

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

VICKI L. PINERO, individually and on behalf of all others similarly situated,	)	Civil Action No. 08-03535
	)	
	)	Sec. R
Plaintiffs,	)	JUDGE SARAH S. VANCE
	)	
v.	)	Mag. 3
	)	MAGISTRATE JUDGE DANIEL E.
JACKSON HEWITT TAX SERVICE	)	KNOWLES, III
INC.; JACKSON HEWITT INC.; and,	)	
CRESCENT CITY TAX SERVICE,	)	
INC. d/b/a JACKSON HEWITT TAX	)	
SERVICE,	)	
	)	
Defendants.	)	

**PLAINTIFF’S SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF PLAINTIFF’S MOTION FOR DE NOVO REVIEW OF  
APRIL 21, 2009 DISPOSITIVE MAGISTRATE RULING**

Plaintiff, Vicki L. Pinero, submits this supplemental memorandum in support of her Motion for *De Novo* Review of April 21, 2009 Dispositive Magistrate Ruling [Docket Nos. 117 and 121]. Plaintiff requests the Court consider the following:

1. There are two loan broker statutes in Louisiana. In plaintiff’s proposed amended complaint, plaintiff asserts a claim against defendants under La. Rev. Stat. §

9:3572.1, *et seq.* See Docket No. 77.

2. The other loan broker statute is found at La. Rev. Stat. § 51:1910, *et seq.* Although plaintiff has not yet asserted a claim against defendants under this second loan broker statute, the statute and the case law under the statute is relevant to analyzing the prescriptive period for claims under § 9:3572.12(D) (the loan broker statute plaintiff asserts a claim under).<sup>1</sup>

3. A loan broker who fails to comply with the requirements set forth in § 9:3572.1, *et seq.*, must return all fees contracted for or received.<sup>2</sup> Similarly, a loan broker who fails to comply with the requirements set forth in § 51:1910, *et seq.*, must return all sums received.<sup>3</sup> In other words, both loan broker statutes contain a private right of action against a non-compliant loan broker for disgorgement of fees or sums received by the loan broker.

4. The similarity between the two statutes is important because at least one

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<sup>1</sup> Under both loan broker statutes, an income tax preparer who is an authorized Internal Revenue Service e-file provider and who brokers loans is considered a loan broker and subject to the restrictions set forth in the statutes, *unless* the income tax preparer's "*only* brokering activity is facilitating refund anticipation loans[.]" La. Rev. Stat. § 9:3572.2(B)(9) (emphasis added); La. Rev. Stat. § 51:1910(1)(b)(xi) (emphasis added). Defendants are *not* exempt under either statute because their brokering activity is not limited to brokering or facilitating *only* refund anticipation loans.

<sup>2</sup> La. Rev. Stat. § 9:3572.12(D) provides:

The contracting to receive any fee, interest, or other charge in violation of this Chapter shall result in forfeiture by the loan broker to the benefit of the aggrieved person of the entire fee, plus damages in the amount of twice the fee. In case the fee has been paid, the person by whom it has been paid may recover from the loan broker the amount of the fee thus paid, plus damages in the amount of twice the fee.

<sup>3</sup> La. Rev. Stat. § 51:1915 provides in part:

A. Violation of any of the provisions of this Chapter shall constitute an unfair practice under R.S. 51:1405(A).

B. If a loan broker uses any untrue or misleading statements in connection with a loan brokerage contract, fails to fully comply with the requirements of this Chapter, fails to comply with the terms of the contract or any obligation arising therefrom, or fails to make diligent effort to obtain or procure a loan on behalf of the prospective borrower, then, upon written notice to the broker, the prospective borrower may void the contract, and shall be entitled to receive from the broker all sums paid to the broker, and recover any additional damages including attorney's fees.

Louisiana court has ruled the disgorgement remedy provided in § 51:1915(B) is a type of “contractual remed[y],” which is *not* subject to a 1-year prescriptive period. *See Fox v. Dupree*, 633 So.2d 612, 614 (La.App. 1st Cir. 1993) (“The statute expressly allows an unfair trade practice action in subsection A; subsections B and C provide contractual remedies, and subsection D states that the remedies provided are in addition to any other remedies provided by law. Clearly, a party is not limited to only one cause of action. The statute allows contractual and tort remedies, and any other remedies provided by law.”).

5. Like the remedy in § 51:1915(B), the remedy in § 9:3572.12(D) is contractual in nature. The Court, therefore, should *not* apply the 1-year-tort prescriptive period in Civil Code Article 3492 to plaintiff’s proposed claim. Instead, the Court should apply the 10-year prescriptive period in Article 3499 to plaintiff’s proposed claim.

6. To the extent the Court is inclined to apply the 1-year prescriptive period to plaintiff’s loan broker claim under § 9:3572.12(D), such application should be limited to only plaintiff’s request for the penalty of double damages, *not* plaintiff’s request for return of the fee contracted for and/or received by defendants.

### **CONCLUSION**

The Court should set aside Judge Knowles’ April 21, 2009 order and grant plaintiff leave to amend her complaint to include her proposed claim.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been forwarded to all counsel of record  by ECF;  by email;  by hand;  by fax;  by FedEx;  by placing a copy of same in the U.S. Mail, postage prepaid this 13th day of August 2009.

/s/ Bryan C. Shartle  
Bryan C. Shartle

Respectfully Submitted,

/s/ Bryan C. Shartle  
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