



In court, Countrywide calls its ads 'puffery'

Defending lawsuit, mortgage company mocks loan modification assurances

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In marketing, advertising and testimony before Congress, Countrywide Home Loans has said repeatedly that it is working hard to modify the mortgages of financially strapped borrowers caught up in the subprime meltdown. But in a New Hampshire court, attorneys for the lending giant are singing a different tune, describing such assurances as "mere commercial puffery."

Saying the modification offers are "only Countrywide's vague advertisements," attorneys for the lender are asking the court to throw out a lawsuit alleging breach of good faith, fraud, negligence and misrepresentation, which was filed on behalf of a family that was refused a loan modification by the California-based company.

"It's breathtaking," attorney Mary Frances Stewart of Concord, N.H., said of Countrywide's response to the lawsuit she and co-counsel Krista Atwater filed in Merrimack County Superior Court. In its response, "Countrywide is saying, 'We don't have any obligation or even necessarily the intention of actually modifying these loans,' and yet they're representing that they do."

The inability of many troubled borrowers to get viable modifications of mortgages they can no longer afford is seen by many economists as major impediment to a solution to the mortgage crisis, which is expected to result in more than 2 million home foreclosures this year.

The mortgage industry, eager to avoid legislation allowing bankruptcy judges to rewrite home mortgages and to maintain the flow of taxpayer bailout funds, says it is working hard to modify as many loans as possible to help homeowners avoid that ruinous result.

But many attorneys representing troubled borrowers say those assurances are belied by the actions of lenders like Countrywide, which are really doing very little to help distressed borrowers stay in their homes.

The New Hampshire lawsuit casts that dispute in a new light, with attorneys representing the company echoing the arguments of Countrywide's courtroom opponents.

Gary and Jessica Raymond are the plaintiffs in the suit, which seeks unspecified damages. The Raymonds say they lost the home of their dreams in Canterbury, N.H., after Countrywide strung them along for eight months in the belief their loans could be modified. They say the company then flatly rejected their efforts to negotiate an interest-rate cut.

"The one thing we wanted was to save the house," Jessica Raymond, 30, told msnbc.com. "We never imagined ... that we'd be sitting here in a lawsuit and talking to a reporter about it."

No comment from Countrywide

An attorney with Goodwin Procter, the Boston law firm handling the case for Countrywide, referred inquiries to the financial company's public relations department, which did not reply to msnbc.com's request for comment.

Representatives of the Financial Services Roundtable, a trade group that counts Countrywide owner Bank of America among its members, did not respond to an e-mail request for comment on the lawsuit. But Scott Talbott, the group's senior vice president for government affairs, told msnbc.com last week that "the industry is working very hard to work with homeowners to prevent delinquencies from becoming foreclosures. Nobody wins in a foreclosure."

Countrywide Home Loans was a division of Countrywide Financial Corp., which in 2007 was the nation's largest mortgage lender and serviced \$1.4 trillion in loans. It was labeled "the company perhaps most

responsible for the mortgage crisis" by Rep. Henry Waxman, D-Calif., chairman of the House Committee on Oversight and Government Reform. Waxman last year blasted the company's executives for taking astronomical salaries and bonuses as Countrywide's stock plummeted amid staggering losses from an orgy of subprime lending. The losses ultimately led to Countrywide's sale last year to BofA. Meanwhile, attorneys general from states across the nation sued Countrywide over deceptive lending practices before 15 of them negotiated an \$8.4 billion settlement on behalf of borrowers in the fall.

According to the Raymonds' lawsuit, Countrywide was the loan servicer for the couple's first mortgage and an equity line of credit that totaled a little over \$230,000. Proceeds from the loans were used to purchase a new Cape Cod-style home on a quarter-acre lot in December 2004, and then finish the upstairs.

"We were really excited about it," said Jessica Raymond, a stay-at-home mom with two daughters, who are now 2 and 5. "It was our first house. We got to pick our colors."

Since they'd never bought real estate before, they were unfamiliar with some aspects of the purchase and wound up with adjustable loans with interest rates that could climb as high as 12.8 percent on the first mortgage and 18 percent on the equity loan.

Counting on a 'redo'

"We didn't know anything about it," Jessica Raymond said. "The mortgage broker we worked with was saying, 'Don't worry, this is a temporary thing, we just want to get you into the house and we'll redo it later.'"

By July 2007, behind on their payments, which had increased by \$700 a month, the Raymonds "proactively contacted Countrywide to see if they could negotiate a temporary or permanent solution that would address their potential delinquency," according to the lawsuit. They were given a repayment plan — not loan modifications — requiring them to pay \$2,859 a month for six months to bring the loans current, it said. After four months, they gave up.

Another plea for help

Gary Raymond, 32, an electrician, said he "was working astronomical hours to save the house," both at his regular job and on side jobs. Their family life began to suffer and again they asked Countrywide for a modification, the Raymonds say.

The couple and their attorneys say that request triggered an eight-month procession of calls, faxes and letters between the couple and Countrywide that the Raymonds' lawsuit recounts in seven single-spaced typewritten pages. During that time, they filed a Chapter 13 bankruptcy petition. They allege that Countrywide employees told different stories about whether they could get their loans modified and what they needed to do. They were asked to send the same documents over and over, they say, by a constantly shifting set of Countrywide employees who rarely returned their phone calls.

Attorney Stewart said the Raymonds' careful documentation of their case was one reason she decided to take it on.

"It's not like he lost his job, it's not like they weren't paying their mortgage," she said. "They did get behind. ... (but) they did everything they were told to do. ... They called all the time, every night, every other night, every three nights. They didn't sit back. He was working two jobs trying to keep up with this house."

Finally, in June 2008, after converting to a Chapter 7 bankruptcy, the Raymonds moved out of the house.

In their responses to the lawsuit filed with the court, Countrywide's attorneys deny nearly all the allegations made by the Raymonds — even including the contention that Countrywide was in the mortgage servicing business and had knowledge of the couple's payment history on their loans.

A key defense to the larger issues raised in the suit is that "loan modification was not mentioned nor even contemplated" in the loans the Raymonds signed, according to court documents. In claiming "puffery," which law dictionaries define as a statement of opinion rather than fact, Countrywide cited "terms that do not set forth concrete representation as to the company's future performance."

'WE CAN HELP YOU!'

Stewart acknowledged that the loans did not include a modification provision, but said that "through media, correspondence and solicitations, including multiple requests for financial documentation and loan modification application, Countrywide has a contract and common law duty to follow-through with the process in good faith. ... Countrywide represents to the public that it will accept and act on applications for assistance from borrowers to avoid foreclosure," which can be seen as a representation of future performance.

Countrywide's offers remain easy to find today, with the lender telling its borrowers "WE CAN HELP YOU!" get a loan modification in big red letters on its Web site. Countrywide is a member of the Hope Now Alliance, which the Raymonds' lawsuit notes has been "trumpeted by the mortgage industry as an effective response to the foreclosure crisis."

And Countrywide executives have testified before Congress that the company is ready and eager to assist troubled borrowers. "I want to underscore ... what is perhaps the most important goal going forward — to keep families in their homes," Countrywide founder and then-CEO Angelo Mozilo told Waxman's panel last spring as the Raymonds were waiting for word on their loan modification request. "We have substantially enhanced our efforts to assist financially distressed homeowners to keep their homes."

Those words ring hollow for the Raymonds, who are trying to make a fresh start in a rent-to-own house in a new town.

"We were paying \$3,000 a month for a house that should have been \$1,400," Gary Raymond said, pointing out that the couple never sought a reduction in the amount of money they owed, just a lower interest rate.

Gary Raymond speaks with amazement as he notes that instead of working out a deal with him and his wife to get back the full \$233,000 owed on the house, Countrywide has possession of a property that is now probably worth less than half that. The company hasn't received a payment in over a year. The house sits abandoned, its plumbing frozen in the New England winter, as real estate prices continue to fall with the snow.

"It's very heartbreaking," Jessica Raymond said.

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