisal on February 24, 2000.

The Court also finds the decision in Crockett v. Byrd (P Ex. 73)⁵³ enlightening in ascertaining Byrd's true intentions towards Smith. In that case, Judge Rafael Diaz found that Byrd falsely represented to an eighty-two year old widow suffering from dementia, Elizabeth Reed, that he would help her keep her home even though he really intended to buy it for a very small sum of money. There is no evidence that he ever paid Ms. Reed anything after she signed a sales contract. (See also P Exs. 76 & 96)

The Court concludes that in this case there is clear and convincing evidence that although Byrd advertised that he offered "creative programs that will help you keep your home," his conduct establishes a lack of intention to help Smith keep her home. Thus, Byrd advertised or offered services without the intent to sell them as advertised or offered. From his

⁵² Though Judd was vague in stating how early in 2000 his discussion with Byrd about Smith's house occurred, it would have been no later than February 2000 when discussions began with the appraiser prior to the appraisal inspection on February 24, 2000.

⁵³ See note 41 *supra*.

conduct and admission described above, the Court concludes that Byrd's intent was to purchase Smith's home and flip it to Judd, which is exactly what he did.

3. Unconscionability

Plaintiff claims that Byrd violated D.C. Code § 28-3904(r) (2003) which states that it is a violation of this statute for any person to "make or enforce unconscionable terms or provisions of sales" To prove that Byrd made unconscionable terms in the sales contract for Smith's home, Plaintiff must prove her claim by a preponderance of the evidence. See Williams v. First Gov't Mortgage and Investors Corp., 974 F.Supp 17 (D.D.C. 1997)(Court did not overturn jury verdict finding unconscionable terms in contract after jury was instructed that Plaintiff had to prove claim by preponderance of the evidence).⁵⁴

In judging whether the \$33,000 price was unconscionable, the Court took into account relevant factors enumerated in D.C. Code § 28-3904(r) (2003).

⁵⁴ Under the CPPA, claims of intentional misrepresentation or omission require the Plaintiff to prove her claim by clear and convincing evidence. Osbourne v. Capital City Mort. Corp., 727 A.2d 322, 326 (D.C. 1999). This burden of proof exists because it applies to the equivalent common law claim for fraudulent misrepresentation. By contrast, Plaintiff's claim that the sales contract contained unconscionable terms or provisions is not a claim of common law fraud or intentional misrepresentation or omission. Because the unconscionability provision of the CPPA does not require proof of intentional misrepresentation or omission, Plaintiff must only prove this claim by a preponderance of the evidence.

First, there was a “gross disparity in the price of the property . . . sold . . . and the value of the property” D.C. Code § 28-3904(r)(3) (2003)⁵⁵. The second factor considered by the Court is “that the person [in this case Byrd] has knowingly taken advantage of the inability of the consumer reasonably to protect . . . [her] interests by reasons of age, [or] physical or mental infirmities” D.C. Code § 28-3904(r)(5) (2003). The Court will now address each of these factors.

There was a gross disparity between the price Byrd, acting under the label B&B, paid for Smith’s home and the value of Smith’s home measured by either the \$150,000 price at which Byrd flipped the property to Kevin Judd, or the \$200,000 price at which this property was appraised by Scott Begab. Byrd purportedly purchased Smith’s home for \$33,000. (P Ex. 7) The \$33,000 price included \$15,000 in cash and \$18,000 for assumption of the first trust on the home. (As previously mentioned, the documents Smith

⁵⁵ That provision reads as follows:

[I]n applying this subsection, consideration shall be given to the following and other factors . . . gross disparity between the price of the property . . . sold . . . and the value of the property . . . measured by the price at which similar property . . . [is] readily obtainable in transactions by like buyers D.C. Code § 28-3904(r)(3)(2003)(emphasis added). The appraisal shows two out of three “comparable” homes sold for more than \$200,000. (P Ex. 4)

In this case, however it is not necessary to compare the price of this property to the price of “similar property . . . readily available by like buyers.” Instead, the Court has the price obtained for the same property. The Court also has the appraised value of the property. To the extent the comparison differs technically from the wording of D.C. Code § 28-3904(r)(3), the Court notes that it is to consider the factors enumerated in the statute as well as “other factors.” Id.

signed contained no provision for payment or assumption of the second trust.) Other than Byrd's assertion in discovery that he paid her \$1000;⁵⁶ there is no evidence that Byrd ever paid Smith any money for her home.⁵⁷ Nor is there any evidence that Byrd or "B&B" ever assumed or paid off the PNC mortgage.

In June 2000, approximately two months after he acquired Smith's home, Byrd sold the property to a friendly buyer, Kevin Judd, for \$150,000. Even the \$150,000 price Judd paid for Smith's home does not reflect the full appraised value of her home, which was \$200,000. If Byrd had sought the market price when selling the property, it is more likely than not that he would have gotten \$200,000 for the home.⁵⁸ In any case, the Court finds that there was a gross disparity between the price Byrd "paid" for Smith's home and the actual value of Smith's home⁵⁹ (using either the \$150,000 sale price or the \$200,000 appraised value).

The Court also finds that Byrd violated D.C. Code § 28-3904(r)(5) (2003) when he knowingly took advantage of Smith's inability to protect her

⁵⁶ P. Ex. 52 (Byrd's Answer to Interrogatory 21).

⁵⁷ Given the totality of evidence on Byrd's conduct in this case, there is no reason why the Court should credit Byrd's uncorroborated claim that he paid Smith even \$1000.

⁵⁸ See note 55 (describing two "comparable sales" for more than \$200,000).

⁵⁹ The gross disparity between the sales price and value exists no matter which sales price is used. In other words, it does not matter whether the actual sales price was \$0, \$1000, \$18,000 or \$33,000. The disparity between any of these prices and the actual value was gross.

interests because of her physical and mental condition. When Byrd first approached Smith, Smith was bedridden, emaciated and weighed under one hundred pounds. She received nourishment through a feeding tube because she could no longer eat normal food. She used bedpans to go to the bathroom rather than the walker provided her. There were times when she was disoriented and did not even recognize her own grandchild. Other times she would talk to the television as if a real person was there. In sum, Smith was vulnerable to the conduct Byrd used in dealing with her, and he took advantage of her vulnerability.

Byrd met with Smith alone behind a closed door the night he first called on her. He then kept the appraiser, who did not know that Smith still owned the home, away from Smith when the appraiser entered her home to conduct the inspection. In telling Begab to avoid her bedroom during the appraisal, he referred to her as a person who "might be ill." When Smith signed the documents in front of an unqualified notary and her friend on April 9, 2000, there was no explanation to Smith in front of any witness about the nature and consequences of what she was signing. Nor is there any evidence that Smith read what she signed. During the second notarization conducted by telephone on April 19, 2000, there again was no explanation given to Smith about the nature and consequences of the documents she signed. The only

question the second notary asked via telephone was whether the signature on the document being notarized was hers.

Byrd plainly knew that Smith was suffering from both physical and mental infirmities. Byrd himself admits that he visited Smith's home several times in January 2000. (See P Ex. 52, Byrd's Answer to Interrogatory 15 as addressed by note 51, supra.) He personally saw her condition. Knowing that her condition would make it difficult for her to protect herself, Byrd proceeded to buy her house with a sales contract containing an unconscionable sales price.

This was not the only time Byrd inserted an unconscionable price into a contract to buy the home of a frail elderly person. In Cole v. Herbert (Civ. Action No. 98-9252), Byrd bought a house worth \$120,000 for \$8000 by defrauding the personal representative of three elderly people who owned interests in the home. (P Ex. 96) In Crockett v. Byrd (Civ. Action No. 98-1584) Byrd purchased a home worth \$150,000 for \$56,000 from an elderly lady suffering from dementia. (P Ex. 73)

From all of the facts described above, the Court concludes by a preponderance of the evidence that Byrd made and enforced an unconscionable sales price by taking advantage of Smith's frail physical and mental condition. As a self-proclaimed foreclosure specialist, he got this

frail elderly woman to trust him with saving her home, and then he took it for himself at an unconscionable price.

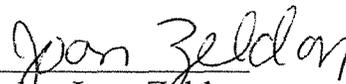
IV. CONCLUSION

The facts set forth above are replete with deceptions and outright lies by Byrd. Based on the facts and the law as applied to the facts, this Court holds Defendant Rodney Byrd liable for violation of D.C. Code §§ 28-3904 (f), (h) and (r) (2003).

Wherefore, it is this 16th day of April 2004, hereby,

ORDERED, that Rodney Byrd violated D.C. Code §§ 28-3904(f), (h) and (r) (2003); and it is further

ORDERED, that a status hearing on how to proceed with the next phase of this case (damages) shall be held in Courtroom 100 on May 6, 2004 at 2:00 p.m.



Judge Joan Zeldon
Associate Judge
(Signed in Chambers)

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