

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, ss. SUPERIOR COURT
2284CV02823-BLS2

COMMONWEALTH OF MASSACHUSETTS

v.

MV REALTY PBC, LLC, AND
MV OF MASSACHUSETTS, LLC

**DECISION AND ORDER ALLOWING THE COMMONWEALTH'S
MOTION FOR A PRELIMINARY INJUNCTION**

MV Realty PBC, LLC, and its Massachusetts subsidiary are in the business of advancing money to cash-strapped homeowners in exchange for a 40-year exclusive right to list their home for sale as a “non-agent facilitator,” with a right to repayment of at least 10 times the original loan amount, and more if property values have increased. MV requires homeowners to promise repayment at these levels if they sell or convey their home, for any reason, or die and leave their home to heirs within 40 years. Though it structures these deals as sales commission arrangements, in economic reality MV is making high-interest loans secured by a mortgage interest in the property. MV has engaged in such transactions with more than 400 Massachusetts homeowners.

The Commonwealth seeks a preliminary injunction that would restrict MV's marketing practices, bar MV from collecting undisclosed fees, and bar MV from obtaining or recording additional mortgages or enforcing existing mortgages in Massachusetts.

For the reasons discussed below, the Court finds that the Commonwealth is likely to succeed in proving that MV has engaged in a pattern of unfair and deceptive conduct, in violation of G.L. c. 93A, by tricking homeowners into thinking they would never have to repay the amounts that MV advanced to them and that they would owe no interest to MV, hiding the fact that MV would record a mortgage on the borrower's property with a statutory power of sale, falsely representing that MV would serve as their agent in selling their home when MV never had any intent of doing so, not giving the borrower homeowners copies of their contract with and mortgage to MV until after the three-day period to rescind the arrangement expires, recording mortgages on property that is owned by people who never received funds from MV, and unlawfully closing mortgage loans without being represented by an attorney.

The Commonwealth has also shown that the requested injunctive relief is in the public interest.

The Court will therefore allow the Commonwealth's motion for a preliminary injunction, with some revisions to the form of the proposed injunction.

1. Standards for the Attorney General to Obtain Preliminary Injunction Relief under Chapter 93A. To obtain a preliminary injunction against conduct that allegedly violates c. 93A, the Attorney General must show that she is likely to succeed in proving that a defendant has engaged in unfair or deceptive acts or practices in violation of c. 93A, and that the requested injunction will promote the public interest. *Commonwealth v. Fremont Investment & Loan*, 452 Mass. 733, 741 (2008); G.L. c. 93A; see generally *Commonwealth v. Mass. CRINC*, 392 Mass. 79, 88–90 (1984).

The Attorney General does not have to prove that any irreparable harm will occur if the preliminary injunction is not issued. *Id.*

The Attorney General may also enforce G.L. c. 93A, and seek and obtain injunctive relief as well as civil penalties, without having to prove that the claimed violation caused individual consumers to suffer economic injury. See G.L. c. 93A, § 4; *Commonwealth v. Fall River Motor Sales, Inc.*, 409 Mass. 302, 312 (1991); *Commonwealth v. Chatham Development Co., Inc.*, 49 Mass. App. Ct. 525, 528-529, rev. denied, 432 Mass. 1107 (2000). MV's assertion that the Attorney General may not obtain a preliminary injunction without showing she is likely to succeed in proving that violations of c. 93A have caused consumers to suffer injury or loss is incorrect.

2. Findings as to Unfair or Deceptive Practices. The Court credits the many affidavits and other evidence submitted in support of the Commonwealth's motion for a preliminary injunction. It makes the following findings based on that evidence and reasonable inferences drawn from it.

Based on the record presented to it, the Court finds that the Commonwealth is likely to succeed in proving that MV engages in unfair and deceptive conduct in violation of G.L. c. 93A by:

- tricking homeowners into signing HBAs by claiming that MV will give them money for free, without disclosing either that the homeowner will have to repay that advance with substantial interest if they convey their home within the next 40 years, or that the

- homeowner's repayment obligation will be secured by a 40-year mortgage interest on their property;
- falsely representing that it will serve as homeowners' agent if they wish to sell their home;
 - not giving homeowners a copy of their contract and mortgage until after their three-day rate to cancel the deal has expired;
 - recording mortgages even where homeowners have cancelled the deal and never received any funds from MV; and
 - closing mortgage loans without involving an attorney.

2.1. Undisclosed Repayment Obligation and Mortgage Interest. MV solicits leads with Internet advertising that offers homeowners cash payments of up to \$5,000. Some of the ads have said that MV is offering "fast cash," cash "without a loan," or cash with "no need to borrow." Many of the ads have been targeted at homeowners who have been seeking pandemic-related financial assistance from public programs. MV has paid to advertise to people conducting Internet searches using terms including "homeowners stimulus package," "stimulus mortgage relief," and "Congress mortgage stimulus program." The ads misleadingly suggest that they concern government relief programs by including terms like "stimulus," "benefit funds," or "the relief you need."

If a homeowner clicks on an MV ad and expresses interest by providing personal contact information, MV will follow up with a flurry of calls and text messages. That marketing tells homeowners that MV's offer "requires no repayment," they will be getting "free money," the money offered by MV is "not a loan," MV will pay them money with "no strings attached," or that MV will never "come after" the homeowner "for anything." MV trains its representatives to tell prospects that if they never sell their home, then "nothing happens." MV similarly states on its various websites that "you keep this money no matter what," "there's no obligation to repay the money you receive," there is "no repayment obligation," and "you never pay it back." And the contract that MV requires participating homeowners to execute states that it "is not and does not represent a loan."

Based on the record before it, the Court finds that the Commonwealth is likely to succeed in proving that this marketing and these representations are false and deceptive.

To obtain a cash payment from MV, a homeowner must enter into a contract called a Homeowner Benefit Agreement (“HBA”) giving MV the exclusive right to serve list their property for sale for the next 40 years, and promising that MV will recoup many times its initial cash advance if the property is sold or otherwise transferred for any reason within that time—including if a mortgage lender forecloses or the homeowner dies. MV generally offers cash advances equal to about 0.3 percent of a home’s then-current market value. To obtain that advance, the homeowner must promise that if they transfer their home within the next 40 years, even if the transfer happens only because the homeowner has died, then they or their estate will have to pay MV (i) 3.0 percent of the property’s market value at the time of the advance or at the time of the future transfer, whichever is greater, plus (ii) an additional \$500 administrative fee that is not disclosed in the contract itself, but instead is referenced only in a sample listing agreement that is described as an exhibit to the contract but that can only be accessed through an online URL referenced in the contract.¹

In addition, the homeowner must grant MV a mortgage interest on the property to secure repayment of the cash advance and payment of all other amounts that are owed to MV upon any sale or other transfer of the property within the next 40 years. The mortgages obtained by MV have all included a statutory power of sale, which means that MV could foreclose on the mortgaged property without need for any court order if there is ever a default on the contractual repayment obligation secured by the mortgage. See *U.S. Bank Nat. Ass’n v. Ibanez*, 458 Mass. 637, 645-646 (2011).

2.1.1. Undisclosed Loan Terms. The Court finds that the HBA terms constitute a high-interest loan to homeowners, and that homeowners do not get the “free money” offered by MV, because MV is not promising and does not provide real

¹ There are only two ways that a homeowner who accepts this deal can avoid repaying MV the cash advance plus many times that amount, calculated as 3.0 percent of current or future market value of their home plus an additional \$500. First, if the homeowner lives another 40 years and never sells or otherwise transfers their home, then they will not have to repay anything to MV. It is unlikely that very many of MV’s customers will fall into that category. Second, if the homeowner asks MV to list their home for sale, and home does not sell within six months, then the homeowner will have a 60-day window within which they may sell the home without owing MV any commission. Once the 60-day window ends, MV’s right to substantial payment upon any sale of the property will spring back to life.

estate sales assistance that would justify the commission rates imposed in the HBA. In other words, the Court finds that the 3 percent commission promised to MV upon any sale or other transfer of the property is not fair compensation for the limited services that MV promises to provide to the selling homeowner, and thus that most of this payment to MV represents implicit interests on MV's advance payment to the homeowner.

To understand why, one needs to compare the duties undertaken and services provided by a typical real estate seller's agent to the very limited duty and services that MV agrees to assume and provide.

In Massachusetts, people seeking to sell their home typically use a seller's agent. A seller's agent owes the seller "the duties of loyalty, full disclosure, confidentiality, to account for funds, reasonable care[,] and obedience to lawful instruction." 254 C.M.R. § 3.00(13)(c). Consistent with their duty of loyalty, seller's agents provide many valuable services to the seller, including paying for professional photography, floor plans, and on-line 3D tours; holding open houses; scheduling and providing individual showings of the home; positioning the home on social media; otherwise actively marketing the home to proper potential buyers; and working with the home inspector, appraiser, lender, and conveyancing attorney. For all of that work, Massachusetts seller's agents generally charge a total 4 to 5 percent commission, keeping roughly half and paying the rest to the buyer's agent.

In contrast, the HBA provides that MV will serve as a "non-agent facilitator," and thus will not owe the homeowner any duty of loyalty or confidentiality. G.L. c. 87AAA³/₄(f). The HBA incorporates by reference a sample listing agreement which states that the broker (MV or its assignee) need only use "reasonable efforts" to locate a buyer for the property. Merely listing the property on a multiple listing service ("MLS") may satisfy this obligation. And even that is not absolutely required, as the listing agreement says only that the broker "may" arrange for the property to appear on an MLS. Yet, for possibly doing nothing other than posting a simple listing on an MLS, or even less, MV charges a 3 percent commission, plus an additional 3 percent if no buyer's agent is involved.

In Massachusetts, non-agent facilitators are generally hired solely to provide an "entry-only listing," where a broker is retained just to put the listing on MLS and do nothing else. Facilitators that provide entry-only listings do not provide

any other services to the customer and typically charge a flat-fee of several hundred dollars.

Though the HBA does not specify what MV is bound to do as a “non-agent facilitator,” its conduct shows that HBA considers this to require little or no work on behalf of a contracting homeowner. Cf. *Brigade Leveraged Capital Structures Fund Ltd. v. PIMCO Income Strategy Fund*, 466 Mass. 368, 378 (2013) (where contract language is ambiguous, “[t]here is no surer way to find out what parties meant, than to see what they have done”) (quoting *Brooklyn Life Ins. Co. of New York v. Dutcher*, 95 U.S. 269, 273 (1877)). One property owner in Springfield who signed an HBA with MV recounted their experience when they told MV that they wanted to sell their home. Though MV apparently put the house on the market by posting the home on an MLS, it refused to put up a for sale sign outside the house. Several realtors contacted the homeowner expressing interest on behalf of a buyer but, when the homeowner referred them to MV, the MV representative never followed up. MV assigned a second representative who materially reduced the listing price without ever speaking with the homeowner. Then the second MV representative quit. A third MV representative told the homeowner they would have three months to sell the house without having to pay MV anything. But as soon as the homeowner retained their own realtor, MV wrote the homeowner and accused them of breaching the HBA. This example seems to confirm that about the only service MV will provide contracting homeowners is to list their home on an MLS if and when they seek to sell their property.

So the record shows that MV provides contracting homeowners with a service that has a market value of only a few hundred dollars, yet charges them thousands or tens of thousands of dollars if they sell or otherwise convey their home within 40 years.

The difference between the market value of MV’s limited services and what they actually charge represents implicit interest on the upfront payment that MV advances to the homeowner. Although MV’s “homeowner benefit agreement” is structured as the purchase of an exclusive right to list their property as a “non-agent facilitator,” with the right to earn a substantial commission if the property is sold or otherwise conveyed within 40 years, in practical effect the arrangement is a loan of money secured by a mortgage interest in the property. Cf. *Hopkins v. Flower*, 256 Mass. 367, 372 (1926) (form of contract does not determine whether transaction is a loan). That is, MV

agrees to advance a lump sum to the property owner in exchange for an essentially guaranteed right to repayment of that amount plus substantial implicit interest.

Such an arrangement—the advance and subsequent repayment of an agreed-upon amount plus implicit interest—is a loan. See *Murphy v. Charlestown Sav. Bank*, 380 Mass. 738, 745 n.11 (1980) (a “loan” is the “delivery by one party to and receipt by another party of a sum of money upon agreement, express or implied, to repay it, with or without interest”) (quoting Black’s Law Dictionary 844 (5th ed. 1979)); *Grotjohn Precise Connexiones Int’l, S.A. v. JEM Financial, Inc.*, 12 S.W.3d 859, 876 (Tex. Ct. App. 2000) (“When money is advanced ... with the understanding that the advance and an added amount are to be returned, there is a loan, and the added amount is interest, ... regardless of the form of the transaction.”).

The Commonwealth is likely to succeed in showing that MV engaged in unfair and deceptive conduct by falsely telling homeowners that they would owe no interest on the amounts that MV advanced, when in fact almost all of the sales commission that the homeowner will almost certainly owe under the HBA constitutes substantial implicit interest rather than a fair payment for services.

2.1.2. Undisclosed Mortgage Interest. The Commonwealth is also likely to succeed in showing that MV acts unfairly by hiding or disguising that it has required homeowners to grant MV a 40-year mortgage interest, with a statutory power of sale, in their property.

MV trains its representatives to tell prospects that the mortgage they must convey “is not a mortgage like a loan for [a] home” because “[t]here is no money you owe us, no interest rate,” and that the mortgage is merely “a notice that we have entered this agreement that should you ever sell your home, you will use us.” The Court credits the affidavit from a former MV representative who says that MV instructed her to tell homeowners that the mortgage they were required to sign was actually “not a mortgage or lien.”

That is all untrue. The mortgages at issue here have given MV the right to tie up and even sell the property in order to secure repayment of the commission guaranteed in the HBA, even if the homeowner sells their home without using MV, or conveys the home without selling it, whether that is by choice (for example by giving it to their child) or not (for example if the homeowner dies or another lender forecloses on the property).

And the mortgages that Massachusetts homeowners have apparently been tricked into conveying to MV have adverse consequences for those homeowners. A Massachusetts property owner's grant of a mortgage to MV has the effect of transferring legal title in the property to MV, leaving the homeowner "with only the equity of redemption." *Double B Capital Group, LLC v. Ellis*, 101 Mass. App. Ct. 803, 805 (2022). That means the homeowner can no longer finance, refinance, or convey their home without MV's agreement.

2.2. Falsely Representing that MV Would Serve as an Agent. MV's marketing materials tell homeowners that if they chose to sell their property then MV will act as their "agent," MV will serve as a "full time real estate agent on our side," and that MV will be the homeowner's "dedicated agent to check on market trends, new locations, or just to chat." The Commonwealth is likely to succeed in showing that this advertising is unfair and deceptive, and that the resulting HBA's were obtained in violation of c. 93A. The HBA specifies that in listing a homeowner's property MV will serve only as a "non-agent facilitator." Under Massachusetts law, such a facilitator "does not act in an agency capacity." G.L. c. 87AAA^{3/4}(f). It is therefore deceptive for MV to tell prospects that if they sign the HBA then MV will act as their agent.

2.3. Withholding Contracts Until After Three-Day Termination Period. The record shows that many homeowners never see the HBA or mortgage to MV until the day that a notary public comes to their home and tells them that they need to sign those documents in order to get the promised cash advance. The record also shows that the notary often does not leave copies of the signed or unsigned documents with the homeowner, and that MV does not send the homeowner copies of the signed documents until well after the three-day period within which the homeowner is entitled to cancel the deal. The Commonwealth is likely to succeed in showing that these practices are unfair and violate c. 93A.

2.4. Recording Mortgages Without Paying Funds. The Court credits the affidavits from five homeowners who told MV that they had changed their minds right after executing an HBA, never received money from MV, and then discovered that MV had nonetheless recorded mortgages on their property. The Commonwealth is likely to succeed in proving that MV's apparent practice of recording mortgages to secure a non-existent financial obligation, where the homeowner never received a cash advance from MV, is unfair and violates G.L. c. 93A.

2.5. Closing Mortgage Loans Without an Attorney. The Commonwealth is also likely to succeed in proving that MV has acted unfairly, in violation of G.L. c. 93A, by closing mortgage loan transactions using a notary rather than an attorney.

It is unlawful for anyone who is not an attorney to practice law in Massachusetts. See G.L. c. 221, § 46A. The purpose of this statute “is not to protect attorneys from competition but rather to protect the public welfare.” *Real Estate Bar Association for Massachusetts, Inc. v. National Real Estate Information Services*, 459 Mass. 512, 517 (2011) (“REBA”). Conduct that violates a statute meant to protect the public welfare will also violate c. 93A if it is unfair or deceptive and it takes place in trade or commerce. See 940 C.M.R. § 3.16(3); *Klairmont v. Gainsboro Restaurant, Inc.*, 465 Mass. 165, 173 (2013).

As explained above, MV is engaged in making mortgage loans. A Massachusetts property owner’s grant of a mortgage to MV has the effect of transferring legal title in the property to MV. *Double B Capital Group*, 101 Mass. App. Ct. at 805. MV’s insistence that the mortgages it obtained conveyed no titled, and that as a result it did not have to use an attorney, is without merit.

Under Massachusetts law, “a lawyer is a necessary participant” at the closing of a mortgage loan because the transfer of title and other activities involved in the granting of a mortgage “constitute the practice of law and the person performing them must be an attorney.” *REBA*, 459 Mass. at 533. At the closing of a mortgage loan, the closing attorney has duties not only to ensure that the property owner is conveying good title to the mortgagee, but also that the consideration for the conveyance has in fact been paid to the homeowner. *REBA*, 459 Mass. at 536. Corporations and limited liability companies like MV that engage in mortgage lending “may only be represented by a licensed attorney in connection with the closing of any mortgage loan transaction,” even though by statute (G.L. c. 221, § 46) they may represent themselves in transactions that do not constitute the practice of law. See *REBA*, 459 Mass. at 533 n.40.

The evidence that MV has repeatedly recorded mortgages in Massachusetts without having first paid any consideration to the homeowner, discussed in the prior section of this decision, shows that MV’s practice of closing mortgage loan transactions without involving an attorney is unfair and has harmed consumers. The Commonwealth is therefore likely to succeed in showing that this practice by MV violates c. 93A.

3. **Public Interest.** The Court also finds that the proposed preliminary injunction would be in the public interest, because it is reasonably tailored to remedying the unfair or deceptive acts or practices described above and ensuring that MV complies with c. 93A until this action is resolved.

ORDER

The Commonwealth's motion for a preliminary injunction is **allowed**.

21 February 2023

Kenneth W. Salinger
Justice of the Superior Court