

THE REAL DEAL

Taking one-stop shops to court

June 2, 2008

By Alex Ulam

Struggling homeowners in low-income New York neighborhoods with high mortgage default rates say they don't have far to look for the sources of their financial woes. They blame the so-called "one-stop shops" that were supposed to help them prosper.

These businesses specialize in fixing up and selling houses bought through distress sales and foreclosure auctions, then offer buyers the services they need to purchase these houses. That includes finding mortgage lenders, appraisers and even lawyers to represent them at the closing. Many buyers are swayed by the convenience factor, but critics who have studied them say one-stop shops often fail to offer the normal checks and balances that protect the customer in standard real estate transactions.

At least five different lawsuits pending in the civil division of Supreme Court in Kings County and in the federal court for the Eastern District of New York take aim at some of the biggest one-stop shops in the city, charging they've engaged in illegal practices, such as racial targeting and fraud.



Josh Zinner of the Neighborhood Economic Development Advocacy Project said low-income neighborhoods lack access to affordable credit.

Ripe for rip-offs

Some of these cases are based on events that took place many years in the past, but advocacy groups say alleged crooked practices by one-stop shops are linked to the current subprime crisis and the recent rise in mortgage defaults in predominantly low-income, minority neighborhoods.

"There was a void of affordable credit in those neighborhoods," said Josh Zinner, co-director of the Neighborhood Economic Development Advocacy Project (NEDAP), a Manhattan-based nonprofit organization. He's the former director of the Foreclosure Prevention Project at South Brooklyn Legal Services.

"They [mortgage lenders] jumped in and started targeting people for any kind of loan they could get them into, and they knew that they could turn [the loans] around and sell them," Zinner said. "That system went on for more than 10 years, and now it has imploded. Those of us who were working with homeowners were saying for years to the investment banks and to regulators that this is a house of cards."

Lynn Armentrout, a lawyer who years ago settled several cases against Better Homes Depot, a one-stop shop currently defending itself in several ongoing lawsuits in Brooklyn, said, "there is a similar fact pattern."

"The house is bought on the cheap by Better Homes Depot. They turn it around and sell it for a huge increase in price that really isn't justified by any change in market conditions; but they get a crooked appraiser to appraise at its inflated price; and then they get a crooked lender to fudge over the underwriting and approve a loan that should never be approved, and everyone is protected because the mortgages are insured by the federal government," she said. "Then the lender sells the mortgage on the market right away, and hence we have our subprime crisis."

Eric Fessler, president of the Ozone Park-based Better Homes Depot, did not return numerous telephone messages left at his office requesting an interview. However, in a Newsday interview in 2004, Fessler took credit for helping thousands of families find homes in neighborhoods such as Bedford Stuyvesant, Bushwick and East New York – some of the neighborhoods hardest hit by the subprime crisis.

He told the paper that he had not engaged in any conspiracy to take advantage of homebuyers. "We do a tremendous amount of transactions, so we are bound to hear some complaints," Fessler was quoted saying. "Many of these lawsuits are frivolous."

However, Fessler has had a long history of documented legal troubles. According to court papers, in the early 1990s federal prosecutors charged Fessler with paying kickbacks to attorneys as part of an effort to illegally expand his mortgage banking business. He served nine months in prison.

In 2003, Fessler's company settled a lawsuit by New York City's Department of

Consumer Affairs for allegedly misleading many first-time homebuyers. It paid more than \$525,000 in restitution to 36 New Yorkers and a \$100,000 civil fine.

Other homeowners have failed to win legal redress for similar alleged violations.

Lionel Oullette, executive director of CHANGER, a homeowner advocacy organization, said one-stops' often complex business practices can mean high legal expenses in cases that can last for years.

"And then there is the fact that they [one-stop shops] intimidate and threaten people; most people are not up for the fight," he added.

Reverend Linda Council and her daughter, Kimberly Council, have a case against Better Homes Depot and a variety of associated companies. They have been fighting to save their home from foreclosure by the Chase Mortgage Company.

The Councils said they contacted Better Homes Depot in 1999 about purchasing a home after seeing one of the company's advertisements in a local newspaper, but went through a bait-and-switch and a legal nightmare. In court papers, the Councils claim a Better Homes Depot agent told them to provide financial information and then sign a blank mortgage form, which the agent from Better Homes Depot would fill out later.

The application for the Federal Housing Administration (FHA) insured loan went through Madison Home Equities, a company with which Better Homes has a longstanding relationship. Madison also has had its share of run-ins with regulators. The company was sanctioned in 1998 by the FHA for allowing false documents to be submitted, which enabled homeowners to borrow beyond their means. In 2000, it entered an agreement with the Department of Housing and Urban Development to stop issuing FHA-insured loans for five years. It also paid a \$71,000 civil fine.

In court, the Councils claimed that after signing a contract to buy a home for \$230,000 at 183 Etna Street in East New York, they were told the property was not available and that a representative of Better Home Depot then steered them to a dilapidated property at 102 Etna Street.

They said they were told the property was being fixed up and that it was a legal two-family house, which could generate rental income. The house was only legally classified as a one-family residence. Mother and daughter also said many promised repairs were never made. Still, their purchase of 102 Etna Street was financed by an FHA-insured mortgage through Madison Home Equities in the amount of \$203,477. An appraiser provided by Better Homes never told the Councils that BHA had purchased 102 Etna Street for \$131,000 in a deal financed by Madison Home Equities, less than six months prior to the Councils' purchase. The appraisal omitted mention of the need for substantial repairs including major plumbing repairs, a new electrical system, a new boiler and a new roof.

The case remains open.

In another federal lawsuit, in Eastern District Court, six Brooklyn homebuyers claim they are victims of a property flipping scheme orchestrated by Yaron Herscho, who owns United Homes and allegedly owns or manages about five or six other related companies, which all use 139-27 Queens Boulevard as an office address.

The suit alleges that United Homes and other companies that Herscho controls use deceptive business tactics to sell first-time minority homebuyers homes that are overpriced and damaged. The complaint cites a review of 60 properties sold by United Homes entities during 2002 to 2003, which reveals that in most instances, the company would only hold a house for a few months before selling it for an average markup of more than \$160,000. Herscho did not return numerous calls to his office requesting an interview.

The long list of other defendants who allegedly aided and abetted the United Homes property flipping scheme includes Olympia Mortgage, which issued the mortgages. It also includes subsidiaries of Credit Suisse First Boston Mortgage Securities, which allegedly created "no income, no asset guidelines" that allowed Olympia access to subprime secondary market financing.

Meanwhile, Best Express Homes, owned by prominent Hillary Clinton supporter Keith Kantrowitz, is also in the legal docket.

Gloria Kingston purchased her first house from Best Express Homes in 2000. Her lawsuit alleges the company inveigled her into getting an unaffordable mortgage for 171 East 59th Street in Brooklyn by telling her to use a friend with better credit to secure the FHA-insured loan.

According to the lawsuit, Kingston and her friend were steered to a lawyer and appraiser working in cahoots with Best Express and to a mortgage company, Power Express, registered to the same Long Island address. Kingston claims she was not informed that both companies were owned by Kantrowitz, and thus prevented from surmising a possible conflict of interest.

In 2002, Kingston defaulted on her mortgage. DLJ Mortgage Capital, a company that acquired Kingston's mortgage, commenced foreclosure proceedings.

During the course of the foreclosure hearings, Kingston attempted to sell her property to minimize her losses, but she found that she was unable to do so because her house was encumbered with building violations that predated her purchase.

Kantrowitz, who briefly fielded questions from a reporter before taking another telephone call, did not respond to numerous requests for a follow-up interview. He claimed he is primarily involved in mortgage banking these days and no longer active in the foreclosure resale business, although he said that because of the credit crunch, the

foreclosure resale business is slowing down. He said, "It is getting a little weaker because it is harder to finance, so if you cannot finance, you have no buyers."

Zinner of NEDAP also sees signs of the foreclosure resale business slowing down. "The enforcement agencies have not moved aggressively against these one-stop-shops," he said. "It may be the market that ultimately stops them, because I think that going forward, it is going to be very hard to get financing for their schemes."

This article is provided for "fair use" not-for-profit, educational purposes (and other related purposes). If you wish to use this copyright material for purposes of your own that go beyond "fair use," you must obtain permission from the copyright owner. Please contact NEDAP at 212-680-5100, or info@nedap.org, if you have questions.