

3. Several North Carolina consumers filed complaints with the North Carolina Office of Commissioner of Banks (“NCOCOB”) and the North Carolina Department of Justice (“NCDOJ”) to notify the agencies that Defendants were accepting fees for refinancing services that never took place and to seek a return of upfront fees and costs paid to Defendants.

4. Defendants’ conduct as described herein constitutes a deceptive, unfair, and illegal business practice in violation of N.C. Gen. Stat. § 75-1.1. Pursuant to N.C. Gen. Stat. § 75-1.1, Plaintiff State of North Carolina (“the State”) seeks injunctive relief, disgorgement, and civil penalties to prevent Defendants from engaging in such unfair, deceptive, and illegal business practices in the future.

II. PARTIES

5. The State, acting through its Attorney General, Roy Cooper (“Attorney General”), brings this action in its sovereign enforcement capacity pursuant to, among other things, authority granted by the common law and Chapters 75 and 114 of the North Carolina General Statutes.

6. Defendant Carolina Mortgage Group, Inc. (“CMG”) became legally registered as a North Carolina corporation on October 19, 1995 (Exhibit A). Its last known principal office address was 1001 Ferndale Court, Wilson, North Carolina 27893-2106. (Exhibit B) In a 1996 Annual Report filed with the North Carolina Secretary of State, CMG described the nature of its business as providing “mortgage financing for residential buyers of real property, operating as a mortgage broker.” (Exhibit C).

7. CMG was sent a “Notice of Grounds for Administrative Dissolution” on September 22, 2014 from the N.C. Secretary of State’s Office. (Exhibit F) The Notice states that CMG (SOSID 0380256) was delinquent in filing at least one annual report and was thus not

in compliance with the North Carolina Business Corporation Act, N.C. Gen. Stat. § 55-1-01, *et seq.* On January 7, 2015, the Secretary of State issued an order administratively dissolving the corporation.

8. CMG was licensed with the NCOCOB as a mortgage broker, and registered at the address of 1401 N. Arendell Avenue, Zebulon, North Carolina 27597. CMG's mortgage broker license (NCOCOB License No. B-102277) was summarily suspended by an Order issued by the Commissioner on October 30, 2013 (Exhibit D), and was revoked pursuant to an Order issued by the Commissioner on August 15, 2014. (Exhibit E)

9. Defendant Jeffrey D. Cox is president, primary owner, and registered agent for CMG. Cox's mortgage originator license (OCOB License No. I-102279) was suspended by an Order issued by the North Carolina Commissioner of Banks on October 30, 2013 (Exhibit D), and then revoked on August 15, 2014. (Exhibit E) Cox's current address is believed to be 39176 Pompano Drive, Avon, North Carolina 27915.

III. FACTUAL ALLEGATIONS

A. Defendants' Illegal Activity

10. Based upon information and belief, in a typical scenario involving either residential or nonresidential properties, Cox would contact North Carolina consumers, some of whom he had worked with previously, and tell them he could secure a low interest rate for refinancing their properties. He would also often tell the consumer that he could complete the refinancing quickly—usually promising the consumer the time period between completing paperwork and closing would be about 30 days. (Exhibits G, H, and I: affidavits from consumers describing their experience with Defendants)

11. Cox would then request an “origination” or “lock” fee of about one percent of the total amount of the mortgages in order to secure the rate that Cox had assured consumers he could obtain. In the case of consumer Jose Delgado (Exhibit G), for example, that fee amounted to \$6,870. After remitting checks to Cox, consumers would then be asked to fill out and sign a pre-approved loan application and provide other paperwork and documentation to Defendants.

12. CMG and Cox would then typically request that the consumer pay for appraisals of his or her properties. For example, consumer Sheila Carter made a \$460 credit card payment to Cox for the appraisal of her home. (See Exhibits G, H, and I)

13. As time passed, Cox would then begin providing a litany of excuses to consumers via phone, email, and text message to justify delays in closing—ranging from personal health issues to the promise of even lower interest rates. In some cases, consumers experienced difficulty in reaching Cox to discuss their refinancing at all. One consumer, Sheila Carter, decided to contact the company that Cox had submitted her paperwork to—Freedom Mortgages—to verify that the process was moving forward after receiving several delays from Cox. (Exhibit I) Because she stayed in contact with a representative at Freedom Mortgages, Ms. Carter learned that Cox’s license had been suspended and Freedom would not be able to complete her refinancing.

14. After months of delays and excuses from Cox, consumers often realized their efforts to pressure Cox into closing the loans were futile. Many gave Cox ultimatums and final chances to close the loans. Time and again, Cox attempted to convince consumers to continue waiting—offering the promise of better rates, requesting additional documentation, and setting closing dates further into the future.

15. Eventually, consumers would request a refund from Cox. In some cases, Cox tried to convince consumers that their loans had been approved, or that he would refund money in due course. Cox did not refund moneys paid by these consumers and the supposed loans never actually closed. Several consumers were forced to seek refinancing elsewhere, often at less optimal rates than those offered by Cox.

B. Individual Consumer Experience with Defendants

16. The experience of Wake Forest resident and North Carolina consumer Ellen Holst is typical of the complaints NCDNJ has received about Defendants. (Exhibit H) Ms. Holst was contacted by Cox in January of 2013 by telephone, offering to refinance her and her husband's home at a better interest rate than their bank could offer. Cox assured the Holsts that the refinancing would be completed in as little as 30 days. Having worked with Cox previously on refinancings, the Holsts agreed to proceed with the refinancing of their home with Defendants.

17. To obtain the promised interest rate of two and seven-eighths percent, Cox asked the Holsts to pay a lock fee of one percent of the total amount of the mortgage. The Holsts were sent and then filled out paperwork and a pre-approved loan application. A representative of CMG then came to the Holsts' residence to collect the paperwork and two checks—one for \$3,780.00 (the 1% lock fee) and another for \$465.00 (appraisal fee).

18. Cox then talked the Holsts into refinancing their investment properties as well, which he also promised could be completed at low interest rates in about 30 days. On February 27, 2013, the Holsts wrote a check for \$5,120.00 (1% lock fee on investment properties), and then another on March 1, 2013, for \$1,120.00 for an additional investment property.

19. Roughly two weeks after an appraisal on the Holst's home was completed in late March 2013, Cox assured Ms. Holst the home refinancing would be completed very soon.

Feeling concerned about the length of time that had passed, Ms. Holst continued to stay in contact with Cox via telephone, email, and texts, though he became increasingly difficult to reach.

20. By the end of July 2013, the Holsts demanded that Cox close on the loans or return the funds that they had paid. Cox, referencing health difficulties, asked for additional time to close the loans, which he assured the Holsts he could do quickly. The Holsts agreed to give Cox a bit more time to complete the refinancings.

21. Cox continued to send excuses about why the loans had not closed through the end of September 2013. Though the Holsts requested a refund of the funds paid to Defendants and Cox assured them that he would pay them back, Cox instead set up bogus closing dates and eventually stopped communicating with the Holsts altogether.

22. All told, the Holsts paid CMG \$10,485.00 in fees, though the company did not complete refinancing of their home or investment properties. Further, the Holsts missed out on a better interest rate offered by their bank due to the promises of a lower rate offered by Cox and CMG. The interest rate for the home refinancing they eventually obtained from their bank was .75 percent higher than the amount they had been offered by the bank prior to being contacted by Cox. They have not been able to refinance their investment properties.

C. Actions Taken by the N.C. Commissioner of Banks

23. Over the past three years, the N.C. Commissioner of Banks has taken several administrative actions against CMG and Cox. While these actions have been based on the Commissioner's statutory authority over transactions involving residential mortgages, they have not fully addressed the Defendants' actions in the realm of investment and nonresidential properties.

24. According to filings by the NCOCOB, Defendant Jeffrey D. Cox filed an application to obtain a license as a loan officer pursuant to the North Carolina Mortgage Lending Act ("MLA") in 2002. (Exhibit J). Once the MLA was repealed and replaced by the North Carolina Secure and Fair Enforcement Mortgage Licensing Act ("NCSAFE") in 2009, Defendant Cox's license was transitioned from "Loan Officer" to "Mortgage Loan Originator."

25. Based on a background review of Defendant Cox's credit history and financial status, the N.C. Commissioner of Banks conditionally renewed Cox's Mortgage Loan Originator license on November 10, 2011. (Exhibit J) The Commissioner's license renewal order contained several stipulations, including the requirement that the licensee have no meritorious complaints filed against him with NCOCOB or any other jurisdiction for five years, and that the licensee take steps to improve his negative credit history to meet the financial responsibility requirements of NCSAFE.

26. After receiving a complaint about Defendants CMG and Cox in September 2011, NCOCOB commenced an investigation of allegations that Cox had accepted fees outside of closing from nine borrowers (a total of \$14,800.05) that were not contained in closing documents. After testifying that he had believed such conduct was legal, Defendant Cox was required by an Order issued by the Commissioner dated November 5, 2012, to disgorge all fees obtained from the nine borrowers, pay the NCOCOB's costs of investigation, and pay a \$1,480.00 penalty for violations of NCSAFE and the MLA. (Exhibit K)

27. On October 24, 2013, the director of the Non-Depository Entities Division at NCOCOB asked the Commissioner to determine whether Defendants' licenses should be revoked, whether a cease-and-desist order should be entered against them, and whether restitution and civil penalties should be ordered. (Docket No. 13:150: MBB) (Exhibit L) The

Notice of Hearing stated that Defendants had failed to respond to four outstanding consumer complaints. Two additional complaints for which responses were soon due were also officially recorded. Based on such complaints, it was determined that Defendants accepted \$18,825.00 for services related to residential mortgage loans that did not close. Additionally, NCOCOB found that Defendant Cox had not complied with a request for examination, had not properly protected consumer confidential information, and operated an unlicensed branch location. Further, Defendant Cox's and CMG's financial responsibility was called into question given evidence of past due debt, foreclosure proceedings, and charged off credit card debt.

28. On October 30, 2013, an Order by the Commissioner summarily suspended the mortgage broker license of CMG and the mortgage loan originator license of Cox. It also ordered Defendants to cease and desist from the solicitation and acceptance of new loan applications and from new origination activity within the State of North Carolina. (Exhibit D)

29. After a first amended notice of hearing was filed June 20, 2014, a hearing was held at the NCOCOB on July 24, 2014 to permit Defendants to respond to allegations of failure to respond to 15 complaints received between July 1, 2013 and April 30, 2014, representing a total sum of \$36,345.00 for services related to mortgage loans that have not closed. The Notice also contained allegations of failure to properly maintain records, the operation of an unlicensed branch location at 2841-B Daisy Lane in Wilson, North Carolina, and lack of financial responsibility. As such, the Non-Depository Entities Division sought the revocation of licenses, restitution, civil money penalties, and other such relief as the Commissioner deemed appropriate. (Exhibit B)

30. On August 15, 2014, the N.C. Commissioner of Banks issued an Order determining that Defendants failed to respond to complaints as requested, accepted fees of

\$36,345.00 from potential borrowers for loans that never closed, failed to respond to NCOCOB examiners, failed to safeguard books and records, demonstrated a lack of financial responsibility and general fitness, and lacked a qualifying individual who could operate that business. Based on these findings, the Commissioner ordered that the mortgage loan operator license of Cox and the mortgage broker license of CMG be revoked. The Defendants were also ordered to pay \$90,345.00 in penalties and reimburse \$36,345.00 to 15 borrowers. The Defendants were afforded an opportunity to appeal the Order, but did not provide written notice of appeal within the 20-day period following the issuance of the Order. (Exhibit E)

VII. CAUSES OF ACTION

COUNT ONE: VIOLATIONS OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT UNDER N.C. GEN. STAT. § 75-1.1

31. The State realleges and incorporates herein the allegations of paragraphs 1 through 30 above.

32. Defendants' acts and practices alleged herein were in or affecting commerce within this State and constitute unfair or deceptive acts or practices in violation of N.C. Gen. Stat. § 75-1.1.

33. Defendants' unfair and deceptive acts or practices include, but are not limited to, the following:

- a. Soliciting and offering to secure refinancing of mortgage loans at low rates for residential and nonresidential properties that never materialized.
- b. Making deceptive representations to North Carolina consumers about Defendants' ability to secure and close loans in a timely manner.
- c. Collecting money from North Carolina consumers for the purported performance of securing refinancing of mortgage loans, but failing to provide material and substantial services to that end.

- d. Failing and refusing to provide refunds to North Carolina consumers in spite of having collected origination fees and appraisal charges, but not actually performing any proper or useful services for consumers.

VIII. PRAYER FOR RELIEF

WHEREFORE, the State requests the following relief:

1. A finding that by the acts alleged herein, Defendants engaged in unfair and deceptive acts and practices in the course of engaging in the trade or commerce of a mortgage loan broker and originator, in violation of N.C. Gen. Stat. § 75-1.1;
2. A permanent injunction under N.C. Gen. Stat. § 75-14 enjoining Defendants from engaging in any acts related to the offering and soliciting of residential and nonresidential mortgage loans that violate N.C. Gen. Stat. § 75-1.1, including, but not limited to, the unfair and deceptive acts and practices, and unfair methods of competition alleged herein;
3. An order under N.C. Gen. Stat. § 75-15.2 directing Defendants to pay appropriate civil penalties for violations of N.C. Gen. Stat. § 75-1.1;
4. An order under N.C. Gen. Stat. § 75-15.1 directing Defendants to restore all moneys and properties achieved in whole or in part through the unfair and deceptive acts or practices complained of herein;
5. Costs of this action; and
6. Such other relief as this Court deems just and equitable.

This the 21st day of January, 2015.

ROY COOPER
Attorney General

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing COMPLAINT by hand-delivery to the Court and served upon DEFENDANTS by placing a copy of same in the United States Mail, first class postage prepaid, addressed as follows:

Carolina Mortgage Group, Inc.
Jeffrey D. Cox, Registered Agent
1001 Ferndale Court
Wilson, North Carolina 27893-2106

Jeffrey D. Cox
39176 Pompano Drive
Avon, North Carolina 27915

This the 21st day of January, 2015.

ROY COOPER
Attorney General

By:



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