

**BEFORE THE DIRECTOR OF THE CONSUMER PROTECTION UNIT
OF THE DEPARTMENT OF JUSTICE**

In re:)
)
Trevor L. Gouert, an individual &) CPU Case No. 14-08-03
ABC Auctions, L.L.C., a Delaware limited)
liability company.)
)
)

CEASE AND DESIST AGREEMENT

This Cease and Desist Agreement (“Agreement”) is entered into by and among the Director of the Consumer Protection Unit of the Department of Justice (the “Director”) and Trevor L. Gouert (“Gouert”) and ABC Auctions, L.L.C., a Delaware limited liability company (“ABC”) pursuant to 29 *Del. C.* § 2525(a). In return for the agreement of Gouert and ABC to the issuance of this Agreement, the Director agrees not to institute or maintain any legal action or proceeding against Gouert or ABC with respect to the specific violations alleged below unless the terms of this Agreement have been breached or violated.

BACKGROUND & FACTUAL ALLEGATIONS

After conducting an investigation involving the provision of residential mortgage loan modification services by Gouert and/or ABC, the Director makes the following allegations:

1. Gouert is a Delaware licensed real estate salesperson having a principal place of residence located at 18352 Pine Lane, Lewes, Delaware 19958.
2. ABC is a Delaware limited liability company whose primary business is auction services and having a principal place of business located at 18352 Pine Lane, Lewes, Delaware 19958.
3. Gouert is the sole member and owner of ABC and is responsible for all business conducted by ABC. Gouert and ABC are hereinafter collectively referred to as "Gouert" unless otherwise stated.
4. Gouert's primary businesses are real estate services and auction services, however, on or about January 6, 2014, Gouert undertook to provide mortgage loan modification services to Delaware consumers Eugene & Mary LaGuardia.

5. Upon information, there was no written agreement between the LaGuardias and Gouert for these mortgage loan modification services. A personal check remitted to Gouert for those services contained a memo reading "for mortgage assistance".

6. Upon information, Gouert rendered mortgage loan modification services to the LaGuardias in exchange for the payment in the amount of \$1,500 and assisted them with completing and submitting a loan modification package to the LaGuardias' mortgage lender and attended the initial mediation conference with the LaGuardias wherein he was listed as their housing counselor. Such services constitute mortgage loan modification services as defined by 6 *Del. C.* § 2402C(4).

7. Upon information, the LaGuardias were offered a loan modification from their mortgage lender, however, the terms of that offer were less favorable than the LaGuardias' original mortgage terms and the LaGuardias rejected the loan modification offer. The LaGuardias' property has proceeded to judicial foreclosure as a result.

8. Gouert undertook to provide these loan modification services to the LaGuardias by way of his membership in the LaGuardias' church, and not through his real estate profession or auction business. Upon information, Gouert was not listing the LaGuardias' property or rendering any other real estate services to them in connection with the mortgage loan modification services.

9. There is no record of Gouert being registered to provide mortgage loan modification services in Delaware pursuant to 6 *Del. C.* § 2404C.

**ALLEGED VIOLATIONS OF THE
DELAWARE MORTGAGE LOAN MODIFICATION SERVICES ACT**

10. Gouert violated the Delaware Mortgage Loan Modification Service Act (6 *Del. C.* § 2400C, *et seq.*) by:

- a. Providing mortgage loan modification services outside of the permissible real estate salesperson exemption under 6 *Del. C.* § 2403C(4);
- b. Failing to register with the State as required under 6 *Del. C.* § 2404C;

c. Failing to provide a surety bond to the State as required under 6 *Del. C.* § 2404C(2);

d. Entering into implied contracts with Delaware consumers for mortgage loan modification services that were not in conformance with the requirements of 6 *Del. C.* § 2406C;

e. Failing to provide to Delaware consumers the disclosures required pursuant to 6 *Del. C.* § 2407C; and

f. Demanding payment of advance fees from Delaware consumers for mortgage loan modification services in violation of 6 *Del. C.* § 2408C(3).

GOUERT'S RESPONSE

11. Gouert neither admits nor denies the Director's allegations above.

CEASE & DESIST TERMS

12. Gouert agrees and is hereby ordered to cease and desist from:

a. Soliciting mortgage loan modification services from Delaware consumers unless duly registered with the State of Delaware, or otherwise exempted;

b. Contracting with Delaware consumers for mortgage loan modification services in a manner that violates the contractual requirements set forth in 6 *Del. C.* § 2406C;

c. Demanding advance payment of fees for mortgage loan modification services prior to a loan modification offer being made by the lender and accepted by the Delaware consumer; and

d. Imposing terms on Delaware consumers not permitted under the provision of applicable Delaware laws.

OTHER MATERIAL TERMS

13. As part of this Agreement, Gouert specifically represents the following:

a. Gouert shall not participate, directly or indirectly, in any activity or form, organize or reorganize into any partnership, corporation, sole proprietorship or any other legal structure for the purpose of avoiding compliance with the terms of this Agreement; and

b. Gouert shall not cause or encourage third parties, nor knowingly permit third parties acting on its behalf, to engage in practices from which Gouert is prohibited by this Agreement.

14. Gouert agrees to pay a total of FIVE THOUSAND DOLLARS (\$5,000) in civil penalties for violations of the Delaware Mortgage Loan Modification Services Act. The full FIVE THOUSAND DOLLARS (\$5,000) shall be suspended provided Gouert does not violate or breach a material term of this Agreement for a period of five (5) years. If Gouert violates a material term of this Agreement within five (5) years of the date this Agreement is executed, the suspended fine shall be immediately due and shall be delivered to the Director or any Deputy Attorney General executing this Agreement, made payable to the State of Delaware, Consumer Protection Fund.

15. Gouert agrees to pay a total of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) in restitution to Eugene & Mary LaGuardia who contracted with Gouert on or about January 6, 2014. This restitution amount shall be paid in equal monthly installments totaling ONE HUNDRED TWENTY FIVE DOLLARS (\$125) per month and delivered to the Director or any Deputy Attorney General executing this Agreement on or before the fifteenth (15th) day of each consecutive month, commencing on November 15, 2014, made payable to the State of Delaware, Consumer Protection Fund. There shall be a total of twelve (12) equal installments of ONE HUNDRED TWENTY FIVE DOLLARS (\$125) to fully satisfy restitution under this Agreement. Any payment not received within ten (10) days of the monthly due date shall be deemed to be a default and breach of this Agreement and all amounts due hereunder shall be immediately due and payable. There shall be no penalty for pre-payment of this amount.

GENERAL PROVISIONS

16. This Agreement shall be binding upon and extend to Gouert, its parent, its subsidiaries, its principals, officers, directors, agents, employees, successors and assigns, and any entity or device through which it may now or hereafter act, as well as any persons who have authority to control or who, in fact, control and direct its business.

17. Nothing in this Agreement shall be deemed or construed as a grant or permission to Gouert to conduct any activities in violation of any federal, state, or other applicable law or regulation.

18. This Agreement does not constitute an approval by the Director of any of the business practices of Gouert, and Gouert shall not make any contrary representations.

19. Nothing in this Agreement shall be construed to limit or affect the rights of any consumer or other person or entity to take any action, assert any claim, or otherwise pursue any available right or remedy, nor create any private rights or causes of action in any third parties.

20. Nothing in this Agreement shall preclude the Director from pursuing any action with respect to acts or practices of Gouert that have not been identified by this Agreement or any acts or practices conducted after the issuance of this Agreement.

21. This Agreement does not preclude the Consumer Protection Unit from investigating any new alleged violations and, if warranted, from taking enforcement action.

22. This Agreement and all of its terms are governed by the laws of the State of Delaware. Any disagreements or contests as to the meaning or enforceability of this Agreement shall be brought before a tribunal of competent jurisdiction within the State of Delaware.

23. Gouert acknowledges by his signatures below that he has entered into this Agreement knowingly and voluntarily and has had opportunity to have this Agreement reviewed by counsel of his choosing.

24. Each undersigned individual represents and warrants that he or she is fully authorized by the party he or she represents to enter into this Agreement and to bind legally such party to the terms of this Agreement.

Trevor L. Gouert
ABC Auctions, L.L.C., a Delaware limited liability company
Cease and Desist Order Pursuant to an Agreement
Signature Page

TREVOR L. GOUERT



By:
Title:

11-14-14
Date

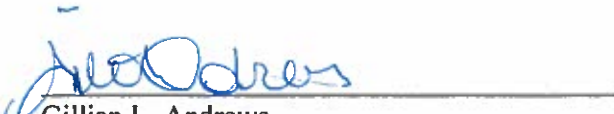
ABC AUCTIONS, L.L.C.



By:
Title:

11-14-14
Date

DELAWARE DEPARTMENT OF JUSTICE



Gillian L. Andrews
Deputy Attorney General
Delaware Department of Justice
820 N French St, 5th Floor
Wilmington, DE 19801
(302) 577-8844

11-19-14
Date

IT IS SO ORDERED THIS 19th day of November, 2014.


Director
Consumer Protection Unit