
THE RESOLUTION LAW GROUP, P.C. & BERGER LAW GROUP, P.A.

MEMORANDUM

TO: ALL CLIENTS OF THE BERGER LAW GROUP AND THE RESOLUTION LAW GROUP

FROM: MARK J. BERNET, RECEIVER

SUBJECT: STATUS OF LITIGATION AGAINST THE BERGER LAW GROUP AND THE RESOLUTION LAW GROUP AND DISCUSSION ABOUT FUTURE LEGAL REPRESENTATION

DATE: 9/22/2014

I have previously reported to you that on Tuesday, July 29, 2014, the Florida and Connecticut Attorney General Offices (the "AG Offices") commenced a lawsuit styled *Office of the Attorney General, The State of Florida, Department of Legal Affairs, and The State of Connecticut, Office of the Attorney General v. Berger Law Group, P.A., et al.*, case no. 8:14-cv-1825-T-MAP, United States District Court, Middle District of Florida (hereafter the "AG's Lawsuit"). In the Lawsuit the AG Offices claimed that the Berger Law Group, P.A., Ian Berger, Litigation Law, LLC, Gary DiGirolamo, The Resolution Law Group, P.C., R. Geoffrey Broderick, The Resolution Law Center, LLC, and David Friedman had operated in violation of federal law by falsely promising consumers that they would file lawsuits that would induce banks to give consumers mortgage modifications or other forms of foreclosure relief. The AG Offices further alleged that consumers were charged an upfront fee of typically \$5,000, characterized as an "investigation fee," and then a \$500 monthly maintenance fee. The AG Offices claim that the actions of the Defendants violated state and federal law. As relief, the AG Offices requested the appointment of a receiver, an injunction preventing the Defendants from further violations of state and federal law, and other relief designed to recover money for injured consumers.

On August 22, 2014, the federal court entered a Preliminary Injunction, which has effectively shut down the Berger Law Group, P.A., and The Resolution Law Group, P.C. A copy can be viewed at my website, located at www.bernet-receiver.com.

At the time that the federal court entered the Preliminary Injunction, the two law firms had 13 lawsuits filed. Many of their clients were included as plaintiffs in these "mass actions."¹ Berger Law Group and The Resolution Law Group hired Jeanne Lahiff to sign the lawsuit papers

¹ In a typical lawsuit, there is only one plaintiff (the "plaintiff" is the party who initiates the lawsuit). The Resolution Law Group and the Berger Law Group decided that they could more efficiently represent their clients if they included multiple plaintiffs in each of their lawsuits – between 60 and 99 was common. I do not approve of that strategy for a host of legal reasons, including the "misjoinder" and "single action" rules under the legal rules of procedure. Many courts have ruled that joining multiple plaintiffs in "mass actions" is improper.

on their behalf; the legal effect of this is that Ms. Lahiff is counsel of record in each of these lawsuits, and therefore she is representing each of you. She has indicated to me that she would like to continue to represent you in these lawsuits. I have misgivings about this, as I will talk about in the next several paragraphs, but I have agreed to allow Ms. Lahiff to contact you to talk about the situation.

Ms. Lahiff, who is an attorney admitted to practice law in New York and New Jersey, and her partner, Brian Yang, who is an attorney admitted to practice in Illinois and New Jersey, will send you an e-mail message explaining that they would like to continue to represent you. As I said above, Ms. Lahiff is already representing you because she signed your lawsuit papers and filed them with the courts. To continue, however, she will need to receive your express permission. Thus, one purpose of the e-mail you will receive from her is for her to ask you to decide whether you would like her to continue as your attorney, or whether you would prefer that she not continue as your attorney. She has indicated to me that to remain as your attorney she will charge a new retainer – this is because the money you already paid to Berger Law Group and to The Resolution Law Group is gone.² She has not told me how much she will charge for a new retainer. Here are some of your options:

- If you choose to ask Ms. Lahiff to remain as your attorney in the pending lawsuits, you will need to make financial arrangements with her (my concerns on this subject are discussed below). She would then continue to represent you, and she would be obligated to report to you about the progress of your lawsuit.
- If you choose to direct Ms. Lahiff not to continue to represent you, you will need to consider how you intend to proceed with your existing lawsuit. Here are some of your options if you do not want Ms. Lahiff to represent you:
 - You could choose not to proceed with your lawsuit further. In that regard, you could ask Ms. Lahiff to dismiss you from the lawsuit. If you do that, you will receive nothing from your mortgage lender, and the money you have spent will not be recovered. It is also possible that your mortgage lender that you sued could ask the court to direct you to pay its costs associated with the lawsuit.
 - You could choose to proceed with your lawsuit by hiring a new lawyer. You would need to make a financial arrangement with your new lawyer. At the end of this memorandum are some links that will help you with the process of finding a new lawyer.
 - You could choose to proceed with your lawsuit by representing yourself. I do not recommend that you do this.

If you decide to ask Ms. Lahiff to continue to represent you, or if you decide to hire a new attorney, you need to understand the MARS Rule. The rule, cited at 12 CFR Part 1015, is a rule that regulates "Mortgage Assistance Relief Services." It became effective on December 1,

² To date, I have been able to recover less than \$1,000.

2010. According to the Federal Trade Commission, the rule concerns " the practices of for-profit companies that, in exchange for a fee, offer to work on behalf of consumers to help them obtain modifications to the terms of mortgage loans or to avoid foreclosure on those loans."

Under the MARS Rule, the term "Mortgage Assistance Relief Services" means any service, plan, or program, offered or provided to the consumer in exchange for consideration, that is represented, expressly or by implication, to assist or attempt to assist the consumer with any of the following:

(1) Stopping, preventing, or postponing any mortgage or deed of trust foreclosure sale for the consumer's dwelling, any repossession of the consumer's dwelling, or otherwise saving the consumer's dwelling from foreclosure or repossession;

(2) Negotiating, obtaining, or arranging a modification of any term of a dwelling loan, including a reduction in the amount of interest, principal balance, monthly payments, or fees;

(3) Obtaining any forbearance or modification in the timing of payments from any dwelling loan holder or servicer on any dwelling loan;

(4) Negotiating, obtaining, or arranging any extension of the period of time within which the consumer may:

(i) Cure his or her default on a dwelling loan,

(ii) Reinstate his or her dwelling loan,

(iii) Redeem a dwelling, or

(iv) Exercise any right to reinstate a dwelling loan or redeem a dwelling;

(5) Obtaining any waiver of an acceleration clause or balloon payment contained in any promissory note or contract secured by any dwelling; or

(6) Negotiating, obtaining or arranging:

(i) A short sale of a dwelling,

(ii) A deed-in-lieu of foreclosure, or

(iii) Any other disposition of a dwelling other than a sale to a third party who is not the dwelling loan holder.

Many of the clients of The Resolution Law Group and the Berger Law Group report that they contacted those law firms because they were concerned that their homes would be foreclosed. Many of the clients have reported to me that when they spoke to these law firms, they were assured that the law firms could stop or prevent a foreclosure sale, or that they could negotiate a modification to the client's mortgage loan, including possibly curing a default or reinstating the loan. These kinds of representations fall within the definition of "Mortgage

Assistance Relief Services," which in turn means that the law firms are governed by the MARS Rule. The MARS Rule:

- (1) Prohibits providers of such mortgage assistance relief services from making false or misleading claims.
- (2) Requires that providers disclose certain information about these services.
- (3) Bars the collection of advance fees for these services.
- (4) Prohibits anyone from providing substantial assistance or support to another they know or consciously avoid knowing is engaged in a violation of the Rule.
- (5) Imposes recordkeeping and compliance requirements.

The Resolution Law Group and the Berger Law Group argued that they were not governed by the MARS Rule because, they claimed, they were not providing "mortgage assistance relief services" as the term is defined. The two law firms maintained that they did not work to obtain loan modifications, or make representations about how they could help their clients cure their mortgage defaults or help defend mortgage foreclosure actions. I disagree. Most clients who contacted the two law firms did so because they were experiencing problems with their mortgage loans. Some were in default, some were in foreclosure, some had foreclosure sales scheduled. The law firms promised consumers that they would file a lawsuit against the mortgage lenders for money damages. The real intent, however, was to attempt to obtain a settlement, which would involve a small reduction in the balance owed on the mortgage, a reinstatement period, or a restructure of the mortgage loan. I have not seen a single instance in which a mortgage lender actually paid money to a client of the Berger Law Group or The Resolution Law Group, but instead, the very small handful of settlements that were obtained all involved loan credits or restructures.

As I wrote above, under the MARS Rule, persons who provide "mortgage assistance relief services" are not permitted to charge any advance fee (such as the \$5,000 or \$6,000 initial fee that you were charged). There is an exception to this part of the rule, known as the "Attorney Exemption." An attorney who (i) regularly provides "mortgage assistance relief services" as part of the practice of law, and (ii) *is licensed to practice law in the state in which the client is located or in which the consumer's home is located*, and (iii) otherwise complies with applicable law, is not subject to the MARS Rule. Also, an attorney who is exempt may charge an advance fee, or a retainer, if the attorney deposits the retainer into a trust account prior to performing legal services, and then complies with state law concerning client trust accounts.

Ms. Lahiff and Mr. Yang are attorneys licensed to practice law in New York, New Jersey, and Illinois. They therefore would be eligible for the "Attorney Exemption" but only to the extent that clients are from those states, or clients' homes are located in those states. And, if Ms. Lahiff and Mr. Yang were to charge a retainer, they must hold it in a trust account, and they may not apply it to their fees, until they have billed time to your file.

Please be sure to check my website at www.bernet-receiver.com, for further updates.

cc: Jeanne Lahiff, Esquire