

**IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA**

OFFICE OF THE ATTORNEY GENERAL,
STATE OF FLORIDA,
DEPARTMENT OF LEGAL AFFAIRS,

Plaintiff,

v.

Case No. _____

AMERICAN INVESTIGATIVE SERVICES LLC,
and BRIAN ROY LOZITO,

Defendants.

_____ /

COMPLAINT

Plaintiff OFFICE OF THE ATTORNEY GENERAL, STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, (“the Attorney General”) sues Defendants, AMERICAN INVESTIGATIVE SERVICES LLC (“AIS”) and BRIAN ROY LOZITO (“Lozito”), and alleges:

1. This is an action for civil penalties, restitution on behalf of consumers, injunctive relief, attorney’s fees and costs, and other relief pursuant to the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2018) (“FDUTPA”).

PARTIES AND JURISDICTION

2. The Attorney General is an enforcing authority of FDUTPA.
3. The Attorney General has determined that an enforcement action serves the public interest as required by section 501.207(2), Florida Statutes (2018).
4. This Court has jurisdiction pursuant to sections 26.012, 501.207(1) and 501.207(3), Florida Statutes (2018).
5. AIS was a Florida limited liability company that was administratively dissolved in 2017 for failing to file its annual report.
6. At all times material to this complaint, AIS was located at 1515 Pullen Rd. Unit 6, Jacksonville, Florida, 32215.
7. Lozito was the owner and manager of AIS. Lozito currently resides at 166 Vanderford Rd. West, Orange Park, Florida 32073.
8. The injurious actions of the Defendants affected consumers in judicial circuits throughout Florida, including the Fourth Judicial Circuit.
9. Venue is proper in this Court under sections 47.011 and 47.051 Florida Statutes, (2018) because Lozito resided and conducted AIS's business in Duval County, Florida when the causes of action alleged herein arose.
10. At all times material to this Complaint, the Defendants solicited consumers as defined in section 501.203(7), Florida Statutes (2018).

11. At all times material to this Complaint, the Defendants engaged in trade or commerce as defined in section 501.203(8), Florida Statutes (2018).

12. Pursuant to sections 95.11(3) and 501.207(5), Florida Statutes (2018), all of the acts, practices, occurrences, and transactions upon which this Complaint is based occurred within four (4) years of the filing of this Complaint.

The Defendants' Course of Conduct

13. From 2015 until 2017, Lozito personally directed and participated through AIS in sending mailings to people throughout the United States whose homes were encumbered by mortgages.

14. These mailings solicited the recipients (hereinafter "consumers") to send thousands of dollars to AIS for "forensic investigation" of the consumers' mortgage documents. The mailings promised that AIS would conduct a "forensic audit" of consumers' mortgage documentation in order to uncover evidence of "robo-signing" of mortgage documents, improper notarization, assignment, or recording of mortgage documents, or other technical deficiencies in the mortgage documents. In some instances, the Defendants promised consumers that the Defendants would obtain quit claim deeds or would initiate quiet title proceedings for the consumers.

15. The Defendants represented to consumers that if AIS uncovered legal deficiencies in a consumer's mortgage documentation, the lender would be unable

to foreclose on the consumer's mortgage, and the consumer would thereby "own his home free and clear" even if the consumer stopped making mortgage payments to the lender. The Defendants even claimed that, as a result of the Defendants' "forensic audits", consumers could also recover previous mortgage payments the consumers had made to their mortgage company.

16. The Defendants' mailings also claimed that the Defendants provided a "money-back guarantee" that consumers' payments to the Defendants would be fully-refunded if the Defendants were unable to uncover deficiencies in consumers' mortgage documentation that led to the invalidity of the consumers' mortgages. Copies of misleading and deceptive solicitations used by AIS are attached hereto as Exhibits "A" and "B".

17. In response to these mailings, consumers throughout the United States sent thousands of dollars to AIS. After accepting and depositing these payments, AIS failed to respond to consumers' repeated attempts to contact AIS to learn the results of AIS's "forensic investigation" and "audit" of the consumers' mortgage documents. Likewise, the Defendants failed to respond to demands for refunds made by consumers who paid money to the Defendants but received nothing from them.

18. One such victim of the Defendants' scheme was Mr. John Krueger of Mt. Airy, Maryland. In approximately August 2016, Mr. Krueger received one of

AIS's mail solicitations, and called AIS and spoke with Lozito. Lozito told Mr. Krueger that because his original mortgage company had improperly assigned Mr. Krueger's mortgage to a new mortgage company, the new company had no right to collect mortgage payments from him. Lozito demanded \$1,500.00 from Mr. Krueger to provide documentation of these claims. After receiving \$1,500.00 from Mr. Krueger, Lozito asked for and received an additional \$1,000.00 to pay "attorney's fees" to attorneys that Lozito claimed were going to file legal documents that would result in the cancellation of Mr. Krueger's mortgage. After some time passed without further communication from Lozito, Mr. Krueger called Lozito in May 2017 and was told that Mr. Krueger's legal papers were "almost complete." After additional time passed with no further word from Lozito, Mr. Krueger tried to contact Lozito by phone but Lozito's phone line had been disconnected. Several subsequent attempts by Mr. Krueger to contact Lozito were unsuccessful. At that point, Mr. Krueger filed a complaint with the Attorney General.

19. Another victim of Lozito's scheme was Patricia Williams of Laguna Nigel, California. Ms. Williams received a solicitation in 2016 through the mail from the Defendants that detailed how banks such as Chase, Wells Fargo, and Bank of America had allegedly acted improperly through "robo-signing" of mortgage documentation. Because her mortgage was held by one of those banks,

Ms. Williams contacted the Defendants and spoke to Lozito. Lozito advised Ms. Williams that her mortgage was probably invalid as a consequence of improper assignment and recording, and stated that AIS would bring a “quiet title” action on her behalf that would result in her owning her home free and clear of any first mortgage. He further promised a 100% money-back guarantee if he was unable to help her. Based upon these assurances, Ms. Williams authorized the Defendants to debit \$500.00 from her bank account to begin work. The Defendants instead debited \$1,000.00 from her bank account, and subsequently provided no documents that evidenced any audit or forensic investigation of Ms. Williams’ mortgage. When Ms. Williams requested a refund of the \$1,000.00 paid to the Defendants, she received only empty promises or simply no response at all. At that point, Ms. Williams filed complaints with the Attorney General and the Better Business Bureau.

20. In total, the Defendants’ scheme victimized over 150 consumers who collectively lost over \$160,000.00. Rather than applying the monies obtained from consumers toward “investigative services” or any other efforts to benefit those consumers, the Attorney General’s investigation of the Defendants determined that the consumers’ funds were used primarily to pay Lozito’s personal expenses.

COUNT ONE

FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT
CHAPTER 501, PART II, FLORIDA STATUTES

21. The Attorney General re-alleges and incorporates by reference Paragraphs 1 to 20.

22. Section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2018), states that “unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

23. Any entity or person that willfully engages in a deceptive or unfair act or practice is liable for a civil penalty of up to \$10,000 for each such violation (up to \$15,000 for each violation involving senior citizens, veterans or members of their families, or disabled persons); willful violations occur when the entity or person knew or should have known that the conduct in question was deceptive or unfair or prohibited by rule. Fla. Stat. §§ 501.2075 and 501.2077 (2018).

24. Defendant Lozito directed and controlled the acts of AIS, or had the authority to direct or control those acts, or directly participated in the deceptive and unfair acts or practices engaged in by AIS that are alleged herein.

25. Defendants knew or should have known that their conduct alleged herein was deceptive and unfair.

26. Defendants engaged in deceptive, unfair, and unconscionable acts that included, but are not limited to, soliciting monies for the delivery of goods or services and failing to provide such goods or services, and Defendants thereby violated FDUTPA.

27. Consumers have suffered harm and injury as a direct result of the Defendants' unlawful acts and practices that violated section 501.204(1), Florida Statutes (2018).

COUNT II—VIOLATION OF FDUTPA THROUGH VIOLATIONS OF SECTION 501.1377, FLORIDA STATUTES (2018)

28. The Attorney General re-alleges and incorporates by reference Paragraphs 1 through 20.

29. Section 501.204(1) of the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2018) states that “unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

30. Any entity or person that willfully engages in a deceptive or unfair act or practice is liable for a civil penalty of up to \$10,000 for each such violation (up to \$15,000 for each violation involving senior citizens, veterans or members of their families, or disabled persons); willful violations occur when the entity or person knew or should have known that the conduct in question was deceptive or unfair or prohibited by rule. Fla. Stat. §§ 501.2075 and 501.2077 (2018).

31. Defendant Lozito directed and controlled the acts of AIS, or had the authority to direct or control those acts, or directly participated in the deceptive and unfair acts or practices engaged in by AIS that are alleged herein.

32. According to section 501.203(3)(c), Florida Statutes (2018), a violation of “any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices” is a violation of FDUTPA.

33. Section 501.1377, Florida Statutes (2018), titled “Violations Involving Homeowners During the Course of Residential Foreclosure Proceedings”, is a statute that “proscribes unfair, deceptive, or unconscionable acts or practices” within the meaning of section 501.203(3)(c), Florida Statutes (2018).

34. Section 501.1377(3)(b), Florida Statutes (2018) provides that:

(3) Prohibited acts.—In the course of offering or providing foreclosure-related rescue services, a foreclosure-rescue consultant may not:

(b) Solicit, charge, receive, or attempt to collect or secure payment, directly or indirectly, for foreclosure-related rescue services before completing or performing all services contained in the agreement for foreclosure-related rescue services.

35. By charging and collecting up-front fees from consumers for foreclosure-related rescue services before performing or completing such services, the Defendants violated section 501.1377(3)(b), Florida Statutes (2018).

36. Likewise, sections 501.1377(3)(a) and 501.1377(4), Florida Statutes (2018) require that providers of foreclosure-related rescue services must enter into written agreements with consumers that contain statutorily-required disclosures and disclaimers, and that provide statutorily-required cancellation rights to consumers. The Defendants failed to execute such written agreements with the consumers from whom the Defendants obtained money to provide the services described herein. The Defendants thereby violated section 501.1377(3)(a), Florida Statutes (2018).

37. Section 501.1377(7), Florida Statutes (2018) provides that:

(7) Violations.—A person who violates any provision of this section commits an unfair and deceptive trade practice as defined in part II of this chapter. Violators are subject to the penalties and remedies provided in part II of this chapter, including a monetary penalty not to exceed \$15,000 per violation.

38. By and through their violations of section 501.1377(3), Florida Statutes (2018), Defendants violated FDUTPA, sections 501.203(3)(c) and 501.204(1), Florida Statutes (2018).

39. Consumers have suffered harm and injury as a direct result of the Defendants' unlawful acts and practices that violated FDUTPA.

**COUNT III—VIOLATION OF FDUTPA THROUGH VIOLATIONS OF
REGULATION O-THE MORTGAGE ASSISTANCE RELIEF
SERVICES RULE**

40. The Attorney General re-alleges and incorporates by reference Paragraphs 1 through 20.

41. The Mortgage Assistance Relief Services Rule (“MARS Rule”), 16 C.F.R. Part 322, recodified as Mortgage Assistance Relief Services (“Regulation O”), 12 C.F.R. Part 1015, prohibits unfair or deceptive acts or practices in connection with the marketing and sale of mortgage relief services. (References below to “Regulation O” encompass both Regulation O and the MARS Rule.)

42. Section 501.203(3)(c), Florida Statutes (2018) states that a violation of FDUTPA may be based upon a violation of “[a]ny law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.”

43. Defendants are “mortgage assistance relief service provider[s]” engaged in the provision of “mortgage assistance relief services” as those terms are defined in Regulation O. 12 C.F.R. § 1015.2.

44. Defendants violated Regulation O in the following ways:

a. Collection of Advance Payments. In numerous instances, in the course of providing, offering to provide, or arranging for others to provide mortgage assistance relief services, Defendants asked for and received

payments before consumers executed a written agreement between the consumer and the loan holder or servicer that incorporates the offer of mortgage assistance relief obtained by Defendants from the consumer's loan holder or servicer, in violation of Regulation O, 12 C.F.R. § 1015.5(a).

b. Material Misrepresentations. In numerous instances, in the course of providing, offering to provide, or arranging for others to provide mortgage assistance relief services, Defendants, in violation of Regulation O, 12 C.F.R. § 1015.3(b)(1), misrepresented, expressly or by implication, material aspects of their services, including, but not limited to Defendants' likelihood of obtaining mortgage loan modifications for consumers that will reduce or eliminate their need to make regular mortgage payments.

c. Failure to Disclose. In numerous instances, in the course of providing, offering to provide, or arranging for others to provide mortgage assistance relief services, Defendants failed to make the following disclosures or failed to make the disclosures in a clear and prominent manner in violation of Regulation O:

(i) failing to disclose to consumers that the consumer may stop doing business with the Defendants or reject any offer the Defendants' obtain from the consumer's lender without having to pay for the Defendants' services, in violation of Regulation O, 12 C.F.R. § 1015.4(b)(1);

(ii) failing to disclose to consumers that the Defendants are not associated with the government and the Defendants' services are not approved by the government or the consumer's mortgage lender in violation of Regulation O, 12 C.F.R. § 1015.4(b)(2);

(iii) failing to disclose to consumers that even if the consumer uses the Defendants' services, the consumer's mortgage holder or servicer may not agree to the represented mortgage modification, in violation of Regulation O, 12 C.F.R. § 1015.4(b)(3); and

(iv) failing to disclose to consumers that if the consumer stops making mortgage payments, that such nonpayment could result in loss of the consumer's home and damage to the consumer's credit rating, in violation of Regulation O, 12 C.F.R. § 1015.4(c).

45. By their actions or omissions as set forth in Paragraph 44(a)-(c), Defendants violated Regulation O and, therefore, engaged in deceptive and unfair acts and practices in trade or commerce in violation of section 501.204, Florida Statutes (2018).

46. Defendants willfully engaged in the acts and practices when they either knew or should have known that such acts and practices were unfair or deceptive or otherwise prohibited by law.

47. Consumers have suffered harm and injury as a direct result of the Defendants' unlawful acts and practices that violated FDUTPA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Office of the Attorney General, State of Florida, Department of Legal Affairs, respectfully requests that this Court:

(a) Temporarily and permanently enjoin Defendants from violating the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2018) through the mailing of misleading solicitations for the delivery of goods and services while failing to provide such goods and services, and from engaging in any business purporting to offer “mortgage assistance relief services,” as defined by 12 C. F. R. §1015;

(b) Order Defendants jointly and severally, to fully reimburse every consumer who paid them money in response to their deceptive, misleading, unfair, unconscionable, and unlawful solicitations;

(c) Order Defendants to pay civil penalties, jointly and severally, pursuant to sections 501.2075, 501.2077, and 501.1377(7), Florida Statutes (2018);

(d) Award the Attorney General reasonable attorney's fees and costs from the Defendants jointly and severally pursuant to sections 501.207(6) and 501.2105, Florida Statutes (2018); and

(e) Grant such other relief as this Court deems just and proper.

Dated: August 29, 2018 at Jacksonville, Florida

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

s/ Steven Gard

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