STATE OF INDIANA)
) SS:
COUNTY OF STEUBEN)

IN THE STEUBEN CIRCUIT COURT

CAUSE NO: 76C01- 0808 -PL- 0652

STATE OF INDIANA,

Plaintiff,

v.

COUNTRYWIDE FINANCIAL CORPORATION, a Delaware corporation, COUNTRYWIDE HOME LOANS, INC., a New York corporation a/k/a AMERICA'S WHOLESALE LENDER, and JOHN DOES 1-20,

Defendants.

FILED
AUG 22 2008
CLERK, STEUBEN CIRCUIT COURT

COMPLAINT

The State of Indiana, by Attorney General Steve Carter and Deputy Attorneys General Gabrielle J. Owens and Paula J. Beller, petitions the Court pursuant to the Indiana Home Loan Practices Act, Ind. Code § 24-9 *et seq.*, and the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-1 *et seq.*, for injunctive relief, restitution, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code § 24-9-8-3.

2. Defendant Countrywide Financial Corporation, a Delaware corporation with a principal place of business in North Carolina, is a wholly owned subsidiary of Bank of America Corporation and is the successor corporation to another entity also named Countrywide Financial Corporation ("Old Countrywide"). Effective July 1, 2008, Old Countrywide merged with and

into Red Oak Merger Corporation, the surviving corporation and a wholly owned subsidiary of Bank of America Corporation. On or about the effective date of the merger, Red Oak Merger Corporation changed its name to Countrywide Financial Corporation. All references to Countrywide Financial Corporation in this complaint shall mean and refer to Countrywide Financial Corporation and its predecessor corporation, Old Countrywide.

3. At all times relevant hereto, Defendant Countrywide Financial Corporation has operated as a thrift holding company. It has numerous subsidiaries that originate, purchase, securitize, sell and service residential and commercial loans, and it provides loan closing services such as credit reports, appraisals and flood determinations among other activities. Defendant Countrywide Financial Corporation owns and operates its wholly owned subsidiary Countrywide Home Loans, Inc.

4. At all times relevant hereto, Defendant Countrywide Home Loans, Inc. ("Countrywide") is registered as a for-profit foreign corporation in the State of Indiana, with a principal business address of 4500 Park Granada, Calabasas, California 91302. Defendant Countrywide Home Loans, Inc. operates under the assumed name, America's Wholesale Lender.

5. The term "Defendants" as used in this Complaint means Countrywide Financial Corporation and Countrywide Home Loans, Inc. a/k/a America's Wholesale Lender.

GENERAL ALLEGATIONS

6. In the ordinary course of business, Defendants have originated and funded real estate secured loans for borrowers in the State of Indiana. These real estate secured loans were made during the period July 1, 2005, until present.

7. Defendants solicited these real estate secured loans using their own employees and loan brokers acting as agents for Defendants.

8. Plaintiff alleges that Defendants created an environment which incentivized the sale of pay option adjustable rate mortgages.

9. Plaintiff alleges that Defendants knowingly made deceptive or misleading representations or omissions regarding loan terms and charges including, but not limited to, the interest rate of the loan, the presence or the mechanics of the adjustable rate features of the loan, and the interest rate or the material costs of the proposed loan.

10. Plaintiff alleges that Defendants engaged in a practice of misleading borrowers about the presence, the significance, and/or meaning of a prepayment penalty, and/or the duration of a prepayment penalty on their loans.

11. Plaintiff alleges that Defendants engaged in acts and practices which resulted in fabricated and/or inflated income information for prospective borrowers. Plaintiff alleges that those borrowers would have failed to qualify for said loans without the fabricated or inflated income.

12. At this time, it is unknown how many Indiana consumers have been affected by the deceptive practices of Defendants.

Duane and Petra Carter

13. The following subparagraphs describe Duane and Petra Carter's ("Carters") experience with Defendants, which is illustrative of Defendants' business practices as alleged in this Complaint:

a. At all times relevant to this Complaint, the Carters are the owners of record for real property located at 1856 Rooses Lane, Indianapolis, Indiana 46217 ("Rooses Lane").

b. As of September 2006, the Carters had obtained two real estate secured loans on Rooses Lane. The first loan for eighty percent (80%) of the initial purchase price had a fixed interest rate of five point two percent (5.2%); the second loan for twenty percent (20%) of the initial purchase price had a variable interest rate.

c. As of September 2006, Petra Carter lost her job and began to draw state unemployment insurance benefits.

d. As a result of the Carters' reduced income, they were concerned that they might not be able to make the variable rate loan payment on Rooses Lane and wanted to refinance their two real estate secured loans into one.

e. In or about September 2006, the Carters contacted NMC Mortgage ("NMC") regarding the possibility of refinancing Rooses Lane.

f. On or about September 8, 2006, the Carters met with Nathan Kluger ("Kluger"), an employee of NMC, to discuss the possibility of refinancing Rooses Lane.

g. On or about September 8, 2006, the Carters provided Kluger with documentation evidencing their income including Petra Carter's unemployment benefits and Duane Carter's bimonthly salary of $1,400.

h. On or about September 9, 2006, Kluger completed a no-documentation loan application dated September 9, 2006, for a real estate secured loan with America's Wholesale Lender. On the application, Kluger identifies himself as the interviewer, and the interviewer's employer as America's Wholesale Lender.

i. The September 9, 2006 loan application indicates that Duane Carter's income is $14,000 per month.

j. The September 9, 2006 loan application indicates that Duane Carter has been employed for 28 years, but fails to identify Duane Carter's employer or in what capacity Duane Carter is employed.

k. Upon information and belief on multiple occasions from September 8, 2006, to September 14, 2006, Kluger made verbal representations to the Carters that the real estate secured loan would have a 1.75% interest rate for the first twelve (12) months and then vary thereafter.

l. On multiple occasions from September 8, 2006, to September 14, 2006, upon information and belief Kluger assured the Carters that the real estate secured loan did not have a prepayment penalty and that the Carters would be able to refinance after the initial interest rate period ended.

m. Upon information and belief, Kluger counseled the Carters not to shop around for any other loans as another broker would verify their credit which would adversely affect their credit score.

n. Upon information and belief, Kluger failed to explain the pay option feature of the Carters' real estate secured loan.

o. Upon information and belief, Kluger failed to explain the negative amortization feature of the Carters' real estate secured loan.

p. Upon information and belief, Kluger failed to explain that the 1.75% interest rate was in reality a qualifying rate only, and that the interest rate would adjust upward on the first payment date.

q. On or about September 14, 2006, the Duane Carter closed on the real estate secured loan for Rooses Lane.

r. The Carters did not receive copies of their loan documents until after the closing occurred and they were walking out of the room.

s. The Carters did not discover the true nature of their real estate secured loan until the second month when the interest payment adjusted up.

t. Some time after September 2006, the Carters attempted to refinance their new real estate secured loan and discovered the prepayment penalty.

u. NMC received $7,261.72 in fees from the Carters as a result of the Carters' real estate secured loan.

v. NMC received $12,601.56 from Countrywide in the form of a yield spread premium as a result of placing the Carters in this particular loan product.

Gary and Laurel Agin

14. The following subparagraphs describe Gary and Laurel Agin's ("Agins") experience with Defendants, which is illustrative of Defendants' business practices as alleged in this Complaint:

a. At all times relevant, the Agins are the owners of record of real estate located at 13152 Duval Drive, Fishers, Indiana ("Duval Drive").

b. In or about December 2005, the Agins met with Bud Sirbu ("Sirbu"), a loan officer from Huntington Mortgage Group, to discuss the possibility of a new mortgage on Duval Drive.

c. Sirbu informed the Agins that Huntington Mortgage Group did not have a product which would meet their needs, but Sirbu stated that he knew of a product offered by Countrywide that he could arrange for the Agins.

d. Sirbu introduced Agins to John Stainbrook ("Stainbrook") of First American Mortgage Corporation ("First American") whom the Agins believed to be a representative of Countrywide.

e. Upon information and belief, the Agins were told by Sirbu and Stainbrook that the real estate secured loan would have a fixed rate of 1.75% for five years and then convert to an adjustable rate mortgage with an interest rate based upon prime rate plus three points.

f. On or about December 9, 2005, the Agins closed on their real estate secured loan.

g. Upon information and belief, at the December 9th closing, the Agins were again told that the rate would not adjust until year five of the loan.

h. At the December 9th closing, the Agins discovered the existence of a complex prepayment penalty addendum.

i. On or about December 12, 2005, the Agins contacted Countrywide to get clarification on what constituted a prepayment and to understand the size of the prepayment penalty.

j. On or about December 13, 2005, Stainbrook contacted the Agins on the last day the real estate secured loan could be rescinded. Stainbrook and the Agins discussed the prepayment penalty and concluded that the fee would be small compared to the amount that the Agins would save over the five year period.

k. On or after December 14, 2005, Scott Long ("Long") of Huntington Bank, at the urging of Sirbu, contacted the Agins regarding the possibility of a home equity

loan. During the conversation, it was discovered that Long was unaware of the recent real estate secured loan.

l. After the conversation with Long, the Agins became concerned and decided to review their loan documents. The Agins discovered that the 1.75% rate was applicable until April 1, 2006 (three months), and not for five years as they had been promised.

m. On or about December 20, 2005, upon information and belief the Agins met with Sirbu who confirmed that the Agins were in fact told that the 1.75% rate was good for five years.

n. At the December 20 meeting, upon information and belief Stainbrook was contacted by phone and he confirmed that the Agins were in fact told that the 1.75% rate was good for five years and that Stainbrook would have documents drawn up to correct the error.

o. On or about December 2, 2005, Buddy Henn ("Henn"), account executive for Countrywide, and Stainbrook contacted the Agins to explain the terms of the loan. Henn and Stainbrook insisted that Agins had misunderstood the initial offer.

p. On or about December 31, 2005, the Agins notified The Huntington National Bank of the misrepresentation that had occurred with regard to their Countrywide real estate secured loan. The Huntington National Bank responded by refunding both the closing costs and prepayment penalty related to the loan.

q. The Agins immediately refinanced the Duval Drive property and paid off the Defendants' loan.

Anthony and Beverly Judson

15. The following subparagraphs describe Anthony and Beverly Judson's ("Judsons") experience with Defendants, which is illustrative of Defendants' business practices as alleged in this Complaint:

a. On or about September 14, 2005, the Judsons purchased real estate located at 275 Lane 650B Snow Lake, Fremont, Indiana 46737 ("Snow Lake") using a real estate secured loan.

b. The Judsons obtained their loan in Angola, Indiana, through Countrywide's local agent, Patti Wilson ("Wilson").

c. Upon information and belief on multiple occasions, Wilson assured the Judsons that their loan had a "soft" prepayment penalty which would allow them to sell their home without paying the penalty.

d. The Judsons discovered that their loan has a "hard" prepayment penalty which applies regardless of the reason the loan is paid.

COUNT I: VIOLATIONS OF THE HOME LOAN PRACTICES ACT

16. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through fifteen (15) above.

17. By making deceptive and/or misleading representations and/or omissions regarding loan terms and charges including, but not limited to, the interest rate of the loan, the presence or mechanics of the adjustable rate feature of the loan, and the interest rate or the material costs of the proposed loan, Defendants committed a "deceptive act" as defined by Ind. Code § 24-9-2-7.

18. By misleading borrowers about the presence, the significance, and/or meaning of a prepayment penalty and/or the duration of a prepayment penalty on their loans, Defendants committed a "deceptive act" as defined by Ind. Code § 24-9-2-7.

19. By engaging in acts and practices which resulted in fabricated and/or inflated income information for prospective borrowers, many of whom would have failed to qualify for said loans without the fabricated or inflated income, Defendants committed a "deceptive act" as defined by Ind. Code § 24-9-2-7.

20. Because the loans described in paragraphs thirteen (13), fourteen (14), and fifteen (15) are secured by a mortgage and are single family dwellings located in Indiana which are the principal residence of Indiana consumers, the loans referred to in paragraphs thirteen (13), fourteen (14), and fifteen are "home loans" as defined by Ind. Code § 24-9-2-9.

21. By engaging in a "deceptive act" in connection with a "home loan," Defendants have violated Ind. Code § 24-9-3-7.

COUNT II: KNOWING VIOLATIONS OF THE HOME LOAN PRACTICES ACT

22. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through twenty-one (21) above.

23. The misrepresentations and deceptive acts set forth above were committed by the Defendants with knowledge at the time of the transactions.

COUNT III: VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

24. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through twenty-three (23) above.

25. The transactions referred to in paragraphs thirteen (13), fourteen (14), and fifteen (15) are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(a)(1).

26. Defendants are a "supplier" as defined by Ind. Code § 24-5-0.5-2(a)(3).

27. The violations of the Home Loan Practices Act referred to in paragraphs sixteen (16) through twenty-three (23) constitute deceptive acts pursuant to Ind. Code § 24-9-8-1 and are actionable under the Deceptive Consumer Sales Act, Ind. Code § 25-5-0.5.

COUNT IV: KNOWING VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

28. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs one (1) through twenty-seven (27) above.

29. The misrepresentations and deceptive acts set forth above were committed by the Defendants with knowledge at the time of the transactions.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants and its successors and assigns, enjoining the Defendants and its successors and assigns from but not limited to the following:

a. In the course of originating loans, making deceptive or misleading representations and/or omissions regarding loan terms and charges.

b.. In the course of originating loans, misleading borrowers about the presence, the significance, and/or meaning of a prepayment penalty, and/or the duration of a prepayment penalty on their loans.

c. In the course of originating loans, engaging in acts and practices which result in fabricated and/or inflated income information for prospective borrowers.

d. In the course of exercising its rights as mortgagee, perfecting any foreclosure where the loan may have been originated by means violative of Indiana law.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant and its successors and assigns for the following:

a. Costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

b. On Count I of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-9-8-3(a)(4) for the Defendant's violations of the Home Loan Practices Act, in the amount of Ten Thousand Dollars ($10,000.00) per violation, payable to the State of Indiana;

c. On Count III of the Plaintiff's complaint, civil penalties pursuant to Ind. Code 24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars ($5,000.00) per violation, payable to the State of Indiana;

d. On Count IV of the Plaintiff's complaint, civil penalties pursuant to Ind. Code 24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars ($500.00) per violation, payable to the State of Indiana;

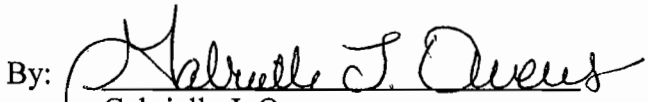
e. Pursuant to Ind. Code § 24-5-0.5-4(d), the Court void or limit the application of contracts or clauses resulting from deceptive acts;

f. Pursuant to Ind. Code § 24-5-0.5-4(d), order restitution to be paid to aggrieved consumers as determined at trial.

g. All other just and proper relief.

Respectfully submitted,

STEVE CARTER
Attorney General of Indiana
Attorney No. 4150-64

By: 
Gabrielle J. Owens
Deputy Attorney General
Attorney No. 26207-49

By:
Paula J. Beller
Deputy Attorney General
Attorney No. 26255-49

Office of the Indiana Attorney General
302 W. Washington Street, 5th Floor
Indianapolis, IN 46204
(317) 233-0878