

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, ATTORNEY AID, LLC, a limited liability company, DAVID BOTTON, individually and as manager of KIRKLAND YOUNG, LLC, APRIL BOTTON KRAWIECKI, and SAMY BOTTON,

Defendants.

**RECEIVER'S SUPPLEMENTAL REPORT CONCERNING
BUSINESS CONDITIONS OF KIRKLAND
YOUNG, LLC AND ITS AFFILIATED ENTITIES**

Court-appointed Receiver, Mark F. Raymond ("Receiver"), pursuant to 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], and this Court's instructions at the November 30, 2009 hearing, files his Supplemental Report concerning the business conditions of Kirkland Young and its affiliated entities. This Supplemental Report is a follow-up to the Receiver's First Interim Report dated November 30, 2009.¹

¹ The statements contained in this report are based on the Receiver's investigation conducted in the short time elapsing from the establishment of this Receivership. The Receiver compiled this supplemental report based on both the Receiver and his professionals' review of thousands of pages of documents, and interviews with Defendant's employees, affiliates, customers, and other related persons.

The Receivership Entities' Business Operations Since Receivership

Since the filing of the Receiver's First Report—in the past 19 days, the Receiver has had an opportunity to further examine the business activities of Kirkland Young. For example, the Receiver has learned that Kirkland Young's customers had been "guaranteed" lower monthly payments on their mortgage if they retained the services of Kirkland Young. In reality however, some customers in fact experienced increases in their monthly mortgage payments, and not the decrease they had been promised. Nonetheless, there were customers who, as a result of Kirkland Young's efforts, did receive loan modifications that resulted in lower monthly mortgage payments.

In an effort to afford consumers and creditors of the Receivership Estate with the best possibility of a full recovery, and, to take advantage of a few of Kirkland Young's key assets, the Receiver has determined that he and his staff can lawfully deliver to consumers the services for which they had contracted, while at the same time delivering a positive cash return to the Receivership Estate with nominal risk.

To that end, the Receiver has retained five (5) former Kirkland Young employees (senior processors) to assist him in reviewing every pending file of Kirkland Young, Attorney Aid LLC, as well as the three law firms working with Kirkland Young and Attorney Aid. Foremost amongst the Receiver's employees' duties was to contact the customers of Kirkland Young who had been calling the office since the imposition of the Court's TRO. Initially, the volume of calls was in excess of 500 per day. With the assistance of these employees, as well as the staff in the Receiver's law firm, however, the number of calls has subsided to a much more manageable number. The vast majority of calls fall into four main categories: (1) What is the status of the customer's escrow account; (2) What is the status of their loan modification since they had

already paid an upfront fee that ranged from \$399 to \$699, (3) What assistance can Kirkland Young provide to stave off an imminent foreclosure, or (4) When will their escrowed monies or upfront fees be refunded. The Receiver is pleased to report that in many instances he has been able to work with the lending institutions to obtain a delay or forbearance based on the institution of the Receivership and the entry of the Court's TRO.

The Receiver's employees are also reviewing the files of all former employees to determine the status of the files they were handling at the time the TRO was entered. The Receiver has determined that customer files were not assigned to any one individual employee of Kirkland Young, whether or not the customer was originally solicited on behalf of Attorney Aid, Kirkland Young, or any of the three law firms (RMG, PLLC, Michael Botton, Esq., or Brian Rokaw, Esq.). There is no distinction made between customers of any of these law firms. In short, there was complete cross-pollination, and Kirkland Young employees provided services to them all. It is without question that each of the entities and law firms, under whose names customers were solicited and/or signed up, are all alter egos of Kirkland Young.

In narrowing down the business aspect to pursue, the Receiver has focused on customers who signed a contract with Kirkland Young prior to entry of the Court's TRO (hereinafter the "active" files). Based on the Receiver's review of Kirkland Young's documents, there are approximately 1,422 active files at Kirkland Young. Of these active files, approximately 1,333 customers paid an upfront fee to Kirkland Young. The Receiver believes the total amount of upfront fees collected by Kirkland Young on these files is approximately \$941,420.00. The Receiver is in the process of confirming this amount and is also waiting to review additional documents from LST Financial, the third party ACH processing company used by Kirkland Young to process these payments.

BROAD and CASSEL

These active files can be further segregated into various stages of the loan modification process. Of the 1,333 active files described above, approximately 642 are at the final stage of the modification process, called “modification in review.” That means that Kirkland Young has provided the customer’s lending institution all of the documents required by the lender to determine whether a modification is appropriate. However, in order to complete this final stage of the process, a senior processor at Kirkland Young must contact the customer’s lender to see if any additional information is required and if so, to obtain that information from the customer. The Receiver has authorized his staff to contact the lenders to obtain a status for each of these files in review. The Receiver believes that if all 642 loans are modified (and the terms are accepted by the customer) that Kirkland Young can collect approximately \$1,258,294.00 in back-end fees as provided in its customers contracts. That said, it must be noted that achieving a 100% success rate is unlikely. Conservatively, the Receiver believes that only 50-55% of the active loans will be approved for modification by the lender and the customer. The reasons are simple: many customers have demanded refunds because they were billed, and no services were provided; others have demanded refunds after learning that Kirkland Young employees repeatedly misrepresented themselves as being employees of financial institutions, such as Chase Bank, Wells Fargo, and the like. The Receiver continues to investigate each of these claims and will report any additional findings to the Court in his next report.

The remaining active files at Kirkland Young are at various different stages of the modification process. For example, there are currently 35 active files where a signed contract and an upfront payment have been received by Kirkland Young but no work has been performed on behalf of the customer (for various reasons). In other words, Kirkland Young did not yet obtain authorization from the customer to contact their lender to obtain information regarding

their loan or did not yet receive any documents from the customer to begin the loan modification process. On the other hand, there 74 active files where a contract has been received, an upfront payment was made and an authorization letter was sent to the customer's lending institution.

Other examples of the various stages in which these active files remain include 18 active files where a contract was received and only a partial payment was made. There are 20 active files where a contract was received, but no upfront payment was made. There are 59 active files where a contract was received but Kirkland Young needs to confirm that with LST Financial that the upfront payment was received. These are only a few of the numerous categories of the stages at which the active files are at. The Receiver and his staff continue to work through these files to confirm their status and to determine what steps, in any, need to be taken in order to proceed with the modification. In the meantime, however, the Receiver's staff continues to contact customers to inform them of the status of their file.

The Receiver proposes the following operating budget consistent with the business plan outlined above. The Receiver believes that these expenses will enable the Receivership Estate to realize the greatest possible recoveries while at the same time protecting the consumers' best interests. Preliminarily, the Receiver estimates that the Receivership Estate will incur the following monthly expenses in connection with operating Kirkland Young's loan modification business and servicing the active files described above per month for the next three (3) months:

| | |
|---|----------------------|
| Rent (2915 Biscayne Blvd): | \$11,000 |
| Overhead expenses (utilities, copy machine rental, etc.): | \$1,000 |
| Receivership staff (payroll): | \$10,000 |
| The Receiver (20 hours): | \$6,800 |
| Receiver's counsel (20 hours): | \$6,500 ² |
| Receiver's accountants: | <u>\$12,500</u> |

Total: \$47,800

The Receiver will continue to provide the Court with relevant information regarding the conditions of Kirkland Young as it becomes available and will timely advise counsel for Defendant David Botton of any developments.

Respectfully submitted,

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By: /s/ Mark F. Raymond
Mark F. Raymond, Receiver
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² The proposed budget for the Receiver and his counsel relates solely to the operation of Kirkland Young's business. It excludes time spent fulfilling his duties under the Order Appointing him, such as attending depositions and participating in the representation of Kirkland Young in the underlying FTC proceeding.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 18, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing 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 who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Mark F. Raymond
Mark F. Raymond, Receiver

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