

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO.

STATE OF NORTH CAROLINA ex rel.)
ROY COOPER, Attorney General,)
)
Plaintiff,)
)
vs.)
)
D. SCOTT HEINEMAN and KURT F.)
JOHNSON, INDIVIDUALLY and D/B/A THE)
DOREAN GROUP, and JOYCE EARL)
DELANCY LAMBETH, A/K/A J.E.D. LAMBETH,))
)
Defendants.)

COMPLAINT

The plaintiff complaining of defendants, alleges and says:

INTRODUCTION

1. This action is brought by the State of North Carolina by and through Roy Cooper, Attorney General, to prohibit the defendants from engaging in deceptive commercial practices in offering fraudulent mortgage elimination services to residents of North Carolina and to obtain injunctive relief, restitution, and civil penalties pursuant to N.C.G.S. §§ 75-14, 75-15.1, and 75-15.2.

PARTIES

2. Plaintiff is the State of North Carolina, acting on the relation of Roy Cooper, Attorney General, pursuant to authority granted by Chapters 75 and 114 of the General Statutes of North Carolina.

3. On information and belief, defendant D. Scott Heineman is a citizen and resident of the State of California. Together with defendant Johnson, defendant Heineman has

perpetrated a deceptive mortgage elimination scheme on mortgage lenders in this State, and, in furtherance of that scheme, has made false filings on the North Carolina public records, and has collected substantial sums of money from North Carolina consumers.

4. On information and belief, defendant Kurt F. Johnson is a citizen and resident of the State of California. Together with defendant Heineman, defendant Johnson has perpetrated a deceptive mortgage elimination scheme on mortgage lenders in this State, and, in furtherance of that scheme, has made false filings on the North Carolina public records, and has collected substantial sums of money from North Carolina consumers.

5. Defendants Heineman and Johnson have engaged in their deceptive activities in North Carolina in their own names and under the name of “The Dorean Group.”

6. Defendant Joyce Earle Delancy Lambeth, a/k/a J.E.D. Lambeth, is a resident of Guilford County, North Carolina. Defendant Lambeth has acted in concert with defendants Heineman and Johnson in deceiving mortgage lenders in North Carolina, and making false filings on the public records in North Carolina. Further, on information and belief, defendant Lambeth is marketing and promoting deceptive mortgage elimination services to North Carolina consumers.

FACTUAL ALLEGATIONS

7. Defendants Heineman and Johnson use the Internet to advertise to homeowners that the defendants have a way to “eliminate your mortgage.” Defendants advertise that “[t]here is now a PROVEN legal and moral way of eliminating your mortgage while adding \$32K to your pocket.” The way in which defendants Heineman and Johnson purport to “eliminate” homeowners’ mortgages is described on their Internet website and on the websites of their

agents. Some of these websites are found at: www.byebymortgage.net, www.mortgage-free-us.com (currently inactive), www.mortgageremover.com, and www.savetoday.cc.

8. Defendants' central premise – which is preposterous and nonsensical – is that the United States banking system is inherently fraudulent and lacks legitimacy. Based on these assertions, defendants maintain that homeowners' mortgage loans are not legally enforceable, and, therefore, that borrowers are not legally responsible for re-paying their mortgage loans.

9. More specifically, defendants' scam is based on a nonsensical theory that the bank cannot enforce the borrower's promissory note. Defendants claim that when a borrower goes to a bank for a loan and gives the bank a promissory note in exchange for the loan, the promissory note becomes an asset on the bank's books, and the bank has a corresponding liability on the promissory note. According to defendants, rather than the borrower owing money to the bank, there has actually just been an exchange – the promissory note for the loan funds. According to defendants, since the bank has had to record the borrower's promissory note as a liability on its books, *the bank actually owes the borrower money for the promissory note*. Defendants further claim that the bank never fronts any money for the loan so the bank puts nothing into the transaction. Under defendants' theory -- which defendants identify as the "vapor money" theory - no enforceable debt accrues. Defendants' theories lack any basis in law or fact. The defendants describe this theory in detail on websites, including www.byebymortgage.net, under the title "How Loans Work: The Truth About Banking." A true and accurate copy of this description is attached as Exhibit 1 and is incorporated by reference.

10. To participate in defendants' purported "mortgage elimination" program, a homeowner must send defendants Heineman and Johnson \$3,000 to begin the process. A step-

by-step guide to defendants' "mortgage elimination" process is set out on various websites, including www.byebymortgage.net. A true and accurate copy of this guide is attached as Exhibit 2 and is incorporated by reference.

11. After receiving a homeowner's application and \$3000 payment, defendants begin the "mortgage elimination" process by filing various false documents with the Register of Deeds in the county where the homeowner's property is located. Defendants' ultimate purpose in filing these baseless documents is to create the appearance on the public record that the homeowner's loan is cancelled and that there are no outstanding liens on the property. Once this is accomplished, in the next step of the scam, defendants instruct the homeowner to refinance the property at the maximum loan to value ratio possible. The proceeds of the refinanced loan are then distributed among defendants, their agents, and the homeowner, with defendants and their agents receiving seventy-five percent (75%) of the proceeds and the borrower receiving the remaining twenty-five percent (25%) of the proceeds. In the final step of the scam, defendants promise that they will eliminate this refinanced mortgage through their "mortgage elimination" process at no charge.

12. To begin the "mortgage elimination" process, defendants Heineman and Johnson set up a "Family Estate Amenable Complex Trust" in the homeowner's name. Heineman and Johnson name themselves as trustees. After the trust is established, defendants begin filing baseless documents with the Register of Deeds in the county where the property is located. The documents filed by the defendants typically include:

- (A) **Quitclaim Deed.** In this document, the homeowner deeds title of the property into the trust defendants created.

- (B) **“Notice of Intent to Correct Title.”** In this document, defendants Heineman and Johnson purport (i) to order the lender to prove the validity of the mortgage, and (ii) to create a negative option in which the lender consents to defendants Heineman and Johnson’s filing of a power of attorney purportedly authorizing defendants to act on the lender’s behalf.
- (C) **Subrogation and Security Bond.** A copy of a purported “bond” is either filed with the “Notice of Intent to Correct Title” or is sent directly to the lender. This “bond” is purportedly an offer to the lender to satisfy the homeowner’s indebtedness. On its face, defendant Kurt Johnson pledges himself as the only security for this “bond.” On information and belief, defendant Johnson has posted these “bonds” with full knowledge that he lacks sufficient assets to pay off the bonds, and the bonds are bogus.
- (D) **Specific Power of Attorney.** Defendants Heineman and Johnson sign, on behalf of the lender – without the lender’s authority – appointing themselves as attorneys-in-fact for the lender. The power of attorney purportedly extends to all transactions involving the homeowner’s property held in trust (for which defendants Heineman and Johnson serve as trustees).
- (E) **Substitution of Trustee.** Relying on the specific power of attorney previously filed, defendants Heineman and Johnson purport to substitute themselves as trustees on the lender’s deed of trust – again, without any authority from the lender.

- (F) **Full Reconveyance.** In this document, defendants Heineman and Johnson, purportedly acting as trustees under the deed of trust, purport to cancel the homeowner's deed of trust and to reconvey the property back to the homeowner.

True and accurate copies of examples of each of these documents which defendants have filed on the North Carolina public records are attached to this Complaint as Exhibits 3 through 8 and are incorporated by reference.

13. Defendants Heineman and Johnson represent to homeowners that, through the above process, the homeowner's loan will be "satisfied" within forty-five to sixty days after the homeowner's application, and that the entire process from the initial application to the elimination of the refinance is supposed to take about five to seven months. Defendants Heineman and Johnson falsely promise, "The end result is that the client gets free and clear title to the home and a good amount of cash in hand."

14. Defendants Heineman and Johnson have contracted with at least twenty-five North Carolina homeowners to perform "mortgage elimination" services. Pursuant to these agreements, defendants Heineman and Johnson have filed one or more of the above documents with North Carolina Registers of Deeds, in an attempt to deceptively "eliminate" these homeowners' mortgages.

15. Defendant Lambeth is promoting and marketing deceptive "mortgage elimination" and other debt elimination services to North Carolina consumers through his Internet website at www.savetoday.cc. On his website, defendant Lambeth touts the same bogus mortgage elimination theories espoused by defendants Heineman and Johnson, and he urges consumers to contact him to learn more about how to eliminate their mortgages. A true and

accurate copy of information provided on defendant Lambeth's website is attached to this Complaint as Exhibit 9 and is incorporated by reference.

16. Defendant Lambeth has utilized the services of defendants Heineman and Johnson to deceive his mortgage lenders by filing some or all of the false documents, described in paragraph 12 above, on the public records of Rockingham and Guilford Counties. More specifically, defendant Lambeth, in an effort to eliminate his mortgage loan, contracted with defendants Heineman and Johnson for their mortgage elimination services. When defendant Lambeth refused to make mortgage payments on a property he owned in Rockingham County, his mortgage lender FNB Southeast commenced a foreclosure action. (*FNB Southeast v. Lambeth*, No. 04 CVS 1375, Rockingham Cty. Sup. Ct.)

17. In an effort to thwart the foreclosure, defendants Lambeth, Heineman and Johnson filed baseless counterclaims asserting the "vapor money" theory to support their contentions that the banking system is inherently fraudulent, and, therefore, no loan existed and defendant Lambeth was not obligated to repay his lender. In an order issued on March 1, 2005, imposing Rule 11 sanctions on the defendants, Rockingham County Superior Court Judge Melzer A. Morgan, Jr. found that the counterclaims were "not well-grounded in fact," "not warranted by existing law," and "asserted by defendants for an improper purpose – to wit, for the purpose of harassing the plaintiff [lender FNB Southeast] specifically and the mortgage banking industry in general." A copy of Judge Morgan's order is attached to this Complaint as Exhibit 10 and is incorporated by reference.

18. In separate filings, defendant Lambeth, in collaboration with defendants Heineman and Johnson, utilized defendants' "mortgage elimination" process in connection with a property defendant Lambeth owned in Guilford County. Relying on these false filings, a

second lender mistakenly believed that defendant Lambeth's deed of trust had been cancelled and, therefore, extended defendant Lambeth another loan on the property.

19. Defendants Heineman and Johnson have filed at least fifteen complaints in the United States District Court for the Northern District of California. In these complaints, defendants Heineman and Johnson, as trustees for homeowners, filed suits alleging that no enforceable debts accrued from the lenders. On January 19, 2005, U.S. District Court Judge William Alsup issued an order in which he explains defendants' scam and concludes defendants' theories have no basis in law and have already been rejected by other courts. (*The Frances Kenny Family Trust v. World Savings Bank FSB et al*, No. C 04-03724, N.D. Cal.). The judge, noting the "serious and disturbing nature" of the matter, and the possibility that defendants committed mail and wire fraud, ordered the Clerk to send a copy of the order to the United States Attorney in the Northern District of California. A true and accurate copy of Judge Alsup's order is attached to this Complaint as Exhibit 11 and is incorporated by reference.

20. Defendants' actions are having a detrimental effect on the public records of North Carolina. By filing the bogus documents purporting to name themselves as substitute trustee on the deeds of trust and then canceling the deeds of trust, defendants have distorted the chain of title to mislead anyone searching the title, including a lending institution which might be considering extending credit to the consumer during the refinancing portion of the scheme or another consumer who might want to purchase the home.

CLAIM FOR RELIEF

21. Plaintiff realleges and incorporates herein the allegations in paragraphs 1 through 20.

22. While conducting their business, defendants have engaged in a continuing pattern of unfair and deceptive business practices through:

- (a) advertising that defendants can help consumers eliminate their mortgages when such advertisements are misleading, false, and deceptive because defendants' scheme will not "eliminate" a mortgage;
- (b) claiming to act as the attorney-in-fact for a lending institution and filing false documents on the public records in counties in North Carolina when defendants do not have permission of the lending institution to act as the institution's attorney-in-fact or to file documents purporting to cancel a borrower's deed of trust with the lending institution;
- (c) distorting the chain of title in real estate transactions by filing documents attempting to cancel valid deeds of trust when defendants have no authority to file such cancellations;
- (d) instructing consumers that their deeds of trust have been cancelled through the filing of the document "Full Reconveyance" on the public records, when defendants do not have the lender's authority to cancel the deed of trust, and the underlying debt has not been satisfied;

- (e) collecting money from North Carolina consumers for the performance of bogus mortgage elimination services that will not result in the elimination of homeowners' mortgages as advertised;
- (f) by encouraging homeowners not to pay their mortgages, placing North Carolina homeowners in the position of losing their properties to foreclosure; and
- (g) causing homeowners to incur additional, substantial debt on their properties by urging homeowners to refinance their properties.

23. Defendants' activities of advertising and offering mortgage elimination services to North Carolina residents are in and affecting commerce in North Carolina.

24. All contracts entered into between defendants and consumers and all money received by defendants from consumers were obtained as a direct result of the defendants' deceptive practices.

25. Pursuant to N.C.G.S. § 75-14, the Attorney General has the right to seek injunctive relief to restrain defendants' violations of N.C.G.S. § 75-1.1.

26. Pursuant to N.C.G.S. § 75-15.1, the Attorney General has the right to seek and obtain cancellation of all contracts and the restoration of all moneys obtained by defendants as a result of defendants' violation of N.C.G.S. § 75-1.1.

27. Pursuant to N.C.G.S. § 75-15.2, the Attorney General has the right to seek civil penalties for knowing violations of North Carolina law.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays the Court for the following relief:

1. That the Court issue temporary, preliminary, and permanent injunctions restraining defendants, their agents, employees, and persons acting in concert with them from:
 - (a) advertising mortgage elimination services to residents of North Carolina;
 - (b) soliciting or receiving money from any residents of North Carolina for mortgage elimination services;
 - (c) filing any documents on the public records in any county in North Carolina, including documents entitled “Notice of Intent to Correct Title,” “Substitution of Trustee,” “Specific Power of Attorney,” “Full Reconveyance” or any other document being used in a scheme to have a deed of trust satisfied with less than full payment;
 - (d) filing any documents on the public records in any county in North Carolina where defendants, their agents, employees, and persons acting in concert with them purport to sign the documents as attorney-in-fact or agent for any lending institution unless defendants, their agents, employees, and persons acting in concert with them can produce an affidavit signed by an authorized agent employed by the lending institution giving permission for defendants, their agents, employees, and persons acting in concert with them to make a filing on behalf of the lending institution; and
 - (e) filing any document on the public records in any county in North Carolina which creates a “negative option” through which a lender purports to lose rights and/or

appoint defendants, their agents, employees, and persons acting in concert with them as attorney-in-fact for the lender.

2. That the Court declare all contracts entered into by defendants for the performance of mortgage elimination services to be void and order all amounts consumers have paid pursuant to such contracts to be refunded to consumers;

3. That the Court declare void all documents previously filed on the North Carolina public records by defendants Heineman and/or Johnson for the purpose of eliminating or cancelling any homeowner's mortgage and/or furthering such purpose;

4. That the Court award civil penalties to the State pursuant to N.C.G.S. § 75-15.2.

5. That costs and reasonable attorney's fees be awarded the Attorney General pursuant to N.C.G.S. § 75-16.1; and

6. For such other relief as may be just and proper.

Respectfully submitted, this the ____ day of March, 2005.

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STATE OF NORTH CAROLINA

COUNTY OF WAKE

VERIFICATION

Jean Ann Wolhar, being first duly sworn, deposes and says:

That I am Consumer Protection Specialist employed by the North Carolina Department of Justice and that I am authorized to make this verification; that I have read the foregoing complaint; and that upon my information and belief the matters and things alleged therein are true.

Jean Ann Wolhar

Sworn to and subscribed before me

this the _____ day of _____, 2005.

Notary Public

My Commission Expires: _____