

STATE of NEW HAMPSHIRE BANKING DEPARTMENT

In re the Matter of:)
Rachel E. Nicholson)
v.)
Countrywide Home Loans, et al)
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DECISION AND ORDER
NHBD – 2009 -133

This matter comes to the Department pursuant to RSA 383:10-d which vests the Banking Commissioner with authority to “investigate conduct that is or may be an unfair or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I.” It further grants the Commissioner with the authority to “order restitution for a person . . . adversely affect by such conduct.” So, the case really comes down to two questions. First, did the conduct of the respondent, through its agents, constitute an unfair and deceptive trade practice under RSA 383:10-d. And, if it did, what is the appropriate restitution.

As to the first inquiry, there was little disagreement in the factual background. The complainant testified as to what happened after she contacted Countrywide (in one of its various forms – it was stipulated that the various entities, other than Bank of New York, are all parts of what is called Countrywide throughout this order). She spoke about her lack of knowledge and/or experience in purchasing a home. She explained that she came to rely on Cheryl Duhamel and Charlene Fletcher (at the time employees of Countrywide). And, she described the “glitch” that resulted in her mortgage loan of 6% for 30 years turning into two subprime mortgages.

I find the complainant's testimony to be credible. Neither Ms. Duhamel or Ms. Fletcher testified at hearing and, thus, complainant's testimony stands as uncontroverted.

FINDINGS OF FACT:

1. For the purposes of this matter, as stipulated, all respondents with the exception of Bank of New York, are entities within the Countrywide umbrella.
2. Nicholson applied for a mortgage loan with Countrywide.
3. Nicholson received documents that led her to believe she had been approved for a 30 year fixed rate mortgage loan at 6% ("the 6% loan").
4. Charlene Fletcher and Cheryl Duhamel were representatives of Countrywide.
5. Nicholson was told by Charlene Fletcher and/or Cheryl Duhamel that she had been approved for the 6% loan.
6. A mortgage loan closing was scheduled for April 27, 2005.
7. Shortly before the closing, Duhamel contacted Nicholson to tell her there was a "glitch" but she should not worry as these things happen a lot and we will just move forward.
8. Nicholson was told by Duhamel and/or Fletcher that there would be a change in terms but it would be temporary.
9. Nicholson was told by Duhamel and/or Fletcher that, after 6 months of payments, they would get her into the 6% loan she was promised.
10. Nicholson was told by Duhamel and/or Fletcher that, if she wanted to buy the house, she would have to sign for two mortgages.
11. The first mortgage was for \$157,500 with a three year fixed rate of 7.875% and adjustable thereafter.
12. The first mortgage was an interest only adjustable rate mortgage.

13. The second mortgage was for \$52,500 at 10.5% with a balloon payment in 15 years.
14. Nicholson was told there would be new or updated paperwork regarding the 6% loan as originally promised.
15. Countrywide produced a document entitled "Notice of Action Taken" dated 5/6/05 relative to the 6% loan that stated, in part, that Countrywide "does not grant to any applicant a loan on the terms and conditions Ms. Nicholson requested."

RULINGS OF LAW:

1. Pursuant to RSA 383:10-d, that the actions of Countrywide in its dealings with Ms. Nicholson constitute an unfair or deceptive act or practice under RSA 358-A and exempt under RSA 358-A:3, I, and
2. Pursuant to RSA 383:10-d, the Commissioner may order restitution for Ms. Nicholson.
3. Restitution means the restoration of the status quo which would put plaintiff in the same position as he or she would have been if no contract had been made.
4. Restitution can be monetary and/or equitable.
5. For the purposes of RSA 383:10-d, restitution includes return of all monies paid by Ms. Nicholson, as reasonable attorney fees she expended to secure restitution and other actions necessary to return to the status quo.

ORDER:

Pursuant to RSA 383:10-d, I hereby ORDER

1. Countrywide shall reimburse Ms. Nicholson for:

- a. all monies paid by Ms. Nicholson prior to and at closing, either to Countrywide or others, in regards to the purchase and financing of the subject property,
 - b. all monies paid to Countrywide or others after closing, on both the first mortgage and second mortgage loan, and
 - c. all reasonable legal fees expended by Ms. Nicholson to secure this restitution.
2. Countrywide shall discharge the first mortgage and void the underlying mortgage note.
 3. Countrywide shall payoff the underlying second mortgage note and obtain discharge of the second mortgage.
 4. When Items 1-3 of this Order are complied with, Ms. Nicholson shall execute a quitclaim deed to Countrywide for the subject property.
 5. The parties shall make every effort to agree to the amounts to be paid pursuant to this order. If the parties cannot agree, a hearing on the amount of restitution only may be requested.

Date: 4 June 10

_____/s/
Peter C. Hildreth
Bank Commissioner
New Hampshire Banking Department