

RODDY KLEIN & RYAN

Attorneys at Law

727 Atlantic Avenue, 2nd Floor
Boston, Massachusetts 02111

Gary Klein

Tel. (617) 357-5500 ext. 15
Fax (617) 357-5030
klein@roddykleinryan.com

February 24, 2010

*By Certified Mail, No. 7007 2560 0002 9615 2653
Return Receipt Requested*

John Stumpf, Chairman and CEO
Wells Fargo Bank, N.A.
d/b/a Wells Fargo Home Mortgage
d/b/a America's Servicing Company
420 Montgomery Street
San Francisco, CA 94104

Re: Demand for Relief on behalf of Wilfredo & Odalid Bosque, Germano DePina,
and a class of similarly situated Massachusetts homeowners

Dear Mr. Stumpf:

Please consider this a demand for relief pursuant to Massachusetts General Laws, Chapter 93A, made on behalf of our clients, Wilfredo & Odalid Bosque and Germano DePina and a class of similarly situated individuals (collectively referred to as "complainants"). The demand is made to Wells Fargo Bank, N.A. d/b/a Wells Fargo Home Mortgage d/b/a America's Servicing Company (hereinafter "ASC").

The complainants have been injured by unfair and deceptive practices that violate G.L. c. 93A § 2 and other applicable laws and legal duties. The following summary provides ASC with an opportunity to settle this matter.

The violations of law of the respondents with respect to the complainants include, but are not limited to, the following descriptions and summaries.

Summary of Facts

1. Odalid and Wilfredo Bosque are a married couple residing at 3 Elizabeth Circle, Leominster, MA 01453.
2. Germano DePina is an individual residing at 5 Tupelo Street, Roxbury, MA 02119.

3. Claimants believe that there are hundreds, if not thousands, of Massachusetts residents who are similarly situated to Mr. and Mrs. Bosque and Mr. DePina, i.e. homeowners who have entered into Trial Period Plan (“TPP”) Agreements with ASC under the U.S. Treasury Department’s Home Affordable Modification Program (“HAMP”), complied with all of the requirements of such Agreements, including but not limited to the making of three monthly Trial Period payments and the provision of documentation, yet have not been given a permanent modification in accord with the TPP Agreement. The identities of such Massachusetts residents are known only to ASC.

4. On April 13, 2009, Michael J. Heid of Wells Fargo Home Mortgage executed a “Servicer Participation Agreement” (“SPA”) with the U.S. Treasury Department, thereby making ASC a participating servicer in HAMP. A copy of this SPA is attached hereto as Exhibit 1.

5. The SPA executed by Mr. Heid incorporates all “guidelines,” “procedures,” and “supplemental documentation, instructions, bulletins, frequently asked questions, letters, directives, or other communications” issued by the Treasury, Fannie Mae or Freddie Mac in connection with the duties of Participating Servicers (together with the HAMP “Supplemental Directives (“SD”)), these documents are referred to herein as “Program Documentation”).

6. The SPA mandates that a Participating Servicer “shall perform” the activities described in the Program Documentation “for all mortgage loans it services.”

7. The Program Documentation requires Participating Servicers to evaluate *all loans*, which are 60 or more days delinquent for HAMP modifications. (SD 09-01 p. 4.) In addition, if a borrower contacts a Participating Servicer regarding a HAMP modification, the Participating Servicer must collect income and hardship information to determine if HAMP is appropriate for the borrower.

8. A HAMP Modification consists of two stages. First, a Participating Servicer is required to gather information and, if appropriate, offer the homeowner a Trial Period Plan (“TPP”).¹ The TPP consists of a three-month period in which the homeowner makes mortgage payments based on a formula that uses the initial financial information provided.

9. ASC offers TPPs to eligible homeowners by way of a TPP Agreement, which describes the homeowner’s duties and obligations under the plan and promises a permanent HAMP modification for those homeowners that execute the agreement and fulfill the documentation and payment requirements.

¹ The eligibility criteria for HAMP, as well as the formula used to calculate monthly mortgage payments under the modification, are explained in detail in SD 09-01. Generally speaking, the goal of a HAMP modification is for owner-occupants to receive a modification of a first-lien loan by which the monthly mortgage payment is reduced to 31% of their monthly income for the next five years.

10. If the homeowner executes the TPP Agreement, complies with all documentation requirements and makes all three TPP monthly payments, the second stage of the HAMP process is triggered, in which the homeowner is offered a permanent modification.

11. ASC has routinely failed to live up to their end of the TPP Agreement and offer permanent modifications to homeowners. In January 2010, the U.S. Treasury reported that Wells Fargo had 350,169 HAMP-eligible loans in its portfolio. Of these loans, just 8,424 resulted in permanent modifications (approximately 2%) even though many more homeowners had made the payments and submitted the documentation required by the TPP Agreement.

12. By failing to live up to the TPP Agreement and convert TPPs into permanent modifications, ASC is not only leaving homeowners in limbo, wondering if their home can be saved. ASC is also preventing homeowners from pursuing other avenues of resolution, including using the money they are putting toward TPP payments to fund bankruptcy plans, relocation costs, short sales or other means of curing their default.

Wilfredo & Odalid Bosque

13. On January 17, 2006, Odalid and Wilfredo Bosque obtained a sub-prime mortgage loan for their residence in Leominster from Accredited Home Lenders, Inc. (“Accredited”).

14. Mr. and Mrs. Bosque made the regularly scheduled payments on their loan for two years. In or about December 2007, Mrs. Bosque lost her job. As a result, the monthly income of Mr. and Mrs. Bosque was severely lessened. Shortly thereafter, the Bosques were unable to continue making regular mortgage payments. Since that time, Mrs. Bosque has opened a daycare center from their home. Mr. Bosque is employed as a corrections officer.

15. Beginning in or around March 2008, the Bosques began an effort to obtain a loan modification through the servicer of their loan, ASC.

16. Over several months, Mr. and Mrs. Bosque negotiated with ASC through its legal representative, Harmon Law Offices, P.C., (“Harmon”) without success.

17. In June 2009, Mr. and Mrs. Bosque, through counsel, requested that ASC consider their loan for modification under HAMP. Over the next three months, ASC repeatedly refused to admit that it was required by its participation in HAMP to allow the Bosques to apply for a HAMP loan modification.

18. Although ASC never expressly retracted this position, Mr. and Mrs. Bosque received an offer in late August 2009 from ASC to enter into a HAMP TPP Agreement to run from October 2009 – December 2009.

19. The first sentence of this TPP Agreement stated: “If I am in compliance with this Loan Trial Period and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Loan Modification Agreement, as set forth in Section 3

[below], that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage.”

20. The Trial Period Plan also states “I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of the Plan if I qualify for the Offer or will send me written notice that I do not qualify for the offer.” Although ASC, to date, has sent neither a signed copy of the Plan nor a written rejection to the Bosques, it accepted payments from Mr. and Mrs. Bosque under the TPP as described below.

21. On September 29, 2009, Mr. and Mrs. Bosque returned two copies of the executed TPP Agreement, along with a hardship affidavit and the documents requested by ASC. A copy of this TPP Agreement is attached hereto as Exhibit 2.

22. Mr. and Mrs. Bosque timely made each of the payments required by the TPP Agreement. Mr. and Mrs. Bosque have also continued to make monthly payments in 2010. ASC accepted these payments without qualification and without notice of rejection of the TPP, thus demonstrating ASC’s approval of the TPP and/or waiver of any right it might have to review documentation submitted in connection therewith.

23. Despite their compliance in all respects with the terms of the TPP Agreement, the Bosques have not been offered a Loan Modification Agreement under the HAMP Program guidelines to date.

24. Instead, Mr. and Mrs. Bosque have continued to receive account statements indicating that payment is currently due on the entire delinquent amount and that their HAMP modification is threatened because they have not submitted their paperwork. When Mr. and Mrs. Bosque called to inquire what paperwork is missing, they were informed by agents of ASC that there is no paperwork missing. Mr. and Mrs. Bosque continue to receive other contacts from the ASC collections department.

25. Mr. and Mrs. Bosque have been living in limbo, without any assurances that their home will not be foreclosed, despite their compliance with HAMP requirements and their continued monthly payments under the TPP. They have invested their limited resources in TPP payments based on the promise that doing so would result in a permanent loan modification.

Germano DePina

26. On or about April 20, 2006, Mr. DePina refinanced his home with a sub-prime mortgage loan from Equifirst Corporation.

27. ASC now acts as servicer on Mr. DePina’s loan.

28. Beginning in April 2009, Mr. DePina began making requests to ASC to evaluate him for a HAMP modification.

29. From April 2009 through August 2009, ASC responded to Mr. DePina's requests by making repeated offers for non-HAMP permanent modifications of his loan. Mr. DePina did not accept any of these offers because he believed he was entitled to be evaluated for HAMP.

30. Finally, after Mr. DePina involved counsel, ASC sent him a TPP Agreement on August 11, 2009, indicating that he had until September 10, 2009 to execute and return the Agreement.

31. Subsequently, Mr. DePina and his counsel had numerous telephone calls and email exchanges with several different ASC agents, including Branden Townsend in the loss mitigation department at telephone number 803-396-4108.

32. During the discussion with Mr. DePina and his counsel, Mr. Townsend indicated that the monthly payment amount contained in the August 11, 2009 TPP Agreement was based on outdated income information contained in ASC's computer system. Mr. Townsend encouraged Mr. DePina and his counsel to provide updated financial documentation to ASC. Mr. DePina and his counsel did so.

33. By agreement with Mr. Townsend, the deadline for Mr. DePina to respond to the ASC TPP Agreement was extended to October 1, 2009.

34. On September 30, 2009, Mr. DePina returned his executed TPP Agreement. Mr. DePina's acceptance reflected a revised TPP payment amount based on his updated financial information and the HAMP program documentation. Included in Mr. DePina's submission, as requested by ASC, were executed copies of a Hardship Affidavit, IRS Form 4506-T, and supporting financial documentation (including, *inter alia*, paystubs, tax returns, and bank statements) as well as two copies of the executed, accepted TPP Agreement. Mr. DePina also included a check for the first TPP payment in his September 30, 2009 submission.

35. The August 11, 2009 Trial Period Plan offer states "I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of the Plan if I qualify for the Offer or will send me written notice that I do not qualify for the offer."

36. Instead of either of these actions, ASC responded to Mr. DePina's September 30, 2009 acceptance of the TPP Agreement by sending Mr. DePina a second TPP Agreement on October 9, 2009, with a lower, revised TPP payment amount.

37. After contacting ASC in response to this new TPP Agreement, Mr. DePina was instructed that he did not need to resubmit the supporting documentation, but only needed to execute and return the second TPP Agreement itself.

38. In keeping with these instructions, Mr. DePina returned the executed TPP Agreement, on October 30, 2009 with a payment. A copy of this TPP Agreement is attached hereto as Exhibit 3.

39. The second TPP Agreement executed by Mr. DePina was entitled “Home Affordable Modification Program Loan Trial Period,” the first sentence of which stated: “If I am in compliance with this Loan Trial Period and my representations in Section 1 continue to be true in all material respects, then the Lender will provide me with a Loan Modification Agreement, as set forth in Section 3 [below], that would amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage.”

40. Mr. DePina’s second Trial Period Agreement also states “I understand that after I sign and return two copies of this Plan to the Lender, the Lender will send me a signed copy of the Plan if I qualify for the Offer or will send me written notice that I do not qualify for the offer.” Although ASC, to date, has sent neither a signed copy of the Plan nor a written rejection to Mr. DePina, it continues to accept payments from Mr. DePina under the TPP as described below.

41. Mr. DePina has timely made each of the payments required by the TPP Agreements. Mr. DePina has also continued to make payments beyond the three months contemplated by the second TPP Agreement. These payments were accepted without qualification by ASC.

42. Despite his compliance in all respects with the terms of the TPP Agreements, Mr. DePina has not been offered a Loan Modification Agreement under the HAMP Program guidelines to date.

43. On January 20, 2010, Mr. DePina received a letter indicating that Mr. DePina had failed to submit some unnamed “required document.” Although the letter indicated that Mr. DePina had been unresponsive to previous attempts to gather this information, Mr. DePina was unaware of any such prior requests for documents.

44. After calling ASC to inquire about the January 20, 2010 letter, Mr. DePina was informed that ASC did not believe he had submitted an IRS Form 4506-T. To the contrary, Mr. DePina had submitted such a form with his September 30, 2009 package. Mr. DePina resubmitted the form, through counsel.

45. Mr. DePina and his family have been living in limbo, without any assurances that their home will not be foreclosed, despite their compliance with HAMP requirements and their continued monthly payments under the TPP. They have invested their limited resources in TPP payments based on the promise that doing so would result in a permanent loan modification.

Violations of Law

For the reasons described above, ASC has violated M.G.L. c. 93A § 2 by engaging in unfair, deceptive, and/or unconscionable practices with respect to its TPP Agreements with claimants. ASC cannot enter agreements that promise to provide Massachusetts homeowners with permanent loan modifications if they make three trial payments and submit appropriate documentation, and then fail to fulfill that promise once homeowners have met these conditions.

Specifically, ASC has violated M.G.L. c. 93A § 2 by intentionally breaching its TPP Agreements with consumers. Under M.G.L. c. 93A § 2(b), courts are to be guided in their interpretation of § 2(a) by the Federal Trade Commission (“FTC”) and the interpretation of the FTC Act by federal courts. There is authority under the FTC Act that widespread breach of consumer contracts, standing alone, can constitute unfair and deceptive conduct. *See Orkin Exterminating Co., Inc. v. F.T.C.*, 849 F.2d 1354, 11363-68 (11th Cir. 1988).

ASC’s unfair and deceptive conduct extends beyond merely breaching TPP Agreements, however. In addition, ASC has violated M.G.L. c. 93A § 2 with the following conduct:

- Asserting that Massachusetts consumers are not eligible to be considered for HAMP, when in fact they were;
- Deceptively encouraging Massachusetts consumers to continue making monthly payments under their TPP Agreement beyond the initial three month period;
- Requiring Massachusetts consumers to submit documentation that has already been submitted;
- Incorrectly informing Massachusetts consumers that they have failed to meet documentation requirements;
- Preventing Massachusetts consumers from using their funds to seek alternative means of saving their homes;
- Failing to cease foreclosure activities against the homes of Massachusetts consumers who have entered into TPP Agreements with ASC;
- Violating its obligation of good faith and fair dealing by continuing to collect monthly payments under the TPP Agreement without providing a permanent loan modification. *See Massachusetts Employers Ins. Exchange v. Propac-Mass, Inc.* 420 Mass. 39, 43 (1995); *Arthur D. Little Intern. Inc. v. Dooyang Corp.*, 979 F. Supp. 919, 925 (D. Mass. 1997), *judgment aff’d* 147 F. 3d 47 (1st Cir. 1998).

With these same actions, ASC has violated the applicable regulations promulgated by the Massachusetts Attorney General pursuant to M.G.L. c. 93A. As a result of these unfair and/or deceptive practices, ASC conducts unnecessary and unlawful foreclosures, causes severe physical and emotional distress to claimants seeking to save their homes. ASC knows or should know that class members rely on it to assist them with foreclosure prevention options and that by failing to deliver on express and implied promises of assistance, ASC prevents class members from pursuing other avenues of relief.

Demand for Relief

The claimants have suffered damages as a result of these violations of law including, without limitation, the loss of payments made under the TPP Agreement, and are threatened with further damages and irreparable injury, including the possible loss of their homes. Accordingly, by this correspondence, the claimants demand that ASC modify the loans to redress the unfair, deceptive and unconscionable practice by offering permanent loan modifications under the terms of HAMP and pay damages pursuant to M.G.L. c. 93A §9.

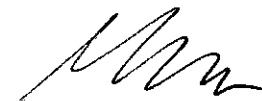
G.L. c. 93A § 9 also provides ASC with the opportunity to make a reasonable written settlement offer within thirty days of its receipt of this letter. Should litigation under c. 93A proceed, ASC may become liable for treble damages, plus attorney's fees and costs. In this regard, I direct your attention to the Supreme Judicial Court's view of the policy behind c. 93A's settlement encouraging directive:

Indeed, the conduct proscribed by the Statute *is as much failure to make a reasonable settlement offer* as it is the substantive violation of c. 93A. Multiple damages are 'the appropriate punishment' for forcing plaintiffs to litigate clearly valid claims.

International Fidelity Ins. Co. v. Wilson, 443 N.E. 2nd 1308, 1318 (1983) (emphasis added).

I look forward to your response in hopes that we may work toward a prompt and equitable settlement of this matter.

Sincerely,



Gary Klein

cc: Wilfredo & Odalid Bosque (without exhibits)
Germano DePina (without exhibits)
Stuart Rossman (without exhibits)
Charles Delbaum (without exhibits)
Arielle Cohen (without exhibits)
Michael Raabe (without exhibits)
Shennan Kavanagh (without exhibits)
Kevin Costello (without exhibits)