

★ NOV 08 2010 ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

JACOB MENASHE, on behalf of himself and those  
similarly situated,

ECF Case

Plaintiff,

Jury Trial Demanded

– against –

COMPLAINT

STEVEN J. BAUM, P.C.,

Case #:

Defendant.

**CV 10-5155**  
**SEYBERT, J.**  
**LINDSAY, M.J.**

The Plaintiff, by and through his undersigned attorneys, alleges upon knowledge as to himself and his own acts, and as to all other matters upon information and belief, and brings this Complaint against the above-named Defendant, Steven J. Baum, P.C. (the “Defendant”) and in support thereof alleges the following:

**PRELIMINARY STATEMENT**

1. This class action seeks relief for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”), and New York General Business Law § 349 (“GBL § 349”). The Defendant, believed to be the largest foreclosure mill in the State of New York (“New York”), routinely attempts to collect and does collect attorneys’ fees for appearances at mandatory settlement conferences in foreclosure matters pending in New York Supreme Court that are prohibited by New York Uniform Civil Rules for the Supreme and County Courts, 22 N.Y. Comp. Codes R. & Regs. § 202.12-a (“§ 202.12-a”) and are not legally due from the mortgagor. The Defendant’s activities are prohibited by the FDCPA and GBL § 349.

2. The unlawful attorneys’ fees demanded by Baum only increase the amount that financially strapped New York homeowners must raise to reinstate or payoff their mortgages and

thereby avoid foreclosure. Baum's unlawful practices contribute to the avoidable loss of consumers' homes and unlawfully strip equity from New York homeowners.

### **JURISDICTION**

3. Jurisdiction arises under 15 U.S.C. § 1692k(d), 28 U.S.C. §§ 1331, 1337(a), together with the pendent jurisdiction of the Court. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

4. Venue in this District is proper in that the Defendants transact business here and the conduct complained of occurred here.

### **PARTIES**

5. The Plaintiff, Jacob Menashe, is a natural person residing at 6 Deepdale Drive, Great Neck, New York 11021.

6. The Defendant, Steven J. Baum, P.C. (the "Defendant"), is a New York professional corporation with a principal place of business located at 220 Northpointe Parkway, Suite G, Amherst, New York 14228.

7. The Defendant regularly attempts to collect debts alleged to be due another and is a debt collector as defined by 15 U.S.C. §1692a(6).

### **FACTUAL ALLEGATIONS**

8. Based upon information and belief, more than 78,000 residential foreclosure cases are now pending in New York Supreme Court.

9. Based upon information and belief, tens of thousands of those cases were filed and are being handled by the Defendant.

10. As a result of the nation's foreclosure crisis, New York's Chief Administrative Judge enacted § 202.12-a relating to settlement conferences in residential mortgage foreclosure actions effective September 24, 2008.

11. Initially, § 202.12-a only required settlement conferences in certain residential foreclosure actions.

12. However, the foreclosure crises has become so bad in New York that § 202.12-a was amended effective February 13, 2010 to require a mandatory settlement conference in all foreclosure matters “involving a home loan secured by a mortgage on a one- to four-family dwelling or condominium, in which the defendant is a resident of the property subject to foreclosure.”

13. § 202.12-a(c)(7) provides that:

Motions shall be held in abeyance while settlement conferences are being held pursuant to this section. A party may not charge, impose or otherwise require payment from the other party for any cost, including but not limited to attorneys’ fees, for appearance at or participation in the settlement conference.

14. At all times relevant hereto, the Defendant represented various mortgage lenders and servicers in connection with the collection of amounts due under certain mortgages, including Bank of America, N.A. (“BOA”), the servicer of the Plaintiff’s mortgage.

15. At all times relevant hereto, the Defendant was attempting to collect an alleged debt owed by the Plaintiff to HSBC.

16. The alleged debt was incurred by the Plaintiff for personal, family or household purposes and is a “debt” as defined by 15 U.S.C. § 1692a(5).

17. In 2008, the Defendant instituted foreclosure proceedings against the Plaintiff in Nassau County Supreme Court on behalf of LaSalle Bank National Association (“LaSalle Bank”), Index No. 11686/2008 (the “2008 Foreclosure”).

18. On September 16, 2009, Nassau County Supreme Court Justice Edward G. McCabe dismissed the 2008 Foreclosure because LaSalle Bank had not complied with the

mortgage's provisions regarding noticing default. (A copy of the decision is attached hereto as Exhibit "A").

19. In 2010, the Defendant instituted foreclosure proceedings against the Plaintiff in Nassau County Supreme Court on behalf of Bank of America, N.A. Successor by Merger to LaSalle Bank National Association, as Trustee for Thornburg Mortgage Securities Trust 2006-4 ("Bank of America"), Index No. 147/2010 (the "2010 Foreclosure").

20. On or about March 4, 2010, the Defendant filed a Request for Judicial Intervention with the Nassau County Clerk.

21. Thereafter, a mandatory settlement conference was scheduled for May 6, 2010. The Plaintiff did not attend the settlement conference.

22. On or about July 8, 2010, the Defendant provided the Plaintiff with a reinstatement letter wherein the Defendant states that the payoff amount necessary to reinstate the Plaintiff's mortgage was \$254,972.61 (the "Reinstatement Letter"). (A copy of the Reinstatement Letter is attached as Exhibit "B").

23. Included in the payoff amount is \$350 for "LEGAL FEES – SETTLEMENT CONFERENCE".

24. Apparently, the Defendant charged the Plaintiff \$350 for an appearance at the May, 2010 mandatory settlement conference, a practice which is clearly prohibited by § 202.12-a(c)(7).

25. Additionally, the Payoff Letter shows \$420 for "INDEX NUMBER FEE"; \$3,050 for "LEGAL FEES – MOTION PRACTICE, \$190 for "REQUEST FOR JUDICIAL INTERVENTION FEE" and other fees related to the 2008 Foreclosure, even though the 2008 Foreclosure was dismissed because LaSalle Bank did not properly establish the Plaintiff's default.

26. The Defendant's charges for legal fees for appearances at residential foreclosure settlement conferences appears to be in direct conflict with § 202-12-a(c)(7), which prohibits the Defendant from charging borrowers for residential foreclosure settlement conferences.

27. Based upon information and belief, the Defendant consistently demands attorney's fees from borrowers for appearances at residential foreclosure settlement conferences in violation of § 202.12-a(c)(7).

28. The Defendant demands these attorney's fees from borrowers even though § 202.12-a(c)(7) clearly prohibits the Defendant from charging borrowers those fees.

29. When attempting to collect a consumer debt, the FDCPA prohibits debt collectors from engaging in certain conduct including, among other things, attempting to collect amounts (including interest, attorney fees, collection costs or expenses) not permitted by law (15 U.S.C. § 1692f(1)); using unfair and unconscionable collection methods (15 U.S.C. § 1692f); giving false impression of the character, amount or legal status of the alleged debt (15 U.S.C. § 1692e(2)); using false or deceptive collection methods (15 U.S.C. § 1692e(5)); and making threats to take action which cannot legally be taken (15 U.S.C. § 1692(e)(10)).

30. The Defendant falsely and deceptively represented to the Plaintiff and others like her that its demand for the payment of attorney's fees was proper under the FDCPA and New York state law. The Defendant, violated and continues to violate the rights of tens of thousands of consumers and the Defendant is engaged in a continuing pattern of unfair and deceptive business practices, in violation of the FDCPA and GBL § 349.

31. By seeking to collect attorney's fees for residential foreclosure settlement conferences, the Defendant creates a substantial hardship on financially strapped New York homeowners such as the Plaintiff, who are seeking to save their homes from foreclosure. The Defendant's improper attorney's fees increase the amount that struggling homeowners have to

raise to reinstate their mortgages and strip equity from New York homeowners who unknowingly pay the Defendant's improper attorney's fees.

### **CLASS ALLEGATIONS**

32. The Plaintiff brings this action as a class action on behalf of herself and all others similarly situated for the purpose of asserting the claims alleged in this Complaint on a common basis. The Plaintiff's first proposed class (hereinafter the "FDCPA Class") is defined under Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 23(b)(2) and (3), and he proposes to act as a representative of the following class comprised of:

**All persons from whom Steven J. Baum, P.C. collected or attempted to collect attorney's fees for appearances at residential foreclosure settlement conferences required by 22 NYCRR § 202.12-a during the one-year period prior to the filing of the Complaint in this action through such time in the future when the effects of the Defendant's violation of the FDCPA, as alleged herein have ceased.**

33. Plaintiff's second proposed class (hereinafter the "GBL § 349 Class") is defined under Fed. R. Civ. P. 23(b)(2) and (3), and he proposes to act as a representative of the following class comprised of:

**All persons from whom Steven J. Baum, P.C. collected or attempted to collect attorney's fees for appearances at residential foreclosure settlement conferences required by 22 NYCRR § 202.12-a between September 24, 2008 through such time in the future when the effects of the Defendant's violation of GBL § 349, as alleged herein have ceased.**

34. The Plaintiff does not know the exact size or identities of members of the proposed Classes, since such information is in the exclusive control of the Defendant. The Plaintiff believes that the Classes encompass thousands of individuals whose identities can be readily ascertained from Defendant's books and records. Thus, the proposed Classes are so numerous that joinder of all members is impracticable.

35. All members of the Classes have been subject to and affected by the same conduct. The claims are based on the same violations of § 202.12-a. There are questions of law and fact that are common to the Classes and predominate over any questions affecting only individual members of the Classes. These questions include, but are not limited to the following:

- a.. Whether the Defendant is entitled to charge borrowers attorneys' fees for appearances at residential foreclosure settlement conferences held in New York Supreme Court;
- b. Whether the Defendant's conduct in seeking to collect attorneys' fees for appearances at residential foreclosure settlement conferences held in New York Supreme Court is an attempt to collect an amount not permitted by law in violation of 15 U.S.C. § 1692f(1);
- c. Whether the Defendant's reinstatement letters seeking to collect attorneys' fees for appearances at residential foreclosure settlement conferences held in New York Supreme Court falsely represent the nature, character or amount of the debt;
- d. Whether the Defendant's reinstatement letters seeking to collect attorneys' fees for appearances at residential foreclosure settlement conferences held in New York Supreme Court are a false or deceptive collection method and violates 15 U.S.C. § 1692g(a)(1);
- e. Whether the Defendant's reinstatement letters constitutes a threat to take action which cannot legally be taken and violates 15 U.S.C. § 1692(e)(10);
- f. Whether the Defendant has collated amounts that are not due and owing from members of the Classes;
- g. Whether the Defendant has intentionally misrepresented the amounts of debts owed by New York homeowners to it by including in its collection letters fees which are not legally due and owing

36. The claims of the individual named Plaintiff is typical of the claims of the Classes and does not conflict with the interests of any other members of the Classes in that both the Plaintiff and the other members of the Classes were subjected to the same conduct.

37. The individual named Plaintiff will fairly and adequately represent the interests of the Classes. He is committed to the vigorous prosecution of the Classes' claims and has retained

attorneys who are qualified to pursue this litigation and has experience in class actions – in particular, consumer protection actions.

38. A class action is superior to other methods for the fast and efficient adjudication of this controversy. A class action regarding the issues in this case does not create any problems of manageability.

39. Certification of the Class pursuant to Fed. R. Civ. P. 23(b)(2) and (3) is appropriate. A class action is the only appropriate means of resolving this controversy because the class members are not aware of their rights. In the absence of a class action, a failure of justice will result.

**COUNT I**  
***(VIOLATION OF FDCPA)***

40. The Plaintiff restates and reiterates herein all previous paragraphs.

41. The Defendant violated the FDCPA with respect to the Plaintiff and each member of the FDCPA Class. Said violations include, without limitation:

- a. attempting to collect amounts not permitted by law (15 U.S.C. § 1692f(1));
- b. using unfair and unconscionable collection methods (15 U.S.C. § 1692f);
- c. giving a false impression of the character, amount or legal status of the alleged debt (15 U.S.C. § 1692(e)(2));
- d. using false or deceptive collection methods (15 U.S.C. § 1692(e)(5));
- e. making threats to take action which cannot legally be taken (15 U.S.C. § 1692(e)(10));

42. The Plaintiff and members of the FDCPA Class are entitled to the relief available under the FDCPA, 15 U.S.C. § 1692k.



**COUNT II**  
**(VIOLATION OF GBL § 349)**

43. The Plaintiff restates and reiterates herein all previous paragraphs.

44. GBL § 349 prohibits deceptive acts or practices in the conduct of any business trade or commerce or in the furnishing of any service in New York State.

45. The Defendant violated GBL § 349 with respect to the Plaintiff and each member of the GBL § 349 Class. Said violations include, without limitation:

- a. Seeking to collect attorney's fees for appearances at foreclosure settlement conferences when such fees are not legally due and owing;
- b. Falsely representing the nature, character or amount of the debt sought to be collected.

46. The Defendant's conduct violates the FDCPA, and, therefore the Defendant's conduct is a *per se* violation of GBL § 349.

47. The Defendant's conduct described above is deceptive and misleading in a material respect and was directed at the public at large.

48. As a result of the Defendant's deceptive and misleading acts, members of the Class have been injured.

49. The Defendant's acts and practices described above are likely to mislead a reasonable consumer acting reasonably under the circumstances.

50. The Defendant's conduct was willful or knowing within the meaning of GBL § 349.

51. The Plaintiff and members of the GBL § 349 Class are entitled to a declaratory judgment that the Defendant's practice of charging borrowers attorney's fees for appearances in residential foreclosure settlement conferences are unlawful.

52. The Plaintiff and members of the GBL § 349 Class are entitled to a permanent injunction enjoining the Defendant from charging borrowers attorney's fees for appearances at residential foreclosure settlement conferences mandated by § 202.12-a.

**WHEREFORE**, the Plaintiff respectfully requests that the Court certify the Classes and order the following relief against the Defendant, Steven J. Baum, P.C.:

- a. Actual and statutory damages pursuant to 15 U.S.C. §1692k(2)(B) and GBL § 349;
- b. Declaratory judgment that the Defendant is prohibited from charging borrowers attorneys' fees for appearances at residential foreclosure settlement conferences held in New York Supreme Court;
- c. Permanently enjoining the Defendant from charging borrowers attorneys' fees to appear at residential foreclosure settlement conferences held in New York Supreme Court;
- d. Awarding the Plaintiff and the Classes reasonable attorneys' fees and costs pursuant to 15 U.S.C. § 1692k(3) and/or GBL § 349; and
- e. Granting such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

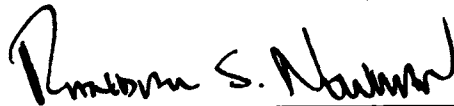
Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Plaintiff hereby demands a trial by jury.

Dated: New York, New York  
November 8, 2010

Respectfully submitted,

RANDALL S. NEWMAN, P.C.

By:



Randall S. Newman, Esq. (RN7862)  
40 Wall Street, 61<sup>st</sup> Floor  
New York, NY 10005  
Tel: (212) 797-3737

*Attorney for Plaintiff,  
Jacob Menashe*

# **EXHIBIT A**

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present: HON. EDWARD G. McCABE**

**Supreme Court Justice**

**FORECLOSURE PART  
NASSAU COUNTY**

\_\_\_\_\_  
**LASALLE BANK NATIONAL ASSOCIATION,**

**Plaintiff,**

**INDEX NO.: 11686/08**

**MOTION SEQ. NO. 2**

**vs.**

**JACOB MENASHE, CITIBANK, N.A.,  
PEOPLE OF THE STATE OF NEW YORK,  
UNITED STATES OF AMERICA ACTING  
THROUGH THE IRS,**

**Defendants.**

\_\_\_\_\_ **X**

**The following papers were read on this application:**

**Emergency Affirmation in Support.....1  
Affirmation in Opposition.....2**

**Motion by defendant Menashe for an order vacating his default in opposing the motion giving rise to the order dated May 18, 2009, is granted, it appearing the parties had stipulated to adjourn such motion.**

Upon consideration of plaintiff's motion for summary judgment (CPLR §3212) and an order of reference (RPAPL §1321) the motion is denied and the complaint is dismissed, without prejudice.

Paragraph 22 of the mortgage requires that before the motion may be accelerated, the bank must serve a notice setting for the mortgagor's default and the date by which the default must be corrected, such date being at least 30 days from the date on which the notice is given.

In a notice dated February 18, 2008, plaintiff advised defendant that as of that date there was a \$12,440.65 delinquency against the account. It further indicated that \$6,158.75 in payments would be due in the next 30 days bringing the "Total due to cure default and bring loan current as of March 19, 2008 - \$18,599.43". The notice went on to state:

"To avoid the possibility of acceleration you must pay  
\$12,440.68 By February 29<sup>th</sup>, 2008  
\$18,599.43 By March 19, 2008"

Clearly defendant was only given until February 29<sup>th</sup>, 2008 to pay the \$12,000+ in arrears as of February 18, 2008. He was entitled under the parties contract to 30 days within which to pay such default.

Plaintiff has not established the debt was properly accelerated. As a result, it is not entitled to maintain the action and the complaint should and hereby is dismissed, without prejudice.

ENTER:

Dated: September 16, 2009  
Mineola, NY



---

HON. EDWARD G. MCCABE  
Supreme Court Justice

# **EXHIBIT B**

Mailing Address  
P.O. Box 1291  
Buffalo, NY 14240-1291

Overnight Mail  
220 Northpointe Parkway  
Suite G  
Amherst, NY 14228



STEVEN J. BAUM, P.C.  
ATTORNEYS AT LAW

Phone Number  
716-204-2400

Fax Number  
716-204-4600

Not for Service

Web Site  
WWW.MBAUM.COM

July 8, 2010

Re: Reinstatement/BANK OF AMERICA, N.A. SUCCESSOR BY MERGER TO LASALLE  
BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THORNBURG MORTGAGE  
SECURITIES TRUST 2006-4 vs. JACOB MENASHE, et al.

Loan No.: 0148571037-708

Property: 6 DEEPDALE DRIVE, GREAT NECK, NY 11021

Dear Sir or Madam:

This office has received your request to provide you with the amounts necessary to bring your loan current (the "reinstatement figure"). The amount that you owe, including legal fees and costs, may increase between the date of this letter and the date that you reinstate your loan. This is because the foreclosure process continues and additional amounts may become due.

As of July 8, 2010 the following is the amount due to reinstate this loan:

**Bank Charges**

PROPERTY INSPECTIONS	\$330.00
BROKERS PRICE OPINION	\$380.00
LATE CHARGES	\$3,818.58
OVERDUE PAYMENTS	\$242,906.18

**Disbursements**

SEARCH CHARGES	\$485.00
INDEX NUMBER FEE	\$420.00
NOTICE OF PENDENCY FILING FEE	\$111.00
SERVICE FEES	\$976.85
REQUEST FOR JUDICIAL INTERVENTION FEE	\$190.00
COURT ADMIN. FEE (EXPARTE/MOTION)	\$90.00
MOTION - COST TO DISCONTINUE	\$45.00
REFEREE'S FEE TO COMPUTE	\$250.00
COURT SERVICE	\$125.00
BLOCK FEE	\$10.00
SEARCH UPDATE	\$175.00

**Attorney Fees**

DEMAND LETTER - SENT - CREDIT	(\$35.00)
LEGAL FEES - MOTION PRACTICE	\$3,050.00
LEGAL FEES TO FORECLOSE	\$1,260.00
LEGAL FEES - SETTLEMENT CONFERENCE	\$350.00

DEMAND LETTER-SENT 10/26/09

\$35.00

**REINSTATEMENT AMOUNT DUE AS OF JULY 8, 2010  
PAYABLE TO: STEVEN J. BAUM, P.C.:****\$254,972.61****Foreclosure Proceedings Will Continue**

Your request does not stop the foreclosure proceedings from continuing. Issuance of this reinstatement letter does not stop the foreclosure action, or the payment of taxes, insurance, or other miscellaneous expenses on your account. Therefore, in the event that you intend to reinstate your loan at a future date, the anticipated and/or estimated reinstatement amount through July 26, 2010 is as follows:

**Estimated Amounts Good Through July 26, 2010**

COURT COST TO DISCONTINUE

\$45.00

---

**SUBTOTAL OF ESTIMATED AMOUNTS****\$45.00****ESTIMATED REINSTATEMENT AMOUNT  
GOOD THROUGH JULY 26, 2010  
PAYABLE TO STEVEN J. BAUM, P.C.****\$255,017.61**

The amounts referenced above are anticipated and/or estimated items which have been ordered, incurred, or services to be performed, the exact amount of which has not yet been determined.

Prior to submitting funds, please contact this office so that we can provide you with an updated reinstatement amount.

If you do not contact this office prior to submitting funds, and if you pay the estimated amount, any refund will be sent to you. Please complete the attached information form and return it with your reinstatement funds.

**Contacting Us**

**By phone:** 716-204-2400

**In writing:** To the attention of the "Payoff and Reinstatement Department", 220 Northpointe Parkway Suite G, Amherst, NY 14228. Do not use our post office box for overnight mail.

**Internet:** Visit [www.mbaum.com](http://www.mbaum.com). You may request an update on a reinstatement request on this website.

**How To Send Us Funds**

Please make your certified check, bank draft or attorneys trust account check, payable to "Steven J. Baum, P.C." Mail or deliver the check to Steven J. Baum, P.C., 220 Northpointe Parkway, Suite G, Mail Stop 200, Amherst, New York 14228. Do not use our post office address for overnight mail.

**Final Verification**

Please be advised that the reinstatement amount is subject to final verification by our client. You will be responsible for reimbursement of taxes, insurance, or other miscellaneous expenses allowed by law that are paid on your account.

**Cancellation of Action**

Upon receipt of satisfactory funds, our office will proceed to have the action discontinued, the Notice of Pendency canceled, and if applicable, the Judgment of Foreclosure vacated. We do not provide these documents



in advance.

Very truly yours,

STEVEN J. BAUM, P.C.

By: Stephanie M. Vampotic  
Legal Assistant

The law firm of Steven J. Baum, P.C. and the attorneys whom it employs are debt collectors who are attempting to collect a debt. Any information obtained by them will be used for that purpose.

---

Loan No.: 0148571037-708

**INFORMATION FORM**

Please provide the information below and return it with your reinstatement funds.

Please note: If you fail to complete this form, any refund will be sent to the mortgagor(s) at the mortgaged premises.

Your Name: \_\_\_\_\_  
Daytime Phone: \_\_\_\_\_ Evening Phone: \_\_\_\_\_  
Address: \_\_\_\_\_

Name and address for return of any refund:

\_\_\_\_ Same as above  
\_\_\_\_ Other (please state below)  
\_\_\_\_\_  
\_\_\_\_\_

The law firm of Steven J. Baum, P.C. and the attorneys whom it employs are debt collectors who are attempting to collect a debt. Any information obtained by them will be used for that purpose.