

FILED Aug 05, 2013

Royce Potts III  
7 Kimberly St.  
Jackson, NJ 08527  
July 30, 2013

Superior Court Clerk's Office, Foreclosure Processing Services  
Attention: Objection to Notice of Intention to Foreclose  
P.O. Box 971  
Trenton, NJ 08625

Re: 7 Kimberly St.  
Jackson, NJ 08527  
Account: 0018779629

Dear Sir / Madam,

This letter is to exercise my right to file an Objection to the Order to Show Cause; Superior Court of New Jersey, Chancery Division, Mercer County, Docket Number: F-015390-13

The Basis for the Objection is specified in the attached Demand for loan modification and copy of Executed Loan Documents & Promissory Note under § 6 of RESPA

Sincerely,

Royce H. Potts III  
Royce H. Potts III

the law offices of  
**Kramer & Kaslow**  
a professional corporation

TELEPHONE: (818) 224-3900 [www.kramerlaw2.com](http://www.kramerlaw2.com) FACSIMILE: (818) 224-3911  
23901 Calabasas Road, Suite 2013  
Calabasas, California 91302

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PHILIP A. KRAMER

Date: 2/25/2011  
Loan#: 18779629

**VIA CERTIFIED MAIL & FAX**  
**HSBC**  
2929 Walden Ave  
Depew NY 14043

**Attention: Legal Department/Office of the President/MAP-Modifications**

Royce Potts  
7 Kimberly St.

Jackson NJ 08527

**Demand for Loan Modification & Copy of Executed Loan Documents & Promissory Note  
Under § 6 of RESPA**

As you are probably aware, Royce Potts (hereinafter "Client") has retained this office to handle any and all matters related to the mortgage loan referenced hereinabove with HSBC (hereinafter "Defendant" or "Lender").

It is difficult to ascertain which lender holds the original promissory note signed by the Client. Furthermore, Client was never provided with signed loan documents at closing making it difficult for our office to conduct proper audit of the documents necessary to protect our Client's interests. Therefore, please forward all copies of the executed original loan documents including,

but not limited to, the Promissory Note as soon as possible (see Exhibit A for a complete list of requested documents).

As you should be further aware, section 6 of the Real Estate Settlement Procedures Act (“RESPA”) provides borrowers with important customer protection relating to the servicing of their loan. Under RESPA, borrowers whom have problems with the servicing of their loan can contact the loan servicer in writing (**Qualified Written Request**) and the loan servicer must acknowledge the borrower’s correspondence within 20 days of receipt of the complaint and **MUST** resolve the issue addressed by the borrower within 60 business days. Please note that HSBC must suspend all reporting activity to the major credit bureaus while the borrower’s issue is being resolved. Please note that HSBC must suspend all reporting activity to the major credit bureaus while the borrower’s issue is being resolved (section 1681(a) of Title 15).

*As such, our Client is disputing the validity of this debt with HSBC and hereby demands that they produce copy of the original executed Promissory Note which the Client signed with the originating lender. In the absence of the originally executed Promissory Note, HSBC cannot legally foreclose on the Client’s property or proceed with any legal action to evict our Client from the property.*

#### **I. PRELIMINARY AUDIT FINDING**

Based on the limited number of loan documents, which are all unsigned, we conducted a preliminary audit and found numerous required disclosures to be missing and/or were never provided to the Client as required by various State and Federal laws governing real property transactions. Under RESPA, at the time of loan application, mortgage brokers and/or lender **MUST** give the borrowers the following:

- A Special Information Booklet, which contains consumer information regarding various real estate settlement services;
- A Good Faith Estimate of settlement costs, which lists the charges the buyer is likely to pay in settlement. This is only an estimate and the actual charges may differ. If a lender requires the borrower to use a particular settlement provider, then the lender must disclose this requirement on the Good Faith Estimate; and,
- A Mortgage Servicing Disclosure Statement, which discloses to the borrower whether the lender intends to service the loan or transfer it to another lender. It also provides information about complaint resolution.

These required disclosures and documents were never provided to the Client when he submitted his loan application. Due to the complex nature of real estate transactions and unfamiliarity with the process in purchasing or refinancing real property, most borrowers are not aware that the lender is required to provide these disclosures. Although these disclosures will not make an individual an expert in real property, it is designed to help them become better shoppers for settlement services and become knowledgeable in the mortgage loan agreement that they are about to enter into.

A lender's failure to abide by the RESPA provisions allows the borrower up to three (3) years to bring an action to enforce these violations in any Federal District Court in the district in which the property is located or where the violation is alleged to have occurred. Also, HUD, a state Attorney General or State insurance commissioner may bring an injunctive action to enforce violations of RESPA within three (3) years.

In addition, our preliminary investigation further revealed that Client never received the following documents required in real property transactions:

- Truth-in-Lending;
- Equal Credit Opportunity Act;
- Borrower's Authorization form;
- Rights to Receive a Copy of the Appraisal;
- Credit Score Disclosure; and,
- Fair Lending Notice

Most importantly, a copy of the form 1003, Mortgage Loan Application, is missing from the Client's file. Obviously, without this document, there is no way to determine how the originating lender structured the loan to establish that the Client had financial ability to repay the loan. Given the limited number of documents, please be informed that these findings are NOT final. This office is confident that we will be able to discover further violations upon the examination of the complete loan documents from your office.

Please be reminded that the Congress recognized the problems with the "*holder in due course*" doctrine where the subsequent investors/purchasers of original loans were protected from legitimate defenses borrowers have against the original lenders. Thus, assignees of these loans are generally liable for all the claims that the homeowner can bring against the original lender for wrongful acts and violations in connection with their mortgage loans.

Furthermore, the following state and federal laws were ignored and violated at the time of the loan closing by HSBC \_\_\_\_\_:

1.

Civil Code § 1789.14 & 1789.15 – In violation of this code section, Lender entered into a contract with the Client without first providing, upfront, the information statement as required. Further, various required disclosures which must be provided to the borrower within 3 days of the credit report were never provided to our Client.

2.

Business and Professionals Code § 10240 – As required under this section, failed to timely provide our Client with mortgage loan disclosure statement and/or a good faith estimate as required under the Real Estate Settlement Procedures Act and all applicable disclosures required under the Truth in Lending Act.

3.

California Civil Code § 1921, requires any lender offering adjustable – rate residential mortgage loans to provide,

“...to prospective borrowers a copy of the most recent available publication of the Federal Reserve Board that is designed to provide the public with descriptive information concerning adjustable – rate mortgages (currently entitled “Consumer Handbook on Adjustable Rate Mortgage”), either upon the prospective borrower’s request or at the time the lender first provides written information, other than direct-mail advertising, concerning any adjustable-rate residential mortgage loan or credit sale to the prospective borrower, whichever is earlier.”

A lender’s failure to comply with this requirement will be liable for actual damages, the costs of the action, and reasonable attorney fees as determined by the court of competent jurisdiction.

4.

10 CA ADC § 1436(d) – This code section mandates that,

“Every licensee shall, within three (3) business days after receipt of completed application for a nontraditional loan or an adjustable rate loan that is subject to the Guidance, or before the borrower becomes obligated on the note, whichever is earlier, cause to be delivered to the borrower statements in writing disclosing, in a clear and conspicuous manner, information comparing payment scenarios and loan balance scenarios among any nontraditional loan and adjustable rate loan products offered by the licensee and that are subject to the Guidance.” (See supra)

Lastly, the defendant failed to comply with California Civil Code § 1789.14 & 1789.15, which states as follows:

§1789.14. Prior to the execution of a contract or agreement between the buyer and a credit services organization, the credit services organization shall provide the buyer a statement in writing, containing all the information required by section 1789.15. The credit services organization shall maintain on file or microfilm for a period of two years an exact copy of the statement personally signed by the buyer, acknowledging receipt of a copy of the statement.

§1789.15. The information statement shall include all the following:

(a) A complete and detailed description of the services to be performed by the credit services organization for or on behalf of the buyer and the total amount the buyer will have to pay, or become obligated to pay, for the services;

(b) The buyer's right to proceed against the bond under the circumstances and in the manner set forth in Section 1789.18.

(c) The name and address of the surety company which issued the bond;

(d) A complete and accurate statement of the availability of nonprofit credit counseling services.

During the entire loan application process, the Lender did not provide any statements complying with the requirements of the above mentioned civil codes. The failure to provide such statements as it relates to the loan terms was one of the main causes in the Client obtaining an adjustment rate mortgage. Had the Lender informed the Client of all the essential information regarding his loan as required by various California codes governing real property transactions, he would have opted to choose a traditional loan with fixed interest rate and payments.

## **II. MODIFICATION IS IN THE BEST INTEREST OF THE LENDER AND THE CLIENT**

Given today's crumbling real estate market conditions, a loan modification is in the best interest of both parties (and any successor in interest) for the following reasons:

1. Foreclosure costs lenders more than loan modification because it is expensive and nets considerably less than property's fair market value, especially in a downward market;
2. Selling the property in a depressed market is unattractive and can lead up to 50% loss to those controlling the loans;
3. If foreclosed, lenders would have to act as landlords and unoccupied property is prone to damage, to be vandalized, and subject to disrepair; and,
4. Foreclosures tend to affect other properties in the neighborhood by further decreasing property values in an otherwise unfavorable real estate market.

**For the foregoing reasons, the Client hereby demands the following modification to the terms of his mortgage loan:**

1. That the principle balance of the loan balance be reduced to reflect 70% of current market value of the property taking into account recent property sales in the Client's neighborhood;
2. That the mortgage loan be converted into fixed 40 year mortgage at an interest rate lower than previously paid;
3. That Client's monthly payment be reduced in half from the current amount and/or accordingly to the adjusted principle and interest rate in number 1 and 2 hereinabove;
4. If applicable, all delinquent payments, penalties and interest charges, assessed to Client's account be waived and his account fully reinstated; and,
5. If applicable, that derogatory report to all 3 major credit reporting agencies to reflect that the client has satisfied any and all delinquencies under the loan.

Regardless, this office deeply appreciates your willingness to work out a feasible modification terms for the benefit of the Client.

At this time, our client is receiving credit counseling as a precursor to filing bankruptcy. If it is necessary that our client proceeds with this action, your position will be characterized accordingly. I am of the belief that it is our duty as attorneys to mitigate all damages for our client prior to any litigation, or formal bankruptcy filing; thus, I will not close the door on an amicable resolution to aid my client and avoid costly litigation expenses.

In the event that HSBC chooses to ignore this request, we will initiate formal proceedings. This letter does not serve to waive or void any of client's rights or remedies. CLIENT'S RECISSION RIGHTS ARE UNDER REVIEW. PLEASE NOTE that if legal action becomes necessary, you will be required to pay substantial additional amounts for court costs and interest upon entry of judgment. Also our client will request attorney fees and punitive damages.

Please note that a written acknowledgement is due to our initial Qualified Written Request with 20 days from receipt. Further, a resolution is due to our request within 60 days of receipt. Since the loan is so delinquent an immediate resolution is demanded. Otherwise, our client's last resort will be to move forward with formal proceedings and file a lis pendens until all issues are resolved.

Should you have any questions or concerns, please do not hesitate in contacting us regarding this matter.

**Please fax all information to (949) 271-2708 and mail to:**

18012 Sky Park Circle, Suite 150, Irvine, California 92614  
TEL:(949) 734-4887 FAX: (949) 271-2708

Very truly yours,

*Philip A. Kramer*

Philip A. Kramer  
Attorney at Law  
Exhibit A Attached

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## Exhibit A

We hereby demand the following: the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.” See Section 2605(e)(2)(c).

1. A copy of the following loan origination documents: promissory note, deed of trust/mortgage (including all riders), HUD-1 Settlement Statement, Truth-in-Lending statement and Notice of Right to Cancel.
2. Please state the following information for the present investor/holder of said loan: full legal name, address, telephone number and contact representative.
3. Please identify the date that said investor/holder of the underlying loan was transferred, assigned, purchased, obtained or otherwise took ownership.
4. Please provide a complete and full loan servicing history from the loan’s origination date to the present.

Please note that the loan servicing history must include the following:

- all payments and the post date of each payment;
- all late fees;
- all NSF fees;
- all attorney fees;
- all broker price opinion fees;
- all corporate advance fees;
- all optional insurance products;
- all forced placed insurance (i.e. flood or hazard);
- all amounts directed to any suspended account or other account used to temporarily hold partial payments;
- all amounts withdrawn from any suspended account or other account used to temporarily hold partial payments and the reason or category for the withdrawal;
- all lender assessed fees or charges to the above referenced loan not otherwise identified.

Our office will consider any partial loan servicing history or any incomplete loan servicing history as an intentional violation of Section 2605(e) of RESPA’s directive to provide such information pursuant to this Qualified Written Request.

5. For any fee or charge resulting from a lender payment to a third party, including but not limited to attorney fees, broker price opinion fees, corporate advance fees, optional insurance products, forced placed insurance (i.e. flood or hazard) or any other lender assessed fees and charges as may be categorized, please provide a copy

6. A breakdown statement of all amounts considered as presently in default, claimed arrearage or delinquency;
7. A breakdown of the current escrow account showing how it is calculated and the reasons for any increase within the last 24 months;
8. A copy of any annual escrow statements and notices of a shortage, deficiency or surplus, sent to the borrower within the last three (3) years; and
9. A statement breakdown of all amounts presently held within any suspense account or other account used to temporarily hold partial payments.

Dated: 2/25/2011

**KRAMER & KASLOW**

By: Philip A. Kramer  
Philip A. Kramer, Esq.