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THE FTC TAKES ACTION ON STOP-FORECLOSURE SCAMS

Kyle Gaffaney

INTRODUCTION

Evidence that the U.S. is suffering from a home market crisis is reflected in many statistics. One such statistic reflects the fact that at the end of the first half of 2009, 1.2% of all homes in the U.S. had received at least one foreclosure notice.¹ Likewise, the prevalence of scam artists is widespread during the downturn. However, scam artists have expanded their target base to include a new target, desperate homeowners who live in fear of losing their homes.² Signs on telephone poles, flyers and television advertisements compete to sell products that purportedly help those about to lose their homes. A few companies have even gone as far as researching public records and legal notices in newspapers looking for their next victims.³ These scam artists use the findings of their research to send letters directly to homeowners they know are in danger of losing their homes.

Like most scam situations, the goal of the scam is to turn a quick profit. Scam artists in the current market do this by making promises of relief to homeowners and then they fail to deliver on these promises.⁴ The scam artists often collect fees for fictitious services they claim they are providing to the homeowner. Sometimes the scam artists are even able collect mortgage payments from the homeowner directly and keep the payments

¹ Michelle Singletary, *The Color of Money – Homeowners Struggle, and the Vultures Circle*, Wash. Post, July 22, 2009, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/07/22/AR2009072203286.html>

² FTC Facts for Consumers, *Foreclosure Rescue Scams: Another Potential Stress for Homeowners in Distress*, available at <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre42.shtm>.

³ *Id.*

⁴ *Id.*

for themselves instead of passing them on to the lender as promised.⁵

TYPES OF STOP-FORECLOSURE SCAMS

The stop-foreclosure companies use four main scams against homeowners: phony counseling, bait-and-switch, rent-to-buy schemes, and bankruptcy foreclosure.⁶ Under the phony counseling scheme, the stop-foreclosure company will charge the consumer fees in exchange for the promise of working out a deal with the lender to save the home from foreclosure. In order to prevent early detection of the fraud, the scam artist often tells the homeowner not to contact their lender, lawyer, or a credit counselor, claiming instead that they will handle all communications with the appropriate parties. Some scam artists even ask that the homeowner make the mortgage payments directly to the scammer. After collecting fees and mortgage payments, the scam artist simply disappears before being detected. This leaves the consumer further behind than when they originally sought the help of the fraudulent stop-foreclosure company.

The bait-and-switch scam is not a new tactic. The stop-foreclosure company will present documents to the homeowner to sign. These documents are represented as a new loan with favorable conditions to the homeowner when, in actuality, the documents do not create a new mortgage; instead, they surrender the title of the home to the scam artist in exchange for a 'rescue' loan.

The third tactic being used by stop-foreclosure scam artists is similar to the bait-and-switch scam in that the title of the home is transferred to the scam artist. However, the big difference in this situation is that the scam artist is honest about the title being transferred. However, the scam artist is not forthright about the consequences of relinquishing the home title and does not fulfill any promises made to the homeowner. The scam artist may explain to the homeowner that signing over the title of the home will allow the rescue company to obtain a favorable rate on the mortgage, which will then allow the homeowner to purchase the home back from the rescue operation. Unfortunately, the terms of the buyback agreement make getting the home back virtually impossible.

⁵ *Id.*

⁶ *Id.*

Similar to the buy-back arrangement scam, in a rent-to-buy scheme, a scam artist will ask the homeowner to sign over title to the home in exchange for a promise that they will rent the home to the consumer, thus allowing the consumer to stay in the home. However, over a period of time, the scam artist eventually raises the rent on the property to a level the former homeowner can no longer afford. The scam artist then evicts the former owner, leaving the scam artist free to sell the home.

In another scam, the stop-foreclosure company offers to assist the homeowner in finding a buyer for the home. Again, the homeowner is coerced into signing over the title of the home. However, they are then asked to move out of the home under the premise that this will aid in the sale of the property. The scam artist will subsequently rent the home to a third party, collect and keep the rent for himself, while the former homeowner is awaiting and expecting the home's sale. Furthermore, the original homeowner is still liable for the mortgage because the mortgage does not transfer with the title.

Yet another prevalent scam is similar to the phony counseling scheme in that the scam artist will collect fees from the homeowner to negotiate with the lender. However, instead of negotiating with the lender, the scam artist will file for bankruptcy in the homeowner's name. The homeowner often believes the fraudulent stop-foreclosure company is helping because the bankruptcy filing will stop the foreclosure proceedings, albeit temporarily. The homeowner is often unaware of the bankruptcy filing and will fail to show up at the first bankruptcy hearing, thus causing the bankruptcy case to be dismissed. The dismissal of the case once again opens the door to creditors and the homeowner's lender, who will then continue with the foreclosure process.

HALTING AND AVOIDING STOP-FORECLOSURE SCAMS

The FTC has been pleading with homeowners to avoid for-profit home loan modification companies since the start of the housing crisis.⁷ Some legislatures have gone as far as prohibiting the upfront charging of fees for foreclosure rescue companies.⁸ Unfortunately, these efforts have not been enough and have led the FTC to take action.

On August 19, 2009, the FTC put a stop to one of these

⁷ Singletary, *supra* note 1.

⁸ *Id.*

stop-foreclosure scams.⁹ A Florida company was charging homeowners an upfront \$1,200 fee to stop foreclosure actions on homes.¹⁰ The company claimed that they could stop foreclosure in virtually all instances or the fee would be returned.¹¹ In reality, and in most cases, the company did neither.¹²

In the settlement entered into by the FTC and the defendant, United Home Savers, LLP, the company is required to “[stop] falsely representing, or assisting others to falsely represent, expressly or by implication, any material fact in connection with the advertising, marketing, promoting, offering for sale, or sale of any mortgage foreclosure rescue service. . . .”¹³ Additionally, the defendant is prohibited from selling or otherwise disclosing any of the information obtained over the course of its business, including telephone numbers, addresses, banking information and social security numbers.¹⁴ Finally, the court issued a suspended monetary judgment in the amount of \$4.1 million against the defendant.¹⁵

The action against United Home Savers is not an isolated incident against stop-foreclosure scams. In July 2009, FTC Chairman Jon Leibowitz and California Attorney General Jerry Brown announced Operation Loan Lies.¹⁶ The program is a coordinated national law enforcement effort to stop mortgage modification scams.¹⁷ As of July 15, 2009, the operation involved 189 actions by twenty-five federal and state agencies.¹⁸

Homeowners need to be wary of companies offering options that seem too good to be true. Instead of entering into potentially harmful situations, homeowners should contact one of the many national and local non-profit housing counselors.

⁹ Press Release, FTC, FTC Action Stops Foreclosure ‘Rescue’ Operation (August 24, 2009), *available at* <http://www.ftc.gov/opa/2009/08/homesavers.shtm>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ Stipulated Permanent Injunction and Final Judgment, *FTC v. United Home Savers*, No. 8:08-cv-01735-VMC-TBM (M.D. Fla. 2009), *available at* <http://www.ftc.gov/os/caselist/0723251/090824unitedhomestippi.pdf>.

¹⁴ *Id.* at 6-7.

¹⁵ *Id.* at 7.

¹⁶ Press Release, FTC, Federal and State Agencies Target Mortgage Foreclosure Rescue and Loan Modification Scams (July 15, 2009), *available at* <http://www.ftc.gov/opa/2009/07/loanlies.shtm>.

¹⁷ *Id.*

¹⁸ *Id.*

Additionally, the FTC has released a three and a half minute video, "Real People. Real Stories." to warn consumers of the dangers of stop-foreclosure scams. In the video, people who have been victims of stop-foreclosure scammers share lessons learned from their experiences.¹⁹ The video and additional information is available on the FTC's website.

¹⁹ *Id.*