

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA**

-----X  
DANE DESOUZA & VELESKA  
DESOUZA,

Case No. 1:11 CV 845  
AJT / TRJ

Plaintiff,

-against-

~~TLA,~~  
FIRST MOUNT VERNON FSB,  
JOHN DOE 1, JOHN DOE 2, JANE DOE 1  
AND JANE DOE 2,

Defendants.  
-----X

CLERA US DISTRICT COURT  
ALEXANDRIA, VIRGINIA  
2011 AUG 10 A 11:53

FILED

**COMPLAINT**

COMES NOW the plaintiffs, DANE DESOUZA & VELESKA  
DESOUZA (hereinafter "Plaintiffs"), an individual alleges against FIRST MOUNT VERNON  
(hereinafter referred to as "FMV"), JOHN DOE 1, JOHN DOE 2, JANE DOE 1 and JANE DOE  
2 (collectively, with FMV referred to as the "Defendants");

**INTRODUCTION**

1. This Complaint is brought by the Plaintiffs against FMV for common law  
fraudulent and unconscionable practices in connection with the financing of a mortgage for a  
residential property.

2. According to the Office of Currency Control in guidance letters have  
stated the following:

[T]he OCC believes that a fundamental characteristic of predatory  
lending is the provision of credit to borrowers who simply cannot  
afford the credit on the terms being offered. Typically, such credit

is underwritten predominantly on the basis of the liquidation value of the collateral, without regard to the borrower's ability to service and repay the loan according to its terms, absent resorting to that collateral. When a loan has been made based on the foreclosure value of the collateral, rather than on a determination that the borrower has the capacity to make the scheduled payments in accordance with the terms of the loan, the lender is effectively relying on its ability to seize the borrower's equity in the collateral to satisfy the obligation (including accrued interest) and to recover the typically high fees associated with such credits.

Predatory and abusive loans originated through brokers or by third-party lenders also present a wide range of heightened legal risks for national banks, and could subject them to both supervisory action and civil liability. For example, borrowers victimized by oppressive loan terms or other unscrupulous conduct of a mortgage broker or loan originator may have remedies against the ultimate creditor under common law theories of fraud or unconsciousability.

In addition, predatory loans originated through mortgage brokers, or purchased from third-party lenders, may subject national banks to liability or supervisory action under a wide range of federal consumer protection laws. For example, in typical mortgage broker transactions, the loan will be closed in the name of the bank as the initial creditor, and thus, the bank generally will have direct liability for any violations of law committed in connection with the loan. In addition, the bank could be liable under agency, "common enterprise," or other theories for violations committed by the broker, and may be jointly and severally liable with the broker — for example, under the Real Estate Settlement Procedures Act (RESPA) — for violations it is deemed to commit in conjunction with the broker. Even in table-funded or purchase transactions, a bank may have liability for violations of law as a successor or assignee of the original creditor.

Office of the Comptroller of the Currency Guidance Letter AL 2003-3.

[A] departure from fundamental principles of loan underwriting generally forms the basis of abusive lending: lending without a determination that a borrower can reasonably be expected to repay the loan from resources other than the collateral securing the loan, and relying instead on the foreclosure value of the borrower's collateral to recover principal, interest, and fees. A national bank

that makes a loan to a consumer based predominantly on the liquidation value of the borrower's collateral, rather than on a determination of the borrower's repayment ability, including current and expected income, current obligations, employment status, and other relevant financial resources, is engaging in a fundamentally unsafe and unsound banking practice that is inconsistent with established lending standards.<sup>7</sup> This practice not only increases the risk to the bank that the loan will default but may also increase the bank's potential loss exposure upon default.

3. On information and belief, FMV loan documents underlying these mortgages will most likely have TILA, RESPA and HOEPA violations.

4. On information and belief, the FMV documents may also reveal abuse of fiduciary responsibility on the part of FMV preparing loans in the subprime market. FMV gave out loans which appear to be train wrecks, that is, loans given to borrowers that only had equity. FMV used creative financing and hybrid loans that appear to be laden with all kinds of statutory federal and state violations. FMV utilized tactics like no-income verification, outlandish appraisals, brokers that are now out of business etc.

### **FIRST CAUSE OF ACTION**

#### **(TILA)**

5. For a Second Cause of Action against all defendants, Plaintiff restates the allegations contained in Paragraphs 1 through 4.

6. This transaction was subject to Plaintiff's right of rescission as described by 15 U.S.C. § 1635 and Reg Z § 226.23 (12 C.F.R. §226.23).

7. In the course of the transaction, Defendants violated 15 U.S.C. § 1635(a) and Reg Z § 226.23(b) by failing to deliver to Plaintiff "material" disclosures required by TILA

and Reg Z, including but not limited to two copies of a notice of right to cancel containing the date the cancellation period expires.

8. Plaintiff has a continuing right to rescind the transaction, pursuant to 15 U.S.C. § 1635(a) and Reg Z § 226.23(a)(3), for up to three years after consummation of the transaction.

9. Plaintiff sent a rescission notice to FMV.

10. As a result of the failure of Defendants to comply with the provisions of the TILA and Reg Z, Plaintiff is entitled to:

- a) Rescission of the transaction;
- b) Termination of any security interest in Plaintiff's property created under the transaction;
- c) Return of any money or property given by Plaintiff to anyone, including defendants, in connection with the transaction;
- d) Statutory damages of \$2,000.00 for Defendants' failure to respond properly to Plaintiff's rescission notice;
- e) Forfeiture or return of loan proceeds;
- f) An injunction, enjoining Defendants and their agents, attorneys, servicers and anyone acting on their behalf, during the pendency of this action, and permanently thereafter, from instituting, prosecuting, or maintaining foreclosure proceedings on the Plaintiff's property, from recording any deeds or mortgages regarding the property or from otherwise taking any steps to deprive Plaintiff of ownership of that property;
- g) Actual damages in an amount to be determined at trial; and

h) Costs and Reasonable attorney's fee.

**SECOND CAUSE OF ACTION**

**(Negligence)**

11. For a Third Cause of Action against all defendants, Plaintiff restates the allegations contained in Paragraphs 1 through 18.

12. FMV has a duty of care to Plaintiff which was breached by the Plaintiff's actions in connection with this loan.

**THIRD CAUSE OF ACTION**

**(Breach of Contract)**

13. For a Fourth Cause of Action against all defendants, Plaintiff restates the allegations contained in Paragraphs 1 through 13.

**FOURTH CAUSE OF ACTION**

**(Unjust Enrichment)**

14. For a Fifth Cause of Action against all defendants, Plaintiff restates the allegations contained in Paragraphs 1 through 14.

**FIFTH CAUSE OF ACTION**

**(Intentional Infliction of Emotional Distress)**

15. For a Sixth Cause of Action against all defendants, Plaintiff restates the allegations contained in Paragraphs 1 through 15.

**SIXTH CAUSE OF ACTION**

**(Negligent Infliction of Emotional Distress)**

16. For a Seventh Cause of Action against all defendants, Plaintiff restates the allegations contained in Paragraphs 1 through 16.

**SEVENTH CAUSE OF ACTION**

**(Fair Credit Reporting Act)**

17. For an Eighth Cause of Action against all defendants, Plaintiff restates the allegations contained in Paragraphs 1 through 17.

**EIGHTH CAUSE OF ACTION**

**(Fraud)**

18. For an Eighth Cause of Action against all defendants, Plaintiff restates the allegations contained in Paragraphs 1 through 18.

**NINTH CAUSE OF ACTION**

**(Unconsionability)**

19. For an Eighth Cause of Action against all defendants, Plaintiff restates the allegations contained in Paragraphs 1 through 19.

**WHEREFORE**, it is respectfully prayed that this Court:

1. Enjoin the Defendants from proceeding with a foreclosure sale for the Property.
2. Declare the security interest in Plaintiff's home void;
3. Rescind the transaction;
4. Order Defendants to take all action necessary to terminate any security interest in Plaintiff's property created under the transaction and that the Court declare all such security interests void, including but not limited to the deed of trust related to the Transaction;
5. Order the return to Plaintiff of any money or property given by Plaintiff to anyone, including but not limited to the Defendants, their agents, servicers etc. in connection with the Transaction;
6. Enjoin Defendants and their agents, attorneys, servicers or anyone acting on their behalf, during the pendency of this action, and permanently thereafter, from instituting, prosecuting, or maintaining foreclosure proceedings on the Plaintiff's property, from recording any deeds or mortgages regarding the property or from otherwise taking any steps to deprive Plaintiff of ownership or that property;
7. Award Plaintiff statutory damages for Defendants' failure to respond properly to Plaintiff's rescission notice, in the amount of twice the finance charge in connection with the Transaction, but not less than \$200 or more than \$2000 as provided by 15 U.S.C. § 1640(a);
8. Order that, because Defendants failed to properly respond to Plaintiff's notice of rescission, Plaintiff has no duty to tender, but in the alternative, if tender is required,

determine the amount of the tender obligation in light of all the Plaintiff's claims, and order Defendants to accept tender on reasonable terms and over a reasonable period of time;

9. Award of actual damages in an amount to be established at trial;

10. Award Plaintiff costs and reasonable attorney's fees as provided under 15

U.S.C. § 1640(a); and

11. For an order quieting the title in and to the Property in Plaintiff, free from any encumbrance, lien or cloud on title created as a result of the Transaction.

12. For costs of suit incurred herein;

13. For reasonable attorneys fees permitted by statute; and,

14. For such other and further relief as this court may deem just and proper.

Dated: August 10, 2011  
New York, New York

  
DANE DESOUZA & VELESKA  
DESOUZA





**DEMAND FOR JURY TRIAL**

PLAINTIFF, DANE DESOUZA & VELESKA DESOUZA, hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: August 10, 2011



SEAN C. SERPE, Attorney  
for plaintiff, DANE DESOUZA &  
VELESKA DESOUZA

JT-TRJ Document 1-1 Filed 08/10/11 P

Court Name: United States District Court  
Division: 1  
Receipt Number: 14683023465  
Cashier ID: sbrown  
Transaction Date: 08/10/2011  
Payer Name: DANE H DESOUZA

CIVIL FILING FEE  
For: DANE H DESOUZA  
Amount: \$350.00

CREDIT CARD  
Amt Tendered: \$350.00

Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

FILING FEE  
111CV845