

LAWRENCE G. WASDEN
Attorney General

JOSEPH B. JONES – I.S.B. #2768
Deputy Attorney General
State of Idaho
Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031
Telephone: (208) 332-8091
Facsimile: (208) 332-8016
joseph.jones@finance.idaho.gov

**BEFORE THE DIRECTOR OF THE DEPARTMENT OF FINANCE
OF THE STATE OF IDAHO**

STATE OF IDAHO, DEPARTMENT OF
FINANCE, FINANCIAL INSTITUTIONS
BUREAU,

Complainant,

vs.

THE RESIDENTIAL LITIGATION
GROUP, P.A.,

Respondent.

Docket No. 2012-41-02

ORDER TO CEASE AND DESIST

Gavin M. Gee, Director of the Idaho Department of Finance (Director), being authorized and directed to administer and enforce the Idaho Financial Fraud Prevention Act, Idaho Code § 67-2750 *et seq.* (IFFPA), and the Idaho Bank Act, Idaho Code § 26-101 *et seq.*, hereby makes the following factual findings which constitute a basis for the issuance of an ORDER TO CEASE AND DESIST (Order) pursuant to Idaho Code § 67-2755(1) requiring THE RESIDENTIAL LITIGATION GROUP, P.A., to cease and desist from violating the IFFPA by disseminating information to the public that is confusing, misleading, and deceptive; and to cease and desist from any other activities which violate the IFFPA and the Idaho Bank Act.

RESPONDENT

1. THE RESIDENTIAL LITIGATION GROUP, P.A. (Respondent) was formed as a Florida corporation on April 13, 2012. The company lists its business address with the Florida Secretary of State (Florida SOS) as 777 South Flagler Drive, Suite 800-West Tower, West Palm Beach, Florida. However, on its website, Respondent lists its address as 2200 Pennsylvania Avenue NW, 4th Floor, Washington, D.C. Respondent's Officer/Director and Registered Agent is Marc Hoffman.

2. Mr. Hoffman is licensed to practice law in the state of Florida and in the District of Columbia. He does not hold a license to practice law in the state of Idaho. The Florida Bar lists Mr. Hoffman's firm as The Residential Litigation Group and also lists the website, www.theresidentiallitigationgroup.com. In addition, the Florida Bar indicates that Mr. Hoffman is admitted to practice before the Florida State and District of Columbia Courts, in addition to the U.S. Supreme Court, the Fifth and Eleventh U.S. Circuit Court of Appeals, and the U.S. District Court, Southern District of Florida. Mr. Hoffman lists the West Palm Beach address with the Florida Bar, and the Washington D.C. address with the DC Bar.

3. Respondent uses the website, www.theresidentiallitigationgroup.com, wherein it represents the following:

The Residential Litigation Group is a leading litigation law firm based out of Washington D.C. Our firm focuses its practice on litigation against all of the major banks and lenders in the United States.

...

The Residential Litigation Group is suing the nation's biggest banks and lenders for deceptive loan practices, deceptive and illegal foreclosure actions, and deceptive mortgage modification practices, among other causes of action. We are seeking to hold the banks and lenders accountable for their harmful and illegal behavior, and we are working to find real relief for homeowners. The lawsuits are also targeting banks' use of fraudulent paperwork in the foreclosure process, foreclosing without actually holding a mortgage, corrupting the local title and land recording systems, and failing to uphold promises of loan modifications.

One of our most significant causes of action that we are taking is to go after the banks' use of phony documents and forged signatures ("robo-signing") for the purpose of illegally foreclosing on tens-of-thousands of homeowners.

FINDINGS OF FACT

4. On or about September 19, 2012, the State of Idaho, Department of Finance, Financial Institutions Bureau (Department) received a complaint from an Idaho bank concerning Respondent's recent dissemination to Idaho residents of advertisements relating to Respondent's services. The bank provided the Department with a copy of the advertisement received by one of its customers. On or about September 27, 2012, the Department received a second complaint from another Idaho bank concerning Respondent's dissemination to Idaho residents of advertisements relating to Respondent's services. That bank provided the Department with a copy of the advertisement received by one of its customers.

5. Among other things, the advertisements stated that Respondent "is intending to file a potential claim against [the individual's lender] aimed at improper lender actions." Further, the advertisements state that the recipient "may be a potential plaintiff in a national lawsuit." The advertisements specifically name the recipients' mortgage lenders, which are both banks.

6. In the fine print appearing at the bottom of the advertisements, Respondent confirms that the document which purports to be a "Litigation Notification" is actually an advertisement.

7. Respondent's advertisements were received by at least two (2) Idaho residents during the month of September 2012. To date, the Department has been unable to determine the total number of Idaho residents who received Respondent's advertisements.

8. The advertisements Respondent sent to Idaho residents suggest to the recipient that the recipient's mortgage lender may have engaged in fraudulent lending practices.

9. Posing as a prospective customer, on September 21, 2012, a Department representative called the telephone number listed on Respondent's advertisements. The representative's phone call was answered by an individual who identified the business as "The Residential Litigation Group." The individual taking the representative's call identified himself as Nick McNesky.

10. Mr. McNesky pressed to obtain information from the representative regarding her mortgage balance, current lender, current interest rate, the market value of her residence, and whether her current lender had filed a foreclosure action. Mr. McNesky further stated that the law firm is assisting homeowners in a lawsuit against 22 lenders, and that the firm is currently working on 17 different fraudulent practices suits.

11. Mr. McNesky told the representative that to begin working with the law firm, she needed to send Respondent a retainer fee of \$6,000, which would be refunded after the lawsuit is settled, and additionally, that the representative needed to pay a monthly fee of \$450 during the pendency of the lawsuit.

CONCLUSIONS OF LAW

VIOLATIONS OF § 67-2752(7) OF THE IFFPA

12. The allegations set forth in paragraphs 1 through 11 above are fully incorporated herein by this reference.

13. The IFFPA, at Idaho Code § 67-2752(7), prohibits persons from using "in a manner likely to cause confusion or mistake or to deceive, the name, trademark, service mark, or

logo of a financial institution in connection with the sale, offering for sale, distribution, or advertising of any product or service without the consent of the financial institution.”

14. In the advertisements Respondent sent to two (2) Idaho residents, Respondent specifically named the recipient’s financial institution and suggested or implied that the institution had engaged in lender misconduct or fraudulent lending practices. Respondent did not have the consent of the financial institution to use the name of the financial institution in Respondent’s advertisements.

15. Respondent’s use of the name of the recipient’s financial institution in Respondent’s advertisements was likely to cause confusion or to deceive the recipient.

16. Respondent’s sending of two (2) advertisements naming the recipient’s financial institution, without the institution’s consent, to at least two (2) Idaho residents constitutes two (2) violations of the IFFPA.

FINDING OF IMMEDIATE DANGER

17. Idaho Code §§ 26-1203 and 26-1204 of the Idaho Bank Act make it unlawful for a person to circulate or transmit to another any false statement, rumor, or suggestion, written, printed or by word of mouth which is directly or by inference derogatory to the financial condition or affects the financial standing of a financial institution.

18. The public’s belief that a financial institution has engaged in lender misconduct or predatory lending practices endangers the financial condition or financial standing of the financial institution, its depositors and customers, and the public. These facts require the Director to issue this Order immediately to protect the public and the financial institutions named in Respondent’s advertisements/solicitations.

REMEDIES

19. Idaho Code § 67-2755(1) authorizes the Director to order a person to cease and desist from violations or attempted violations of the IFFPA if, in the determination Director, it is necessary to protect any financial institution or the public, or a person is violating or is about to violate the IFFPA.

20. Idaho Code § 26-1116(a) authorizes the Director to order a person to cease and desist from violations of the Idaho Bank Act if the Director believes that a person not authorized to engage in banking or trust business has engaged or is about to engage in any act or practice constitution a violation of the Idaho Bank Act or any rule or order thereunder.

ORDER

The Director, having reviewed the foregoing, and good cause being shown therefor,

THE DIRECTOR HEREBY FINDS that Respondent has violated the Idaho Financial Fraud Prevention Act, Idaho Code § 67-2750, *et seq.*; and the Idaho Bank Act, Idaho Code § 26-101 *et seq.*, and that issuance of this Order is necessary to protect the financial institutions named in Respondent's advertisements and the public.

THE DIRECTOR FURTHER FINDS, pursuant to Idaho Code § 67-5247, that Respondent's violations of the IFFPA, as set forth above, involve an immediate danger to the public safety and welfare, requiring immediate agency action.

NOW, THEREFORE, IT IS HEREBY ORDERED:

Pursuant to § 67-2755(1) of the IFFPA, and § 26-1116(a) of the Idaho Bank Act, THE RESIDENTIAL LITIGATION GROUP, P.A. shall CEASE AND DESIST from violations of the Idaho Financial Fraud Prevention Act, to include engaging in advertising that is misleading, confusing, and deceptive and which use the name of a financial institution without the financial

institution's consent; and from violations of the Idaho Bank Act. Because of the danger to the public presented by Respondent's violations of the IFFPA and the Idaho Bank Act, this action constitutes an emergency contested case, and this Order is effective upon its issuance.

IT IS SO ORDERED.

DATED this 14TH day of NOVEMBER, 2012.



STATE OF IDAHO
DEPARTMENT OF FINANCE



GAVIN M. GEE, Director

NOTICE

Respondent is hereby notified that the foregoing ORDER TO CEASE AND DESIST is a final order of the Director. Pursuant to Idaho Code § 67-5246, Respondent may file a motion for reconsideration of this Order within fourteen (14) days of the issuance of this Order. The motion for reconsideration or request for a hearing shall be served on:

Mary E. Hughes
Financial Institutions Bureau Chief
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83720-0031

A copy of such motion for reconsideration shall also be served on the Department's counsel, Joseph B. Jones, Deputy Attorney General at the same address.

Any hearing and subsequent proceedings in this matter will be conducted in accordance with the Idaho Administrative Procedure Act, Idaho Code § 67-5201 *et seq.*

If Respondent timely files a motion for reconsideration, the Department will dispose of such motion within twenty-one (21) days of its receipt, or the motion will be considered denied by operation of law, pursuant to Idaho Code § 67-5246(4).

If Respondent timely requests a hearing, Respondent will be notified of the date, time, and place of the hearing, as well as the name of the presiding officer. At the hearing, Respondent will be entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceedings. Respondent may also be represented by legal counsel at its own expense.

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order may appeal from such order to the district court by filing a petition in the district court of the county in which:

- a. a hearing was held;
- b. the final agency action was taken;
- c. the party seeking review of the order resides, or
- d. the real property or personal property that was the subject of the agency action is located.

An appeal must be filed within twenty-eight (28) days: (a) of the issuance of this Order, (b) of the issuance of an order denying a motion for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. Idaho Code § 67-5273(2). The filing of an appeal to the district court does not itself stay the effectiveness of enforcement of the order being appealed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of November, 2012, I caused a true and correct copy of the foregoing ORDER TO CEASE AND DESIST to be served on the following by the designated means:

The Residential Litigation Group, P.A.
2200 Pennsylvania Ave. NW, 4th Floor
Washington, D.C. 20037

U.S. mail, postage prepaid
 certified mail
 overnight mail
 fax: (800) 620-0070
 email:

The Residential Litigation Group, P.A.
777 S. Flagler Dr., Ste. 800-West Tower
West Palm Beach, FL 33401

U.S. mail, postage prepaid
 certified mail
 overnight mail
 fax: (800) 620-0070
 email: marchoffmanlegal@gmail.com

Paralegal

