

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

Case No. 09-23507-CIV-GOLD/MCALILEY

Federal Trade Commission,

Plaintiff,

v.

Kirkland Young, LLC, a limited liability
company,

Attorney Aid, LLC, a limited liability
company,

David Botton,

April Botton Krawiecki, and

Samy Botton,

Defendants.

**PLAINTIFF FEDERAL TRADE COMMISSION'S RESPONSE IN OPPOSITION TO
THE RECEIVER'S MOTION TO DISTRIBUTE PROOFS OF CLAIM AND
ESTABLISH A CLAIM BAR DATE**

Plaintiff Federal Trade Commission opposes the motion [DE 114] of the Temporary Receiver ("Receiver") to distribute proofs of claim and to establish a claim bar date. Plaintiff opposes the motion because it is the first step in establishing a preference for refunds to some consumers over others, it seeks to extinguish the claims of consumers after sixty days if they do

not return the claim form, and it will add unnecessarily to expenses of the receivership.

I. The Receiver's Motion Should Be Denied Because It Will Lead to a Preference Being Shown to Some of Defendants' Victims Over Others.

It is Plaintiff's position that all victims of Defendants' deceptive loan modification business should share equally in frozen monies, whether the victims are current or former customers and whether the funds they paid are characterized as "fees" or "payments to escrow." The Receiver, however, distinguishes between current customers and former customers of the Defendant Kirkland Young ("Kirkland"). Receiver's Motion, ¶ 6 [DE 114]. The Receiver seeks approval to send claim forms to current customers of Defendant Kirkland, who are defined in his motion as "those customers whose request for a loan modification is currently pending and whose funds are currently held in escrow accounts controlled by the Receivership." *Id.*, ¶ 4. The proposed claim form is the first step in the Receiver's proposed plan to return money from escrow funds to the current customers. The second step would be to verify the amounts owed in returned claim forms and then seek the Court's approval to make refunds to the current customers. *Id.*, ¶ 9. Although the Plaintiff respects the Receiver's motive, which is to return funds to the victims, Plaintiff opposes the Receiver's motion and plan because it will set up a preference for the current customers to the disadvantage of former customers.

Escrow payment made by victims should not be distinguished from other payments that they made to Defendants. All payments were the result of Defendant Kirkland enticing its victims to purchase loan modification services by misrepresenting its effectiveness in obtaining loan modifications and its relationship with the lenders of the victims. Defendant Kirkland required customers to pay fees and also make monthly payments into escrow accounts. Escrow funds could be used to pay subsequent (back-end) fees of Kirkland.

Escrow payments were made to accounts effectively controlled by the Defendants. Prior to the spring of 2009, Kirkland maintained escrow funds under a control account in its own name at Citibank. In February 2009, Defendant April Krawiecki, using the title “Escrow Account Manager” notified CitiBank that the escrow funds would be moved to another CitiBank account under the name of “Michael Botton, Attorney at Law.” [DE 38-3]. Michael Botton was closely aligned with Defendant Kirkland. He is a relative of the owners of Kirkland (the individual defendants in the instant case), and Defendant April Botton Krawiecki was a signatory on his trust account in which the escrow funds were maintained. Receiver’s Motion to Extend Receivership to Include ABK Consultants, p. 3 [DE 63]. In addition, Defendant April Krawiecki managed and controlled the escrow funds paid at the request of Defendants Kirkland and Attorney Aid, LLC¹ through her wholly-owned company ABK Consultants, Inc. *Id.*, pp. 2-4. ABK had its computer system housed in the server of Defendant Kirkland at Kirkland’s office. *Id.* at p. 3, n. 1.

Similarly, later escrow agents Ryan Grant, Esquire, and Brian Rokaw, P.A., were closely aligned with Defendants. For example, Ryan Grant is the husband of Bridget Grant, sister of Defendants David Botton and April Krawiecki. Receiver’s Motion to Extend Receivership to Include ABK Consultants, p. 4 [DE 63]. Bridget Grant is also the 99 percent owner of Defendant Attorney Aid, LLC, and its managing member. *Id.*, p. 4, n. 2. Regarding, Brian Rokaw, he allowed Bridget Grant to be a signer on his accounts for a time. Plaintiff’s Exhibit 94 (attached). Even when Bridget Grant was removed as a signer, her sister, Defendant April

¹ Defendant Attorney Aid, LLC, was a continuation of Kirkland operating out of the same office with the same employees and management. Temporary Receiver’s Verified First Interim Report, pp. 4-5, 12-13 [DE 38].

Krawiecki, told Brian Rokaw that when “we need checks signed you will be notified and you can come in to sign them. . . .” *Id.*

Payments made by current customers to the so called “escrow accounts” should not be treated differently than funds paid by former customers to Defendant Kirkland. All have paid money to avail themselves of the misrepresented loan modification services offered by the Defendants. All of the victims should share equally, and the Receiver’s effort to give preference to current customers should be denied.

II. The Receiver’s Motion Should Also Be Denied Because It Seeks to Cut Off the Claims of Consumers Who Do Not Return the Proposed Claim Form.

Putting aside the issue of creating a preference for one group of victims over another, Plaintiff also opposes the Receiver’s motion because it will place the burden on consumers to make a claim or otherwise lose their rights to a refund after sixty days. The instant action is an action to vindicate the public interest by invoking the equitable powers of the Court to enforce Section 5 of the Federal Trade Commission Act, 45 U.S.C. § 45(a), and the Telemarketing Sales Rule, C.F.R. Part 310. Whether consumers return a claim form has no bearing on the merits of Plaintiff’s action or its request for consumer redress for those customers. A cut off for claims should not be sanctioned.

Moreover, as a practical matter, the cut off of rights proposed by the Receiver places the burden and the risk on victims. If the claims process were implemented, victims could lose their claim by failing to return a timely claim form because of the problems inherent in the process, such as their failure to receive the form,² or their failure to return the form due to lack of

² Failure to receive the form is a definite concern because victims in this case were financially distressed and in danger of losing their houses to foreclosure. As a result, victims may have

understanding it, mistake or inadvertence. Consumers' entitlement to redress should not be put in jeopardy through the claims process suggested by the Receiver.

III. Receiver's Motion Should Also Be Denied Because It Will Impose an Unnecessary Expense on the Receivership.

Plaintiff opposes the Receiver's motion because the sending of more than a thousand claim forms (*see* Receiver's Motion, p. 2) and the review of the responses of customers will be a substantial expense to the receivership. The cost of such an undertaking would unnecessarily deplete the assets available for consumer redress. There should be accounting records from which the contributions of victims to the escrow accounts could be determined. On motion of the receiver [DE 63], ABK Consultant, which managed the escrow funds, has been included in the receivership. Order of the Court, 12/30/09, ¶ 7 [DE 84]. To the extent accounting records exist that document the contributions of the current consumers to the escrow accounts requesting claim forms from those customers would be unnecessary.

For all these reasons, the Receiver's motion should be denied.

Respectfully submitted,

WILLARD K. TOM
General Counsel

Dated: May 10, 2010

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been forced to move after making payment to Defendants.

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Certificate of Service

I hereby certify that on May 10, 2010, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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PLAINTIFF' EXHIBIT 94

David Botton

From: April Krawiecki
Sent: Monday, August 31, 2009 10:50 PM
To: 'Brian M. Rokaw, Esq.'
Cc: bridget.grant@sbcglobal.net; David Botton
Subject: FW: Account opening forms
Attachments: resolution.pdf; SignatureCard.pdf; citiescrow_control_account_application_new.pdf

Brian,
Bridget Grant was removed as a signer on your accounts. When we need checks signed you will be notified and you can come in to sign them if its not one of the days you already come into the office. You will need to resign and fedex Citibank the following new resolution signature card Page 7 on application

You can fedex directly to
Liliana Sanabria
Citibank
100 William Street
New York, NY 10038

April Krawiecki
T. 866-554-3880 ext 177
F. 866-554-3881

-----Original Message-----

From: Sanabria, Liliana [mailto:liliana.sanabria@citi.com]
Sent: Friday, June 05, 2009 1:55 PM
To: April Krawiecki
Subject: Account opening forms

Hi April,

These are the forms needed to open new accounts:

1) Citiescrow Control Account Application - complete page 1, 2 & 4 and two signers must sign page 5.

The each signer must complete one of the quadrants on page 2

2) Business - General Deposit Resolution - All signers must print and sign name - Only one signer needs to sign and print their name at the bottom of the form.

3) Citibusiness signature card - There are two signature cards on this page. All signers must print and sign both top and bottom signature cards.

4) Citibusiness online enrollment form - Please complete section C and two signers must sign section D.

5) I need two ID's from each signer. For example:

Driver's License and a major credit card (Visa, Master Card, Discover, Amex). This can be done via email.

6) I also need a copy of your attorney license. - If second signer is a attorney, I need a copy of his attorney license too.

7) EIN number

8) Business specific documentation such as - Copy of the Certificate of Incorporation or Articles of Incorporation stamped "filed" or "approved" by the Sec. of State

If you have any questions, please do not hesitate to call me.

Thank you,
Liliana Sanabria
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New York, NY 10038
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* 212.825.1958 fax
* liliana.sanabria@citi.com