

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1862 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 21 DB 2012
v.	:	
	:	Attorney Registration No. 44063
JOSEPH A. GEMBALA, III,	:	
Respondent	:	(Philadelphia)

**ORDER**

**PER CURIAM:**

**AND NOW**, this 25<sup>th</sup> day of October, 2012, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated August 1, 2012, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Joseph A. Gembala, III, is suspended on consent from the Bar of this Commonwealth for a period of two years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that within sixty days from the date of this Order Joseph A. Gembala, III, shall refund to the complainants his share of the fees he retained from the loan modification fees as set forth in Exhibit A of the Joint Petition.

A True Copy Patricia Nicola  
As Of 10/25/2012

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

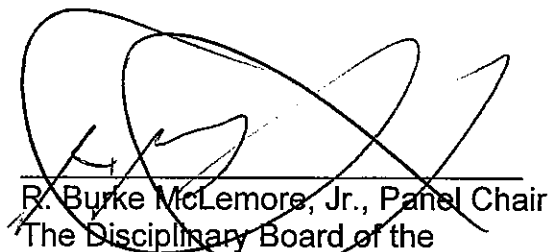
OFFICE OF DISCIPLINARY COUNSEL : No. 21 DB 2012  
Petitioner :  
v. : Attorney Registration No. 44063  
JOSEPH A. GEMBALA, III :  
Respondent : (Philadelphia)

RECOMMENDATION OF THREE-MEMBER PANEL  
OF THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members R. Burke McLemore, Jr., Gerald Lawrence, and David E. Schwager, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on July 9, 2012.

The Panel approves the Joint Petition consenting to a two year suspension with the condition that within 60 days after the entry of the order of suspension, Respondent shall refund to the complainants Respondent's share of the fees he retained from the loan modification fees and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.

  
R. Burke McLemore, Jr., Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: August 1, 2012

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
                                  Petitioner :  
  : No. 21 DB 2012  
  :  
  : Atty. Reg. No. 44063  
  :  
v. :  
  :  
  : Atty. Reg. No. 44063  
  :  
JOSEPH A. GEMBALA, III, :  
  :  
  : Respondent : (Philadelphia)

JOINT PETITION IN SUPPORT OF DISCIPLINE  
ON CONSENT UNDER Pa.R.D.E. 215(d)

Petitioner, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Chief Disciplinary Counsel, and Richard Hernandez, Disciplinary Counsel, and by Respondent, Joseph A. Gembala, III, Esquire, who is represented by Samuel C. Stretton, Esquire, file this Joint Petition In Support of Discipline on Consent under Pennsylvania Rule of Disciplinary Enforcement 215(d) ("the Joint Petition"), and respectfully represent that:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law

**FILED**

JUL - 9 2012

Office of the Secretary  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Joseph A. Gembala, III, was born on July 3, 1956, and was admitted to practice law in the Commonwealth on November 6, 1985. According to attorney registration records, Respondent's office is located at 1500 Walnut Street, Suite 2000, Philadelphia, PA 19102.

3. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

4. On February 7, 2012, Petitioner filed a Petition for Discipline against Respondent with the Secretary of the Disciplinary Board ("the Secretary").

5. On March 22, 2012, Respondent, through his counsel, Mr. Stretton, filed an Answer to the Petition for Discipline with the Secretary.

**SPECIFIC FACTUAL ADMISSIONS AND  
RULES OF PROFESSIONAL CONDUCT VIOLATED**

6. Respondent hereby stipulates that the following factual allegations drawn from the Petition for Discipline are true and correct and that he violated the charged Rules of Professional Conduct as set forth herein.

CHARGE

**A. General Allegations Addressing  
Respondent's Relationship with SPS  
and Respondent's Misconduct.**

7. At all times relevant hereto, Respondent was licensed to practice law in New Jersey and Pennsylvania.

a. Respondent maintained a Pennsylvania law office known as Joseph A. Gembala, III, & Associates ("the Gembala firm"), at 1500 Walnut Street, Suite 2000, Philadelphia, PA 19102.

b. Respondent also maintained a New Jersey law office at 208 White Horse Pike, Suite 9, Barrington, NJ 08007.

8. On or about March 19, 2009, Respondent had a meeting with Michael Malone, Christopher Frisch, Ernesto Ranieri, Bruce Friedman, Esquire, and Joseph Bongiovanni, Esquire, at Mr. Bongiovanni's law office in Philadelphia, Pennsylvania.

9. Mr. Malone and Mr. Frisch were the owners of a company named Secure Property Solutions, L.L.C. ("SPS"), which provided loan modification services to the public.

- a. SPS had an office location at 208 White Horse Pike, Suite 12, Barrington, NJ 08007 ("the New Jersey office").
- b. SPS did not employ any attorneys.
- c. Mr. Ranieri was President and COO of SPS.

10. At the meeting, Mr. Malone, Mr. Frisch, and Mr. Ranieri described to Respondent the services that SPS provided to New Jersey residents, their plans to provide services to non-New Jersey residents, and their interest in having Respondent affiliated with SPS because SPS needed to be affiliated with a New Jersey attorney in order to continue to provide loan modification services in New Jersey without being licensed in New Jersey under New Jersey's Debt Adjuster Act ("the Act").

11. By e-mail dated March 19, 2009, sent to Respondent, Mr. Ranieri, *inter alia*:

- a. expressed his pleasure at having met with Respondent earlier that day; and
- b. stated that he would send to Respondent via facsimile transmission documents that SPS was currently using, as well as documents SPS planned to adopt that were used by a New Jersey-based company named "Hope Today

Mitigation Services" ("Hope Today") and that company's attorney, Vito A. Giannola, Esquire.

12. Respondent received this e-mail.

13. On March 19, 2009, Respondent received from Mr. Ranieri:

- a. a fifteen-page facsimile transmission which, *inter alia*, consisted of documents that Hope Today and Mr. Giannola sent to prospective clients seeking loan modification services; and
- b. a thirteen-page facsimile transmission which consisted of sample documents that SPS planned to send to prospective clients seeking loan modification services if Respondent decided to affiliate himself with SPS.

14. Respondent received Mr. Ranieri's facsimile transmissions.

15. Other than the cover page for the thirteen-page facsimile transmission, the sample documents had letterhead that contained the New Jersey office address for SPS, above which appeared "JOSEPH A. GEMBALA, III, ATTORNEY AT LAW."

16. Among the sample documents was a sample cover letter to a prospective client seeking loan modification services that contained the following typed statements:

- a. "Be advised that this law firm along with its modification processing center, Secure Property Solutions, is here to help you with your loan modification, aiding you to stay in your home and keep your dream alive."
- b. "Please know that Secure Property Solutions and our legal staff will be here to help you with any questions regarding your disclosures and/or the modification process."
- c. "ALL CHECKS ARE MADE PAYABLE TO: JOSEPH A. GEMBALA, III." (bold and upper case in original)
- d. "Rest assured that our team has expertise in mortgage and real estate law."
- e. By signing below, you hereby agree to abide by the legal fee retaining agreement."

17. The sample cover letter closed with Respondent's name appearing in typeface.



18. Among the sample documents was a document titled the "WORKING AGREEMENT" ("the sample Agreement"). (uppercase in original)

19. The first sentence of the sample Agreement stated the following:

The undersigned client (referred to as 'Client,' whether one or more) employs Joseph A. Gembala, III Attorney at Law and the Processing Center of Secure Property Solutions, LLC (referred to as 'Loss Mitigation'), to act as Client's agent in assisting client with certain problems resulting from mortgage delinquency and/or foreclosure situations.

20. Paragraph 3 of the sample Agreement stated the following:

**REFUND POLICY:** If no solution what so ever [sic] is reached between Joseph A. Gembala, III, Attorney at Law and the Processing Center of Secure Property Solutions, LLC and the homeowner's mortgage servicer there will be a 100% refund of your deposit minus \$895 attorney retainer fee. If the client is in violation of the Client's Responsibilities During Loss Mitigation Processing the refund will be determined case by case. (bold and underscore in original)

21. Among the sample documents was a document titled "FEE AGREEMENT FOR CASE WORK TO JOSEPH A. GEMBALA III" ("the sample fee agreement"). (bold, uppercase, and underscore in original)

22. By e-mail dated March 20, 2009, sent to Respondent, Mr. Frisch, *inter alia*:

- a. thanked Respondent for meeting with him and Mr. Ranieri;
- b. provided Respondent with the web address for the guidelines issued by State of New Jersey's Department of Banking & Insurance ("the Department") for businesses that wanted to provide loan modification services;
- c. explained that on the web page for the web address he provided to Respondent were other links to "specific statutes to consider"; and
- d. asked that Respondent contact him "with any input."

23. Respondent received this e-mail.

24. The web address Respondent received from Mr. Frisch directed Respondent to a web page that was titled

**"Warning Regarding Mortgage Loan Modification Activity."**

(bold in original)

25. On that web page, the Department, *inter alia*:

- a. explained that loan modification services fall under the category of "debt adjustment" as defined in the Act;
- b. advised that under the Act, a "debt adjuster" must be licensed by the Department;
- c. stated that certain entities were exempt from the licensing requirements under the Act, specifically attorneys licensed to practice law in New Jersey who were not principally engaged as a debt adjuster;
- d. enumerated the risks to consumers from seeking help from entities offering loan modification services that were not licensed or exempted under the Act; and
- e. discussed the risks to businesses conducting loan modification services without a license or exemption, including but not limited to criminal prosecution.

26. On that web page, one could access "**Bulletin 08-27**" titled "Mortgage Loan Modification Activity" ("the Bulletin"), which was issued by the Department on December 19, 2008. (bold in original)

a. The Bulletin advised all New Jersey mortgage licensees and solicitors, debt adjustors, and HUD-approved housing counselors and interested parties that mortgage loan modification activities constituted "debt adjustment" under the Act and that entities providing such services, unless exempt, must be licensed.

27. By e-mail dated March 30, 2009, Mr. Frisch forwarded to Respondent the e-mail Mr. Frisch sent to Respondent on March 20, 2009.

28. Respondent received this e-mail.

29. At a minimum, Respondent reviewed the web page for the Department.

30. On March 30, 2009, Mr. Bongiovanni forwarded to Respondent an e-mail he received from Mr. Malone dated March 24, 2009.

31. In the March 24, 2009 e-mail to Mr. Bongiovanni, Mr. Malone, *inter alia*:

- a. expressed his belief that Mr. Bongiovanni was in possession of the documents that SPS intended to send to prospective clients seeking loan modification services and the documents used by Hope Today;
- b. stated his preference that the name of Mr. Bongiovanni's law firm be placed on the letterhead used by SPS, just as Hope Today had done with Mr. Giannola;
- c. inquired if any information was needed by Mr. Bongiovanni to decide if changes had to be made to the documents SPS intended to use;
- d. made additional inquiries regarding the formalization of a business agreement between Mr. Bongiovanni and SPS, whether Mr. Bongiovanni had the ability to accept payments by credit card and by telephone check payments, the transfer of funds from Mr. Bongiovanni's account to an account maintained by SPS, and whether Mr. Bongiovanni wanted a desk and telephone line at the New Jersey office; and

e. advised that he wanted SPS to begin sending the "new loan modification packages" to their prospects by the beginning of the following week.

32. Respondent received this e-mail.

33. By e-mail dated March 31, 2009, sent to Respondent, Mr. Malone, *inter alia*:

- a. provided Respondent with the contact information for the company that SPS employed to process telephone check payments;
- b. explained the application process; and
- c. asked that Respondent contact him if Respondent needed anything else.

34. Sometime in early April 2009, Respondent decided to affiliate his law firm with SPS.

35. With minor changes, the principal one being the correct use of Respondent's firm's name, Respondent agreed that SPS could send to prospective clients seeking loan modification services the sample documents he received from Mr. Ranieri.

- a. The sample documents became the loan modification paperwork that SPS mailed to

prospective clients who were interested in retaining Respondent and SPS to provide loan modification services.

- b. Any prospective client who wanted to retain Respondent and SPS to provide loan modification services had to complete, sign, date, and return the loan modification paperwork to SPS.

36. Respondent and SPS agreed and arranged that Respondent would receive the fee payments made by clients for loan modifications services.

37. Respondent received a share of the fee payments made by clients for loan modification services.

- a. At the outset of Respondent's affiliation with SPS, he received \$395.00 from the fee payment made by a client for loan modification services.
- b. Respondent's share of the fee payment made by a client for loan modification services decreased during the period that Respondent and SPS were affiliated with one another; Respondent's share decreased from \$395.00 to

\$195.00 and from \$195.00 to \$95.00 and from \$95.00 to zero dollars.

38. Respondent and SPS agreed and arranged that Respondent would receive from SPS the fee payments made by clients for loan modification services, and Respondent subsequently received the fee payments in accordance with that agreement and arrangement.

39. Respondent deposited the fee payments he received from SPS into a bank account, he retained his agreed-upon share of the fee payments, and he transferred the remaining share of the fee payments to a bank account maintained by SPS.

40. During the time period that Respondent was affiliated with SPS, Respondent maintained a website for the Gembala firm.

41. On the Gembala firm's website, Respondent advertised on a webpage those services that the Gembala firm offered to the public.

a. Respondent advertised that he could represent individuals in matters involving, *inter alia*, loan modifications.

42. On the Gembala firm's website, Respondent had a separate webpage titled "LOAN MODIFICATION," that discussed



how Respondent and "his processing center, Secure Property Solutions, LLC, have helped countless homeowners during this difficult time through the process of a loan modification." (uppercase in original)

43. On the webpage titled "LOAN MODIFICATION," Respondent made the following statements:

- a. At Joseph A. Gembala, III & Associates, one of the areas of the law in which we specialize is the representation of homeowners who are behind on their mortgage payments and/or are facing mortgage foreclosure.
- b. Contact Joseph A. Gembala, III & Associates to discuss the possibility of a loan modification. (underscore in original)
- c. **Why you need an experienced real estate attorney:**
  - Bank loss mitigation specialists are skilled negotiators and need to protect the interest of the bank
  - The loan modification is a legal process and, if not handled properly, may make things worse for you in the long run
  - Our attorneys and negotiators have extensive experience

negotiating with banks and they understand state and federal laws as well as lending regulations

- Our attorneys can use the Truth in Lending Act (TILA) and the Real Estate and Settlement Procedures Act (RESPA) to your advantage
- Banks listen to attorneys because they know the law (bold in original)

d. Contact Joseph A. Gembala, III & Associates to stop the foreclosure process and save your home. (underscore in original)

44. During the time period that SPS was affiliated with Respondent, SPS maintained a website.

45. SPS advertised on its website the loan modification services it offered to the public.

46. The SPS website had a separate webpage titled "LOAN MODIFICATION," that discussed how "Secure Property Solutions has been contracted by the Law Firm of Joseph A. Gembala, III & Associates to assist homeowners who are behind on their mortgage payments and/or are facing mortgage foreclosure." (uppercase in original)

47. The following statements appeared on the SPS webpage titled "LOAN MODIFICATION":

- a. Together Joseph A. Gembala, III & Associates and the processing center, Secure Property Solutions, LLC, have helped countless homeowners during this difficult time through the process of a loan modification.
- b. **Why you need an experienced real estate attorney:**
  - Bank loss mitigation specialists are skilled negotiators and need to protect the interest of the bank
  - The loan modification is a legal process and, if not handled properly, may make things worse for you in the long run
  - Our attorneys and negotiators have extensive experience negotiating with banks and they understand state and federal laws as well as lending regulations
  - Our attorneys can use the Truth in Lending Act (TILA) and the Real Estate and Settlement Procedures Act (RESPA) to your advantage
  - Banks listen to attorneys because they

know the law (bold in original)

- c. If you would like to learn more about the Law Firm of Joseph A. Gembala, III & Associates, click **here**. (bold and underscore in original)

48. In the 33 disciplinary matters discussed below, the complainants:

- a. retained Respondent and SPS to provide loan modification services;
- b. completed, signed, dated, and returned loan modification paperwork to SPS that was virtually identical to, or similar to, the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission;
- c. made advance payments towards the loan modification services, either paying the requested loan modification fees in full or in part;
- d. requested information regarding their loan modification cases from Respondent and/or SPS;

- e. ceased receiving communications from Respondent and/or SPS regarding their loan modification cases;
- f. were unable to reach Respondent and/or SPS to ascertain the status of their loan modification cases; and
- g. received no refunds of the advance payments of loan modification fees.

49. By virtue of the sample documents that Respondent agreed that SPS could send to prospective clients seeking loan modification services, the loan modification paperwork that the complainants completed, signed, dated, and returned to SPS, the advance payments that the complainants made to Respondent through SPS for loan modification services, and the advertisements that appeared on the websites for the Gembala firm and SPS, Respondent and each of the individuals identified in Section B, *infra* ("complainants"), entered into an attorney-client relationship.

50. Respondent did not personally provide loan modification services to the complainants.

51. The loan modification paperwork that the complainants received from SPS conveyed the impression that

Respondent was either working with SPS to provide loan modification services, overseeing and supervising the rendering of such services by SPS, or providing loan modification services through the Gembala firm.

52. The loan modification paperwork that the complainants received from SPS contained false and misleading information concerning, but not limited to, the rendering of loan modification services by Respondent or other "legal staff," the supervising by Respondent of loan modification services rendered by SPS, and the refunding of any advance fees paid.

53. The websites maintained by SPS and by Respondent for the Gembala firm conveyed the impression that Respondent and/or other experienced real estate attorneys were either working with SPS to provide loan modification services, overseeing and supervising the rendering of such services by SPS, or providing loan modification services through the Gembala firm.

54. The websites maintained by Respondent for the Gembala firm and by SPS contained false and misleading information concerning, but not limited to, the rendering of loan modification services by Respondent and other purportedly experienced real estate attorneys and the

supervising by Respondent of loan modification services rendered by SPS.

55. Sometime in January 2010, SPS ceased operating and took no further action on any unresolved loan modification cases.

56. By no later than sometime in January 2010, Respondent learned that SPS ceased operating and had abandoned a substantial number of unresolved loan modification cases, including cases involving the complainants.

**B. Specific Allegations of Respondent's Misconduct in Thirty-three Complainant Matters.**

**1. The Manuel Matter**

57. In June 2009, Mr. Michael Manuel and Ms. Dorothy Manuel, who reside in Mayodan, North Carolina, were seeking assistance in reducing their mortgage payments.

58. On or about June 14, 2009, Mr. and Ms. Manuel reviewed the website for SPS.

59. On or about June 18, 2009, Ms. Manuel completed an on-line questionnaire found on the SPS website, in which she provided contact information and requested a reply.

60. On or about June 18, 2009, an SPS employee who identified himself as Mr. Scott Feltman contacted Ms. Manuel by telephone.

a. After Ms. Manuel described her and her husband's efforts to reduce their monthly mortgage payments, Mr. Feltman told Ms. Manuel that he could reduce their monthly mortgage payments if Mr. and Ms. Manuel made an \$895.00 advance payment.

b. Ms. Manuel decided to make the \$895.00 advance payment and provided Mr. Feltman with her debit check card information so that the payment could be processed.

61. On June 18, 2009, the Gembala firm processed an \$895.00 payment from Mr. and Ms. Manuel's State Employees Credit Union account.

62. Respondent received from Mr. and Ms. Manuel the sum of \$895.00.

63. On June 19, 2009, Mr. and Ms. Manuel received a package via Federal Express, which contained loan modification paperwork from SPS that substantially comported with the sample documents Respondent received



from Mr. Ranieri as part of the thirteen-page facsimile transmission.

64. Mr. and Ms. Manuel returned to the New Jersey office the loan modification paperwork that they had completed, signed, and dated.

65. On or about July 6, 2009, an SPS employee who identified himself as Mr. Kevin Malone telephoned Mr. and Ms. Manuel and told them he would be contacting their mortgagee.

66. SPS was unable to modify Mr. and Ms. Manuel's mortgage.

67. Mr. and Ms. Manuel's mortgagee contacted them to advise that it did not modify mortgages and that SPS would not be able to modify their mortgage.

68. In accordance with the loan modification paperwork that Mr. and Ms. Manuel completed, Mr. Feltman contacted Mr. and Ms. Manuel in early October 2009 to advise that they would be issued a refund.

69. Thereafter, Mr. and Ms. Manuel contacted SPS regarding their refund.

70. Sometime in November 2009, Mr. Feltman again contacted Mr. and Ms. Manuel to advise that they would be issued a full refund sometime after November 11, 2009.

71. In late November 2009, Mr. and Ms. Manuel again contacted SPS and advised that they would file a lawsuit unless they received a complete refund.

72. The Gembala firm and SPS failed to provide Mr. and Ms. Manuel with any refund of the advance fee they paid for loan modification services.

73. The Gembala firm and SPS failed to respond to the inquiry made by Mr. and Ms. Manuel regarding their request for a refund.

## 2. The Coleman Matter

74. In or around June 2009, Mr. Patrick Coleman and his wife, who reside in Palmdale, California, were seeking assistance in reducing their mortgage payments.

75. In or around June 2009, Mr. Coleman spoke with "Scott," an employee with SPS, regarding loan modification services.

- a. Mr. Coleman was told, *inter alia*, that a licensed lawyer was responsible for the legal aspects of the loan modification.

76. After Mr. Coleman had several conversations with "Scott," Mr. Coleman and his wife decided to retain SPS to modify their mortgage.

77. In July 2009, Mr. Coleman received loan modification paperwork from SPS that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission.

78. On July 13, 2009, Mr. Coleman completed, signed, and dated the loan modification paperwork.

79. On July 13, 2009, Mr. Coleman returned to the New Jersey office the completed loan modification paperwork.

80. Mr. Coleman authorized three separate electronic withdrawals from his bank account in the amounts of \$595.00, \$300.00, and \$1,100.00 to the Gembala firm in order to satisfy a \$1,995.00 fee for loan modification services.

81. Respondent received Mr. Coleman's three payments totaling \$1,995.00.

82. In October 2009, Mr. Coleman received a letter from his mortgage company stating that he did not qualify for a loan modification.

83. From October 2009 through December 2009, Mr. Coleman had telephone conversations with Ms. Jamie Butler, Mr. Kevin Malone, Ms. Maegan Coleman, and others employed by either the Gembala firm or SPS regarding a refund, as provided for in the Agreement.

84. In January 2010, Mr. Coleman had a telephone conversation with Respondent regarding his refund, during which conversation Respondent:

- a. provided Mr. Coleman with the telephone number of a company in Florida; and
- b. wished him "good luck."

85. In January 2010, Mr. Coleman sent Respondent an e-mail through the website Respondent maintained for the Gembala firm in which Mr. Coleman requested a refund.

86. Respondent received Mr. Coleman's e-mail.

87. Respondent failed to respond to Mr. Coleman's e-mail.

88. In February 2010, Mr. Coleman mailed to Respondent at the Philadelphia office address for the Gembala firm a certified letter, return receipt requested, in which he requested, *inter alia*, a refund or a written response within ten days.

89. Respondent or his staff refused to accept Mr. Coleman's certified letter for delivery.

90. The Gembala firm and SPS abandoned Mr. Coleman's loan modification case.

91. The Gembala firm and SPS failed to provide Mr. Coleman with a refund of the fee he paid for loan

modification services as provided for in the loan modification paperwork.

### 3. The Sutton Matter

92. On or about July 6, 2009, Ms. Demetria Sutton, who resides in St. Paul, Minnesota, contacted SPS through its website and provided her contact information so that she could inquire further about loan modification services.

93. Ms. Sutton received an e-mail reply to her inquiry from Ms. Veronica Morales, an employee of SPS.

94. On or about July 7, 2009, Ms. Veronica Morales, an employee of SPS, placed a telephone call to Ms. Sutton.

95. After speaking with Ms. Morales, Ms. Sutton received a telephone call from Mr. Scott Feltman, who identified himself as Vice-President of Sales for SPS.

96. Mr. Feltman told Ms. Sutton that SPS could provide her with loan modification services and reduce her monthly mortgage payment for the sum of \$1,295.00; however, the fee would be reduced to \$995.00 if Ms. Sutton paid immediately.

97. Ms. Sutton decided to retain the Gembala firm and SPS to provide her with loan modification services.

98. During Ms. Sutton's telephone call with Mr. Feltman, Ms. Sutton decided to make an immediate payment of \$995.00.

a. Ms. Sutton provided Mr. Feltman with the information he needed to allow the Gembala firm to make a telephone withdrawal from Ms. Sutton's checking account with US Bank in the amount of \$995.00.

99. On July 7, 2009, Ms. Sutton paid \$995.00 to the Gembala firm.

100. Respondent received Ms. Sutton's \$995.00 payment.

101. Ms. Sutton received loan modification paperwork from SPS that substantially comported with the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission.

102. Sometime in July 2009, Ms. Sutton sent to the New Jersey office the loan modification paperwork that she had completed, signed, and dated.

103. By e-mail dated October 23, 2009, sent to Ms. Sutton, Jamie Butler, a "Processor" with SPS, *inter alia*:

a. advised Ms. Sutton that she had sent Ms. Sutton's application to America's Servicing Company via facsimile transmission for the

purpose of reapplying for a loan modification; and

b. stated that she would provide Ms. Sutton with weekly updates.

104. From time to time thereafter, Ms. Sutton would telephone SPS inquiring about the status of her loan modification case.

105. The Gembala firm and SPS failed to respond to Ms. Sutton's inquiries.

106. The Gembala firm and SPS failed to pursue Ms. Sutton's loan modification case.

107. The Gembala firm and SPS abandoned Ms. Sutton's loan modification case.

108. The Gembala firm and SPS failed to provide Ms. Sutton with any refund of the advance fee she paid for loan modification services.

#### 4. The Salisbury Matter

109. On July 29, 2009, Mr. John R. Salisbury, who resides in York, Pennsylvania, contacted SPS through its website and provided his contact information so that he could inquire further about loan modification services.

110. On July 29, 2009, Nick Angelastro, an employee of SPS, placed a telephone call to Mr. Salisbury.

111. After speaking with Mr. Salisbury, Mr. Angelastro sent an e-mail to Mr. Salisbury that included as an attachment loan modification paperwork.

112. Mr. Salisbury received loan modification paperwork from Mr. Angelastro that substantially comported with the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission.

113. Mr. Salisbury decided to retain the Gembala firm and SPS to provide him with loan modification services.

114. On July 31, 2009, Mr. Salisbury, via facsimile transmission, sent to the New Jersey office the loan modification paperwork that he had completed, signed, and dated.

115. After SPS received the loan modification paperwork, Mr. Angelastro telephoned Mr. Salisbury and stated that the Gembala firm and SPS required an advance payment of \$2,595.00.

- a. Mr. Angelastro also told Mr. Salisbury that he had spoken with a representative for Mr. Salisbury's mortgage company and that a new interest rate and term would take effect as



soon as the mortgage company processed the paperwork.

116. On August 2, 2009, Mr. Salisbury paid a total of \$2,595.00 to the Gembala firm, which amount was electronically withdrawn from Mr. Salisbury's account.

117. Respondent received from Mr. Salisbury the sum of \$2,595.00.

118. On August 19, 2009, Mr. Salisbury received an e-mail from Mr. Bill Brooks, who identified himself as the SPS contact person for Mr. Salisbury's loan modification case.

119. From time to time thereafter, Mr. Salisbury would send e-mails to SPS inquiring as to when his loan modification would be finalized.

a. Mr. Salisbury was told that SPS was working on his loan modification case and that Mr. Salisbury's mortgagee was responsible for the delay in finalizing his case.

120. In October 2009, Mr. Salisbury complied with a request made by Mr. Brooks for Mr. Salisbury's tax returns, banks statements, and a financial statement.

121. In mid-November 2009, Mr. Salisbury was contacted by Ms. Jessica Vandergrift, who identified herself as the new SPS contact person.

a. Ms. Vandergrift requested that Mr. Salisbury provide her with Mr. Salisbury's tax returns, banks statements, and a financial statement.

b. Mr. Salisbury told Ms. Vandergrift that on two prior occasions, he had provided those documents to Mr. Angelastro and Mr. Brooks.

122. In November 2009, Mr. Salisbury's mortgage company contacted him to inquire if Mr. Salisbury would be interested in the "making home affordable program."

a. Mr. Salisbury decided to apply for the "making home affordable program."

123. The Gembala firm and SPS failed to pursue Mr. Salisbury's loan modification case.

124. The Gembala firm and SPS abandoned Mr. Salisbury's loan modification case.

125. Since January 2010, Mr. Salisbury has been unable to contact anyone at SPS.

126. The Gembala firm and SPS failed to provide Mr. Salisbury with any refund of the advance fee he paid for loan modification services.

5. The Puhl Matter

127. In July 2009, Ms. Lisa M. Puhl, who resides in Portsmouth, Virginia, was seeking assistance in reducing her mortgage payments.

128. In July 2009, Ms. Puhl communicated with Mr. Skip Weakland, an employee with SPS, regarding loan modification services.

129. Ms. Puhl was told that for a fee of \$895.00, she could receive loan modification services.

130. After Ms. Puhl had several communications with Mr. Weakland, Ms. Puhl decided to retain SPS to modify her mortgage.

131. In an attachment to an e-mail dated July 16, 2009, Ms. Puhl received loan modification paperwork from Ms. Washington that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission.

132. On August 2, Ms. Puhl completed, signed, and dated the loan modification paperwork.

133. Among the loan modification paperwork was a document titled "CHECK BY PHONE or CREDIT CARD" ("the Credit Card agreement"). (bold, underscore, and upper case in original).

134. By completing the Credit Card agreement, Ms. Puhl authorized two separate payments in the amounts of \$595.00 and \$300.00 to the Gembala firm in order to satisfy the \$895.00 fee.

135. Respondent received Ms. Puhl's two debit payments totaling \$895.00 from Ms. Puhl's checking account.

136. In August 2009, Ms. Puhl returned to the New Jersey office the completed loan modification paperwork.

137. By e-mail dated December 8, 2009, sent to Ms. Puhl by Liz Monaghan, who identified herself as a Senior Negotiator with the Gembala firm, Ms. Monaghan, *inter alia*, advised Ms. Puhl that Bank of America had denied Ms. Puhl a loan modification.

138. By letter dated December 27, 2009, sent to Respondent at the New Jersey office address and the Philadelphia office address for the Gembala firm, Ms. Puhl, *inter alia*:

- a. explained that she signed a loan modification agreement "with your

organization" and paid Respondent "\$895.00 in fees";

- b. stated that she kept up her responsibility to maintain communication with SPS during the loan modification process, but her "Loan Negotiator" would not answer any of Ms. Puhl's e-mails or voice mail messages;
- c. advised that Ms. Liz Monaghan left her a message on December 8, 2009, indicating that Ms. Puhl's loan modification was denied by Bank of America;
- d. detailed her subsequent efforts to communicate with Ms. Monaghan by leaving voice mail messages and sending e-mails, but no responses were forthcoming from Ms. Monaghan; and
- e. requested a refund in accordance with the refund policy set forth in the Agreement or a reassignment of her file to another loan negotiator.

139. Respondent received this letter.

140. Respondent failed to respond to this letter.

141. The Gembala firm and SPS abandoned Ms. Puhl's loan modification case.

142. The Gembala firm and SPS failed to provide Ms. Puhl with a refund of the fee she paid for loan modification services.

#### 6. The Cox Matter

143. In July 2009, Mr. Jeff Cox and Ms. Karen Cox, who reside in Taylorsville, Kentucky, were seeking assistance in reducing their mortgage payments.

144. Mr. and Ms. Cox decided to retain the Gembala firm and SPS to provide them with loan modification services.

145. Mr. and Ms. Cox received loan modification paperwork from SPS that substantially comported with the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission.

146. SPS personnel asked Mr. and Ms. Cox to make an advance payment of \$1,295.00 towards the loan modification services.

147. Mr. and Ms. Cox paid a total of \$1,295.00 to the Gembala firm.

- a. Mr. and Ms. Cox paid to the Gembala firm \$595.00 on August 3, 2009, \$400.00 on August

17, 2009, and \$400.00 on September 14, 2009, which amounts were electronically withdrawn from their checking account.

b. Mr. and Ms. Cox received a \$100.00 refund because the September 14, 2009 withdrawal was \$400.00, as opposed to the agreed upon amount of \$300.00.

148. Respondent received from Mr. and Ms. Cox the sum of \$1,295.00.

149. Sometime in August 2009, Mr. and Ms. Cox returned to the New Jersey office the loan modification paperwork that they had completed, signed, and dated.

150. The Gembala firm and SPS failed to pursue Mr. and Ms. Cox's loan modification case.

151. The Gembala firm and SPS abandoned Mr. and Ms. Cox's loan modification case.

152. In accordance with the loan modification paperwork Mr. and Ms. Cox received from the Gembala firm and SPS, Mr. and Ms. Cox, in January 2010, requested a refund of the \$1,295.00 they paid the Gembala firm for loan modification services.

153. The Gembala firm and SPS failed to provide Mr. and Ms. Cox with any refund of the advance fee they paid for loan modification services.

154. The Gembala firm and SPS failed to respond to the inquiries made by Mr. and Ms. Cox regarding their request for a refund.

#### 7. The Johnson Matter

155. In or about July 2009, Mr. Troy Johnson, who resides in Maplewood, Minnesota, was seeking assistance in reducing his mortgage payments for a property located at 984 Albemarle Street, St. Paul, Minnesota ("the Albemarle property").

156. Mr. Johnson decided to retain the Gembala firm and SPS to provide him with loan modification services.

157. Mr. Johnson received loan modification paperwork from the New Jersey office of SPS that substantially comported with the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission.

158. SPS personnel asked Mr. Johnson to make an advance payment of \$2,395.00 towards the loan modification services.



159. In July 2009, Mr. Johnson paid a total of \$2,395.00 to the Gembala firm in three separate telephone withdrawals that were made from Mr. Johnson's checking account.

160. Respondent received from Mr. Johnson a total of \$2,395.00.

161. Sometime between July 2009 and September 2009, Mr. Johnson returned to the New Jersey office the loan modification paperwork that he had completed, signed, and dated, as well as other documentation needed to process Mr. Johnson's loan modification case.

162. Periodically, Mr. Johnson received notices and telephone calls advising him that foreclosure proceedings were being pursued against the Albemarle property.

163. Mr. Johnson reported to SPS that he was receiving notices and telephone calls advising him that foreclosure proceedings were being pursued against the Albemarle property.

164. Mr. Johnson was told that the foreclosure proceedings had been stayed and not to worry.

165. Sometime in January 2010, Mr. Johnson contacted SPS via telephone to obtain information regarding his loan modification case.

166. Mr. Johnson did not receive any response to his inquiries from either the Gembala firm or SPS.

167. The Gembala firm and SPS failed to pursue Mr. Johnson's loan modification case.

168. The Gembala firm and SPS abandoned Mr. Johnson's loan modification case.

169. The Gembala firm and SPS failed to provide Mr. Johnson with any refund of the advance fee he paid for loan modification services.

#### 8. The Thomas Matter

170. In September 2009, Mr. Kent Thomas and Ms. Carlotta Thomas, who reside in South Holland, Illinois, were seeking assistance in reducing their mortgage payments.

171. Mr. and Ms. Thomas decided to retain the Gembala firm and SPS to provide them with loan modification services.

172. Mr. and Ms. Thomas received loan modification paperwork from SPS that substantially comported with the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission.

173. SPS personnel asked Mr. and Ms. Thomas to make an advance payment of \$895.00 towards the loan modification services.

174. In September 2009, Mr. and Ms. Thomas paid a total of \$895.00 to the Gembala firm.

175. Respondent received from Mr. and Ms. Thomas the sum of \$895.00.

176. Sometime in September 2009, Mr. and Ms. Thomas returned to the New Jersey office the loan modification paperwork that they had completed, signed, and dated.

177. The Gembala firm and SPS failed to pursue Mr. and Ms. Thomas's loan modification case.

178. The Gembala firm and SPS abandoned Mr. and Ms. Thomas's loan modification case.

179. In accordance with the loan modification paperwork Mr. and Ms. Thomas received from the Gembala firm and SPS, Mr. and Ms. Thomas requested a refund of the \$895.00 they paid the Gembala firm for loan modification services.

180. The Gembala firm and SPS failed to provide Mr. and Ms. Thomas with any refund of the advance fee they paid for loan modification services.

181. The Gembala firm and SPS failed to respond to the inquiries made by Mr. and Ms. Thomas regarding their request for a refund.

9. Johnson Matter

182. In and around October 2009, Ms. Donyale Luna Johnson and her husband, who reside in Rochester, New York, were seeking assistance in reducing their mortgage payments.

183. In or around 2009, Ms. Johnson spoke with Ms. Sheyda Zaman, an employee with SPS and the Gembala firm, regarding loan modification services.

184. Ms. Johnson and her husband decided to retain SPS and the Gembala firm to modify their mortgage.

185. Ms. Johnson and her husband paid the Gembala firm the sum of \$895.00 for loan modification services.

186. Respondent received the \$895.00 payment.

187. Ms. Johnson and her husband received loan modification paperwork that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission.

188. Ms. Johnson and her husband completed, signed, and dated the loan modification paperwork, which was returned to the New Jersey office.

189. Sometime thereafter, Ms. Johnson telephoned the New Jersey office to ascertain the status of the loan modification case.

190. Ms. Johnson was unable to reach anyone by telephone because the telephone numbers for the New Jersey office had been disconnected.

191. Ms. Johnson telephoned the Gembala firm and left messages.

192. Respondent and the employees of the Gembala firm failed to return Ms. Johnson's messages.

193. The Gembala firm and SPS abandoned Ms. Johnson's loan modification case.

194. The Gembala firm and SPS failed to provide Ms. Johnson with a refund of the fee she paid for loan modification services.

#### 10. The Burton Matter

195. Mr. Brian Burton, who resides in Hobart, Indiana, was seeking assistance in reducing his mortgage payments.

196. Mr. Burton decided to retain the Gembala firm and SPS to provide him with loan modification services.

197. Mr. Burton received loan modification paperwork from the New Jersey office of SPS that substantially comported with the sample documents Respondent received

from Mr. Ranieri as part of the thirteen-page facsimile transmission.

198. SPS personnel asked Mr. Burton to make an advance payment of \$1,295.00 towards the loan modification services.

199. Mr. Burton paid a total of \$1,295.00 to the Gembala firm.

200. Respondent received from Mr. Burton a total of \$1,295.00.

201. Mr. Burton returned to the New Jersey office the loan modification paperwork that he had completed, signed, and dated.

202. From time to time, Mr. Burton would contact SPS and be told by an employee to call in two weeks to check on the status of his loan modification case.

203. Mr. Burton discovered from his mortgagee that he did not qualify for a loan modification.

204. In accordance with the loan modification paperwork, Mr. Burton communicated to the New Jersey office that he wanted a refund of the \$1,295.00 he paid towards loan modification services.

205. The Gembala firm and SPS failed to respond to the requests made by Mr. Burton for a refund.

206. The Gembala firm and SPS failed to provide Mr. Burton with any refund of the advance fee he paid for loan modification services.

207. The Gembala firm and SPS failed to advise Mr. Burton that he was not eligible for a loan modification.

#### **11. The Hannah Matter**

208. In August 2009, Mr. Alan W. Hannah, who resides in Ormond Beach, Florida, was seeking assistance in reducing his mortgage payments.

209. In August 2009, Mr. Hannah contacted [www.makinghomeaffordable.com](http://www.makinghomeaffordable.com) and was referred to the Gembala firm.

210. In August 2009, Mr. Hannah spoke with Robert Delguerico, an employee with SPS, regarding loan modification services.

211. Mr. Delguerico told Mr. Hannah that for an advance payment of \$595.00, which was payable to the Gembala firm, the Gembala firm would reduce his monthly mortgage payment to Bank of America.

212. Mr. Hannah decided to retain the Gembala firm to modify his mortgage.

213. By e-mail dated August 13, 2009, Mr. Delguerico sent Mr. Hannah loan modification paperwork via an

attachment from the New Jersey office of SPS that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

214. On August 13, 2009, Mr. Hannah authorized an electronic withdrawal from his checking amount in the amount of \$595.00, which was made payable to the "Law Firm of Josphe[sic] A. Gembala."

215. On or about August 17, 2009, Respondent received Mr. Hannah's payment.

216. On September 23, 2009, Mr. Hannah returned to the New Jersey office, via facsimile transmission, the loan modification paperwork that he had completed, signed, and dated.

217. From September 2009 through March 2010, Mr. Hannah telephoned SPS bi-weekly to ascertain the status of his loan modification case.

218. The Gembala firm and SPS failed to respond to Mr. Hannah's inquiries.

219. The Gembala firm and SPS failed to pursue Mr. Hannah's loan modification case.



220. The Gembala firm and SPS abandoned Mr. Hannah's loan modification case.

221. The Gembala firm and SPS failed to provide Mr. Hannah with any refund of the advance fee he paid for loan modification services.

## 12. The Hilferty Matter

222. In September 2009, Mr. Michael P. Hilferty, Sr., who resides in Philadelphia, Pennsylvania, was seeking assistance in reducing his mortgage payments.

223. In September 2009, Mr. Hilferty decided to retain the Gembala firm to modify his mortgage.

224. Mr. Hilferty received loan modification paperwork from the New Jersey office that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

225. On September 8, 2009, Mr. Hilferty, *inter alia*, completed, signed, and dated the loan modification paperwork.

226. In September 2009, Mr. Hilferty returned to the New Jersey office the completed loan modification paperwork.

227. From September 2009 through October 2009, Mr. Hilferty made several separate payments to the Gembala firm that Respondent received, which payments totaled \$1,100.00.

228. Thereafter, for the next five months, Mr. Hilferty would receive telephone calls from individuals who identified themselves as employees of the Gembala firm, during which telephone calls he was:

- a. requested to supply additional paperwork;  
and
- b. advised the loan modification process was progressing well.

229. In February 2010, Mr. Hilferty no longer received telephone calls from employees of the Gembala firm.

230. Commencing in February 2010 and continuing for some time thereafter, Mr. Hilferty telephoned the New Jersey office and left voicemail messages inquiring as to the status of his loan modification case.

231. Mr. Hilferty received no responses to his voicemail messages.

232. By letter dated February 19, 2010, sent to Respondent via facsimile transmission and regular mail at the Philadelphia address for the Gembala firm, Mr.

Hilferty's son, Michael Patrick Hilferty, Esquire ("Mr. M.P. Hilferty"), *inter alia*:

- a. advised Respondent that Mr. Hilferty, his father, had retained Respondent's office to handle a loan modification case;
- b. stated that for over a month Mr. Hilferty had been unable to contact anyone by telephone regarding the loan modification case; and
- c. asked that Respondent immediately contact him, as well as Mr. Hilferty, regarding Mr. Hilferty's loan modification case.

233. Respondent received this letter.

234. Respondent failed to respond to this letter.

235. The Gembala firm and SPS abandoned Mr. Hilferty's loan modification case.

236. The Gembala firm and SPS failed to provide Mr. Hilferty with a refund of the fee he paid for loan modification services.

### 13. The Knight Matter

237. In September 2009, Ms. Debra Knight, who resides in Philadelphia, Pennsylvania, was seeking assistance in reducing her mortgage payments.

238. In September 2009, Ms. Knight was referred to the Gembala firm.

239. Ms. Knight decided to retain the Gembala firm to provide her with loan modification services.

240. Ms. Knight received loan modification paperwork from the New Jersey office that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

241. Ms. Knight was requested to make an advance payment of \$595.00 towards the loan modification services.

242. On September 10, 2009, Ms. Knight used her debit check card to pay the sum of \$595.00 to the Gembala firm.

243. Respondent received Ms. Knight's payment.

244. On or about September 21, 2009, Ms. Knight returned to the New Jersey office the loan modification paperwork that she had completed, signed, and dated.

245. After three months, Ms. Knight received no further communications from any employees of SPS or of the Gembala firm regarding her loan modification case.

246. The Gembala firm and SPS abandoned Ms. Knight's loan modification case.

247. The Gembala firm and SPS failed to provide Ms. Knight with a refund of the advance fee she paid for loan modification services.

14. The Von Alt Matter

248. In September 2009, Mr. William A. Von Alt, who resides in Seven Hills, Ohio, was seeking assistance in reducing his mortgage payments.

249. On or about September 15, 2009, Mr. Von Alt had a telephone conversation with Mr. Ray Wielechowski, an employee with SPS, regarding loan modification services.

250. Following Mr. Von Alt's telephone conversation with Mr. Wielechowski, Mr. Wielechowski sent an e-mail to Mr. Von Alt dated September 15, 2009.

251. In that e-mail, Mr. Wielechowski, *inter alia*:

- a. identified himself as a "financial consultant" with SPS;
- b. stated that "we first and foremost represent and are contracted by the Law Office of: Joseph A. Gembala, III & Associates";
- c. advised that there is a "100% guarantee that our clients will receive the financial relief they are currently seeking"; and

d. provided the website links for the home pages for SPS and the Gembala firm.

252. Mr. Von Alt decided to retain SPS and the Gembala firm to modify his mortgage.

253. Mr. Von Alt was advised that the fee for the loan modification services was \$1,495.00.

254. On September 15, 2009, Mr. Von Alt used his credit card to pay the sum of \$1,495.00 to the Gembala firm.

255. Respondent received the \$1,495.00 that Mr. Von Alt paid for loan modification services.

256. Shortly thereafter, Mr. Von Alt received from the New Jersey office loan modification paperwork that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

257. On September 20, 2009, Mr. Von Alt completed, signed, and dated the loan modification paperwork.

258. On or about September 20, 2009, Mr. Von Alt returned to the New Jersey office the completed loan modification paperwork.

259. By e-mail dated September 25, 2009, Ms. Patti Dickinson advised Mr. Von Alt that she would be the SPS "processor" for Mr. Von Alt's loan modification.

- a. At the close of the e-mail, SPS and the Gembala firm were identified, along with the New Jersey office address for SPS and the Philadelphia office address for the Gembala firm.

260. From January 2010 through early February 2010, Mr. Von Alt telephoned the New Jersey office, the Philadelphia office for the Gembala firm, Respondent's residence, Respondent's cell phone numbers, and Respondent's mother's residence to ascertain the status of his loan modification case.

261. Respondent failed to respond to Mr. Von Alt's messages.

262. On February 12, 2010, Mr. Von Alt telephoned Respondent and:

- a. explained to Respondent that he had been trying to contact him for over a month; and
- b. requested a refund of the fee.

263. Respondent told Mr. Von Alt that:

- a. the partners that Respondent was working with at SPS absconded with all of the clients' monies and paperwork;
- b. he could not assist Mr. Von Alt; and
- c. he should contact Mr. Marty Rothenburg at (954)391-6902, as Mr. Rothenberg would assist Mr. Von Alt with his loan modification.

264. Mr. Von Alt telephoned Mr. Rothenburg; Mr. Rothenburg told Mr. Von Alt he could assist him for the sum of \$595.00.

265. The Gembala firm and SPS abandoned Mr. Von Alt's loan modification case.

266. The Gembala firm and SPS failed to provide Mr. Von Alt with a refund of the fee he paid for loan modification services.

#### **15. The Garcia Matter**

267. In September 2009, Mr. Micah Garcia, who resides in Caledonia, Michigan, was seeking assistance in reducing his mortgage payments.

268. Mr. Garcia decided to retain the Gembala firm and SPS to provide him with loan modification services.



- a. Before Mr. Garcia retained the Gembala firm and SPS, he spoke to Respondent on the telephone to confirm that Respondent was affiliated with SPS and that loan modification services offered by the Gembala firm and SPS were legitimate.
- b. Respondent confirmed his affiliation with SPS and that they provided loan modification services.

269. In September 2009, Mr. Garcia received loan modification paperwork from the New Jersey office of SPS that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

270. SPS personnel asked Mr. Garcia to make an advance payment of monies towards the loan modification services.

271. Mr. Garcia paid a total of \$2,525.92 to the Gembala firm.

- a. Mr. Garcia authorized the Gembala firm to make withdrawals from his checking account, beginning with an initial withdrawal of \$595.00 on September 23, 2009, and six

successive monthly withdrawals, in the amount of \$321.82 each, to take place on the 23<sup>rd</sup> day of the month.

272. Respondent received from Mr. Garcia a total of \$2,525.92.

273. Mr. Garcia returned to the New Jersey office the loan modification paperwork that he had completed, signed, and dated.

274. Mr. Garcia contacted SPS via telephone and e-mail to request that monies no longer be withdrawn from his account and stated that he would pay the remaining balance when his loan modification case had successfully concluded.

a. An employee with SPS told Mr. Garcia that monies would no longer be withdrawn from his account and that he would be billed after his loan modification had successfully concluded.

275. Despite assurances from the SPS employee to the contrary, the Gembala firm continued to make periodic withdrawals from Mr. Garcia's account.

276. Between September 28, 2009 and December 22, 2009, several e-mails were exchanged between Mr. Garcia and

Cristal Miranda, a Senior Loan Processor with SPS, regarding Mr. Garcia's loan modification case.

277. Commencing in January 2010, Mr. Garcia attempted to contact SPS by telephone and e-mail to ascertain the status of his loan modification case and to request a refund of the advance fee he paid for loan modification services.

278. The Gembala firm and SPS failed to respond to Mr. Garcia's inquiries.

279. The Gembala firm and SPS failed to pursue Mr. Garcia's loan modification case.

280. The Gembala firm and SPS abandoned Mr. Garcia's loan modification case.

281. The Gembala firm and SPS failed to provide Mr. Garcia with any refund of the advance fee he paid for loan modification services.

#### **16. The Guined Matter**

282. In September 2009, Mr. Eldon Guined and his wife, Ms. Donalyn Guined, who reside in Las Vegas, Nevada, were seeking assistance in reducing their mortgage payments.

283. Mr. and Ms. Guined decided to retain the Gembala firm and SPS to provide them with loan modification services.

284. Mr. Raymond Wielechowski, an employee with SPS, asked Mr. and Ms. Guined to make an advance payment of \$2,245.00 towards the loan modification services.

285. On September 24, 2009, Mr. and Ms. Guined paid a total of \$2,245.00 to the Gembala firm, which amount was electronically withdrawn from their checking account.

286. Respondent received from Mr. Guined the \$2,245.00 payment.

287. Mr. and Ms. Guined received loan modification paperwork from the New Jersey office of SPS that substantially comported with the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

288. On October 2, 2009, Mr. and Ms. Guined returned to the New Jersey office the loan modification paperwork that they had completed, signed, and dated.

289. Over the next three months, Mr. Guined contacted SPS via telephone and e-mail to obtain information regarding his loan modification case.

290. Mr. Guined did not receive any response to his inquiries from either the Gembala firm or SPS.

291. The Gembala firm and SPS failed to pursue Mr. Guined's loan modification case.

292. The Gembala firm and SPS abandoned Mr. Guined's loan modification case.

293. The Gembala firm and SPS failed to provide Mr. Guined with any refund of the advance fee he paid for loan modification services.

#### 17. The Reese Matter

294. In October 2009, Mr. Bryan Reese, who resides in Occoquan, Virginia, was seeking assistance in reducing his mortgage payments.

295. Mr. Reese decided to retain the Gembala firm and SPS to provide him with loan modification services.

296. Mr. Reese received loan modification paperwork from the New Jersey office of SPS that substantially comported with the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

297. SPS personnel asked Mr. Reese to make an advance payment of \$2,495.00 towards the loan modification services.

298. On October 16, 2009, Mr. Reese paid \$2,495.00 to the Gembala firm using his American Express card.

299. Respondent received from Mr. Reese the \$2,495.00 payment.

300. On or about November 1, 2009, Mr. Reese returned to the New Jersey office the loan modification paperwork that he had completed, signed, and dated.

301. Between October 8, 2009 and December 18, 2009, several e-mails were exchanged between Mr. Reese and Andy Korman, a Property Consultant with SPS, and Stacey Ventrone, a Loan Negotiator with SPS, regarding the loan modification process, the loan modification paperwork, and Mr. Reese's loan modification case.

302. From January 2010 through March 2010, Mr. Reese contacted SPS via telephone and e-mail to discuss his loan modification case.

303. Mr. Reese did not receive any response to his inquiries from either the Gembala firm or SPS.

304. The Gembala firm and SPS failed to pursue Mr. Reese's loan modification case.

305. The Gembala firm and SPS abandoned Mr. Reese's loan modification case.

306. The Gembala firm and SPS failed to provide Mr. Reese with any refund of the advance fee he paid for loan modification services.

18. The Portier Matter

307. In October 2009, Mr. Carlton Portier, who resided in Hacienda Heights, California, was seeking assistance in reducing his mortgage payments.

308. Mr. Portier decided to retain the Gembala firm to provide him with loan modification services.

309. Mr. Portier received loan modification paperwork from the New Jersey office of SPS that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

310. SPS personnel asked Mr. Portier to make an advance payment of \$1,000.00 towards the loan modification services, with three additional payments of \$500.00 due on November 18, 2009, December 16, 2009, and January 18, 2010.

311. On October 27, 2009, Mr. Portier paid \$1,000.00 to the Gembala firm.

312. Respondent received from Mr. Portier the \$1,000.00 payment.

313. On or about October 26, 2009, Mr. Portier returned to the New Jersey office the loan modification paperwork that he had completed, signed, and dated.

314. On or about November 18, 2009, Mr. Portier made the first \$500.00 payment to the Gembala firm.

315. On or about November 23, 2009, Respondent received from Mr. Portier the \$500.00 payment.

316. On November 25, 2009, Mr. Portier decided to terminate the services of the Gembala firm because no progress had been made on his loan modification case.

317. On November 25, 2009, Mr. Portier communicated to the New Jersey office that he wanted a refund of the \$1,500.00 he paid towards loan modification services.

318. The Gembala firm and SPS failed to respond to the request made by Mr. Portier for a refund.

319. On March 15, 2010, Mr. Portier contacted Respondent on Respondent's cell phone and requested a refund from Respondent.

320. The Gembala firm and SPS failed to provide Mr. Portier with any refund of the advance fee he paid for loan modification services.

321. The Gembala firm and SPS failed to pursue Mr. Portier's loan modification case.



322. The Gembala firm and SPS abandoned Mr. Portier's loan modification case.

19. The Hoyt Matter

323. In October 2009, Ms. Lori A. Hoyt, who resides in Gold Canyon, Arizona, was seeking assistance in reducing her mortgage payments.

324. On October 23, 2009, Ms. Hoyt contacted SPS and spoke with Ms. Jackie Saxenmeyer.

a. Ms. Hoyt was told that for a fee of \$1,295.00. which was payable to Respondent, SPS could guarantee that it would reduce her monthly mortgage payment.

b. Ms. Hoyt decided to retain SPS to modify her mortgage.

325. In October 2009, Ms. Hoyt received loan modification paperwork from the New Jersey office that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

326. On October 26, 2009, via facsimile transmission, Ms. Hoyt returned to the New Jersey office the loan

modification paperwork that she had completed, signed, and dated.

327. On October 26, 2009, Ms. Hoyt used her debit check card to pay the sum of \$1,295.00 to the Gembala firm.

328. Respondent received Ms. Hoyt's payment.

329. From November 2009 through January 13, 2010, Ms. Hoyt would either telephone or e-mail Ms. Crystal Miranda, the assigned SPS loan processor, to ascertain the status of her case.

330. Ms. Hoyt received no response to her communications from Ms. Miranda.

331. By letter dated January 14, 2010, sent to Respondent via e-mail and facsimile transmission at Respondent's Philadelphia office location, Ms. Hoyt, *inter alia*:

- a. explained how she came to retain the Gembala firm and SPS to handle her loan modification;
- b. stated that she had "almost no correspondence" from either Ms. Miranda or anyone else associated with the Gembala firm and SPS;

- c. detailed her efforts to obtain information regarding her loan modification;
- d. noted that on January 13, 2010, she spoke on the telephone with a female employee of the Gembala firm who was unfamiliar with Ms. Hoyt's file, but who agreed to have a supervisor immediately contact Ms. Hoyt;
- e. stated that she was not contacted by a supervisor; and
- f. requested a "full refund of the \$1,295.00 retainer fee immediately" and a response by January 15, 2010.

332. Respondent received this letter.

333. Respondent failed to respond to this letter.

334. The Gembala firm and SPS abandoned Ms. Hoyt's loan modification case.

335. The Gembala firm and SPS failed to provide Ms. Hoyt with a refund of the advance fee she paid for loan modification services.

## 20. The Noel Matter

336. In October 2009, Mr. Allan Noel, who resides in St. Paul, Minnesota, was seeking assistance in reducing his mortgage payments.

337. Mr. Noel was referred to SPS and the Gembala firm by Mr. Pierre L. Rhodes, President of New Approach, L.L.C. ("New Approach").

- a. In or about October 2009, Mr. Rhodes and Mr. James Milsap incorporated New Approach for the purpose of soliciting loan modification clients in Minnesota; New Approach agreed to refer its loan modification clients to SPS and the Gembala firm.
- b. In November 2009, New Approach and SPS entered into a written agreement whereby New Approach would receive a portion of the fees paid by those loan modification clients New Approach referred to SPS and the Gembala firm.

338. Respondent knew that SPS had referral agreements with New Approach and other entities.

339. At no time did Respondent oppose SPS entering into these referral agreements.

340. Mr. Noel decided to retain the Gembala firm and SPS to provide him with loan modification services.

341. Mr. Noel received loan modification paperwork from the New Jersey office of SPS that was similar to the

sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

342. Sometime in November 2009, Mr. Noel returned to the New Jersey office the loan modification paperwork that he had completed, signed, and dated.

343. Mr. Noel agreed to make an advance payment of \$1,200.00 towards the loan modification services by authorizing three telephone withdrawals from his checking account with TCF Bank.

344. Over the course of December 2009 and January 2010, the Gembala firm processed three telephone withdrawals from Mr. Noel's checking account that totaled \$1,200.00.

345. Respondent received from Mr. Noel a total of \$1,200.00.

346. From time to time thereafter, Mr. Rhodes and Mr. Milsap, on behalf of Mr. Noel, telephoned the Gembala firm and SPS inquiring about the status of Mr. Noel's loan modification case.

347. The Gembala firm and SPS failed to respond to Mr. Rhodes's and Mr. Milsap's inquiries.

348. The Gembala firm and SPS failed to pursue Mr. Noel's loan modification case.

349. The Gembala firm and SPS abandoned Mr. Noel's loan modification case.

350. The Gembala firm and SPS failed to provide Mr. Noel with any refund of the advance fee he paid for loan modification services.

## 21. The LaRusso Matter

351. In November 2009, Mr. Martin LaRusso, who resides in Bushkill, Pennsylvania, was seeking assistance in reducing his mortgage payments.

352. Mr. LaRusso contacted SPS and spoke on the telephone with Jessica Vandergrift, an SPS employee.

a. Ms. Vandergrift stated that the Gembala firm could reduce Mr. LaRusso's monthly mortgage payment.

353. After Mr. LaRusso verified that Respondent was an attorney, he decided to retain the Gembala firm to provide him with loan modification services.

354. Sometime in November 2009, Ms. Vandergrift sent to Mr. LaRusso via facsimile transmission loan modification paperwork.

- a. Mr. LaRusso received loan modification paperwork from Ms. Vandergrift that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

355. Ms. Vandergrift asked Mr. LaRusso to make an advance payment of \$1,195.00 towards the loan modification services.

- a. Mr. LaRusso agreed to make three separate payments to the Gembala firm over a period of three months by direct telephone withdrawals being made from his checking account.

356. Mr. LaRusso paid a total of \$1,195.00 to the Gembala firm.

- a. Mr. LaRusso paid to the Gembala firm \$400.00 on November 12, 2009, \$400.00 on December 1, 2009, and \$395.00 on January 12, 2010.

357. Respondent received from Mr. LaRusso a total of \$1,195.00.

358. Mr. LaRusso returned to the New Jersey office the loan modification paperwork that he had completed, signed, and dated.

359. Sometime thereafter, Mr. LaRusso contacted the New Jersey office and the Gembala firm via telephone and e-mail regarding his loan modification case.

a. Mr. LaRusso did not receive any response to his inquiries regarding his loan modification case.

360. The Gembala firm and SPS failed to pursue Mr. LaRusso's loan modification case.

361. The Gembala firm and SPS abandoned Mr. LaRusso's loan modification case.

362. The Gembala firm and SPS failed to provide Mr. LaRusso with any refund of the advance fee he paid for loan modification services.

363. Mr. LaRusso telephoned the Gembala firm to request that Respondent issue a refund.

364. Respondent failed to return Mr. LaRusso's messages.



## 22. The Daley Matter

365. In November 2009, Mr. Thomas M. Daley, who resides in Fort Wayne, Indiana, was seeking assistance in reducing his mortgage payments.

366. On November 1, 2009, Mr. Daley contacted [www.makinghomeaffordable.com](http://www.makinghomeaffordable.com) and explained that he was seeking assistance in reducing his mortgage payments.

367. On November 2, 2009, Mr. Daley was contacted by a representative from SPS, who discussed how the Gembala firm could assist Mr. Daley by providing him with loan modification services.

368. From November 3, 2009 through November 15, 2009, Mr. Daley had several telephone conversations with several individuals who identified themselves as representatives from the Gembala firm.

369. During this time frame, Mr. Daley:

- a. received from the New Jersey office of the Gembala firm loan modification paperwork; and
- b. was advised that he would have to make a down payment of \$895.00 when he returned the completed loan modification paperwork.

370. The loan modification paperwork that Mr. Daley received from the New Jersey office of the Gembala firm was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

371. On November 16, 2009, Mr. Daley completed, signed, dated, and returned the loan modification paperwork that he received.

372. On November 16, 2009, Mr. Daley submitted his credit card information with the loan modification paperwork in order to make the advance payment of \$895.00.

373. Respondent received Mr. Daley's \$895.00 credit card payment.

374. By e-mail dated November 20, 2009, and titled "Update from Gembala Law," Josh Kelly, a "processor," contacted Mr. Daley and, *inter alia*, requested additional information/documentation from him.

- a. At the close of Mr. Kelly's e-mail, appearing underneath his name, was "The Law Office of JOSEPH A. GEMBALA III & Associates," followed by the New Jersey office address for the Gembala firm.

375. Mr. Daley provided the additional information/documentation requested by Mr. Kelly.

376. By e-mail dated December 8, 2009, and titled "Loan Modification," Jessica Vandergrift, a "processor" who identified herself as with the Gembala firm, contacted Mr. Daley and, *inter alia*, requested additional information/documentation from him.

377. Mr. Daley provided the additional information/documentation requested by Ms. Vandergrift.

378. On or about December 14, 2009, Respondent received a \$500.00 electronic withdrawal from Mr. Daley's checking account with JP Morgan Chase Bank.

379. On or about December 21, 2009, Respondent received a \$300.00 electronic withdrawal from Mr. Daley's checking account with JP Morgan Chase Bank.

380. On or about December 28, 2009, Respondent received a \$300.00 electronic withdrawal from Mr. Daley's checking account with JP Morgan Chase Bank.

381. Respondent received from Mr. Daley a total of \$1,995.00 as payment for loan modification services.

382. On January 15, 2010, Mr. Daley called the New Jersey office for the Gembala firm and learned that his file had been turned over to "Ben."

a. During this telephone call, Mr. Daley was told that "Ben" would call Mr. Daley back in 5 minutes.

383. No one returned Mr. Daley's telephone call.

384. On January 27, 2010, Mr. Daley telephoned the Philadelphia office for the Gembala firm and spoke to "Crystal," who told Mr. Daley that by January 29, 2010, Mr. Daley's file would be transferred from New Jersey to Philadelphia.

385. On January 29, 2010, Mr. Daley talked to "Crystal," who told Mr. Daley that his files had not been transferred yet and that she would call him by February 2, 2010.

386. On February 2, 2010, Mr. Daley telephoned the Philadelphia office for the Gembala firm and asked to speak to Crystal and was told that she was not there.

a. Mr. Daley was referred to Mr. Marty Rothenburg and given a telephone number for Mr. Rothenburg.

387. From February 2, 2010 to February 8, 2010, Mr. Daley left messages with Mr. Rothenburg and the Philadelphia office for the Gembala firm to ascertain the status of his case.

388. On February 9, 2010, Mr. Daley received a return call from Mr. Rothenburg, who told Mr. Daley that he would be unable to help him.

389. Thereafter, Mr. Daley telephoned Respondent and left messages for Respondent to return his calls.

390. Respondent failed to respond to Mr. Daley's messages.

391. The Gembala firm and SPS abandoned Mr. Daley's loan modification case.

392. The Gembala firm and SPS failed to provide Mr. Daley with a refund of the advance fee he paid for loan modification services.

### 23. The Payne Matter

393. Sometime in November 2009, Ms. Cindy Payne, who resides with her husband in Abilene, Kansas, was seeking assistance in reducing her mortgage payments.

394. Sometime in November 2009, Ms. Payne communicated with one or more individuals who identified themselves as employees of the Gembala firm and SPS regarding loan modification services.

395. Ms. Payne was told that for a fee of \$1,295.00, she and her husband could receive loan modification services.

396. Ms. Payne decided to retain the Gembala firm and SPS to modify her mortgage.

397. Sometime in November 2009, Ms. Payne received loan modification paperwork that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

398. Sometime in November 2009, Ms. Payne and her husband completed, signed, and dated the loan modification paperwork.

399. Among the loan modification paperwork was a document titled "CHECK BY PHONE or CREDIT CARD" ("the Credit Card agreement") (bold, underscore, and upper case in original).

400. Ms. Payne and her husband completed and signed the Credit Card agreement.

401. By completing and signing the Credit Card agreement, Ms. Payne and her husband authorized three payments in the amounts of \$595.00, \$350.00, and \$350.00 to the Gembala firm in order to satisfy the \$1,295.00 fee.

402. Respondent received three debit payments drawn from Ms. Payne's checking account with Sunflower Bank, in

the amounts of \$595.00, \$350.00, and \$350.00, on or about November 20, 2009, December 3, 2009, and January 5, 2010, respectively.

403. By e-mail dated December 4, 2009, Mr. Shawn R. Cephus, a "Property Consultant" with SPS, provided Ms. Payne with his e-mail address.

a. At the close of the e-mail, Mr. Cephus provided web site links for SPS and the Gembala firm.

404. The Gembala firm and SPS abandoned Ms. Payne's loan modification case.

405. The Gembala firm and SPS failed to provide Ms. Payne with a refund of the fee she paid for loan modification services.

#### **24. The Christopher Matter**

406. Sometime in November 2009, Mr. Theodokis Christopher and Mrs. Carmela Christopher, who reside in Whiting, New Jersey, were seeking assistance in reducing their mortgage payments.

407. Sometime in November 2009, Mrs. Christopher had a telephone conversation with an individual who identified him/herself as an employee of SPS and the Gembala firm regarding loan modification services.

408. Mrs. Christopher was told that for a fee of \$895.00, which was payable to the Gembala firm, the Gembala firm and SPS would provide loan modification services.

409. In November 2009, Mr. and Mrs. Christopher wrote a \$595.00 check on their Wachovia checking account, made payable to the Gembala firm.

410. On or about November 25, 2009, Respondent received the \$595.00 that Mr. and Mrs. Christopher paid for loan modification services.

411. On December 10, 2009, SPS and the Gembala firm electronically processed a \$300.00 debit from Mr. and Mrs. Christopher's checking account that was made payable to the Gembala firm.

412. Respondent received the \$300.00 debit from Mr. and Mrs. Christopher's checking account.

413. Sometime in December 2009, Mrs. Christopher telephoned the New Jersey office to inquire about the delay in receiving loan modification paperwork.

414. Shortly thereafter, Mr. and Mrs. Christopher received an e-mail from "Rebecca" which had as an attachment loan modification paperwork that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission;



however, any mention of SPS was omitted from the loan modification paperwork.

415. After having a telephone conversation with Rebecca, Mr. and Mrs. Christopher sent to the New Jersey office via facsimile transmission the completed loan modification paperwork, signed and dated by Mr. and Mrs. Christopher.

416. From January through February 2010, Mrs. Christopher placed telephone calls to the New Jersey office address to ascertain the status of the loan modification case.

417. Mrs. Christopher would hear a busy signal and was unable to leave telephone messages.

418. After several weeks Mrs. Christopher contacted a telephone operator, who advised that the New Jersey office number was disconnected.

419. On February 5, 2010, Mr. and Mrs. Christopher sent Respondent a letter by certified mail, return receipt requested, at the New Jersey office address.

420. The United States Postal Service forwarded the letter to the Philadelphia address for the Gembala firm, but Respondent or his staff refused to accept Mr. and Mrs. Christopher's certified letter for delivery.

421. The Gembala firm and SPS abandoned Mr. and Mrs. Christopher's loan modification case.

422. The Gembala firm and SPS failed to provide Mr. and Mrs. Christopher with a refund of the \$895.00 fee they paid for loan modification services.

## 25. The Gillo Matter

423. In November 2009, Mr. Daniel W. Gillo, who resides in Carnegie, PA, was seeking assistance in reducing his mortgage payments.

424. In November 2009, Mr. Gillo spoke and exchanged e-mails with Ms. Jackie Saxenmeyer, an employee with SPS, regarding loan modification services.

425. Mr. Gillo decided to retain SPS to modify his mortgage.

426. By e-mail dated November 23, 2009, Ms. Meredith Washington, who identified herself as an employee of the Gembala firm, provided Mr. Gillo with loan modification paperwork via an attachment.

- a. At the close of Ms. Washington's e-mail, appearing underneath her name, was "The Law Office of: JOSEPH A. GEMBALA III & Associates," followed by the Gembala firm's New Jersey office address.

427. Mr. Gillo received loan modification paperwork from Ms. Washington that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

428. Mr. Gillo was also advised that he had to make an advance payment of \$895.00, made payable to the Gembala firm.

429. On or about November 30, 2009, Mr. Gillo returned to the Gembala firm's New Jersey office the loan modification paperwork that he had completed, signed, and dated.

430. On December 7, 2009, Respondent received an \$895.00 payment from Mr. Gillo.

431. By e-mail dated January 11, 2010, Renee Bousson, a "processor" who identified herself as an employee of the Gembala firm, contacted Mr. Gillo and, *inter alia*:

- a. apologized for the delay in processing his loan modification; and
- b. asked for more documentation and information from Mr. Gillo.

432. At the close of Ms. Bousson's e-mail, appearing underneath her name, was "The Law Office of: JOSEPH A. GEMBALA III & Associates," followed by the Gembala firm's New Jersey office address.

433. Mr. Gillo provided Ms. Bousson with the additional information/documentation she requested.

434. By e-mails dated February 2 and 5, 2010, Mr. Gillo requested from Ms. Bousson an update on the status of his loan modification case.

435. Mr. Gillo received no response to his e-mails.

436. By e-mails dated February 8 and 15, 2010, Mr. Gillo requested that Ms. Bousson and Ms. Washington contact him to discuss the status of his loan modification case.

437. Mr. Gillo received no response to his e-mails.

438. Mr. Gillo sent Respondent an e-mail through the Gembala firm's website to inquire about his loan modification case.

439. Respondent failed to respond to Mr. Gillo's e-mail.

440. Thereafter, Mr. Gillo placed several telephone calls to the Philadelphia office for the Gembala firm and left messages to ascertain the status of his loan modification case.

441. Respondent failed to return Mr. Gillo's messages.

442. In April 2010, Mr. Gillo sent Respondent a certified letter, addressed to Respondent at the Philadelphia address for the Gembala firm.

443. Respondent or his staff refused to accept Mr. Gillo's certified letter for delivery.

444. The Gembala firm and SPS abandoned Mr. Gillo's loan modification case.

445. Respondent failed to provide Mr. Gillo with a refund of the advance fee he paid for loan modification services.

#### 26. The Wisniewski Matter

446. In November 2009, Mr. Scott M. Wisniewski, who resides in Leesport, Pennsylvania, was seeking assistance in reducing his mortgage payments.

447. Mr. Wisniewski was referred to the Gembala firm by Mr. Richard Pietrowitz, an employee with Safetrust Financial.

448. In November 2009, Mr. Wisniewski received loan modification paperwork from the New Jersey office for the Gembala firm that was similar to the sample documents Respondent received from Mr. Ranieri as part of the

thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

449. In November 2009, Mr. Wisniewski was told by an individual who identified him/herself as employed by the Gembala firm that for a fee of \$1,353.00, which was payable to the Gembala firm, Mr. Wisniewski would receive loan modification services.

450. Mr. Wisniewski decided to retain the Gembala firm to modify his mortgage.

451. On or about November 23, 2009, Mr. Wisniewski returned to the New Jersey office for the Gembala firm the loan modification paperwork that he completed, signed, and dated.

452. By e-mail dated December 7, 2009, "Tim," a processor, contacted Mr. Wisniewski and, *inter alia*, requested additional information/documentation from him.

- a. At the close of Tim's e-mail, appearing underneath the name of "Ronnie Gervasoni, was "The Law Office of: JOSEPH A. GEMBALA III & Associates," followed by the Gembala firm's New Jersey office address.

453. On or about December 7, 2009, Respondent received a \$1,353.00 electronic withdrawal from Mr. Wisniewski's checking account."

454. From time to time, Mr. Wisniewski would telephone Respondent at the Philadelphia office for the Gembala firm to discuss the status of his loan modification case.

455. Respondent failed to respond to Mr. Wisniewski's messages.

456. By e-mail dated April 9, 2010, sent to Respondent's work e-mail address at the Gembala firm, Mr. Wisniewski, *inter alia*:

- a. stated that he had sent the Gembala firm, "and now you," an e-mail;
- b. expressed his intention to send Respondent a certified letter, enclosing a copy of the \$1,353.00 check that Respondent had negotiated; and
- c. advised Respondent that he wanted a full refund because no work had been performed on his loan modification case.

457. Respondent received this e-mail.

458. On or about April 13, 2010, Mr. Wisniewski sent Respondent an April 10, 2010 letter via certified mail, to

the Philadelphia office for the Gembala firm, in which he, *inter alia*, reiterated his request for a refund.

459. Respondent or his staff refused to accept Mr. Wisniewski's certified letter for delivery.

460. The Gembala firm and SPS abandoned Mr. Wisniewski's loan modification case.

461. Respondent failed to provide Mr. Wisniewski with a refund of the advance fee he paid for loan modification services.

#### 27. The Anes Matter

462. In November 2009, Ms. Virginia Anes, who resides in New Haven, Connecticut, was seeking assistance in reducing her mortgage payments.

463. Sometime in November 2009, Ms. Anes received a telephone call from Mr. David Siegel, who identified himself as an employee of the Gembala firm, regarding loan modification services.

464. During this telephone conversation Mr. Siegel, *inter alia*:

- a. counseled Ms. Anes to obtain representation because her mortgage company, Litton Loans, was "playing games"; and



b. advised Ms. Anes that for a total fee of \$1,950.00, which was payable in installments, the Gembala firm would represent her and her husband in obtaining a loan modification.

465. Ms. Anes and her husband decided to retain the Gembala firm to modify their mortgage.

466. The Gembala firm received a total payment of \$2,000.00 from Ms. Anes and her husband, in three separate payments of \$1,500.00, \$250.00, and \$250.00.

a. The first two payments of \$1,500.00 and \$250.00 were received by the Gembala firm on December 9, 2009 and December 11, 2009, respectively.

b. The third \$250.00 payment was received by the Gembala firm sometime after December 11, 2009.

467. Ms. Anes contacted Mr. Siegel regarding the overpayment of \$50.00.

468. Mr. Siegel told Ms. Anes that he would discuss the matter with the "finance department."

469. The Gembala firm and SPS failed to refund to Ms. Anes the \$50.00 overpayment.

470. By e-mail dated December 22, 2009, Mr. Timothy Weers, who identified himself as an employee of the Gembala firm, provided Ms. Anes with an attachment that consisted of loan modification paperwork that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

- a. At the close of Mr. Weers' e-mail, appearing underneath his name, was the "Law Office of Joseph Gembala," followed by the New Jersey office address, absent a suite number.

471. On or about December 23, 2009, Ms. Anes completed, signed, and dated the loan modification paperwork that she received via e-mail from Mr. Weers.

472. On December 23, 2009, Ms. Anes returned to Mr. Weers, via facsimile transmission, the completed loan modification paperwork.

473. By e-mails dated February 17, 2010, February 19, 2010, and February 24, 2010, Ms. Anes, *inter alia*, inquired of Mr. Weers as to the status of her loan modification case.

474. Mr. Weers failed to respond to Ms. Anes' e-mails.

475. In February 2010, Ms. Anes placed several telephone calls to the New Jersey office for the Gembala firm to ascertain the status of her loan modification case.

476. Ms. Anes was unable to leave messages when she called the New Jersey office for the Gembala firm.

477. The Gembala firm and SPS abandoned Ms. Anes' loan modification case.

478. The Gembala firm and SPS failed to provide Ms. Anes with a refund of the \$2,000.00 fee she paid for loan modification services.

## **28. The Groninga Matter**

479. In November 2009, Mr. Paul Duane Groninga and Mrs. Linda Kay Groninga, who reside in Twin Falls, Idaho, were seeking assistance in reducing their mortgage payments.

480. On December 1, 2009, Mr. and Mrs. Groninga communicated with Ms. Jill Holwell, who, on information and belief, identified herself as an employee of the Gembala firm, regarding loan modification services that could be provided by the Gembala firm.

481. Ms. Holwell told Mr. and Mrs. Groninga that for a fee of \$1,095.00, they could receive loan modification services.

482. Mr. and Mrs. Groninga decided to retain the Gembala firm to modify their mortgage.

483. Mr. and Mrs. Groninga received loan modification paperwork from the New Jersey office for the Gembala firm that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

484. On December 3, 2009, Mr. and Mrs. Groninga completed, signed, and dated the loan modification paperwork.

a. Mr. and Mrs. Groninga forwarded the completed loan modification paperwork to the New Jersey office for the Gembala firm.

485. Among the loan modification paperwork was a document titled "FEE AGREEMENT FOR CASE WORK TO JOSEPH A. GEMBALA III" ("the Groninga fee agreement"). (bold, underscore, and upper case in original).

486. The Groninga fee agreement states that Mr. and Mrs. Groninga agreed to pay "Joseph A. Gembala, III & Associates the amount of \$1095 for Loss Mitigation Services."

487. Mr. and Mrs. Groninga also identified on the Groninga fee agreement the routing number and account number for the checking account they maintained at First Federal Savings Bank.

488. By completing and signing the Groninga fee agreement, Mr. and Mrs. Groninga authorized three payments in the amounts of \$595.00, \$300.00, and \$200.00 to the Gembala firm in order to satisfy the \$1,095.00 fee.

489. Respondent received Mr. and Mrs. Groninga's two debit payments drawn from their checking account, in the amounts of \$595.00 and \$250.00, on or about December 16, 2009 and December 29, 2009, respectively.

490. On or about January 10, 2010, Respondent received a \$250.00 money order payment made by Mr. and Mrs. Groninga.

491. Respondent received a total of \$1,095.00 from Mr. and Mrs. Groninga.

492. On December 15, 2009, Mr. Tim Weers, who identified himself as an employee of the Gembala firm, contacted Mr. and Mrs. Groninga by e-mail to inform them, *inter alia*, that he was the "processor" handling their "loan modification request."

a. At the close of Mr. Weers' e-mail, appearing underneath his name, was the "Law Office of Joseph Gembala," followed by the New Jersey office address, absent a suite number.

493. From January 2010 through February 2010, Mr. and Mrs. Groninga periodically telephoned the New Jersey office for the Gembala firm to ascertain the status of their case.

494. Mr. and Mrs. Groninga would hear a busy signal on those occasions they called the New Jersey office for the Gembala firm.

495. On February 3, 2010, Mr. Weers e-mailed Mr. and Mrs. Groninga to advise them, *inter alia*, that the New Jersey office of "Joseph Gembala, III and Associates" closed.

496. The Gembala firm and SPS abandoned Mr. and Mrs. Groninga's loan modification case.

497. The Gembala firm and SPS failed to provide Mr. and Mrs. Groninga with a refund of the fee they paid for loan modification services.

## 29. The Sorgie Matter

498. In December 2009, Mr. Daniel L. Sorgie, who resides in Poinciana, Florida, was seeking assistance in reducing his mortgage payments.

499. In December 2009, Mr. Sorgie decided to retain SPS and the Gembala firm to modify his mortgage.

500. Mr. Sorgie was advised that the fee for providing loan mortgage services was \$1,495.00, which was payable to the Gembala firm.

501. Sometime in December 2009, Mr. Sorgie received loan modification paperwork that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

502. On December 14, 2009, Mr. Sorgie completed, signed, and dated the loan modification paperwork that he received.

503. Among the loan modification paperwork was a document titled "FEE AGREEMENT FOR CASE WORK TO JOSEPH A. GEMBALA III" ("the Sorgie fee agreement") (bold, underscore, and upper case in original).

504. The Sorgie fee agreement stated that Mr. Sorgie agreed to pay "Joseph A. Gembala, III & Associates the amount of \$1495 for Loss Mitigation Services."

a. The amount of "\$1495" was hand-written on the Sorgie fee agreement over the type-faced amount of "\$1895," and was initialed.

505. Mr. Sorgie also placed on the Sorgie fee agreement the routing number and account number for an account he maintained at Bank of America.

506. By completing and signing the Sorgie fee agreement, Mr. Sorgie authorized two separate payments in the amounts of \$795.00 and \$700.00 to the Gembala firm in order to satisfy the \$1,495.00 fee.

507. Respondent received two debit payments drawn from Mr. Sorgie's account, made payable to the Gembala firm, in the amounts of \$795.00 and \$700.00, on or about December 14, 2009 and January 15, 2010, respectively.

508. On or about December 14, 2009, Mr. Sorgie completed, signed, and dated the loan modification paperwork.

509. On or about December 14, 2009, Mr. Sorgie returned to the New Jersey office for the Gembala firm the loan modification paperwork.

510. By e-mail dated February 3, 2010, Mr. Timothy Weers, who identified himself as an employee of the Gembala



firm, told Mr. Sorgie that the New Jersey office for the Gembala firm had closed.

511. The Gembala firm and SPS abandoned Mr. Sorgie's loan modification case.

512. The Gembala firm and SPS failed to provide Mr. Sorgie with a refund of the \$1,495.00 fee he paid for loan modification services.

### 30. The Boykin Matter

513. In December 2009, Ms. Clara Boykin, who resides in St. Paul, Minnesota, was seeking assistance in reducing her mortgage payments.

514. Ms. Boykin was referred to SPS and the Gembala firm by Mr. Rhodes, President of New Approach.

515. Ms. Boykin decided to retain the Gembala firm and SPS to provide her with loan modification services.

516. Ms. Boykin received loan modification paperwork from the New Jersey office of SPS that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

517. Sometime in December 2009, Ms. Boykin returned to the New Jersey office the loan modification paperwork that she had completed, signed, and dated.

518. SPS personnel asked Ms. Boykin to make an advance payment of \$1,900.00 towards the loan modification services.

519. In December 2009 Ms. Boykin paid the Gembala firm the sum of \$1,900.00.

520. Respondent received from Ms. Boykin \$1,900.00.

521. Between December 15, 2009 and December 23, 2009, Mr. Rhodes and Mr. Pierre received three e-mails regarding Ms. Boykin's loan modification cases from Mr. Ronnie Gervasoni, who identified himself as "Director of Operations" for the "Law Office of Joseph A. Gembala III & Associates."

522. From time to time thereafter, Mr. Rhodes and Mr. Milsap, on behalf of Ms. Boykin, telephoned SPS inquiring about the status of Ms. Boykin's loan modification case.

523. The Gembala firm and SPS failed to respond to Mr. Rhodes' and Mr. Milsap's inquiries.

524. The Gembala firm and SPS failed to pursue Ms. Boykin's loan modification case.

525. The Gembala firm and SPS abandoned Ms. Boykin's loan modification case.

526. The Gembala firm and SPS failed to provide Ms. Boykin with any refund of the advance fee she paid for loan modification services.

### 31. The Boose Matter

527. In December 2009, Ms. Anna L. Boose, who resides in Middletown, Connecticut, was seeking assistance in reducing her mortgage payments.

528. On December 14, 2009, Ms. Boose spoke with Mr. Saul E. Freedman, an SPS "Senior Consultant," who identified himself as an employee of SPS, regarding loan modification services.

- a. Mr. Freedman told Ms. Boose that SPS worked with the Gembala firm to provide loan modification services.

529. By e-mail dated December 14, 2009, Mr. Freedman provided Ms. Boose with information and web links for SPS and the Gembala firm, including the Gembala firm's Philadelphia address.

530. Ms. Boose decided to retain SPS and the Gembala firm to modify her mortgage.

531. Ms. Boose agreed to a payment schedule, whereby automatic deductions were to be made from her checking account to pay the requested fee of \$1,595.00.

532. Shortly thereafter, Ms. Meredith Washington, who on information and belief identified herself as an employee of the Gembala firm, e-mailed loan modification paperwork to Ms. Boose that was similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

533. Ms. Boose decided not to sign and return the loan modification paperwork.

534. Among the loan modification paperwork was a document titled "FEE AGREEMENT FOR CASE WORK TO JOSEPH A. GEMBALA III" ("the Boose fee agreement"). (bold, underscore, and upper case in original).

535. The Boose fee agreement stated that Ms. Boose agreed to pay "Joseph A. Gembala, III & Associates the amount of \$1595 for Loss Mitigation Services."

- a. The Boose fee agreement provided that two payments, one in the amount of \$995.00 and the second in the amount of \$600.00, would

be made on December 18, 2009 and December 31, 2009, respectively.

- b. The Boose fee agreement also required Ms. Boose's signed, written authorization to process any fee payments.

536. Without obtaining Ms. Boose's written authorization, SPS and the Gembala firm electronically processed three separate debits from Ms. Boose's checking account with Sovereign Bank, in the amounts of \$995.00, \$100.00, and \$200.00 on December 18, 2009, December 31, 2009, and January 15, 2010, respectively.

- a. Each of the aforementioned debits was made payable to the "Law Firm of Josphe[sic] A. Gembala."

537. Respondent received the three debits made from Ms. Boose's checking account.

538. By e-mail dated February 10, 2010, sent to Ms. Washington, Ms. Boose:

- a. stated that she had left several messages for Ms. Washington using the "866 number" and that earlier that day she again called using that same number and received a

recording stating that "all circuits were busy"; and

- b. requested a refund in the amount of \$1,295.00 because she had not signed and returned the loan modification paperwork and no work had been done on her loan modification case.

539. Ms. Washington failed to respond to Ms. Boose's e-mail.

540. On February 12, 2010, Ms. Boose telephoned the New Jersey office regarding her request for a refund.

541. Ms. Boose was unable to leave a telephone message.

542. By letter dated February 12, 2010, which was sent via facsimile transmission to the New Jersey office, Ms. Boose, *inter alia*:

- a. recounted her February 10, 2010 e-mail to Ms. Washington;
- b. mentioned her inability to reach the New Jersey office by telephone; and
- c. requested a response to her having cancelled the agreement for loan modification services.

543. The facsimile transmission did not successfully transmit because the line was busy.

544. Later that same day, Ms. Boose sent Respondent an e-mail through the website Respondent maintained for the Gembala firm, in which she cancelled the agreement for loan modification services.

545. Respondent received this e-mail.

546. By letter dated February 26, 2010, sent to Respondent by certified mail, return receipt requested, at the New Jersey office address and the Philadelphia address for the Gembala firm, Ms. Boose, *inter alia*:

- a. explained to Respondent that she had been trying to contact him by telephone, but had only reached his voicemail;
- b. stated that his facsimile transmission machine was constantly busy;
- c. advised that she had not returned the loan modification paperwork and that she had sent a February 2, 2010 e-mail to Ms. Washington cancelling the agreement for loan modification services;

- d. listed the amounts of three separate withdrawals that were made from her checking account, which totaled \$1,295.00; and
- e. requested that he refund the \$1,295.00 that she had paid to him.

547. Respondent or his staff refused to accept Ms. Boose's certified letter for delivery at either the New Jersey office address or the Philadelphia address for the Gembala firm.

548. The Gembala firm and SPS failed to provide Ms. Boose with a refund of the \$1,295.00 that was withdrawn from her checking account without her written authority.

### 32. The Larmour Matter

549. Sometime in 2009, Mr. Joseph F. Larmour, who resides in Redding, California, decided to retain SPS and the Gembala firm to modify his mortgage.

550. Mr. Larmour paid the requested fee for retaining SPS and the Gembala firm to provide him with loan modification services.

551. Respondent received Mr. Larmour's payment.

552. The Gembala firm and SPS abandoned Mr. Larmour's loan modification case.



553. The Gembala firm and SPS failed to provide Mr. Larmour with a refund of the fee he paid for loan modification services.

**33. The Barbera Matter**

554. In January 2010, Ms. Grace B. Barbera, who resides in Colorado Springs, Colorado, was seeking assistance in reducing her mortgage payments.

555. Ms. Barbera decided to retain the Gembala firm to provide her with loan modification services.

556. In January 2010, Ms. Barbera received loan modification paperwork from the New Jersey office for the Gembala firm that was somewhat similar to the sample documents Respondent received from Mr. Ranieri as part of the thirteen-page facsimile transmission; however, any mention of SPS was omitted from the loan modification paperwork.

557. Ms. Barbera was asked to make an advance payment of \$1,295.00 towards the loan modification services, with the payments due in several monthly installments, commencing in January 2010.

558. On or about January 10, 2010, Ms. Barbera returned to the New Jersey office for the Gembala firm the

loan modification paperwork that she had completed, signed, and dated.

- a. Among the loan modification paperwork that Ms. Barbera completed was a document that authorized the Gembala firm to make a telephone withdrawal of \$300.00 from Ms. Barbera's checking account with Wells Fargo.

559. On or about January 11, 2010, Ms. Barbera paid \$300.00 to the Gembala firm.

560. Respondent received from Ms. Barbera no less than \$300.00 as payment for loan modification services.

561. Beginning in February 2010, Ms. Barbera telephoned the New Jersey office and the Philadelphia office for the Gembala firm to ascertain the status of her loan modification case.

562. Ms. Barbera was unable to reach anyone at the New Jersey office for the Gembala firm by telephone.

563. After several days, Ms. Barbera spoke to a woman at the Philadelphia office for the Gembala firm who told Ms. Barbera that the loan modification department was no longer in business.

564. The Gembala firm and SPS failed to provide Ms. Barbera with any refund of the advance fee she paid for loan modification services.

565. The Gembala firm and SPS failed to pursue Ms. Barbera's loan modification case.

566. The Gembala firm and SPS abandoned Ms. Barbera's loan modification case.

567. Respondent admits that by his conduct as set forth in Paragraphs 7 through 566 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- b. RPC 1.4(a)(2), which states that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- c. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- d. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;

- e. RPC 1.4(b), which states that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;
- f. RPC 1.16(d), which states that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law;
- g. RPC 5.3(b), which states that with respect to a nonlawyer employed or retained by or associated with a lawyer, a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is

compatible with the professional obligations of the lawyer;

h. RPC 5.3(c)(2), which states that with respect to a nonlawyer employed or retained by or associated with a lawyer, a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and in either case knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action;

i. RPC 5.4(a), which states that a lawyer or law firm shall not share legal fees with a nonlawyer, except that: (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's

estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that portion of the total compensation which fairly represents the services rendered by the deceased lawyer;

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement;

(4) a lawyer or law firm may purchase the practice of another lawyer or law firm from an estate or other eligible person or entity consistent with Rule 1.17; and

(5) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter;

- j. RPC 7.5(a), which states that a lawyer shall not use a firm name, letterhead or other professional designation that violates Rule

7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government, government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. If otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession;

- k. RPC 8.4(a), which states that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another; and
- l. RPC 8.4(c), which states that a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

568. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of two years, with a condition requiring him, within 60 days of the order of suspension, to refund to the complainants Respondent's share of the fees Respondent retained from the loan modification fees, as discussed more fully below.

569. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Rule 215(d), Pa.R.D.E., stating that he consents to the recommended discipline, including the mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

570. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are several mitigating circumstances:

- a. Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions



herein and his consent to receiving a suspension of two years;

c. Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his consent to receiving a suspension of two years; and

d. Respondent has no prior record of discipline in the Commonwealth since being admitted to practice law in 1985.

571. Respondent, who is not admitted in Nevada, agreed to resolve a disciplinary matter filed in that jurisdiction by admitting he engaged in misconduct in a loan modification case. On August 30, 2011, Respondent received a public reprimand for violating the following Nevada ethics rules: RPC 1.1 (competence); RPC 1.3 (diligence); RPC 1.4 (communication); RPC 1.15 (safekeeping property); and RPC 5.4(a) (professional independence of a lawyer). The disciplinary complaint filed against Respondent alleged that the complainants, residents of Nevada, retained Respondent and SPS to provide loan modification services, but no services were provided; no communications took place between complainants, on the one hand, and Respondent and SPS, on the other; and Respondent did not issue a refund.

It was also alleged that Respondent engaged in a practice of providing SPS with the fees he received for loan modification cases.

572. Respondent agrees that the two-year suspension shall be accompanied by a condition requiring Respondent, within 60 days of the order of suspension, to refund to the complainants his share of the loan modification fees Respondent claims to have retained, per the fee-sharing agreement Respondent entered into with SPS as described in paragraphs 37-39, *supra*.

573. Attached as "Exhibit A" is a chart that Respondent claims accurately itemizes Respondent's share of the fees Respondent retained from the fees paid by the complainants for loan modification services.

574. Respondent's satisfaction of the aforementioned condition shall not bar a complainant from pursuing a claim with the Pennsylvania Lawyers Fund for Client Security ("the Fund"), and Respondent agrees not to raise such a defense before the Fund; however, if the Fund issues an award to a complainant, Respondent may seek to reduce the award by the amount of any refund of Respondent's share of the loan modification fee issued to a complainant.

575. Respondent, through his attorney, desires to bring to the attention of the three-member panel of the Disciplinary Board and the Supreme Court of Pennsylvania that if the within disciplinary matter had proceeded to a disciplinary hearing, Respondent would have presented his testimony, as well as the testimony of a former employee of SPS, Ms. Rebecca Beresin, to show that:

- a. Respondent had intended that his business relationship with SPS be limited to that of counsel to SPS and that SPS have sole responsibility for handling the loan modification cases, although Respondent admits that based on the loan modification paperwork he approved and the advertisements on his website, an attorney-client relationship was formed between him and the complainants;
- b. Respondent believed after meeting with the owners and executives of SPS that the company had the experience and ability to handle the in-coming loan modifications cases competently and expeditiously;

- c. Respondent was unaware of certain practices of SPS that were adopted sometime in the Fall of 2009, which practices Respondent did not authorize, such as the owners of SPS instructing the staff of SPS to answer telephone calls as if the caller had reached Respondent's law office or SPS's omitting from the loan modification paperwork any mention of SPS;
- d. in January 2010, Respondent learned that SPS ceased operating when former employees of SPS appeared at Respondent's law office demanding their paychecks;
- e. Respondent advised the former employees that he did not have an ownership interest in SPS and that the owners of SPS were responsible for issuing their paychecks; and
- f. Respondent went with the group of former employees to the SPS office, intending to retrieve the loan modification files and to pay the former employees to resolve the outstanding loan modification cases, but Mr. Malone and Mr. Frisch appeared at the office

and refused to allow access to the files and the computers unless Respondent also paid Messrs. Malone and Frisch to work on the outstanding loan modifications cases, which demand Respondent refused.

576. There is no Pennsylvania disciplinary case with a fact pattern similar to Respondent's disciplinary matter; however, Respondent's misconduct can be characterized as involving a pattern of neglect, lack of communication, and misrepresentations to clients. For cases involving those types of misconduct, there is precedent that supports the recommendation that Respondent receive a suspension of two years.

Attorneys who have engaged in a pattern of neglect and lack of communication, with or without misrepresentations, have been suspended for two years. See, e.g., *In re Anonymous No. 54 DB 83 and 59 DB 83 (Howard L. Rubenfield)*, 34 Pa. D.&C.3<sup>rd</sup> 606 (1985) (Rubenfield engaged in neglect and misrepresentations in nine client matters over a time period encompassing four and one-half years; Respondent Rubenfield had previously been issued an unspecified number of informal admonitions); *In re Anonymous Nos. 52 DB 92, 79 DB 92, and 116 DB 92 (Bernard Turner)*, 24 Pa. D.&C.4<sup>th</sup> 447

(1994) (Turner engaged in neglect and lack of communication, failed to return files and unearned fees, and failed to comply with court orders and directives in eleven client matters during a period exceeding five and one-half years; Turner had an unspecified record of prior discipline and was placed on emergency temporary suspension pending the outcome of his disciplinary case); and *Office of Disciplinary Counsel v. Susan Bell Bolno*, 64 Pa. D.&C.4<sup>th</sup> 189 (2003) (over a seven-year period, Bolno, *inter alia*, engaged in neglect, lack of communication, and misrepresentations in four client matters; Bolno expressed remorse and had no record of discipline)..

The other misconduct committed by Respondent is his sharing of legal fees with SPS. In *Office of Disciplinary Counsel v. G. Jeffrey Moeller*, No. 53 DB 2000 (D.Bd. Rpt. 5/16/02) (S.Ct. Order 7/10/02); Respondent Moeller engaged in similar misconduct which, combined with his having engaged in the unauthorized practice of law and having assisted a company to engage in the unauthorized practice of law, resulted in his receiving a suspension of one year and one day. Respondent Moeller was a "review attorney" for a business, "AESI," that sold revocable living trusts through non-attorneys; he was paid \$100.00 for each review

from the fee collected by AESI. As a review attorney, Respondent Moeller was responsible for reviewing, modifying, and finalizing documents that had been prepared by AESI based on information gathered from a client. The Board concluded that Respondent Moeller violated RPC 5.4(a) by sharing a legal fee collected by AESI.

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Pa.R.D.E. 215(e) and 215(g), the three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania recommending that the Supreme Court enter an Order that Respondent receive a suspension of two years, with a condition requiring Respondent, within 60 days of the order of suspension, to refund to the complainants Respondent's share of the fees he retained from the loan modification fees.
- b. Pursuant to Pa.R.D.E. 215(i), the three-member panel of the Disciplinary Board enter an order for Respondent to pay the necessary

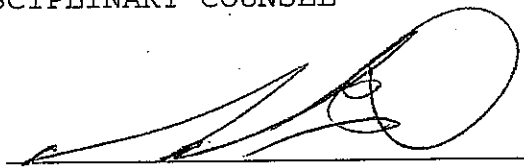
expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition, and that all expenses be paid by Respondent before the imposition of discipline under Pa.R.D.E. 215(g).

Respectfully and jointly submitted,

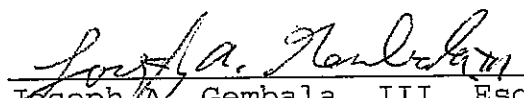
OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION  
CHIEF DISCIPLINARY COUNSEL

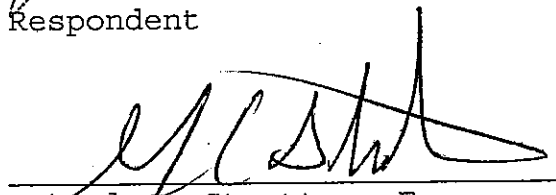
June 20, 2012  
Date

By   
Richard Hernandez  
Disciplinary Counsel

6/26/12  
Date

By   
Joseph A. Gembala, III, Esq.  
Respondent

6/29/12  
Date

By   
Samuel C. Stretton, Esq.  
Respondent's Counsel



# **EXHIBIT A**

GEMBALA - SECURE PROPERTY SOLUTIONS DISCIPLINARY PETITION CLAIMANTS

FEE PAID      JAG FEE      SPS FEE

Manuel, [REDACTED]	6/18/09	\$895.00	\$195.00	\$700.00	\$0.00	Credit Card
Coleman, [REDACTED]	7/15/09	\$595.00	\$195.00	\$400.00	Credit Card	1st installment
Coleman, [REDACTED]	8/7/09	\$300.00	\$0.00	\$300.00	Credit Card	2nd installment
Coleman, [REDACTED]	8/30/09	\$550.00	\$0.00	\$550.00	Credit Card	3rd installment
Sutton, [REDACTED]	7/8/09	\$995.00	\$195.00	\$800.00	Check by pho	1st installment
Salisbury, [REDACTED]	7/31/09	\$2,595.00	\$195.00	\$2,400.00	Credit Card	1st installment
Puhl, [REDACTED]	8/3/09	\$595.00	\$195.00	\$400.00	Credit Card/D	1st installment
Puhl, [REDACTED]	9/1/09	\$300.00	\$0.00	\$300.00	Credit Card	Final Installment
Cox, [REDACTED]	7/31/09	\$595.00	\$195.00	\$400.00	Check By Pho	1st installment
Cox, [REDACTED]	8/14/09	\$400.00	\$0.00	\$400.00	Check by pho	Final installment
Cox, [REDACTED]	9/12/09	\$400.00	\$0.00	\$400.00	Check By Pho	Final Installment
Johnson, [REDACTED]	7/8/09	\$500.00	\$195.00	\$305.00	Check by pho	1st installment
Johnson, [REDACTED]	7/8/09	\$500.00	\$0.00	\$500.00	Check by pho	2nd installment
Johnson, [REDACTED]	7/9/09	\$1,395.00	\$0.00	\$1,395.00	Check by pho	Final installment
Thomas, [REDACTED]	9/28/09	\$595.00	\$95.00	\$500.00	Personal Che	1st installment
JOHNSON, [REDACTED]	12/9/09	\$895.00	\$95.00	\$800.00		PD IN FULL
Burton, [REDACTED]	8/31/2009	\$1,295.00	\$95.00	\$1,200.00	Credit Card	Payment in Full
Alan, [REDACTED]	8/14/09	\$595.00	\$195.00	\$400.00	Check by pho	1st installment
Hannah, [REDACTED]	8/29/09	\$300.00	\$0.00	\$300.00	Check by pho	2nd installment
Hannah, [REDACTED]	9/18/09	\$500.00	\$0.00	\$500.00	Check By Pho	Final Installment

rec'd \$100 refund from SPS

complaint states paid \$1,000

only \$595 claimed in complaint

GEMBALA - SECURE PROPERTY SOLUTIONS DISCIPLINARY PETITION CLAIMANTS

no fee received by JAG  
complaint states paid \$1995

Hilferty, [REDACTED]	10/16/09	\$550.00	\$0.00	\$550.00	Credit Card
Hilferty, [REDACTED]	11/6/2009	\$550.00	\$	\$550.00	Credit Card

Knight, [REDACTED]	9/8/09	\$595.00	\$95.00	\$500.00	Credit Card
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Von Alt, [REDACTED]	9/15/09	\$1,495.00	\$95.00	\$1,400.00	Credit Card
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Garcia, [REDACTED]	9/23/09	\$595.00	\$95.00	\$500.00	Credit Card
Garcia, [REDACTED]		\$1,623.50			

Guined, [REDACTED]	9/24/09	\$2,245.00	\$95.00	\$2,150.00	Check By Phc
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Reese, [REDACTED]	10/16/09	\$2,495.00	\$95.00	\$2,400.00	credit card
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Portier, [REDACTED]	10/28/09	\$1,000.00	\$95.00	\$905.00	check by pho
PORTIER, [REDACTED]	11/20/2009	\$500.00		\$500.00	check by ph

Hoyt, [REDACTED]	10/23/2009	\$1,295.00	\$95.00	\$1,200.00	Credit Card
NOEL, [REDACTED]	12/15/2009	\$595.00	\$95.00	\$500.00	check by ph
NOEL, [REDACTED]	1/1/2010	\$305.00		\$305.00	check by ph

complaint states paid \$1200

LaRusso, [REDACTED]	11/12/2009	\$400.00	\$95.00	\$305.00	Check by Phc
LARUSSO, [REDACTED]	12/1/2009	\$400.00		\$400.00	check by ph
LARUSSO, [REDACTED]	1/12/2010	\$395.00		\$395.00	check by ph

DALEY, [REDACTED]	12/11/2009	\$500.00		\$500.00	CBP
DALEY, [REDACTED]	12/18/2009	\$300.00		\$300.00	CBP
DALEY, [REDACTED]	12/26/2009	\$300.00		\$300.00	CBP

complaint states paid \$1995  
no record of \$895 1st payment  
no fee received by JAG

PAYNE, [REDACTED]	11/23/2009	\$595.00	\$95.00	\$500.00	CBP
PAYNE, [REDACTED]	12/3/2009	\$350.00		\$350.00	CBP
PAYNE, [REDACTED]	1/5/2010	\$350.00		\$350.00	CBP

1ST  
2ND  
FINAL

GEMBALA - SECURE PROPERTY SOLUTIONS DISCIPLINARY PETITION CLAIMANTS

complaint claim matches  
no fee received by JAG

CHRISTOPHER, [REDACTED]	11/25/2009	\$595.00		CBP	2nd installment
CHRISTOPHER, [REDACTED]	12/10/2009	\$300.00	\$595.00		FINAL

GILLO, [REDACTED]	12/7/2009	\$895.00	\$95.00	\$800.00	CBP	FINAL
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WISNIEWSKI, [REDACTED]	12/7/2009	\$1,353.00	\$95.00	\$1,258.00	CBP	PD IN FULL
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ANES, [REDACTED]	12/9/2009	\$1,500.00	\$95.00	\$1,405.00	CBP	1st installment
ANES, [REDACTED]	12/11/2009	\$250.00		\$250.00	CBP	2nd installment
ANES, [REDACTED]	12/18/2009	\$250.00		\$250.00	CBP	FINAL

complaint states paid \$1095  
with 2 add'l pmts. \$300 & \$200

GRONINGA, [REDACTED]	12/15/2009	\$595.00	\$95.00	\$500.00	CBP	1ST
GRONINGA, [REDACTED]	1/11/2010	\$250.00		\$250.00	CBP	FINAL

SORGIE, [REDACTED]	12/16/2009	\$795.00	\$95.00	\$700.00	CBP	1st
SORGIE, [REDACTED]	1/15/2010	\$700.00		\$700.00	CBP	FINAL

BOOSE, [REDACTED]	12/18/2009	\$995.00	\$95.00	\$900.00	CBP	1ST
BOOSE, [REDACTED]	12/31/2009	\$100.00		\$100.00	CBP	2ND
BOOSE, [REDACTED]	1/15/2010	\$200.00		\$200.00	CBP	3RD

Lairmour, [REDACTED]	9/30/09	\$1,995.00	\$95.00	\$1,900.00	Credit Card	Payment in full
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no fee received by JAG

BARBERA, [REDACTED]	1/9/2010	\$300.00		\$300.00	CBP	MONTHLY
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Total Paid      JAG Received

\$43,301.50      \$3,460.00

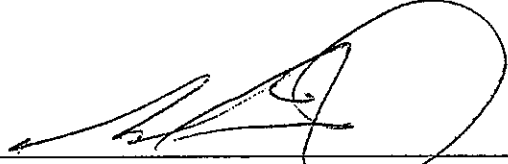
BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
: No. 21 DB 2012  
v. :  
: Atty. Reg. No. 44063  
JOSEPH A. GEMBALA, III, :  
Respondent : (Philadelphia)

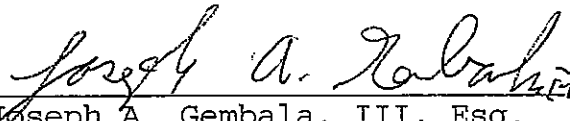
VERIFICATION

The statements contained in the foregoing Joint Petition In Support Of Discipline On Consent Under Pa.R.D.E. 215(d) are true and correct to the best of our knowledge, information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

June 20, 2012  
Date

  
Richard Hernandez  
Disciplinary Counsel

6/26/12  
Date

  
Joseph A. Gembala, III, Esq.  
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
                        Petitioner :  
                                      : No. 21 DB 2012  
                        v.                   :  
                                      : Atty. Reg. No. 44063  
JOSEPH A. GEMBALA, III,                 :  
                        Respondent     : (Philadelphia)

AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

Respondent, Joseph A. Gembala, III, Esquire, hereby states that he consents to the imposition of a suspension of two years, with a condition requiring Respondent, within 60 days of the order of suspension, to refund to the complainants Respondent's share of the fees he retained from the loan modification fees, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition in Support of Discipline on Consent and further states that:

1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted with Samuel C. Stretton, Esquire, in connection with the decision to consent to discipline;

2. He is aware that there is presently pending a disciplinary proceeding at No. 21 DB 2012 involving

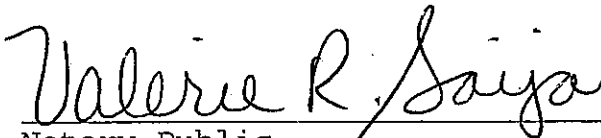
allegations that he has been guilty of misconduct as set forth in the Joint Petition;

3. He acknowledges that the material facts set forth in the Joint Petition are true; and

4. He consents because he knows that if charges pending at No. 21 DB 2012 continued to be prosecuted, he could not successfully defend against them.

  
\_\_\_\_\_  
Joseph A. Gembala, III, Esquire  
Respondent

Sworn to and subscribed  
before me this 26th  
day of June, 2012.

  
\_\_\_\_\_  
Notary Public

