

**THE STATE OF NEW HAMPSHIRE**  
**Northern District of Hillsborough County**

300 Chestnut Street  
Manchester, NH 03101 2490  
603 669-7410

**NOTICE OF DECISION**

**RECEIVED**

AUG 29 2006

**GALLAGHER, CALLAHAN  
& GARTRELL, PA**

WALTER L MARONEY ESQ  
GALLAGHER CALLAHAN & GARTRELL  
PO BOX 1415  
CONCORD NH 03302-1415

04-E-0025 Michael Dillon v. Fairbanks Capital Corp., et al.

Enclosed please find a copy of the Court's Order dated 8/25/2006  
relative to:

**Court Order**

08/28/2006

John Safford  
Clerk of Court

cc: Veronica C. Viveiros, Esq.  
Jeffrey J. Clark, Esq.

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.  
NORTHERN DISTRICT

SUPERIOR COURT

Docket no. 04-E-0025

MICHAEL DILLON  
Plaintiff

v.

SELECT PORTFOLIO SERVICING, INC., f/k/a  
FAIRBANKS CAPITAL CORPORATION (Servicer),

LASALLE NATIONAL BANK ASSOCIATION, (Trustee)  
MERRILL LYNCH MORTGAGE CAPITAL INVESTORS (Trust)  
HARMON LAW OFFICES ET AL.  
(Defendants)

**PROPOSED FINDINGS OF FACT, RULINGS OF LAW AND ORDER ON  
PLAINTIFF'S MOTION FOR CONTEMPT OR, IN THE ALTERNATIVE, FOR  
CLARIFICATION OF ORDER**

Upon Hearing, the Court hereby Orders as follows:

1. The Defendant Select Portfolio Servicing, Inc. ("SPS") is hereby found in Contempt of this Court's Order of July 1, 2005, as follows:
  - a. Defendant has failed to provide the Plaintiff with the opportunity to reinstate his loan by failing to provide any accurate billing statements to the plaintiff since the date of the July 1, 2005 Order to the present.
  - b. Notwithstanding Defendant's inability to provide the Plaintiff with a single accurate billing statement, and Defendant's own instruction to the Plaintiff to ignore billing statements at variance with this Court's Order, Defendant has assessed late charges and other penalties on the Plaintiff for alleged missed payments between August 1 and the present.

c. Defendant has failed to clarify the nature of its reclassification of past due principal payments or interest or both between June 2002 and August 2005 as "deferred interest," thereby presumably charging the Plaintiff either excess interest or principal, or both on his loan in violation of this court's Order to allow the Plaintiff to reinstate his loan "without penalty."

d. <sup>Defendant</sup> ~~Plaintiff failed for at least ten months to correct derogatory disparaging and inaccurate information of the Plaintiff's Credit Reports with the three major credit reporting agencies, thereby violating the Federal Fair Credit Reporting Act, 16 USA § 1681(s)(2)(a)(2) and an Consent Agreement entered by the Defendant with the Federal Trade Commission, FTC CONSENT ORDER, United States of America v. Fairbanks Capital Corporation, and Thomas A. Basmajian, Civ. No. 03-12219 DPW (U.S. Dist. Mass., Nov. 21, 2003), at Section VIII, B, at 15 and a Settlement Agreement in a private Federal class action, Curry et al v. Fairbanks Mortgage Corp., civ. No. 03-10805-DPW (U.S. Dist. Mass.) (2003). This conduct constitutes a violation of this Court's Order that the Defendant to allow the Plaintiff to reinstate his loan "without penalty."~~

e. <sup>Defendant</sup> ~~Plaintiff continues to fail to rectify derogatory disparaging and false information of the Plaintiff's Credit Reports with the three major credit reporting agencies, thereby violating this court's Order to allow the Plaintiff to reinstate his loan "without penalty."~~

2. The Plaintiff is not in default under the loan or mortgage which is the subject of this action for any payment between August 1, 2005 and the present.

3. The Defendant is Ordered:

- a. To provide the Plaintiff with an accurate statement of the full amount owed under the loan, including, at a minimum, a correct statement of interest rate, a correct and calculable principal amount, a correct, calculable and consistent monthly payment amount;
- b. To continue to provide the Plaintiff with such accurate statements for the term of the loan.
- c. To provide Plaintiff with an accurate statement of the substance and nature of the so-called "deferred interest," including an accounting of the cost of finance to the plaintiff under the

deferral scheme imposed by the Defendant and the cost of finance which the Plaintiff would have incurred had the Defendant not wrongfully refused his payments beginning in June 2002. Plaintiff shall be obligated to pay the lesser amount of finance cost derived thereby.

d. To provide the Plaintiff with evidence in the form of invoices and evidence of payment of all amounts which it claims to have made on his behalf for force-placed insurance and taxes, *including flood insurance in 2004.*

(i) Included in this disclosure, Defendant shall disclose the methodology by which it determined the amount of any forced placed insurance; including whether the insurance was purchased in the form of an individual policy on Mr. Dillon's home, or whether the insurance was purchased in a pool.

(ii) If the insurance was purchased through a pool, Defendants shall disclose the methodology and calculations by which the premium assigned to Mr. Dillon's home was derived.

*By agreement,* Defendant is ordered to <sup>and</sup> place the following statement regarding this account with each of Experian, Transunion and Equifax Credit Reporting Services:

*"Mr. Dillon's Account was placed in foreclosure in or about June 2002. In July, 2005, the said foreclosure was enjoined by the Superior Court for Hillsborough County North in the case entitled MICHAEL DILLON, Plaintiff v. SELECT PORTFOLIO SERVICING, INC., f/k/a FAIRBANKS CAPITAL CORPORATION (Servicer) et al, no. 04-E-0025. upon a finding that SPS had acted wrongfully in refusing payments by Mr. Dillon, thereby resulting in an improper foreclosure."*

4. The Defendant is further Ordered to provide to the Court within sixty days of the Date of this Order a detailed affidavit, executed under pains of perjury by its Chief Executive Officer, detailing all steps it has taken to comply with this Order and the original Order of this Court.

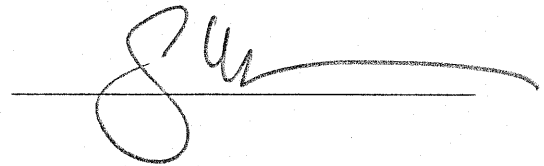
5. The Plaintiff having lived for six years under the constant threat of illegal foreclosure, the Defendant is hereby permanently enjoined from taking any action to initiate foreclosure proceedings against Mr. Dillon without making application to this Court by Petition to initiate such proceedings by making, and receiving the approval of this Court to do so upon making an affirmative showing of its right to make such foreclosure and that it has not engaged in any improper, illegal or predatory action with respect to same. Any such application shall be served on Mr. Dillon in the manner prescribed for a Petition and Mr. Dillon will be

given the opportunity to contest such foreclosure in conformity with the rules of the Superior Court.

6. The court further decrees that Plaintiff <sup>shall</sup> ~~is under no obligation to~~ make any payment to the Defendant under the loan until the Defendant has been found by this Court to be in full compliance with the Orders of this Court in this Case. *an escrow account to be established through his counsel of the mortgage payment due each month.*

7. The Plaintiff is awarded his costs and reasonable attorney's fees in connection with this action, and all actions related to the loan and mortgage since July 1, 2005.

SO ORDERED THIS 25<sup>th</sup> DAY of August, 2006.



Presiding Justice