

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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PEOPLE OF THE STATE OF NEW YORK,  
by ELIOT SPITZER, Attorney :  
General of the State of New York, :  
 :  
Plaintiffs, : **COMPLAINT**  
 :  
-against- : Index No.  
 :  
FIRST HORIZON HOME LOAN CORP., :  
 :  
Defendant. :  
-----X

The People of the State of New York, by their attorney, Eliot Spitzer, Attorney General of the State of New York, allege upon information and belief:

**INTRODUCTION**

1. The Attorney General brings this action, pursuant to General Business Law (“GBL”) Article 29-H, § 602(2), to restrain and prevent defendant First Horizon Home Loan Corp. (“First Horizon”) from violating and continuing to violate GBL §601(8), and pursuant to GBL §§ 349(b) and 350-d, to permanently enjoin First Horizon from engaging in deceptive acts and practices and to recover restitution, statutory penalties and costs.

**PARTIES AND JURISDICTION**

2. Plaintiffs are the People of the State of New York, by their attorney, Eliot Spitzer, Attorney General of the State of New York.

3. Plaintiffs bring this action pursuant to GBL Article 29-H, § 602(2) under which the Attorney General is empowered to seek injunctive relief against any principal creditor who has engaged in unlawful debt collection practices, and pursuant to GBL §§ 349(b) and 350-d, which empower the Attorney General to seek injunctive relief, restitution and civil penalties

when any person or entity has engaged in deceptive acts or practices in the conduct of business.

4. Defendant First Horizon is a foreign corporation with its principal place of business located at 4000 Horizon Way, Irving, Texas 75063.

5. First Horizon is a full-service mortgage banking company and a wholly-owned operating subsidiary of First Tennessee Bank, National Association. ("First Tennessee"). First Tennessee is a national bank headquartered in Memphis, Tennessee.

### **FACTS**

6. In October 1974, Richard H. Hall and Marsha P. Hall purchased their residence at 132 Horizon View Drive, East Greenbush, New York 12061, with a loan in the amount of \$27,000 from Mechanics Exchange Savings Bank ("Mechanics Exchange").

7. The Halls negotiated the terms of the loan and consummated the loan transaction on October 15, 1974. The terms of the loan are as follows: the loan would be repaid over twenty-five (25) years at an interest rate of eight and one half percent (8.5%) per annum, in three hundred (300) monthly payments of two hundred and one dollars and thirty one cents (\$201.31), with the first payment due on November 15, 1974, and the final payment due on October 15, 1999.

8. As collateral for the loan, Mechanics Exchange received a first mortgage lien on the premises located at 132 Horizon View Drive, East Greenbush, New York 12061.

9. The terms of the loan agreement were memorialized in a Disclosure Statement and Mortgage Bond, drafted by Mechanics Exchange and signed by the Halls. The Mortgage and Mortgage Bond were filed with the Clerk of Rensselaer County on October 17, 1974, and were entered in Book 1112, Page 767.

10. In or around 1983, Mechanics Exchange merged with The Dime Savings Bank of

New York, FSB (“Dime”), which acquired the Halls’ Mortgage, as well as their checking accounts. Also around this time, the Halls divorced and Mr. Hall assumed the obligations under the Mortgage Bond.

11. On or about June 16, 1993, Dime transferred the Mortgage Bond to Sunbelt National Mortgage Corp (“Sunbelt”) through an Assignment. The Assignment was filed with the Clerk of Rensselaer County on July 15, 1993, and was entered in Book 2299, Page 203.

12. In or around 1995, First Horizon Home Loan Corporation merged with Sunbelt National Mortgage National Mortgage Corporation (“Sunbelt”), and acquired Mr. Hall’s mortgage in the process.

13. Around this time, Mr. Hall authorized First Horizon to debit the amount of his monthly mortgage payment (\$201.31) directly out of his checking account.

14. By November 15, 1999, Mr. Hall had fulfilled the obligations under the Mortgage Bond by making three hundred (300) timely payments of two hundred and one dollars and thirty one cents (\$201.31), for a total of sixty thousand three hundred and ninety-three dollars (\$60,393) to Mechanics Exchange and all subsequent holders of the Mortgage Bond.

15. Despite the fact that Mr. Hall had completed his obligations under the loan agreement, First Horizon continued debiting two hundred and one dollars and thirty one cents (\$201.31) from Hall’s checking account on or about the 15<sup>th</sup> of each month.

16. Mr. Hall was unaware that he was making payments in excess of those owed under the Mortgage Bond, because he assumed he had taken out a thirty year mortgage, and had not recently looked at his mortgage paperwork.

17. In May 2003, Mr. Hall received a letter from First Horizon. The letter included the following statements:

- “[w]e strive to keep you informed of significant events involving your account, such as the upcoming maturity of your mortgage loan **on 10-99**” [emphasis added];
- “Once we receive your 10/31/03 payment, your principal balance will reflect a paid-in-full status”;
- “Enclosed you will find a payoff statement on your account if you decide to pay your loan in full **prior to 10-99**” [emphasis added];
- “Should you decide to pay your account in full after this date, but still prior to 10-99, please contact our office for an updated payoff statement.” [emphasis in original]

18. The “payoff statement” enclosed with Horizon’s May 19, 2003 letter to Mr. Hall alleged that Mr. Hall owed \$12,784.81 that was due on July 1, 2003. The “payoff statement” also included the following: “ONLY CERTIFIED FUNDS WILL BE ACCEPTED. NO PERSONAL CHECKS!”

19. Mr. Hall was understandably confused by First Horizon’s letter and contacted the bank at the number contained in the letter and spoke with a First Horizon representative. He was told that a representative would review his file and get back to him within one week. Mr. Hall did not receive a response from First Horizon and called the bank several times over the next few weeks. Ultimately, Mr. Hall was able to speak with a First Horizon representative named Karen Cosby, who told him that she would look into the matter.

20. A few days later, Mr. Hall received a letter from First Horizon (incorrectly dated July 9, 2002) stating, in relevant part:

“A review of the loan and the note executed October 15th, 1974 has revealed a discrepancy in the amortization. The note indicates a principal and interest (P&I) payment amount of \$201.31. The loan, since inception, has carried a P&I amount of \$201.31; however the payment amount of should [sic] have been \$217.41, a difference of \$16.10 per month. The current principal balance is \$12,320.49. Had the loan been set up with the correct P&I amount the principal balance would have paid [sic] in full on October 15, 1999. Based on the current P&I the loan, as it stands will mature March 15, 2010.”

21. This letter was the first time that Horizon communicated with Mr. Hall about an alleged “discrepancy in the amortization” of his loan, and that Horizon was claiming that he should have paid \$16.10 more each month. The letter acknowledged that Mr. Hall would have “many questions regarding [the] issue” and advised him to call Karen Cosby, Executive Analyst.

22. After reviewing the letter, Mr. Hall called Ms. Cosby at the number contained in the letter. Ms. Cosby told Mr. Hall that it was a very complex issue and still under review. She also told him that she herself did not understand the matter and advised Mr. Hall to contact a lawyer and told him that he might want to request First Horizon to cease debiting his account.

23. By letter dated September 11, 2003, Mr. Hall notified First Horizon to cease debiting his bank account. As of this date, First Horizon had debited an additional \$9,461.57 over the amount due under the Mortgage Bond since it matured in October 1999.

24. Shortly thereafter, Mr. Hall received a letter from First Horizon’s Collections Department, dated October 2, 2003, notifying him that his loan “matured” in October 1999 and that the “unpaid principal balance” of \$12,642.34 “is NOW due and payable.” In addition, the letter informed Mr. Hall that the “property securing [his] loan [would] be referred to an attorney for foreclosure” if he did not pay the amount due within thirty days. The letter did not disclose the manner in which First Horizon arrived at the purported “unpaid principal balance of \$12,642.34.”

25. After receiving this letter, Mr. Hall met with his attorney, Donna Heinrichs. Ms. Heinrichs explained to First Horizon that any alleged miscalculation of the monthly payment was through no fault of Mr. Hall, and that, in any event, Mr. Hall had already paid more than \$9,461.57 over the amount due under the Mortgage Bond.

26. In response, First Horizon offered to settle Mr. Hall’s account and discharge his

mortgage if he paid an additional \$7,500.00.

27. Although Mr. Hall had already paid First Horizon \$9,461.57 over the amount due under the Mortgage Bond, in an effort to avoid costly litigation, he authorized Ms. Heinrichs to offer to settle the matter with a payment to First Horizon in the amount of \$5,000.

28. First Horizon rejected Mr. Hall's offer to settle the account for \$5,000 and reverted to its original demand for \$12,642.34. In addition, First Horizon repeated its threat to foreclose on Mr. Hall's home.

29. Horizon had no right to take any of the following actions which it has taken, or is threatening to take, with respect to Mr. Hall's mortgage:

- (a) unilaterally extending the maturity date on Mr. Hall's mortgage from October 15, 1999 until March 15, 2010, thus threatening to hold a lien on Mr. Hall's home for more than 11 years beyond the term of the mortgage;
- (b) demanding that Mr. Hall pay \$201.31 per month for more than 11 years beyond the term of the mortgage, resulting in an additional payment of \$25,163.75 beyond the amount required under the Mortgage Bond;
- (c) continuing to debit funds from Mr. Hall's account after October 15, 1999, without notice or authorization -- and after receiving all payments to which it was entitled under the Mortgage Bond.
- (d) threatening to foreclose on Mr. Hall's home unless he paid an additional \$12,320.49 within 30 days; and
- (e) failing to discharge the mortgage on Mr. Hall's home.

30. Horizon knew, or had reason to know, that it had no right to take the actions set forth above.

**FIRST CAUSE OF ACTION PURSUANT TO GBL ARTICLE 29-H  
UNLAWFUL COLLECTION PRACTICES**

31. New York GBL Article 29-H, § 601(8) provides that no principal creditor, as defined by GBL § 600(3), or his agent, shall “claim, or attempt or threaten to enforce a right with knowledge or reason to know that the right does not exist.”

32. GBL § 600(3) defines “principal creditor” as “any person, firm, corporation or organization to whom a consumer claim is owed, due or asserted to be due or owed.”

33. GBL § 600(1) defines “consumer claim” as “any obligation of a natural person for the payment of money or its equivalent which is or is alleged to be in default and which arises out of a transaction wherein credit has been offered or extended to a natural person, and the money, property or service which was the subject of the transaction was primarily for personal, family or household purposes.”

34. First Horizon is a “principal creditor” as defined under GBL § 600(3) because it asserts that it is owed a debt arising out of a consumer’s default on a loan wherein the money which was the subject of the loan was used for personal, family or household purposes.

35. By reason of the conduct described in paragraphs 15 through 29 above, First Horizon has violated and is continuing to violate GBL § 601(8).

**SECOND CAUSE OF ACTION PURSUANT TO  
GENERAL BUSINESS LAW § 349  
DECEPTIVE BUSINESS PRACTICES**

36. Pursuant to GBL § 349, it is unlawful to engage in any deceptive acts or practices in the conduct of any business, trade, or commerce in this State.

37. By reason of the conduct described in paragraphs 15 through 29 above, First Horizon is engaging in deceptive acts and practices.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs request that the Court grant relief pursuant to GBL §§ 349 and 602(2) by issuing an order and judgment as follows:

1. Permanently enjoining defendant from engaging in the unlawful collection practices and deceptive acts and practices described above;
2. Directing defendant to file a certificate with the Rensselaer County Clerk's office declaring that the mortgage currently held by defendant, which is filed in the Rensselaer County Clerk's office in Book 2299, Page 203, is satisfied;
3. Directing defendant to make restitution to Richard H. Hall;
4. Directing defendant to pay a civil penalty in the sum of \$500.00 to the State of New York for each instance of violation of GBL § 349, pursuant to GBL § 350-d;
5. Awarding plaintiffs the costs and disbursements of this action; and
6. Granting plaintiffs such other and further relief as the Court deems just and proper.

Dated: January 16, 2004  
Albany, New York

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