

**CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND**

JOE JOHNSON

Plaintiff,

**Vs.**

TAYLOR, BEAN AND WHITAKER  
MORTGAGE CORPORATION, et al.,

**Defendants.**

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) Civil No. **CAL09-36433**

**CORRECTED SECOND AMENDED COMPLAINT**

COMES NOW, the Plaintiff, Joe Johnson, and files this Corrected Second Amended Complaint and represents to the Court, that:

## JURISDICTION

1. This Court has jurisdiction as the acts and omissions giving rise to this complaint occurred in Prince George's County.

## PARTIES

2. The Plaintiff is a resident of Prince George's County in Fort Washington, Maryland.

3. Defendant, Taylor, Bean and Whitaker is a Mortgage Corporation, hereinafter referred to as (“TBW”), authorized to do business in the State of Maryland and at the time of the acts complained of was doing business in the State of Maryland.

4. Defendant, Key Realty Group LLC, is a licensed realtor, hereinafter referred to as (“Key Realty”), authorized to do business in the State of Maryland and at the time of the acts complained of was doing business in the State of Maryland.

5. Defendant, Matthew Zarrabinia, is a licensed real estate agent, hereinafter referred to as (“Zarrabinia”), authorized to engage in real estate transactions in the State of

Maryland and at the time of the acts complained of was a resident of Montgomery County in Boyd, Maryland.

## **COMPLAINT**

### **COUNT I**

#### **(Anticipatory Breach of Agreement)**

6. At all times relevant, Defendant, TBW represented that it was the legal owner of a foreclosed real estate property located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743, hereinafter "the property".

7. Sometime prior to October 27, 2009, Defendant, TBW employed the service of Defendant, Key Realty to advertise, market and sell the property.

8. At all times relevant, Defendant, Key Realty, employed Defendant, Zarrabinia as a real estate agent and Defendant, Zarrabinia was acting within the scope of his employment with Defendant, Key Realty.

9. Defendant, Zarrabinia was assigned by Defendant, Key Realty with the primary responsibility of overseeing the advertisement, marketing and sell of the property.

10. On or about October 27, 2009, Defendant, Zarrabinia acting as agent for Defendant, TBW advertised the property for sale with a listing price of \$95,000. The property was described as an "end unit townhouse that had been freshly painted in good condition with 3 bedrooms, 2 full baths and one half baths" with a monthly Homeowner Association ("HOA") fee of one hundred seventy five ("\$175.00") dollars.

11. On or about October 29, 2009, the Plaintiff offered to purchase the property from Defendant, TBW for \$110,000.

12. On November 3, 2009, Defendant, Zarrabinia notified the Plaintiff that Defendant, TBW had accepted the Plaintiff's offer.

13. As a condition of acceptance, Defendant, TBW required that Plaintiff execute its disclosures for the property.

14. Defendant, Zarrabinia provided Plaintiff with a written document described as a contract for the sale and purchase of real estate that stated in part that Defendant, TBW agreed to sell the property to the Plaintiff for \$110,000. The closing date was set for on or before December 15, 2009.

15. On November 4, 2009, Plaintiff executed the disclosures and written contract and gave it back to Defendant, Zarrabinia on that same day.

16. On November 11, 2009, Defendant, Zarrabinia notified the Plaintiff that he had received a legitimate higher offer than Plaintiff's and requested that Plaintiff send his absolute best offer.

17. Plaintiff refused and advised Defendant, Zarrabinia that Defendant, TBW had already accepted the Plaintiff's offer to purchase the property and agreed to sell the property to the Plaintiff for \$110,000.

18. By letter dated December 2, 2009, an agent acting on behalf of Defendant, TBW, told the Plaintiff to abate any action to take possession of the property. By its actions and inactions, Defendant, TBW advised the Plaintiff in positive and unconditional language, that Defendant TBW repudiated the agreement and would refuse to sell the property to the Plaintiff for \$110,000, thereby anticipatorily breaching its agreement with the Plaintiff.

19. At all times relevant, the Plaintiff was capable and ready to perform under the agreement.

20. Plaintiff has suffered losses and damages as a result of Defendant, TBW's anticipatory breach of the said agreement.

WHEREFORE, Plaintiff, Joe Johnson, demands judgment that the Contract of Sale between the Plaintiff and Defendant, TBW be specifically enforced, and that Defendant, TBW be ordered to transfer title and possession of the aforesaid Property to the Plaintiff and that Plaintiff be awarded judgment against Defendant, TBW in the amount of Seventy-Five Thousand Dollars (\$75,000), as and for compensatory damages, plus interest, cost and reasonable attorney fees, or in the alternative, award Plaintiff judgment against Defendant, TBW in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000), as and for compensatory damages, plus interest, cost and reasonable attorney fees, and for such further and other relief as the Court deems just and proper.

**COUNT II**  
**(Specific Performance)**

21. The Plaintiff adopts by reference each and every factual allegation made in the preceding paragraphs.

22. On November 3, 2009, Plaintiff and Defendant, TBW entered into a valid and enforceable Contract of Sale for the purchase by the Plaintiff of Defendant, TBW's property that it represented it was the legal owner located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743, hereinafter "the property".

23. The terms of the agreement required Defendant, TBW to sell the property to the Plaintiff for \$110,000.

24. Settlement was scheduled for on or before December 15, 2009.

25. By letter dated December 2, 2009, an agent acting on behalf of Defendant, TBW, told the Plaintiff to abate any action to take possession of the property. By its actions and inactions, Defendant, TBW advised the Plaintiff that they were not going to sell the property to the Plaintiff because they had subsequently received a higher offer than Plaintiff's.

26. At all times relevant hereto, Plaintiff was ready, willing and able to perform under the terms of the Contract of Sale.

27. Defendant, TBW failed to sell the property to the Plaintiff for \$110,000 or take the necessary action to satisfactorily perform under the Contract of Sale.

28. Defendant, TBW breached the Contract of Sale by failing to sale the property to the Plaintiff for \$110,000 including by failing to take the necessary action to satisfactorily perform under the Contract of Sale.

29. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff, Joe Johnson, demands judgment that the Contract of Sale between the Plaintiff and Defendant, TBW be specifically enforced, and that Defendant, TBW be ordered to transfer title and possession of the aforesaid Property to the Plaintiff and that Plaintiff be awarded judgment against Defendant, TBW in the amount of Seventy-Five Thousand Dollars (\$75,000), as and for compensatory damages, plus interest, cost and reasonable attorney fees, or in the alternative, award Plaintiff judgment against Defendant, TBW in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000), as and for compensatory damages, plus interest, cost and reasonable attorney fees, and for such further and other relief as the Court deems just and proper.

**COUNT III**  
**(Concealment and/or Non-Disclosure)**

30. The Plaintiff adopts by reference each and every factual allegation made in the preceding paragraphs.

31. At all times relevant, prior to November 17, 2009, Defendant, TBW represented that it was the legal owner of a foreclosed real estate property located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743, hereinafter "the property.

32. Based upon information and belief, and as Defendant, TBW then well knew, Defendant, TBW did not legally own the property but the property was legally owned by and under the deed of the Federal Home Loan Mortgage Corporation, hereinafter referred to as "Freddie Mac".

33. Based upon information and belief, on or about August 24, 2009, Defendant, TBW filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §101, et seq. in the United States Bankruptcy Court for the Middle District of Florida, in a case styled as *In Re TBW Mortgage Corp.*, Case No. 09-07047-JAF.

34. Based upon further information and belief, on or about October 20, 2009, Defendant, TBW, entered into a written Real Estate Purchase and Sale Agreement with Selene RMOF REO Acquisition II LLC, hereinafter ("Selene"), to sell, assign, transfer, convey and deliver to Selene all of Defendant, TBW's rights, title, and interest in and to all of its REO properties, including its' foreclosed real estate property located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743.

35. Based upon further information and belief, and without Selene's knowledge, sometime prior to October 27, 2009, Defendant, TBW employed the service of Defendant, Key Realty to advertise, market and sell the property.

36. At all times relevant, Defendant, Key Realty, employed Defendant, Zarrabinia as a real estate agent and Defendant, Zarrabinia was acting within the scope of his employment with Defendant, Key Realty.

37. Defendant, Zarrabinia was assigned by Defendant, Key Realty with the primary responsibility of overseeing the advertisement, marketing and sell of the property.

38. On or about October 27, 2009, Defendant, Zarrabinia acting as agent for Defendant, TBW advertised the property for sale with a listing price of \$95,000. The property was described as an "end unit townhouse that had been freshly painted in good condition with 3 bedrooms, 2 full baths and one half baths" with a monthly HOA fee of \$175.00 dollars.

39. On or about October 29, 2009, the Plaintiff offered to purchase the property from Defendant, TBW for \$110,000.

40. At all times relevant, prior to Plaintiff offering to purchase the property from Defendant, TBW, Plaintiff had a contract to purchase property from a seller in Prince George's County Maryland for \$80,000. The closing date was set for on or before November 6, 2009.

41. On November 3, 2009, Defendant, Zarrabinia notified the Plaintiff that Defendant, TBW had accepted the Plaintiff's offer.

42. Thereafter, on November 11, 2009, Defendant, Zarrabinia notified the Plaintiff that he had received a legitimate higher offer than Plaintiff's and requested that Plaintiff send his absolute best offer.

43. Plaintiff refused and advised Defendant, Zarrabinia that Defendant, TBW had already accepted the Plaintiff's offer to purchase the property and agreed to sell the property to the Plaintiff for \$110,000.

44. On November 16, 2009, Defendant, Zarrabinia notified the Plaintiff that the best chance of Plaintiff getting the property would be to offer to pay more for the property.

45. By email dated November 16, 2009, Plaintiff advised the Defendants through Plaintiff's agent that although Plaintiff did not want to, but rather felt intimidated and placed under duress by the Defendants' threats and statements suggesting that Plaintiff would not get the property unless Plaintiff offered to pay more for the property, Plaintiff sent Defendant,

Zarrabinia his highest and best offer of \$126,900 at the suggestion of the buyer's agent.

46. Defendant, Zarrabinia knowingly made material false representations to the Plaintiff that Defendant, TBW had accepted the Plaintiff's October 29, 2009 offer and that he had received a legitimate higher offer than Plaintiff's to induce the Plaintiff to pay an additional \$16,900 to Defendant, TBW for the property.

47. Nonetheless, on November 17, 2009, and without Selene's knowledge, Defendant, TBW fraudulently purported to agree to sell the property to the Plaintiff.

48. The Defendants, and each of them, knew or should have known but failed to disclose to the Plaintiff, that on or about August 24, 2009, Defendant, TBW had filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §101, et seq. in the United States Bankruptcy Court for the Middle District of Florida and that the property was under the jurisdiction of the United States Bankruptcy Court and that Defendant, TBW required a court order from the Bankruptcy Court to sell the property.

49. The Defendants, and each of them, also knew or should have known but failed to disclose to the Plaintiff that the property was legally owned by and under the deed of "Freddie Mac" and that Defendant, TBW was not the owner but the debtor-in-possession.

50. The Defendants, and each of them, further knew or should have known but failed to disclose to the Plaintiff, that on October 20, 2009, Defendant, TBW, had entered into a written agreement with Selene to sell, assign, transfer, convey and deliver to Selene all of Defendant, TBW's rights, title, and interest in and to all of its REO properties, including its' foreclosed real estate property located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743.



51. The Defendants, and each of them, also knew or should have known but failed to disclose to the Plaintiff that the property was not a "townhouse" with a monthly HOA fee of \$175.00 as advertised by the Defendants but in fact was a "condominium" with an "inactive" Condominium Association.

52. The Defendants' failure to disclose the existence of each of these facts constituted a failure to disclose material facts, which the Defendants had a duty to disclose.

53. The Defendants failed to disclose the existence of these facts with the sole intent to deceive the Plaintiff. The Defendants, and each of them, knew that the Plaintiff would not have agreed to purchase the property from Defendant, TBW had Plaintiff known of the existence of any of these undisclosed facts.

54. Plaintiff relied on the belief that none of these facts were in existence, and was justified in his reliance and withdrew the contract to purchase property from the seller in Prince George's County for \$80,000 and agreed to purchase property from Defendant, TBW.

55. The Plaintiff would not have agreed to purchase the property from Defendant, TBW nor withdrawn the contract to purchase property from the seller in Prince George's County for \$80,000 had the Defendants disclosed any of these material facts to the Plaintiff.

56. The Defendants' conduct was fraudulent and perpetrated upon the Plaintiff for the sole purpose of injuring the Plaintiff.

57. As a result of the Defendants' non-disclosures and concealment, Plaintiff has suffered damages.

WHEREFORE, Plaintiff, Joe Johnson, demands judgment against the Defendants, and each of them, jointly and severally, in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000), as and for compensatory damages, punitive damages in the amount of

Three Hundred Seventy Thousand Dollars (\$370,000), plus interest, cost and reasonable attorney fees, and for such further and other relief as the Court deems just and proper.

**COUNT IV**  
**(Unfair or Deceptive Trade Practices)**

58. The Plaintiff adopts by reference each and every factual allegation made in the preceding paragraphs.

59. At all times relevant, Defendant, TBW represented that it was the legal owner of a foreclosed real estate property located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743, hereinafter "the property".

60. Sometime prior to October 27, 2009, Defendant, TBW employed the service of Defendant, Key Realty to advertise, market and sell the property.

61. At all times relevant, Defendant, Key Realty, employed Defendant, Zarrabinia as a real estate agent and Defendant, Zarrabinia was acting within the scope of his employment with Defendant, Key Realty.

62. Defendant, Zarrabinia was assigned by Defendant, Key Realty with the primary responsibility of overseeing the advertisement, marketing and sell of the property.

63. On or about October 27, 2009, Defendant, Zarrabinia acting as agent for Defendant, TBW advertised the property for sale with a listing price of \$95,000. The property was described as an "end unit townhouse that had been freshly painted in good condition with 3 bedrooms, 2 full baths and one half baths" with a monthly HOA fee of \$175.00 dollars.

64. On or about October 29, 2009, the Plaintiff offered to purchase the property from Defendant, TBW for \$110,000.

65. On November 3, 2009, Defendant, Zarrabinia notified the Plaintiff that Defendant, TBW had accepted the Plaintiff's offer.

66. As a condition of acceptance, Defendant, TBW required that Plaintiff execute its disclosures for the property.

67. Defendant, Zarrabinia provided Plaintiff with a written document described as a contract for the sale and purchase of real estate that stated in part that Defendant, TBW agreed to sell the property to the Plaintiff for \$110,000. The closing date was set for on or before December 15, 2009.

68. On November 4, 2009, Plaintiff executed the disclosures and written contract and gave it back to Defendant, Zarrabinia on that same day.

69. Based upon information and belief, Defendant, TBW told Defendant, Zarrabinia to forward all offers as they came in so that the Defendant could sell the property as quickly as possible at the highest price.

70. Based upon further information and belief, after Defendant, TBW had accepted the Plaintiff's offer there were no other pending offers. Plaintiff had no knowledge that Defendant, TBW was soliciting or would be soliciting for other buyers after accepting Plaintiff's offer to purchase the property on November 3, 2009.

71. On November 11, 2009, Defendant, Zarrabinia notified the Plaintiff that he had received a legitimate higher offer than Plaintiff's and requested that Plaintiff send his absolute best offer.

72. Plaintiff refused and advised Defendant, Zarrabinia that Defendant, TBW had already accepted the Plaintiff's offer to purchase the property and agreed to sell the property to the Plaintiff for \$110,000.

73. By letter dated December 2, 2009, an agent acting on behalf of Defendant, TBW, told the Plaintiff to abate any action to take possession of the property. By its actions

and inactions, Defendant, TBW advised the Plaintiff in positive and unconditional language, that Defendant, TBW had repudiated the agreement and would refuse to sell the property to the Plaintiff for \$110,000.

74. By advertising the property for sale and accepting the Plaintiff's offer without the intent to sell the property to the Plaintiff, Defendant, TBW committed unfair and deceptive trade practices in violation of Section 13-303 of the Maryland Consumer Protection Act.

75. By failing to disclose to the Plaintiff before offering to sell the property to the Plaintiff that on August 24, 2009, Defendant, TBW had filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. §101, et seq. in the United States Bankruptcy Court for the Middle District of Florida, in a case styled as *In Re TBW Mortgage Corp.*, Case No. 09-07047-JAF and, that the Defendant required a court order from the Bankruptcy Court to sell the property to the Plaintiff, the Defendants committed unfair and deceptive trade practices in violation of Section 13-303 of the Maryland Consumer Protection Act.

76. By failing to disclose to the Plaintiff before offering to sell the property to the Plaintiff that Freddie Mac was the legal owner of the property and that Defendant, TBW was not the owner but the debtor-in-possession, the Defendants committed unfair and deceptive trade practices in violation of Section 13-303 of the Maryland Consumer Protection Act.

77. By failing to disclose to the Plaintiff before offering to sell the property to the Plaintiff that on October 20, 2009, Defendant, TBW, had entered into a written agreement with Selene to sell, assign, transfer, convey and deliver to Selene all of Defendant, TBW's rights, title, and interest in its REO property located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743 or, that Defendant, TBW would be soliciting for other

buyers after accepting the Plaintiff's offer on November 3, 2009, the Defendants committed unfair and deceptive trade practices in violation of Section 13-303 of the Maryland Consumer Protection Act.

78. By falsely advertising the property as a townhouse with a monthly HOA fee of \$175.00, the Defendants committed unfair and deceptive trade practices in violation of Section 13-303 of the Maryland Consumer Protection Act.

79. By failing to disclose to the Plaintiff that the property was a condominium with an inactive Condominium Association, the Defendants committed unfair and deceptive trade practices in violation of Section 13-303 of the Maryland Consumer Protection Act.

80. By representing to the Plaintiff that Plaintiff's offer had been accepted, when in fact and truth, as the Defendants then well knew, this representation was false and misleading, the Defendants committed unfair and deceptive trade practices in violation of Section 13-303 of the Maryland Consumer Protection Act.

81. By soliciting other buyers after accepting the Plaintiff's offer and agreeing to sell the property to the Plaintiff on November 3, 2009 for \$110,000, Defendant, TBW committed unfair and deceptive trade practices in violation of Section 13-303 of the Maryland Consumer Protection Act.

82. By accepting or attempting to accept another offer for the purchase of the property after having agreed to sell the property to the Plaintiff on November 3, 2009, Defendant, TBW committed unfair and deceptive trade practices in violation of Section 13-303 of the Maryland Consumer Protection Act.

83. By use of a contract related to the sale of the property that contained a clause limiting or precluding the buyer's right to obtain consequential damages or limiting the buyer's

recourse as a result of the seller's breach or cancellation of the contract, Defendant, TBW committed unfair and deceptive trade practices in violation of Section 13-303 of the Maryland Consumer Protection Act.

84. By each and every act and omission described herein and throughout other counts of this complaint, the Defendants otherwise committed unfair and deceptive trade practices all in direct violation of Section 13-303 of the Maryland Consumer Protection Act.

85. Plaintiff has suffered losses and damages as a result of the Defendants' unfair and deceptive trade practices.

WHEREFORE, Plaintiff, Joe Johnson, demands judgment against the Defendants, and each of them, jointly and severally, in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000), as and for compensatory damages, punitive damages in the amount of Three Hundred Seventy Thousand Dollars (\$370,000), plus interest, cost and reasonable attorney fees, and for such further and other relief as the Court deems just and proper.

**COUNT V**  
**(Unjust Enrichment)**

86. At all times relevant, Defendant, TBW represented that it was the legal owner of a foreclosed real estate property located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743, hereinafter "the property".

87. On or about October 27, 2009, Defendant, Zarrabinia acting as agent for Defendant, TBW advertised the property for sale with a listing price of \$95,000. The property was described as an "end unit townhouse that had been freshly painted in good condition with 3 bedrooms, 2 full baths and one half baths" with a monthly HOA fee of \$175.00 dollars.

88. On or about October 29, 2009, the Plaintiff offered to purchase the property from Defendant, TBW for \$110,000.

89. On November 3, 2009, Defendant, Zarrabinia notified the Plaintiff that Defendant, TBW had accepted the Plaintiff's offer.

90. As a condition of acceptance, Defendant, TBW required that Plaintiff execute its disclosures for the property.

91. Defendant, Zarrabinia provided Plaintiff with a written document described as a contract for the sale and purchase of real estate that stated in part that Defendant, TBW agreed to sell the property to the Plaintiff for \$110,000. The closing date was set for on or before December 15, 2009.

92. On November 4, 2009, Plaintiff executed the disclosures and written contract and gave it back to Defendant, Zarrabinia on that same day.

93. Based upon information and belief, Defendant, TBW told Defendant, Zarrabinia to forward all offers as they came in so that the Defendant could sell the property as quickly as possible at the highest price.

94. Based upon information and belief, after Defendant, TBW had accepted the Plaintiff's offer, there were no other pending offers. Plaintiff had no knowledge that Defendant, TBW was soliciting or would be soliciting for other buyers after accepting Plaintiff's offer to purchase the property on November 3, 2009.

95. On November 11, 2009, Defendant, Zarrabinia notified the Plaintiff that he had received a legitimate higher offer than Plaintiff's and requested that Plaintiff send his absolute best offer.

96. Plaintiff refused and advised Defendant, Zarrabinia that Defendant, TBW had already accepted the Plaintiff's offer to purchase the property and agreed to sell the property to the Plaintiff for \$110,000. Plaintiff later discovered, among other things, that the property was

falsely advertised by the Defendants as a "townhouse" with a monthly HOA fee of \$175.00 and that the property, as the Defendants then well knew, was a "condominium" with an inactive Condominium Association with a market value of less than \$80,000.

97. The Plaintiff's offer to purchase the property from Defendant, TBW ultimately conferred a benefit upon Defendant, TBW in an amount in excess of \$75,000.

98. Defendant, TBW was aware of, and had knowledge of, the benefits conferred upon Defendant, TBW by Plaintiff.

99. Defendant, TBW's acceptance and retention of the Plaintiff's offer to purchase the property under the false pretense that the property was a townhouse and while Defendant, TBW had knowledge of the benefit being conferred to the Defendant by the Plaintiff, make it inequitable for Defendant, TBW to retain these benefits without payment of their value.

WHEREFORE, Plaintiff, Joe Johnson, demands judgment against Defendant, TBW in the amount of Seventy-Five Thousand Dollars (\$75,000), plus interest, cost and reasonable attorney fees, and for such further and other relief as the Court deems just and proper.

**COUNT VI**  
**(Tortious Interference With Contractual Relations)**

100. The Plaintiff adopts by reference each and every factual allegation made in the preceding paragraphs.

101. At all times relevant, Defendant, TBW represented that it was the legal owner of a foreclosed real estate property located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743, hereinafter "the property".

102. Sometime prior to October 27, 2009, Defendant, TBW employed the service of Defendant, Key Realty to advertise, market and sell the property.



103. At all times relevant, Defendant, Key Realty, employed Defendant, Zarrabinia as a real estate agent and Defendant, Zarrabinia was acting within and outside the scope of his employment with Defendant, Key Realty.

104. Defendant, Zarrabinia was assigned by Defendant, Key Realty with the primary responsibility of overseeing the advertisement, marketing and sell of the property.

105. On or about October 27, 2009, Defendant, Zarrabinia acting as agent for Defendant, TBW advertised the property for sale with a listing price of \$95,000. The property was described as an "end unit townhouse that had been freshly painted in good condition with 3 bedrooms, 2 full baths and one half baths" with a monthly HOA fee of \$175.00 dollars.

106. On or about October 29, 2009, the Plaintiff offered to purchase the property for \$110,000.

107. On November 3, 2009, Defendant, Zarrabinia notified the Plaintiff that Defendant, TBW had accepted the Plaintiff's offer.

108. As a condition of acceptance, Defendant, TBW required that Plaintiff execute its disclosures for the property.

109. Defendant, Zarrabinia provided Plaintiff with a written document described as a contract for the sale and purchase of real estate that stated in part that Defendant, TBW agreed to sell the property to the Plaintiff for \$110,000. The closing date was set for on or before December 15, 2009.

110. On November 4, 2009, Plaintiff executed the disclosures and written contract and gave it back to Defendant, Zarrabinia on that same day to deliver to Defendant, TBW.

111. Defendant, Zarrabinia was fully aware of the existence of the formulation of the agreement between the Plaintiff and Defendant, TBW.

112. Based upon information and belief, Defendant, Zarrabinia knowingly and willfully withheld the Plaintiff's executed disclosures and written contract from Defendant, TBW or wrongly delayed the delivery of the Plaintiff's executed disclosures and written contract to Defendant, TBW.

113. Based upon further information and belief, Defendant, Zarrabinia withheld the Plaintiff's executed disclosures and written contract from Defendant, TBW or wrongly delayed the delivery of the Plaintiff's executed disclosures and written contract to Defendant, TBW because he had subsequently received a higher offer than Plaintiff's for the property and wanted Plaintiff to offer more than \$110,000.

114. As a result of Defendant, Zarrabinia's conduct, Defendant, TBW repudiated the agreement with the Plaintiff and would not sell the property to the Plaintiff for \$110,000 as it had agreed to do on November 3, 2009.

115. Plaintiff has suffered losses and damages as a result of Defendant, Zarrabinia's tortious interference with the contractual relations between the Plaintiff and Defendant, TBW.

WHEREFORE, Plaintiff, Joe Johnson, demands judgment against Defendants, Key Realty and Zarrabinia, jointly and severally, in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000), as and for compensatory damages, punitive damages in the amount of Three Hundred Seventy Thousand Dollars (\$370,000), plus interest, cost and reasonable attorney fees, and for such further and other relief as the Court deems just and proper.

**COUNT VII**  
**(Coercion and Inducement)**

116. The Plaintiff adopts by reference each and every factual allegation made in the preceding paragraphs.

117. At all times relevant, Defendant, TBW represented that it was the legal owner of a foreclosed real estate property located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743, hereinafter "the property".

118. Sometime prior to October 27, 2009, Defendant, TBW employed the service of Defendant, Key Realty to advertise, market and sell the property.

119. At all times relevant, Defendant, Key Realty, employed Defendant, Zarrabinia as a real estate agent and Defendant, Zarrabinia was acting within the scope of his employment with Defendant, Key Realty.

120. Defendant, Zarrabinia was assigned by Defendant, Key Realty with the primary responsibility of overseeing the advertisement, marketing and sell of the property.

121. On or about October 27, 2009, Defendant, Zarrabinia acting as agent for Defendant, TBW advertised the property for sale with a listing price of \$95,000. The property was described as an "end unit townhouse that had been freshly painted in good condition with 3 bedrooms, 2 full baths and one half baths" with a monthly HOA fee of \$175.00 dollars.

122. On or about October 29, 2009, the Plaintiff offered to purchase the property from Defendant, TBW for \$110,000.

123. On November 3, 2009, Defendant, Zarrabinia notified the Plaintiff that Defendant, TBW had accepted the Plaintiff's offer.

124. As a condition of acceptance, Defendant, TBW required that Plaintiff execute its disclosures for the property.

125. Defendant, Zarrabinia provided Plaintiff with a written document described as a contract for the sale and purchase of real estate that stated in part that Defendant, TBW agreed to sell the property to the Plaintiff for \$110,000. The closing date was set for on or

before December 15, 2009.

126. On November 4, 2009, Plaintiff executed the disclosures and written contract and gave it back to Defendant, Zarrabinia on that same day.

127. Based upon information and belief, Defendant, TBW told Defendant, Zarrabinia to forward all offers as they came in so that the Defendant could sell the property as quickly as possible at the highest price.

128. Based upon information and belief, after Defendant, TBW accepted the Plaintiff's offer, there were no other pending offers. Plaintiff had no knowledge that Defendant, TBW was soliciting or would be soliciting for other buyers after it had accepted Plaintiff's offer to purchase the property on November 3, 2009.

129. On November 11, 2009, Defendant, Zarrabinia notified the Plaintiff that he had received a higher offer than Plaintiff's and requested that Plaintiff send his absolute best offer.

130. Plaintiff refused and advised Defendant, Zarrabinia that Defendant, TBW had already accepted the Plaintiff's offer to purchase the property and agreed to sell the property to the Plaintiff for \$110,000.

131. On November 16, 2009, Defendant, Zarrabinia, acting as agent for Defendant, TBW, conveyed to the Plaintiff that the best chance of Plaintiff getting the property would be to offer to pay more for the property. Defendant, Zarrabinia advised Plaintiff to submit his best and highest offer.

132. By email dated November 16, 2009, Plaintiff advised the Defendants through Plaintiff's agent that although he did not want to, but rather felt intimidated and placed under duress by the Defendants' threats and statements suggesting that Plaintiff would not get the property unless Plaintiff offered to pay more for the property, Plaintiff sent Defendant,

Zarrabinia his highest and best offer of \$126,900 at the suggestion of the buyer's agent.

133. Plaintiff continued to protest paying Defendant, TBW an additional \$16,900 for the property and would not have offered to pay Defendant, TBW an additional \$16,900 for the property but for the Defendants' actions. The Defendants coerced and induced Plaintiff into offering to pay more for the property by fraud, duress, undue influence and misrepresentations.

134. As a result of the Defendants' conduct, Plaintiff has sustained damages.

WHEREFORE, Plaintiff, Joe Johnson, demands judgment against the Defendants, jointly and severally, in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000), as and for compensatory damages, punitive damages in the amount of Three Hundred Seventy Thousand Dollars (\$370,000), plus interest, cost and reasonable attorney fees, and for such further and other relief as the Court deems just and proper.

**COUNT VIII**  
**(Misrepresentation)**

135. The Plaintiff adopts by reference each and every factual allegation made in the preceding paragraphs.

136. At all times relevant, Plaintiff had a contract to purchase property from a seller in Prince George's County Maryland for \$80,000. The closing date was set for on or before November 6, 2009.

137. At all times relevant, Defendant, TBW represented that it was the legal owner of a foreclosed real estate property located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743, hereinafter "the property".

138. Sometime prior to October 27, 2009, Defendant, TBW employed the service of Defendant, Key Realty to advertise, market and sell the property.

139. At all times relevant, Defendant, Key Realty, employed Defendant, Zarrabinia as a real estate agent and Defendant, Zarrabinia was acting within the scope of his employment with Defendant, Key Realty.

140. Defendant, Zarrabinia was assigned by Defendant, Key Realty with the primary responsibility of overseeing the advertisement, marketing and sell of the property.

141. On or about October 27, 2009, Defendant, Zarrabinia acting as agent for Defendant, TBW advertised the property for sale with a listing price of \$95,000. The property was described as an "end unit townhouse that had been freshly painted in good condition with 3 bedrooms, 2 full baths and one half baths" with a monthly HOA fee of \$175.00 dollars.

142. On or about October 29, 2009, the Plaintiff offered to purchase the property from Defendant, TBW for \$110,000.

143. On November 3, 2009, Defendant, Zarrabinia knowingly made a false representation of a material fact to the Plaintiff that Defendant, TBW had accepted the Plaintiff's offer.

144. The Plaintiff not only relied upon the misrepresentation but had a right to rely upon it and, in so doing; Plaintiff withdrew the contract to purchase the property from the seller in Prince George's County for \$80,000.

145. As a result of Defendant, Zarrabinia's misrepresentations, Plaintiff suffered damages as a direct result of the reliance upon the misrepresentation.

WHEREFORE, Plaintiff, Joe Johnson, demands judgment against Defendants, Key Realty and Zarrabinia, and each of them, jointly and severally, in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000), as and for compensatory damages, punitive damages in the amount of Three Hundred Seventy Thousand Dollars (\$370,000), plus interest,

cost and reasonable attorney fees, and for such further and other relief as the Court deems just and proper.

**COUNT IX**  
**(Fraud and/or Deceit)**

146. The Plaintiff adopts by reference each and every factual allegation made in the preceding paragraphs.

147. At all times relevant, Defendant, TBW represented that it was the legal owner of a foreclosed real estate property located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743, hereinafter "the property".

148. Sometime prior to October 27, 2009, Defendant, TBW employed the service of Defendant, Key Realty to advertise, market and sell the property.

149. At all times relevant, Defendant, Key Realty, employed Defendant, Zarrabinia as a real estate agent and Defendant, Zarrabinia was acting within the scope of his employment with Defendant, Key Realty.

150. Defendant, Zarrabinia was assigned by Defendant, Key Realty with the primary responsibility of overseeing the advertisement, marketing and sell of the property.

151. On or about October 27, 2009, Defendant, Zarrabinia acting as agent for Defendant, TBW advertised the property for sale with a listing price of \$95,000. The property was described as an "end unit townhouse that had been freshly painted in good condition with 3 bedrooms, 2 full baths and one half baths" with a monthly HOA fee of \$175.00 dollars.

152. On or about October 29, 2009, the Plaintiff offered to purchase the property from Defendant, TBW for \$110,000.

153. On November 3, 2009, Defendant, Zarrabinia knowingly made a false representation of a material fact to the Plaintiff that Defendant, TBW had accepted the

Plaintiff's offer.

154. Thereafter, on November 11, 2009, Defendant, Zarrabinia falsely represented to the Plaintiff that he had received a legitimate higher offer than Plaintiff's and requested that Plaintiff send his absolute best offer.

155. Defendant, Zarrabinia knew that he had not received a legitimate higher offer than the Plaintiff's or knew that his representations were made with such reckless disregard of the truth so as to be the equivalent of actual knowledge of the falsity.

156. Plaintiff refused and advised Defendant, Zarrabinia that Defendant, TBW had already accepted the Plaintiff's offer to purchase the property and agreed to sell the property to the Plaintiff for \$110,000.

157. On November 16, 2009, Defendant, Zarrabinia, acting as agent for Defendant, TBW, conveyed to the Plaintiff that the best chance of Plaintiff getting the property would be to offer to pay more for the property. Defendant, Zarrabinia advised Plaintiff to submit his best and highest offer.

158. By email dated November 16, 2009, Plaintiff advised the Defendants through Plaintiff's agent that although he did not want to, but rather felt intimidated and placed under duress by the Defendants' threats and statements suggesting that Plaintiff would not get the property unless Plaintiff offered to pay more for the property, Plaintiff sent Defendant, Zarrabinia his highest and best offer of \$126,900 at the suggestion of the buyer's agent.

159. Defendant, Zarrabinia knowingly made material false representations to the Plaintiff to induce the Plaintiff to pay an additional \$16,900 to Defendant, TBW for the property.



160. Plaintiff not only relied upon the misrepresentations, but had a right to rely upon it in the full belief of its truth, and but for the misrepresentations Plaintiff would not had sent Defendant, Zarrabinia his highest and best offer of \$126,900 agreeing to the purchase of the property from Defendant, TBW.

161. Defendant, Zarrabinia's conduct was fraudulent and perpetrated upon the Plaintiff for the sole purpose of injuring the Plaintiff.

162. As a result of Defendant, Zarrabinia's fraudulent conduct, Plaintiff actually suffered damages directly resulting from such fraudulent misrepresentations.

WHEREFORE, the Plaintiff, Joe Johnson, demands judgment against Defendants, Key Realty and Zarrabinia, jointly and severally, in the amount of One Eighty-Five Thousand Dollars (\$185,000), as and for compensatory damages, punitive damages in the amount of Three Hundred Seventy Thousand Dollars (\$370,000), plus interest, cost and reasonable attorney fees, and for such further and other relief as the Court deems just and proper.

**COUNT X**  
**(Reformation)**

163. The Plaintiff adopts by reference each and every factual allegation made in the preceding paragraphs.

164. At all times relevant, Defendant, TBW represented that it was the legal owner of a foreclosed real estate property located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743, hereinafter "the property".

165. Sometime prior to October 27, 2009, Defendant, TBW employed the service of Defendant, Key Realty to advertise, market and sell the property.

166. At all times relevant, Defendant, Key Realty, employed Defendant, Zarrabinia as a real estate agent and Defendant, Zarrabinia was acting within the scope of his

employment with Defendant, Key Realty.

167. Defendant, Zarrabinia was assigned by Defendant, Key Realty with the primary responsibility of overseeing the advertisement, marketing and sell of the property.

168. On or about October 27, 2009, Defendant, Zarrabinia acting as agent for Defendant, TBW advertised the property for sale with a listing price of \$95,000. The property was described as an "end unit townhouse that had been freshly painted in good condition with 3 bedrooms, 2 full baths and one half baths" with a monthly HOA fee of \$175.00 dollars.

169. On or about October 29, 2009, the Plaintiff offered to purchase the property from Defendant, TBW for \$110,000.

170. On November 3, 2009, Defendant, Zarrabinia notified the Plaintiff that Defendant, TBW had accepted the Plaintiff's offer.

171. Thereafter, on November 11, 2009, Defendant, Zarrabinia falsely represented to the Plaintiff that he had received a legitimate higher offer than Plaintiff's and requested that Plaintiff send his absolute best offer. Defendant, Zarrabinia knew that he had not received a legitimate higher offer than the Plaintiff's or knew that his representation was made with such reckless disregard of the truth so as to be the equivalent of actual knowledge of the falsity.

172. Nonetheless, plaintiff refused and advised Defendant, Zarrabinia that Defendant, TBW had already accepted the Plaintiff's offer to purchase the property and agreed to sell the property to the Plaintiff for \$110,000.

173. On November 16, 2009, Defendant, Zarrabinia, acting as agent for Defendant, TBW, conveyed to the Plaintiff that the best chance of Plaintiff getting the property would be to offer to pay more for the property. Defendant, Zarrabinia advised Plaintiff to submit his best and highest offer.

174. By email dated November 16, 2009, Plaintiff advised the Defendants through the Plaintiff's agent that although he did not want to, but rather felt intimidated and placed under duress by the Defendants' threats and statements suggesting that Plaintiff would not get the property unless Plaintiff offered to pay more for the property, Plaintiff sent Defendant, Zarrabinia his highest and best offer of \$126,900 at the suggestion of the buyer's agent.

175. Plaintiff later discovered, among other things, that the property was falsely advertised by the Defendants as a "townhouse" with a monthly HOA fee of \$175.00, when in fact, and in truth, as the Defendants then well knew, the property was a "condominium" with an inactive Condominium Association with a market value of less than \$80,000.

176. The subsequent contract that Plaintiff agreed to pay Defendant, TBW \$126,900 for the property was induced by fraud, duress, undue influence and misrepresentations by the Defendants.

177. The written agreement was not the original agreement nor intentions contemplated by the parties in that on October 29, 2009, the Plaintiff offered to purchase the property from Defendant, TBW for \$110,000 and on November 3, 2009, Defendant, TBW accepted the Plaintiff's offer and agreed to sell the property to the Plaintiff for \$110,000.

178. As a result of the Defendants' conduct, the written contract Plaintiff executed on November 16, 2009 was induced by fraud, duress, undue influence and misrepresentations, and Plaintiff is entitled to reform the written contract to conform to the original agreed upon and accepted intentions of the parties, namely, the selling price of the property to the Plaintiff in the amount of \$110,000.

WHEREFORE, Plaintiff, Joe Johnson, prays this Court to reform the aforementioned written contract to specify that Defendant, TBW agree to sell the property to the Plaintiff for

\$110,000 to conform to the original intentions of the parties, and award Plaintiff judgment against Defendant, TBW in the amount of Seventy-Five Thousand Dollars (\$75,000), as and for compensatory damages, plus interest, cost and reasonable attorney fees, and for such further and other relief as the Court deems just and proper.

**COUNT XI**  
**(Breach of Contract)**

179. The Plaintiff adopts by reference each and every factual allegation made in the preceding paragraphs.

180. On November 3, 2009, Plaintiff and Defendant, TBW entered into a valid and enforceable Contract of Sale for the purchase by the Plaintiff of Defendant, TBW's property that it represented it was the legal owner located at 5822 N Holly Springs Drive, #1-6, in Capitol Heights, Maryland 20743, hereinafter "the property".

181. The terms of the agreement required Defendant, TBW to sell the property to the Plaintiff on or before December 15, 2009.

182. At all times relevant hereto, Plaintiff was ready, willing and able to perform under the terms of the Contract of Sale, and on November 17, 2009, Plaintiff paid Defendant, TBW a down payment of \$1,000.

183. On December 15, 2009, Defendant, TBW failed to sell the property to the Plaintiff as agreed and failed take the necessary action to satisfactorily perform under the Contract of Sale.

184. Defendant, TBW breached the Contract of Sale by failing to sale the property to the Plaintiff on or before December 15, 2009 including by failing to take the necessary action to satisfactorily perform under the Contract of Sale on or before December 15, 2009.

185. As a result of the breach, Plaintiff has sustained damages.

WHEREFORE, Plaintiff, Joe Johnson, demands judgment against the Defendant, TBW, in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000), as and for compensatory damages, plus interest, cost and reasonable attorney fees, and for such further and other relief as the Court deems just and proper.

**COUNT XII**  
**(Intentional Infliction of Emotional Distress)**

186. The Plaintiff adopts by reference each and every factual allegation made in the preceding paragraphs.

187. Defendant, Key Realty and Defendant, Zarrabinia tortuously interfered with the contractual relations between the Plaintiff and Defendant, TBW by knowingly and willfully withholding the Plaintiff's executed disclosures and written contract from Defendant, TBW or wrongly delaying the delivery of the Plaintiff's executed disclosures and written contract to Defendant, TBW so as to cause Defendant, TBW to not sale property to the Plaintiff for \$110,000 as Defendant, TBW had agreed to do. This conduct was perpetrated by the agents, servants and employees of Defendant, Key Realty and within the scope of their employment. Defendant, Key Realty is responsible for all of the acts committed by its agents within the scope of their employment.

188. The Defendants, and each of them, coerced and induced the Plaintiff into offering Defendant, TBW an additional \$16,900 for the property by threatening that the Plaintiff would not get the property unless Plaintiff paid the Defendant more for the property. This conduct was perpetrated by the agents, servants and employees of Defendant, Key Realty and Defendant, TBW within the scope of their employment. Defendant, Key Realty is responsible for all of the acts committed by its agents within the scope of their employment.

189. Defendant, Key Realty and Defendant, Zarrabinia knowingly made a false representation of a material fact to the Plaintiff that Defendant, TBW had accepted the Plaintiff's offer to purchase the Defendant's property for \$110,000. Plaintiff not only relied upon the misrepresentation but had a right to rely upon it and, in so doing; Plaintiff withdrew the contract to purchase property from a seller in Prince George's County for \$80,000. This conduct was perpetrated by the agents, servants and employees of Defendant, Key Realty and within the scope of their employment. Defendant, Key Realty is responsible for all of the acts committed by its agents within the scope of their employment.

190. Defendant, Key Realty and Defendant, Zarrabinia falsely represented to the Plaintiff that he had received a legitimate higher offer than Plaintiff's for the purchase of the property from the Defendant or knew that his representation was made with such reckless disregard of the truth so as to be the equivalent of actual knowledge of the falsity. This conduct was perpetrated by the agents, servants and employees of Defendant, Key Realty and within the scope of their employment. Defendant, Key Realty is responsible for all of the acts committed by its agents within the scope of their employment.

191. The Defendants, and each of them, engaged in unfair and deceptive trade practices during the course of dealing with the Plaintiff by, among other things, falsely advertising or causing to be falsely advertised property for sale in violation of Section 13-303 of the Maryland Consumer Protection Act. This conduct was perpetrated by the agents, servants and employees of the Defendants and within the scope of their employment. The Defendants are responsible for all of the acts committed by its agents within the scope of their employment.

192. The Defendants had a duty to disclose certain material facts to the Plaintiff, as more fully set-forth in the preceding paragraphs, but failed to disclose them with the intent to deceive the Plaintiff and, in fact, the Plaintiff was deceived. This conduct was perpetrated by the agents, servants and employees of the Defendants and within the scope of their employment. The Defendants are responsible for all of the acts committed by their agents within the scope of their employment.

193. The Defendants' conduct was intentional, reckless, and in deliberate disregard of a high degree of probability that emotional distress would result to the Plaintiff.

194. The aforesaid conduct by the Defendants was malicious, willful, and intentional.

195. As a result of the aforesaid conduct and actions, the Plaintiff has suffered, and will continue to suffer, severe and extreme emotional distress.

WHEREFORE, the Plaintiff, Joe Johnson, demands judgment against the Defendants, and each of them, jointly and severally in the amount of One Hundred Eighty-Five Thousand Dollars (\$185,000), as and for compensatory damages, punitive damages in the amount of Three Hundred Seventy Thousand Dollars (\$370,000), plus interest, cost and reasonable attorney fees, and for such further and other relief as the Court deems just and proper.

Respectfully submitted,

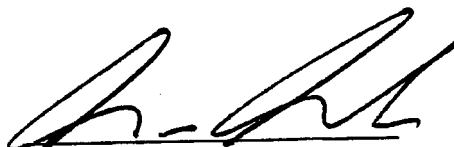


Joe Johnson  
2600 Brinkley Road PH 1005  
Fort Washington, MD 20744  
(301) 686-0531

December 18, 2009

**CERTIFICATE OF SERVICE**

On December 18, 2009, a copy of the foregoing Second Amended Complaint and Jury Demand was mailed to all parties and counsel of record, by regular first-class mail, postage prepaid.


  
Joe Johnson

**DEMAND FOR JURY TRIAL**

The Plaintiff, Joe Johnson, demands a trial by jury on each and every issue raised herein.

Respectfully submitted,

December 18, 2009

  
Joe Johnson  
2600 Brinkley Road PH 1005  
Fort Washington, MD 20744  
(301) 686-0531