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CLERK OF SUPREME COURT
BY *[Signature]*
CHIEF DEPUTY CLERK

Re: Proposed Amendment to the Rules Governing the Foreclosure Mediation Program

ADKT 435

The primary purpose of this written submission is to determine if the proposed amendment to the Foreclosure Mediation Rules, specifically Rule 5(8)(c), affects the ability of a Covered Service Provider to participate at foreclosure mediation.

Falcon Credit Management (Falcon Credit) is a Covered Service Provider licensed by the State of Nevada Division of Mortgage Lending pursuant to NRS 645F.310. Damian Falcone is the founder of Falcon Credit and holds an associated license under the company.

Falcon Credit has been hired by numerous individuals to assist with loan modifications, which often result in participation in a foreclosure mediation. Based on a reading of Chapter 645F of the Nevada Revised Statutes, Falcon Credit feels that it has adequate authorization as a Covered Service Provider to assist clients at the mediations.

According to Nevada Revised Statute 645F.310, "covered service" includes, without limitation:

1. Financial counseling, including, without limitation, debt counseling and budget counseling.
2. Receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a mortgage or other lien on a residence in foreclosure.
3. Contacting a creditor on behalf of a homeowner.
4. Arranging or attempting to arrange for an extension of the period within which a homeowner may cure his default and reinstate his obligation pursuant to a note, mortgage or deed of trust.
5. Arranging or attempting to arrange for any delay or postponement of the time of a foreclosure sale.
6. Advising the filing of any document or assisting in any manner in the preparation of any document for filing with a bankruptcy court.

7. Giving any advice, explanation or instruction to a homeowner which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a mortgage or other lien on the residence in foreclosure, the full satisfaction of the obligation, or the postponement or avoidance of a foreclosure sale.

Mr. Falcone attended several mediations with clients without any question raised by either the mediator or the opposing party about his qualification to serve. Eventually he had one mediator who told him that he could not participate because he was not a licensed attorney. There was no specific instruction in the Foreclosure Mediation Rules, and Falcon Credit had been unable to get a definitive answer from the Foreclosure Mediation Program.¹

It appears as though the most recent proposed amendment attempts to address who is able to assist a homeowner at a mediation. Proposed Rule 5(8)(c) states:

If a lender and/or borrower has a legal representative appearing on their behalf at the FMP mediation, and that legal representative has or will receive compensation, the mediator may request that the representative provide proof that he or she is licensed to practice law in the State of Nevada.

Unfortunately for Falcon Credit and the other duly licensed covered service providers, there is still enough ambiguity in the proposed amendment to cause confusion. While it is clear that if one is acting as a legal representative for a homeowner at a mediation she must demonstrate that she is licensed to practice law in Nevada, it is still unstated whether or not a Covered Service Provider can participate. A covered Service Provider would never seek to act as a "legal representative" as contemplated by the proposed amendment, but rather would only seek to act as authorized under NRS 645F.

NRS 645F.310 clearly states that a covered service provider can arrange for the filing of the mediation election form² and can give "advice, explanation or instruction to a homeowner which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a mortgage or other lien on the residence in foreclosure, the full satisfaction of the obligation, or the postponement or avoidance of a foreclosure sale."³ This is exactly the type of advice that would be given during a foreclosure mediation.

It is clear to Falcon Credit that the proposed rule requiring the documentation of licensed attorneys does not impact its ability to represent clients at the foreclosure mediation. It would simply make no sense to license individuals to provide exactly this

¹ Emails sent to the Foreclosure Mediation Program went unanswered. Both the Division of Mortgage Lending and Mayor Goodman's office assured Falcon Credit that as a Covered Service Provider it was authorized to participate in the mediations.

² NRS 645F.310(6)

³ NRS 645F.310(7)

service, and then not allow them to perform the functions they are authorized to perform. It would also be financially detrimental to homeowners who have retained a Covered Service Provider (often because their services can be retained for less than an attorney would charge) to try and obtain a loan modification and then force the homeowner to then hire an attorney as soon as a default is recorded and the mediation is elected.

While this all seems clear, based on the confusion among some mediators prior to the amendment, Falcon Credit requests that something be done to eliminate the potential uncertainty. Ideally, an additional provision could be added to the amendment with the following language:

Rule 5(8)(d)

If a borrower has a covered service provider representing them at the FMP mediation, the mediator may request that the representative provide proof that he or she is licensed by the State of Nevada as a covered service provider.

If the Court is hesitant to add further language to the amendment, then the same thing could be accomplished by an instruction to the mediators indicating that Rule 5(8)(c) does not refer to duly licensed Covered Service Providers. A further instruction specifically indicating that Covered Service Providers are authorized to participate in foreclosure mediations would also be beneficial.

Falcon Credit looks forward to addressing the Court at the upcoming public hearing, and is willing to assist in any way possible to ensure that licensed Covered Service Providers are allowed to continue to serve clients here in Nevada.

Sincerely,



Damian Falcone
Falcon Credit Management