UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v. Case No.: 8:09-cv-547-T-23TBM

HOME ASSURE, et al.,

Defendants.
_____/

STIPULATED PERMANENT INJUNCTION AND ORDER FOR OTHER EQUITABLE RELIEF AGAINST DEFENDANT MICHAEL GRIECO

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), commenced this action on March 24, 2009 by filing its Complaint for injunctive and other equitable relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), charging that Defendants Home Assure, LLC, B Home Associates, LLC, d/b/a Expert Foreclosure, Michael Grieco, Michael Trimarco, Nicolas Molina, and Brian Blanchard engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

Plaintiff FTC and Defendant Michael Grieco ("Grieco") have agreed to the entry by this Court of this Stipulated Final Judgment and Order for Permanent Injunction ("Order") to resolve all matters of dispute between them in this action.

By stipulating to the entry of this Order, Defendant Grieco does not admit any liability as alleged in the Plaintiff FTC's Complaint. Defendant Grieco admits only the jurisdictional facts alleged in the Plaintiff FTC's Complaint.

NOW, THEREFORE, Plaintiff FTC and Defendant Grieco having requested the Court to enter this Order (Doc. 139),

The motion (Doc. 139) is **GRANTED** and **IT IS HEREBY ORDERED** as follows:

FINDINGS

1. This action by the Commission is instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Pursuant to this statute, the Commission has the authority to seek the relief contained herein.

2. This Court has jurisdiction over the subject matter and the parties.

3. Venue in the United States District Court for the Middle District of Florida is proper as to all parties.

4. The Complaint states a claim upon which relief may be granted under Sections 5(a) and 13(b) of the FTC Act, 15 U.S.C. §§ 45(a) and 53(b).

5. The activities of the Defendants are or were in or affecting commerce, as defined by Section 4 of the FTC Act, 15 U.S.C. § 44.

6. Defendant Grieco has waived any and all rights that may arise under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996).

7. This Order is in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law.

8. Plaintiff and Defendant Grieco waive all rights to seek appellate review or otherwise challenge or contest the validity of this Order. Defendant Grieco further

waives and releases any claim he may have against the Commission, its employees, agents, and representatives.

9. Entry of this Order is in the public interest.

DEFINITIONS

For purposes of this Order , the following definitions shall apply:

1. **"Asset" or "assets"** means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattels, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located, and shall include both existing assets and assets acquired after the date of entry of this Order.

2. **"Assisting others"** means knowingly providing any of the following goods or services to another business venture: (A) performing customer service functions, including, but not limited to, receiving or responding to consumer complaints; (B) formulating or providing, or arranging for the formulation or provision of, any marketing material; (C) providing names of, or assisting in the generation of, potential customers; (D) hiring, recruiting, or training personnel; (E) advising or acting as a consultant to others on the commencement or management of a business venture; or (F) performing marketing services of any kind.

3. "**Individual Defendants**" means Brian Blanchard, Michael Grieco, Michael Trimarco, and Nicolas Molina.

4. **"Corporate Defendants"** means the Defendants Home Assure, LLC, and B Home Associates, LLC, doing business as Expert Foreclosure, and their successors and assigns.

5. **"Defendants"** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

6. **"Receivership Defendants"** means the Corporate Defendants and any entity or name through which they do business.

7. **"Temporary Receiver"** means Robb Evans and Associates, LLC, 11450 Sheldon Street, Sun Valley, CA 91352-1121, as Temporary Receiver for the Receivership Defendants, with the full powers of an equity receiver over the Receivership Defendants as the Court ordered in the April 16, 2009 Order.

8. **"Document"** is synonymous in meaning and equal in scope to the usage of the term in Federal Rule of Civil Procedure 34(a), and includes both documents and electronically stored information, including, but not limited to, writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document within the meaning of the term "document."

9. **"Financial institution"** means any bank, savings and loan institution, credit union, financial institution, brokerage house, escrow agent, money market or mutual fund, telephone or other common carrier, storage company, trustee or any other person, partnership, corporation, or other legal entity maintaining or having control of any

records, accounts, or other assets, owned directly or indirectly, of record or beneficially, by any Defendant, including accounts or other assets which any Defendant may control by virtue of being a signatory on said accounts.

10. **"Mortgage loan modification or foreclosure relief service"** means any service, product, or program that is represented, expressly or by implication, to assist a homeowner in any manner to: (A) obtain or arrange for a modification of any term of a home loan, deed of trust, or mortgage; (B) obtain or arrange a refinancing, recapitalization, or reinstatement of a home loan, deed of trust, or mortgage; (C) obtain or arrange a pre-foreclosure sale, short sale, or deed-in-lieu of foreclosure; (D) stop, prevent, or postpone any home mortgage or deed of trust foreclosure sale; (E) obtain any forbearance from any beneficiary or mortgagee; (F) obtain a loan or advance of funds that is connected to the consumer's home ownership; (G) avoid or ameliorate the impairment of the owner's credit standing, credit rating, or credit profile that is connected to the consumer's home ownership; (H) save the owner's residence from foreclosure; (I) exercise any statutory right of reinstatement; (J) obtain any extension of the period within which the owner may reinstate his or her obligation; (K) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a deed of trust or mortgage on a residence in foreclosure or contained in that deed of trust or mortgage; (L) assist the owner in obtaining from the beneficiary, mortgagee, trustee under a power of sale, or counsel for the beneficiary, mortgagee, or trustee, the remaining proceeds from the foreclosure sale of the owner's residence.

11. **"Material"** means likely to affect a person's choice of, or conduct regarding, goods or services.

12. **"Person"** means a natural person, an organization, or other legal entity, including a corporation, partnership, sole proprietorship, limited liability company, association, cooperative, or any other group or combination acting as an entity.

13. The terms **"and"** and **"or"** shall be construed conjunctively or disjunctively as necessary, and to make the applicable phrase or sentence inclusive rather than exclusive.

ORDER

I. PROHIBITED BUSINESS ACTIVITIES

IT IS HEREBY ORDERED that Defendant Grieco and his officers, agents, employees, and corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names, are hereby permanently restrained and enjoined from:

A. Making, or assisting in the making of, expressly or by implication, any false or misleading statement or representation of material fact in connection with the advertising, marketing, promoting, offering for sale, or sale of any mortgage loan modification or foreclosure relief service, including but not limited to, any false or misleading representation:

1. that any home mortgage foreclosure can or will be stopped, postponed, or prevented;
2. that any Defendant or any other person will save any consumer's residence from foreclosure;
3. the terms of any refund or guarantee of any Defendant or any other person, including but not limited to the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
4. the likelihood that a consumer will receive a full or partial refund if a home mortgage foreclosure is not stopped, postponed, or prevented; or
5. any fact material to a consumer's decision to purchase any mortgage loan modification or foreclosure relief service; and

B. Making, or assisting in the making of, expressly or by implication, any false or misleading statement or representation of material fact in connection with the advertising, marketing, promoting, offering for sale, or sale of any good or service, including but not limited to, any false or misleading representation about the performance; efficacy; nature; cost; conditions or restrictions on purchase, use, or return; or any other material aspect, feature, or characteristic of the product or service or other material fact represented in connection with the offer of such product or service.

II. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment for equitable monetary relief is hereby entered against Defendant Grieco, in the amount of $3,721,807.84 (Three Million, Seven Hundred Twenty-One Thousand, Eight Hundred Seven Dollars, and Eighty Four Cents), and the FTC is awarded a monetary judgment in this amount; *provided, however,* that this Judgment for equitable monetary relief shall be suspended until further order of this Court. The Commission's agreement to and the Court's approval of this Order, in which Defendant Grieco pays less than the full amount of consumer injury, is expressly premised upon the truthfulness, accuracy, and completeness of Defendant Grieco's sworn financial statements and related documents submitted to the Commission, namely: Defendant Grieco's individual financial statement signed and dated April 2, 2009, and Defendant Grieco's Federal Tax Returns for 2005, 2006, and 2007.

Such financial statements and related documents contain material information upon which the Commission relied in negotiating and agreeing to this Order.

B. If, upon motion by the Commission, the Court finds that Defendant Grieco has failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial statements and related documents identified above, then the Court shall lift the suspension of the judgment. Defendant Grieco shall owe the full judgment amount, which the parties stipulate only for purpose of this Section titled "Monetary Judgment" is the consumer

injury caused by the actions alleged in the Complaint, minus any payments previously made pursuant to this Section.

C. In the event of any default on any obligation to make payment under this Section, interest, computed pursuant to 28 U.S.C. § 1961(a), shall accrue from the date of default to the date of payment, and shall immediately become due and payable;

D. Any funds paid pursuant to this Section shall be deposited into a fund administered by the Commission or its agent to be used for equitable relief, including, but not limited to, restitution and any attendant expenses for the administration of such equitable relief. If the Commission determines, in its sole discretion, that direct redress of consumer injury is wholly or partially impracticable or funds remain after restitution is completed, the Commission may apply any remaining funds for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the Complaint. Any funds not used for such equitable relief shall be deposited to the United States Treasury as disgorgement. Defendant Grieco shall have no right to challenge the Commission's choice of remedies under this Subsection;

E. Defendant Grieco relinquishes all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendant Grieco shall make no claim to or demand for the return of funds, directly or indirectly, through counsel or otherwise;

F. Unless already provided, the Defendant Grieco shall also furnish to the Commission, in accordance with 31 U.S.C. § 7701, his taxpayer identification number (social security number, social insurance number, employer identification number, or

Revenue Canada identification number), which shall be used for purposes of collecting and reporting on any delinquent amount arising out of Defendant Grieco's relationship with the government. Defendant Grieco also agrees, if he has not done so already, to provide Plaintiff and the Commission with clear, legible and full-size photocopies of all valid driver's licenses which he possesses, which will be used solely for collection, reporting, and compliance purposes; and

G. Proceedings instituted under this Section are in addition to, and not in lieu of, any other civil or criminal remedies that may be provided by law, including any other proceedings the Commission may initiate to enforce this Order.

III. LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze against any assets of Defendant Grieco pursuant to Section II of the Preliminary Injunction Order entered by this Court on May 1, 2009, shall be dissolved upon entry of this Order.

IV. ORDER PROVISION REGARDING CUSTOMER INFORMATION

IT IS FURTHER ORDERED that Defendant Grieco and his officers, agents, employees, and corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division or other device, including, but not limited to, fictitious business names, are permanently restrained and enjoined from:

A. Disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other

identifying information, or any data that enables access to a customer's account (including a credit card, bank account, mortgage account, or other financial account), of any person which any Defendant obtained prior to entry of this Order in connection with the Defendants' mortgage loan modification or foreclosure relief service; and

B. Failing to dispose of such customer information in all forms in their possession, custody, or control within 30 days after either entry of a stipulated final order against the last remaining Defendant or receipt of written direction from a representative of the Commission. Disposal shall be by means that protect against unauthorized access to the customer information, such as by burning, pulverizing, or shredding any papers, and by erasing or destroying any electronic media, to ensure that the customer information cannot practicably be read or reconstructed.

V. COOPERATION WITH FTC COUNSEL

IT IS FURTHER ORDERED that Defendant Grieco shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the FTC's Complaint, cooperate in good faith with the FTC and appear at such places and times as the FTC shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by the FTC. If requested in writing by the FTC, Defendant Grieco shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Complaint, without the service of a subpoena.

VI. PRIOR RECEIVERSHIP POWERS

IT IS FURTHER ORDERED that, to the extent they are not inconsistent with this Order, all powers granted to the Temporary Receiver pursuant to the Order entered April 16, 2009, shall remain in full force and effect, as amended by the Court's order dated October 1, 2009.

VII. COOPERATION WITH TEMPORARY RECEIVER

IT IS FURTHER ORDERED that, so long as the Receivership remains in effect, Defendants shall cooperate fully with the Temporary Receiver in: (a) pursuing any and all claims by the Receivership against third parties; (b) assisting the Temporary Receiver in defending any and all actions or claims brought against the Receivership by third parties; and (c) executing any documents necessary to transfer assets or ownership interests to the Temporary Receiver pursuant to the terms of this Order.

VIII. BANKRUPTCY PROVISIONS FOR MONETARY RELIEF SECTION OF ORDER

A. Defendant Grieco relinquishes all dominion, control, and title to any funds paid to the fullest extent permitted by law. Defendant Grieco shall make no claim to or demand for return of such funds, directly or indirectly, through counsel or otherwise.

B. Defendant Grieco agrees that the facts as alleged in the Complaint filed in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the Commission to enforce its rights to any payment or money judgment pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendant Grieco further stipulates and agrees that the facts alleged in the Complaint establish all elements

necessary to sustain an action pursuant to, and that this Order shall have collateral estoppel effect for purposes of Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A).

IX. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of (i) monitoring and investigating compliance with any provision of this Order, and (ii) investigating the accuracy of Defendant Grieco's financial statements upon which the Commission's agreement to this Order is expressly premised:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendant Grieco shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in Defendant Grieco's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
2. having its representatives pose as consumers and suppliers to Defendant Grieco, his employees, or any other entity managed or

controlled in whole or in part by Defendant Grieco, without the necessity of identification or prior notice; and

C. Defendant Grieco shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Order. The person interviewed may have counsel present.

Provided however, that nothing in this Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

X. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Order may be monitored:

A. For a period of five (5) years from the date of entry of this Order:

1. Defendant Grieco shall notify the Commission of the following:

   a. Any changes in his residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

   b. Any changes in his employment status (including self-employment), and any change in his ownership in any business entity within ten (10) days of the date of such change. Such notice shall include the name and address of each business that Defendant Grieco is

affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of Defendant Grieco's duties and responsibilities in connection with the business or employment; and

c. Any changes in Defendant Grieco's name or use of any aliases or fictitious names within ten (10) days of the date of such change;

2. Defendant Grieco shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that Defendant Grieco directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Order, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which Defendant Grieco learns less than thirty (30) days prior to the date such action is to take place, Defendant Grieco shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Order and annually thereafter for a period of five (5) years, Defendant Grieco shall provide a written report to the FTC, which is true and accurate and sworn to under penalty of

perjury, setting forth in detail the manner and form in which he has complied and is complying with this Order. This report shall include, but not be limited to, Defendant Grieco's:

1. then-current residence address, mailing addresses, and telephone numbers;
2. then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that Defendant Grieco is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of Defendant Grieco's duties and responsibilities in connection with the business or employment;
3. Any other changes required to be reported under Subsection A of this Section; and
4. A copy of each acknowledgment of receipt of this Order, obtained pursuant to the Section titled "Distribution of Order;"

C. Defendant Grieco shall notify the Commission of the filing of a bankruptcy petition by him within fifteen (15) days of filing.

D. For the purposes of this Order, Defendant Grieco shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Order to the Commission, to the following address:

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room NJ-2122
Washington, D.C. 20580
RE: FTC v. Home Assure, LLC, et al. 8:09-cv-547-T23 TBM (M.D. Fla.)

Provided that, in lieu of overnight courier, Defendant Grieco may send such reports or notifications by first-class mail, but only if Defendant Grieco contemporaneously sends an electronic version of such report or notification to the Commission at: DEBrief@ftc.gov.

E. For purposes of the compliance reporting and monitoring required by this Order, the Commission is authorized to communicate directly with Defendant Grieco.

Provided however, nothing in this provision shall limit the Commission's authority to pose as a consumer or supplier pursuant to Subsection B.2 of the Section titled "Compliance Monitoring."

XI. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Order, in connection with any business where Defendant Grieco is the majority owner or otherwise controls the business, Defendant Grieco and his agents, employees, officers, corporations, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, in connection with the advertising, marketing, promoting, offering for sale, or sale of mortgage loan modification or foreclosure relief services, are hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly or indirectly, such as through a third party,) and any responses to those complaints or requests;

E. Copies of all sales scripts, training materials, advertisements, or other marketing materials, including websites; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Order, including but not limited to, copies of acknowledgments of receipt of this Order required by the Sections titled "Distribution of Order" and "Acknowledgment of Receipt of Order" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

XII. DISTRIBUTION OF ORDER

IT IS FURTHER ORDERED that, for a period of five (5) years from the date of entry of this Order, Defendant Grieco shall deliver copies of the Order as directed below:

A. Defendant Grieco as control person: For any business that Defendant Grieco controls, directly or indirectly, or in which such Defendant has a majority ownership interest, Defendant Grieco must deliver a copy of this Order to: (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Order upon Defendant Grieco. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

B. Defendant Grieco as employee or non-control person: For any business where Defendant Grieco is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Order, Defendant Grieco must deliver a copy of this Order to all principals and managers of such business before engaging in such conduct.

C. Defendant Grieco must secure a signed and dated statement acknowledging receipt of the Order, within thirty (30) days of delivery, from all persons receiving a copy of the Order pursuant to this Section.

XIII. ACKNOWLEDGMENT OF RECEIPT OF ORDER

IT IS FURTHER ORDERED that Defendant Grieco, within five (5) business days of receipt of this Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Order.

XIV. ENTRY OF ORDER

IT IS FURTHER ORDERED that there is no just reason for delay, and the Clerk of Court is hereby directed to enter this Order immediately.

XV. COMPLETE SETTLEMENT

The parties hereby consent to entry of this Order, which shall constitute a final judgment and order in this matter. The parties further stipulate and agree that the entry of this Order shall constitute a full, complete, and final settlement of this action.

XVI. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

STIPULATED AND AGREED TO BY:
PLAINTIFF:

WILLARD K. TOM
General Counsel
LEONARD L. GORDON
Director, Northeast Region

FEDERAL TRADE COMMISSION:

_____ DATED:_____

ANN F. WEINTRAUB
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DEFENDANT:

_____ DATED:_____

Michael Grieco, Individually

ORDERED in Tampa, Florida, on November 24, 2009.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE