

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
ORANGE COUNTY, FLORIDA  
CIVIL ACTION**

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

Plaintiff,

CASE NO: 09 CA-4405-39

v.

FMA SERVICING, INC.,  
a/k/a FINANCIAL MANAGEMENT ADVISORS;  
a Florida Corporation;

and

EDWARD BILLINGS, an Individual;  
JOSEPH ESPOSITO, an Individual;  
And SALVATORE ESPOSITO, an Individual;  
Defendants.

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**ORDER GRANTING PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION**

THIS CAUSE came to be heard on February 20, 2009, on Plaintiff's Motion for Temporary Injunction against Defendant FMA Servicing, Inc. a/k/a Financial Management Advisors. This Court has considered the parties' evidence and arguments and is otherwise fully advised on its premises.

**Findings of Fact**

Plaintiff is an enforcing authority of Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA"), Chapter 501, Part II, Florida Statutes, which authorizes Plaintiff to seek injunctive and other relief. Defendant FMA Servicing, Inc. a/k/a Financial Management Advisors, ("FMA") is an active, for profit Florida Corporation which, at pertinent times, did business in Orange County, Florida.

From November 2008, forward, Defendant FMA represented itself as being engaged in the business of providing loan modification services to homeowners with residential mortgages. Through its website, <www.fmafinancial.com>, Defendant FMA targeted consumers facing foreclosure by advertising, “[we can] Prevent foreclosure, even if you are 1, 2, 3, or more months late on your mortgage payments.”

Before Defendant FMA would agree to provide loan modification services to a homeowner seeking its services, Defendant FMA solicited a fee in advance of providing services. The advance fee sought by Defendant FMA servicing could be as high as \$2,500.

Defendant FMA executed written contracts entitled “Financial Management Agreement” (“Agreement(s)”) with homeowners for whom it provides services. According to Defendant FMA’s Agreements, the homeowner is responsible to compensate Defendant FMA on an “advance fee base arrangement.” Under the terms of the Agreement, the homeowner must submit payment to Defendant FMA within 10 days of receiving an invoice. The Agreements do not advise homeowners of any of the following:

- (a) That Defendant FMA is prohibited by law from accepting any fee in advance of services rendered;
- (b) That Defendant FMA must return 100% advance fee within 7 days from the date that fee was collected;
- (c) The date and time by which a signed notice of cancellation must be sent by the homeowner to effectively cancel the agreement; and
- (d) A homeowner should contact his/her lender or mortgage servicer prior to signing the agreement.

(e) A statement located immediately above the signature line, in at least 12-point uppercase type in all foreclosure-related rescue service agreements, which substantially complies with the statutory example contained in Florida Statute §501.1377.

### **Conclusions of Law**

When a party seeks a temporary injunction pursuant to statutory authority, that party needs only show clear legal right to obtain an injunction. *Millennium*, 761 So. 2d at 1260; See *Storer Communication, Inc. v State of Florida, Department of Legal Affairs*, 591 So. 2d 238, 260 (Fla. 4th DCA 1991). Clear legal right can be established by a prima facie showing that a violation of the statute providing the injunction has occurred. *Id.* Section 501.207(1)(b), Florida Statute (2008) provides injunctive remedy for violations of the FDUPTA.

Section 501.1377, Florida Statute was enacted by on October 1, 2008 to protect homeowners facing residential foreclosure from the potentially fraudulent and deceptive practices of person's or entities providing foreclosure-related rescue services. Foreclosure-related rescue services are defined as:

“Any good or service related to, or promising assistance in connection with:

Stopping, avoiding, or delaying foreclosure proceedings concerning residential real property; or curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.” §501.1377(2)(c)(1-2), Fla. Stat. (2008).

Any person or entity providing foreclosure-related rescue services is a foreclosure-related rescue consultant. §501.1377(2)(b), Fla. Stat. (2008). Because Defendant FMA advertises a loan modification service that it claims can “prevent foreclosure,” then Defendant FMA meets the statutory definition of a foreclosure-related rescue consultant.

Pursuant to §501.1377(3)(b), Florida Statute (2008), a foreclosure-related rescue consultant may not, “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.” This provision is rationally related to the Legislatures objective of protecting homeowners facing foreclosure from companies offering fraudulent services. By charging or soliciting a fee in advance of its performance of all contracted-for services, Defendant FMA has violated §501.1377(3)(b).

Additionally, according to this law, all contracts for foreclosure-related rescue services must be in writing and must contain some notice that substantially complies with the following statutory example:

“HOMEOWNER’S RIGHT OF CANCELLATION

YOU MAY CANCEL THIS AGREEMENT FOR FORECLOSURE-RELATED RESCUE SERVICES WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS DAYS FOLLOWING THE DATE THIS AGREEMENT IS SIGNED BY YOU.

THE FORECLOSURE-RESCUE CONSULTANT IS PROHIBITED BY LAW FROM ACCEPTING ANY MONEY, PROPERTY, OR OTHER FORM OF PAYMENT FROM YOU UNTIL ALL PROMISED SERVICES ARE COMPLETE. IF FOR ANY REASON YOU HAVE PAID THE CONSULTANT BEFORE CANCELLATION, YOUR PAYMENT MUST BE RETURNED TO YOU NO LATER THAN 10 BUSINESS DAYS AFTER THE CONSULTANT RECEIVES YOUR CANCELLATION NOTICE.

TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED (POSTMARKED) OR DELIVERED TO (NAME) AT (ADDRESS) NO LATER THAN MIDNIGHT OF (DATE).

IMPORTANT: IT IS RECOMMENDED THAT YOU CONTACT YOUR LENDER OR MORTGAGE SERVICER BEFORE SIGNING THIS AGREEMENT. YOUR LENDER OR MORTGAGE SERVICER MAY BE WILLING TO NEGOTIATE A PAYMENT PLAN OR A RESTRUCTURING WITH YOU FREE OF CHARGE.” §501.1377(4)(c), Fla. Stat. (2008)

The written Agreement utilized by Defendant FMA for providing foreclosure-related rescue services does not substantially comply with the notice requirements contained in §501.1377(4)(c). Further, the exception for mortgage brokers or lenders is not applicable as established by testimony of Defendant FMA’s own witnesses.

Based on the evidence and law presented, Plaintiff has demonstrated that Defendant FMA has violated and is likely to continue to violate §§501.1377(3)b and 501.1377(4)(c). Section 501.1377(7), Florida Statute (2008) provides that a violation of any part §501.1377 is also a violation of the FDUPTA and subject to the remedies available under the FDUPTA, including injunctive relief.

Based on the foregoing it is ORDERED AND ADJUGED:

(1) Defendant FMA Servicing, Inc., a/k/a Financial Management Advisors, is hereby enjoined from further violating §501.1377(3)(b), Florida Statutes (2008) by:

Soliciting, charging, receiving, or attempting 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.

(2) Defendant FMA Servicing, Inc., a/k/a Financial Management Advisors, is hereby enjoined from executing an written agreement to provide foreclosure-related rescue services which does not substantially comply with the notice requirements contained in §501.1377(4)(c), Florida Statutes (2008).

(3) The injunctive terms provided for in numbered paragraph (1) and (2) of this order shall operate to bind Defendant FMA Servicing, Inc., a/k/a Financial Management Advisors, its officers, directors, agents, employees, and any person performing services for Defendant FMA Servicing, Inc., a/k/a Financial Management Advisors, Inc.

(4) The injunctive terms provided for in numbered paragraphs (1)-(3) of this order shall remain in effect until such time as this court enters a final order in this matter.

(5) No bond is required under applicable Florida statutes.

DONE AND ORDERED in Chambers in ORANGE County, Florida, this Original Order Signed day of \_\_\_\_\_, 2009.

FEB 24 2009

CYNTHIA Z. MACKINNON  
JUDGE CYNTHIA Z. MACKINNON  
Circuit Court Judge

Copies furnished to:  
Jerrett D. Brock (counsel for Plaintiff)  
Luis A. Gonzalez (counsel for Defendants)