

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, *ex rel.*
MARC DANN
ATTORNEY GENERAL
30 East Broad Street
State Office Tower – 14th Floor
Columbus, Ohio 43215-3428

and

JOHN REARDON, Superintendent
OHIO DEPARTMENT OF COMMERCE,
DIVISION OF FINANCIAL INSTITUTIONS
77 S. High Street, 21st Floor
Columbus, Ohio 43266

Plaintiffs,

v.

RANDALL MORTGAGE SERVICES, INC.
655 Metro Place South, Suite 600
Dublin, OH 43017
c/o Statutory Agent
Robert R. Shepherd
9299 Concord Road
Powell, OH 43065
and

SYDMAR INVESTMENTS, INC.
9299 Concord Road
Powell, OH 43065
c/o Statutory Agent
Robert R. Shepherd
9299 Concord Road
Powell, OH 43065
and

ROBERT R. SHEPHERD
9299 Concord Road
Powell, OH 43065

Defendants.

CASE NO. 07-CV

JUDGE HORTON

07CVH 12 16960

COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF,
RESTITUTION, AND CIVIL
PENALTIES

FILED
COMMON PLEAS COURT
FRANKLIN CO. OHIO
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CLERK OF COURTS - CV

JURISDICTION

1. Marc Dann, Attorney General of Ohio, brings this action pursuant to the authority vested in him by the Consumer Sales Practices Act (CSPA), R.C. §1345.01 *et seq.* and the Ohio Mortgage Broker Act (OMBA), R.C. §1322.01 *et seq.* John Reardon, Superintendent of the Division of Financial Institutions, Ohio Department of Commerce, brings this action pursuant to the authority vested in him by the Ohio Mortgage Broker Act, R.C. §1322.01 *et seq.*
2. The actions of the Defendants, hereinafter described, have occurred in the State of Ohio, Franklin County and as set forth below are in violation of the Consumer Sales Practices Act, R.C. §1345.01 *et seq.*, and the Ohio Mortgage Broker Act, R.C. §1322.01 *et seq.*
3. Defendant Randall Mortgage Services, Inc. is a “supplier” as that term is defined in R.C. §1345.01(C), as Defendant was at all times relevant herein engaged in the business of effecting consumer transactions by soliciting to broker and arrange mortgage loans to individual “consumers” in Franklin County and other Ohio counties for purposes that were primarily personal, family or household within the meaning specified in R.C. §1345.01(A) and (D). Defendant Randall Mortgage Services, Inc. is an Ohio corporation which, until it surrendered its mortgage broker certificates of registration in August 2007, held a mortgage broker certificate of registration issued by the Ohio Division of Financial Institutions, MB #800012.
4. Defendant Sydmar Investments, Inc. is an Ohio corporation which is a holding company into which Robert R. Shepherd placed the shares of Randall Mortgage Services, Inc. and as such is a necessary party to the proceeding pursuant to Ohio Civ. R. 19. Robert R. Shepherd is the sole owner of Sydmar Investments, Inc.

5. Defendant Robert R. Shepherd was a loan officer and the operations manager for Randall Mortgage Services, Inc. LO/OM #001178, and was its president and through Sydmar Investments, Inc., was its sole owner. Said Defendant retains his loan officer license LO#001178 in escrow with the Ohio Division of Financial Institutions.
6. Defendant Randall Mortgage Services, Inc. was a “mortgage broker” as defined in R.C. §1322.01(G)(1), as said Defendant held itself out to Ohio consumers as being able to assist buyers as defined in R.C. §1322.01(A) to obtain a mortgage loan for home purchase and refinancing in return for money.
7. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. §1345.04 of the Ohio Consumer Sales Practices Act and R.C. §1322.10 and §1322.11 of the Ohio Mortgage Broker Act.
8. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), and has authority to grant injunctive and declaratory relief pursuant to R.C. §§ 1322.10(B), 1322.11(B)(1), and 1345.07(A) .

NATURE OF DEFENDANT’S BUSINESS

9. Defendant Randall Mortgage Services, Inc. was a business entity operating from Dublin, Ohio and two other locations in the state that solicited and provided consumers with mortgage broker services by assisting such consumer buyers in obtaining first lien mortgage loans to purchase homes for residential use or to refinance loans on their existing homes. Randall Mortgage Services, Inc. was initially issued a certificate of registration as a mortgage broker by the Division pursuant to the Ohio Mortgage Broker Act, R.C. §1322.01 *et seq.* on April 16, 1993 and agreed to voluntarily surrender its certificates of registration on August 29, 2007. Randall Mortgage

Services, Inc. operated two authorized branch offices until the August 29, 2007 surrender of its certificates of registration: one in Fairlawn, Ohio and another in Cincinnati, Ohio. As part of its normal course of business, Randall Mortgage Services, Inc. would take loan applications from consumer buyers for mortgages, obtain credit information, and gather verifications on financial and employment information provided. These applications, records and verifications would include private financial information regarding the consumer buyers' debts, current loan account information, wages, credit agency reports, bank account information, social security numbers, and even on occasion tax filing information. This information would be used for underwriting purposes to determine if the consumer buyers qualified for a loan or particular loan product. The Ohio Mortgage Broker Act, R.C. 1322.06(B) requires that the records of the Defendant be maintained for a period of four years.

STATEMENT OF FACTS

10. Defendant Randall Mortgage Services, Inc. maintained its records in accordance with the Ohio Mortgage Broker Act, R.C. 1322.06 at its main office location at 655 Metro Place South, Suite 600, Dublin, Ohio 43017.
11. Upon surrender of its mortgage broker certificates of registration, Defendant Randall Mortgage Services, Inc. abandoned its mortgage broker records at its previous main office location in Dublin, Ohio.
12. Pursuant to the rules issued by the Division pursuant to the Ohio Mortgage Broker Act, *"If a person surrenders its certificate of registration or otherwise ceases to engage in business as a mortgage broker, such person shall nonetheless preserve the records required by this rule."* OAC 1301:8-7-06(B).

13. Defendant Randall Mortgage Services, Inc.'s mortgage broker records also constitute "consumer information" as that term is defined under the federal Fair and Accurate Credit Transaction Act rule promulgated at 16 C.F.R. §682.1(b), in that the records contain material from "consumer reports" or are derived from consumer reports as that term is defined by the federal Fair Credit Reporting Act, 15 U.S.C. 1681a(d). The term credit report includes materials businesses receive with information relating to employment background, check writing history, or residential history.
14. Pursuant to federal law, 15 U.S.C. §1681w and 16 C.F.R. §682.3, mortgage brokers are required to properly dispose of any consumer information by "*taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.*" *Id.* Failure to do so is considered an unfair or deceptive act or practice in violation of the Federal Trade Commission Act, 15 U.S.C. §45(a).
15. Defendant Randall Mortgage Services, Inc. is subject to the federal Gramm-Leach-Bliley Act, 15 U.S.C. §6801 *et seq.* as a financial institution per 15 U.S.C. §6809(3) regulated by the Federal Trade Commission and thus subject to the FTC's Standards for Safeguarding Customer Information, 16 C.F.R. 314 ("Safeguards Rule"). The records abandoned by the Defendant Randall Mortgage Services, Inc. constitute "nonpublic personal information" and "customer information" as those terms are defined in 15 U.S.C. §6809(4) and 16 C.F.R. § 314.2(b).
16. The Gramm-Leach-Bliley Act requires mortgage brokers to develop and implement an information security program for disposal and storage of customer information so as to protect against "*unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.*" 16 C.F.R. §314.3(b)(3). Violations

of the Gramm-Leach-Bliley Act and its accompanying Safeguards Rule are considered an unfair or deceptive act or practice in violation of the FTC Act, 15 U.S.C. §45(a).

17. Defendant Robert R. Shepherd, as president and operations manager of Randall Mortgage Services, Inc., as well as sole owner through his holding company Sydmar Investments, Inc., controlled the operation of the company, together with the creation, direction and implementation of its policies including its storage and disposal policies for consumer and customer information. On or about September 1, 2007 Defendant Randall Mortgage Services, Inc. upon the decision and actions of Defendant Robert R. Shepherd abandoned its mortgage broker records containing customer and consumer information at its previous main office location at 655 Metro Place South, Suite 600, Dublin, Ohio.
18. Pursuant to R.C. § 1345.02(C), in determining whether conduct is "unfair or deceptive" in violation of R.C. § 1345.02(A) of the CSPA, courts in Ohio "*shall give due consideration and great weight to federal trade commission orders, trade regulation rules and guides, and the federal courts' interpretations of subsection 45 (a)(1) of the "Federal Trade Commission Act," 38 Stat. 717 (1914), 15 U.S.C.A. 41, as amended.*"

COUNT I

VIOLATION OF THE MORTGAGE BROKER ACT

19. Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1 to 18 of this Complaint.
20. Defendant Randall Mortgage Services, Inc. has failed to maintain its records for business transacted as a mortgage broker in violation of R.C. §1322.06(B) and OAC 1301:8-7-06(B).
21. Defendant Robert R. Shepherd is responsible for Randall Mortgage Services, Inc.'s

failure to maintain its business records and, in deciding to abandon those records in violation of the Ohio Mortgage Broker Act, has engaged in conduct that constitutes improper or dishonest dealings in violation of R.C. §1322.07(C).

COUNT II

UNFAIR AND DECEPTIVE ACTS OR PRACTICES

22. Plaintiffs reallege and incorporate by reference the allegations of Paragraphs 1 to 21 of this Complaint.
23. Defendant Randall Mortgage Services, Inc. has committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A) by abandoning its customer and consumer information as those terms are defined in the federal laws designed to protect personal financial information from improper disclosure and prevent identity theft under the Fair and Accurate Credit Transaction Act and the Gramm-Leach-Bliley Act and the rules promulgated thereunder.
24. Defendant Robert R. Shepherd is responsible for Randall Mortgage Services, Inc.'s failure to properly store or dispose of its business records containing customer and consumer information as those terms are defined in the federal laws designed to protect personal financial information from improper disclosure and prevent identity theft under the Fair and Accurate Credit Transaction Act and the Gramm-Leach-Bliley Act and the rules promulgated thereunder. In deciding to abandon those records in violation of the Ohio CSPA, Defendant Robert R. Shepherd has committed unfair and deceptive acts or practices in violation of R.C. §1345.02(A).

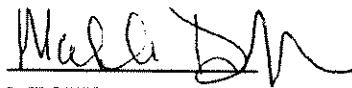
WHEREFORE, PLAINTIFFS REQUEST THIS COURT:

1. ISSUE a permanent injunction enjoining Defendant Randall Mortgage Services, Inc., its agents, servants, representatives, employees, successors or assigns, and Defendant Robert R. Shepherd, from engaging in the acts and practices of which Plaintiffs complain, including failing to maintain its mortgage broker records as required by the Ohio Mortgage Broker Act and rules thereunder, or otherwise failing to properly store or dispose of consumer or customer records in violation of the Consumer Sales Practices Act in a manner reasonably designed to protect personal financial information from improper disclosure and prevent identity theft.
2. ISSUE a declaratory judgment declaring that each act or practice of which Plaintiff, the State of Ohio, *ex rel.* Marc Dann, Attorney General complains violates the Ohio Consumer Sales Practices Act in the manner set forth in this Complaint.
3. ORDER Defendants jointly and severally to reimburse all Ohio consumers found to have been damaged by their unfair and deceptive acts or practices.
4. ASSESS, FINE and IMPOSE a civil penalty of Twenty Five Thousand Dollars (\$25,000.00) upon the Defendants jointly and severally for each separate and appropriate violation described herein, pursuant to R.C. §1345.07(D).
5. As a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, ORDER Defendants to maintain in their possession and control for a period of four (4) years all business records relating to Defendants' mortgage broker transactions in Ohio and to permit the Division and Attorney General or their representatives, upon reasonable twenty-four hour notice, to inspect and/or copy any and all records.

6. ORDER Defendants to pay all costs.
7. GRANT such other relief as the Court deems to be just, equitable and appropriate.

Respectfully submitted

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