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Attorney used New York loophole to charge mortgage fees, lawsuit says

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NEW YORK, April 4 (Reuters) - An attorney licensed in Nevada exploited a loophole in New York law to scam dozens of homeowners out of fees for mortgage modifications, according to a lawsuit filed in Nassau County Supreme Court.

It was the latest of several lawsuits involving abusive mortgage modifications to be filed in Nassau County in the last year.

According to the latest suit, filed on March 20, Anthony Blackwell extracted thousands of dollars in upfront fees from homeowners for loan modifications that never materialized. Blackwell could not be reached for comment.

The suit was brought by the Lawyers' Committee for Civil Rights Under Law, with pro bono counsel from Davis Polk & Wardwell, on behalf of 26 homeowners from New York and eight other states: Florida, New Jersey, New Hampshire, Minnesota, Virginia, Maryland, Alaska and Pennsylvania.

According to the lawsuit, Blackwell, who is licensed to practice law in Nevada but not New York, allegedly set up branches of his Nevada-based law firms in New York in order to charge upfront fees for mortgage modification company Homesafe America Inc.

Under a 2010 rule issued by the U.S. Federal Trade Commission, loan modification companies cannot charge upfront fees for their services. The change was aimed at preventing fly-by-night loan-modification companies from charging homeowners for promised relief and then absconding with the payment, the FTC said at the time.

New York state passed a similar law in 2008. But an amendment to the law passed in 2009 provides an exception for attorneys providing legal advice about loan modifications directly to homeowners.

Blackwell's participation gave Homesafe a "veneer of legitimacy" that allowed Homesafe to demand upfront fees for loan-modification services that were never delivered, according to the complaint.

The lawyers who filed suit against Blackwell sued Homesafe and its two co-owners in June 2011. That lawsuit, *Mook v. Homesafe America Inc*, accused Homesafe of falsely promising to modify mortgages of lower-income and middle-class homeowners for upfront payments of thousands of dollars apiece. In August, Acting Justice John Michael Galasso ordered the Homesafe operation shut down and all assets frozen pending a resolution of the case.

Representatives of Homesafe could not be reached for comment. Elliott Martin, an attorney for the company did not respond to a request for comment. Contacted last August, Martin declined to comment on the pending litigation.

Attempts to reach Blackwell for comment were unsuccessful. A phone number listed for Blackwell in Nevada attorney registration records was not working, and he has not made an appearance yet in the lawsuit.

Linda Mullenbach, senior counsel at the Lawyers' Committee, said that Blackwell's alleged scheme is part of a disturbing trend in which lawyers deceive homeowners into thinking they are getting much-needed legal help, only to have their lawyer disappear with as much as \$4,000 in upfront payments.

"Victims who are desperate to try to find a resolution are trusting of the fact that when someone is a lawyer and they need legal advice, they're actually getting legal advice," Mullenbach said.

The Lawyers' Committee has filed seven lawsuits over loan modification since 2010, five of them in Nassau County.

In a lawsuit filed on March 5, it alleged that another law firm, the Law Offices of David Green, fronted loan-modification fraud. A spokesman for Green has said the allegations were unproven and that Green intends to fight the lawsuit.

In the Blackwell case, the two law firms, Consumer First Law Group and United Solutions Law Firm, appear to have closed up shop. No working phone number could be found for either company. During an emergency hearing in the case on March 20, no counsel appeared for the defendants, and a judge granted plaintiffs' motion to freeze certain of the companies' assets.

Plaintiffs in the Blackwell case are seeking at least \$1 million in damages on claims including fraud, breach of contract and legal malpractice.

Daniel Kolb, a Davis Polk attorney representing homeowners in the suits, said that the new wave of fraud represented the "dark side" of legitimate efforts to boost the number of homeowners who are represented by counsel during mortgage-modification or foreclosure proceedings.

"A lawyer who's actually helping someone may well collect a fee, or do it pro bono, but they're not charging an upfront fee before they're doing anything," Kolb said.

The case is Squassoni et al. v. Blackwell et al., in the Supreme Court of New York, Nassau County, No. 3571/12.

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