

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.: _____

**CONSUMER FINANCIAL
PROTECTION BUREAU,**

Plaintiff,

v.

**UNITED GUARANTY
CORPORATION,**

Defendant.

/

**COMPLAINT FOR PERMANENT
INJUNCTION AND OTHER RELIEF**

Plaintiff, the Consumer Financial Protection Bureau (“CFPB” or “Bureau”), alleges:

1. The Bureau brings this action under Section 1054 of the Consumer Financial Protection Act of 2010, Pub. L. No. 111-203, Title X, § 1054, 124 Stat. 1376, 2028-29 (2010) (“CFPA”), codified at 12 U.S.C. § 5564, and Sections 8 and 16 of the Real Estate Settlement Procedures Act (“RESPA”), 12 U.S.C. §§ 2607 and 2614, to obtain civil money penalties and permanent injunctive relief, for Defendant’s acts or practices in violation of Section 8 of RESPA, 12 U.S.C. § 2607.

2. Section 8 of RESPA prohibits: (1) the payment and acceptance of any fee, kickback, or thing of value in exchange for referring a consumer to a real estate settlement service provider, and (2) the giving or accepting of any portion, split, or percentage of a charge for a real estate settlement service other than for services actually performed (that is, unearned fees).

3. This enforcement action is brought to remedy the unlawful acts and practices by Defendant of entering into agreements pursuant to which illegal kickback payments or unearned fees, disguised as reinsurance premiums, were paid by Defendant to the captive reinsurance affiliates (“captive reinsurers”) of entities offering or providing residential mortgage loans (“lenders”) in exchange for the referral of private mortgage insurance business from the lenders.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and 12 U.S.C. §§ 2614 and 5565(a).

5. Venue is proper in this district under 28 U.S.C. § 1391, and 12 U.S.C. § 2614, 12 U.S.C. § 5564(f).

PARTIES

6. The CFPB is an independent agency of the United States Government created by statute. 12 U.S.C. § 5481 *et seq.* Section 1061(b)(7) of the CFPA, 12 U.S.C. § 5581(b)(7), transfers to the Bureau all consumer protection functions originally granted to the Secretary of the Department of Housing and Urban Development (“HUD”) relating to the enforcement of RESPA, and Section 1098(7) of the CFPA amended Section 8(d)(4) of RESPA to authorize the Bureau to bring actions to enjoin violations of Section 8.

7. The CFPB is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of RESPA and to secure such legal and equitable relief as may be appropriate in each case. 12 U.S.C. § 2607(d)(4); 12 U.S.C. §§ 5564(a) and 5565.

8. The CFPB is also authorized to collect civil money penalties, as set forth in 12 U.S.C. §§ 5565(a) and (c), and to recover its costs in connection with prosecuting an action, 12 U.S.C. § 5565(b).

9. Defendant United Guaranty Corporation (“United Guaranty”) is a North Carolina corporation with its principal place of business in Greensboro, North Carolina. United Guaranty transacts or has transacted business in this district and throughout the United States. At times material to this Complaint, United Guaranty engaged in the business of selling private mortgage insurance and ceded premiums to lenders in exchange for purported “reinsurance.”

FACTS

The Private Mortgage Insurance Industry

10. Private mortgage insurance is issued by a mortgage insurance provider. Typically, the lender selects and designates the mortgage insurance provider that will provide the mortgage insurance at the time of the loan origination. As a result, consumers usually have no effective choice in this referral.

11. In the event of a borrower default, the mortgage insurance policy covers a specified percentage of losses the lender may face in connection with a foreclosure of the loan.

12. Prior to the 2008 financial crisis, mortgage insurance was a very profitable business for Defendant. As a result, Defendant highly valued its selection by a lender to provide mortgage insurance for loan transactions originated by the lender.

13. Beginning in the mid-1990’s, many lenders established their own wholly-owned subsidiaries to serve as captive reinsurers providing purported reinsurance to Defendant and others. These captive reinsurers purported to provide a layer of reinsurance coverage primarily or exclusively for the mortgage insurance on the affiliated lender’s mortgage loans.

14. Defendant entered into captive mortgage reinsurance arrangements (“captive arrangements”) with lenders. Under each of these arrangements, Defendant agreed to cede a certain percentage of a referred borrower’s premiums back to the referring lender through the

lender's wholly-owned subsidiary, the captive reinsurer, purportedly in exchange for reinsurance coverage.

15. Defendant entered into captive arrangements with many of the more than one hundred captive reinsurers, including those affiliated with virtually every major lender participating in the U.S. housing market.

Kickback Payments Made for Referrals

16. Defendant's premiums ceded to lenders' captive reinsurers were kickback payments, paid in exchange for referring customers.

17. The "reinsurance" provided by the lenders' captive reinsurers was of little if any value because the projected value of the reinsurance to Defendant was far less than the premiums Defendant expected to cede.

18. Defendant advocated the use of captive arrangements to encourage lenders to use its services. Ceding a percentage of premiums to lenders through captive reinsurers encouraged those lenders to refer mortgage insurance business to Defendant.

19. These arrangements obligated Defendant to split its profits with lenders, but simultaneously enabled Defendant to increase or maintain its market share.

20. When it first participated in captive arrangements, Defendant ceded approximately 12% of its premiums per referral to lenders' captive reinsurers. Over time, Defendant ceded increasingly large percentages of its premiums to captive reinsurers in exchange for lenders' continued referral of customers to Defendant, until the amount ceded was as high as 40% for each referral. With each change in ceding percentage, the reinsurance structure changed, purportedly to provide greater coverage.

VIOLATIONS OF RESPA

21. Section 8(a) of RESPA prohibits any person from giving or accepting “any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.” 12 U.S.C. § 2607(a).

22. Section 8(b) of RESPA prohibits the giving and acceptance of “any portion, split, or percentage” of any charge made or received for a settlement service other than for services actually performed in connection with a transaction involving a federally related mortgage loan. 12 U.S.C. § 2607(b).

23. Defendant is a provider of settlement services subject to the requirements of, and is a “person” under, Section 8 of RESPA. *See* 12 U.S.C. § 2602.

24. Mortgage insurance constitutes “business incident to or a part of a real estate settlement service” within the meaning of Section 8 of RESPA. 12 C.F.R. § 1024.2(b).

25. The home loans originated by lenders and referred to Defendant are “federally related mortgage loans” as defined in 12 U.S.C. § 2602(1) and 12 C.F.R. § 1024.2(b).

26. In the course and conduct of making these home loans, lenders routinely referred many consumers to Defendant for mortgage insurance.

27. Many of these referrals of mortgage insurance business were made pursuant to agreements between Defendant and lenders which provided that Defendant would cede a portion of their mortgage insurance premiums to the referring lender’s captive reinsurer. These agreements are reflected by, among other things, written reinsurance and trust agreements, other written communications between and within lenders and Defendant, and by Defendant’s and lenders’ pattern, practice, and course of conduct.

28. Each ceding payment by Defendant to the captive reinsurers is a “thing of value” that has been given to a lender’s captive.

29. Each such ceding payment: (a) was not and is not for services actually furnished or performed, or (b) grossly exceeded or exceeds the value of any such services.

30. Each such ceding payment by Defendant was and is made in consideration of lenders’ continued referral of mortgage insurance business to Defendant.

31. Each such ceding payment therefore was and is an illegal kickback in violation of Section 8(a) of RESPA, 12 U.S.C. § 2607(a), for which Defendant is liable.

32. Each ceding payment paid by Defendant and accepted by a lender through its captive reinsurer is a portion, split, or percentage of the private mortgage insurance premiums paid by consumers who are lenders’ customers.

33. Defendant gave and lenders accepted a portion, split, or percentage of charges received by Defendant for the rendering of business incident to a real estate settlement service other than for services actually performed, in violation of Section 8(b) of RESPA, 12 U.S.C. § 2607(b), for which Defendant is liable.

THIS COURT'S POWER TO GRANT RELIEF

34. Sections 8 and 16 of RESPA, 12 U.S.C. §§ 2607(d)(4) and 2614, and Section 1055 of the CFPA, 12 U.S.C. § 5565, empower this Court to grant injunctive relief to halt and redress violations of Section 8 of RESPA in actions brought by the Bureau. The Court, in the exercise of its equitable power, may award ancillary relief, including rescission of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of Section 8 of RESPA in actions brought by the Bureau.

35. Further, Section 1055 of the CFPA, 12 U.S.C. § 5565, empowers this Court to award civil money penalties, payment of damages or other monetary relief, public notification regarding the violation, limits on the activities or functions of the person, and the CFPB's costs of prosecuting the action, in addition to the equitable remedies described above.

PRAYER FOR RELIEF

36. Wherefore, Plaintiff CFPB, pursuant to Sections 8 and 16 of RESPA, 12 U.S.C. §§ 2607 and 2614, Section 1055 of the CFPA, 12 U.S.C. § 5565, and the Court's own equitable powers, requests that the Court:

- A. Enter a permanent injunction to prevent and restrain future violations of Section 8 of RESPA; and
- B. Award civil money penalties for Defendant's violations of Section 8 of RESPA.

DATED: April 4, 2013

Respectfully submitted,

Kent Markus
Enforcement Director

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Certificate of Service

I certify that a true and correct copy of the foregoing Complaint was served by U.S. Mail and email on April 4, 2013 on all counsel or parties of record on the service list.

s/Donald R. Gordon

Donald R. Gordon

SERVICE LIST

Case No.: _____

United States District Court, Southern District of Florida

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