SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

AYANA RUSH, GUL MAGSOOD, ANGEL OSMANZAI, RAHIM MAQSOOD, MOHAMMED SHUKRAN, RITA IDAVOY, REBECCA VERNA, BRIAN VERNA, ARIEL CROSS-EDWARDS Plaintiffs, -against- SAVE MY HOME CORP., SAVE MY HOME NOW, INC., SAVE MY HOME TODAY INC., SAVE MY HOME U.S.A., INC., BENJAMIN ABRAHAM, AMIT SINGH, DANIELLE DOE, HUMA HALIMI (a/k/a HELEN HALIMI), NAVIN MENON (a/k/a NAVIN MENIN, a/k/a NOVIN MENON), CHRIS MARINO, THE SELIG LAW GROUP, P.C., EXPRESS MODIFICATIONS INC., DAVID GOTTERUP, EXPRESS HOME SOLUTIONS, INC. (a/k/a EXPRESS HOME 411, a/k/a EXPRESS DEBT SOLUTIONS), KENNETH SAROSI, BRIAN MANGAN, MICHAEL ANDERSON, SANDRA GONZALEZ, DELSY VALASQUEZ, TANNIA GRIGO, MILADYS DOE, RICHARD MASINI, EDWIN GARCIA, ROBERT WEINREB, EMPIRE HOME SAVER INCORPORATED (a/k/a EMPIRE HOME SAVINGS) Defendants.	Index No. 3605/2011 Assigned to Justice Steven M. Jaeger

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' DAMAGE ASSESSMENT AT INQUEST

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On July 20, 2011, the Honorable Steven M. Jaeger granted Plaintiffs' motion for entry of an order of default judgment against Save My Home Corp., Save My Home Now, Inc., Save My Home Today Inc., Save My Home U.S.A., Inc., Benjamin Abraham, Danielle Doe, Navin Menon (a/k/a Navin Menin, a/k/a Novin Menon), Chris Marino, The Selig Law Group, P.C., Express Modifications, Inc., David Gotterup, Express Home Solutions, Inc. (a/k/a Express Home 411, a/k/a Express Debt Solutions), Kenneth Sarosi, Michael Anderson, Sandra Gonzalez, Delsy Valasquez, Tannia Grigo, Miladys Doe, Edwin Garcia, and Empire Home Saver, Inc. (a/k/a Empire Home Savings) (collectively, the "Defaulting Defendants"). Rush v. Save My Home, Inc., No. 3605/2011, Order, at 3 (Sup. Ct. Nassau Cnty. July 20, 2011) (the "Order").

The Defaulting Defendants defrauded and victimized Plaintiffs and countless other vulnerable homeowners by operating a corrupt for-profit loan modification business. They targeted low- and middle-income homeowners that were in danger of foreclosure and pretended to have specialized knowledge that would enable them to lower the homeowners' monthly mortgage payments. They promised that, in exchange for a sizable upfront fee, they would re-negotiate the Plaintiffs' mortgages with their lenders and servicers. They assured homeowners that they would be entitled to a full refund of this fee if they failed to get a modification.

In fact, and as the Court recognized, the Defendants defrauded their victims and failed to honor the most basic terms of their agreements. The Defaulting Defendants breached their contracts with Plaintiffs by "failing to perform the services" they had promised, failing to provide the promised refund, and "engag[ing] in a scheme to defraud Plaintiffs by misrepresenting, concealing, or omitting information regarding the services

Defendants promised to perform." Order, at 2. Every Plaintiff here lost – at the least – the upfront fee the Defaulting Defendants illegally collected from them.[1]

ARGUMENT

I. PLAINTIFFS ARE ENTITLED TO COMPENSATORY, EXEMPLARY, AND PUNITIVE DAMAGES

The Order granting default judgment set this matter for an inquest "to assess the appropriate amount of damages." Order, at 4. Plaintiffs are entitled to compensatory damages for the money they lost, the exemplary damages authorized by statute, and punitive damages to deter the Defaulting Defendants and others, whose cavalier and dismissive attitude towards the law must be punished.

A. Inquests Are Authorized To Assess Compensatory, Exemplary, and Punitive Damages for Plaintiffs

Damages awarded pursuant to a default judgment may not "exceed in amount or differ in type from [those] demanded in the complaint." N.Y. C.P.L.R. § 3515(b). Plaintiffs may submit properly-executed affidavits as proof of these damages. Uniform Rules for Trial Courts (22 NYCRR) § 202.46. So long as plaintiffs meet their burdens of proof – as Plaintiffs here do – compensatory, exemplary, and punitive damages may all be awarded at an inquest. See Kessler v. Atlantic Ave. CVS, Inc., 271 A.D.2d 655, 656 (2d Dep't 2000) (noting that punitive damages "cannot be determined in advance of an inquest" as a default "does not admit the plaintiff's conclusion as to damages"); Johnson v. McFadden Ford, Inc., 278 A.D.2d 907, 907-08 (4th Dep't 2000) (affirming trial court's order adopting an inquest's finding of actual damages, treble damages, and attorney's

[1] The facts of this case are more fully spelled out in the Complaint, and in the Affidavits submitted by each Plaintiff in support of their motion for default judgment. Courtesy copies of these materials will be provided at the inquest.

fees); but see Giano v. Ioannou, 78 A.D.3d 768, 772 (2d Dep't 2010) (vacating inquest's award of treble damages exclusively because plaintiffs were not entitled to such damages as a matter of law under the statute providing their cause of action).

B. Plaintiffs Have Submitted Plentiful Evidence to Warrant the Assessment of Exemplary and Punitive Damages

Plaintiffs brought ten separate causes of action against the Defaulting Defendants, and default judgment was granted as to each of them. Order, at 3. Three of these causes of action permit the Court to award treble or quadruple the amount of actual losses suffered by Plaintiffs as exemplary damages. New York Banking Law Section 590 permits recovery of up to four times the amount of money paid by Plaintiffs to unlicensed mortgage brokers such as the Defaulting Defendants. N.Y. Banking Law §§ 590, 598. New York General Business Law Section 349 authorizes trebling of actual damages, up to $1,000, while Section 350 permits trebling of such damages up to $10,000, for deceptive practices and false advertisements. N.Y. Gen. Bus. Law §§ 349, 350. Plaintiffs also pled four common law causes of action sounding in fraud (common law fraud, fraudulent concealment, fraudulent inducement, and civil conspiracy to commit fraud) that permit the assessment of punitive damages. See infra Part B.3.

Plaintiffs' affidavits submitted in support of their default judgment motion lay out in precise detail the facts constituting their claims, the amount that they lost due to the scam run by the Defaulting Defendants, annex proof of such losses, and state the relief they request. Based on this evidence, Plaintiffs are entitled to compensatory and exemplary damages as summarized below:

Plaintiff	Compensatory	Treble[2]	Quadruple[3]
Ayana Rush	$1,000	$3,000	$4,000
Gul Magsood	$3,718	$10,000	$14,872
Angel Osmanzai / Rahim Maqsood	$5,100	$10,000	$20,400
Mohammed Shukran	$3,000	$9,000	$12,000
Rita Idavoy	$3,500	$10,000	$14,000
Rebecca and Brian Verna	$2,750	N/A	$11,000
Ariel Cross-Edwards	$2,000	$6,000	$8,000

Given the egregious, willful, and wanton fraud perpetrated by the Defaulting Defendants, combined with their past and current reprehensible behavior in executing precisely the same fraud against others,[4] Plaintiffs are also entitled to punitive damages. Compl. §§ 301, 309, 317, 322.

1. Violation of N.Y. Banking Law § 590

New York Banking Law § 590(2)(b) ("Section 590") requires entities or individuals that "engage in the business of soliciting, processing, placing or negotiating mortgage loans for others, or offering to solicit, process, place or negotiate mortgage loans for others" to register as "mortgage brokers" with the superintendant of the New

[2] Pursuant to New York General Business Law Sections 350, 350-e

[3] Pursuant to New York Banking Law Sections 590, 598.

[4] As explained in Plaintiffs' Memorandum of Law in Support of their Motion for Entry of Default Judgment, certain of the Defaulting Defendants have been barred from conducting business in Massachusetts and Maryland for perpetrating substantially similar mortgage modification scams. Pl. Br. at 10-11. Most of the Defaulting Defendants have also been named as defendants in Osmanzai v. Save My Home, Inc., No. 9471/11, Sup. Ct. Nassau Cnty., a case brought by 20 similarly-situated plaintiffs who allege that the Defaulting Defendants scammed them in precisely the same way as they did Plaintiffs here.

York State Banking Department ("NYSBD"). N.Y. Banking Law § 590(2)(b). This rule covers entities "negotiating" or "offering to . . . negotiate" the "terms or conditions" of a mortgage loan on behalf of third parties. See id., at (1)(d). Unlicensed or unregistered persons or entities that provide these services shall be liable to those they advise or purport to advise for a sum of money no less than the amount of money paid, nor more than four times that sum. N.Y. Banking Law § 598. The egregious conduct of the Defaulting Defendants warrants the imposition of quadruple damages.

None of the Defaulting Defendants were registered with the NYSBD as mortgage brokers. While soliciting Plaintiffs to hire them to perform loan modification services, the Defaulting Defendants said that they would negotiate the terms and conditions of Plaintiffs' mortgages, including those terms relating to the Plaintiffs' interest rates and monthly loan payments. See, e.g., Osmanzai Aff., at ¶ 7. The Defaulting Defendants also collected information, such as Social Security Numbers, income, and debt data, which would be sufficient to evaluate Plaintiffs' financial status and render a credit decision. See, e.g., Magsood Aff., at ¶ 10. Defaulting Defendants made these representations via print and electronic advertisements, telephone calls, letters, fliers, and face-to-face conversations. See, e.g., Cross-Edwards Aff. , at ¶¶ 4, 6-8 (telephone), 12-13 (letters); Osmanzai Aff. , at ¶ 7 (face-to-face).

In the handful of cases where the Defaulting Defendants performed any of the services they undertook to provide, they acted as mortgage brokers by communicating with lenders regarding the terms and conditions of Plaintiffs' mortgages. See, e.g., Osmanzai Aff., at ¶ 33. There, the Defaulting Defendants may have had some electronic

and telephonic communications with mortgage lenders regarding Plaintiffs' monthly loan payments. See, e.g., id.

On the basis of these violations, Defaulting Defendants are liable to Plaintiffs for quadruple the $21,068 in fees paid to the Defaulting Defendants, totaling $84,200.

2. N.Y. General Business Law §§ 349, 350

Under Sections 349 and 350 of the N.Y. General Business Law ("Section 349" and "Section 350"), Plaintiffs may recover the greater of actual damages or $50, and the court is permitted to treble these damages up to $1,000 for violations of Section 349, and up to $10,000 for violations of Section 350. N.Y. Gen. Bus. Law §§ 349(h), 350-e. In addition to money damages, Sections 349 and 350 permit injured private plaintiffs to seek an injunction prohibiting deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in the state of New York. The Court has granted this injunctive relief. Order, at 3-4. The egregious conduct of the Defaulting Defendants warrants an assessment of treble damages.

The Defaulting Defendants used consumer-oriented deceptive practices and advertisements as core components of their loan modification scam. Each Plaintiff was told a lie regarding the level of contact the Defaulting Defendants intended to have with them, or about the guarantee of a full refund. See, e.g., Rush Aff., at ¶ 12 (refund); Magsood Aff., at ¶ 6 (refund); Osmanzai Aff., at ¶¶ 11, 32 (both); Shukran Aff., at ¶ 10 (refund); Idavoy Aff., at ¶¶ 7, 12 (both); R. Verna Aff., at ¶¶ 13, 17, 32, 43, 46 (both); Cross-Edwards Aff., at 6, 13 (both). The Defaulting Defendants touted their loan modification services through unsolicited print and electronic advertisements, telephone calls, letters, fliers, and face-to-face conversations with homeowners, including Plaintiffs, whose mortgage payments have become "difficult" or who "are currently in foreclosure

or fear the threat of foreclosure." See, e.g., Cross-Edwards Aff., at ¶¶ 4, 6-8 (telephone), 12-13 (letters); Osmanzai Aff., at ¶ 7-8 (face-to-face). The advertisements represented that the company obtains modifications for homeowners yielding mortgage payments at the lowest rate possible through an expedited process at a low cost. See Rush Aff., at.¶ 3.

The Defaulting Defendants materially misled their victims, including Plaintiffs, by collecting upfront fees in violation of N.Y. Banking Law § 590 by falsely representing that they were loan modification specialists, see, e.g., R. Verna Aff., at ¶ 12; by falsely representing that they would help Plaintiffs reduce their monthly mortgage payment and obtain a modification on favorable terms, see, e.g., Osmanzai Aff., at ¶¶ 7, 20-22; Rush Aff., at ¶¶ 7-8, 20; by falsely representing that their services would be prompt, see, e.g., Osmanzai Aff., at ¶ 10; by falsely promising Plaintiffs that they would refund their fee if they could not get a modification, see, e.g., Shukran Aff., at ¶ 10; by falsely representing to Plaintiffs that it would be in their interest to pay upfront fees for Defendants' services in lieu of making their mortgage payments, Rush Aff., at ¶ 11; by falsely representing that Plaintiffs should stop communicating with their mortgage lender or servicer, see, e.g., Osmanzai Aff., at ¶ 13; by falsely representing that they were a "law firm" that required a retainer before performing services, Rush Aff., at ¶¶ 9, 14; by intentionally concealing the progress, if any, that they had made on Plaintiffs' modification applications, see, e.g., R. Verna Aff., at ¶¶ 27-30; and by hiding behind an ever-shifting list of corporate identities to evade law enforcement and dissatisfied former customers, see, e.g., Rush Aff., at ¶¶ 20-21; R. Verna Aff., at ¶¶ 43-47; B. Verna Aff., at ¶¶ 31-33; Cross-Edwards Aff., at ¶¶ 22-23, 25; Magsood Aff., at ¶¶ 27-28; Shukran Aff., at ¶¶ 19-20.

Because of their dire financial straits, Plaintiffs were unusually susceptible to these advertised guarantees that were fraught with deceptive and untrue statements. Under the reasonably held, albeit mistaken, belief that there was truth behind these advertisements and false statements, Plaintiffs retained the services of the Defaulting Defendants and suffered substantial injuries as a result of their conduct beyond being defrauded out of no less than $21,068 in upfront fees. They:

- have accumulated additional debt based on non-payment of their mortgages, see, e.g., Rush Aff., at ¶ 27; Shukran Aff., at ¶ 21;
- were forced to pay lender fees and "missed payment" penalties because of Defendants' false and misleading advice, see, e.g., Cross-Edwards Aff., at ¶ 26;
- have seen their credit scores damaged, which will have far-reaching effects on their creditworthiness and overall financial well-being, see, e.g., Magsood Aff., at ¶ 29;
- were disadvantaged in future modification applications due to delay caused by working with Defendants, see Cross-Edwards Aff., at ¶ 27; and
- have seen their homes foreclosed upon, their credit frozen, and their personal health compromised, Idavoy Aff., at ¶¶ 16, 23-25.

Beyond the injunctive relief already ordered by the Court, Plaintiffs are entitled to recover triple their $21,068 in damages, up to $10,000 per Plaintiff, totaling $48,000.

3. Fraud

The Court entered default judgment against the Defaulting Defendants on four causes of action sounding in fraud: common law fraud, fraudulent inducement, fraudulent concealment, aiding and abetting fraud, and civil conspiracy to commit fraud.[5] Order, at 3. Accordingly, the Defaulting Defendants are liable to Plaintiffs for (a) actual damages;

[5] The Court also entered default judgment against the Defaulting Defendants for aiding and abetting fraud, which may not in itself warrant the imposition of punitive damages.

(b) punitive damages in an amount sufficient to prevent others from engaging in similar schemes; and (c) costs and disbursements. See Lama Holding Co. v. Smith Barney Inc., 88 N.Y.2d 413, 421 (1996) ("measure of damage is indemnity for the actual pecuniary loss sustained as the direct result of the wrong"). Punitive damages are available "where the defendants' fraudulent conduct is gross, wanton, or deliberate and demonstrates a high degree of moral culpability." V.J.V. Transport Corp. v. Santiago, 173 A.D.2d 537, 538 (1st Dep't 1991) (citing Giblin v. Murphy, 73 N.Y.2d 769 (1988); Walker v. Sheldon, 10 N.Y.2d 401, 404-405 (1961)); see Loughry v. Lincoln First Bank, 67 N.Y.2d 369, 378 (1986) ("[T]he decision to award punitive damages in any particular case, as well as the amount, are generally matters within the sound discretion of the trier of fact."). Here, the Defaulting Defendants are liable for not less that $21,068 in actual damages, plus punitive damages. See Johnson v. Home Savers Consulting Corp., No. 04-CV-5427 (NG) (KAM), 2007 U.S. Dist. LEXIS 24288 (E.D.N.Y. Mar. 23, 2007) (awarding punitive damages during default judgment proceedings against corrupt mortgage refinancing scammers because defendants, one of whom was an attorney, misrepresented the transactions at issue, provided no services of any kind to plaintiffs, and plaintiffs were able to prove defendants received payment).

The Defaulting Defendants intentionally misrepresented and/or failed to provide material information, including but not limited to the following:

- Falsely representing to Plaintiffs that they were loan modification specialists, see, e.g., R. Verna Aff., at ¶ 12;
- Falsely representing to Plaintiffs that it was in their interest to stop making their mortgage payments or communicating with their lender, see, e.g., Osmanzai Aff., at ¶ 13;
- Falsely representing to Plaintiffs at the time of the transactions that Defendants would help Plaintiffs reduce their monthly home mortgage

payments and obtain the lowest interest rate possible when in fact Defendants intended to take Plaintiffs' money while performing few if any actual services, see, e.g., Osmanzai Aff., at ¶¶ 7, 20-21; Rush Aff., at ¶¶ 7-8, 20;

- Falsely representing that Defendants' services would be prompt, see, e.g., Osmanzai Aff., at ¶ 10;

- Falsely representing that Defendants had a very high success rate in obtaining loan modifications, see, e.g., Rush Aff., at ¶ 8;

- Falsely representing that Defendants would issue refunds if the offered loan modifications did not succeed, see, e.g., Shukran Aff., at ¶ 10;

- When contacted by Plaintiffs, intentionally concealing the progress of the loan modification application, when in most cases Defendants had not even attempted to submit an application, see, e.g., Verna Aff., at ¶¶ 27, 29-30;

- Falsely representing to Plaintiffs that Defendants would be in communication throughout the course of the transaction, see, e.g., Osmanzai Aff., at ¶ 32; and

- Falsely representing that Defendants were among the few companies that have contracted with the federal government to assist with loan modifications, or that are otherwise affiliated with the federal government, see, e.g., Rush Aff., at ¶ 8.

Plaintiffs suffered damages as a direct and proximate result of their reasonable and justifiable reliance on Defendants' intentional misrepresentations and failures to disclose. See, e.g., Osmanzai Aff., at ¶ 44. Defendants' actions were willing, intentional, knowing, and malicious. See Compl., at ¶¶ 296-97, 300, 305, 308, 316, 319-20, 325, 332, 342. As such, Plaintiffs are entitled to an award of both compensatory and punitive damages.

CONCLUSION

For the reasons set forth above, and based on the supporting evidence submitted herewith and at the inquest, Plaintiffs respectfully request that the Court award the compensatory, exemplary, and punitive damages described herein.

Date: September 14, 2011
New York, NY

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