

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

TRACY VON ESSEN, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

MORTGAGE RELIEF GROUP, LLC, an Arizona
limited liability company, d/b/a MORTGAGE
ASSISTANCE GROUP,

Defendant.

No. 09 CH 517 43

DEC 23 PM 2:38

CLASS ACTION COMPLAINT

Plaintiff Tracy Von Essen (“Von Essen”), for her Class Action Complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences and, as to all other matters, upon information and belief based upon, *inter alia*, investigation conducted by her attorneys:

Introduction

1. Plaintiff’s claims herein are based upon Defendant Mortgage Relief Group, LLC’s (d/b/a Mortgage Assistance Group) (“MRG”) illegal billing practices related to its mortgage relief services.
2. MRG is a “distressed property consultant” as defined by the Illinois Mortgage Rescue Fraud Act, 765 ILCS 940/1, *et seq.* (“MRFA” or the “Act”) and purports to offer consumers a variety of services, including debt, budget, and financial counseling, as well as mortgage renegotiation and modification services.
3. In clear contravention of the MRFA’s proscriptions, MRG charged and collected fees from consumers in exchange for mortgage relief services before it fully performed such services. Furthermore, MRG forbid consumers from canceling their contracts upon request as required by the MRFA, and refused to provide full refunds of the fees paid. Plaintiff brings this

action on behalf of herself and a Class and Subclass of individuals seeking actual damages, equitable remedies, and reasonable costs and attorneys' fees for Defendant's violations of the MRFA (765 ILCS 940/1, *et seq.*), violations of the Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505/1, *et seq.*) ("ICFA"), restitution/unjust enrichment, and such other and further relief as the Court deems equitable and just.

Nature of the Claim

4. Defendant offers its mortgage relief services to consumers throughout the State of Illinois and the nation.

5. Defendant advertises itself as being able to negotiate with lenders to reduce consumers' monthly mortgage payments and purports to have helped numerous consumers save thousands of dollars. According to the "Senior Modification Specialist" assigned to Plaintiff's account, "Mortgage Assistance Group prides itself on it's [sic] integrity" and works diligently to ensure its customers receive the services they need and want.

6. At the time a consumer contracts with Defendant for its mortgage relief services, Defendant provides the consumer with a "Service Agreement" that sets out the terms under which it will perform its services. (See Tracy Von Essen Service Agreement, a true and correct copy of which is attached hereto as Exhibit A).

7. Immediately upon executing the Service Agreement, and before completing the promised services, Defendant requires the payment of a "Service Fee" of up to several thousand dollars and a "Processing Fee" of several hundred dollars (which becomes nonrefundable after the so-called "grace period"). (See Ex. A, ¶¶ 5B, 5D.)

8. Defendant's practice of requiring the payment of upfront fees prior to the full performance of the agreed upon mortgage relief services is a clear violation of both the MRFA

and ICFA.

9. Defendant's Service Agreements further violate the MRFA by failing to include the required contractual language found in Section 10 of the Act, which is designed to inform consumers of their right to avoid payment of any fees before full performance of the promised services is rendered.

10. If at any time a consumer seeks to cancel its contract with MRG or requests a refund of any fees paid, MRG provides that consumer with a copy of its "Client Refund Process" (a true and correct copy of which is attached hereto as Exhibit B). The Client Refund Process makes no guarantees of cancellation or reimbursement and leaves all cancellation and refund decisions to Defendant's sole discretion.

11. Section 15 of the MRFA, however, allows consumers to "cancel a distressed property consultant contract at any time until after the distressed property consultant has fully performed each service [it] contracted to perform or represented [it] would perform[.]" and proscribes the form of notice required for cancellation. Nevertheless, Defendant violated this proscription by requiring that consumers submit to its Client Refund Process.

Parties

10. **Plaintiff Tracy Von Essen:** Von Essen is a resident of Elgin, Illinois. Von Essen's residential property, which is the subject of this lawsuit, is a "distressed property" as defined by 735 ILCS 940/5. On November 3, 2009, Plaintiff entered into a Service Agreement with Defendant for mortgage relief services, and paid Defendant \$1,000.00—a portion of the Service Fee required by the agreement. Plaintiff has not received the promised mortgage relief services, nor a refund of the fees she paid.

11. **Defendant Mortgage Relief Group, LLC d/b/a Mortgage Assistance Group:** MRG is a provider of mortgage counseling, renegotiation, and modification services. MRG is an Arizona limited liability company headquartered at 7055 West Bell Road, Suite 22, Glendale, Arizona 85308. MRG does business throughout the State of Illinois and the nation. MRG is a “distressed property consultant” as defined by 735 ILCS 940/5.

Jurisdiction and Venue

12. The Court has jurisdiction over this action pursuant to 735 ILC 5/2-209(a)(1) because Defendant does business in this state and Plaintiff is a resident of Illinois.

13. Venue is proper in this Court because Defendant does business throughout Cook County, Illinois.

Facts Regarding Plaintiff

14. In or around October 2009, Plaintiff became unable to make her monthly mortgage payments in full. As a result, at the time she contracted with Defendant for its mortgage relief services and as of the filing of this lawsuit, Plaintiff was and is more than thirty (30) days delinquent in her mortgage payments.

15. In or around October 2009, Plaintiff contacted Defendant to request information regarding its mortgage relief services.

16. On October 19, 2009, Plaintiff received an e-mail from one of Defendant’s “Senior Modification Specialists,” which described generally the mortgage relief services Defendant provides.

17. On October 20, 2009, Plaintiff responded to Defendant’s e-mail and requested to engage Defendant for its mortgage relief services.

18. Later that same day, Defendant e-mailed Plaintiff a Service Agreement.

19. Under the terms of the Service Agreement, Plaintiff was required to pay Defendant a \$1,995.00 Service Fee “at the time [she] retained the COMPANY’S services.” (Ex. A, ¶¶ 5B, 5D.)

20. Plaintiff was also required to pay Defendant a \$495.00 “Processing Fee,” which would become nonrefundable after the “grace period.” (Ex. A, ¶ 5B.)

21. On October 31, 2009, Plaintiff made two credit card payments to Defendant totaling \$1,000.00 to account for a portion of the required fees.

22. On November 3, 2009, Plaintiff and her husband executed the Service Agreement and returned it to Defendant.

23. On November 12, 2009, Plaintiff contacted Defendant to cancel her contract and receive a refund of the \$1,000.00 payment she made. Later that day, Defendant provided Plaintiff with a copy of its “Client Refund Process.” (See Ex. B.)

24. As required by Defendant’s Client Refund Process, Plaintiff mailed Defendant a typewritten letter dated November 12, 2009 requesting a refund of all monies she paid to Defendant and indicating that she wished to cancel her Service Agreement. (See Von Essen Letter, a true and correct copy of which is attached hereto as Exhibit C.)

25. On November 24, 2009, Defendant contacted Plaintiff and informed her that she would not receive a refund, but rather that MRG would place any monies paid by Plaintiff in an escrow account until Defendant completed the agreed upon mortgage relief services.

26. Despite Plaintiff’s protestations and Defendant’s own recognition that its Service Agreements and business practices did not comply with Illinois law, Plaintiff has yet to receive a refund from Defendant or the mortgage relief services it promised to perform.

Class Allegations

27. Plaintiff seeks certification of a class and subclass as defined below under Illinois Code of Civil Procedure § 5/2-801.

(a) **The Service Agreement Class:** All Illinois residents who contracted with Defendant at anytime from January 1, 2007 through the present for its mortgage relief services and were charged fees prior to Defendant fully performing such mortgage relief services.

(b) **The Cancellation Request Subclass:** All members of the "Service Agreement Class" who requested a refund of all or a portion of any fees paid to Defendant and/or cancellation of their Service Agreements with Defendant, but received no refund or only a partial refund of any fees paid, and whose Service Agreements Defendant refused to cancel.

Excluded from the Class and Subclass are (i) any judge presiding over this action and members of their families; (ii) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (iii) persons who properly execute and file a timely request for exclusion from the Class; and (iv) the legal representatives, successors or assigns of any such excluded persons.

28. **Numerosity:** The exact number of Class members is unknown to Plaintiff at this time, but on information and belief, Defendant has contracted with hundreds of Class members throughout the State of Illinois, making joinder of each individual member impracticable. Ultimately, the Class and Subclass members will be easily identified through Defendant's records.

29. **Commonality and Predominance:** Common questions of law and fact exist as to all members of the Class and Subclass and predominate over any questions affecting only individual members.

These common questions include but are not limited to:

- (a) Whether Defendant's Service Agreements required members of the Class and Subclass to pay upfront fees prior to Defendant rendering full performance of the promised mortgage relief services;
- (b) Whether Defendant's Service Agreements with Plaintiff, the Class and Subclass are contrary to Illinois public policy;
- (c) Whether Defendant's billing practices violate the MRFA;
- (d) Whether Defendant's billing practices violate the ICFA;
- (e) Whether Defendant was unjustly enriched as a result of receiving payments from Plaintiff, the Class and Subclass; and
- (f) Whether Plaintiff, the Class, and Subclass are entitled to relief, and the nature of such relief.

30. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class and Subclass. Plaintiff, the Class, and Subclass sustained damages as a result of Defendant's uniform wrongful conduct during transactions with Plaintiff, the Class, and Subclass.

31. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and Subclass, and has retained counsel competent and experienced in complex litigation and class actions. Plaintiff has no interests antagonistic to those of the Class or Subclass, and Defendant has no defenses unique to Plaintiff.

32. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and joinder of all members of the Class and Subclass is impracticable. The damages suffered by the individual members of the Class and Subclass will likely be small

relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class and Subclass to obtain effective relief from Defendant's misconduct. Even if members of the Class and Subclass could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

33. **Policies Generally Applicable to the Class:** This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Class and Subclass, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and Subclass, and making final injunctive relief appropriate with respect to the Class and Subclass as a whole. Defendant's policies challenged herein apply and affect members of the Class and Subclass uniformly and Plaintiff's challenge of these policies hinges on Defendant's conduct with respect to the Class and Subclass as a whole, not on facts or law applicable only to Plaintiff.

34. Plaintiff reserves the right to revise the Class and Subclass definitions based upon information learned through discovery.

Amount in Controversy

35. Plaintiff makes no specific allegations that the amount in controversy (including requests for attorneys' fees, injunctive and other relief) exceeds any specific dollar amount, let

alone \$5,000,000.

**Count I: Declaratory Relief Pursuant to 735 ILCS 5/2-701
(On behalf of Plaintiff, the Class, and Subclass)**

36. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

37. There exists an actual controversy between Plaintiff, the Class and Subclass on the one hand, and Defendant on the other, to the extent Defendant's Service Agreements are contrary to Illinois public policy.

38. As explained in Counts II – IV *infra*, Defendant's Service Agreements with Plaintiff, the Class and Subclass violate the Illinois Mortgage Rescue Fraud Act and Illinois Consumer Fraud and Deceptive Business Practices Act by, *inter alia*, requiring the payment of upfront fees prior to Defendant rendering full performance of the agreed upon mortgage relief services.

39. Defendant further violated the MRFA and ICFA with respect to Plaintiff and the Subclass by failing to cancel their Service Agreements and refund any fees paid upon their request.

40. Defendant's Service Agreements with Plaintiff, the Class and Subclass are contrary to applicable Illinois law and are therefore void as against Illinois public policy. Furthermore, Plaintiff and the Subclass voided their agreements with Defendant upon their written notice and request as contemplated by the MRFA, 735 ILCS 940/15.

41. Plaintiff, the Class and Subclass have tangible legal interests in the instant controversy, including but not limited to:

- (a) Their interest in recouping any upfront fees paid to Defendant for the agreed upon mortgage relief services before Defendant rendered full performance of those services; and

- (b) Their interest in avoiding or rescinding their Service Agreements at any time prior to Defendant rendering full performance of the agreed upon mortgage relief services.

**Count II: Violations of the Illinois Mortgage Rescue Fraud Act
(On behalf of Plaintiff, the Class, and Subclass)**

42. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

43. The MRFA provides that Defendant, as a distressed property consultant, may not “claim, demand, charge, collect, or receive any compensation until after [it] has fully performed each service [it] contracted to perform or represented [it] would perform.” 735 ILCS 940/50(a)(1).

44. Defendant charged and collected fees from Plaintiff, the Class, and Subclass for mortgage relief services it represented it would perform, prior to rendering full performance of such services.

45. Furthermore, Defendant’s Service Agreements with Plaintiff, the Class, and Subclass did not contain the required “NOTICE REQUIRED BY ILLINOIS LAW” contract language as set forth in 735 ILCS 940/10.

46. By failing to include the required contractual language in its Service Agreements, Defendant further violated the MRFA by inducing or attempting to induce Plaintiff, the Class, and Subclass to enter into Service Agreements that did not comply in all respects with Section 10 of the Act. 735 ILCS 940/50(a)(7).

47. As a result of Defendant’s violations of the MRFA as described herein, Plaintiff, the Class, and Subclass have been harmed and suffered actual damages.

**Count III: Violations of the Illinois Mortgage Rescue Fraud Act
(On behalf of Plaintiff and the Cancellation Request Subclass)**

48. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

49. Prior to Defendant fully performing the agreed upon mortgage relief services, Plaintiff and the other members of the Cancellation Request Subclass requested refunds of the fees they paid to Defendant for its mortgage relief services and/or cancellation of their Service Agreements.

50. Defendant required Plaintiff and the Subclass to submit their refund and cancellation requests through its Client Refund Process.

51. Ultimately, Defendant refused to cancel its Service Agreements with Plaintiff and the Subclass and provided no refunds, or only partial refunds of the fees it received from Plaintiff and the Subclass.

52. Defendant's Client Refund Process violates the proscriptions of 735 ILCS 940/15 because it did not allow Plaintiff or the Subclass to cancel their Service Agreements at any time before Defendant fully performed the agreed upon mortgage relief services and left cancellation and refund decisions to Defendant's sole discretion.

53. As a result of Defendant's violations of Section 15 of the MRFA described herein, Plaintiff and the Cancellation Request Subclass suffered harm and actual damages.

**Count IV: Violations of the ICFA § 2z
(On behalf of Plaintiff, the Class, and Subclass)**

54. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

55. Section 2z of the Illinois Consumer Fraud and Deceptive Business Practices Act declares unlawful any violation of, *inter alia*, the Mortgage Rescue Fraud Act. 815 ILCS 505/2z.

56. By violating the MRFA as described in Counts II and III, Defendant also violated section 2z of the ICFA.

57. As a result of Defendant's violations of the MRFA and section 2z of the ICFA, Plaintiff, the Class, and Subclass were harmed and suffered actual damages.

**Count V: Restitution/Unjust Enrichment
(On behalf of Plaintiff, the Class, and Subclass)**

58. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

59. Defendant has knowingly received and retained benefits from Plaintiff, the Class, and Subclass under circumstances that would render it unjust to allow Defendant to retain such benefits.

60. By requiring Plaintiff, the Class, and Subclass to pay upfront fees before it fully performed the agreed upon mortgage relief services, Defendant knowingly received and appreciated benefits at the expense and to the detriment of Plaintiff, the Class, and Subclass.

61. Defendant's receipt of Service, Processing, and other fees from Plaintiff, the Class, and Subclass, allowed it to utilize those monies for its own purposes, without expending resources to perform the mortgage relief services it promised.

62. Defendant appreciates or has knowledge of that benefit.

63. Under principles of equity and good conscience, Defendant should not be permitted to retain the monies belonging to Plaintiff, the Class, and Subclass that they paid in the form of Service, Processing, and other fees and that Defendant unjustly received as a result of its misconduct alleged herein.

Prayer for Relief

WHEREFORE, Plaintiff Tracy Von Essen, on her own behalf and on behalf of the Class and Subclass, prays that the Court enter an order and judgment in her favor and against Defendant as follows:

(a) Certifying this case as a class action, designating Plaintiff as Class Representative

- and her attorneys as Class Counsel;
- (b) Declaring Defendant's Service Agreements with Plaintiff, the Class and Subclass void;
 - (c) Awarding actual damages to Plaintiff, the Class, and Subclass under 815 ILCS 505/10(a) for Counts II and IV in an amount to be proven at trial;
 - (d) Awarding actual damages to Plaintiff and the Subclass under 815 ILCS 505/10(a) for Count III in an amount to be proven at trial;
 - (e) Granting equitable and injunctive relief to Plaintiff, the Class, and Subclass for Count V, including restitution, disgorgement, and an accounting of all revenue gained by Defendant through its unlawful conduct alleged herein;
 - (f) Awarding Plaintiff, the Class, and Subclass reasonable costs and attorneys' fees;
 - (g) Awarding Plaintiff, the Class, and Subclass pre- and post-judgment interest; and
 - (h) Granting such other and further relief as the Court deems equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff requests trial by jury of all matters that can be so tried.

Dated: December 23, 2009

TRACY VON ESSEN, individually
and on behalf of all others similarly
situated,

By: 

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