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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

THE REAL ESTATE BAR ASSOCIATION
FOR MASSACHUSETTS, INC.,

Plaintiff,

v.

NATIONAL REAL ESTATE
INFORMATION SERVICES, INC.,

Defendant.

06-4632- F

CIVIL ACTION NO.

COMPLAINT TO RESTRAIN UNAUTHORIZED PRACTICE OF LAW

1. This is an action to restrain violations of G.L. c. 221, § 46A, which provides that “[n]o individual, other than a member, in good standing, of the bar of this commonwealth shall practice law.” In Massachusetts, conveyancing, which is the profession of conveying that legal interest in real estate required to consummate a transaction between a buyer and seller, or between a borrower and a lender, is the practice of law. E.g., Opinion of Justices, 289 Mass. 607, 613 (1935) (“conveyancing” is the practice of law). When the conveyance of the real estate interest is entrusted to a third person, who is not a party to the transaction, that third person must be an attorney who controls and supervises the entire conveyancing process.

2. Although the Defendant is not an attorney, it is engaged in the practice of law by conveying real property in Massachusetts on behalf of various banks and mortgage lenders in violation of G.L. c. 221, §§ 46A and 46B. In order to appear to comply with Massachusetts law, the Defendant engages attorneys to participate in the settlement of these transactions. However, the Defendant divests the attorneys of virtually all responsibility for the conveyances and requires that they do nothing more than witness the execution of the closing documents. In essence, the attorneys are engaged to act as notaries public.

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3. The Plaintiff seeks a declaratory judgment that a “notary only” closing, in which the conveyance of real property is controlled and supervised by a non-lawyer and the attorney’s participation is restricted to notarizing documents, is not permitted under Massachusetts law. The Plaintiff also seeks a declaratory judgment that because conveyancing is the practice of law, the relationship between a mortgage lender and the attorney responsible for the conveyance of the real estate interest to the mortgage lender is an attorney-client relationship which cannot be controlled by a third party.

4. The Plaintiff also seeks an order pursuant to G.L. c. 221, § 46 enjoining the Defendant, preliminarily and permanently, from all activities by which an interest in real property is conveyed or from any other actions that constitute the unauthorized practice of law.

PARTIES

5. Plaintiff The Real Estate Bar Association For Massachusetts, Inc. (“Bar Association”), formerly known as the Massachusetts Conveyancers Association, Inc., is a corporation with a principal place of business at 50 Congress Street, Suite 600, Boston, Massachusetts. The Plaintiff is a bar association with a membership of approximately 3,000 Massachusetts real estate attorneys.

6. Defendant National Real Estate Information Services, Inc. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business in Pittsburgh, Pennsylvania.

JURISDICTION

7. Jurisdiction over this action is specifically conferred on this Court by General Laws c. 221, § 46B which provides that the Superior Court shall have jurisdiction in equity, upon petition of any bar association within the Commonwealth, to restrain violations of General Laws c. 221, §46A. This Court has personal jurisdiction over Defendant pursuant to G.L. c. 223A, § 3.

STATEMENT OF FACTS

CONVEYING AN INTEREST IN REAL ESTATE IS THE PRACTICE OF LAW.

8. Where an individual intends to purchase residential real estate or refinance an existing mortgage loan on his home, he typically borrows money from a bank or a mortgage lender. As security for its loan, the lender will receive a mortgage on the property. Before actually making the loan, the lender must ensure that its interests in the transaction are protected and the conveyance of the property interest is completed in a legally enforceable manner.

9. In order for that legal interest to be conveyed properly, the following activities must necessarily be performed in both a purchase transaction or a refinance of an existing mortgage: (a) a review of the legal title to the property to ensure that the seller/mortgagor has good and clear and marketable title to the property, (b) the completion of the process by which any title issues or encumbrances are resolved, (c) a settlement or “closing” of the real estate transaction at which the appropriate legal documents are executed, the consideration for the property is exchanged, and the parties’ obligations to one another are fulfilled, and (d) the recordation of the appropriate documents to create the various interests in the property.

10. Because the lender typically has the greatest interest in ensuring that the real estate interest is correctly conveyed, and that its mortgage is legally valid, the lender undertakes the responsibility for the conveyance.

11. In Massachusetts, conveying an interest in real estate is the practice of law. Opinion of Justices, 289 Mass. at 613. When the conveyance is entrusted to a third person who is not a party to the transaction, that person must be an attorney who must control and supervise the entire process.

12. Consequently, before actually making the loan, the lender ordinarily retains an attorney to ensure that the lender’s interests in the transaction are legally protected. Although the other parties to the transaction sometimes retain their own attorneys, the lender’s attorney is

ordinarily responsible for virtually all the conveyancing work.

13. All the parties to the transaction rely on the lender's attorney to properly convey the interest in real estate in accordance with the parties' various legal obligations under the purchase and sale agreement and/or the mortgage loan commitment.

THE DEFENDANT IS ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW.

14. Defendant National Real Estate Information Services, Inc. ("National Real Estate") is a privately held company headquartered in Pittsburgh. Defendant National Real Estate is not an attorney or a law firm and is not authorized to engage in the practice of law. G.L. c. 221, § 46.

15. Defendant National Real Estate has entered into contractual agreements with a number of banks and mortgage lenders for the provision of conveyancing services in Massachusetts. Pursuant to these agreements, Defendant National Real Estate reviews title to real property in Massachusetts to determine whether the seller or mortgagor of that property has a valid title; prepares documents required to convey a legal interest in real property in Massachusetts, including the preparation of deeds, affidavits, and HUD forms; disburses funds secured by a mortgage on real property in Massachusetts to the borrower, seller and other parties; reviews executed loan documents for completeness and recordability; and records documents to effectuate a conveyance of a legal interest in real estate in Massachusetts with various registries throughout the Commonwealth.

16. By providing these services, Defendant National Real Estate is engaged in the unauthorized practice of law under the laws of the Commonwealth of Massachusetts.

THE DEFENDANT ENGAGES ATTORNEYS SOLELY TO ACT AS NOTARIES.

17. In connection with the services it provides to banks and mortgage lenders doing business in the Commonwealth of Massachusetts, Defendant National Real Estate has entered into agreements with various Massachusetts attorneys.

18. Defendant National Real Estate engages these attorneys to attend the settlement of the real estate transactions at which deeds, mortgages, and other legal documents are executed. At the settlement, the attorneys are permitted to act only as notaries public by witnessing the parties execute the various documents required to complete the transaction. In fact, Defendant National Real Estate refers to the attorneys as “real estate signing professionals.”

19. The attorneys are not permitted to review any part of the title to the real property and they are not involved in identifying or resolving defects or clouds on the title. They do not substantively review any of the documents that are to be executed at the settlement. The attorneys do not record the deed, the mortgage, or any other title documents. They do not receive any portion of the mortgage loan and do not disburse any of the loan proceeds. All of these activities are undertaken by Defendant National Real Estate.

20. Defendant National Real Estate engages attorneys to attend the settlement only to give the appearance of complying with Massachusetts law. In fact, the attorneys have no control or supervision over all of the activities that must be undertaken to ensure that the legal interest in the real estate is properly conveyed.

21. A non-lawyer, who is not a party to the real estate transaction but controls and supervises a conveyance of real property for the contractual parties, like Defendant National Real Estate, is engaged in the unauthorized practice of law in violation of Massachusetts law.

**THE RELATIONSHIP BETWEEN THE ATTORNEY AND THE BANK
OR MORTGAGE LENDER MUST BE A DIRECT RELATIONSHIP.**

22. Although the attorneys are performing services for various banks and mortgage lenders, they have no direct relationship with those clients. They are engaged by Defendant National Real Estate, and subject to its control and direction.

23. The actions of Defendant National Real Estate, by which it interposes itself between the attorneys and their clients, is a violation of Massachusetts law.

FIRST CLAIM FOR DECLARATORY JUDGMENT

24. Plaintiff The Real Estate Bar Association For Massachusetts, Inc. restates the allegations contained in the preceding paragraphs as if fully set forth herein.

25. A controversy presently exists between the parties as to whether Massachusetts law permits a non-lawyer who is not a party to a real estate transaction to control and supervise the conveyance of a legal interest in the real property that is the subject of the transaction where the only participation of an attorney is restricted to notarizing documents at the settlement of the transaction.

26. The Plaintiff The Real Estate Bar Association For Massachusetts, Inc. is entitled to a declaratory judgment that Defendant National Real Estate is engaged in the unauthorized practice of law in violation of Massachusetts law and that the so-called “notary closings” that result from the Defendant’s actions are also not permitted under Massachusetts law.

SECOND CLAIM FOR DECLARATORY JUDGMENT

27. Plaintiff The Real Estate Bar Association For Massachusetts, Inc. restates the allegations contained in the preceding paragraphs as if fully set forth herein.

28. A controversy presently exists between the parties as to whether Massachusetts law permits Defendant National Real Estate to contract with various attorneys for the provision of legal services to third parties.

29. The Plaintiff The Real Estate Bar Association For Massachusetts, Inc. is entitled to a declaratory judgment that an attorney retained to perform a conveyance of a legal interest in Massachusetts real property on behalf of a bank or lender must have a direct attorney-client relationship

with the bank or mortgage lender client, and that Defendant National Real Estate is not permitted to interpose itself into that attorney-client relationship or otherwise control it.

INJUNCTION AGAINST UNAUTHORIZED PRACTICE OF LAW

30. Plaintiff The Real Estate Bar Association For Massachusetts, Inc. restates the allegations contained in the preceding paragraphs as if fully set forth herein.

31. The activities of Defendant National Real Estate, described above, constitute the unauthorized practice of law and can only be performed by attorneys licensed to practice in Massachusetts.

32. Section 46 of Chapter 221 of the General Law provides in relevant part that “no corporation or association shall draw agreements, or other legal documents not relating to its lawful business . . . or give legal advice in matters not relating to its lawful business, or practice law, or hold itself out in any manner as being entitled to do any of the foregoing acts.”

33. Defendant National Real Estate is in violation of G.L. c. 221, § 46 and is exposing the public to serious risk of harm.

PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff Bar Association and its members demand relief as follows:

1. Enter an Order preliminarily enjoining Defendant National Real Estate from engaging in any of the activities which constitute a conveyance of real property unless it is acting under the supervision or control of a Massachusetts attorney;

2. Following a trial on the merits of the Plaintiff’s claims, enter an Order permanently enjoining Defendant National Real Estate from engaging in any of the activities which constitute a conveyance of real property unless it is acting under the supervision or control of a Massachusetts attorney;

3. Enter the declaratory judgments sought by the Plaintiff; and
4. Allow such other relief as this Court deems just.

THE REAL ESTATE BAR ASSOCIATION
FOR MASSACHUSETTS, INC.

By its attorneys,

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