

**LAW OFFICE OF  
GERARD C. TAMBURINO**

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March 1, 2014

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

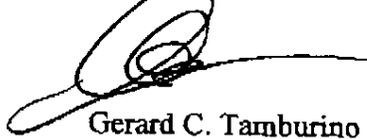
**Re: In Re BOA  
Docket no: F-041084-13**

Dear Madam or Sir:

Enclosed for filing, please find Defendant's Answer, CIS, and Response Certification to plaintiff's Order to Show Cause in the above referenced matter along with a check satisfying the requisite fee.

Thank you.

Very truly yours,



Gerard C. Tamburino

GCT/lc  
Encls.  
CC: The Honorable Margaret McVeigh, J.S.C  
CC: Kathleen N. Fennelly, Esq.  
CC: Patricia Fanego



**GERARD C. TAMBURINO, ESQ.**  
292 Lafayette Street, 2<sup>nd</sup> Floor  
Newark, NJ 07105  
(973) 344-3895  
Attorney for defendants Acela & Patricia Fanego

**IN RE THE APPLICATION OF BOA  
TO ISSUE CORRECTED NOTICES OF  
INTENT TO FORECLOSE ON BEHALF OF  
IDENTIFIED FORECLOSURE PLAINTIFFS  
IN UNCONTESTED CASES**

: SUPERIOR COURT OF NEW JERSEY  
: PASSAIC COUNTY  
: CHANCERY DIVISION  
:  
: Docket no: F-041084-13  
:  
:  
:  
:  
: CERTIFICATION OF PATRICIA  
: FANEGO, Defendant  
:  
:  
:

I, Patricia Fanego, of full age, hereby certifies as follows:

1. I am the defendant with my mother, Acela Fanego who is elderly and widowed.
2. We live together with my son who suffers from autism. We have found it very difficult to maintain the home, but are hopeful because we are in the process of a loan modification application. Fannie Mac has been guiding us in that regard.
3. I would like the Court to know that we have never been properly served with a Summons and Complaint for foreclosure. I see the docket number on the letter sent by plaintiff's attorney which ends in "10". I assume that case is very old. Notwithstanding, I do not believe we were ever served!! We did receive the Order to Show Cause in the mail and retained Mr. Tamburino because we are very confused.
4. Falling behind on the mortgage and the process of obtaining a loan modification has been very stressful on all of us. We feel as if things have moved much too fast for us and we have been kept in the dark

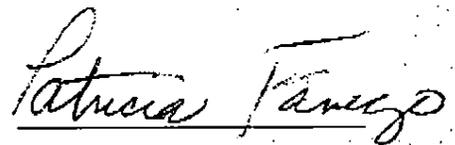


5. I do not believe it is at all fair and equitable that the plaintiff be allowed to stray from its obligations. If we had received the proper paperwork, things would have been much easier. We would have retained an attorney from the inception of the Notice of Intent to Foreclose.
6. The subject property is OUR FAMILY HOME. Unfortunately, it is underwater but we will do whatever is necessary to keep our home and pray the real estate market ultimately rebounds.
7. I ask that the Court rewind the injustice that has occurred and allow us to properly defend the foreclosure action. Our interest rate is unnecessarily high and all it would take would be a reduction in our rate and perhaps a reduction in the principal balance and we would be able to afford the property.
8. We do not believe it is fair that the mortgage company should be allowed to forego the proper procedure when such an important thing as a family home is at stake.
9. There is no prejudice to plaintiff if we are allowed our day in court. It is our Constitutional right to be afforded Due Process.
10. Plaintiff should be required to act prudently under local, state and Federal law.  
We simply ask that the Court dismiss any action against us and instruct plaintiff to comply with the law. We would like our day in Court.
11. This is just not fair.

I hereby certify that the foregoing statements made by me are true. I am aware that if any statement is made willfully false, I am subject to punishment.

Dated:

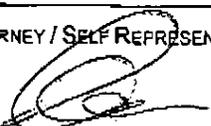
2/28/14



Patricia Fanego



Appendix XII-B2

<b>FORECLOSURE CASE INFORMATION STATEMENT (FCIS)</b>		FOR USE BY CLERK'S OFFICE ONLY
 <p><b>Use for initial Chancery Division — General Equity foreclosure pleadings (not motions) under Rule 4:5-1. Pleading will be rejected for filing, under Rule 1:5-8(c), if information is not furnished or if attorney's signature is not affixed.</b></p>	PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA <input type="checkbox"/> MO	
	RECEIPT NO.	
	AMOUNT:	
	OVERPAYMENT:	
	BATCH NUMBER:	
		BATCH DATE:
SECTION A: TO BE COMPLETED BY ALL PARTIES		
CAPTION In Re Bank of America Application		COUNTY OF VENUE Ocean
		DOCKET NUMBER (when available) F-041084
NAME(S) OF FILING PARTY(IES) (e.g. John Doe, Plaintiff) Acela and Patricia Fanego, Defendants		DOCUMENT TYPE <input type="checkbox"/> COMPLAINT <input checked="" type="checkbox"/> ANSWER <input type="checkbox"/> OTHER
ATTORNEY NAME (IF APPLICABLE) Gerard C. Tamburino, Esq.	FIRM NAME (IF APPLICABLE)	
MAILING ADDRESS 292 Lafayette Street, Newark, NJ 07105		DAYTIME TELEPHONE NUMBER (973) 344-3895
SECTION B: TO BE COMPLETED BY PLAINTIFF TO INITIAL COMPLAINT		
FORECLOSURE CASE TYPE NUMBER		IS THIS A HIGH RISK MORTGAGE PURSUANT TO P.L.2009,C.84 AND P.L.2008,C.127 <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/> 088 IN PERSONAM TAX FORECLOSURE <input type="checkbox"/> 089 IN REM TAX FORECLOSURE <input checked="" type="checkbox"/> 0RF RESIDENTIAL MORTGAGE FORECLOSURE <input type="checkbox"/> 0CF COMMERCIAL MORTGAGE FORECLOSURE <input type="checkbox"/> 0CD CONDOMINIUM OR HOMEOWNER'S ASSOCIATION LIEN FORECLOSURE <input type="checkbox"/> 091 STRICT FORECLOSURE <input type="checkbox"/> 0FP OPTIONAL FORECLOSURE PROCEDURE (NO SALE) <input type="checkbox"/> 0TS TIME SHARE FORECLOSURE		PURCHASE MONEY MORTGAGE <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO RELATED PENDING CASE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YES, LIST DOCKET NUMBERS:
FULL PHYSICAL STREET ADDRESS OF PROPERTY: 151 New York Avenue, Newark, NJ		MUNICIPALITY CODE (*) 0714
ZIP CODE 07105	COUNTY: Essex	MUNICIPAL BLOCK:  (LOTS)
ALL FILING PARTIES MUST SIGN AND PRINT NAMES(S) AND DATE THE FORM BELOW		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).		
ATTORNEY / SELF REPRESENTED SIGNATURE 	PRINT ATTORNEY / SELF REPRESENTED NAME Gerard C. Tamburino, Esq.	DATE 2/28/14

\*The Municipality Codes can be found at [http://www.judiciary.state.nj.us/forms/11343\\_municodes.pdf](http://www.judiciary.state.nj.us/forms/11343_municodes.pdf)



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**IN RE THE APPLICATION OF BOA  
TO ISSUE CORRECTED NOTICES OF  
INTENT TO FORECLOSE ON BEHALF OF  
IDENTIFIED FORECLOSURE PLAINTIFFS  
IN UNCONTESTED CASES**

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**: SUPERIOR COURT OF NEW JERSEY  
: PASSAIC COUNTY  
: CHANCERY DIVISION**

**: Docket no: F-041084-13**

**: ANSWER TO VERIFIED  
: COMPLAINT**

Defendants, Acela and Patricia Fanego, by way of answer to the complaint say:

As to plaintiff's statement of facts and procedure, defendants neither admit nor deny but leave plaintiff to its proofs.

COUNT ONE through COUNT FIFTEEN

1. These Defendants, neither admit nor deny the allegations contained in these counts of the Complaint but leave plaintiff to its proofs.

WHEREFORE, these Defendants demand that both plaintiff's foreclosure and verified complaint against them be dismissed and they be awarded counsel fees and any other relief this Court deems fair and just.

SEPARATE DEFENSES

**FIRST SEPARATE DEFENSE**

Plaintiff failed to mitigate damages.



**SECOND SEPARATE DEFENSE**

There was an accord and satisfaction.

**THIRD SEPARATE DEFENSE**

Plaintiff failed to state a claim upon which relief can be granted.

**FOURTH SEPARATE DEFENSE**

Plaintiff's complaint is barred by applicable statute of limitations and/or the doctrine of laches.

**FIFTH SEPARATE DEFENSE**

Plaintiff's complaint fails to establish jurisdiction over defendant.

**SIXTH SEPARATE DEFENSE**

The alleged damages were the result of acts performed by plaintiff and by defendant.

**SEVENTH SEPARATE DEFENSE**

Court lacks jurisdiction over answering defendants due to improper and insufficient service.

**EIGHTH SEPARATE DEFENSE**

The agreement entered into between parties was unconscionable.

**NINTH SEPARATE DEFENSE**

Plaintiff lacks standing to bring this action.

**TENTH SEPARATE DEFENSE**

Plaintiff lacks clean hands.

**ELEVENTH SEPARATE DEFENSE**



Plaintiffs' complaint is barred by doctrine of waiver, estoppel and accord and satisfaction and/or closing of title.

#### **TWELFTH SEPARATE DEFENSE**

Defendants reserve the right to assert other defenses which may arise during discovery subsequent to the filing of this Answer.

#### **THIRTEENTH SEPARATE DEFENSE**

At all times material hereto, the consumer credit transaction was governed by and the plaintiff violated 1) The Federal Truth and Lending Act, 2) RESPA, 3) The Home Ownership Counseling Act of 1968, 4) Fair Debt and Collection Act, 5) any and all Federal law and New Jersey Statutes and caselaw governing this type of transaction. The loan is predatory and has been unenforceable since its inception. Bank of America breached its fiduciary duty with these defendants and come to Court with unclean hands.

#### **FOURTEENTH SEPARATE DEFENSE**

Plaintiff has failed to include certain important items in its Order to Show Cause, including, but not limited to the fact that these defendants have a pending loan modification and have been assisted by Fannie Mac throughout the process since on or about March 5, 2013. These defendants were never personally served with a foreclosure complaint.

WHEREFORE, these defendants demand that both plaintiff's foreclosure and verified complaint be dismissed and they be awarded counsel fees and any other relief this court deems fair and just

2/27/14

  
**Gerard C. Tamburino**  
**Attorney At Law**  
**State of New Jersey**



**R.4:5-1(c) CERTIFICATION**

I hereby certify that to my knowledge and based on the information available to me at this time, the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no other action or arbitration proceeding is contemplated and there are no other necessary parties which need to be joined.

I hereby certify that the within answer was filed and served in accordance with R. 4:6, et seq.

Dated:

2/27/14



Gerard C. Tamburino, Esq.,  
Attorney for defendants,  
Fanego

