

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-23507-GOLD/MCALILEY

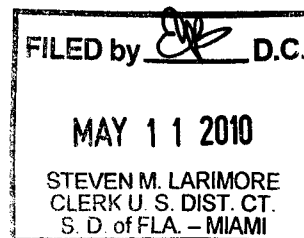
FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Kirkland Young, LLC, a limited liability
company, and David Botton, individually and
as manager of Kirkland Young, LLC, Attorney
Aid, LLC, a limited liability company, April
Botton Krawiecki and Samy Botton,

Defendants.



**RECEIVER'S EMERGENCY MOTION FOR INSTRUCTIONS
CONCERNING THE WINDING DOWN OF KIRKLAND YOUNG, LLC**

Pursuant to S.D. Fla. L.R. 7.1(e), Court-appointed Receiver, Mark F. Raymond ("Receiver") files this Emergency Motion for Instructions Concerning the Winding Down of Kirkland Young, LLC ("Kirkland Young") and states as follows:

At the demand of the Federal Trade Commission ("FTC") and the Office of the Attorney General of Florida ("OAG"), the Receiver has stopped processing loan modifications on behalf of the victims of Kirkland Young pending direction from the Court. For the reasons set forth below, the Receiver does not believe that the FTC and OAG's request is in the best interest of the Receivership Estate, its creditors or its victims.

The Receiver files this motion on an emergency basis because of the harm that many Kirkland Young customers will likely suffer, including going into foreclosure or even worse, facing imminent sale dates, as a result of the Receiver's inability to continue processing their loan modifications during this period.

BROAD and CASSEL

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

INTRODUCTION

Since the inception of the Receivership, the Receiver and his staff have been working diligently with the victims of Kirkland Young to assist them in obtaining mortgage modifications. This work has included extensive and intensive interaction with both financial institutions and the customers to avoid foreclosures, obtain delays or forbearances, and in many instances, obtain mortgage modifications. As the Court is aware, the former customers of Kirkland Young deposited in excess of \$2 million with Kirkland Young with the expectation that those funds would be segregated and utilized to help secure mortgage modifications and avoid their facing foreclosures.

Now, nearly six months after the Receiver has undertaken these efforts, the FTC and the OAG have suddenly demanded that the Receiver cease providing assistance to these customers. According to the OAG, the Receiver's activities are a continuation of the unlawful business practices of Kirkland Young. The OAG has indicated that unless the Receiver ceases its business operations, it will seek an emergency injunction to shut down the Receivership's activities. The OAG filed an action against Kirkland Young in the case known as: *Office of the Attorney General, Department of Legal Affairs, State of Florida vs. Kirkland Young, et. al.* (Case No.: 09-90945-CA-03). A copy of the OAG's Complaint is attached as Exhibit 1.

The Receiver submits that the FTC and OAG's instructions are contrary to the best interests of the Receivership Estate and its customers, as both will suffer greater damage by the Receiver's inability to assist customers who might otherwise obtain a loan modification and, in some cases avoid foreclosure. Hence, the Receiver finds himself in a proverbial "catch 22." Accordingly, the Receiver seeks instruction from the Court regarding whether he should

continue providing assistance to these customers or simply shut down Kirkland Young's limited business operations as demanded by the FTC and the OAG.

MEMORANDUM

The Court has broad power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). The Court's wide discretion derives from the inherent powers of an equity court to fashion relief. *Id.* at 1566 (citing *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982)). The purpose of establishing a receivership is "to protect the estate property and ultimately return that property to the proper parties in interest," and a receiver is vested with the duty and authority to marshal and preserve assets to effectuate an orderly, efficient, and equitable administration. *SEC v. Credit Bancorp, Ltd.*, 93 F. Supp. 2d 475, 476-77 (S.D.N.Y. 2000); *see also* 28 U.S.C. § 754 (noting that a receiver "appointed in any civil action or proceeding involving property . . . shall be vested with complete jurisdiction and control of all such property with the right to take possession thereof.").

In this case, the Court's November 19, 2009 Order to Show Cause and *Ex Parte* Temporary Restraining Order with Asset Freeze and Other Equitable Relief ("TRO") [DE 19] provides the Receiver with the authority to conduct the business operations of the Receivership Defendant. Specifically, paragraph M of the TRO states that Receiver may:

M. Continue and conduct the businesses of the Receivership Defendant in such manner, to such extent, and for such duration as the Temporary Receiver may in good faith deem to be necessary or appropriate to operate the businesses profitably, using the assets of the receivership estate, and lawfully, if at all.

(*See* TRO, Sec. XII) (emphasis added). The TRO further provides that the Receiver shall "[m]anage and administer the business of the Receivership Defendant until further order of this

Court.” (TRO, Sec. XII, par. G). The Receiver has attempted to execute his fiduciary responsibilities and comply with the Court’s TRO by continuing to operate Kirkland Young’s business on a limited basis to assist Kirkland Young’s former customers, while at the same time maximizing the value of the Receivership’s assets pending final resolution of the underlying litigation instituted by the FTC.

As previously set forth in the Receiver’s Supplemental Report dated December 18, 2009 [DE 75], the Receiver continues to wind down the affairs of Kirkland Young, LLC. In doing so, the Receiver and his staff of five former Kirkland Young employees (senior loan processors) have worked with former customers of Kirkland Young, Attorney Aid, LLC, as well as the three law firms that previously worked with Kirkland Young and Attorney Aid, that signed contracts with these entities prior to entry of the Court’s TRO to assist them with their mortgage modification. The Receiver’s December 18, 2009 Supplemental Report also provided the Court with a detailed business plan and monthly operating budget for continuing to service these customers.

Since entry of the Court’s TRO, the Receiver and his staff have reviewed thousands of customer files and have been working with customers and their lending institutions on a daily basis to help customers avoid a foreclosure and obtain a loan modification. None of these customers are located in Florida. Through the Receiver’s efforts, nearly 123 customers have been offered and accepted a loan modification. The Receiver has not collected any fees from any of these customers. However, pursuant to the terms of the customers’ contracts with Kirkland Young, the Receivership Estate would be entitled to collect approximately \$207,000 in fees for obtaining these mortgage modifications. A substantial portion of these fees were

previously collected in advance by Kirkland Young prior the entry of the Court's TRO. These funds remain in segregated accounts under the control of the Receiver.

The Receiver's December 18, 2009 Supplemental Report advised the Court, FTC and the OAG, that the Receiver would continue to assist Kirkland Young's former customers, and that by working with these customers, the Receiver could further his efforts to afford customers and creditors of the Receivership Estate with the best possibility of a full recovery. The Receiver remains in a position to continue assisting these customers and has been successful in avoiding such tragedies that so many homeowners are currently facing nationwide. Therefore, it comes as a surprise that the FTC and the OAG waited nearly 6 months after learning of the Receiver's activities to demand that the Receiver abandon these victims.

The OAG maintains that the Receiver is prohibited from assisting Kirkland Young's former customers because their contracts with Kirkland Young are void *ab initio* based on the allegation that Kirkland Young collected up-front fees from its customers in connection with the rendering of loan modification services---an act that is prohibited by Florida Statute § 501.1377(3), which provides in part:

(3) Prohibited acts.--In the course of offering or providing foreclosure-related rescue services, a foreclosure-rescue consultant may not:

(b) 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.

Fla. Stat. § 501.1377.¹ Any prior bad acts of Kirkland Young should not be imputed to the Receivership so as to preclude the Receiver and his staff from helping these disadvantaged customers to obtain loan modifications.

¹ The FTC has advised the Receiver that they defer to the OAG's position on issues of Florida law.

The ongoing assistance provided by the Receivership to these former customers, many of whom are experiencing dire financial difficulties and are facing the risk of foreclosure of their homes, outweighs the potential harm that many of these customers will experience should the Receiver be required to cease its business operations. Kirkland Young's customers are relying on the Receiver to continue helping them through the loan modification process. As a practical matter, to avoid causing any further harm to these customers, the Receiver would need to contact approximately 1580 customers to provide them with information and documents relating to their files so they can continue the modification process on their own, assuming they have the requisite understanding and ability to do so. The amount of time needed to accomplish this enormous task, and in the interim, the Receiver's inability to service these customers, including responding to any lender inquiries would likely result in many customers going into foreclosure or even worse, facing an imminent sale date.

Even if the Receiver could provide customers with their files in an expedited manner, their funds would remain frozen and under the control of the Receivership Estate. Customers' funds must be returned through an orderly and court-approved claims process which, as the Court may be aware, can often take several months to fully implement. Customers who would otherwise be offered a loan modification likely will not have the necessary funds available to make any qualifying or other payments to their lenders as part of the modification process because their funds are being held by the Receivership Estate.

Notably, the FTC and the OAG have indicated that they will ask the Court to implement a pro-rata claims process which would require the Receiver to invade these customer defined segregated funds for distribution to other customers who previously paid a small upfront fee ranging between \$399-\$699, did not make any monthly escrow payments to Kirkland Young,

and were not offered a loan modification by their lender. One apparent danger in that approach is that active customers who deposited funds on a monthly basis with Kirkland Young and who may otherwise qualify for a loan modification may suffer greater harm by not having access to their funds for use in obtaining a loan modification.²

As previously stated, in six short months, the Receiver has already helped 123 customers obtain a loan modification. By allowing the Receiver to continue assisting these customers, many more loan modifications will likely be obtained. The fees the Receivership Estate would be entitled to collect as a result of obtaining these loan modifications, as provided in the customers' contracts can be used to pay the operating expenses associated with carrying out these services. The remainder of the fees that are ultimately generated through the Receiver's efforts can be earmarked for eventual distribution to those customers who suffered harm and legitimate verifiable losses as a result of Kirkland Young's pre-receivership activities, as has been alleged by the FTC and OAG.

The Receiver remains committed to assisting the former customers of Kirkland Young. However, in light of the FTC and the OAG's demand, which is entirely adverse to the interests of these customers, the Receiver asks this Court for instructions regarding how to proceed with this matter.

² The Receiver will be filing a separate brief in connection with his proposal for a claim distribution process.

CASE NO. 09-23507-GOLD/MCALILEY

Respectfully submitted,

BROAD AND CASSEL


Attorneys for Receiver
One Biscayne Tower, 21st Floor
2 South Biscayne Boulevard
Miami, Florida 33131
Telephone: 305.373.9400
Facsimile: 305.373.9443

By: 

DAVID B. ROSEMBERG
Florida Bar No.: 0582239

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via facsimile and U.S. mail on this 11th day of May, 2010 upon all counsel of record identified on the attached Service List.



DAVID B. ROSEMBERG

BROAD and CASSEL

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

SERVICE LIST

Chris M. Couillou, Esq.

Sana C. Chriss, Esq.

Federal Trade Commission
225 Peachtree Street, Suite 1500
Atlanta, GA 30303

Tel: 404.656.1353 (Couillou)

404.656.1364 (Chriss)

Fax: 404.656.1379

e-mail: ccouillou@ftc.gov ;

schriss@ftc.gov;

Douglas Brown, Esq.

Rumberger Kirk and Caldwell
Attorneys For David Botton
Lincoln Plaza, Suite 1400

300 South Orange Avenue

Orlando, Florida 32801

Tel.: 407.872.7300

Fax: 407.841.2133

e-mail: dbrown@rumberger.com

Darren Keith McCartney, Esq.

Rumberger Kirk & Caldwell
300 S Orange Avenue, Suite 1400

Orlando, FL 32802-1873

Tel: 407.872.7300

Fax: 407.841.2133

e-mail: dmccartney@rumberger.com

Michael Holt, Esq.

Rumberger Kirk & Caldwell P A
80 SW 8th Street, Suite 3000

Miami, Florida 33130

Tel.: 305.358.5577

Fax: 305.371.7580

e-mail: mholt@rumberger.com

Amanda Maxwell, Esq.

Robert D. Hertzberg, P.A.

Bank of America Tower, Suite 3550

100 SE 2nd Street

Miami, FL 33131

Tel: 305.371.6060

Fax: 305.358.5917

e-mail: amaxw@aol.com

Arthur R. Rosenberg, Esq.

Arthur R. Rosenberg, P.A.

6499 Powerline Rd., Suite 106

Fort Lauderdale, Florida 33309

Tel: 954.772.5151

Fax: 954.772.4224

e-mail: arr@arosenberg.com

David B. Rothman, Esq.

Rothman & Associates P A

200 S Biscayne Blvd., Suite 2770

Miami, Florida 33131

Tel.: 305.358.9000

Fax: 305.374.5747

e-mail: DBR@RothmanLawyers.com

Assistant Attorney General George Rudd

Office of the Attorney General

110 SE 6th Street, 10th Floor

Fort Lauderdale, Florida 33301

Tel.: 954.712.4600

Fax: 954.712.4658

e-mail: george.rudd@myfloridalegal.com

CASE NO. 09-23507-GOLD/MCALILEY

Richard Wayne Epstein, Esq.
Greenspoon Marder P A
100 W Cypress Creek Rd Ste 700
Fort Lauderdale, Florida 33309
Tel.: 954.491.1120
Fax: 954. 771.9264
e-mail: richard.epstein@gmlaw.com

Richard Alan Sharpstein, Esq.
Jordan Burt LLP
777 Brickell Ave Ste 500
Miami, Florida 33131
Tel.: 305.371.2600
Fax: 305.372.9928
e-mail: ras@jordenusa.com

Gregory Richard Barthelette, Esq.
PO Box 400
Cobleskill, New York 12043
Tel.: 518.2958383
e-mail: george5252@hotmail.com

Mark F. Raymond, Receiver
2 South Biscayne Tower, 21st Floor
Miami, FL 33131
Tel: 305.373.9400
Fax: 305.373.9443
e-mail: MRaymond@BroadandCassel.com

BROAD and CASSEL

One Biscayne Tower, 21st Floor 2 South Biscayne Blvd. Miami, Florida 33131-1811 305.373.9400

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL
CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

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

Plaintiff,

vs.

Case No.: 09-90945 CA 03

KIRKLAND YOUNG LLC, a Florida limited liability company; ATTORNEY AID LLC, a Florida limited liability company, DAVID BOTTON, individually and as owner, manager and/or member of Kirkland Young, LLC; BRIDGET GRANT, individually and as owner, manager and/or member of Attorney Aid LLC; ABK CONSULTANTS INCORPORATED, a New York corporation; APRIL BOTTON KRAWIECKI, individually and as owner, officer and/or director of ABK Consultants Incorporated, and as owner, manager and/or member of Kirkland Young, LLC; SAMY BOTTON, individually and as owner, manager and/or member of Kirkland Young, LLC; MICHAEL BOTTON, individually; RYAN MATTHEW GRANT, individually; and BRIAN MICHAEL ROKAW, individually.

Defendants.

THE ORIGINAL FILED
ON DEC 17 2009
IN THE OFFICE OF
CIRCUIT COURT DADE CO
CIVIL DIVISION

COMPLAINT

Plaintiff, OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, STATE OF FLORIDA (hereinafter referred to as "Plaintiff"), sues Defendants KIRKLAND YOUNG LLC, a Florida limited liability company; ATTORNEY AID LLC, a Florida limited liability company, DAVID BOTTON, individually and as owner, manager, member and/or officer of Kirkland Young, LLC; BRIDGET GRANT, individually and as owner, manager, member and/or officer of Attorney Aid LLC; ABK CONSULTANTS

INCORPORATED, a New York corporation; **APRIL BOTTON KRAWIECKI**, individually and as owner, officer and/or director of ABK Consultants Incorporated; **SAMY BOTTON**, individually and as owner, manager and/or member of Kirkland Young, LLC; **MICHAEL BOTTON**, individually; **RYAN MATTHEW GRANT**, individually; and **BRIAN MICHAEL ROKAW**, individually, (hereinafter collectively referred to as "Defendants").

JURISDICTION

1. This is an action for damages and injunctive relief, brought pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2008).
2. This Court has jurisdiction pursuant to the provisions of said statute.
3. Plaintiff is an enforcing authority of Florida's Deceptive and Unfair Trade Practices Act as defined in Chapter 501, Part II, Florida Statutes, and is authorized to seek damages, injunctive and other statutory relief pursuant to this part.
4. The statutory violations alleged herein occurred in or affected more than one judicial circuit in the State of Florida, including Dade and Broward County. Venue is proper in the Eleventh Judicial Circuit as the Defendants engaged in business in Miami-Dade County and/or because much of the conduct alleged below occurred in Miami-Dade County, Florida.
5. Plaintiff has conducted an investigation, and the head of the enforcing authority, Attorney General Bill McCollum has determined that an enforcement action serves the public interest.
6. Defendants, at all times material hereto, provided goods or services as defined within Section 501.203(8), Florida Statutes (2008).
7. Defendants, at all times material hereto, solicited consumers within the definitions of Section 501.203(7), Florida Statutes (2008).

8. Defendants, at all times material hereto, were engaged in a trade or commerce within the definition of Section 501.203(8), Florida Statutes (2008).

DEFENDANTS

9. Defendant Kirkland Young LLC is an active Florida limited liability company with a principal address of 2915 Biscayne Boulevard, Suite 303, Miami, Florida 33137.

10. Defendant Attorney Aid LLC is an active Florida corporation with a principal address of 17201 Biscayne Boulevard, Suite 3507, Sunny Isles Beach, Florida 33160.

11. Defendant ABK Consultants Incorporated is a New York corporation doing business in Miami-Dade County, Florida.

12. Defendant David Botton is an adult male over the age of twenty one and is sui juris. Upon information and belief, Defendant David Botton resides in Miami-Dade County, Florida.

13. Defendant David Botton was at all times material an owner, manager, member and/or officer of Defendant Kirkland Young LLC.

14. At all times material hereto, Defendant David Botton knew of and controlled the activities of Defendant Kirkland Young LLC. He had actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the acts of the employees, agents, and representatives of Defendant Kirkland Young LLC as described below were unfair or deceptive and/or prohibited by law.

15. Defendant Bridget Grant is an adult female over the age of twenty one and is sui juris. Upon information and belief, Defendant Bridget Grant resides in Broward County, Florida.

16. Defendant Bridget Grant was at all times material an owner, manager, member and/or officer of Defendant Attorney Aid LLC.

17. At all times material hereto, Defendant Bridget Grant knew of and controlled the activities of Defendant Attorney Aid LLC. She had actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the acts of the employees, agents, and representatives of Defendant Attorney Aid LLC as described below were unfair or deceptive and/or prohibited by law.

18. Defendant April Botton Krawiecki is an adult female over the age of twenty one and is sui juris. Upon information and belief, Defendant April Botton Krawiecki resides in Miami-Dade County, Florida.

19. Defendant April Botton Krawiecki was at all times material an owner, officer and/or director of ABK Consultants Incorporated, and an owner, manager, member and/or officer of Defendant Kirkland Young LLC.

20. At all times material hereto, Defendant April Botton Krawiecki knew of and controlled the activities of Defendant ABK Consultants Incorporated and Kirkland Young LLC. She had actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the acts of the employees, agents, and representatives of Defendant ABK Consultants Incorporated and Kirkland Young LLC as described below were unfair or deceptive and/or prohibited by law.

21. Defendant Samy Botton is an adult male over the age of twenty one and is sui juris. Upon information and belief, Defendant Samy Botton resides in Broward County, Florida.

22. Defendant Samy Botton was at all times material an owner, manager, member and/or officer of Defendant Kirkland Young LLC.

23. At all times material hereto, Defendant Samy Botton knew of and controlled the activities of Defendant Kirkland Young LLC. He had actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the acts of the employees, agents, and representatives of Defendant Kirkland Young LLC as described below were unfair or deceptive and/or prohibited by law.

24. Defendant Michael Botton is an adult male over the age of twenty one and is sui juris. Upon information and belief, Defendant Michael Botton resides in Ocean, New Jersey.

25. Defendant Michael Botton was at all times material a practicing attorney licensed with the State of New Jersey.

26. At all times material hereto, Defendant Michael Botton had actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the acts of the employees, agents, and representatives of Defendants Kirkland Young LLC, Attorney Aid, LLC and/or ABK Consultants Incorporated as described below were unfair or deceptive and/or prohibited by law.

27. Defendant Ryan Matthew Grant is an adult male over the age of twenty one and is sui juris. Upon information and belief, Defendant Ryan Matthew Grant resides in Plano, Texas.

28. Defendant Ryan Matthew Grant was at all times material a practicing attorney licensed with the State of Texas.

29. At all times material hereto, Defendant Ryan Matthew Grant had actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the acts of the employees, agents, and representatives of Defendants Kirkland Young LLC, Attorney Aid, LLC and/or ABK Consultants Incorporated as described below were unfair or deceptive and/or prohibited by law.

30. Defendant Brian Michael Rokaw is an adult male over the age of twenty one and is sui juris. Upon information and belief, Defendant Brian Michael Rokaw resides in Fort Pierce, Florida.

31. Defendant Brian Michael Rokaw was at all times material a practicing attorney licensed with the State of Florida.

32. At all times material hereto, Defendant Brian Michael Rokaw had actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the acts of the employees, agents, and representatives of Defendants Kirkland Young LLC, Attorney Aid, LLC and/or ABK Consultants Incorporated as described below were unfair or deceptive and/or prohibited by law.

33. At all times relevant to this action, Defendants marketed loan modification and foreclosure-related rescue services to consumers.

34. At all times relevant to this action, Defendants received funds from consumers for the implementation of the foreclosure-related rescue services.

STATEMENT OF FACTS AND DEFENDANTS'
COURSE OF CONDUCT

35. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 34 as if fully set forth hereinafter.

36. Commencing on a date unknown, but at least subsequent to October 1, 2008, the Defendants engaged in various willful deceptive and unfair trade practices, as hereinafter set forth, in violation of Chapter 501, Part II, Florida Statutes (2008).

37. Commencing on a date unknown, but at least subsequent to October 1, 2008, the Defendants engaged in a systematic pattern of conduct designed and intended to induce consumers to purchase their services via a series of misrepresentations.

38. Section 501.1377(3)(b), Florida Statutes (2008), prohibits any person performing foreclosure-related rescue services from imposing a fee prior to the completion of the services.

39. Commencing on a date unknown, but at least subsequent to October 1, 2008, the Defendants solicited, advertised or otherwise offered services to homeowners for mortgage foreclosure-related rescue services.

40. Commencing on a date unknown, but at least subsequent to October 1, 2008, the Defendants solicited, charged and received upfront payment from homeowners for foreclosure-related rescue services in violation of Section 501.1377, Florida Statute (2008).

41. In order to utilize mortgage foreclosure-related rescue services, the Defendants required homeowners to pay to Defendants a non-refundable upfront fee of approximately \$499.00 - \$798.00.

42. In addition to the upfront fee, homeowners were to pay loan modification fees of approximately \$1,299.00 - \$2,299.00 for a first mortgage modification and approximately \$499.00 - \$699.00 for a second mortgage modification. These fees were often referred to as "back end fees."

43. In return for said payments from homeowners, Defendants represented to homeowners that Defendants would interact or otherwise work with the lenders to reduce the consumers' indebtedness and/or prevent foreclosure of the homeowners' houses.

44. The back end fees were allegedly due upon completion of the modification.

45. The Defendants represented to homeowners however, that the back end fees could be "rolled" into the loan.

46. The Defendants thereby implied that the lender would incorporate the modification fee into the new loan and that the homeowner would have no further expense other than the upfront fee.

47. The Defendants also made misrepresentations to homeowners regarding the need for "Qualifying Payments." The Defendants falsely stated lenders required "Qualifying Payments" from homeowners in order to enter a lender's modification program.

48. To facilitate the collection of additional fees, homeowners were required to setup escrow accounts with affiliated attorneys Michael Botton, Ryan Matthew Grant and Brian Michael Rokaw.

49. Defendants Michael Botton, Ryan Matthew Grant and Brian Michael Rokaw facilitated and furthered the misrepresentations made to homeowners through the use of the escrow accounts they maintained as attorneys and escrow agreements with homeowners.

50. Kirkland Young LLC and Attorney Aid LLC employees were instructed to misrepresent themselves as members of the "loan modification department" of the Law Offices of Michael Botton, Ryan Matthew Grant or Brian Michael Rokaw, depending on the geography of the homeowner.

51. Homeowners were thus misled into believing they were retaining attorney representation for their loan modification.

52. The Defendants set up automatic monthly payments from consumer's bank accounts into the escrow accounts to collect the "Qualifying Payments."

53. Lenders, however, do not require homeowners to pay a "Qualifying Payment" in order to qualify for a loan modification.

54. The requirement to pay into the escrow account was in fact a vehicle to collect escrow fees and to ensure the collection of loan modification fees prior to any modification being completed, in direct violation of Section 501.1377, Florida Statutes (2008).

55. The use of the escrow accounts generated additional fees for the Defendants.

56. Fees homeowners were required to pay from funds deposited into escrow included but were not limited to a Setup fee of \$18.99; Monthly Service Charge fee of \$12.00; Payment Into Account by Certified Check fee of \$9.99; Account Closing fee of \$19.99; Premium Disbursement fee of \$15.00; Statement Copy by email fee of \$8.99 and Statement Copy by regular mail fee of \$14.99.

57. The use of the escrow accounts also facilitated the collection of loan modification fees prior to any modification being completed.

58. Defendants Michael Botton, Ryan Matthew Grant and Brian Michael Rokaw obtained consumer funds from their escrow accounts by use of escrow agreements which stated that any funds accumulated in the escrow account not used as a "Qualifying Payment" were to be forwarded to the "Modification Company" and applied to any balance due for loan modification services.

59. Any payments made by the Defendants to lenders as a "Qualifying Payment", if at all, were arbitrary, and not based on a standard requirement by any lender.

60. The funds accumulated in the attorney escrow accounts were used primarily for the benefit of the Defendants, rather than for the purported purpose of assisting homeowners in being qualified for a loan modification by a bank.

61. Correspondence sent to homeowners by ABK Consultants Incorporated regarding the attorney escrow accounts furthered the misrepresentations by stating that ABK Consultants

Incorporated was "hired" by the respective attorney "...to continue working on your Escrow accounts."

62. Service contracts between the Defendant attorneys and ABK Consultants Incorporated, however, reflect that ABK Consultants Incorporated could remove the attorney "...as the Escrow Agent and appoint another Escrow Agent of ABK's choosing," establishing ABK Consultants Incorporated hired the attorneys, not vice versa.

COUNT I

DECEPTIVE AND UNFAIR TRADE PRACTICES CHAPTER 501, PART II FLORIDA STATUTES

63. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 62 as if fully set forth hereinafter.

64. Chapter 501.204(1), Florida Statutes, declares that unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

65. The Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes, provides that "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful."

66. Defendants have violated Section 501.204(1) the Florida Deceptive and Unfair Trade Practices Act, Florida Statutes (2008) by using deceptive and unfair practices in the marketing of loan modification and foreclosure-related rescue services likely to mislead consumers.

67. These above-described acts and practices of Defendants have injured and will likely continue to injure and prejudice the public.

68. Unless the Defendants are permanently enjoined from engaging further in the acts and practices complained of herein, the continued activities of the Defendants will result in irreparable injury to the public for which there is no adequate remedy at law.

69. As a result of the foregoing and as specifically heretofore set forth, Defendants have engaged in deceptive acts or practices as aforesaid in violation of the provisions of Chapter 501, Part II of the Florida Statutes.

COUNT TWO

**VIOLATIONS INVOLVING HOMEOWNERS DURING THE COURSE OF
RESIDENTIAL FORECLOSURE PROCEEDINGS**

70. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 62 as if fully set forth hereinafter.

71. Section 501.1377(3)(b), Florida Statutes (2008), prohibits any person performing foreclosure-related rescue services from imposing a fee prior to the completion of the services.

72. Subsequent to October 1, 2008, the Defendants solicited, charged and received upfront payment from homeowners for foreclosure-related rescue services in violation of Florida Statute § 501.1377.

73. In return for said payments from homeowners, Defendants represented to homeowners that Defendants would interact or otherwise work with the lenders to reduce the consumers' indebtedness and/or prevent foreclosure of the homeowners' houses.

74. As set forth in paragraphs 35 through 62 above, by charging an up-front fee to homeowners seeking foreclosure-related rescue services, Defendants have violated Section 501.1377(3)(b), Florida Statutes (2008).

75. As a result of the Defendants' aforesaid practices, Defendants have enriched themselves from the funds of distressed homeowners prior to rendering the represented services.

76. As a result of the foregoing and as specifically heretofore set forth, Defendants have engaged in deceptive acts or practices as aforesaid in violation of the provisions of Section 501.1377 and Chapter 501, Part II of the Florida Statutes.

WHEREFORE, Plaintiff requests this court to enter Judgment for Plaintiff as follows:

1. As to Counts I and II, permanent injunctions against the Defendants, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with the Defendants who receive actual notice of this injunction, prohibiting and enjoining such persons from doing the following acts:

a. Violating the provisions of Section 501.1377 and Chapter 501, Part II, Florida Statutes (2008);

b. Engaging in any business activity or operations offering, soliciting, providing or otherwise generally dealing in or related to foreclosure and the residential and commercial real estate businesses, including but not limited to foreclosure defense, loan modification, loss mitigation, debt reduction, mortgage financing, sales and/or brokerage.

2. As to Counts I and II, award actual damages to all consumers who are shown to have been injured in this action, pursuant to Section 501.207(1)(c), (3) Florida Statutes (2008).

3. As to Count I, assess against Defendants herein civil penalties in the amount of Ten Thousand Dollars (\$10,000.00) for each act or practice pursuant to Section 501.2075, Florida Statutes (2008).

4. As to Count I, assess against the Defendants herein civil penalties in the amount of Fifteen Thousand Dollars (\$15,000.00) for each act or practice found to be in violation of Section 501.2077(7), Florida Statutes (2008).

5. As to Count II, assess against the Defendants herein civil penalties in the amount of Fifteen Thousand Dollars (\$15,000.00) for each act or practice found to be in violation of Section 501.1377, Florida Statutes (2008).

6. As to Counts I and II, order the dissolution of Defendant **KIRKLAND YOUNG LLC**, a Florida limited liability company, and any fictitious names registered, and owned by, **KIRKLAND YOUNG LLC**.

7. As to Counts I and II, order the dissolution of Defendant **ATTORNEY AID LLC** a Florida limited liability company, and any fictitious names registered, and owned by, **ATTORNEY AID LLC**.

8. As to Counts I and II, order the dissolution of Defendant **ABK CONSULTANTS INCORPORATED**, a New York corporation, and any fictitious names registered, and owned by, **ABK CONSULTANTS INCORPORATED**.

9. As to Counts I and II, award reasonable attorneys fees pursuant to F.S. 501.2075.

10. As to Counts I and II, grant temporary relief pursuant to F.S. 501.207(3).

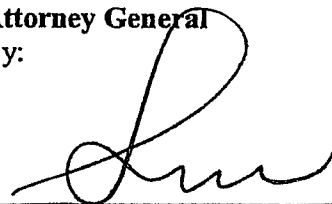
11. As to Counts I and II, waive the posting of any bond by Plaintiff in this action.

12. As to Counts I and II, grant such other relief as this Honorable Court deems just and proper.

Respectfully Submitted

BILL McCOLLUM
Attorney General

By:



GEORGE E. RUDD
Assistant Attorney General

Economic Crimes Division
Office of the Attorney General
Department of Legal Affairs
110 S.E. 6th Street, Tenth Floor
Ft. Lauderdale, Florida 33301
(954) 712-4600
Fla. Bar. No. 0178136