

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 09-1220B

COMMONWEALTH OF MASSACHUSETTS,
Plaintiff,

v.

EXPRESS MODIFICATIONS, INC.
d/b/a LOAN MODS BY LAWYERS, INC. &
LOANMODSBYLAWYERS.COM,

and

DAVID J. GOTTERUP,
individually and as owner of
EXPRESS MODIFICATIONS, INC.,
d/b/a LOAN MODS BY LAWYERS, INC. &
LOANMODSBYLAWYERS.COM,
Defendants.

Noticed
4/24/09
DWM
EMA
RDM

FINAL JUDGMENT BY CONSENT

Plaintiff, the Commonwealth of Massachusetts (the "Commonwealth"), by and through its Attorney General Martha Coakley, and defendants Express Modifications, Inc. ("Express Modifications") and David J. Gotterup, (collectively, "the defendants") consent to the entry of this Final Judgment By Consent ("Final Judgment") and its provisions without trial or adjudication.

It appearing to the Court that the defendants have consented, by the attached Consents, to the entry of this Final Judgment; that the defendants have waived all rights of appeal; and that this Court has subject matter and personal jurisdiction and sufficient basis for the entry of this Final Judgment,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

TRUE COPY OF JUDGMENT ONLY ENTERED 09

I. PARTIES SUBJECT TO JUDGMENT

JUDGMENT ENTERED ON DOCKET 4/24 2009
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 58(a)
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO-
VISIONS OF MASS. R. CIV. P. 77(d) AS FOLLOWS

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Plaintiff, the Commonwealth of Massachusetts (the "Commonwealth"), by and through its Attorney General Martha Coakley, and defendants Express Modifications, Inc. ("Express Modifications") and David J. Gotterup, (collectively, "the defendants") consent to the entry of this Final Judgment By Consent ("Final Judgment") and its provisions without trial or adjudication.

It appearing to the Court that the defendants have consented, by the attached Consents, to the entry of this Final Judgment; that the defendants have waived all rights of appeal; and that this Court has subject matter and personal jurisdiction and sufficient basis for the entry of this Final Judgment,

IT IS HEREBY ORDERED AND ADJUDGED THAT:

I. PARTIES SUBJECT TO JUDGMENT

1. This Final Judgment shall extend to the defendants, their agents, servants, employees, successors, heirs and assigns, or any other person acting under their direction and control, directly or indirectly, and shall constitute a continuing obligation. The terms and conditions of this Final Judgment shall apply to both defendants except where otherwise specified in this Final Judgment.

II. GROUND FOR COMPLAINT AND VIOLATIONS

2. On March 25, 2009, the Commonwealth filed a Complaint against the defendants, alleging that they had violated G. L. c. 93A, § 2(a), the Consumer Protection Act by: (1) directing newspaper advertisements to Massachusetts residents which were unfair and deceptive; (2) making misleading, unfair and deceptive statements via telephone and email to Massachusetts consumers who inquired about their services; and (3) soliciting advance fees in connection with offering, arranging, or providing Foreclosure-Related Services, in violation of 940 CMR 25.02(b).

3. The defendants admit that they have committed violations of G.L. c. 93A, § 2(a), the Consumer Protection Act, as aforesaid.

III. INJUNCTIVE RELIEF

4. The defendants are permanently enjoined from engaging in any of the following acts in the Commonwealth of Massachusetts:

a) causing or arranging for the publication, directly or indirectly, of advertisements that offer or relate to the provision of Foreclosure-Related Services, as defined in 940 CMR 25.01, or any advertisements for any business whatsoever that contain an assertion, representation, or statement of fact which is false, deceptive, or misleading;

b) contacting any Massachusetts resident, directly or indirectly, to solicit or offer Foreclosure-Related Services, as defined in 940 CMR 25.01;

c) contacting any Massachusetts resident with whom they had prior contact regarding Foreclosure-Related Services, as defined in 940 CMR 25.01;

d) soliciting or accepting payment, funds, or other consideration from a Massachusetts resident for providing Foreclosure-Related Services, or for any services whatsoever related to how to avoid foreclosure; and

e) forming a business or organizational identity or operating as a “doing business as” as a method of avoiding the terms and conditions of the injunctive relief stated above.

5. The defendants will forthwith disclose the terms and conditions of the injunctive relief described above to all officers, employees, representatives, affiliates, agents, successors, assigns, or any other person who acts at their direction or control in any Massachusetts activity relating to Foreclosure-Related Services.

6. The defendants will place text on any website that either of them operates for the purpose of offering or soliciting Foreclosure-Related Services, and arrange for the placement of text on any website that any other party operates which offers or solicits the provision of Foreclosure-Related Services by the defendants, in clear and conspicuous type size and on every portion of the website where a user is asked to provide contact information for the purpose of requesting or receiving more information about the defendants’ services, notifying users that the defendants do not provide Foreclosure-Related Services to homeowners in Massachusetts.

7. Any violation of the Injunctive Relief section of this Judgment is punishable under G. L. c. 93A, §4, and/or by contempt sanctions.

IV. PAYMENT OF CIVIL PENALTIES, RESTITUTION, AND COSTS

8. Pursuant to G.L. c.93A, §4, a judgment is hereby entered against the defendants for the sum of \$50,000 in civil penalties, subject to the provisions below.

9. The first \$7,700 in civil penalties will be paid by defendants to the Commonwealth contemporaneously with the defendants' execution of the Consents to this Judgment.

10. Defendants will pay an additional \$17,300 in civil penalties on or before September 1, 2009.

11. Payment thereafter of the remaining \$25,000 in civil penalties is suspended, provided however, that if a subsequent judicial finding should enter that either of the defendants has violated any of the provisions of this Final Judgment, then the defendant found to violate the Judgment shall pay the previously suspended amount of \$25,000 in civil penalties.

12. The defendants, by the attached Consents, have attested that they accepted the sum of \$7,300 from a total of five consumers in Massachusetts.

13. Defendants shall pay to the Commonwealth the sum of \$7,300 as restitution, to be distributed by the Commonwealth to the consumers who paid fees to the defendants. Said payment shall be made contemporaneously with the defendants' execution of the Consents to this Judgment.

14. The Office of the Attorney General shall be responsible, in its sole discretion, for the distribution of restitution to the consumers. Consumers who accept such restitution shall execute releases, on the form attached hereto as "Exhibit A," of all consumer protection claims or breach of contract claims to date against the defendants arising from the defendants solicitations or services.

15. Should the Commonwealth learn, after execution of this Final Judgment, that any additional sums not herein reported by the defendants were paid to any of the defendants by any Massachusetts consumer in relation to an offer to provide Foreclosure-Related Services, then upon demonstrating said fact to this Court, the Commonwealth will be entitled to an order requiring the defendants to: (1) pay full restitution to the Commonwealth in the sum of the additional amount paid by the consumers; (2) pay the remaining \$25,000 in civil penalties which was suspended pursuant to paragraph 11 above; and (3) pay an additional civil penalty of \$5,000 per consumer whose payment was not reported to the Commonwealth.

16. Pursuant to G.L. c. 93A, §4, the Commonwealth waives the imposition of any payment to reimburse the Commonwealth for the costs associated with the investigation and litigation of this matter to date.

17. All payments required pursuant to this Final Judgment shall be by means of certified check payable to the Commonwealth of Massachusetts and delivered to the Office of the Attorney General, Consumer Protection Division, to the attention of David W. Monahan, Assistant Attorney General.

VI. LIMITED RELEASE FROM CLAIMS

18. The defendants' compliance with the provisions of this Final Judgment is intended to resolve all claims by the Commonwealth that the defendants violated the Consumer Protection Act, G. L. c. 93A arising from conduct alleged in the Complaint. Upon entry of this Final Judgment, compliance with all of its terms, and payment by the defendants of all sums required by this Final Judgment, the defendants and their general partners, principals, directors, and attorneys shall be released from all such claims.

VII. WAIVER OF APPEAL AND OF FINDINGS AND RULINGS

19. The defendants waive all rights of appeal they have, and also waive the requirements of Rule 52 of the Massachusetts Rules of Civil Procedure.

VIII. CONTINUING JURISDICTION

20. The Superior Court of the Commonwealth retains jurisdiction of this action for the purpose of enforcing or modifying the terms of this Judgment, or granting such further relief as the Court deems just and proper, and the provisions of this Final Judgment shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

IX. MISCELLANEOUS

21. The provisions of this Judgment shall be severable and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the other provisions of this Judgment shall remain in full force and effect.

22. Nothing in this Judgment shall be construed as relieving the defendants of their duty to comply with all applicable federal, state, and local laws, regulations, rules, and permits.

23. Consent to this Final Judgment does not constitute an approval by the Commonwealth of any of the defendants' business acts and practices.

24. This Final Judgment by Consent contains the complete agreement between the parties.

25. This Final Judgment may not be changed, altered, or modified, except by further order of the Court.

26. This Final Judgment becomes effective upon entry by the Court, and all periods of time described herein commence as of that date.

APPROVED AND ORDERED:


Justice of the Superior Court

Dated: April 23, 2009

RELEASE

_____, 2008

In consideration of _____ Dollars (\$) paid to me by the Commonwealth of Massachusetts, the receipt whereof is hereby acknowledged, I hereby remise, release and forever discharge Express Modifications, Inc., David Gotterup, and their successors, heirs, assigns and attorneys, of and from all claims arising out of services performed or agreed to, whether performed or not, in connection with request for Foreclosure Related Services.

It is understood and agreed that payment of the above sum is only for the purpose of compromise of a disputed claim involving the acts of Express Modifications, Inc. and David Gotterup, and is not, in any way, to be construed as an admission of liability on the part of either.

Witness my hand and seal this _____ day of _____, 2009.

CONSENT TO JUDGMENT OF DAVID J. GOTTERUP

1. The Defendant David J. Gotterup admits to the continuing jurisdiction and venue of the Suffolk Superior Court, and hereby consents to the entry of the Final Judgment in the form attached hereto. In so consenting, the Defendant certifies that he has read and understands each of the sections, paragraphs, and subparagraphs in the Final Judgment and that he is represented by legal counsel.

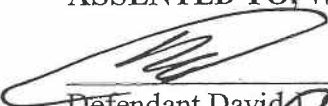
2. The Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

3. The Defendant understands that the restrictions set forth in the Final Judgment apply to him and to his agents, servants, successors, attorneys, and assigns, and all persons and entities, corporate and otherwise, acting in concert with any of them, directly or indirectly.

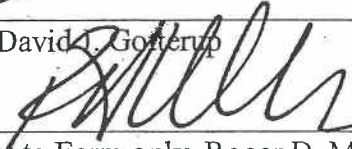
4. The Defendant hereby attests that Express Modifications, Inc. has received a total of \$7,300 from five Massachusetts consumers as fees for the provision of Foreclosure-Related Services, and further attests that neither he nor Express Modifications to his knowledge, nor their employees, agents, or assigns have received any additional fees from Massachusetts consumers.

5. The Defendant further states that he understands that any violation of this Final Judgment may result in sanctions against him under G. L. c. 93A, § 4, and/or a finding of contempt of court.

ASSENTED TO, WAIVING ALL RIGHTS OF APPEAL


Defendant David J. Gotterup

Dated: 4/22/09


Approved as to Form only, Roger D. Matthews, Counsel for David J. Gotterup

Dated: 4/23/09

CONSENT TO JUDGMENT OF EXPRESS MODIFICATIONS, INC.

1. The undersigned, as authorized signatory for defendant Express Modifications, Inc., hereby consents to the entry of Judgment in the form attached hereto. The signatory states that he has read and understood the terms of the judgment, and that he is duly authorized to enter into such a settlement on behalf of the Defendant corporation.

2. The Defendant Express Modifications, Inc. admits to the continuing jurisdiction and venue of the Suffolk Superior Court, and hereby consents to the entry of the Final Judgment in the form attached hereto. In so consenting, the signatory certifies that he has read and understands each of the sections, paragraphs, and subparagraphs in the Final Judgment and that said corporation is represented by legal counsel.

3 The Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Massachusetts Rules of Civil Procedure.

4 The Defendant understands that the restrictions set forth in Final Judgment apply to the defendant, its agents, servants, successors and assigns, and all persons and entities, corporate and otherwise, acting under its direction or control.

5. The Defendant hereby attests that Express Modifications, Inc. received a total of \$7,300 from five Massachusetts consumers as fees for the provision of Foreclosure-Related Services, and further attests that Express Modifications, Inc. nor its employees, agents, or assigns have received any additional fees from Massachusetts consumers.

6 The Defendant further understands that any violation of this Final Judgment may result in sanctions against the Defendant under G. L. c. 93A, § 4, and/or a finding of contempt of court.


ASSENTED TO, WAIVING ALL RIGHTS OF APPEAL



Authorized Signatory for Express Modifications, Inc.

Dated: 4/28/09

David Gatterup
Print Name of Signatory



Approved as to Form only, Roger D. Matthews, Counsel for Express Modifications, Inc.

Dated: 4/23/09