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DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 S. Potomac Street Centennial, Colorado 80112	
STATE OF COLORADO, ex rel. JOHN W. SUTHERS, ATTORNEY GENERAL, Plaintiff, v. GREEN RIVER MORTGAGE, INC., and DIMITRY YAKUBOVICH, individually. Defendants.	▲ **COURT USE ONLY** ▲
Attorneys for Plaintiff: JOHN W. SUTHERS Attorney General ANDREW P. MCCALLIN* First Assistant Attorney General Registration Number: 20909 ALISSA HECHT GARDENSWARTZ* Assistant Attorney General Registration Number: 36126 1525 Sherman Street, 7th Floor Denver, CO 80203 (303) 866-5079 (303) 866-4916 Fax *Counsel of Record	Case No.:
COMPLAINT	

Plaintiff, the State of Colorado, upon relation of John W. Suthers, Attorney General for the State of Colorado, by and through undersigned counsel, states and alleges as follows:

INTRODUCTION

1. This is an action brought by the State of Colorado pursuant to the Colorado Consumer Protection Act, Colo. Rev. Stat. §§ 6-1-101 through 115 (2008) ("CCPA"), to enjoin and restrain Defendants from engaging in unlawful deceptive trade practices, for statutorily mandated civil penalties, for disgorgement, restitution, and for other relief as provided in the CCPA.

PARTIES

2. John W. Suthers is the duly elected Attorney General of the State of Colorado and is authorized under Colo. Rev. Stat. § 6-1-103 (2008) to enforce the provisions of the CCPA.

3. Green River Mortgage, Inc. ("Green River") was a Colorado corporation incorporated on November 25, 2003 and voluntarily dissolved on July 25, 2007, with a principal place of business located at 6855 S. Havana Street, Suite 560, Centennial, CO 80112 at all times relevant to this action.

4. Dimitry Yakubovich ("Yakubovich") is an individual who resided at 10176 Park Meadows Drive, Lone Tree, Colorado 80214 at all times relevant to this action. Mr. Yakubovich was the president of Green River, and formulated, directed, controlled, or participated in the alleged unlawful acts and practices of Green River.

JURISDICTION AND VENUE

5. Pursuant to Colo. Rev. Stat. § 6-1-110(1), this Court has jurisdiction to enter appropriate orders prior to and following a determination of liability.

6. At all times relevant to this action, Defendants maintained their offices and transacted business in Arapahoe County, Colorado. Accordingly, venue is proper under Colo. Rev. Stat. § 6-1-103 and C.R.C.P. 98.

PUBLIC INTEREST

7. Through their unlawful, deceptive and fraudulent business practices, Defendants deceived, misled and financially injured Colorado consumers. Therefore, the Attorney General believes that this legal proceeding is in the public interest.

STATEMENT OF FACTS

8. Green River was incorporated on or about November 25, 2003 in Colorado. Green River brokered residential mortgages.

9. On or about February 16, 2006, Yakubovich purchased all of the stock and assets of Green River from its previous owners, Ted Martin and Steve Hurley.

10. On or about March 1, 2006, Yakubovich began running advertisements in the Rocky Mountain News and the Denver Post for Green River, advertising specific loans known as "option ARM" loans.

11. An "option ARM loan" appears to be a traditional adjustable rate mortgage. In actuality, it contains some features that are much different than a traditional ARM and which can make this loan unaffordable to the borrower. The option ARM typically allows the borrower to choose from a few monthly payment options, including: a) an amortizing payment of interest and principal, b) an interest-only payment, or c) a minimum payment that is calculated using a low teaser rate. Because this teaser rate is usually lower than the actual interest rate, a borrower who makes the minimum payment is not paying all of the interest due that month. As a result the unpaid interest is being added to the loan principal, resulting in a phenomenon known as "negative amortization".

12. In a traditional ARM, the borrower locks in a fixed interest rate for a period of time, typically one to five years, after which the interest rate adjusts periodically based upon a reference rate. In contrast, option ARM loans start out with a low introductory "teaser" rate that only applies for the first month of the loan. After the first month the interest rate changes periodically, usually on a monthly basis and becomes a fully-indexed rate. A fully-indexed rate is the current value of the rate index used by the loan, plus a margin which varies from one transaction to another, but stays the same through the life of any one loan.

13. Once the interest rate changes to the fully-indexed rate, the teaser rate becomes the minimum monthly payment rate, which is typically lower than the interest rate. As a result, making minimum monthly payments will not cover all of the interest accruing at the fully indexed rate and results in negative amortization.

14. Therefore, if a borrower makes only the minimum monthly payment the negative amortization can cause the loan to reach a "negative amortization life cap." The negative amortization life cap is reached when the owed principal exceeds a certain percentage of the original principal borrowed, usually 110% or 115%. Thereafter, the minimum payment is adjusted to an amount which would be sufficient to repay the new unpaid principal balance in full on the maturity date at the fully-indexed interest rate. When an option ARM loan reaches the negative amortization life cap, there is no limit on how much the minimum monthly payment may adjust upward and it either becomes equal to the fully-amortized payment or is no longer a payment option. This payment shock leaves the borrower obligated to make monthly payments that are sometimes twice as much as their original minimum monthly payment.

15. Option ARM loans typically include a one- to three-year pre-payment penalty which, if the borrower pays off more than a certain percentage of the original principal in the first one or three years of the loan, the borrower must pay a penalty amounting to a set amount of interest on the remaining principal.

16. An option ARM loan can easily reach the negative amortization life cap within two years. The negative amortization life cap and pre-payment penalties, taken together, have the effect of restricting a borrower's ability to refinance out of an option ARM loan

before the minimum payment adjusts or is eliminated altogether. Often by the time the loan reaches the negative amortization life cap, the adjusted minimum monthly payment or fully-amortized payments are far more than what the borrower can afford.

17. From early 2006 through early 2007, Green River regularly advertised these option ARM loans as a way to "get the phone ringing." Yakubovich himself admitted that the option ARM product did not fit everyone, and that less than ten consumers in a given year would sign up for the advertised loan. However, Yakubovich used the low rates associated with the option ARM loan to lure consumers into transactions with Green River.

18. Green River's advertisements of option ARM loans were entirely deceptive and misleading. Specifically, Green River advertised option ARM loans in such a way as to suggest that the initial teaser rate was a fixed interest rate for an extended period of time. For example, Green River advertised the option ARM as a "10 Year Fixed Payment Plan" or "10 Year Fixed" at 3.95%, 4.05% APR in March and April of 2006. Examples of these advertisements are attached hereto as Exhibit A.

19. Throughout 2006, Green River ran numerous, often daily advertisements in both the Rocky Mountain News and the Denver Post that marketed the option ARM loan as "10 Year Fixed," thus misrepresenting the accompanying rate as a fixed interest rate for ten years. In fact, the advertised rate was a payment rate available for ten years that could result in the borrower owing more money than he or she originally borrowed.

20. Additionally, Green River's advertisements did not fully disclose all features of the option ARM loans.

21. Nowhere in its advertisements did Green River disclose the potential for negative amortization associated with making payments at the advertised rate.

22. Nowhere in its advertisements did Green River disclose the potential for loan recasting associated with making payments at the advertised rate.

23. Nowhere in its advertisements did Green River disclose that pre-payment penalties were associated with the option ARM loans.

24. Furthermore, Green River's advertisements misrepresented how a borrower could qualify for an option ARM loan. In a typical Green River advertisement, the following additional statements would be itemized in standard-sized font immediately following the statement of the "interest" rate and the representation that the rate was "10 Year Fixed":

- No Income Verified
- No Docs Required
- 107% Purchases

- 125% Refinancing
- All Credit Welcome

25. In fact, these terms applied to other loans offered by Green River, not to the option ARM loan. As was cryptically stated in very small print at the bottom of the advertisement or along the side of the advertisement, the option ARM was available only to borrowers that had at least 20% equity in their homes, had FICO credit scores of 720 or higher, and had fully-documented income. There is absolutely no indication in the advertisement that this disclosure applied to the "10 Year Fixed" loan. *See* Exhibit A.

26. Yakubovich was responsible for the content and design of the Green River advertisements.

27. As a result of the Defendants' deceptive advertisements, consumers were misled regarding the features of and the qualifications for the option ARM loans, and consequently suffered financial injuries.

28. For example, an elderly couple saw one of Green River's advertisements in the Rocky Mountain News in June 2006 and were very interested in the low advertised interest rate. The couple was living on a fixed income, and thought that the advertised Green River loan would enable them to obtain a better interest rate than they had on their original loan, which was 7.75%. They had excellent credit scores and significant equity in their home.

29. This couple dealt with a Green River loan officer by the name of David Kole. Mr. Kole sold them an option ARM loan with an introductory rate of 1.25% that was applicable for one month. After the first month, the interest rate changed monthly based upon the United States Treasury Securities Twelve Month Index ("MTA"), and included a margin of 3.075%. The loan also included a three year pre-payment penalty.

30. The couple did not understand that 1.25% was not the interest rate of their loan. Despite asking Mr. Kole several times what the interest rate was on the loan, Mr. Kole would keep emphasizing that the couple would have a low monthly payment based upon the 1.25% rate. Mr. Kole did not disclose that making the minimum payment would result in negative amortization.

31. The couple did not realize that making the minimum payment would result in negative amortization until they received their first statement from the loan servicer.

32. As a result of Green River's deceptive advertising and trade practices, the couple now either can pay a minimum payment and incur additional debt, or make monthly interest-only or principal and interest payments that can increase significantly over the life of the loan.

33. Similarly, another elderly couple responded to a Green River advertisement around December 2005-January 2006 advertising a low monthly payment on a $250,000 loan. The advertisement did not disclose the interest rate or term of the loan.

34. This couple met with Nathan Soroka, a loan officer with Green River, who sold them an option ARM loan similar to the one advertised. The loan had a 1.75% interest rate for the first month, and then changed to a fully-indexed rate based upon the London Interbank Offered Rate ("LIBOR") plus a margin of 3.25%. The loan also included a three year pre-payment penalty.

35. In the couple's meetings with Mr. Soroka, he emphasized the low monthly payment option rather than talking about the interest rate associated with the loan. He also did not disclose the potential for negative amortization in making the monthly payment.

36. As a result of Green River's deceptive advertising and trade practices, this couple has lost a significant amount of money. A year after Green River sold them their option ARM loan, they had incurred over $7,700 in deferred interest because they could only afford to make minimum payments on their loan.

FIRST CLAIM FOR RELIEF

(False representations as to characteristics, uses, or benefits of goods, services or property)

37. Plaintiff incorporates herein by reference all of the allegations set forth in paragraphs 1 through 36 of this Complaint.

38. Through the above-described conduct, Defendants have knowingly made false representations as to the characteristics, uses, or benefits of goods, services or property in violation of Colo. Rev. Stat. § 6-1-105(1)(e) (2008).

39. Through the above-described conduct, Defendants have deceived, misled and unlawfully obtained money from Colorado consumers.

SECOND CLAIM FOR RELIEF

(False representations that goods, services or property are of a particular standard, grade or quality)

40. Plaintiff incorporates herein by reference all of the allegations set forth in paragraphs 1 through 39 of this Complaint.

41. Through the above-described conduct, Defendants have represented that goods, services or property are of particular standard, grade or quality when they knew or

should have known that they are of another in violation of Colo. Rev. Stat. § 6-1-105(1)(g) (2008).

42. Through the above-described conduct, Defendants have deceived, misled and unlawfully obtained money from Colorado consumers.

THIRD CLAIM FOR RELIEF

(Advertising goods, services or property with intent not to sell them as advertised)

43. Plaintiff incorporates herein by reference all of the allegations set forth in paragraphs 1 through 42 of this Complaint.

44. Through the above-described conduct, Defendants have advertised goods, services or property with intent not to sell them as advertised in violation of Colo. Rev. Stat. § 6-1-105(1)(i) (2008).

45. Through the above-described conduct, Defendants have deceived, misled and unlawfully obtained money from Colorado consumers.

FOURTH CLAIM FOR RELIEF

(False or misleading statements of fact concerning the price of goods, services or property)

46. Plaintiff incorporates herein by reference all of the allegations set forth in paragraphs 1 through 45 of this Complaint.

47. Through the above-described conduct, Defendants made false or misleading statements of fact concerning the price of goods, services or property in violation of Colo. Rev. Stat. § 6-1-105(1)(l) (2008).

48. Through the above-described conduct, Defendants have deceived, misled and unlawfully obtained money from Colorado consumers.

FIFTH CLAIM FOR RELIEF

(Failing to disclose material information concerning goods, services or property)

49. Plaintiff incorporates herein by reference all of the allegations set forth in paragraphs 1 through 48 of this Complaint.

50. Through the above-described conduct, Defendants failed to disclose material information concerning goods, services, or property which was known at the time of advertisement or sale, if such failure to disclose such information was intended to induce the consumer to enter into a transaction, in violation of the Colo. Rev. Stat. § 6-1-105(1)(u) (2008).

51. Through the above-described conduct, Defendants have deceived, misled and unlawfully obtained money from Colorado consumers.

SIXTH CLAIM FOR RELIEF

(Advertising, displaying, distributing, or broadcasting false, misleading or deceptive statements with regard to rates, terms, or conditions for a mortgage loan)

52. Plaintiff incorporates herein by reference all of the allegations set forth in paragraphs 1 through 51 of this Complaint.

53. Through the above-described conduct, Defendants knowingly advertised displayed, distributed, broadcasted, televised, or caused or permitted to be advertised, displayed, distributed, broadcast, or televised, in any manner, any false, misleading, or deceptive statement with regard to rates, terms, or conditions for a mortgage loan in violation of Colo. Rev. Stat. § 38-40-105(1)(a) (2008) and Colo. Rev. Stat. § 6-1-105(1)(uu) (2007).

54. Through the above-described conduct, Defendants have deceived, misled and unlawfully obtained money from Colorado consumers.

SEVENTH CLAIM FOR RELIEF

(Making a false statement or misrepresenting or concealing material or essential facts to entice a borrower into a mortgage agreement)

55. Plaintiff incorporates herein by reference all of the allegations set forth in paragraphs 1 through 54 of this Complaint.

56. Through the above-described conduct, Defendants made false promises or misrepresentations or concealed essential or material facts to entice either a borrower or a creditor to enter into a mortgage agreement when, under the terms and circumstances of the transaction, he or she knew or reasonably should have known of such falsity, misrepresentation, or concealment in violation of Colo. Rev. Stat. § 38-40-105(1)(b) (2007) and Colo. Rev. Stat. § 6-1-105(1)(uu) (2008).

57. Through the above-described conduct, Defendants have deceived, misled and unlawfully obtained money from Colorado consumers.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for judgment against the Defendants and the following relief:

A. An order declaring Defendants' above-described conduct to be in violation of Colo. Rev. Stat. § 6-1-105(1)(e), (g), (i), (l), and (uu) (2008); and Colo. Rev. Stat. § 38-40-105(1)(a) and (b) (2008).

B. An order permanently enjoining Defendants, their officers, directors, successors, assigns, agents, employees, and anyone in active concert or participation with any Defendant with notice of such injunctive orders, from engaging in any deceptive trade practices as defined in and proscribed by the CCPA and as set forth in this Complaint.

C. Appropriate orders necessary to prevent Defendants' continued or future deceptive trade practices.

D. For a judgment in an amount to be determined at trial for restitution, disgorgement, or other equitable relief pursuant to Colo. Rev. Stat. § 6-1-110(1) (2008).

E. For any pre-judgment interest pursuant to Colo. Rev. Stat. § 5-12-102 (2008).

F. An order requiring Defendants to forfeit and pay to the General Fund of the State of Colorado, civil penalties in an amount not to exceed $2,000 per violation pursuant to Colo. Rev. Stat. § 6-1-112(1) (2008), or $10,000 per violation pursuant to Colo. Rev. Stat. § 6-1-112(3) (2008).

G. An order requiring Defendants to pay the costs and expenses of this action incurred by the Attorney General, including, but not limited to, Plaintiff's attorney fees, pursuant to Colo. Rev. Stat. § 6-1-113(4) (2008).

H. Any such further orders as the Court may deem just and proper to effectuate the purposes of the CCPA.

Dated this 14th day of January, 2009.

JOHN W. SUTHERS
Attorney General

/s Alissa Hecht Gardenswartz

ALISSA HECHT GARDENSWARTZ, 36126*
Assistant Attorney General
Consumer Protection Section
Attorneys for Plaintiff
*Counsel of Record

Pursuant to C.R.C.P. 121, § 1-26(9), the original of this document with original signatures is maintained in the offices of the Colorado Attorney General, 1525 Sherman Street, Denver, CO 80203, and will be made available for inspection by other parties or the Court upon request.