

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

PATRICK W. CANTLIN,
Individually and on behalf of all others
similarly situated,
428 Dumbarton Boulevard
Richmond Heights, Ohio 44143

And

ELIZABETH S. HONG,
Individually and on behalf of all others
similarly situated,
428 Dumbarton Boulevard
Richmond Heights, Ohio 44143

And

RITA A. NOALL
Individually and on behalf of all others
similarly situated,
651 Belmont Drive
Painesville, Ohio 44077

And

CINDY L. MILLER
Individually and on behalf of all others
similarly situated,
500 Sycamore Street, #200
Aurora, Ohio 44202

Plaintiffs,

vs.

HOWARD HANNA COMPANY
Care of its statutory agent,
Alfred R. Corsi, Jr., Esquire
4141 Rockside Road
Seven Hills, Ohio 44131

And

CASE NO. 1:09 CV 2510

JUDGE DONALD C. NUGENT

**CONSOLIDATED CLASS ACTION
COMPLAINT AND JURY DEMAND**

SMYTHE, CRAMER CO.
d/b/a/ Howard Hanna Smythe Cramer
Care of its statutory agent,
Alfred R. Corsi, Jr., Esquire
4141 Rockside Road
Seven Hills, Ohio 44131

And

HOWARD HANNA SMYTHE
CRAMER
Care of its statutory agent,
Smythe, Cramer Co.
4141 Rockside Road
PO Box 318006
Cleveland, Ohio 44131

Defendants.

Now come Plaintiffs Patrick W. Cantlin, Elizabeth S. Hong, Rita A. Noall, and Cindy L. Miller, individually and as representatives of all others similarly situated, and for their Class Action Complaint state:

INTRODUCTION

This is a class action for customers of Howard Hanna Company, Smythe, Cramer Co. and Howard Hanna Smythe Cramer (hereinafter "Defendants"). Defendants are charging an "Administrative Fee" in violation of RESPA (12 U.S.C. § 2607). This complaint seeks an order stopping these practices; reimbursing all customers for the improper charges plus interest; awarding punitive damages; and for such other relief as the court deems plaintiff and the class entitled.

PARTIES

1. Named Plaintiffs, Patrick W. Cantlin, Elizabeth S. Hong, Rita A. Noall, and Cindy L. Miller contracted with Defendants for services related to the purchase of real estate.

Defendants took from Plaintiffs an "Administrative Fee" at the closing and settlement in connection with a federally related loan.

2. Defendant Howard Hanna Company is a Pennsylvania corporation headquartered in Pittsburgh, Pennsylvania which provides consumers with real estate sales services in Ohio, Pennsylvania, West Virginia and New York.

3. Defendant Smythe, Cramer Co. is a subsidiary of Howard Hanna Company and is an Ohio corporation headquartered in Cleveland, Ohio. Defendant provides consumers with real estate sales services in Ohio, Pennsylvania, West Virginia and New York. Smythe, Cramer Co. holds the trademark for Howard Hanna Smythe Cramer in Ohio and is the registered Ohio agent of Howard Hanna Smythe Cramer.

4. Defendant Howard Hanna Smythe Cramer is a business operating in Ohio whose trade name is registered with the Ohio Secretary of State.

JURISDICTION

5. This court has personal jurisdiction over Defendants because Defendants transact business in the state of Ohio and enter into contracts to supply services in the State of Ohio. R.C. § 2307.382.

CLASS ALLEGATIONS

6. Plaintiffs reallege and incorporate herein all previous paragraphs of this Complaint.

7. This class action is brought by the named representative Plaintiffs pursuant to 12 U.S.C. § 2607(d)(5). A class action is appropriate and necessary in this instance because Defendants have engaged in conduct violative of the Federal Real Estate Settlement Procedures Act, 12 U.S.C. § 2607, on a widespread and systematic basis.

8. The class that Plaintiffs represent (the "Plaintiff Class") is composed of all persons who have paid an Administrative Fee to Defendants during the applicable limitations period in transactions involving RESPA covered mortgages.

9. The Class Definition is as follows:

All individuals, who have paid an " Administrative Fee" to any Defendant in connection with a real estate closing and/or settlement in connection with a real estate closing and/or settlement involving a RESPA covered mortgage loan during the applicable limitations period.

10. This class numbers over forty (40) persons and is so numerous that joinder of all members is impracticable, and it is further impracticable to bring all such persons before this Court.

11. The injuries and damages to these class members present questions of law and fact that are common to each class member, and that are common to the entire class as a whole.

12. Defendants have engaged in the same conduct regarding all of the other members of the class asserted in this suit.

13. The claims, defenses, and injuries of the representative Plaintiff are typical of the claims, defenses and injuries of the entire class, and the claims, defenses and injuries of each class member are typical of those of the entire class.

14. Representative Plaintiff will fully and adequately protect and represent the entire class, and all of its putative class members.

15. The identity of all members of this class cannot be determined at this time, but will be so determined at a later time upon obtaining discovery from Defendants and others.

16. The prosecution of separate actions by each member of this class would create a substantial risk of inconsistent or varying adjudications with regard to individual members of the class that would establish incompatible standards of conduct for Defendants.

17. The prosecution of separate actions would also create a substantial risk of adjudication with respect to individual members of the class which, as a practical matter, would be dispositive of the interest of other members not parties to the adjudication, thereby substantially impairing and impeding their ability to protect these interests. Further, the maintenance of this suit as a class action is the superior means of disposing of the common questions which predominate herein.

18. Questions of law and fact common to the Plaintiff Class exist and predominate over questions affecting only individual members, including, inter alia, the following:

- a. Whether Defendants' practice of collecting and accepting an Administrative Fee violates the Federal Real Estate Settlement Procedures Act, codified at 12 U.S.C. § 2607;
- b. Whether Defendants' practice of collecting and accepting an Administrative Fee is fraudulent.

FIRST CLAIM FOR RELIEF
RESPA Violations

19. Plaintiffs reallege and incorporate herein all previous paragraphs of this Complaint.

20. Defendants have unlawfully accepted settlement charges from consumers (reflected on HUD-1 Settlement Statements) in the form of Administrative Fees, in connection with federally related mortgage loans.

21. Defendants have not rendered any service in connection with said charge and/or Defendants have unlawfully charged and accepted Administrative Fees as a duplicative fees for services already rendered as part of the total sales / broker's commission.

22. Defendants' aforementioned conduct violates 12 U.S.C. § 2607 and 24 C.F.R. § 3500.14.

23. As a direct and proximate result of Defendants' actions, Plaintiffs have suffered damages.

SECOND CLAIM FOR RELIEF
Fraud

24. Plaintiffs reallege and incorporate herein all previous paragraphs of this Complaint.

25. By including the Administrative Fee on the HUD-1, Defendants represented that it was paid for services which Defendant performed and which were not already paid for.

26. Plaintiffs relied on this representation to their detriment, and it was material.

27. Defendants' representation to Plaintiffs that the Administrative Costs were for services actually rendered was made falsely, with knowledge of its falsity and with the intent of misleading Plaintiffs to rely on this representation.

28. As a direct and proximate result of Defendants' fraud, Plaintiffs have suffered damages.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs demand judgment as follows:

1. For an Order determining at the earliest possible time that this matter may proceed as a class action under Civil Rule 23 and certifying this case as such;

2. That this Court declare Defendants' practice of collecting an Administrative Fee at closing as part of the settlement process violative of the Real Estate Settlement Procedures Act;

3. That this Court permanently enjoin Defendants from further collecting the challenged Administrative Fee in connection with federally related real estate settlement services;
4. For compensatory and punitive damages;
5. That Plaintiff Class be awarded treble the amount of damages sustained for all RESPA violations;
6. That Plaintiffs be awarded such other and further relief as the Court may deem appropriate, just and proper.
7. For reasonable costs and attorney fees necessarily incurred herein pursuant to common law and 12 USCS § 2607(d)(5).

Respectfully submitted,

/s/ Nicole T. Fiorelli

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Counsel for Plaintiffs

JURY DEMAND

Plaintiffs demand a trial by jury on all of the within causes of action.

/s/ Nicole T. Fiorelli

Nicole T. Fiorelli, Esq. (#0079204)
DWORKEN & BERNSTEIN CO., L.P.A.

One of the Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants today (September 27, 2010).

/s/ Nicole T. Fiorelli

Nicole T. Fiorelli, Esq. (#0079204)
DWORKEN & BERNSTEIN CO., L.P.A.

One of the Attorneys for Plaintiffs