

CAUSE NO. 2011-58741

CARL D. SHAW

v.

EVERHOME MORTGAGE CO.

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IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
151ST JUDICIAL DISTRICT

FILED
Chris Daniel
District Clerk

MAR - 7 2013

Time: 10:10 AM
By: [Signature]
District Clerk

FINAL JUDGMENT

The above -styled and numbered cause came on for trial on November 15, 2012. All parties announced ready. The Court found that it had jurisdiction over the parties and the subject matter, and a trial commenced to the bench.

A trial was held on the live causes of action and defenses.

The parties, represented by counsel, made opening statements. The parties then presented evidence to the Court, as well as final arguments. The Court, having considered the evidence, and having reflected upon the evidence, arguments, and authority submitted by the parties, is of the opinion that Plaintiff Carl Shaw should have Judgment against Defendant Everhome Mortgage Company on Plaintiff's causes of action for breach of contract, violations of the Texas Debt Collection Act (as a stand-alone statute, but not through the DTPA because Plaintiff has not been shown to be a "consumer" under the DTPA), negligent misrepresentation and common law fraud.

The Court finds in favor of Defendant Everhome Mortgage Company on Plaintiff Carl Shaw's causes of action for statutory fraud, malicious prosecution, violations of the Texas Deceptive Trade Practices Act (DTPA), violation of the duty of good faith and fair dealing, and defamation.

Further, the Court finds in favor of Plaintiff Carl Shaw on Defendant Everhome Mortgage Company's affirmative defenses as enunciated in paragraphs 2-10 in Defendant's First

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RECORDER'S MEMORANDUM
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Amended Answer, and finds that the damage caps in Chapter 41, as pled in paragraph 11 of Defendant's First Amended Answer are not applicable Plaintiff's award herein, because no exemplary damages are awarded herein.

The Court finds that Plaintiff Carl Shaw should be awarded judgment for actual damages in the amounts of \$25,000.00 for past mental pain and anguish; \$0.00 for future mental pain and anguish; \$0.00 for past and future damage to professional reputation; \$0.00 for past and future damage to credit reputation; \$89,500.00 for past loss of earning capacity and loss of business; \$0.00 for future loss of earning capacity and loss of business; \$62,500.00 for reasonable and necessary attorney's fees through the time of trial; \$10,000 for attorney's fees for defending an unsuccessful appeal to the court of appeals, \$10,000 for reasonable and necessary attorney's fees for defending an unsuccessful appeal to the Texas Supreme Court, or successfully prosecuting a petition for review or full appeal to the Texas Supreme Court from an adverse ruling by an intermediate appellate court; and \$0.00 for exemplary damages.

AWARD

It is therefore ORDERED, ADJUDGED and DECREED that Plaintiff Carl Shaw be and hereby is awarded judgment for actual damages against Defendant Everhome Mortgage Company in the principal amount of ONE HUNDRED FOURTEEN THOUSAND FIVE HUNDRED DOLLARS (\$114,500.00);

It is further ORDERED, ADJUDGED and DECREED that Plaintiff Carl Shaw be and hereby is awarded prejudgment interest on this award of actual damages against Defendant Everhome Mortgage Company in the additional amount of \$8,220.20, which is calculated as 5.00% simple interest on Plaintiff's actual damages of \$114,500.00 from September 29, 2011 through March 6, 2013, the day before the entry of this Final Judgment, for a total of

\$122,720.20 plus attorney's fees, taxable costs of court and postjudgment interest as listed and described herein below.

It is further ORDERED, ADJUDGED and DECREED that Plaintiff Carl Shaw be and hereby is awarded additional judgment for attorney's fees through the time of trial against Defendant Everhome Mortgage Company in the principal amount of SIXTY TWO THOUSAND FIVE HUNDRED DOLLARS (\$62,500.00);

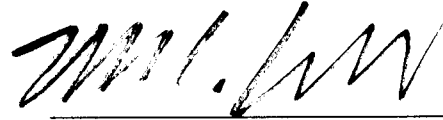
It is further ORDERED, ADJUDGED and DECREED that Plaintiff Carl Shaw be and hereby is awarded judgment against Defendant Everhome Mortgage Company for reasonable and necessary attorney's fees in the amount of \$10,000.00 for the successful defense of a final judgment of this Court on appeal, including appeal to the Court of Appeals; an additional \$10,000.00 in reasonable and necessary attorney's fees for the successful defense of this final judgment through any and all proceedings actually commenced in the Texas Supreme Court, including a Petition for Review, full briefing, and oral argument, if any;

It is further ORDERED, ADJUDGED and DECREED that Plaintiff Carl Shaw be and hereby is awarded additional judgment against Defendant Everhome Mortgage Company for all taxable costs of court;

It is further ORDERED, ADJUDGED and DECREED that Plaintiff Carl Shaw be and hereby is awarded postjudgment interest against Defendant Everhome Mortgage Company in the amount of 5.00% per annum, compounded annually, on the entire judgment from the date this judgment is signed until finally paid; and

It is further ORDERED, ADJUDGED and DECREED that this is a final judgment disposing of all parties, claims and causes of action, and is appealable.

Signed this MAR - 7 2013 day of March, 2013,



Judge Mike Engelhart

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