

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
THE PEOPLE OF THE STATE OF NEW YORK,
by ANDREW M. CUOMO, Attorney General of the State
of New York,

Petitioner,

-against-

INFINITY MITIGATION SERVICES, INC.,
INFINITY FUNDING GROUP, and
NEIL SINGER, individually, and as
principal of INFINITY MITIGATION SERVICES,
INC. and INFINITY FUNDING GROUP

Respondents.
-----X

VERIFIED PETITION

Index No.: 400 790/2010

IAS Part _____
Assigned to Justice _____

The People of the State of New York, by its attorney, ANDREW M. CUOMO, Attorney General of the State of New York, respectfully allege, upon information and belief:

PARTIES AND JURISDICTION

1. Petitioner is the People of the State of New York, by their attorney, Andrew M. Cuomo, Attorney General of the State of New York ("Petitioner or Attorney General").
2. The Attorney General brings this special proceeding pursuant to Executive Law § 63(12), Real Property Law 265-b and General Business Law Article 22-A to enjoin Respondents from engaging in a multitude of fraudulent and illegal acts and practices in connection with their loan modification business, including collection of illegal upfront fees from their consumers, failure to provide consumers with contracts that contain provisions required by law, false advertising, and deceptive acts or practices.

3. Executive Law § 63(12) empowers the Attorney General to seek injunctive relief, restitution, damages, and costs when any person or business entity has engaged in or otherwise demonstrated repeated or persistent fraudulent or illegal acts in the transaction of business.

4. Real Property Law § 265-b, which became effective on September 1, 2008, regulates the conduct of “distressed property consultants” when providing services relating to New York State properties. It provides, among other things, that distressed property consultants: (1) shall not charge or accept payments for consulting services before the full completion of such services; (2) provide consumers with certain notices of their rights; and (3) provide consumers with contracts written in the same language in which the contract was negotiated.

5. Real Property Law § 265-b empowers the Attorney General to enjoin and restrain violations of its provisions and permits the court to direct restitution and impose a civil penalty of up to ten thousand dollars for each violation.

6. General Business Law § 349(a) prohibits deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in New York.

7. General Business Law § 350 prohibits false advertising in the conduct of any business, trade or commerce or in the furnishing of any service in New York.

8. General Business Law § 350-d empowers the Attorney General to seek penalties of up to five thousand dollars for each violation when any person or entity has engaged in deceptive business practices or false advertising in violation of General Business Law Article 22-A.

9. Respondent Infinity Mitigation Services, Inc., which operates under the name “Infinity Mitigation Services,” is a New York corporation headquartered at 630 Johnson Avenue, Suite #4, Bohemia, New York 11716 and has been in operation since February 2009.

10. Respondent Infinity Funding Group, Inc., which operates under the name Infinity Funding Group, is a New York corporation headquartered at 630 Johnson Avenue, Suite #4, Bohemia, New York 11716 and has been in operation since August 2006.

11. Infinity Mitigation Services and Infinity Funding Group (collectively referred to hereinafter as “Infinity”) have operated and presented themselves to the public as one and the same company.

12. Infinity claims in advertisements and solicitations to be able to assist homeowners in modifying their mortgages and avoiding foreclosure.

13. Infinity has operated at least two websites:
<http://www.infinitymitigationservices.com> and www.infinityfundsgroup.com.

14. Respondent Neil Singer (“Singer”) is the President and sole principal of Infinity Mitigation Services and Infinity Funding Group.

FACTS

15. Infinity represents to homeowners that it can lower their mortgage interest rates, lower their monthly mortgage payments, lock in fixed interest rates, and avoid foreclosure by negotiating loan modifications with the homeowners’ lenders.

16. Since September 1, 2008, Infinity has operated as a “distressed property consultant” within the meaning of Real Property Law § 265-b, with New York consumers who own homes in New York State.

17. Infinity dramatically increased the likelihood of foreclosure in its clients’ cases because their contract with homeowners required that they abstain from contacting their mortgage companies or making any payments. Their financial situations were further harmed by Infinity’s requirement that they pay a large, illegal, upfront fee.

18. The existence of one or more defaults under their mortgages entitles lenders to accelerate full payment of the mortgages and repossess the properties where the lenders have commenced foreclosure action.

The Attorney General's Investigation

19. Beginning in 2009, the Attorney General received complaints alleging that Infinity was engaged in range of unlawful conduct, including but not limited to:

- a. illegally charging up front fees to New York consumers for loan modification services;
- b. engaging in deceptive practices and advertising regarding their qualifications and services to entice homeowners at risk of foreclosure, including falsely claiming a 90% success rate in obtaining loan modifications;
- c. instructing consumers to cease paying their mortgage or contacting their lender on the false representation that failure to follow these instructions would prevent Infinity from being able to obtain the consumer a loan modification; and
- d. refusing to provide promised refunds after failing to obtain modifications for consumers.

20. Based on these allegations, the Attorney General conducted a confidential investigation, including analyzing Infinity documents, consumer contracts, and marketing materials, reviewing dozens of consumer complaints filed with the Better Business Bureau, and taking sworn statements from victims of Infinity's wrongful conduct.

21. The investigation revealed that Infinity has engaged in widespread illegal conduct, including but not limited to (a) illegally charging upfront fees to financially-vulnerable New York consumers; (b) luring consumers with the promise of a money back guarantee and then failing to provide refunds; (c) falsely asserting to consumers that they could not obtain modifications on their own and that communicating with their lenders would hurt their chances of obtaining a modification; and (d) falsely representing to consumers that Infinity was close to obtaining a loan modification when, in fact, little to no work had been performed.

22. Further, the investigation revealed that Infinity instructed consumers not to pay their mortgage under the false representation that this would facilitate obtaining a modification, often to the extreme detriment of the homeowner.

Infinity Violates New York Law by Charging Consumers Fees Before Any Services Are Performed and by Failing to Utilize Contractual Language Required by Law

23. Infinity repeatedly and persistently violates New York Law by charging consumers illegal upfront fees and by omitting legally required notices from their contracts. Infinity's consumers typically sign a contract with Infinity for loan modification services ("the working agreement"). Pursuant to the working agreement, Infinity charges its consumers an upfront fee of several thousand dollars. This varies from a flat fee of \$2,000 to the equivalent of one monthly mortgage payment or one percent (1%) of the current balance of the mortgages being modified. Infinity requires consumers to pay all or at least a portion of the fee up front, before any services are completed, in violation of Real Property Law § 265-b. In fact, at the time Infinity accepts its fee, it does not know with any certainty whether it will be able to obtain a loan modification on the consumer's behalf.

24. Infinity's working agreements with consumers also violate the law by failing to include notices required by Real Property Law § 265-b to protect consumers and inform them of

alternative sources of reliable assistance. These required notices inform consumers of their right to cancel the consulting contract within five business days of its execution and provide important guidance that could help prevent consumers from falling prey to foreclosure rescue scams. For example, these notices advise consumers that they should use their own attorney and not to consult with an attorney recommended by a distressed property consultant. They also provide contact information for the New York State Banking Department so that consumers may obtain a list of housing counselors.

Infinity Engages in False Advertising and Deceptive Sales Practices

25. Infinity lures its consumers with widespread false advertising and, as set forth below, a variety of deceptive marketing tactics. Infinity has falsely advertised its services on its website and through direct mailings numerous and persistent ways.

26. Through its advertisements and in conversations with consumers, Infinity overstates its track record of helping homeowners avoid foreclosure and misleads consumers as to the results the company will obtain.

27. For example, on its website, Infinity has falsely claimed that it has “been in business for the last ten years,” and that it “prevent[s] foreclosure with a 90% success rate.” In phone calls with potential consumers, Infinity has falsely claimed to have a success rate as high as 98%.

28. Infinity’s website also has claimed that the company will “[c]ut your rates by 50%,” “[f]reeze adjustable rates” and “[g]et your principal reduced.” The distressed property consulting contract Infinity sends new consumers suggests that Infinity can create a loan modification plan that includes the “[d]eferment of current payments,” the “[e]limination of arrears owed,” and the “[e]limination of adjustable rate escalations.” In their conversations with

consumers, Infinity representatives even “guarantee” that they will be able to obtain certain mortgage interest rates or monthly payments as a result of a loan modification.

29. However, these representations are unsubstantiated and demonstrably false. In fact, consumer affidavits and complaints demonstrate that Infinity’s consumers never received loan modifications despite persistent requests for updates on the status of their modifications, as they continued to receive foreclosure notices.

30. In some cases, the proposed loan modifications that Infinity might obtain for its consumers would require significant upfront payments to the banks, and ironically, higher monthly mortgage payments, even though the consumers are already struggling to make their mortgage payments and stay in their homes. Infinity fails to disclose this possibility to its consumers before collecting its illegal upfront fees.

31. Infinity further deceives its consumers as to the timing of the loan modification process and provides them with unsound advice regarding contact with lenders and collectors while a loan modification is pending.

32. However, loan modifications can sometimes take up to a year or longer if they can be obtained at all.

33. For example, the “Frequently Asked Questions” page on Infinity’s website stated in response to the question “How Long Does This Take?” that “most lenders are very busy, so we are noticing about 4-8 weeks before a final settlement is reached.”

34. Another version of this deceptive representation is repeated in the distressed property consulting contract for new consumers, informing consumers that the “process of loss mitigation for some lenders can take as long as 1 to 60 days to complete,” but that “[m]ost cases are completed less [sic] than 30 days.” These deceptive statements regarding the timing of the

loan modification process make it impossible for consumers to make informed decisions as to whether a loan modification is the best option.

35. Furthermore, in conversations with consumers, Infinity advises consumers that they must end all communications with their lenders and collectors during the loan modification process and cease making mortgage payments if they have not already stopped making payments—advice that can be, and has been, disastrous for borrowers, resulting in the loss of a home while Infinity fails to obtain or even seek to obtain a loan modification for the consumer.

36. For instance, the distressed property consulting contract Infinity sends new consumers requires that “monthly deposits, equal to their mortgage payment, are to be saved during the process of procuring a loss mitigation alternative [and that] [t]hese funds are NOT to be forwarded to lender unless otherwise directed,” and that clients are “not to negotiate or agree to terms of any loss mitigation alternative without first contacting the loss mitigation specialist handling their case file at our office.” Infinity’s contract then warns consumers that “breach [sic] of anyone [sic] of these provisions is a violation . . . and could terminate our assisting you any further.”

37. Infinity’s advice to avoid lenders and collection attempts can have serious, detrimental consequences for its consumers, because failing to communicate with a lender can put a homeowner at greater risk of foreclosure. In fact, several Infinity consumers have complained that, on Infinity’s advice, they stopped making payments on their mortgage, only to find themselves in foreclosure when Infinity failed to negotiate a loan modification with their lender as promised.

38. Further, Infinity representatives have dissuaded potential consumers from seeking a loan modification on their own by suggesting that they would not succeed and would not

receive favorable terms from their lenders, despite the fact that these same consumers were later able to obtain loan modifications by contacting their banks directly, without any assistance from Infinity.

39. Infinity also has falsely advertised and represented to potential consumers that consumers can receive a “100% money back guarantee” if “you are one of the few we cannot help.” In fact, once consumers pay Infinity thousands of dollars in up front fees, they often find it nearly impossible to contact an Infinity representative to obtain an update on the status of their modification and are repeatedly refused refunds. And, consumers who are promised refunds are never provided any refund despite numerous attempts to redeem their payments.

40. In addition, Infinity has misled consumers into believing that they have a staff of attorneys who perform the loan modifications when Infinity did not, in fact, employ any attorneys.

41. Finally, Infinity has also falsely represented to its consumers that it is a licensed mortgage broker. During the Attorney General’s undercover testing, an Infinity representative claimed that Infinity was a licensed broker. Infinity, furthermore, falsely indicated in some of its contracts with consumers that “Infinity Mitigation Services is a division of JT Capital, LLC, D/B/A as Express Funding Group which is a registered mortgage broker in the state of New York,”

42. However, Infinity Funding Group, Infinity Mitigation Services, and Express Funding Group are not registered mortgage brokers with the New York State Banking Department.

**Infinity's President has Been Actively Involved
in Infinity's Illegal and Deceptive Practices**

43. Respondent Singer, President and sole principal of Infinity Funding Group and Infinity Mitigation Services, has at all times had knowledge of, participated in, and been complicit in Infinity's deceptive and illegal advertising and business practices.

44. As the sole principal and President of Infinity, Singer is responsible for the day-to-day operations of Infinity and has participated in and had knowledge of the company's acts and practices.

45. Petitioner delivered to Respondents a pre-litigation notice, as required by Real Property Law § 265-b(4)(d) and General Business Law §§ 349(c) and 350-c, to Respondents' last known addresses and those addresses listed with the Department of State.

**FIRST CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12)
VIOLATIONS OF REAL PROPERTY LAW § 265-b**

46. Real Property Law § 265-b, which became effective on September 1, 2008, prohibits "distressed property consultants" from charging or accepting payments for consulting services before the completion of such services and requires that consumers receive "distressed property consulting contracts" that contain certain notices of the consumers' rights and that are written in the same language used to discuss the distressed property consultant's services or to negotiate the contract.

47. As alleged above, since at least September 1, 2008, Respondents have repeatedly engaged in illegal acts and practices, including:

- (a) charging for and accepting fees for consulting services for New York residents before the completion of such services; and

- (b) failing to provide most consumers with distressed property consulting contracts that contain notices required by law, including a notice of the consumer's right to cancel the contract within five business days;

48. Respondents' acts and practices are illegal in violation of Real Property Law § 265-b.

49. By their actions in violation of Real Property Law § 265-b, Respondents have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

SECOND CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12)
VIOLATIONS OF GENERAL BUSINESS LAW § 349

50. General Business Law § 349 prohibits deceptive acts and practices in the conduct of any business, trade or commerce in the state of New York.

51. As alleged above, Respondents have repeatedly engaged in deceptive acts and practices, including:

- (a) falsely representing to and/or guaranteeing consumers that they will be able to obtain certain interest rates or monthly payment amounts through the loan modification process;
- (b) promising a 100% money back guarantee;
- (c) advising consumers that they must end contact with lenders and collectors in order for Infinity to provide its services effectively, which, instead, often accelerates foreclosure on consumers' homes; and
- (d) misleading consumers as to the time a loan modification will take.

52. Respondents' acts and practices are deceptive in violation of General Business Law § 349.

53. By their actions in violation of General Business Law § 349, Respondents have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

THIRD CAUSE OF ACTION
PURSUANT TO EXECUTIVE LAW § 63(12)
VIOLATIONS OF GENERAL BUSINESS LAW § 350

54. General Business Law § 350 prohibits false advertising in the conduct of any business, trade or commerce.

55. As alleged above, Respondents have made false and misleading representations to consumers in their advertisements and solicitations, including:

- (a) representing that Infinity has “been in business for the last ten years,” and that Infinity “prevent[s] foreclosure with a 90% success rate,” when in fact, such claims are unsubstantiated and false;
- (b) misleading consumers into believing that a loan modification will always result in lower monthly payments and interest rates by claiming that the company will “[c]ut your rates by 50%,” “[f]reeze adjustable rates,” and “[g]et your principal reduced,” when in fact, many proposed loan modifications obtained by Infinity might require significant up front payments to the bank and higher monthly mortgage payments; and
- (c) falsely suggesting that consumers cannot obtain loan modifications on their own, despite the fact that consumers have obtained loan modifications by contacting their banks directly after Infinity fails to provide services.

56. Respondents’ solicitations are false and misleading in violation of General Business Law § 350.

57. By their actions in violation of General Business Law § 350, Respondents have engaged in repeated and persistent illegal conduct in violation of Executive Law § 63(12).

FOURTH CAUSE OF ACTION
VIOLATIONS OF EXECUTIVE LAW § 63(12) FRAUD

58. Pursuant to Executive Law § 63(12), it is illegal for a business to engage in repeated fraudulent business conduct.

59. By reason of the conduct alleged above, Respondents engage in repeated and persistent fraudulent conduct in violation of Executive Law § 63(12).

WHEREFORE, petition requests an order and judgment pursuant to Executive Law § 63(12), Real Property Law § 265-b, and General Business Law §§ 349 and 350:

1. permanently enjoining Respondents from violating Executive Law § 63(12), Real Property Law § 265-b, and General Business Law §§ 349 and 350, and from engaging in the fraudulent, deceptive, and illegal acts and practices alleged in the Verified Petition;
2. permanently enjoining Respondents from conducting business in the State of New York involving the marketing and provision of loan modification services;
3. directing Respondents to render an accounting to the Attorney General of: (a) the names and addresses of each consumer who paid fees directly to Infinity from August 4, 2006 to the present, the amount of money received from each such consumer, and the dates of their contracts with Infinity and (b) the names and addresses of each consumer who paid fees to Infinity through any attorney or other third party from August 4, 2006 to the present, the amount of money received from each such consumer, and the dates of their contracts with Infinity;
4. directing Respondents to make full monetary restitution and pay damages to all injured consumers, including those not identified at the time of the order;
5. permanently enjoining Respondents from directly or indirectly destroying or disposing of any records pertaining to their business;
6. permanently enjoining Respondents from converting, transferring, selling or otherwise disposing of funds paid to Respondents;
7. directing Respondents to notify Petitioner of any change of address within five days of such change;
8. directing Respondents to pay a penalty to the State of New York for each violation of Real Property Law § 265-b, pursuant to Real Property Law § 265-b(4)(d);

9. directing Respondents to pay a penalty to the State of New York for each violation of General Business Law Article 22-A, pursuant to General Business Law § 350-d;

10. awarding Petitioner additional costs of \$2,000 against each Respondent pursuant to CPLR § 8303(a)(6); and

11. granting such other and further relief as the Court deems just and proper.

Dated: New York, New York
March __, 2010

ANDREW M. CUOMO
Attorney General of the State of New York
Attorney for Plaintiff

By:



ALPHONSO B. DAVID
Bureau Chief



SPENCER FREEDMAN
Counsel for Civil Rights

Office of the New York State Attorney General
Civil Rights Bureau
120 Broadway, 23rd Floor
New York, NY 10271
Tel: (212)416-8250
Fax: (212) 416-8074

VERIFICATION

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

ALPHONSO B. DAVID, being duly sworn, deposes and says:

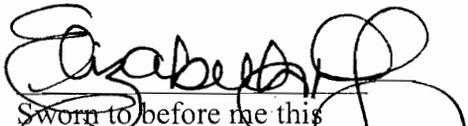
I am Civil Rights Bureau Chief in the Office of Andrew M. Cuomo, Attorney General of the State of New York, and am duly authorized to make this verification.

I have read the foregoing petition and know the contents thereof, which are to my knowledge true, except as to matters stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds of my belief as to all matters stated upon information and belief are investigative materials contained in the files of the Attorney General's office.

The reason this verification is not made by Plaintiff is that Plaintiff is a body politic and the Attorney General is its duly authorized representative.



ALPHONSO B. DAVID
Bureau Chief
Civil Rights Bureau



Sworn to before me this
25th day of March 2010

ELIZABETH DE LEÓN
Notary Public - State of New York
No. 02DE6146784
Qualified In New York County
Commission Expires May 22, 2010

Sir:

Please take notice that the within is a true copy of duly filed and entered in the office of the Clerk of County, on the day of 200

Yours, etc.,
ANDREW M. CUOMO,
Attorney General,

Attorney For

Office and P.O. Address
120 Broadway, New York, NY 10271

To , Esq.

Attorney for

COPY

Sir:

Please take notice that the within will be presented herein to the Hon one of the judges of the within named Court, at in the Borough of City of New York, on the day of 201 , at M.

Dated, N.Y. , 201
Yours, etc.,
ANDREW M. CUOMO,
Attorney General,

Attorney For

Office and P.O. Address
120 Broadway, New York, NY 10271

To , Esq.

Attorney for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

PEOPLE OF THE STATE OF NEW YORK,
by **ANDREW M. CUOMO, ATTORNEY**
GENERAL OF THE STATE OF NEW YORK,
PETITIONER,

-against-

INFINITY MITIGATION SERVICES INC.,
INFINITY FUNDING GROUP, and NEIL
SINGER, individually, and as principal of
INFINITY MITIGATION SERVICES, INC.
and INFINITY FUNDING GROUP,

RESPONDENTS.

VERIFIED PETITION

ANDREW M. CUOMO,
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Attorney for Petitioner

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Personal service of a copy of
within day of
is admitted this day of
..... 2010