

ORDER

BEFORE THE ADMINISTRATOR STATE OF WISCONSIN DEPARTMENT OF FINANCIAL INSTITUTIONS DIVISION OF BANKING

TO: Rightway Solutions Inc.
4450 Milton Ave. #104
Janesville, WI 53546
Respondent

Marietta J. Gorniak
4450 Milton Ave. #104
Janesville, WI 53546
Respondent

PURPOSE

1. This is an order issued by the Administrator, State of Wisconsin, Department of Financial Institutions, Division of Banking and directed to respondents Rightway Solutions, Inc. ("Rightway") and Marietta J. Gorniak ("Gorniak").

JURISDICTION and AUTHORITY

2. The State of Wisconsin, Department of Financial Institutions, Division of Banking ("division") shall enforce all laws relating to adjustment service companies in the State of Wisconsin, and shall enforce and cause to be enforced every law relating to the supervision and control thereof. Sec. 220.02(2)(b), Stats.

3. The intent of s. 220.02(2)(b), Stats., is to give the division jurisdiction to enforce and carry out all laws relating to adjustment service companies in the State of Wisconsin. Sec. 220.02(3), Stats.

4. Respondents are not licensed under s. 218.02, Stats., with the division. Upon information and belief, respondents are located at the address indicated above.

5. Respondents are regulated entities under the supervision and control of the division. Sec. 220.04(9)(a)2., Stats.

6. It shall be the duty of the division and the division shall have power, jurisdiction and authority to investigate the conditions and ascertain the facts with reference to such companies and upon the basis thereof to issue special orders in execution of or supplementary to s. 218.02, Stats. Sec. 218.02(7), Stats.

FINDINGS

The division finds as follows:

7. On or about February 27, 2009, the division wrote to Gorniak and advised Gorniak to immediately cease any and all credit repair, debt restructure, negotiation with creditors, or other similar activity for which a service charge or other consideration is received by Gorniak or Rightway. **Ex. 1.**

8. On or about September 10, 2009, the division received a complaint filed against Rightway and Gorniak by [REDACTED] Wisconsin residents. **Ex. 2.**

9. On September 16, 2009, the division wrote to respondents concerning [REDACTED] complaint. The letter advised respondents that the type of business conducted with [REDACTED] was considered unlicensed adjustment service company activity and requested a written explanation and evidence that monies paid by [REDACTED] to respondents had been refunded to [REDACTED]. **Ex. 3.**

10. On or about September 24, 2009, the division received a response from respondents that states, in part:

The [REDACTED] tried to negotiate with CBD with NO success – CBD was foreclosing. Rightway gathered all the financial documents CBD needed and demanded; we copied and faxed them to CBD. Rightway advocates, Gorniak and Maciulis, designed a payment plan acceptable to the [REDACTED] and affordable to the [REDACTED] which would prevent CBD foreclosure; negotiated with a reluctant CBD until they agreed to moved [sic] back the original loan balloon date two months so that the Rightway plan could be implemented; and finally obtained CBD approval of the plan. Rightway's efforts stopped the foreclosure.

The response did not include evidence that monies paid by [REDACTED] to respondents had been refunded to [REDACTED]. **Ex. 4.**

11. Included with respondent's September 24, 2009 letter were a number of exhibits, including the Loan Modification Service Agreement ("agreement") signed by [REDACTED] on May 19, 2009. The agreement indicates, in part, that Rightway will negotiate with Lender on behalf of Client for approval of the Plan or some modification thereof reasonably acceptable to Client. The fee for respondent's services was \$1,800. **Ex. 5.**

12. On or about September 25, 2009, the division received an inquiry from [REDACTED] a Wisconsin resident who received a solicitation from Rightway. The solicitation indicated, in part, "In the loan modification process we contact your mortgage company on your behalf and work out an agreement to change the original terms of your loan." **Ex. 6.**

13. Rightway has a website at www.rightwaysolutionsinc.com. As of February 23, 2010, the website indicated:

The Rightway loan modification advocates will negotiate with your lender in order to obtain their agreement to a mortgage note modification that saves your home from foreclosure. There are a range of options depending on your lender and your circumstances. Some possible loan modifications include:

- Monthly mortgage payments may be reduced
- Interest rate may be decreased
- Interest rate may be changed to a fixed rate
- Loan principal may be decreased. **Ex. 7.**

14. Pursuant to s. 218.02(1)(a), Stats., an adjustment service company is engaged as principal in the business of prorating the income of a debtor to the debtor's creditor or creditors, or of assuming the obligations of any debtor by purchasing the accounts the debtor may have with the debtor's several creditors, in return for which the principal receives a service charge or other consideration.

15. As demonstrated in paras. 10 through 13, *supra*, respondents are engaged in the business of prorating the income of a debtor to the debtor's creditor or creditors in return for a service charge or other consideration.

16. Pursuant to s. 218.02(2)(a)1, Stats., each adjustment service company shall apply to the division for a license to engage in such business.

17. Respondents violated, and are continuing to violate, s. 218.02(2)(a)1, Stats., by engaging in business as an adjustment service company without a license from the division.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED AS FOLLOWS:

18. Respondents shall not conduct or attempt to conduct adjustment service company business with Wisconsin residents.

19. Respondents shall immediately discontinue any and all violations of s. 218.02, Stats., and ch. DFI—Bkg 73, Admin. Code.

20. Respondents shall refund to [REDACTED] any and all monies that have been paid to respondents by [REDACTED] that have not been remitted to [REDACTED] creditors. This includes, but is not limited to, any and all set-up fees and monthly serving fees [REDACTED] paid to respondents.

21. Respondents shall submit to the division a copy of the refund check respondents issue to [REDACTED]. Such copy shall be received by the division by the close of business on March 26, 2010.

22. Respondents shall refund to any Wisconsin client to whom it provided, or attempted to provide, adjustment service company activity since February 27, 2009, any and all moneys that have been paid to respondents by said clients that have not been remitted to the clients' creditors.

23. Respondents shall forward to the division the refund checks and stamped envelopes addressed to each client along with letters advising the clients of the refund. The refund checks, client-addressed stamped envelopes, and letters must be received by the division by March 26, 2010.

24. The provisions of this order shall be binding upon Gorniak, Rightway, and Rightway's directors, officers, employees, agents, successors, assigns, and other persons participating in the conduct of its affairs. The provisions of the order shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this order shall have been modified, terminated, suspended, or set aside by the division.

25. The effective date of this order shall be the date it is served, and service is complete upon mailing. Secs. 227.48(1), Stats., and DFI—Bkg 11.09, Admin. Code.

26. Any person violating any of the provisions of s. 218.02, Stats., shall be punished by a fine of not more than \$500 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment. Sec. 218.02(10), Stats.

Dated and mailed at Madison, Wisconsin this 24th day of February, 2010.

By: 

Michael J. Mach, Administrator
Wisconsin Department of Financial Institutions
Division of Banking
P.O. Box 7876
345 W. Washington Avenue, 4th Floor
Madison, WI 53707-7876
tel. (608) 266-0451
fax (608) 267-6889

APPEAL

The procedures to appeal this order are set forth in s. 227.42, Stats. Pursuant to s. 227.42(1), Stats., any person filing a written request with an agency for hearing shall have the right to a hearing which shall be treated as a contested case if:

- (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
- (b) There is no evidence of legislative intent that the interest is not to be protected;
- (c) The injury to the person requesting a hearing is different in kind or degree from injury to the general public caused by the agency action or inaction; and
- (d) There is a dispute of material fact.

All four criteria set for in s. 227.42(1), Stats., must be met for a person to have the right to a hearing. In particular, the attention of an individual or entity requesting a hearing is directed to the requirement to demonstrate that there is a dispute of material fact regarding the basis or bases for the action being taken by the division.

The request shall be sent to:

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