



**Legal Assistance Corporation**  
of Central Massachusetts

ANDREA M. PARK  
STAFF ATTORNEY  
APARK@LACCM.ORG

VIA CERTIFIED MAIL

April 6, 2010

Company A  
4600 Regent Blvd  
Anytown, USA

Company B  
1761 East St  
Anytown, USA

Attorney John Doe  
Law Firm  
Anytown, USA

Re: Jane Smith, 35 Elm Street, Massachusetts  
**Demand for Relief Pursuant to Massachusetts General Laws c. 93A**

Dear Madam/Sir:

Please be advised that this office represents Ms. Smith of 34 Elm Street, Massachusetts. Please communicate with Ms. Smith only through this office.

I am sending this letter on behalf of Ms. Smith in order to demand relief pursuant to Mass. G.L. c. 93A and its accompanying regulations, 940 CMR 3.16(4), as a result of the unfair and deceptive practices described below. Though this summary is not all-inclusive, it is more than sufficient to demonstrate that you committed several violations of law.

Factual Background

Ms. Smith and her then-husband Kevin purchased the home at 34 Elm Street in 1996. They refinanced several times, and in 2004 took out a mortgage from Company X. The couple had three children together, one of whom receives special services for a pervasive developmental disorder. During the marriage Ms. Smith largely relied on her husband to take care of financial matters. In 2007 the couple divorced, leaving Ms. Smith with many unpaid and delinquent debts. During the divorce process she fell behind on the mortgage. In late 2007 Ms. Smith began to work with her servicer, Company B, on a modification agreement, and their interactions lasted for over one year. During this time, Ms. Smith was repeatedly assured by B

representatives that a foreclosure sale would not happen while a modification was pending. Ms. Smith complied with each of B's requests regarding the modification, including purchasing her own hazard insurance policy, which she did with the help of her father.

In late 2008, Ms. Smith and B were very near a final agreement, which terms included a lump sum payment. Ms. Smith's father, with whom she was very close, lent her the money to make this payment. Just before Ms. Smith signed the agreement in December 2008, her father passed away suddenly and she fell into a deep depression. Ms. Smith's doctor prescribed medication to help with her depression and sleeping problems. Her youngest son stopped talking as a result of the trauma, and continues to receive early intervention services and speech therapy. Ms. Smith spoke to a B representative, who told her she could take a few weeks to recover before he sent her the final agreement to sign and return.

Around February 2009, Ms. Smith received a letter from Citi indicating that her loan had been sold to Company A. Unclear about what this meant, she immediately contacted the B representative with whom she had been speaking about the modification. He told her he would be forwarding all of her information to A, and that she should expect to hear from them regarding the modification. The representative again assured her that a foreclosure would not occur while the modification was being considered.

Ms. Smith did not hear anything from A for several months, during which time she assumed it was continuing to review and process her modification. She finally received a letter dated June 30, 2009 indicating that her modification had been denied because she had failed to return executed documents. Ms. Smith immediately called A and told them that she had never received any of the documents to sign, and that Citi had instructed her to wait for A to contact her. The A representative described the documentation Ms. Smith should send in, including a hardship letter and pay stubs. Ms. Smith faxed the requested documents to A immediately.

Ms. Smith then received a letter dated July 20, 2009, indicating that A had received information regarding her modification, but that additional documentation would be required. The letter described the additional documents; Ms. Smith faxed those documents in immediately, and waited.

The next correspondence Ms. Smith received was a Notice to Quit letter from Law Firm on behalf of Company C, which purported to be the new owner of the home. Shortly thereafter Ms. Smith was served with a Summary Process Summons and Complaint to evict her from the home. It was only following the initiation of the eviction action that Ms. Smith learned that a foreclosure sale had occurred on July , 2009, at which her home had been sold to C. The foreclosure sale occurred before the July 20 correspondence she received from A, requesting that she send additional modification information. She never received any notice of decision regarding the modification. She never received any notice of the date of the foreclosure sale.

It is unclear which entity had true ownership and control over the mortgage and note, and whether C had the proper authority to conduct a foreclosure. In a Power of Attorney dated March 2009 and recorded with the Worcester Northern District Registry of Deeds, C gave power of

attorney to A, granting it authority to modify loans and conduct foreclosure activities on C-owned properties. In a separate Assignment recorded at the Worcester Northern District Registry of Deeds, A, on behalf of Company X, assigned to C the rights under the mortgage on May 28, 2009, with an “effective date” of February 28, 2008. Such backdating of assignments has been deemed to be impermissible in foreclosure practice pursuant to the recent Land Court decision U.S. Bank Nat. Ass’n. v. Ibanez, 2009 WL 3297551 (Mass.Land Ct. 2009). C filed a complaint pursuant to the Servicemembers Civil Relief Act in June 2008, prior to the execution of the assignment.

There is no document recorded that indicates the nature of ownership of the Note. Additionally, these recorded documents seem to grant contradictory authority over the foreclosure.

#### Unfair and Deceptive Acts and Practices Committed by A and C

The unfair, misleading and deceptive acts and practices committed by your company(ies) include, but are not limited to:

- Failure to use reasonable diligence in operating your workout/modification program;
- Failure to take reasonable steps to process Ms. Smith’s request for a modification in a timely manner;
- Misrepresenting that the foreclosure sale would not go forward as long as a modification was pending;
- Failure to notify Ms. Smith of a decision on her modification request;
- Failure to provide notice of the foreclosure sale date to Ms. Smith;
- Failure to act in Ms. Smith’s best interest;
- Breach of the duty of good faith and fair dealing;
- Negligent misrepresentation of material facts;
- Intentional and/or negligent infliction of severe emotional distress.
- To the extent the entities cannot provide documentation demonstrating proper authority to foreclose, foreclosing on the property without proper authority.

As a result of A and C’s unlawful conduct, Ms. Smith suffered significant financial losses and severe emotional distress. Ms. Smith was prepared to enter a modification agreement to keep her home, and had taken attentive and significant steps towards that end. A and C failed to diligently process Ms. Smith’s modification, resulting in further arrears and late charges. A and C failed to provide notice of the pending foreclosure sale. A and C foreclosed on the property while Ms. Smith’s modification request was pending, despite telling her that they would not take such actions. Because Ms. Smith was not aware that the foreclosure had been scheduled she did not have the opportunity to take additional steps (such as the filing of a bankruptcy) to postpone the foreclosure, which she would have taken to prevent foreclosure had she known a sale was imminent. The actions of A and C also caused Ms. Smith to incur additional fees and costs as a result of the foreclosure process.

#### Demand for Relief

Ms. Smith is entitled to be reasonably compensated for the losses and damages she and her family suffered. She is currently residing in the home with her four children, and has the financial ability to make mortgage payments. **Pursuant to G.L. c. 93A, demand is hereby**

**made that you immediately cease any effort to transfer this property. Ms. Smith further demands that you reinstate and modify her mortgage, or in the alternative, offer a reasonable purchase price in order for her to repurchase the home.**

Pursuant to G.L. c.93A §9, you have thirty (30) days from receipt of this letter to make a reasonable written tender of settlement. If you fail to tender a timely and reasonable offer of settlement, Ms. Smith may file suit against you. If a court finds that your conduct violated G.L. c.93A §2, Ms. Smith will be awarded her actual damages or \$25.00, whichever is greater, plus costs and reasonable attorneys' fees. If a court further finds that your conduct was willful or knowing in nature, or that your failure to make a reasonable tender of settlement was in bad faith with knowledge or reason to know that your conduct violated G.L. 93A §2, Ms. Smith may be awarded up to three times her actual damages, plus costs and attorneys fees.

We look forward to hearing from you.

Very truly yours,