

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other Civil
(Consumer Protection)

State of Minnesota, by Its Attorney General,
Lori Swanson,

Court File No. _____

Plaintiff,

vs.

COMPLAINT

Davis Mitigation, Inc. d/b/a Davis Foreclosure
Assistance,

Defendant.

The State of Minnesota, by its Attorney General, Lori Swanson, for its Complaint against Davis Mitigation, Inc., hereby states and alleges as follows:

INTRODUCTION

Defendant Davis Mitigation, Inc. (“Davis”), sells mortgage foreclosure consulting services in Minnesota and across the United States. Davis solicits customers on its website, <http://www.davisforeclosureassistance.com>, which claims that “[w]ith over 20 years of experience, the experts at Davis Foreclosure Assistance have the knowledge and the ability to help stop your foreclosure, save your home and save your credit rating.” Davis makes a number of other representations on its website, including that: (1) “[w]ith a success rate of over 90%, we are experts at implementing viable solutions” and (2) “[w]e will negotiate with the bank on your behalf to ensure the best possible outcome - or your money back!”

These and many other representations made by Davis and/or its representatives are false, misleading, and inconsistent with Davis’ business practices in Minnesota. Moreover, Davis’

foreclosure consulting contract fails to comply with Minnesota Statutes Chapter 325N, by requiring payment in advance of the services to be performed and by failing to advise the homeowner that he or she may cancel the contract within the statutorily-mandated three-day rescission period. In advertising and selling its foreclosure consulting services in Minnesota, Davis has violated Minnesota's statutory prohibitions against consumer fraud, as well as the State's foreclosure consulting laws. The State of Minnesota, by its Attorney General, Lori Swanson, brings this consumer protection lawsuit against Davis for declaratory and injunctive relief, restitution, civil penalties, exemplary damages as provided by statute, costs, reasonable attorneys' fees, and other appropriate relief.

PARTIES

1. Lori Swanson, the Attorney General of the State of Minnesota, is authorized under Minn. Stat. Ch. 8, including Minn. Stat. §§ 8.01, 8.31, 8.32, and under Minn. Stat. §§ 325F.70, and 325N.06, and has common law authority, including *parens patriae* authority, to bring this action on behalf of the State of Minnesota and its citizens to enforce Minnesota's laws, including Minn. Stat. §§ 325N.01-.18 (mortgage foreclosures) and 325F.68-.70 (consumer fraud).

2. Defendant Davis is a New Jersey corporation that was incorporated on February 6, 2008. Davis' business address is 95 Cedar Lane, Suite 5, Englewood NJ, 07631-4817. Davis' registered agent is Spiegel & Utrera, P.A., 642 Broad St., Suite 2, Clifton, NJ, 07013-1615. Davis is not registered to do business in Minnesota and does not have a registered agent in Minnesota. Davis also uses the name "Davis Foreclosure Assistance."

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to Minn. Stat. §§ 8.01, 8.31, 8.32, subd. 2(a), 325F.70, and 325N.06.

4. This Court has personal jurisdiction over Davis because Davis transacted business in Minnesota and committed acts in and outside Minnesota causing injury to Minnesota citizens.

FACTUAL BACKGROUND

5. Davis is engaged in the practice of offering mortgage foreclosure consulting services to homeowners whose homes are in foreclosure.

6. Davis advertises its services to the public through its website, <http://www.davisforeclosureassistance.com>.

7. On its website, Davis claims that “[w]ith over 20 years of experience, the experts at Davis Foreclosure Assistance have the knowledge and the ability to help stop your foreclosure, save your home and save your credit rating.” Davis also makes a number of other representations and statements on its website, including but not limited to the following:

- a. “We can help you save your home and credit history through a variety of loss mitigation options.”
- b. “We will negotiate with the bank on your behalf to ensure the best possible outcome - or your money back!”
- c. “With a success rate of over 90%, we are experts at implementing viable solutions.”
- d. “We want to negotiate with your bank and stop foreclosure now with the program that best suits your needs.”

8. All of the representations and statements referenced above in Paragraph 7 of Plaintiff’s Complaint are false, deceptive, and/or misleading.

9. When a homeowner contacts Davis in response to the company's website, a Davis representative assures the responding homeowner that Davis can stop foreclosure, and makes a number of other representations and statements to the homeowner.

10. Before undertaking any mortgage foreclosure consulting services, Davis demands that the homeowner requesting such services pay an up-front fee as high as \$1,200 to Davis.

11. Davis provides its clients with a written contract and other forms to sign and return. Davis' contract does not inform the homeowner that it is unlawful for Davis to take money from the homeowner before performing all promised services, does not inform the homeowner that he or she has three business days to cancel the contract, does not contain a notice of cancellation form, and otherwise does not comply with Minn. Stat. § 325N.03.

12. Davis does not honor its representations and commitments to Minnesota homeowners.

13. C.J. is a Minnesota homeowner who paid \$1,200 Davis for foreclosure consulting services. In March of 2008, C.J. filled out an online form and sent it to Davis after reviewing Davis' website. Within minutes of completing this online form, C.J. received a call from a Davis representative named "Alan." During this phone call, Alan assured C.J. that Davis could negotiate with her lender to get a loan modification, and told C.J. that she would need to pay Davis \$1,200 before the company could perform any work to help her. C.J. told Alan that she did not have \$1,200 at that time. In response, Alan told her that she could make a partial payment of \$600, as long as she paid the remaining balance within 14 days.

14. On March 25, 2008, Alan sent an email to C.J. reassuring her that Davis "can get this resolved more quickly [than C.J.] and can result in a better [interest] rate." Approximately one week later, on or about April 3, 2007, C.J. signed a contract with Davis, provided Davis with

her checking account information, and authorized Davis to withdraw a total of \$600 from her account by the following day. On or about April 7, 2008, Davis withdrew \$600 from C.J.'s checking account. During the month of April, Davis did not perform any services for C.J., but demanded that she pay the remaining \$600 of Davis' fee. Because C.J. could not afford to pay the remaining balance, she did not authorize Davis to withdraw any more money from her checking account.

15. On or about April 21, 2008, Davis made two withdrawals of \$100 and \$200 from C.J.'s checking account without authorization. C.J. subsequently sent an email to Davis asking why the company had withdrawn these funds without her authorization, but she never received a response. On or about May 5, 2008, Davis withdrew an additional \$300 from C.J.'s checking account without authorization. Over the next two weeks, C.J. left several voice messages with the company asking why it had withdrawn a total of \$600 without her authorization. Davis did not respond to these voice messages.

16. On May 20, 2008, C.J. sent an email to Davis' "Director of Mitigation," Stacy Weinstein, stating that she and her husband "are wondering if we have been scammed" because C.J. had not heard from anyone at the company for nearly a month, despite having left several voice messages with the company. Within minutes, C.J. received a call from Ms. Weinstein, who said that she had recently spoken with C.J.'s husband, but C.J.'s husband had not spoken with Ms. Weinstein.

17. On May 21, 2008, C.J. sent an email to Ms. Weinstein inquiring about an offer C.J. had received from her mortgage company. Ms. Weinstein advised C.J. to refuse the offer. Ms. Weinstein also told C.J. that Davis would get her a "better offer." Based on Ms. Weinstein's advise, C.J. refused the offer from her mortgage lender. Since May 21, 2008, C.J. has not heard

from Ms. Weinstein or anyone else at Davis. To this day C.J. has not received any services or a refund from Davis.

**COUNT I
VIOLATION OF MINNESOTA STATUTES CHAPTER 325N
(FORECLOSURE CONSULTANTS)**

18. Plaintiff realleges all prior paragraphs of this Complaint.

19. Davis is a “foreclosure consultant” as defined by Minn. Stat. § 325N.01(a).

20. Davis has committed multiple, separate violations of Minnesota Statutes Chapter 325N (“Chapter 325N”).

21. Minn. Stat. § 325N.03(b) provides that every contract for foreclosure consulting services must contain the following notice, printed in at least 14-point boldface type:

NOTICE REQUIRED BY MINNESOTA LAW

..... (Name) or anyone working for him or her CANNOT:

(1) Take any money from you or ask you for money until
..... (Name) has completely finished doing everything he
or she said he or she would do; and

(2) Ask you to sign or have you sign any lien, mortgage, or
deed.

22. Davis committed multiple, separate violations of Minn. Stat. § 325N.03(b) by failing to include the above notice in its contracts with Minnesota homeowners.

23. Minn. Stat. § 325N.03(c) provides that every contract for foreclosure consulting services must be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract, must be dated and signed by the owner, and must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 10-point boldface type, as follows:

You, the owner, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.

24. Davis committed multiple, separate violations of Minn. Stat. § 325N.03(c) by failing to include the above notice in its contracts with Minnesota homeowners.

25. Minn. Stat. § 325N.03(e) provides that each contract for foreclosure consulting services must be accompanied by a "notice of cancellation" form, attached to the contract, that contains the following statement in at least 10-point type:

NOTICE OF CANCELLATION

.....
(Enter date of transaction) (Date)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation; or (2) e-mail a notice of cancellation

to
(Name of foreclosure consultant)

at
(Physical address of foreclosure consultant's place of business)

.....
(E-mail address of foreclosure consultant's place of business)

NOT LATER THAN MIDNIGHT OF

.....
(Date)

I hereby cancel this transaction
(Date)

.....
(Owner's Signature)

26. Davis committed multiple, separate violations of Minn. Stat. § 325N.03(e) by failing to include the above notice or the notice required under a prior version of the same statute in its contracts with Minnesota homeowners.

27. Minn. Stat. § 325N.03(f) provides that “[t]he foreclosure consultant shall provide the owner with a copy of the contract and the attached notice of cancellation immediately upon execution of the contract.”

28. Davis committed multiple, separate violations of Minn. Stat. § 325N.03(f).

29. Minn. Stat. § 325N.04 provides that it is a violation for a foreclosure consultant to:

(1) claim, demand, charge, collect, or receive any compensation until after the foreclosure consultant has fully performed each and every service the foreclosure consultant contracted to perform or represented he or she would perform; [or]

...

(7) induce or attempt to induce any owner to enter a contract which does not comply in all respects with sections 325N.02 and 325N.03.

30. Davis committed multiple, separate violations of Minn. Stat. § 325N.04 by, among other things, demanding and receiving compensation in advance of performing services for Minnesota homeowners, and by inducing or attempting to induce Minnesota homeowners to enter into contracts that did not comply with Minn. Stat. § 325N.03.

31. Pursuant to Minn. Stat. §§ 8.31 and 325N.06, Plaintiff is entitled to injunctive relief, restitution, civil penalties, exemplary damages, attorneys’ fees, costs (including costs of investigation), and other relief provided by law for Davis’ violations of Chapter 325N, including but not limited to the specific violations set forth above.

**COUNT II
CONSUMER FRAUD**

32. Plaintiff realleges all prior paragraphs of this Complaint.

33. Minn. Stat. § 325F.69, subd. 1 provides, in pertinent part, that:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

34. Davis committed multiple, separate violations of Minn. Stat. § 325F.69, subd. 1 by violating Minn. Stat. Ch. 325N and by making false, misleading and/or deceptive representations and statements, including but not limited to the representations and statements referenced above in Paragraphs 7, 9, 13-14, and 16-17 of Plaintiff's Complaint, with the intent that homeowners in Minnesota and elsewhere would rely upon such representations and statements in doing business and/or deciding to do business with Davis.

35. Pursuant to Minn. Stat. §§ 8.31, 325N.06, and 325F.70, subd. 1, Plaintiff is entitled to injunctive relief, restitution, civil penalties, attorneys' fees, costs (including costs of investigation), and other relief provided by law for Davis' violations of Minn. Stat. § 325F.69, subd. 1.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Minnesota, by its Attorney General, Lori Swanson, respectfully asks this Court to award judgment against Defendant:

I. Declaring that Davis' acts described in this Complaint constitute multiple, separate violations of Minn. Stat. §§ 325N and 325F.69;

II. Enjoining Davis and its principals, partners, officers, directors, employees, agents, successors, assignees, merged or acquired predecessors, parent or controlling entities,

subsidiaries, affiliates, and all other persons acting in concert or in participation with it, from performing foreclosure consulting services in Minnesota or engaging in conduct that violates Minn. Stat. §§ 325N or 325F.69;

III. Awarding judgment against Davis for civil penalties pursuant to Minn. Stat. § 8.31, subd. 3 for each separate violation of Minn. Stat. §§ 325N and 325F.69;

IV. Awarding exemplary damages, pursuant to Minn. Stat. § 325N.06(c), equal to 1-1/2 times the compensation charged by Davis to Minnesota homeowners for each separate violation of Minn. Stat. § 325N.04(1);

V. Awarding judgment against Davis for restitution under the *parens patriae* doctrine, the general equitable powers of this Court, Minn. Stat. § 8.31 and other authority, for all persons injured by Davis' acts as described in this Complaint;

VI. Awarding Plaintiff its costs, including costs of investigation and attorney fees, as authorized by Minn. Stat. § 8.31, subd. 3a; and

VII. Granting such further relief as provided by law and/or as the Court deems appropriate and just.

Dated: 8/18/08

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

KAI RICHTER
Assistant Attorney General
Atty. Reg. No. 0296545
(651) 297-4606 (Voice)



IAN DOBSON
Assistant Attorney General
Atty. Reg. No. 0386644

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 297-8753 (Voice)
(651) 297-7206 (TTY)


ATTORNEYS FOR STATE OF MINNESOTA

MINN. STAT. § 549.211

ACKNOWLEDGMENT

The party or parties on whose behalf the attached document is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. § 549.211 (2007).

Dated: 8/18/08



IAN DOBSON
Assistant Attorney General
Atty. Reg. No. 0386644

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 297-8753 (Voice)
(651) 297-7206 (TTY)

ATTORNEY FOR STATE OF MINNESOTA