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8
9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
IN AND FOR THE COUNTY OF MARICOPA

10 **CV2009-006810**

11 STATE OF ARIZONA, ex rel., TERRY
12 GODDARD, Attorney General, and
13 FELECIA A. ROTELLINI,
Superintendent, Department of Financial
14 Institutions,

15 Plaintiffs,

16 -vs-

17 RICHARD WINER and COLLEEN
18 WINER, husband and wife; TAKEN
19 CARE OF INVESTMENTS, LLC;
20 HOMEOWNER SOLUTIONS, LLC;
BOURBON STREET PROPERTY
21 MANAGEMENT, LLC; and
FILIBUSTER, LLC;

22 Defendants.

Case No.

COMPLAINT

(for Injunctive and Other Relief)

23 Plaintiffs, the State of Arizona upon the relation of Terry Goddard, Attorney
24 General, and Department of Financial Institutions Superintendent, Felecia A. Rotellini,
25 for their Complaint against Defendants, allege as follows:
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NATURE OF CLAIMS

This case involves an equity stripping scheme that defrauded hundreds of Arizona homeowners, ultimately causing them to lose both their homes and the equity in their homes. In pursuit of this scheme, Arizona homeowners facing imminent foreclosure were persuaded to deed their property to Richard Winer, or one of his limited liability companies, in return for an option to repurchase the property, the ability to remain in the home as a renter, and the payoff of the arrearage on their mortgage debt. The effective sales price of the home was the amount of money owed on the home, and had no relation to its market value. Former homeowners could exercise the option to repurchase by meeting all lease obligations, repaying the amount paid to reinstate their mortgage and an option fee (typically of approximately \$15,000) within a one year option period. Violation of the provisions of the lease agreement extinguished the option. The mortgages remained in the name of the original owners and mortgage companies were not informed of the transfer of ownership. Richard Winer, or one of his limited liability companies, undertook to make mortgage payments on the former homeowner's behalf.

Homes obtained under these schemes were quickly resold to investors who paid a commission to Richard Winer, or one of his limited liability companies, and then, after the former homeowner proved unable to repurchase the property, sold the property at market value. Few, if any, original homeowners were ultimately able to repurchase their homes. This scheme was implemented by Richard Winer, his employees and Defendant limited liability companies that were organized and controlled by Richard Winer.

PARTIES, JURISDICTION AND VENUE

1. This action is brought pursuant to the Arizona Consumer Fraud Act,

1 A.R.S. § 44-1521, *et seq.*, the Arizona Debt Management Companies Act,
2 A.R.S. § 6-701, *et seq.*, the Arizona Mortgage Brokers Act, A.R.S. § 6-901 *et seq.*, and
3 the Arizona Mortgage Bankers Act, A.R.S. § 6-941, *et seq.*, to obtain injunctive relief to
4 prevent the unlawful acts and practices alleged in this Complaint and other relief,
5 including but not limited to rescission, restitution, civil penalties, costs of investigation
6 and attorneys' fees.

7 2. The Superior Court has jurisdiction to enter appropriate orders both prior to and
8 following a determination of liability pursuant to the Consumer Fraud Act; including
9 injunctive relief and restitution under A.R.S. § 44-1528, civil penalties under A.R.S. §
10 44-1531, and costs and attorneys' fees under A.R.S. § 44-1534. The Superior Court also
11 has jurisdiction following a determination of liability pursuant to Title 6; including
12 A.R.S. § 6-131, the right of the Superintendent to sue to restore monies or property
13 transferred in violation of Title 6, A.R.S. § 6-132, the right of the Superintendent to seek
14 civil penalties, and A.R.S. § 6-137(E), the right of the Superintendent to seek injunctive
15 and other relief.

16 3. Venue is appropriate in Maricopa County pursuant to A.R.S. § 12-401.

17 4. Plaintiff Terry Goddard is the Attorney General of Arizona.

18 5. Plaintiff Felecia A. Rotellini is the Superintendent of Financial Institutions.

19 6. Defendants Richard Winer and Colleen Winer, husband and wife, are residents
20 of Maricopa County, State of Arizona, and at all times relevant to this action acted for the
21 benefit of their marital community.

22 7. Defendants Taken Care of Investments, LLC, Homeowner Solutions, LLC,
23 Bourbon Street Property Management, LLC, and Filibuster, LLC, are Arizona limited
24 liability companies, located in Maricopa County, Arizona.

25 8. At all times relevant herein, Richard Winer directed, managed and controlled
26 the activities and assets of the Defendant limited liability companies.

1 FACTUAL ALLEGATIONS

2 **I. RICHARD WINER'S BUSINESS MODEL**

3 9. Richard Winer began soliciting sale-leaseback transactions in January of 2003.
4 Between 2003 and 2007 over 400 sale-leaseback transactions were completed.

5 10. Mr. Winer obtained information on upcoming trustee's sales through public
6 records and services that compiled lists of names and addresses of homeowners facing
7 foreclosure. Mr. Winer then evaluated the properties to determine whether the property
8 had less than a 75% ratio of debt to value. In other words, he determined whether, based
9 upon the equity in the home, obtaining the home for the price of the outstanding
10 mortgage and liens would be paying far less than the market value of the home.

11 11. Taken Care of Investments' salespersons called themselves distressed
12 property consultants. The services listed on agents' business cards included expert
13 advice on stopping/resolving a foreclosure, discounted note purchases, short sales, buying
14 "subject to," forbearances/workouts, buying preforeclosures and REOs, equity loans,
15 refinancing and resolving title defects. The business card also stated "We can stop a
16 foreclosure within 24 hours, if required."

17 12. The Taken Care of Investments' website offered small loans to bring a
18 homeowner's mortgage current and stop the foreclosure; a leaseback program; or home
19 purchases.

20 13. Mr. Winer hung door flyers and had an internet site, but found that appearing
21 in person at the distressed homeowner's house was the most effective.

22 14. In addition to personally contacting and soliciting distressed homeowners,
23 Richard Winer also hired and trained numerous salespersons to complete sale-leaseback
24 transactions. These salespersons were compensated on a commission basis.

25 15. Most of the homeowners who agreed to the sale leaseback transaction were
26 facing trustee's sales of their homes within a matter of days.

1 16. Each sale leaseback transaction contained a Residential Lease Agreement, an
2 Option to Purchase Real Property, a Purchase and Sales Agreement and Quit Claim Deed
3 or Warranty Deed.

4 17. The Purchase and Sales Agreement listed the amounts owed on deeds of trust,
5 judgments and liens, which then became the purchase price. A cash payment of
6 approximately \$3,000 to \$5,000 to the homeowner was sometimes included. The
7 purchase price was not based on market value or negotiated.

8 18. The Option to Purchase Real Property provided that it was voided if any of
9 the provisions detailed in the lease agreement were violated. Later versions of the Option
10 state that it would be voided by an eviction process judgment in favor of the optionor.

11 19. The Residential Lease Agreement provided that the tenant was responsible for
12 all court costs, attorney's fees and costs of collections and required the tenant to waive
13 the right to a jury trial and agree to a one year time limit in which to bring suit. The
14 tenant waived any and all right to assert affirmative defenses or counterclaims in any
15 eviction action except full payment of all amounts claimed by Landlord not to have been
16 paid by Tenant. Once breached, covenants contained in the lease could not afterward be
17 performed and detainer proceedings could be commenced without notice to the tenant.
18 The tenant was responsible for all repairs, maintenance, and improvements.

19 20. The original homeowner's mortgage company was not informed of the change
20 in ownership.

21 21. These transactions typically took place in the homeowner's home or at a
22 nearby restaurant or coffee shop. A mobile notary was used. A title company was not
23 used.

24 22. The amount of the monthly rent payment was typically the same as the
25 amount of the former homeowner's mortgage payment.

26 23. Many homeowners did not understand that if a trustee's sale took place they

1 would be entitled to excess proceeds, the amount that would remain after the trustee's
2 sale of their home and the satisfaction of their mortgage.

3 **II. MISREPRESENTATIONS TO HOMEOWNERS**

4 24. Some homeowners were told that they were receiving a loan secured by their
5 house.

6 25. Some homeowners were promised that the deed would not be recorded unless
7 they defaulted in the terms of their lease.

8 26. Some homeowners were promised that the prompt and timely payments of
9 their mortgage during the option period would enable them to refinance their home by
10 improving their credit history.

11 27. Some homeowners were told that they could sell their property at any time
12 during the option period.

13 28. Some homeowners were told that they could refinance the property at any
14 time during the option period.

15 29. No homeowners were informed that their home would be immediately sold by
16 Defendants to an unknown investor.

17 **III. INVESTORS**

18 30. Virtually all properties were sold to investors within two weeks of purchase
19 by Defendants for varying amounts.

20 31. The sale of the home to a third party violated the exclusive purchase option
21 given to homeowners in the sale leaseback transaction.

22 32. Investors purchased the home subject to the mortgage of the original
23 homeowner.

24 33. The investor collected the rent, enforced the lease and typically evicted the
25 homeowner at the end of the option period or before. Sometimes a former homeowner
26 stayed on as a tenant past the expiration of the option period.

1 34. After the former homeowner was evicted or their option ended, the investor
2 often sold the property for market value on the open market, typically for tens of
3 thousands dollars more than the amount “paid” to the former homeowner.

4 35. In some cases the investor refinanced the property for market value prior to
5 the eviction of the former homeowner, effectively negating the homeowner’s right to
6 repurchase the property under the terms of the sale/leaseback contract.

7 **IV. EQUITABLE MORTGAGE**

8 36. The contractual arrangement created by the Purchase & Sales Agreement is a
9 mortgage, pursuant to A.R.S. 33-702(A), and is a mortgage loan, pursuant to
10 A.R.S. § 6-901, or a mortgage banking loan, pursuant to A.R.S. § 6-941. *See*
11 *Merryweather v. Pendelton*, 91 Ariz. 334, 372 P.2d 335 (1962).

12 37. This type of mortgage is commonly referred to as an equitable mortgage.
13

14 **CAUSES OF ACTION**

15 **COUNT I: VIOLATION OF THE CONSUMER FRAUD ACT**

16 38. Defendants’ practice of obtaining sale-leaseback agreements used and
17 employed deception, deceptive acts and practices, fraud, false pretenses, false promises,
18 misrepresentation, or concealment, suppression or omission of material facts with intent
19 that others rely upon such concealment suppression or omission, including but not limited
20 to the following:

21 a. Defendants falsely and deceptively represented to homeowners that they
22 would save their homes when, in fact, the Defendants structured the transaction to take
23 ownership and equity away from the homeowners solely for the benefit and profit of
24 Defendants.

25 b. Defendants’ sale-leaseback transaction misled homeowners and
26 circumvented and concealed from homeowners Defendants’ obligations and the

1 homeowners' rights and remedies under a mortgage loan agreement, including, but not
2 limited to:

3 (1) Defendants' legal obligation to foreclose their mortgage loan
4 through judicial proceedings;

5 (2) the homeowner's legal and equitable rights of redemption;

6 (3) the homeowner's right to retain excess proceeds from a
7 foreclosure sale;

8 (4) the homeowner's ability to refinance their mortgage loans
9 through another lender;

10 (5) evasion of the protections of the Homeowners Equity Protection
11 Act (HOEPA) which would have required Defendants to disclose the annual percentage
12 rate (APR), the amount financed and the total finance charge of the loan, give notice of
13 the right of rescission and prohibited making a loan without verifying and documenting
14 consumers repayment ability;

15 (6) evasion of the protections of the Federal Truth in Lending Act
16 (TILA) which would have required Defendants to disclose the Annual Percentage Rate of
17 the mortgage, and the homeowner's right to rescind the transaction within three days of
18 receiving notification of the right; and

19 (7) evasion of the protections provided by Arizona's licensing
20 requirements for Mortgage Bankers and Mortgage Brokers.

21 39. Defendants' Residential Lease Agreement facilitated eviction and thus
22 termination of the option to repurchase by including onerous terms such as providing that
23 covenants contained in the lease, once breached, cannot afterward be performed,
24 requiring the tenant to waive trial by jury, requiring the tenant to waive notice of detainer
25 proceedings, and to waive affirmative defenses and counterclaims in an eviction action.

26 40. At all times relevant to the Complaint, Defendants acted willfully, in violation

1 of A.R.S. § 44-1531.

2

3 **COUNT II: VIOLATION OF THE ARIZONA DEBT MANAGEMENT**
4 **COMPANIES ACT**

4

5 41. As part of the sale/leaseback transaction, Defendants, in return for
6 compensation, received monthly payments from former homeowners and distributed
7 them to mortgage lenders on the former homeowner's behalf.

7

8 42. Defendants acted as a debt management company, pursuant to A.R.S. § 6-701.

8

9 43. Defendants, while acting as a debt management company, failed to obtain a
10 license, post the bond required, pay the required fees, or maintain the required liquid
11 assets and were, therefore, in violation of A.R.S. § 6-703 *et seq.*

11

12 **COUNT III: ACTING AS UNLICENSED MORTGAGE BROKER**

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14 44. Defendants, for compensation, made, negotiated and offered to make or
15 negotiate mortgage loans and, therefore, required a mortgage broker license pursuant to
16 A.R.S. § 6-901.

16

17 45. Defendants, who acted as mortgage brokers, failed to obtain the required
18 license, post the required bond, pass the mortgage broker's test, conduct the required
19 investigations into employees, and make the disclosures to consumers required of
20 mortgage brokers by Arizona law.

20

21 46. In addition, Defendants violated A.R.S. § 6-909(B) by receiving
22 compensation in connection with arranging or negotiating mortgage loans without a
23 mortgage broker license.

23

24 **COUNT IV: ACTING AS UNLICENSED MORTGAGE BANKER**

25

26 47. Defendants, for compensation, made or indirectly made, negotiated or offered
to make or negotiate mortgage banking loans or mortgage loans and, therefore, required a

1 mortgage banker license pursuant to A.R.S. § 6-943.

2 48. Defendants, who acted as mortgage bankers, failed to obtain the required
3 license, post the required bond, conduct the required investigations into employees, and
4 make the disclosures to consumers required of mortgage bankers by Arizona law.

5 49. In addition, Defendants violated A.R.S. § 6-947(B) by receiving
6 compensation in connection with arranging or negotiating mortgage banking loans or
7 mortgage loans.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs respectfully request that the Court:

10 1. Prohibit Defendants from violating the Arizona Consumer Fraud Act,
11 A.R.S. § 44-1521 *et seq.*, the Arizona Debt Management Companies Act, A.R.S. § 6-701
12 *et seq.* the Arizona Mortgage Brokers Act, A.R.S. § 6-901 *et seq.*, and the Arizona
13 Mortgage Bankers Act, A.R.S. § 6-941 *et seq.*

14 2. Prohibit Defendants and all persons in active concert or participation with
15 Defendants from engaging in the course of conduct alleged herein.

16 3. Order Defendants to restore to all persons any money or property, real or
17 personal, that was acquired by any means or practice alleged herein to be in violation of
18 any of the abovementioned Acts, as deemed proper by the Court pursuant to
19 A.R.S. §§ 44-1528 and 6-131.

20 4. Order Defendants to pay the State of Arizona a civil penalty of \$10,000 for
21 each violation of the Consumer Fraud Act pursuant to A.R.S. § 44-1531.

22 5. Order Defendants to pay the Department of Financial Institutions a civil
23 penalty of \$5,000.00 for each violation of the Arizona Debt Management Companies Act,
24 A.R.S. § 6-701 *et seq.*, the Arizona Mortgage Brokers Act, A.R.S. § 6-901 *et seq.*, and
25 the Arizona Mortgage Bankers Act, A.R.S. § 6-941 *et seq.*, pursuant to A.R.S. § 6-132,
26 under which each day of violation constitutes a separate offense.

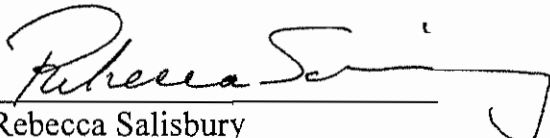
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6. Order Defendants to reimburse the Attorney General and the Superintendent of Financial Institutions for costs of investigation and reasonable attorneys' fees pursuant to A.R.S. §§ 44-1534 and 6-131.

7. Order such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED: March 3, 2009

TERRY GODDARD
Attorney General

By: 
Rebecca Salisbury
Assistant Attorney General
Attorney for Petitioner

CLU 2008-0782/Doc. 396413