

IN THE CIRCUIT COURT OF THE 11<sup>th</sup>  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CASE NO.:

FORECLOSURE ASSISTANCE  
& INDEPENDENT RESEARCH, INC., ON  
BEHALF OF ITSELF AND MIAMI-DADE  
COUNTY, A POLITICAL SUBDIVISION,

Plaintiff,

vs.

GIBRALTAR BANK, N.A.

Defendant.

11-314060A-7

THE ORIGINAL FILED  
IN THE OFFICE OF THE CLERK  
SEP 28 2011  
CIRCUIT & COUNTY COURTS  
MIAMI-DADE COUNTY FLORIDA

"QUI TAM ACTION"

QUI TAM COMPLAINT

COMES NOW, the Plaintiff, FORECLOSURE ASSISTANCE & INDEPENDENT RESEARCH, INC., ("FAIR"), on behalf of itself and the County of Miami-Dade, a Political Subdivision, and sues Defendant, GIBRALTAR BANK, N.A. ("Gibraltar"), and as grounds therefore, states as follows:

JURISDICTION AND THE PARTIES

1. Jurisdiction properly lies with this court as this is an action for an amount in excess of \$15,000.00 exclusive of attorney's fees, costs and interest.
2. At all relevant times hereto, the Plaintiff, FAIR, is a Florida Corporation authorized and licensed to do business in the State of Florida.
3. At all relevant times the Defendant, Gibraltar was and is authorized and licensed to do business in the County of Miami-Dade, State of Florida, and was doing business in Florida.

GENERAL ALLEGATIONS

4. This action arises as a result of the course of conduct by Defendant in failing to register single-family dwelling units, it has filed foreclosure actions against, in Miami-Dade County, a Political Subdivision in the State of Florida, which constitutes a violation under

Miami-Dade County Ordinance - CHAPTER 17A.

5. §17A-19 states in pertinent part:

**§17A-19. – Registration of single-family dwelling units subject to foreclosure.**

Upon the filing of a lis pendens or an action to foreclose upon a mortgage or other instrument of debt which debt is secured by the real property of a single-family dwelling unit, whether a house, townhouse, condominium or duplex, the holder or owner of said mortgage or other debt instrument, or the party bringing the foreclosure action, shall immediately register the single-family dwelling unit with the Office of Neighborhood Compliance.

6. As a result of Defendant's failure to comply with §17A-19, the Miami-Dade County Minimum Housing Enforcement Officer is compelled to issue a violation in compliance with §17A-9<sup>1</sup>.

7. §17A-9 states:

**§17A-9 – Notice of Violations.**

Whenever the Minimum Housing Enforcement Officer or his or her assistant finds and determines that there has been a violation of the standards established by this chapter, he or she shall give notice of such violation to the owner and any operators. Such notice shall be in writing, shall specify the violation, and shall specify the time for compliance. Such notice shall specify that the violation must be corrected or a building permit for the work required to correct the violation must be obtained from Team Metro or appropriate municipal Building and Zoning Department and that final compliance must conform to the requirements of the South Florida Building Code. Such notice shall contain an outline of the remedial action which, if taken, will constitute compliance with the requirements of this chapter. Such notice shall inform the owner and any operators of the right to apply to the Minimum Housing Appeals Board for a hearing and review of matters within the notice and advise that failure to comply or appeal may result in the Minimum Housing Enforcement Officer's securing the vacant structure without further notice to the owner or a hearing. Such notice may also inform the person or persons to whom it is directed that failure to comply may result in enforcement action as provided for in Section 17A-13 or Chapter 8CC of this Code. Such

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<sup>1</sup> §17A-10 states that: "Any notice of violation provided for in Section 17A-9 hereof *shall automatically become a final order* in the event that no written appeal from the notice of violation is filed with the Minimum Housing Appeals Board within ten (10) days after the date of service of the notice of violation." (*emphasis added*) The issue of "finality" is thus in effect by operation of law and the only issues left to discuss are the correction of the violation and the amount due to Miami-Dade County, a Political Subdivision.

notice shall be served upon the owner and any operators. Such notice shall be deemed to be properly served and binding upon the owner and upon any operators and upon the vacant structure or vacant premises involved if a copy is served by certified mail return receipt requested, addressed to the owner's and/or operator's last known address. If the owner cannot be served by certified mail, a copy of the notice shall be posted in a conspicuous place on the vacant structure or vacant premises involved. Such notice shall state the date of posting.

8. The Minimum Housing Enforcement Officer for Miami-Dade County, having met the Notice requirements under §17A-9 may then institute an "appropriate civil action" in order to impose and recover a civil penalty as provided for in §17A-13.

9. §17A-13 (c) states:

**§17A-13 (c) – Remedies for enforcement; hindering or obstructing Minimum Housing Enforcement Officer.**

(c) The provisions of this article and final orders issued in accordance with the provisions of this article may be enforced by mandatory injunction, *or other appropriate civil action*. The Minimum Housing Enforcement Officer may institute a civil action in a court of competent jurisdiction to impose and recover a *civil penalty for each violation in an amount of not more than five thousand dollars (\$5,000.00) per offense. Each day, during any portion of which, such violation occurs constitutes a separate offense.* (emphasis added)

10. Miami-Dade County Ordinance, Chapter 17A, was approved on June 30<sup>th</sup> 2009 and became effective on July 10<sup>th</sup> 2009.<sup>2</sup>

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The Miami-Dade County Office of Neighborhood Compliance issued on its website the implementation of a workshop in teaching banks, lenders and other entities what had to be done in order to comply with the new implementation of Chapter 17A, Miami-Dade County Ordinances. The website stated:

"Due to the pressing situation with the economy, many of our neighborhoods have been affected by unsightly abandoned/vacant homes which are undergoing foreclosure. In order to minimize the negative impact on our neighborhoods, the Board of County Commissioners approved, on December 2, 2008, Ordinance 08-134, which requires that once a Lis Pendens is filed on a residential property, this be registered with the Building and Neighborhood Compliance Department department (BNC) through a "Registry". A citation of \$500 will be issued to entities failing to register the property within 30 days of the filing of the Lis Pendens. The Implementing Orders which established the fee (\$125) and the process to be followed for implementation of the Ordinance were approved by the Board of County Commissioners at its June 30, 2009 meeting. The implementation of this ordinance will commence on July 10, 2009. In anticipation of the implementation of this Ordinance, BNC conducted two workshops to discuss the proposed process with the industry (banks, lenders, realtors, contractors, etc.). The workshops were held on May 4, and May 28, 2009, at 2:00 pm, at the Jorge Mas Canosa Center located at 250 SW 114 Avenue," (<http://bldgappl.miamidade.gov/foreclosureregistry/MainPage.aspx>) For a foreclosing entity on a single family home in Miami-

11. From July 2009 through August 2011 the Miami-Dade Clerk's Office has received and recorded in the Public Records 72,801 foreclosure actions in the County of Miami-Dade.

12. Upon review of Miami-Dade County's Building & Neighborhood Compliance Foreclosure Registry, the Defendant has failed to comply with Miami-Dade County Ordinance, Chapter 17A.

13. §17A-19 states:

**Sec. 17A-19. - Registration of single-family dwelling units subject to foreclosure.**

Upon the filing of a lis pendens or an action to foreclose upon a mortgage or other instrument of debt which debt is secured by the real property of a single-family dwelling unit, whether a house, townhouse, condominium or duplex, the holder or owner of said mortgage or other debt instrument, or the party bringing the foreclosure action, shall immediately register the single-family dwelling unit with the Office of Neighborhood Compliance. The registration shall be upon forms as are designated by the Director of the Department and shall be accompanied by the approved registration fee as established in the Department's duly enacted fee schedule.

14. Defendant, by having failed to register the single-family dwelling unit, is in direct violation of Chapter 17A of the Miami-Dade County Ordinance. Defendant was required to register these foreclosure cases and pay a \$125.00 fee to the County. A cursory inspection in the County's website foreclosure registry reveals that Defendant has not registered properties with a lis pendens filed in contravention of Chapter 17A.

15. By having failed to register the single-family dwelling unit in accordance with Chapter 17A, Miami-Dade County, a Political Subdivision is entitled to collect a civil penalty for the lack of registration as stated in §17A-13. Most penalties are in the amount of \$500 per day. Currently, upon information and belief, it is estimated that the Defendant has incurred in excess

of \$1,000,000.00.

16. As a result of the failure of Defendant's to comply with the registration requirements in Chapter 17A of the Miami-Dade County Ordinance, Miami-Dade County has lost and is losing millions of dollars in uncollected civil penalties for non-compliance.

17. All conditions precedent to bringing this claim have been performed, excused or waived.

18. Pursuant to Miami-Dade County Ordinance §21-262, FAIR and Miami-Dade County, a Political Subdivision are entitled to attorney's fees and costs incurred in this action. §21-262 provides in part:

**Sec. 21-262. - Expenses; attorney's fees and costs.**

(1) If the County initiates an action under this article or assumes control of an action brought by a person under this article, and the County prevails in such action, the County shall be awarded its reasonable attorney's fees, expenses, and costs.

(2) If the court awards the person bringing the action proceeds under this article, the person shall also be awarded an amount for reasonable attorney's fees and costs. Payment for reasonable attorney's fees and costs shall be made from the recovered proceeds before the distribution of any award.

(3) If the County does not proceed with an action under this article and the defendant is the prevailing party, the court shall award the defendant reasonable attorney's fees and costs against the person bringing the action.

(4) No liability shall be incurred by the County for any expenses, attorney's fees, or other costs incurred by any person in bringing or defending an action under this article, except as otherwise specifically provided by law.

19. Furthermore, FAIR is entitled to a percentage of the total proceeds recovered pursuant Miami-Dade County Ordinance §21-262. Miami-Dade County Ordinance §21-261 states:

**Sec. 21-261. - Awards to plaintiffs bringing action.**

(1) If the County proceeds with and prevails in an action brought by a person

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under this article, except as provided in subsection (2), the court shall order the distribution to the person of ten (10) percent of the proceeds recovered under any judgment obtained by the County in an action under Section 21-258 or of the proceeds of any settlement of the claim.

(2) If the County proceeds with an action which the court finds to be based primarily on disclosures of specific information, other than that provided by the person initiating the action, relating to allegations or transactions in a criminal, civil, or administration hearing; a legislative, administrative, or inspector general report, hearing, audit, or investigation; or from the news media, the court may award such sums as it considers appropriate, but in no case more than five (5) percent of the proceeds recovered under a judgment or received in settlement of a claim under this article, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(3) If the County does not proceed with an action under this article, the person bringing the action or settling the claim shall receive twenty-five (25) percent of the proceeds recovered under a judgment rendered in an action under this article or in settlement of a claim under this article.

(4) Any payment under this section to the person bringing the action shall be paid only out of the proceeds recovered from the defendant.

(5) Whether or not the County proceeds with the action, if the court finds that the action was brought by a person who planned, initiated, or furthered the violation of Section 21-258 upon which the action was brought, the person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the County to continue the action.

20. The Defendants were the sole parties in control and responsible for the filing of a lis pendens or action in foreclosure requiring registry of the same with Miami-Dade County's Office of Neighborhood Compliance. By having failed to comply with registration they have violated the County ordinance in not paying the registration fee and the civil penalties now due to Miami-Dade County, a Political Subdivision, thereby proximately causing damages to Miami-Dade County, a Political Subdivision and depriving the same of civil penalties due for failure to register the properties.<sup>3</sup>

### COUNT I

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<sup>3</sup> An omission and failure to act in registering the single family dwelling being foreclosed upon in Miami-Dade County is the equivalent (in a dispositive manner) of a false claim in that the Defendant is avoiding the requirements of an ordinance that require a registration fee payable to the County and then a subsequent civil penalty due to the County for such NON-action

## VIOLATION OF THE MIAMI-DADE COUNTY FALSE CLAIMS ORDINANCE

FAIR on behalf of itself and Miami-Dade County, a Political Subdivision, adopts and re-alleges each and every allegation contained in paragraphs one (1) through twenty one (20) of this Complaint as though more fully set forth herein.

21. Pursuant to Chapter 17A, Miami-Dade County Ordinances, Defendant was obligated to register single family dwelling units in foreclosure.

22. Specifically, the Defendant was supposed to fill out a registration form and pay a filing fee in the Office of Neighborhood Compliance or online in order for the Minimum Housing Enforcement Officer of Miami-Dade County to identify and monitor minimum housing standards for property located within the jurisdiction of Miami-Dade County.

23. Additionally, as a result of Defendants' failure to comply Chapter 17A, Miami-Dade County Ordinance, a civil penalty is due and payable to Miami-Dade County which is secured by a real property lien against the single family dwelling unit *not* registered by the Defendant. The Defendant was obligated to register the single family dwelling unit.

24. Defendant knowingly and intentionally failed to register and pay to register the single family dwelling units in foreclosure with the Miami-Dade County Office of Neighborhood Compliance from July 10<sup>th</sup> 2009 to present date; thus, triggering a civil penalty payable to Miami-Dade County, a Political Subdivision. The amounts which are to be determined since failure to register is an ongoing violation subjecting the Defendant to accrual of civil penalties and fines payable to Miami-Dade County under Chapter 17A, Miami-Dade County Ordinance.

25. Defendant has or had possession, custody, or control of money used or to be used by Miami-Dade County and, intending to deceive Miami-Dade County or knowingly conceal and/or concealed the money due to Miami-Dade County by virtue of Chapter 17A, Miami-Dade County

Ordinance, by not registering or causing to be registered the single family dwelling units they were supposed to register under Chapter 17A, which required a filing fee and continuing civil penalties that accrue for every day that the violation continues to exist, for which Defendant is responsible to pay to Miami-Dade County, a Political Subdivision in violation of §17A-13, Miami-Dade County Ordinance.

26. Defendant intended to deceive Miami-Dade County, a Political Subdivision, by failing to register single family dwelling units in foreclosure in violation of Chapter 17A, Miami-Dade County Ordinance, knowing that they were obligated to do so. Specifically, Defendant failed to properly register the single family dwelling units from July 10<sup>th</sup> 2009 to present date and the civil penalties due now for that failure are due and owing to Miami-Dade County, a Political Subdivision. Defendant's conduct has been intentional in nature and Defendant continues to incur additional penalties.

27. Furthermore, Defendant knowingly did not register single family dwelling units in foreclosure to conceal, avoid, or decrease their obligations to collect and pay registration fees and civil penalties that accrue as a result of non-registration with the Office of Neighborhood Compliance in violation of Chapter 17A, Miami-Dade County Ordinance.

28. Defendant's continued conduct proximately causes damages to Miami-Dade County, a Political Subdivision and its residents in that it reduces the amount of revenues Miami-Dade County, a Political Subdivision collects and requires its residents to pay.

**WHEREFORE**, FAIR, on behalf of itself and Miami-Dade County, a Political Subdivision, respectfully demands judgment against the Defendant, GIBRALTAR, for damages in excess of \$15,000.00 as well as any and all penalties allowed by §17A and §21-261 & 262, Miami-Dade County Ordinances, allowable awards to plaintiffs bringing actions under claims enumerated therein, reasonable attorney's fees and costs allowed by §21-261 & 262 and any



other applicable Miami-Dade County Ordinances or Florida Statutes, and any other relief this Court deems just and proper.

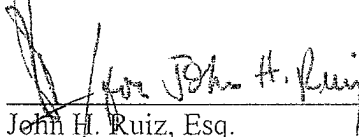
**DEMAND FOR JURY TRIAL**

FAIR, on behalf of itself and Miami-Dade County, a Political Subdivision, demands a trial by jury on all issues triable as of right by a jury.

DATED on this 28<sup>th</sup> day of September, 2011.

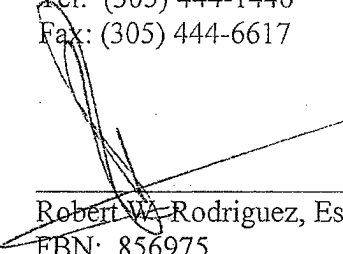
Respectfully submitted,

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