

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

CASE NO: 8:08-cv-388-T-23EAJ

MORTGAGE FORECLOSURE SOLUTIONS,
INC., DEBRA BEHRENS, and MICHAEL SIANI,

Defendants.

STIPULATED FINAL JUDGMENT AND PERMANENT INJUNCTION

The Federal Trade Commission ("FTC" or "Commission") sues the defendants

Mortgage Foreclosure Solutions, Inc., Debra

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FINDINGS

1. This court has jurisdiction of the subject matter of this case and the parties hereto pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 15 U.S.C. §§ 45(a) and 53(b).
2. Venue in the Middle District of Florida is proper as to all parties.
3. The activities of defendants Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani are in or affecti

Order”) freely and without coercion and acknowledge that they have read, understand, and are prepared to abide by the provisions of this Final Order.

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

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

DEFINITIONS

For the purpose of this Final Order,

sound recordings, images, and any other data or data compilations stored in any medium from which information can be obtained and translated, if necessary, into reasonably usable form and is synonymous in meaning and equal in scope to the usage of the term in the Federal Rules of Civil Procedure 34(a). A draft or non-identical copy of a document is a separate document within the meaning of the term.

6. "Mortgage foreclosure rescue service" means any service, product, or program wherein the offeror, expressly or by implication, claims that it can assist a homeowner in any manner to (A) stop, prevent, or postpone any home mortgage foreclosure sale, (B) obtain any forbearance from any beneficiary or mortgagee, (C) exercise any statutory right of reinstatement, (D) obtain any extension of the period within which the owner may reinstate his or her obligation, (E) 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, (F) obtain a loan or advance of funds, (G) avoid or repair any credit impairment resulting from mortgage default or foreclosure sale, (H) save the owner's residence from foreclosure, or (I) assist the owner in obtaining any remaining proceeds from the foreclosure sale of the owner's residence. The foregoing shall include any manner of claimed assistance, including, but not limited to, debt, budget, or financial counseling; receiving money for the purpose of distributing it to creditors; contacting creditors on behalf of the homeowner; arranging or attempting to arrange for an extension of the period within which the owner of property sold at foreclosure may cure his or her default; arranging or attempting to arrange for any delay or postponement of

the time of a foreclosure sale; and giving advice of any kind with respect to filing for bankruptcy.

7. The term “and” also means “or,” and the term “or” also means “and.”

ORDER

I. PROHIBITED BUSINESS ACTIVITIES

IT IS ORDERED that defendants Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani, and their successors, assigns, agents, employees, officers, servants, and all other persons or entities in active concert or participation with them who receive actual notice of this Final Order by personal service, facsimile, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are hereby permanently restrained and enent

- (4) the degree of past success of any efforts to stop, postpone, or prevent home mortgage foreclosures;
- (5) the number of satisfied customers or customer complaints;
- (6) the terms of any refund or guarantee;
- (7) the likelihood that a consumer will receive a full or partial refund if a home mortgage foreclosure is not stopped, postponed, or prevented;
- (8) any approval, endorsement, or rating by the Better Business Bureau or any other consumer advocacy or consumer protection association;
or
- (9) any fact material to a consumer's decision to purchase any mortgage foreclosure rescue service.

B. Falsely representing, or assisting others to falsely represent, expressly or by implication, any material fact in connection with the advertising, marketing, promoting, offering for sale, or sale of any other good or service.

II. PROHIBITIONS AGAINST DISTRIBUTION OF CUSTOMER INFORMATION

IT IS FURTHER ORDERED that defendants Mortgage Foreclosure Solutions, Inc., Debra Behrens, and Michael Siani, and their successors, assigns, agents, employees, officers, servants, and all other persons or entities in active concert or participation with them who receive actual notice of this Final Order by personal service, facsimile, or otherwise, whether acting directly or through any corporation, subsidiary, division or other device, are permanently restrained and enjoined from selling, renting,

leasing, transferring or otherwise disclosing the individual name, address, telephone number, email address, credit card number, social security number, bank account number or other identifying information of any person who provided any such information to defendants at any time in connection with the advertising, marketing, promoting, offering for sale, or sale of mortgage foreclosure rescue services; *provided, however,* that defendants may disclose such identifying information to any law enforcement or regulatory agency,

5061, \$5,603.33 in funds held in Suntrust Bank account ending 4056, \$353.43 in funds held in Suntrust Bank account ending 4642, and \$5.08 in funds held in Bank of America account ending in 0560, all of which were frozen pursuant to the Temporary Restraining Order (Dkt. #10) entered by the court on February 27, 2008 and the Stipulated Preliminary Injunction (Dkt. #22) entered by the court on March 7, 2008. The defendants shall pay all amounts due to the Commission in cash by electronic funds transfer to the Commission, or to such agent as the

defendants' practices alleged in the complaint. Any funds not used for this equitable

IV. RIGHT TO RE-OPEN AS TO MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. By agreeing to this Final Order, defendants reaffirm and attest to the truthfulness, accuracy, and completeness of defendants' written Financial Statements submitted by defendants to the Commission on February 28, 2008. This Court's Final Order, and the plaintiff's agreement to enter into this Final Order, is expressly premised upon the truthfulness, accuracy, and completeness of defendants' financial conditions, as represented in the Financial Statements referenced above, which contain material information upon which the Commission relied in negotiating and agreeing to the terms of this Final Order.

B. If, upon motion by plaintiff, this Court should find that one or more defendant failed to disclose any material asset, or materially misrepresented the value of any asset, or made any other material misrepresentation in or omission from the Financial Statements, the Court shall reinstate the suspended judgment against such defendant, in favor of the Commission, in the amount of \$1,178,920, which the defendants and the Commission stiy.f3n faT0.225 R1.0028 nD6edATtNeo g5 Commission jerteme

2. posing as consumers and suppliers to defendants, their employees, or any other entity managed or controlled in whole or in part by any defendant, without the necessity of identification or prior notice; and

C. Defendants each 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 Final Order. The person interviewed may have counsel present.

Provided however, that nothing in this Final 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

- b. Any changes in such defendant's employment status (including self-employment), and any change in such defendant's 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 such defendant 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 such defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any changes in such defendant's name or use of any aliases or fictitious names;
2. Defendants shall notify the Commission of any changes in structure of any corporate defendant or any business entity that any defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Final 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 Final 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 proposed change in the

business entity about which a defendant learns less than thirty (30) days prior to the date such action is to take place, such defendant 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 Final Order and annually thereafter for a period of five (5) years, defendants each 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 they have complied and are complying with this Final Order. This report shall include, but not be limited to:

1. For each individual defendant:
 - a. such defendant's then-current residence address, mailing addresses, and telephone numbers;
 - b. such defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of such defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any other changes required to be reported under Subsection A of this Section.

2. For all defendants:

- a. A copy of each acknowledgment of receipt of this Final Order, obtained pursuant to Section IX; and
- b. Any other changes required to be reported under Subsection A of this Section.

C. Each defendant shall notify the Commission of the filing of a ^{ac.} Final bankruptcy petition by such defendant within fifteen (15) days of filing.

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

Associate Director for Enforcement
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room N1c9taiT75- uoRE: FTC v. Mriegage (D

VIII. RECORD KEEPING PROVISIONS

IT IS FURTHER ORDERED that, for a period of eight (8) years from the date of entry of this Final Order, defendants and those businesses where any defendant is the majority owner or otherwise controls the business and their agents, employees, officers, corporations, and those persons in active concert or participation with them who receive actual notice of this Final Order by personal service, facsimile, or otherwise, in connection with the advertising, marketing, promoting, offering for sale, or sale of mortgage foreclosure rescue services, are hereby restrained and enjoined from failing to create and/or 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, indirectly, or through any 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 weblogs; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Final Order, including but not limited to, copies of acknowledgments of receipt of this Final Order required by Sections IX and X and all reports submitted to the FTC pursuant to Section VII.

IX. DISTRIBUTION OF ORDER BY DEFENDANTS

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

A. Corporate Defendant: Each corporate defendant must deliver a copy of this Final Order to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Final Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of Section VII. For current personnel, delivery shall be within five (5) days of service of this Final Order upon such defendant. 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 Section VII, delivery shall be at least ten (10) days prior to the change in structure.

B. Individual Defendant as Control Person: For any business that an individual defendant controls, directly or indirectly, or in which such defendant has a majority ownership interest, such defendant must deliver a copy of this Final 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 Final Order; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of Section VII. For current personnel, delivery shall be within five (5) days of service of this Final Order upon such defendant. 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 Section VII, delivery shall be at least ten (10) days prior to the change in structure.

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

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

X. ACKNOWLEDGMENT OF RECEIPT OF ORDER BY DEFENDANT

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

XI. 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 Final Order. The Clerk is directed to close the case.

ORDERED in Tampa, Florida, on January 5, 2009.



STEVEN D. MEIER
U.S. MAGISTRATE JUDGE UNITED STATES DISTRICT COURT

cc: U.S. Magistrate Judge