



DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
OFFICE OF CONSUMER PROTECTION

News Release

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STATE OBTAINS PRELIMINARY INJUNCTION AGAINST FRANCHA SERVICES, LLC AND EDNA A. FRANCO FOR MORTGAGE RESCUE FRAUD PREVENTION ACT VIOLATIONS

HONOLULU - The Department of Commerce and Consumer Affairs' (DCCA) Office of Consumer Protection (OCP) has obtained a preliminary injunction against Francha Services, LLC and Edna A. Franco ("Franco") for violations of Hawai'i's Mortgage Rescue Fraud Prevention Act and other consumer protection laws. Maui Circuit Court Judge Rhonda Loo barred Franco from soliciting business from or contacting for any purpose Hawai'i consumers who are owners of "distressed property," continuing to act as "distressed property consultants," and/or engaging in any "distressed property consultant contracts."

Violations of Hawai'i's Mortgage Rescue Fraud Prevention Act and the laws prohibiting unfair and deceptive trade practices subject offending parties to fines ranging from \$500 to \$10,000 per violation.

Act 183, signed into law by Governor Neil Abercrombie on June 28, 2012, now makes violations of the Mortgage Rescue Fraud Prevention Act a class C felony with a mandatory \$10,000 fine.

The injunction, filed on July 25, 2012, also prohibits Franco and her business from directly or indirectly taking, asking for, claiming, demanding, charging, collecting, or receiving any money from any Hawai'i consumers for any purpose until after Franco and her business has fully performed any services that they have contracted or promised to deliver and/or perform.

The suit against Franco and her business was filed in the Circuit Court of the Second Circuit, State of Hawai'i. It alleges that Defendants committed numerous violations of Hawai'i's Mortgage Rescue Fraud Prevention Act which, among other things, prohibits collection of fees before services are performed and requires a written contract spelling out the services and fees to be charged for such services. The suit also alleges Franco's company engaged in a pattern and practice of unfair and deceptive conduct and that Franco actively or passively participated in the violations.

Franco and her business targeted consumers on Maui, O'ahu and Hawai'i Island, offering to save their homes from foreclosure. The homeowners had to pay Franco in advance before she would help them and then did little if anything to complete any of the services she promised.

If members of the public are in default on their mortgage or facing foreclosure, the state has warned that they may be targeted by a mortgage rescue scam. These mortgage rescue "professionals" use half-truths and deceptive tactics to sell services that promise relief to homeowners in distress.

Tips on Avoiding Mortgage Rescue Scams:

If you are looking for foreclosure prevention help, avoid any business that:

- Promises it can stop the foreclosure process, no matter your circumstances
- Instructs you not to contact your lender, lawyer or HUD-approved credit or housing counselor
- Collects a fee before providing any services
- Recommends that you stop making your mortgage payments
- Recommends that you make your mortgage payments directly to it, rather than your lender
- Pressures you to sign papers you haven't had a chance to read thoroughly or that you don't understand

Anyone who believes they have been victimized by a mortgage rescue scam, whether by the above Defendants or any other business, and have not filed a complaint with the State's Office of Consumer Protection may call 587-3222 in Honolulu.

HUD-approved housing counseling agencies in Hawai'i can provide advice on buying a home, renting, defaults, foreclosures, and credit issues for free. If facing foreclosure, members of the public can locate a HUD-approved Hawai'i housing counselor at <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>. They may also call 888-995-HOPE (4673) around-the-clock for free, comprehensive foreclosure assistance from housing experts.

Landon Murata, an OCP staff attorney, represents the OCP in this action.

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N. YOTSUYA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

STATE OF HAWAII, by its Office of Consumer Protection,	)	CIVIL NO.12-1-0247 (1)
	)	(Other Civil Action)
)	
Plaintiff,	)	FINDINGS OF FACT, CONCLUSIONS
	)	OF LAW AND ORDER GRANTING
	)	PLAINTIFF'S MOTION FOR
vs.	)	PRELIMINARY INJUNCTION FILED ON
	)	APRIL 17, 2012
)	
FRANCHA SERVICES, LLC and EDNA)	
A. FRANCO,	)	Date: June 28, 2012
	)	Time: 1:30 p.m.
Defendants.	)	Judge: The Hon. Rhonda I. L. Loo
)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER GRANTING
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION FILED ON APRIL 17, 2012**

State's Motion for Preliminary Injunction, having come on for hearing on June 21, 2012, at 11:00 a.m. and June 28, 2012 at 1:30 p.m. before the Honorable Rhonda I.L. Loo, Judge of the above-entitled Court, the State being represented by Landon M. M. Murata and Defendants Francha Services, LLC and Edna A. Franco being present and being represented by Harry Eliason, and the Court having received evidence, and being fully advised in the premises, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff is the State agency charged with enforcing Hawaii's consumer protection laws, including the Mortgage Rescue Fraud Protection Act and those statutes pertaining to the prevention of unfair and deceptive trade practices.
2. Defendant Francha Services, LLC (hereinafter "Defendant Francha Services") is a domestic limited liability company.
3. Defendant Edna A. Franco (hereinafter "Defendant Franco") is the principal, sole member and manager of Defendant Francha Services and actively or passively participated in the conduct of Defendants set forth below.
4. Defendant Francha Services and Defendant Franco (hereinafter "Defendants") entered into transactions with numerous Hawaii consumers, including but not limited to Estrella R. Agapay (hereinafter "Ms. Agapay") on the Island of Maui, Mila Burcena (hereinafter "Ms. Burcena") on the Island of Oahu, Luke and Young Hwa Jahja Chun (hereinafter "the Chuns") on the Island of Maui, and Kim Sa Thi Do (hereinafter "Ms. Do") on the Island of Maui, regarding their respective residential real properties.
5. At the time she met with Defendants, Ms. Agapay was four months delinquent on her mortgage loan for the residential real property involved in her transaction with Defendants.
6. At the time she met with Defendants, Ms. Burcena was not delinquent on her mortgage loan for the residential real property involved in her transaction with Defendants.

7. At the time they met with Defendants, The Chuns were several months delinquent on their mortgage loan for the residential real property involved in their transaction with Defendants.

8. At the time she met with Defendants, Ms. Do was at least four months delinquent on her mortgage loans for the four residential real properties involved in her transaction with Defendants.

9. In the course of Defendants' initial meetings with the above-mentioned Hawaii consumers, Defendant Franco presented them with her Francha Services, LLC business card which had the phrase "SAVE YOUR HOME NOW!" printed on the front of the card, directly below her company name, "Francha Services, LLC.," (State's Exhibits 1, 4, & 7).

10. In the course of Defendants' initial meetings with Ms. Agapay, the Chuns, and Ms. Do, Defendants made numerous representations to the consumers, including but not limited to representing that Defendants could save their respective properties from foreclosure, help them get their homes free and clear, and assist them with filing lawsuits against their respective lenders.

11. In the course of Defendants' initial meeting with Ms. Burcena, Defendants advised her to stop making payments to her lender and represented that she could sue her lender because of discrepancies in her loan.

12. Defendants represented to Ms. Agapay, Ms. Burcena, the Chuns, and Ms. Do that Defendants would be performing a number of services in furtherance of the above mentioned objectives, including but not limited to preparing what Defendants

have termed “forensic loan audits,” “free” loan modifications, and assistance with possible legal action in exchange for a fee.

13. Defendants entered into agreements for services with Ms. Agapay, the Chuns, and Ms. Do and collected money for those services up-front and without first fully performing each service they had agreed to perform.

14. Defendants did not enter into any agreement with Ms. Burcena, and represented they would not cash the two checks Ms. Burcena gave them without her permission, giving her time to decide whether to use Defendants services or not.

15. There is no written agreement or contract memorializing the agreement between Defendants and Ms. Agapay or Defendants and Ms. Do.

16. In the written agreement or contract signed by the Chuns and Defendants through Carmelita Uy, Defendants’ employee and authorized representative (State’s Exhibit 8), Defendants, who were present at the signing of the written agreement or contract, failed to fully disclose or include the following information and or materials:

- a) All services to be performed by Defendants;
- b) All terms of any agreements between Defendants and the owners of the distressed properties, including the total amount and terms of compensation;
- c) A description of the distressed property;
- d) The name, street address, telephone number of the distressed property consultant;
- e) The name and address of the distressed property consultant to whom any notice of cancellation was to be delivered;

- f) The distressed property consultant's signature and date of signature;
- g) A "notice of right to cancel" as set forth in Haw. Rev. Stat. § 480E-4(a); and
- h) A "notice of cancellation form" as set forth in Haw. Rev. Stat. § 480E-4(b).

17. Defendants mislead Ms. Agapay, the Chuns, and Ms. Do, regarding the services Defendants would be rendering, the value of those services, and the potential outcomes as they relate to the Hawaii consumers' distressed properties.

18. Defendants made promises to Ms. Agapay, the Chuns, and Ms. Do that were not fully disclosed in any distressed property consultant contracts, including but not limited to promises to save their homes from foreclosure or to get their homes "free and clear."

19. Defendants, engaged or attempted to engage in activities or acts concerning the distressed properties belonging to Ms. Agapay, the Chuns, and Ms. Do that were not fully disclosed in any distressed property consultant contracts, including but not limited to sending or preparing to send a demand letter to Ms. Agapay's lender on her behalf (State's Exhibit 6).

20. Defendants induced Ms. Agapay, the Chuns, and Ms. Do to engage in activities or acts not fully disclosed in the distressed property consultant contracts, including but not limited to having them produce loan documents to Defendants, sign over general power of attorney to Defendants, pay additional monies to Defendants, and retain attorneys through Defendants.

21. Defendants took general power of attorney from Ms. Agapay for purposes other than to inspect documents concerning the distressed properties.

22. Defendants collected \$2,500 each from Ms. Agapay and Ms. Chun, and \$10,000 from Ms. Do.

23. Despite representing to Ms. Burcena that Defendants would not cash her checks without prior approval, Defendants cashed the checks Ms. Burcena gave them, thus collecting \$5,000 from Ms. Burcena.

24. The total amount of monies Defendants collected from Ms. Agapay, Ms. Burcena, the Chuns, and Ms. Do prior to fully performing any services, was \$20,000.

25. None of the above-mentioned Hawaii consumers' homes and/or property were saved from foreclosure, returned to them after having already been foreclosed on, or transferred to the above-mentioned Hawaii consumers free and clear by the products or services offered or delivered by Defendants.

26. When challenged by Ms. Burcena, Defendants issued her two refund checks, one of which was returned to Defendants when they paid Ms. Burcena \$2,500.00 cash, the other of which was subsequently denied for insufficient funds when Ms. Burcena attempted to redeem it (State's Exhibit 3).

27. Ms. Burcena has been unsuccessful in recovering the remaining \$2,500.00 which Defendants had represented they would be refunding to her.

28. Defendant Franco has represented throughout these proceedings that Defendants have engaged in the conduct set forth above in the performance of their services as "Certified Forensic Loan Auditors."

29. Contrary to Defendant's representation, Defendant Franco's certificate clearly states that she agreed "to NOT solicit homeowners directly, unless [she is] a licensed attorney," (State's Exhibit 19).

30. Defendant Franco's certificate also states, with regard to the training Defendant Franco received, "this training does not imply nor encourage trainees to offer foreclosure relief/prevention assistance services directly to homeowners as it is illegal in many states for loan modification consultants and businesses to charge up-front fees for their services," (State's Exhibit 19).

31. Since early 2010, Plaintiff has received and investigated thirteen (13) mortgage rescue fraud type complaints against Defendants, including but not limited to the four above-mentioned cases, and Defendants failed to produce any evidence that they have at any point or in any way ceased doing business.

32. In the event that a finding of fact should be deemed to be a conclusion of law, it shall be so construed.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the subject matter of this case, there is good cause to believe it will have jurisdiction over all parties hereto, and venue in this circuit is proper.

2. Hawaii courts have set forth the following test to determine whether injunctive relief should be granted: (1) Is the party seeking the injunction likely to prevail on the merits? (2) Does the balance of irreparable damage favor issuance of an interlocutory injunction? (3) To the extent that the public interest is involved, does it

support granting the injunction. See Penn v. Transportation Lease Hawaii, Ltd., 2 Hawaii App. 272 (1981). See also Life of the Land v. Ariyoshi, 59 Haw. 156 (1978).

3. Based on the foregoing Findings of Fact, Plaintiff has established a likelihood of proving that:

a) At the time they met with Defendants, Ms. Agapay, the Chuns, and Ms. Do were owners of “distressed properties” as defined in Haw. Rev. Stat. § 480E-2;

b) Defendants, in the course of their transactions with Ms. Agapay, the Chuns, and Ms. Do, were acting as “distressed property consultants” as defined in Haw. Rev. Stat. § 480E-2;

c) Defendants, in the course of acting as distressed property consultants, have engaged in a variety of acts or practices in violation of Hawaii Rev. Stat. § 480E-3 and § 480E-4, including but not limited to failing in each case to have a “distressed property consultant contract,” that fulfills the requirements of Hawaii Rev. Stat. § 480E-3 and § 480E-4.

d) Defendants, in the course of acting as distressed property consultants, have engaged in a variety of acts or practices in violation of Hawaii Rev. Stat. § 480E-10, including but not limited to taking, asking for, claiming, demanding, charging, collecting, or receiving any compensation prior to fully performing each service Defendants contracted to perform or represented would be performed in violation of Hawaii Rev. Stat. § 480E-10(a)(6) and taking general power of attorney from a distressed property owner in violation of Hawaii Rev. Stat. § 480E-10(a)(12).

e) Defendants, in the course of their transaction with Ms. Burcena, engaged in a variety of unfair or deceptive trade practices, including but not limited to misrepresenting or concealing material facts and failing to make promised refunds in violation of Haw. Rev. Stat. § 480-2(a); and

f) Defendant Franco is personally liable;

g) Plaintiff will thus prevail on the merits.

4. Haw. Rev. Stat. § 480-15 and § 487-15 give the Court the authority to issue injunctive relief for violations of Hawaii's consumer protection laws, thus Defendants' violations of Hawaii Rev. Stat. § 480-2, § 480E-3, § 480E-4, and § 480E-10 constitute irreparable damage, *per se*, and favor the issuance of the requested injunctive relief. See State by Minami v. Andrews, 65 Haw. 289, 291 (1982).

5. Additionally, an injury is irreparable where it is of such a character that a fair and reasonable redress may not be had in a court of law. Penn v. Transportation Lease Hawaii, Ltd., 2 Haw. App. at 276 (1981).

6. If a party "cannot collect a money judgment, then failure to enter the preliminary judgment would irreparably harm it." Tri-State Generation & Transmission Ass'n v. Shoshone River Power, Inc., 805 F.2d 351, 355-56 (10th Cir. 1986).

7. Based on the foregoing Findings of Fact and Conclusions of Law, Defendants have illegally collected at least \$20,000 from the above-referenced Hawaii consumers and allowing Defendants unfettered access to and control of their assets during the pendency of this litigation poses an unreasonable risk that funds wrongfully obtained from consumers will not be available in the future, eliminating the possibility of

meaningful redress and thus constituting irreparable damage favoring the issuance of the requested injunctive relief.

8. The Supreme Court of Hawaii has recognized “the concern of our legislature for consumers” in the enactment of Haw. Rev. Stat. § 480-2, Rosa v. Johnston, 3 Haw. App. 420, 427 (1982).

9. The same policy consideration is reflected in the stated purpose of Haw. Rev. Stat. Chapter 480E which states, impertinent part:

§480E-1 Purpose. The purpose of this chapter is to protect Hawaii consumers from persons who prey on homeowners who face property foreclosures, liens, or encumbrances. Consumers who face foreclosures, liens, or encumbrances are often in desperate financial situations that can have severe adverse consequences for individuals and families even if the consumers have significant equity in their residential real property. The consumers' desperation makes them vulnerable to persons who claim they can stop, prevent, or delay foreclosures, liens, or encumbrances. Persons who make these claims often use the consumers' desperation to foster unequal bargaining positions and withhold or misrepresent vital information and details. As a result, consumers may be convinced to give up their real property interests and valuable equity to these persons while receiving little in return. Requiring full and complete disclosure of vital information will better enable consumers to make informed decisions when dealing with persons claiming to be able to stop foreclosures, liens, or encumbrances. This [chapter] addresses possible misrepresentations by compelling persons who offer assistance to fully and completely describe their services in written contracts and gives the homeowners the right to cancel at any time before a distressed property consultant has performed all services called for in a contract.

Haw. Rev. Stat. § 480E-1.

10. Given our legislature’s clear concern for Hawaii consumers as evidenced in the above-mentioned statutory provisions, their desire to protect Hawaii consumers from the exact type of conduct Defendants have engaged in, and the authority given to the Courts to grant injunctive relief for violations of Hawaii’s consumer protection laws, the public interest clearly supports the issuance of the requested injunctive relief.

12. In the event that a conclusion of law should be deemed to be a finding of fact, it shall be so construed.

ORDER

ACCORDINGLY IT IS HEREBY ORDERED, ADJUDGED AND DECREED

that Defendants Francha Services, LLC and Edna A. Franco (hereinafter “Defendants”) and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order are hereby restrained and enjoined from any of the following:

1. Continuing to solicit business from or contact for any purpose, whether directly or indirectly, any Hawaii consumers who are owners of “distressed property,” continuing act as “distressed property consultants,” and/or engaging in any “distressed property consultant contracts” as those terms are defined in Haw. Rev. Stat. § 480E-2.

2. Continuing to solicit business from or contact for any purpose, whether directly or indirectly, any Hawaii consumers in Defendants’ capacity as what Defendants have referred to as “certified forensic loan auditors,” or “real estate loan document examiners.”

3. Continuing to provide any information, products or services for any purpose, whether directly or indirectly, to Hawaii consumers in connection with Defendant’s activities as what Defendants have referred to as “certified forensic loan auditors,” or “real estate loan document examiners,” including but not limited to the preparation of what have been termed as “forensic loan audits,” or “loan audits,” or “audit reports.”

4. Directly or indirectly taking, asking for, claiming, demanding, charging, collecting, or receiving any money from any Hawaii consumers for any purpose until after the Defendants have fully performed each and every service they have contracted to perform or promised to perform, whether prior to or subsequent to the date of this order and whether orally or in writing.

5. Directly or indirectly taking, asking for, claiming, demanding, charging, collecting, or receiving any money from any Hawaii consumers for any purpose until after the Defendants have delivered any and all products they have contracted to deliver or promised to deliver, whether prior to or subsequent to the date of this order and whether orally or in writing.

6. Making or disseminating any misleading or deceptive representations, whether orally or in writing and whether overtly or by implication or omission, including but not limited to distributing business cards or any other documentation with the phrase "SAVE YOUR HOME NOW" printed on them.

7. Failing to make any refunds promised to Hawaii consumers whether that promise was made orally or in writing.

8. Failing to return to the Hawaii consumers any and all contracts, accounting data, correspondence, computer tapes, discs, or other computerized records, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, bank statements, appointment books, copies of federal, state or local business or personal income or property tax returns, and other documents or records of any kind, belonging to the Hawaii consumers, that were given to or received by Defendants.

9. Any further violations of any provision of Haw. Rev. Stat. § 480-2(a) and Haw. Rev. Stat. Chapter 480E, including but not limited to § 480E-3, § 480E-4, and/or § 480E-10(a).

10. Effecting any change in its products, services, form of doing business or organizational identity for the purpose of avoiding the terms of this preliminary injunction.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that

Defendants and their officers, agents, servants, employees, attorneys, and all persons or entities directly or indirectly under the control of any of them, including any financial institution, and all other persons or entities acting in concert or participation with any of them who are served with a copy of this Order are hereby restrained and enjoined from any of the following:

1. Directly or indirectly transferring, selling, alienating, liquidating, encumbering, pledging, loaning, assigning, concealing, dissipating, converting, withdrawing or otherwise disposing of any assets, funds, real property or other property, wherever located, owned or controlled by or held for the benefit of, in whole or in part, or in the possession of any of the Defendants, except as ordered by the court.

2. Directly or indirectly withdrawing, removing, assigning, transferring, pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise disposing of any account or asset of the Defendants or their affiliates or subsidiaries.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

1. The funds, property and assets affected by this Order shall include

both existing assets and assets acquired after the effective date of this Order, including without limitation those acquired by loan or gift.

2. Copies of this Order may be served by facsimile transmission, email transmission, personal or overnight delivery, or U.S. mail, by agents and employees of the Plaintiff or any state or federal law enforcement agency or by private process server on (1) Defendants; (2) any financial institution, entity or person that holds, controls, or maintains custody of any account or assets of any Defendant or who has held, controlled or maintained custody of any account or asset of any Defendant; and (3) any other person or entity that may be subject to any provision of this Order.

3. This Court shall retain jurisdiction over this matter for all purposes.

Dated at Wailuku, Hawaii: JUL 25 2012

SGD./RHONDA I.L. LOO (SEAL)

THE HONORABLE RHONDA I.L. LOO
Judge of the above entitled court

APPROVED AS TO FORM:

HARRY ELIASON
Attorney for Defendants Francha Services, LLC
and Edna A. Franco

Civil No. 12-1-0247 (1); State v. Francha Services, LLC and Edna A. Franco; Findings of Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Preliminary Injunction filed on April 17, 2012