

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

LLOYD KEITH LILLY and
BARBARA LILLY, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

CIVIL ACTION NO. 03-C-778-K

BANK ONE NATIONAL ASSOCIATION
COLUMBUS f/k/a BANK ONE WEST
VIRGINIA, N.A. and THOMAS M.
HAZLETT, HOMECOMINGS FINANCIAL NETWORK,
INC., a corporation, RESIDENTIAL FUNDING
CORPORATION, a corporation, as subsidiary of
GMAC and RESIDENTIAL ASSET SECURITIES
CORP. HOME EQUITY MORTGAGE ASSET
BACKED PASS, through the CERTIFICATE
SERIES 1999 -KS2, a trust, and O. GAY ELMORE,

Defendants.

MOTION FOR PRELIMINARY/TEMPORARY INJUNCTION
RE: HOMECOMINGS FINANCIAL NETWORK, INC.

Now come the Plaintiffs, by counsel, and respectfully move that the Defendant Homecomings Financial Network, Inc. ("HFN") be temporarily enjoined from the following:

- (1) adding default charges not authorized by West Virginia law, including but not limited to attorneys fees, to homeowners accounts;
- (2) forcing customers to pay duplicate homeowners insurance; and
- (3) pursuing foreclosures until these issues are resolved.

Likelihood of Prevailing on the Merits

The following summary of Defendants' illegal practices demonstrates the entitlement to relief:

Adding of illegal charges. HFN adds impermissible fees, such as attorneys fees and other default charges, to borrower's accounts. These charges are illegal under West Virginia law See W. Va. Code § 46A-2-115. Expressly prohibited are collection costs and attorneys fees. See W. Va. Code §§ 46A-2-127(g), -128(c).

Charges for duplicate homeowners insurance. Even when homeowners have their own homeowners insurance, HFN force-places on homeowners duplicate insurance on the property, out of which it generates a significant profit at unnecessary expense to the borrower. When the borrower protests and reports that he or she already carries his or her own homeowners insurance, HFN refuses to cancel their forced-placed insurance.

Threatened foreclosure and more charges. Next HFN puts the foreclosure wheels in motion. The company contacts the consumer and claims that hundreds or thousands must be paid immediately or the consumer's home will be sold. Many victims pay the extortionate charges to save their homes, but the fraudulent pattern simply begins again in the next payment cycle. During the period of the pre-foreclosure dispute, HFN illegally adds anywhere from hundreds to a couple thousand dollars to the actual amount due. HFN adds amounts never contemplated by the original loan documents and illegal under state law.

No Adequate Remedy of Law

There is no adequate remedy at law. Because West Virginia is a non-judicial foreclosure state, HFN is free to pursue foreclosure, even after conditioning reinstatement on the payment of

illegal fees and charges, without any court proceeding. Absent an injunction by this Court, HFN's illegal foreclosures and extortion from borrowers would continue without interruption. HFN has exacted illegal charges under threat of loss of home from many West Virginia borrowers and many more West Virginia borrowers who may fall victim to these illegal practices. HFN demands illegal charges and pursues foreclosure as the first remedy for any alleged payment deficiency.

Irreparable Harm

West Virginia homeowners being serviced by HFN are all subject to Defendant's illegal practices. Many lose their homes because of these extortionate practices, and others are put through the fear and agony of potential loss of home.

WHEREFORE, Plaintiffs pray that the Defendants be temporarily enjoined from assessing illegal default charges and attorney's fees to borrower's accounts and enjoined from conducting any further foreclosures in this State.

**KEITH and BARBARA LILLY,
individually and on behalf of
all others similarly situated,
By Counsel.**

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