

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

MICHAEL E. KATIN and)
ALFRED GEOFFRION, JR., on behalf of)
Themselves and all others similarly situated,)

Plaintiffs,)

v.)

NATIONAL REAL ESTATE)
INFORMATION SERVICES, INC.,)
NATIONAL REAL ESTATE INFORMATION)
SERVICES, ATM CORPORATION OF)
AMERICA, FIRST AMERICAN SIGNATURE)
SERVICES, INC., TRANS STATE)
CLOSERS, INC., LIBERTY TITLE & ESCROW)
CO., INC., and SERVICE LINK, INC.,)

Defendants.)

CIVIL ACTION NO:

CLASS ACTION AND
JURY DEMAND

COMPLAINT

Plaintiffs Michael E. Katin and Alfred Geoffrion, Jr. ("Plaintiffs"), by their attorneys, bring this action on behalf of themselves and all others similarly situated against Defendants National Real Estate Information Services, Inc., National Real Estate Information Services, ATM Corporation of America, First American Signature Services, Inc., Trans State Closers, Inc., Liberty Title & Escrow Co., Inc., and Service Link, Inc.

BACKGROUND

1. This action is brought by Plaintiffs on behalf of themselves and a proposed class of Massachusetts real estate conveyancing attorneys who, during the last 4 years, were

Massachusetts-licensed attorneys in good standing who were engaged in the practice of performing conveyancing services for Massachusetts real estate transactions.

2. Typically when an individual purchases residential real estate, she borrows money from a bank or mortgage lender. As security for the loan, the lender will receive a mortgage on the property. The same is true in the case of an individual refinancing an existing mortgage loan on her home. Not surprisingly, the mortgage lender will want to protect its interests in the transaction by ensuring that the conveyance of the real estate is completed in a legally enforceable manner.

3. In Massachusetts, this process is known as conveyancing and includes: (1) the review of the legal title to the property to ensure that the seller has good and clear and marketable title to the property; (2) the supervision of the process by which any title issues or encumbrances are resolved; (3) controlling the settlement or “closing” of the real estate transaction to ensure that the appropriate legal documents are properly executed, the consideration for the property is exchanged, and the parties’ obligations to one another are fulfilled; (4) recording the appropriate documents to protect the various interests in the property; and (5) disbursement of closing proceeds.

4. As the lender has a substantial interest in ensuring that the conveyance is properly completed, so that the mortgage is valid, the lender generally undertakes responsibility for the conveyancing.

5. Typically, these lenders will not handle the conveyancing directly, but rather, will retain a conveyancing attorney to ensure that the lender obtains a valid mortgage in the real estate.

6. In Massachusetts, it has long been established that conveying an interest in real estate constitutes the practice of law. Opinions of Justices, 289 Mass. 607, 613 (1935); Mass. Conveyancers' Ass'n, Inc. v. Colonial Title & Escrow, Inc., 13 Mass. L. Rptr. 633 (Mass. Super. 2001). Thus, when the conveyance is entrusted to a third person who is not a party to the transaction, that person must be an attorney.

7. Yet, especially as refinancing has become a more common phenomenon, lenders are increasingly hiring companies known as settlement service providers to handle the conveyancing process and conduct the settlement or "closing" of the real estate transaction.

8. Problematically, these settlement service providers largely hire non-lawyers to conduct these transactions and designate notary publics to handle the actual closing of the transaction, or in a hollow attempt to comply with the law, engage attorneys who do nothing more than witness the execution of the closing documents-i.e., these attorneys do not maintain any control over the transaction, but rather, they fulfill the same function as a notary public would.

9. Defendants' practice of utilizing settlement service agents who are not Massachusetts attorneys, or utilizing attorneys who have been divested of all meaningful responsibility and oversight and who merely fulfill the same function as a notary public would in the conveyancing process, violates Massachusetts law that defines conveyancing as the practice of law, and statutory provisions that require the involvement of attorneys in the conveyancing process. Thus, Defendants and their agents are engaged in the unauthorized practice of law in violation of Mass. Gen. Laws Ann. c. 221, §§ 46A and 46B.

10. Defendants' practice of utilizing settlement service agents who are not Massachusetts attorneys, or utilizing attorneys who have been divested of all substantive legal

responsibility, deprives the Class, as defined below, of business that is reserved to its members by Massachusetts law.

11. Upon information and belief, Defendants continue to engage in this pattern and practice of illegal conduct and have no plans to discontinue doing so. As such, they unlawfully encroach upon the rights of Massachusetts conveyancing attorneys and threaten to erode the level of legal expertise available to the members of the public purchasing or refinancing real estate in Massachusetts.

12. Plaintiffs assert claims against Defendants for (a) tortious interference with business expectancies, and (b) violation of Mass. Gen. Laws Ann. c. 93A, §§ 2(a), 11, the Massachusetts Consumer Protection Act.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332(d)(2)(A), in that this is a “civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interests and costs, and is a class action in which . . . any member of a class of Plaintiff is a citizen of a State different from any Defendant,” and 28 U.S.C. § 1367.

14. Venue is appropriate under 28 U.S.C. § 1391 inasmuch as named Plaintiffs Michael E. Katin and Alfred Geoffrion, Jr. are residents of the Commonwealth of Massachusetts, Defendants systematically and continuously transact business in the Commonwealth of Massachusetts, and a substantial part of the events or omissions giving rise to the causes of action set forth in this Complaint arose in the Commonwealth of Massachusetts.

THE PARTIES

15. Plaintiff Michael E. Katin is an individual who is a citizen of the Commonwealth of Massachusetts. He currently practices law at 103 Great Road, Acton, Massachusetts 01720.

16. Plaintiff Alfred Geoffrion, Jr. is an individual who is a citizen of the Commonwealth of Massachusetts. He currently practices law at his offices at 1350 Main Street, Springfield, Massachusetts 01103.

17. 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 at 290 Bilmar Drive, Pittsburgh, Pennsylvania 15205.

18. Defendant National Real Estate Information Services is a limited partnership organized and existing under the laws of the Commonwealth of Pennsylvania with a mailing address at 1 Rutgers Road, Pittsburgh, Pennsylvania 15205.

19. Defendant ATM Corporation of America is a corporation organized and existing under the laws of the Commonwealth Pennsylvania with a principal place of business at 345 Rouser Road, Coraopolis, Pennsylvania 15108.

20. Defendant First American Signature Services, Inc. is a corporation organized and existing under the laws of the state of California with a principal place of business at 1 First American Way, Santa Ana, California 92707.

21. Defendant Trans State Closers, Inc. is a corporation organized and existing under the laws of the state of Florida with a principal place of business at 8224 Damara Drive, New Port Richey, Florida 34653.

22. Defendant Liberty Title & Escrow Co., Inc. is a corporation organized and existing under the laws of the state of Rhode Island with a principal place of business at 1575 So. County Trail, E. Greenwich, Rhode Island, 02818.

23. Defendant Service Link, Inc. is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with a principal place of business at 4000 Industrial Boulevard, Aliquippa, Pennsylvania 15001.

CLASS ACTION ALLEGATIONS

24. This class action is brought on behalf of Plaintiffs and members of the Class (defined below) to recover for the harm caused by the Defendants' pattern of illegal, unfair, and/or deceptive actions as practices as alleged herein pursuant to Rule 23 of the Federal Rules of Civil Procedure and under Mass. Gen. Laws c. 93A, § 11.

25. Throughout the Class Period (defined below), Defendants engaged in illegal and unfair methods of competition and deceptive acts and practices by utilizing individuals or entities who are not Massachusetts attorneys, or engaging attorneys who have been divested of all meaningful responsibility to fulfill the same function as a notary public would in the conveyancing process, to provide conveyancing services to banks and mortgage lenders. Flouting the statutory and case law requirements that these practices be performed by Massachusetts attorneys, Defendants affirmatively and deliberately utilized the services of non-attorneys or attorneys divested of all real responsibility to the detriment of Plaintiffs and the other members of the Class.

26. The acts, practice and conduct of which Plaintiffs complain commonly affect a Class defined as: all conveyancing attorneys practicing in Massachusetts, who, at any time

during the 4-year period prior to the filing of this lawsuit to the present (the “Class Period”), were Massachusetts-licensed attorneys in good standing and who were engaged in the practice of performing conveyancing services.

27. Plaintiffs are members of the Class they seek to represent.

28. The members of the Class are so numerous that joinder is impractical. Upon information and belief, the Class is comprised of hundreds of individuals.

29. There are numerous and substantial questions of law and fact common to the members of the Class, which questions predominate over any individual issues. These questions include, but are not limited to:

- a) Whether the elements for the claim for tortious interference with business expectancies are satisfied in this case?
- b) Whether Defendants, by failing to use Plaintiffs and the Class members, and instead entering into contracts with non-lawyers or lawyers who did not retain any meaningful responsibility in the conveyancing process, as settlement service agents, engaged in unfair competition and/or deceptive actions and practices under Mass. Gen. Laws Ann. ch. 93A, § 2(a)?
- c) Whether Defendants’ actions constitute an unfair or deceptive act under Mass. Gen. Laws Ann. ch. 93A by operation of Mass. Gen. Laws Ann. ch. 93, § 70, The Good Funds Statute, “willful failure by an attorney to render a certification to the mortgagor as required by the provisions of this section shall constitute an unfair or deceptive act or practice under the provisions of chapter ninety-three A.”

30. The claims of Plaintiffs are typical of the claims of all members of the Class as both Plaintiffs and Class members were subjected to a common course of Defendants' conduct. By proving their case, Plaintiffs will simultaneously prove the case of the members of the Class.

31. Plaintiffs will fairly and adequately represent the Class. Plaintiffs are willing and able to serve as representatives of the Class, and have no knowledge of any possible divergent interest between or among Plaintiffs and any member of the Class. Plaintiffs have retained competent counsel experienced in class actions and complex litigation to provide representation on behalf of Plaintiffs and the Class.

32. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants.

33. The prosecution of separate actions would also create a substantial risk of adjudication with respect to individual members of the Class, which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

34. Questions of law and fact common to all members of the Class predominate over any questions affecting individual members. The determinative facts and legal principles apply universally among Plaintiffs and members of the Class.

35. A class action is superior to other available methods for the fair and efficient adjudication of the controversy for reasons including that, due to the expense of pursuing individual litigation regarding Defendants' common course of conduct alleged herein, members of the Class would, as a practical matter, be effectively precluded from protecting and enforcing their legal rights.

FACTUAL ALLEGATIONS

36. In order for a legal interest to be conveyed properly, the following must be undertaken: (a) a review of the legal title to the property to ensure that the seller/mortgagor has good and clear and marketable title; (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; (d) the recording of the appropriate documents to protect the various interests in the property; and (e) disbursement of closing proceeds.

37. Historically in Massachusetts, this conveyancing process, including all real estate closings and the more recent development of the practice of issuing title insurance, was handled by lawyers authorized to practice in Massachusetts. While this practice is rooted in tradition, it is also based on requirements of law.

38. In Massachusetts, conveying an interest in real estate constitutes the practice of law. Opinions of Justices, 289 Mass. 607, 613 (1935); Mass. Conveyancers’ Ass’n, Inc. v. Colonial Title & Escrow, Inc., 13 Mass. L. Rptr. 633 (Mass. Super. 2001).

39. Moreover, on May 15, 2004, then-Governor Romney codified the prohibition in Massachusetts law precluding non-attorneys from conducting residential real estate closings. The Governor issued Executive Order No. 455, which provides in relevant part that “a notary public who is not an attorney licensed to practice law in Massachusetts, or who is not directly supervised by an attorney, shall not conduct a real estate closing and shall not act as a real estate closing agent.” Executive Order No. 455, § 9(c).

40. Further, Massachusetts statutory law that bears upon the process of conveyancing also contains provisions that either anticipate or require the involvement of an attorney in the practice of conveyancing:

- (a) **Title Certification Statute – ALM GL c. 93, § 70** – This statute requires that the “*attorney* acting for or on behalf of the mortgagee shall render a certification of title to the mortgaged premises to the mortgagor and to the mortgagee.” Mass. Gen. Laws Ann. ch. 93, § 70 (2006)(emphasis added). Further, “the liability of any *attorney* rendering such certification shall be limited to the amount of the consideration shown on the deed . . . [and] willful failure by an *attorney* to render a certification to the mortgagor as required by the provisions of this section shall constitute an unfair or deceptive act or practice under the provisions of chapter ninety-three A.” *Id.* (emphasis added).
- (b) **Good Funds Statute – ALM GL c. 183, § 63B** – This statute requires that the full amount of the mortgage loan proceeds due to the mortgagor pursuant to the Settlement Statement “must be transferred to the mortgagor, the mortgagor’s *attorney* or the mortgagee’s *attorney*” before recordation of the deed. Mass. Gen. Laws Ann. ch. 183, § 63B (emphasis added). Significantly, there is no provision for the loan proceeds to be held by a settlement service provider who is the lender’s attorney.
- (c) **Mortgage Discharge Statute – ALM GL c. 183, § 54C**- Under this statute, a mortgage will be discharged when “an affidavit executed by an *attorney* licensed to practice law in the commonwealth who, pursuant to a payoff

statement from the mortgage service or note holder, transmitted funds to the mortgage servicer or note holder.” Mass. Gen. Laws Ann. ch. 183, § 54C (emphasis added).

41. Defendants are not attorneys or law firms, and are not authorized to engage in the practice of law. Mass. Gen. Laws Ann. ch. 221, § 46. Yet, despite these facts, Defendants have entered into contractual agreements with a number of banks and mortgage lenders for the provision of conveyancing services in Massachusetts. Pursuant to these agreements, Defendants purportedly review title to real property in Massachusetts to determine whether the seller or mortgagor of that property has a valid title; prepare documents required to convey legal interest in real property in Massachusetts, including the preparation of deeds, affidavits, and HUD forms; disburse funds secured by a mortgage on real property in Massachusetts to the borrower, seller and other parties; review executed loan documents for completeness and recordability; and record documents to effectuate a conveyance of a legal interest in real estate in Massachusetts with various registries throughout the Commonwealth.

42. By providing these services, Defendants are engaging in the practice of conveyancing and thus are also engaging in the unauthorized practice of law under the laws of the Commonwealth of Massachusetts.

43. Perhaps in a misguided attempt to obscure this flagrant flouting of the law, some Defendants have entered into agreements with various Massachusetts attorneys. These “witness-only attorneys” are engaged to attend the settlement of real estate transactions at which deeds, mortgages, and other legal documents are executed. At the settlement, the witness-only attorneys are permitted to act only as notaries public by witnessing the parties execute the various documents required to complete the transaction.

44. The witness-only attorneys are not permitted to review any part of the title to the real property and 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 witness-only 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 loans proceeds. Instead, all of these activities, as discussed above, are undertaken by Defendants.

45. Thus, the witness-only attorneys have no control or supervision over the activities that must be undertaken to ensure that the legal interest in the real estate is properly conveyed. Instead, Defendants who are non-lawyers control and supervise the conveyance, and are thus engaged in the unauthorized practice of law.

46. Yet, despite the illegality of their actions and practices, Defendants hold themselves out to the public as being able to legally effectuate the conveyance of real property.

47. Similarly, those witness-only attorneys who entered into contractual agreements with Defendants have no direct relationship with the banks and mortgage lenders, and are instead under the direct control of Defendants. As such, these witness-only attorneys are assisting in the unauthorized practice of law in violations of Massachusetts Rules of Professional Conduct, Rule 5.5(b).

48. As a result of these practices, Massachusetts attorneys who properly participate in and supervise the conveyancing process, such as Plaintiffs and Class members, have been and continue to be excluded from serving as conveyancing attorneys, despite the clear statutory and case law precedent that they do so, which has resulted in lost business and, accordingly, lost revenues and profits.

49. Plaintiffs and the members of the Class seek, *inter alia*, damages representing those lost revenues and profits.

50. Moreover, Massachusetts residents involved in real estate transactions are being harmed by this deceptive and illegal practice.

COUNT I

TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCIES

51. Plaintiffs repeat and reallage the allegations set forth above as though fully set forth herein.

52. Plaintiffs and the Class members had a valid business expectancy in being selected to serve as conveyancing attorneys in Massachusetts real estate transactions.

53. On information and belief, Defendants knew or should have known that conveyancing constitutes the practice of law and should only be undertaken by attorneys.

54. Nevertheless, Defendants intentionally and deliberately interfered with Plaintiffs' and Class members' business expectations and either completely handled the conveyancing process illegally without an attorney, or engaged an attorney who was devoid of any real responsibility in the transaction in a hollow and insufficient attempt to appear in compliance with the law. Such interference was without justification and was based solely on a desire to maximize their amount of business and their margin of profit.

55. As a result of this interference, Plaintiffs and the Class members have suffered actual loss in an amount to be proved at trial.

COUNT II

VIOLATION OF ALM GL c. 93A §§ 2(a), 11

56. Plaintiffs repeat and reallage the allegations set forth above as though fully set forth herein.

57. The Massachusetts Consumer Protect Act, Mass. Gen. Laws Ann. ch. 93A § 2(a) (2006), provides: “Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

58. Defendants have engaged in a flagrant course of conduct as part of their general business practices, of improperly engaging non-attorneys or attorneys divested of all meaningful responsibility to participate in the settlement of real estate conveyancing transactions.

59. Defendants’ practices as outlined above and as described throughout this complaint are in violation of Massachusetts case law and statutory requirements that define conveyancing as the practice of law and require active attorney participation in real estate conveyancing transactions. As such, these practices constitute unfair and deceptive acts and practices within the meaning of Mass. Gen. Laws Ann. ch. 93A. Further, on information and belief, the actions of Defendants were willful and knowing and deceptively designed to be held out as legal to Massachusetts residents and lenders involved in real estate transactions and to thus deprive Plaintiffs and Class members of their business.

60. Plaintiffs and Class members are Massachusetts conveyancing attorneys who are persons engaged in the conduct of any trade or commerce pursuant to the terms of Mass. Gen. Laws Ann. ch. 93A § 11. As a direct and proximate cause of Defendants’ violation of the Mass. Gen. Laws. Ann. ch. 93A, § 2(a), Plaintiffs and Class members have suffered and will continue to suffer ascertainable loss. Mass. Gen. Laws Ann. ch. 93A, § 11.

61. Plaintiffs and Class Members are entitled to relief for Defendants' unfair and deceptive trade practices.

62. Defendants are liable for attorneys' fees and costs, and as their conduct was willful and knowing, Defendants are further liable for up to three, but not less than two, times the actual damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants for themselves and the Class members as follows:

- (a) Determining that this action is a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure and ALM GL c. 93A, § 11, and for an order certifying this case as a class action;
- (b) Awarding compensatory damages on behalf of Plaintiffs and the Class members in an amount to be proved at trial;
- (c) Awarding punitive damages;
- (d) Awarding multiple damages as well as costs and attorney fees under ALM GL c. 93A, § 11;
- (e) Awarding Plaintiffs and the Class all expenses, costs and disbursements incident to the prosecution of this action, including reasonable attorneys' fees; and
- (f) Granting such other relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand trial by jury on all issues triable at law.

Dated: May 9, 2007

Respectfully submitted,
MICHAEL E. KATIN,
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By Their Attorneys,

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