
THE RESOLUTION LAW GROUP & THE BERGER LAW GROUP

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: SEPTEMBER 10, 2014

STATUS OF LITIGATION AGAINST BLG and RLG

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 "AGs' 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 AG Offices amended their complaint to add additional defendants and claims against those defendants. The added defendants are Stephen R. Kopolow, P.C., Stephen Kopolow, Onisak, LLC, Remarque Holdings, LLC, Philip Kramer, and Christopher Wright Fox. A copy of the Amended Complaint can be viewed at my website, located at www.bernet-receiver.com.

Also, 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.

YOUR PENDING CASE IN NEW JERSEY

At the time that the federal court entered the Preliminary Injunction, the Berger Law Group, P.A., and The Resolution Law Group, P.C., had filed 13 lawsuits. Many of their clients were included as plaintiffs in these "mass actions."¹ Berger Law Group and The Resolution Law Group hired a New Jersey based attorney, Jeanne Lahiff, to sign the lawsuit papers 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, Arthur Yang, who is an attorney admitted to practice in Illinois and New York, 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 intends to 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 intends to charge for a new retainer.

YOUR NEXT STEPS

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:

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.

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

- 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 in connection with the lawsuit, and the money you have spent likely will not be refunded to you as we have recovered very little of the funds to date.³ 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. If you would like to continue with your lawsuit, this may be the best option for you.
- You could choose to proceed with your lawsuit by representing yourself. I do not recommend that you do this.

IMPORTANT: IF YOU CHOOSE TO CONTINUE WITH THE LAWSUIT

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 basics of the federal law that regulates companies, including law firms and attorneys, that offer foreclosure assistance or help with modifying a mortgage loan.⁴ This law is referred to as the Mortgage Assistance Relief Services, or MARS, Rule.⁵ The MARS Rule makes it illegal for companies to collect any fees until a homeowner has actually received an offer of relief from his or her lender and accepted it. There is an exception to this rule, however, and it applies to attorneys as further explained below.

I believe that the MARS Rule requirements apply to this situation. Most clients who contacted The Resolution Law Group or the Berger Law Group 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

³ We are actively working to recover additional funds in hope that at least a portion of the money you have spent can be refunded to you. While we remain cautiously optimistic, our efforts to date have resulted in the recovery of very little money.

⁴ 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.

⁵ The rule, cited at 16 CFR Part 322, is a rule that regulates "Mortgage Assistance Relief Services." It became effective on December 1, 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."

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 occurred all involved loan credits or restructures.

If you choose to continue with the lawsuit, the attorney you hire can require you to pay an upfront fee, but only if he or she is:

- Licensed to practice law in the state where you live or your house is located;
- Providing you with real legal services;
- Complying with state ethics requirements for attorneys; and
- Placing the money in a client trust account and complying with state laws and regulations regarding the management of trust accounts.

Ms. Lahiff, is admitted to practice law in New York and New Jersey, and Mr. Yang, is admitted to practice in Illinois and New York, They therefore could be eligible for the "Attorney Exemption" for your case, but only to the extent that you are from one of those states, or your home is located in one of 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.

LINKS FOR FURTHER RESOURCES

Following are some links where you may find resources to help you with your lawsuit or with defending a foreclosure case.

<http://www.consumerfinance.gov/find-a-housing-counselor/>

<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>

The Florida Bar has posted the following information on its website for consumers facing foreclosure-related issues:

❖ A variety of web resources for families facing foreclosure and attorneys helping them is available from The Florida Bar's Consumer Protection Law Committee, go to:

<http://www.floridabar.org/DIVEXE/BD/cmstanding.nsf/WCommitteesDetail/92C1EA5F0AC2F0D285256C5B00554822?OpenDocument>

❖ Florida's Attorney General has more than 50 investigations open against mortgage fraud and foreclosure rescue firms. Find out how to protect you and your home, go to:

<http://myfloridalegal.com/pages.nsf/Main/55BC21CB13128F728525741800481491>

❖ For a referral to an attorney for a low-fee consultation, contact The Florida Bar Lawyer Referral Service (1-800-342-8011) or go to:

<http://www.floridabar.org/divpgm/ironline.nsf/wreferral6?OpenForm>

❖ If you are at risk of foreclosure, free housing counseling is available through HUD or NeighborWorks National Foreclosure Mitigation Counseling, go to:

http://portal.hud.gov/hudportal/HUD?src=/i_want_to/talk_to_a_housing_counselor

or <http://www.nw.org/network/foreclosure/nfmcp/>

If you have been served with foreclosure papers, contact your local legal office immediately. In Florida, this can be located at FloridaLawHelp.org (Find Legal Help), go to:

<http://floridalawhelp.org/find-legal-help>

For assistance in finding an attorney in New Jersey, go to:

<http://www.njsba.com/for-the-public/lawyer-referral-service.html>