

JUDGE SCHEINDLIN

05 CV 7892

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
AMERICAN HOME MORTGAGE CORP. d/b/a  
American Brokers Conduit, individually and as  
successor in interest to First Home Mortgage  
Corporation,

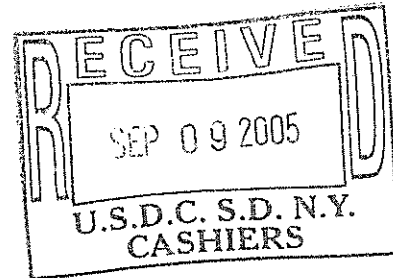
Plaintiff,

- against -

ALLEGIANCE MORTGAGE CORPORATION, ACT  
APPRAISAL, INC. and KAREN KERTZ,

Defendants.  
-----X

NOTICE FOR REMOVAL



Defendants, ACT Appraisal, Inc. ("ACT Appraisal") and Karen Kertz ("Kertz")  
(collectively, "defendants"), through their attorneys, Landman Corsi Ballaine & Ford P.C.,  
respectfully state upon information and belief:

1. On August 10, 2005, plaintiff filed a Summons and Complaint in this action  
which is currently pending in the Supreme Court of the State of New York, New York County.  
A copy of the Summons and Complaint is annexed hereto as Exhibit A. The Summons and  
Complaint constitute all of the prior pleadings and/or orders served upon defendants to date.

2. The Complaint alleges that plaintiff is a domestic corporation. Upon information  
and belief, plaintiff is a corporation incorporated under the laws of the State of New York and its  
principal place of business is located in Melville, New York.

3. The Complaint alleges that ACT Appraisal is a foreign corporation. ACT Appraisal is a corporation incorporated under the laws of the State of Illinois and its principal place of business is located at 5N447 West Lakeview Circle, St. Charles, Illinois.

4. The Complaint alleges that Kertz is an individual residing in Illinois. Kertz resides at 300 Thames Parkway, Park Ridge, Illinois.

5. The Complaint alleges that defendant Allegiance Mortgage Corporation (“Allegiance”) is a foreign corporation. Upon information and belief, Allegiance is a corporation incorporated under the laws of the State of Illinois and its principal place of business is located at 300 North Mannheim Road, Hillside, Illinois.

6. According to the Complaint, on or about November 20, 2003 plaintiff funded a mortgage loan submitted by Allegiance based upon an appraisal allegedly prepared by defendants. Plaintiff alleges that defendants intentionally, knowingly and/or negligently misrepresented the true market value of the mortgaged property by preparing a fraudulent appraisal in the amount of \$289,500.00. Plaintiff is seeking damages in the amount of at least \$297,802.56 as well as costs and expenses, including attorneys’ fees.

7. Based upon the foregoing, the above-described action is a civil action of which this Court has original jurisdiction under the provisions of Title 28, U.S.C. § 1332 and is one which may be removed to this Court by the defendants therein, pursuant to the provisions of Title 28, U.S.C. § 1441.

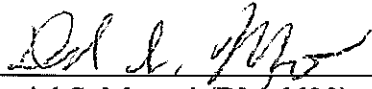
8. I have conferred with a representative of Allegiance, Vice President Anthony Menolascino, and Allegiance has consented to removing this action to federal court.

WHEREFORE, defendants ACT Appraisal, Inc. and Karen Kertz pray that the action now pending against them in the Supreme Court of the State of New York in and for the County of New York be removed therefrom to this Court.

Dated: New York, New York  
September 9, 2005

Respectfully submitted,

LANDMAN CORSI BALLAINE & FORD P.C.

By:   
Daniel S. Moretti (DM 6630)  
Samantha D. Midgal (SM 9164)  
Attorneys for Defendants  
ACT Appraisal, Inc. and Karen Kertz  
120 Broadway, 27th Floor  
New York, New York 10271-0079  
(212) 238-4800

# EXHIBIT A

SUPREME COURT: NEW YORK COUNTY

AMERICAN HOME MORTGAGE CORP. d/b/a  
American Brokers Conduit, individually and as  
successor in interest to First Home Mortgage  
Corporation,

Plaintiff,

— against —

ALLEGIANCE MORTGAGE  
CORPORATION, ACT APPRAISAL,  
INC. and KAREN KERTZ,

Defendants.

Index No.: 602 888/05

SUMMONS

To the above-named defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the verified complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York) or within (60) days after service of this summons if it is the United States of America; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the verified complaint.

Dated: New York, New York  
August 10, 2005

TONY MELDELA JUDGE

ZEICHNER ELLMAN & KRAUSE LLP

By: 

Stephen F. Ellman, Esq.

Bruce S. Goodman, Esq.

Attorneys for Plaintiff

American Home Mortgage Corp. d/b/a  
American Brokers Conduit, individually  
and as successor in interest to First Home  
Mortgage Corporation

575 Lexington Avenue  
New York, New York 10022  
(212) 223-0400

NEW YORK  
COUNTY CLERK'S OFFICE

AUG 10 2005

NOT COMPARED  
WITH COPY FILED

TO: ALLEGIANCE MORTGAGE CORPORATION  
300 N. Mannheim Road  
Hillside, Illinois 60162

ACT APPRAISAL, INC.  
5N447 W. Lakeview Circle  
Saint Charles, Illinois 60175

KAREN KERTZ  
2500 Archbury Lane #1G  
Park Ridge, Illinois 60068

SUPREME COURT: NEW YORK COUNTY

AMERICAN HOME MORTGAGE CORP. d/b/a  
American Brokers Conduit, individually and as  
successor in interest to First Home Mortgage  
Corporation,

Plaintiff,

— against —

ALLEGIANCE MORTGAGE CORPORATION,  
ACT APPRAISAL, INC. and KAREN KERTZ,

Defendants.

Index No.: 602888/05

COMPLAINT

Plaintiff American Home Mortgage Corp. d/b/a American Brokers  
Conduit, individually and as successor in interest to First Home Mortgage Corporation  
("American Home"), by its attorneys, Zeichner Ellman & Krause LLP, for its complaint  
alleges, upon information and belief, as follows:

OVERVIEW

1. This is an action to recover damages that American Home has  
suffered as a result of the purchase of a mortgage loan imbued with fraud, including a  
fraudulent appraisal.

THE PARTIES

2. American Home is a domestic corporation.

3. Defendant Allegiance Mortgage Corporation ("Allegiance") is a foreign corporation.

4. Defendant Act Appraisal, Inc. ("Act Appraisal") is a foreign corporation.

5. Defendant Karen Kertz ("Kertz") is an individual residing in Illinois.

#### THE UNDERLYING FACTS

6. Pursuant to an agreement with Allegiance, American Home agreed to fund mortgage loans originated by Allegiance.

7. On or about November 20, 2003, American Home funded a mortgage loan (the "Loan") submitted by Allegiance and secured by a mortgage on property located at 743 North Lockwood Avenue, Chicago, Illinois (the "Property").

8. American Home approved the amount of the Loan in reliance upon the accuracy of the information set forth in the borrower's application and the accuracy of an appraisal prepared by Act Appraisal dated October 18, 2003 (the "Appraisal").

9. Kertz, on behalf of Act Appraisal, appraised the property as having a market value of \$289,500.

10. On or about December 8, 2003, American Home sold the Loan to Countrywide Home Loans ("Countrywide").

11. Thereafter, the Loan went into default, and Countrywide commenced a mortgage foreclosure proceeding. The Property was sold in a foreclosure sale in April 2005, with Countrywide as the successful bidder at the sale.

12. Following the default, Countrywide discovered serious deficiencies concerning the appraised value of the Property, the occupancy of the Property, and undisclosed liabilities for which the borrower was obligated but did not disclose. As a result, Countrywide demanded that American Home repurchase the Loan.

13. American Home conducted a review, and found the appraised value of the Property as set forth in the Appraisal to be grossly inflated. The true market value of the Property at the time the Loan closed was approximately \$65,000., not \$289,500. as represented by Act Appraisal and Kertz. In fact, the property appraised by Act Appraisal and Kertz, and represented in the Appraisal provided to American Home, was not the property securing the Loan American Home funded, but was instead a completely different property.

14. Further, American Home funded the Loan on the basis that the Property would be owner-occupied. Instead, the borrower leased the Property to a tenant.

15. Finally, it appears that the borrower failed to disclose on his loan application an outstanding obligation in the amount of \$348,000., for which he was liable.

16. On or about May 19, 2005, American Home repurchased the Loan from Countrywide for the amount of \$297,802.56, and is presently marketing the Property for sale.

**FIRST CAUSE OF ACTION:  
BREACH OF THE CONTRACT (Allegiance)**

17. American Home repeats and realleges each and every allegation contained in paragraphs 1 through 16 above.

18. Pursuant to Allegiance's agreement with American Home, Allegiance is solely responsible for the accuracy, truthfulness and completeness of all information supplied to American Home in connection with any loan submitted to it by Allegiance.

19. Further, pursuant to its agreement with American Home, Allegiance represented, warranted and covenanted that in connection with each loan it submitted, the information included in the application provided to American Home by Allegiance, including the borrower's credit information, the property appraisal, and other statements of fact, would be complete, accurate, true, correct and genuine in all material respects.

20. The information Allegiance provided to American Home in connection with the Loan was not complete, accurate, true, correct or genuine in all material respects. Specifically, (i) the Appraisal of the Property was grossly inflated, and was not an appraisal of the property securing the Loan which American Home funded; (ii) the Property was not owner-occupied, but was instead leased by the borrower to a tenant; and (iii) the borrower and/or Allegiance failed to disclose to American Home a debt obligation for which the borrower was liable. Each of these facts was material.

21. As a result, Allegiance breached its obligations to American Home.

22. American Home demanded that Allegiance repurchase the Loan, and compensate American Home for its loss.

23. Allegiance ignored American Home's demand.

24. As a result, American Home has been damaged.

**SECOND CAUSE OF ACTION:  
FRAUDULENT APPRAISAL (Act Appraisal and Kertz)**

25. American Home repeats and realleges each and every allegation contained in paragraphs 1 through 16 above.

26. Act Appraisal and Kertz knowingly and intentionally misrepresented the market value of the Property, and/or appraised a property different from the one securing the Loan American Home funded.

27. Act Appraisal and Kertz knew and/or believed the Appraisal to be false.

28. Act Appraisal and Kertz intended that the Appraisal be relied upon by American Home.

29. The Appraisal concerned material facts about the Property which went to the essence of the Loan, the Property's value and its identity, but for which American Home would not have agreed to funded the Loan.

30. American Home reasonably relied upon the Appraisal to its detriment believing it to be truthful and accurate.

31. As a direct and proximate result of the fraudulent appraisal, American Home has been damaged.

**THIRD CAUSE OF ACTION:**  
**NEGLIGENT MISREPRESENTATION (Act Appraisal and Kertz)**

32. American Home repeats and realleges each and every allegation contained in paragraphs 1 through 16 above.

33. Act Appraisal and Kertz negligently appraised a property that was not the property securing the Loan.

34. It was reasonably foreseeable to Act Appraisal and Kertz that American Home would rely upon the representations set forth in the Appraisal.

35. American Home reasonably relied on the representations in the Appraisal to its detriment believing them to be truthful and accurate.

36. As a direct and proximate result of Act Appraisal's and Kertz's negligent misrepresentations, American Home has been damaged.

WHEREFORE, American Home demands judgment as follows:

- (a) on the first cause of action against defendant Allegiance for damages in the amount of at least \$297,802.56, and costs and expenses, including reasonable attorneys' fees and disbursements;
- (b) on the second cause of action against defendants Act Appraisal and Kertz, jointly and severally, for damages in the amount of at least \$297,802.56, punitive damages as permitted by law, and costs and expenses, including reasonable attorneys' fees and disbursements;

- (c) on the third cause of action against defendants Act Appraisal and Kertz, jointly and severally, for damages in the amount of at least \$297,802.56, and costs and expenses, including reasonable attorneys' fees and disbursements;
- (d) for all appropriate interest on the various causes of action, together with the costs and disbursements of this action; and
- (e) for such further and other relief as the Court deems just and proper.

Dated: New York, New York  
August 10, 2005

ZEICHNER ELLMAN & KRAUSE LLP

By: 

Stephen F. Ellman, Esq.  
Bruce S. Goodman, Esq.  
Attorneys for Plaintiff American  
Home Mortgage Corp. d/b/a  
American Brokers Conduit,  
individually and as successor in  
interest to First Home Mortgage  
Corporation  
575 Lexington Avenue  
New York, New York 10022  
(212) 223-0400

AMERICAN HOME MORTGAGE CORP.  
d/b/a American Brokers Conduit,  
Individually and as successor in interest to  
First Home Mortgage Corporation,

Plaintiff,

- against -

ALLEGIANCE MORTGAGE  
CORPORATION, ACT APPRAISAL,  
INC. and KAREN KERTZ,

Defendants.

SUMMONS AND COMPLAINT

ZEICHNER ELLMAN & KRAUSE LLP

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