

No: 13-7280

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IN THE  
SUPREME COURT OF THE UNITED STATES

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NEIL J. GILLESPIE - PETITIONER

vs.

REVERSE MORTGAGE SOLUTIONS, INC, ET AL - RESPONDENTS

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ON PETITION FOR A WRIT OF CERTIORARI TO  
U.S. Court of Appeals For The Eleventh Circuit, Case No. ~~13-11858-B~~  
13-11585-B

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PETITION FOR A WRIT OF CERTIORARI

Submitted October 23, 2013 by

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Ocala, Florida 34481  
United States of America

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## QUESTIONS PRESENTED

1. Does the Secretary, United States Department of Housing and Urban Development (HUD), administrator of the *Home Equity Conversion Mortgage* program, have itself as held in Bennett v. Donovan “the capability to provide complete relief to the lenders and mortgagors alike, which eliminates the uncertainty of third-party action that would otherwise block standing,” under 12 U.S.C. § 1715z–20(i) Protection of homeowner and lender, or any other grounds set forth in the Petitioner’s Motion to Reconsider, Vacate or Modify Order denied July 25, 2013 by the Eleventh Circuit? Ultimate relief sought: Void the mortgage for the borrowers incapacity, as held in Matter of Doar (Brunson) 2009 NY Slip Op 29549 [28 Misc 3d 759].
2. Does the U.S. Constitution, a covenant of “negative rights”, under Article VI, Clause 2, the Supremacy Clause, require that signed and ratified Treaties of the United States, covenants of “positive rights” such as the *International Covenant on Civil and Political Rights* (ICCPR), be fully implemented to guarantee the American People a full measure of Life, Liberty and the pursuit of Happiness, or to protect our Citizens from being wrongly deprived of Life, Liberty, or Property, without due process of law?
3. What redress or protection is available to the Petitioner for political persecution by The Florida Bar and lawyer Ryan Christopher Rodems for initiating an investigation of Petitioner’s pro se defense of home foreclosure as the Unlicensed Practice of Law, which is subject to five years incarceration, in retaliation for Petitioner seeking a First Amendment Government redress of grievances in Petition No. 12-7747 for writ of certiorari to the U.S. Supreme Court? What redress or protection is available to the Petitioner for political persecution by U.S. Judge William Terrell Hodges for wrongly assisting the attorney and/or paralegal of McCalla Raymer LLC wrongly foreclosing on the Petitioner’s home on a HECM “reverse” mortgage?

4. What redress is available to the Petitioner for the fraud or impairment of his pro se, *in forma pauperis*, Petition No. 12-7747 for writ of certiorari to the U.S. Supreme Court, a legitimate government activity, 18 U.S.C. § 371, and related crimes? Should the Human Rights Committee to receive and consider communications in this matter under article 41, the International Covenant on Civil and Political Rights (ICCPR)?
5. What redress or protection is available to the Petitioner for political persecution, and other cruel, inhumane and degrading treatment on the basis of disability, by The Florida Bar and lawyer Eugene P. Castagliuolo, in retaliation for my Petition No. 12-7747 for writ of certiorari to the U.S. Supreme Court, and my Bar complaint No. 2013-10,162 (6D) against him? Castagliuolo included disability threats and insults in his official communication with The Bar by email and mailed letters indicating he had contacted the “SSDI abuse investigator for Florida” because he is “confident that [my] “handicap” status will be very much at issue” to disrupt my benefits.
6. Does the state of Florida adequately protect consumers of legal and court services, and properly regulate lawyers, law firms, the practice of law, and state judicial officers affecting interstate commerce? Is the Florida Supreme Court’s monopoly over the practice of law an illegal restraint of trade? Is inadequate regulation by Florida of its legal profession responsible for Florida’s ranking as the most corrupt state in America, according to DOJ numbers?
7. Does the Lawyer-Judge Bias in the American legal system require a right to counsel in civil legal proceedings because “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable”? *Compare at* Caperton v. A.T. Massey Coal Co., Inc., recusal required because “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable”.

8. Did a letter October 10, 2012 to the Petitioner from the Florida Judicial Qualifications Commission (JQC) waive jurisdiction in JQC Docket No. 12385 for Judge Claudia Rickert Isom<sup>1</sup>, where JQC general counsel Michael Schneider wrote, "the concerns you express....are matters for review *solely* through the court system." Is this an open-ended "right to sue" letter that allows the Human Rights Committee to receive and consider communications under article 41, the International Covenant on Civil and Political Rights (ICCPR)?
9. Does The Florida Bar's survey disaster of Florida and Federal Judges in The Bar's 2012 Report on the Hawkins Commission on Review of Discipline show the "ambient bias" described in *The Secret Life of Judges*, 75 Fordham L. Rev. 2855 (2007) is disrupted in a way that suggests violation of the U.S. Const. art. I, § 10, clause 1, contracts, "No State shall. ..grant any Title of Nobility" [Esquire]? When Florida grants a license to practice law, is it essentially granting a title of nobility, Esquire, one that trumps the both the state and federal judiciary?
10. Is the First Amendment right to petition the Government for a redress of grievances by a person disabled with mental and physical impairments who invoked protection of the Americans with Disabilities Act (ADA) and the ADA Amendments Act of 2008 (ADAAA), a valid exercise of Congress' authority under §5 of the Fourteenth Amendment to enforce that Amendment's substantive guarantees under Title II of the ADA which provides: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation or denied the benefits of the services, programs or activities of a public entity," 42 U.S. C. §12132? Does Tennessee v. Lane support counsel appointment for mental disabilities when considered with Powell v. Alabama and a disabled litigant's right to fundamental access to courts?

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<sup>1</sup> New information shows Judge Isom failed to report her interest in WCAT, INC., a Florida Profit Corporation, where she is Vice President and Corporate Secretary; and failed to report an ownership interest in a high performance aircraft owned by WCAT, INC.

## LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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U.S. Court of Appeals for the Eleventh Circuit, no. 13-11585-B  
District Court no: 5:13-cv-00058-WTH-PRL, removed from Marion County Florida  
Marion County Florida, Fifth Judicial Circuit, no. 42-2013CA-000115-AXXX-XX

Verified Complaint to Foreclose Home Equity Conversion Mortgage (HECM)  
Unlicensed Practice of Law Investigation (UPL) of Neil J. Gillespie

Plaintiff: Reverse Mortgage Solutions, Inc.

Defendant: Neil J. Gillespie, individually, and for his interest in the Gillespie Family Living Trust Agreement Dated February 10, 1997

Defendant: United States of America, Secretary of Housing and Urban Development

Cross-party: The Florida Bar, Unlicensed Practice of Law Investigation of Neil J. Gillespie

Observer: Request to President Jimmy Carter for an observer, due to fraud or impairment of Petition No. 12-7747, a legitimate government activity (18 U.S.C. § 371), deprivation of rights under color of law (18 U.S.C. § 242), and conspiracy against rights (18 U.S.C. § 241).

Observer, Urgent Appeal: Protection from Persecution: Special Rapporteur, Independence of Judges and Lawyers, U.N. High Commissioner for Human Rights, and the Special Rapporteur, Disability, United Nations Enable, Secretariat for the Convention on the Rights of Persons with Disabilities, for protection from political persecution, and for an observer, due to fraud or impairment of Petition No. 12-7747, a legitimate government activity (18 U.S.C. § 371), etc.

Others served. On advice of the Clerk, Supreme Court of the United States, I will suspend service under Rule 29 of documents in this matter to any party, person or entity shown herein.

1. Florida Attorney General Pam Bondi
2. Hon. Ed Carnes, Chief United States Judge, U.S. Court of Appeals for the 11th Circuit
3. Hon. Wm. Terrell Hodges, United States District Court Judge, Senior Status, Ocala Division
4. Hon. Hale Ralph Stancil, Circuit Court Judge, Marion County Florida, Fifth Judicial Circuit
5. Tiffany Caparas, Esq. (for Mark Gillespie), Kaufman, Englett and Lynd, PLLC
6. Gregory D. Jones, Esq., referral to Neil J. Gillespie by The Florida Bar Lawyer Referral Service for a consultation on Unlicensed Practice of Law Investigation. I paid Mr. Jones a \$25 referral fee, but he did not respond to my ADA disability accommodation request. Mr. Jones did not provide a consultation for which I paid, and he accepted, the \$25 LRS fee.
7. Craig H Benson, Esq., c/o William H. Abbuehl, Executive Director, Community Legal Services of Mid-Fla. (CLSMF) provided legal advice, foreclosure of HECM

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APPENDIX E	District Court, <u>Order</u> (Doc. 24), April 12, 2013, denied Rule 59(e) motion to alter or amend the judgment (Doc. 21). [Note, the Order does not respond to the Affidavit of Neil J. Gillespie, 28 U.S.C. 144, bias or prejudice of judge (Doc. 22), which required Judge Hodges “shall proceed no further therein, but another judge shall be assigned to hear such proceeding.”]
APPENDIX F	District Court, <u>Judgment in a Civil Case</u> (Doc. 20), March 11, 2013
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APPENDIX H	District Court, <u>Order</u> (Doc. 12), February 22, 2013. U.S. Magistrate Judge Order extending Plaintiff time to respond to Motion to Dismiss
APPENDIX I	District Court, <u>Report and Recommendation</u> (Doc. 10), U.S. Magistrate Judge, February 13, 2013
APPENDIX J	Letter to U.S. Senator Elizabeth Warren as it appears in the District Court record, <u>Exhibit 4</u> to the Affidavit of Neil J. Gillespie, 28 U.S.C. 144, bias or prejudice of judge (Doc. 22), which required Judge Hodges “shall proceed no further therein, but another judge shall be assigned to hear such proceeding.” Judge Hodges proceeded and denied the affidavit without reference in his <u>Order</u> (Doc. 24), April 12, 2013, that denied my Rule 59(e) motion to alter or amend the judgment (Doc. 21).
APPENDIX K	List of Financial Interests for Judge Hodges shows Bank of America, and appears in the District Court record with the Affidavit of Neil J. Gillespie, 28 U.S.C. 144, bias or prejudice of judge (Doc. 22, Page 30 of 48 PageID 765)
APPENDIX L	District Court, Notice of Filing (Doc. 29), The Florida Bar, Unlicensed Practice of Law Investigation of Neil J. Gillespie Case No. 20133090(5)

## **INDEX TO AFFIDAVITS OF NEIL J. GILLESPIE**

### **AFFIDAVIT OF NEIL J. GILLESPIE, FRAUD-IMPAIRMENT OF PETITION No. 12-7747**

October 21, 2013- To the Special Rapporteur, Independence of Judges and Lawyers, Office of the United Nations High Commissioner for Human Rights, and the Special Rapporteur on Disability, United Nations Enable (website), Secretariat for the Convention on the Rights of Persons with Disabilities

Affidavit: Fraud or impairment of Petition No. 12-7747, a legitimate government activity (18 U.S.C. § 371), deprivation of my rights under color of law (18 U.S.C. § 242), and conspiracy against my rights (18 U.S.C. § 241).

### **AFFIDAVIT OF NEIL J. GILLESPIE-WELL-FOUNDED FEAR-POLITICAL PERSECUTION**

October 21, 2013- To the Special Rapporteur, Independence of Judges and Lawyers, Office of the United Nations High Commissioner for Human Rights, and the Special Rapporteur on Disability, United Nations Enable (website), Secretariat for the Convention on the Rights of Persons with Disabilities

Affidavit: *I have a well-founded fear of political persecution*

## **INDEX TO SEPARATE VOLUME APPENDICES**

### **U.S. ELEVENTH CIRCUIT No. 13-11585-B, SEPARATE VOLUME APPENDIX - No. 1**

- June 12, 2013, Order of dismissal, sua sponte
- July 1, 2013, letter to Clerk, stamped received July 2, 2013 by the Clerk, 2 pages; original returned by the Clerk
- July 1, 2013, Motion to Reconsider, Vacate or Modify Order, 62 pages, docketed by the Clerk July 2, 2013 and appears on PACER; original returned by the Clerk
- July 1, 2013, Certificate of Interested Persons, 40 pages, not docketed; original returned by the Clerk
- July 1, 2013, Civil Appeal Statement, 11CirR33-1b Appendix-Record, 47pages, not docketed; original returned by the Clerk
- July 25, 2013, Order denied motion to reconsider

### **U.S. ELEVENTH CIRCUIT No. 13-11585-B, SEPARATE VOLUME APPENDIX - No. 2**

- July 18, 2013, Gillespie's letter to Clerk, docketed July 19, 2013, 21 pages-PACER



- July 26, 2013, Clerk's letter, SCOTUS instructions, returned Gillespie's addendum letter of July 18, 2013, docketed July 22, 2013 (Clerk docketed its July 26th letter on July 22nd)
- August 6, 2013, Neil Gillespie's letter to Clerk, docketed August 7, 2013-PACER
- August 7, 2013, email 1.44pm of paralegal Yolanda Martinez/McCalla Raymer to Gillespie
- August 7, 2013, email 4.07pm of Neil Gillespie to paralegal Yolanda Martinez/McCalla Raymer LLC, w/attached letter to Clerk
- August 7, 2013, email 4.18pm of paralegal Yolanda Martinez/McCalla Raymer LLC to Gillespie, w/attached court order denied reconsideration
- August 7, 2013, email 4.50pm of Neil Gillespie to paralegal Yolanda Martinez/McCalla Raymer LLC, w/attached letter of U.S. Sen. Bill Nelson w/info for judicial complaint
- PACER Docket 13-11585, Reverse Mortgage Solutions, Inc. v. Neil J. Gillespie, et al.
- PACER Summary 13-11585, Reverse Mortgage Solutions, Inc. v. Neil J. Gillespie, et al

U.S. ELEVENTH CIRCUIT No. 13-11585-B, SEPARATE VOLUME APPENDIX - No. 3

TRANSCRIPT: HUD-HECM Reverse Mortgage Telephonic Counseling Session of Neil J. Gillespie and Penelope M. Gillespie with Susan Gray, CCCS MMI

RECEIVED AT: Home Office Telephone Extension of Neil J. Gillespie

DATE & TIME: April 22, 2008

TRANSCRIBED BY: Michael J. Borseth Court Reporter

SEPARATE VOLUME APPENDIX - MORAL COURAGE

Thank You For Moral Courage in the Justice System

FRAUD OR IMPAIRMENT OF PETITION NO. 12-7747,  
A LEGITIMATE GOVERNMENT ACTIVITY (18 U.S.C. § 371)  
DEPRIVATION OF RIGHTS UNDER COLOR OF LAW (18 U.S.C. § 242)  
CONSPIRACY AGAINST RIGHTS (18 U.S.C. § 241)

DISTRICT COURT No. 5:13-cv-00058-WTH-PRL, SEPARATE VOLUME APPENDIX - No. 4

Doc. 1 Notice of Removal

Doc. 2 Verified Complaint Foreclosure HECM

DISTRICT COURT No. 5:13-cv-00058-WTH-PRL, SEPARATE VOLUME APPENDIX - No. 5

Doc. 5. Motion to Dismiss Verified Complaint  
Doc. 5-1. Exhibits to Motion to Dismiss

DISTRICT COURT No. 5:13-cv-00058-WTH-PRL, SEPARATE VOLUME APPENDIX - No. 6

Doc. 5-2. Defendants Composite A  
Doc. 5-3. Defendants Composite B

DISTRICT COURT No. 5:13-cv-00058-WTH-PRL, SEPARATE VOLUME APPENDIX - No. 7

Doc. 5-4. Appendix 1 to HUD complaint

DISTRICT COURT No. 5:13-cv-00058-WTH-PRL, SEPARATE VOLUME APPENDIX - No. 8

Doc. 5-5. Appendix 2 to HUD Complaint

DISTRICT COURT No. 5:13-cv-00058-WTH-PRL, SEPARATE VOLUME APPENDIX - No. 9

Doc. 11. RMS agreed motion for extension of time  
Doc. 14. Rule 7.1, motion to compel compliance  
Doc. 15. Rule 11 sanction motion against Ms. Parsons, McCalla Raymer LLC.  
Doc. 16. Rule 55 motion for default judgment by Defendant Gillespie.  
Doc. 17. Rule 72/Rule 60(b)(3) Verified Objection to Magistrate Order by Gillespie  
Doc. 18. Objections to the Report and Recommendation.

DISTRICT COURT No. 5:13-cv-00058-WTH-PRL, SEPARATE VOLUME APPENDIX - No. 10

Doc. 21. Rule 59(e) motion to alter-amend judgment  
Doc. 22. Gillespie Affidavit 28 U.S.C. § 144 bias or prejudice of judge  
Doc. 25. Gillespie Motion for IFP on Appeal (17 pages)  
Doc. 26. Gillespie APPENDIX for IFP on Appeal (32 pages)  
Doc. 27. Gillespie Affidavit of IFP (5 page form)  
Doc. 29. Notice of Filing Florida Bar UPL investigation of Gillespie

SEPARATE VOLUME APPENDICES, THE FLORIDA BAR

To be provided.

SEPARATE VOLUME APPENDICES, CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED - To be provided.

## TABLE OF AUTHORITIES CITED

### CASES

Bennett v. Donovan

2013 WL 45879 (11-5288 DC Cir. Jan. 4, 2013)

Matter of Doar (Brunson)

2009 NY Slip Op 29549 [28 Misc 3d 759]

Kingsford v. Salt Lake City Sch. Dist.

247 F.3d 1123 (10th Cir. 2001), U.S. Constitutional question

Isabel Santos, individually & trustee, et al. v RMS

12-3296-SC, USDC, ND Cal

Thermtron Products, Inc. v. Hermansdorfer

423 U.S. 336, 352-53, 96 S.Ct. 584, 593-94, 46 L.Ed.2d 542 (1976)

Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc

561 F.3d 1294, 1296 (11th Cir. 2009)

Troville v. Venz

303 F.3d 1256, 1260, n. 5 (11th Cir. 2002)

Bland v. Fidelity Trust Co.

71 Fla. 499, 71 So. 630 (1916)

Thompson-El v. Bank of America

1:12-CV-840-TWT, District Court, N.D. GA

Florida Unlicensed Practice of Law (UPL)

Rule 10. Rules Governing the Investigation and Prosecution of the Unlicensed Practice of Law, The Rules Regulating The Florida Bar

Rule 10-2.1(a), Unlicensed Practice of Law, Definition

Florida Statutes, section 454.23 Penalties [UPL]

Goldfarb v. Virginia State Bar,

421 U.S. 773 (1975)

State ex rel. Shevin v. Weinstein,

353 So. 2d 1251 (Fla. Dist. Ct. App. 3d Dis1. 1978).8

McPartland v. ISI Inv. Services, Inc.,

890 F.Supp. 1029, M.D.Fla., 1995

IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgments below.

**OPINIONS BELOW**

The Eleventh Circuit's Order of Dismissal in case no. 13-11585-B entered June 12, 2013 dismissed the appeal *sua sponte* for lack of jurisdiction, and is unpublished. (Appendix A).

The Eleventh Circuit's Order DENIED Appellant Neil Gillespie's July 2, 2013 motion for reconsideration of the Court's June 12, 2013 order dismissing this appeal for lack of jurisdiction in case no. 13-11585-B and was entered July 25, 2013 and is unpublished. (Appendix B).

The Clerk's letter July 26, 2013 to Appellant Neil Gillespie included a pro se information sheet for proceeding *in forma pauperis* and filing a petition for writ of certiorari in the Supreme Court of the United States. (Appendix C).

The district court's Order Remanding Case in case no. 5:13-cv-00058-WTH-PRL was entered March 7, 2013, and is unpublished. (Appendix D).

The district court's Judgment in a Civil Case was entered March 11, 2013. (Appendix E).

**JURISDICTION**

The Eleventh Circuit's Order of Dismissal *sua sponte* for lack of jurisdiction in case no. 13-11585-B was entered June 12, 2013.

The Eleventh Circuit's Order DENIED Appellant Neil Gillespie's July 2, 2013 motion for reconsideration of the Court's June 12, 2013 order dismissing this appeal for lack of jurisdiction in case no. 13-11585-B and was entered July 25, 2013 and is unpublished.

The jurisdiction of the U.S. Supreme Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

*This petition draws into question the constitutionality of certain Florida Statutes.*

U.S. Const. art. III, § 2, federal question for “all cases, in law and equity, arising under this Constitution, [and] the laws of the United States...”.

28 U.S.C. § 1331 - Federal question, Thompson-El v. Bank of America, 1:12-CV-840-TWT, District Court, N.D. GA

Federal question cases are those “arising under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331 A case “arises under” federal law “if federal law creates the cause of action, or if a substantial disputed issue of federal law is a necessary element of a state law claim.” Pacheco de Perez v. AT&T Co., 139 F.3d 1368, 1373 (11th Cir. 1998) (citing Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for S. Cal., 463 U.S. 1, 13 (1983)).

Fed. R. Civ. Pro 13(g) permits a crossclaim by one party, me, against a coparty, HUD, “if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action.”

12 U.S.C. Chapter 53, Subchapter V, Bureau of Consumer Financial Protection

U.S. Const. art. I, § 8, The Commerce Clause

U.S. Const. amend. VI Assistance of Counsel.

Due Process, Equal Protection Clauses - Right to Counsel in civil proceedings

The Lawyer-Judge Bias In The American Legal System establishes a right to counsel in civil legal proceedings because “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable”, compare at Caperton v. A.T. Massey Coal Co., Inc. required recusal because “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable”.

“Legal aid, a right in itself” – UN Special Rapporteur - GENEVA (30 May 2013)

ABA Basic Principles of a Right to Counsel in Civil Legal Proceedings

C.A.11, Addenda Five, 11th Cir. R., Non-Criminal Justice Act Counsel Appointment

U.S. Const. art. I, § 10, clause 1, contracts, “No State shall...grant any Title of Nobility” [Esquire]. When Florida grants a license to practice law, it is essentially granting a title of nobility, Esquire, one that trumps the both the state and federal judiciary.

Fed. R. Civ. Pro. 5.1, Constitutional Challenge to HECM - 12 U.S.C. § 1715z20

Void for Vagueness Doctrine

Fed. R. Civ. P. 57, Declaratory Judgment

28 U.S.C. §§ 2201-2202 Declaratory Judgment Act.

28 U.S.C. § 2201, Creation of remedy

U.C.C., Article 3, Negotiable Instruments, § 3-305 Defenses and Claims in Recoupment.

F.S. § 673.3051, Negotiable Instruments, Defenses and Claims in Recoupment.

18 USC § 371 - Conspiracy to commit offense or to defraud United States  
18 USC § 242 - Deprivation of rights under color of law  
18 USC § 241 - Conspiracy against rights  
18 USC § 4 - Misprision of felony

U.S. Const. amend. I Petition the Government for a redress of grievances.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. V *Due Process* for taking life, liberty, or property. (see below, amend. XIV)

U.S. Const. amend. XIV Citizenship (liberty), Due Process, Equal Protection Clauses.

The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures.  
[http://www.law.cornell.edu/wex/due\\_process](http://www.law.cornell.edu/wex/due_process)

Statutes 12 U.S.C. § 1715z20 Insurance of home equity conversion mortgages for elderly homeowners

12 U.S.C. § 1715-z20(j), Safeguard to prevent displacement of homeowner  
12 U.S.C. § 1715-z20(h), The Secretary has administrative authority  
12 U.S.C. § 1715z-20(n), The Secretary approved mortgage originators  
12 U.S.C. 1715z-20(d)(2)(B), Counseling not adequate  
12 U.S.C. 1715z-20(f), Counseling not adequate  
12 USC § 1715z-20(i) Protection of homeowner and lender  
12 USC § 1715z-20(e)(4) did not disclose depreciation rates

24 C.F.R. Part 206; 24 C.F.R. § 206.27(c), HECM becomes due and payable in full "if a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor....and no other mortgagor retains title to the property

24 C.F.R. § 206.27(c), "Mortgagors" are safeguarded from displacement  
24 C.F.R. § 206.125(d)(1), HECM foreclosure must commence within 6 months

HUD Complaint, Reverse Mortgage Handbook 7610.01, Section 4-19  
HECM handbook 7610.1 states, Sec. 4-18 F. Issuing the Certificate of Counseling.

28 U.S.C. § 455(b)(4), trial judge, financial interest Bank of America  
28 U.S.C. § 144, bias or prejudice of judge

Federal Rules Civil Procedure

Fed. R. Civ. Pro. 81, Repleading not necessary  
Fed. R. Civ. Pro. 11, sanctions  
Fed. R. Civ. Pro. 55, motion for default

12 U.S.C. 2605, RESPA, Real Estate Settlement Procedures Act  
42 U.S.C. Sections 6101-6107, The Age Discrimination Act of 1975

U.S. Const. amend. XI Immunity.

42 U.S.C. § 12101 et seq., The Americans with Disabilities Act (ADA), the ADAAA.  
29 U.S.C. § 701 et. seq., The Rehabilitation Act of 1973, Section 504 and 508.  
42 U.S.C. 10801 et seq.; Federal Protection, Advocacy for Mentally Ill Individuals Act.

Fla. Bar Rule 10-2.1(a) Unlicensed Practice of Law  
F.S. § 454.23 penalty for Unlicensed Practice of Law

Only the Attorney General of Florida may represent the State of Florida in a federal court action,  
Fla. Const. Art IV § 4, F.S. § 16.01, State ex rel. Shevin v. Weinstein.

15 U.S.C. Chapter 1, Sherman Act (15 U.S.C. §§ 1-7).  
15 U.S.C. § 12-27, Clayton Act.  
15 U.S.C § 45 - Section 5, Federal Trade Commission Act (FTC Act).  
15 U.S.C. § 1640 Truth in Lending Act (TILA).  
18 U.S.C. § 1951, The Hobbs Act.  
18 U.S.C § 1961-68, RICO, Racketeer Influenced and Corrupt Organizations Act.  
18 USC § 2511 - Interception and disclosure of wire, oral, or electronic communications.

### **Florida provisions**

<b>The Rules Regulating The Florida Bar</b>	<b>The Florida Code of Judicial Conduct</b>
<b>Florida Rules of Civil Procedure</b>	<b>Florida Rules of Judicial Administration</b>
<b>Florida Rules of Appellate Procedure</b>	<b>Fla. Sup.Ct. Manual Internal Operating P</b>

Only the Attorney General of Florida may represent the State of Florida in a federal court action, Fla. Const. Art IV § 4, F.S. § 16.01, and State ex rel. Shevin v. Weinstein

Fla. Const. Article 1, § 2, basic rights (challenge; mental disability not protected).  
Fla. Const. Article 1, § 9, due process.  
Fla. Const. Article 1, § 17, excessive punishments, excessive fines.  
Fla. Const. Article 1, § 21, access to courts.  
Fla. Stat. § 784.048(2) criminal stalking (harassment)  
Fla. Stat. § 825.01 et seq., Abuse, Neglect, Exploitation of Elderly Persons, Disabled Adults

This petition draws into question the constitutionality of the following Florida Statutes:  
Constitutional challenge, Fla. Stat., sec. 454.021 Attorneys; admission to practice law;  
Supreme Court to govern and regulate.  
Constitutional challenge, Fla. Stat., sec. 38.01 et seq., Disqualification of judges.  
Constitutional challenge, Fla. Stat., sec. 43.20 Judicial Qualifications Commission.  
Constitutional challenge, Fla. Stat., sec. 43.291 Judicial nominating commissions.  
Constitutional challenge, Fla. Stat., sec. 57.105 Awards of attorney's fees against pro se.  
Constitutional challenge, Fla. Stat., sec. 27.52 Appointment of Counsel  
Constitutional challenge, Fla. Stat., Ch. sec. 934.01 et seq., Security of Communications.

## **Constitutional Provision, Treaties of the United States**

<http://www.senate.gov/artandhistory/history/common/briefing/Treaties.htm>

Article VI, Clause 2 of the U.S. Constitution, the Supremacy Clause, which explicitly states that a ratified treaty is the Supreme Law of the land and all state law provisions which conflict with the treaty are overridden by the treaty. [http://en.wikipedia.org/wiki/Supremacy\\_Clause](http://en.wikipedia.org/wiki/Supremacy_Clause)

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding. [http://www.senate.gov/civics/constitution\\_item/constitution.htm#a6](http://www.senate.gov/civics/constitution_item/constitution.htm#a6)

The International Covenant on Civil and Political Rights (ICCPR).

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

Signed by President Carter October 5, 1977 - Ratified by the United States June 8, 1992

The United States declares that it accepts the competence of the Human Rights Committee to receive and consider communications under article 41 in which a State Party claims that another State Party is not fulfilling its obligations under the Covenant.

Universal Declaration of Human Rights (UDHR) - <http://www.un.org/en/documents/udhr/>  
Resolution 217(A)(III) of the United Nations General Assembly, December 10, 1948  
<http://www.ohchr.org/en/udhr/Pages/UDHRIndex.aspx>

A Magna Carta for all humanity - <http://www.un.org/rights/50/carta.htm>

<http://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx>

<http://www.state.gov/documents/organization/204710.pdf>

U.N ENABLE: INTERNATIONAL NORMS AND STANDARDS RELATING TO DISABILITY

<http://www.un.org/esa/socdev/enable/comp00.htm>

INTRODUCTION <http://www.un.org/esa/socdev/enable/comp001.htm>

PART I. National Frameworks for the Protection of Rights of Persons with Disabilities

<http://www.un.org/esa/socdev/enable/comp100.htm>

PART II. The International Human Rights System

<http://www.un.org/esa/socdev/enable/comp200.htm>

The International Covenant on Civil and Political Rights (ICCPR).

2.1 Review of provisions, <http://www.un.org/esa/socdev/enable/comp202.htm>

PART III. The Regional Human Rights System

<http://www.un.org/esa/socdev/enable/comp300.htm>

PART IV. Towards a Rights Based Perspective on Disability

<http://www.un.org/esa/socdev/enable/comp400.htm>

PART V. Rights of Special Groups with Disabilities

<http://www.un.org/esa/socdev/enable/comp500.htm>



## STATEMENT OF THE CASE

My name is Neil Gillespie, the petitioner reluctantly appearing pro se<sup>1</sup>, henceforth in the first person, age 57, a law-abiding, indigent, disabled single man, a surviving “reverse” mortgage borrower<sup>2</sup>, and homeowner in a 55+ community in Ocala Florida. This petition is to save my home from a disputed foreclosure<sup>3</sup> of a *Home Equity Conversion Mortgage*<sup>4</sup> or HECM, a FHA<sup>5</sup> “reverse” mortgage program administered by the Secretary, United States Department of Housing and Urban Development (Secretary or HUD). My home’s value is \$74,730 and falling. The mortgage payoff balance is \$114,889. The property is “underwater” by \$40,159. A HECM cannot be refinanced. A ruling January 4, 2013 in Bennett v. Donovan held in part:

HUD itself has the capability to provide complete relief to the lenders and mortgagors alike, which eliminates the uncertainty of third-party action that would otherwise block standing.

I bear witness to the “uncertainty of third-party action”, which here includes political persecution by The Florida Bar, U.S. Judge William Terrell Hodges, and Florida attorneys Ryan Christopher Rodems and Eugene P. Castagliuolo, in retaliation for my Petition No. 12-7747 for writ of certiorari to the U.S. Supreme Court. Current political persecution of me includes:

1. The Florida Bar for an open investigation of me for Unlicensed Practice of Law (UPL).
2. Mr. Rodems made the UPL complaint against me for representing myself and my interests.
3. Judge Hodges corruptly assisted McCalla Raymer in a wrongfully foreclosure of my home.
4. Mr. Castagliuolo’ ongoing threats to interfere with my Social Security disability income.

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<sup>1</sup> I was a client of Community Legal Services of Mid-Fla. which provides legal advice, but not foreclosure representation. I paid a \$25 Florida Bar referral fee to Gregory D. Jones, Esq. but he has not responded to my disability accommodation request, or consulted with me on UPL.

<sup>2</sup> I am one of three (3) HECM borrowers, with brother Mark Gillespie, and mother Penelope Gillespie, whose death September 16, 2009 Plaintiff claims is grounds to accelerate the debt.

<sup>3</sup> Reverse Mortgage Solutions, Inc. v. Neil J. Gillespie, et al., Marion County Florida, Fifth Judicial Circuit, No. 42-2013CA-000115-AXXX-XX; removed February 4, 2013 to U.S. District Court, Ocala Division, Middle District Florida, No. 5:13-cv-00058-WTH-PRL; U.S. Court of Appeals for the Eleventh Circuit, No. 13-11585-B; real party Plaintiff, Bank of America, N.A.

<sup>4</sup> 12 U.S.C. § 1715z-20 - Insurance of home equity conversion mortgages for elderly homeowners, and 24 C.F.R. Part 206, Home Equity Conversion Mortgage Insurance.

<sup>5</sup> The Federal Housing Administration (FHA) is a United States government agency.

FRAUD OR IMPAIRMENT OF PETITION NO. 12-7747

*Ongoing Political Persecution of Neil J. Gillespie in retaliation for his exercise of First Amendment right “to petition the Government for a redress of grievances”.*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

- First Amendment to the United States Constitution

Petition No. 12-7747 for writ of certiorari to the U.S. Supreme Court was denied February 19, 2013. Rehearing was denied April 15, 2013.

In May 2013 Diana R. Esposito, Florida Chief-Assistant Attorney General, provided me incriminating public records showing Respondent David A. Rowland, General Counsel for the Thirteenth Judicial Circuit Florida, concocted with others a fraud to falsely portray to Kenneth Wilson, Florida Assistant Attorney General, that I did not serve Mr. Rowland my petition as I certified under Supreme Court Rule 29. Mr. Wilson claims he relied on Mr. Rowland’s fraud, and did not submit a brief in opposition due the Supreme Court January 14, 2013.

Without a response, Attorney General Pam Bondi denied me due process under the Fifth and Fourteenth Amendments. The Supreme Court relies on opposition briefs as part of its adversarial process to properly litigate and decide a petition. Florida’s opposition brief was due January 14, 2013. The Attorney General did not respond for Florida, thus no opposition brief was distributed for the Supreme Court’s Conference February 15, 2013. Fraud or impairment of Petition No. 12-7747, a legitimate government activity, 18 U.S.C. § 371, is a crime, a deprivation of rights under color of law, 18 U.S.C. § 242, and a conspiracy against rights, 18 U.S.C. § 241.

To remind the Court, and to inform new parties or interested persons how this matter got to the Supreme Court twice, Ryan Christopher Rodems and Barker, Rodems & Cook, PA, have unlawfully represented themselves against me, a former client of Barker, Rodems & Cook, PA

and partner William J. Cook, on matters that were the same or substantially related to the prior representation. Mr. Rodems' firm and his partners concocted a closing statement fraud and stole \$7,143 from my settlement in the Amscot case, a contingent fee case where the lawyers wrongly took almost 90% of the total recovery for themselves, rather than 45% permitted by Bar Rules. Mr. Rodems' representation of his firm against me violates the holding of case law such as McPartland v. ISI Inv. Services, Inc., and The Rules of Professional Conduct including:

Florida Bar Rule 4-1.7 Conflict of Interest; Current Clients.  
Florida Bar Rule 4-1.9 Conflict of Interest; Former Client.  
Florida Bar Rule 4-1.10 Imputation of Conflicts of Interest.

In 2005 I sued to get the stolen money back, and found systemic problems, including:

1. Protections of the U.S. Constitution are little more than a parchment guarantee; and
2. Self-regulation of the legal profession is not effective in protecting consumers; and
3. The lawyer-judge biased American legal system results in a system of favors, not law.
4. Courts to not accommodate disabled persons, but take advantage of disability for gain.

In 2007 I retained Robert W. Bauer on referral of The Florida Bar Lawyer Referral Service to defend a vexatious libel counterclaim brought against me by Mr. Rodems in 2006. Mr. Bauer was not competent, not diligent, churned \$31,863 in fees that only benefited himself, moved to withdrawal from representation in 2008, and with Rodems and others, engaged in fraud and impaired of Petition 12-7747.

Shanell M. Schuyler, Director of Intake for The Florida Bar, wrote me October 4, 2013 that my complaint against Robert W. Bauer, TFB File No. 2013-00,540 (8B), would remain closed with a finding of no probable cause.

## **Markers of Fraud or Impairment in Petition No. 12-7747**

### Markers of fraud or impairment of Petition No. 12-7747 in the U.S. Supreme Court

On January 22, 2013 I submitted Petitioner's Verified Rule 8 Notice of Conduct Unbecoming a Member of the Bar of this Court by Ryan Christopher Rodems, with separate volume appendix; and Rule 29 Proof of Service. The Supreme Court did not docket this filing and did not return the filing to me. U.P.S. shows proof of delivery the next day, January 23, 2013. The Rule 8 Notice is posted on Scribd (86 pages) at the link below

<http://www.scribd.com/doc/125838636/>

On January 22, 2013 I submitted Petitioner's Rule 12.6 Notice to the Clerk of the Court showing Mr. Rodems did not have a party interest in this petition. The Supreme Court did not docket this filing and did not return the filing to me. U.P.S. shows proof of delivery the next day, January 23, 2013. The Rule 12.6 Notice is posted on Scribd (22 pages) at the link below

<http://www.scribd.com/doc/125839046/>

On February 11, 2013 I wrote to Clerk William Suter about the above missing filing that did not appear on the Court's docket but got no response from the Clerk or anyone else.

On May 13, 2013 I wrote ~~Contacted~~ Kathleen L. Arberg, Public Information Officer, but got no response. The letter is posted on Scribd <http://www.scribd.com/doc/144645896/>

On August 29, 2012 I filed a corrected Rule 13.5 Application to Justice Thomas. On information and belief, a Rule 13.5 Application to extend time to file a petition for a writ of certiorari automatically consolidates two or more judgments because:

“...you may only submit a single petition for a writ of certiorari when two or more judgments are sought to be reviewed to the same lower court. Rule 12.4. This also applies to an application for an extension of time within which to file a petition for a writ of certiorari.”

Letter of Jeffrey Atkins to Neil Gillespie, July 25, 2012.

2012

On September 13, ~~2013~~ Justice Thomas granted Application 12A215 extending the time to file a writ of certiorari to and including December 10, 2012. It does not appear cases C.A.11 No. 12-11028 and C.A.11 No. 12-11213 were consolidated. The decision by Justice Thomas is not in the form of an order, but a letter from the Clerk that shows the extension of time was granted, but not consolidation of C.A.11 No. 12-11028 and C.A.11 No. 12-11213. Only C.A.11 No. 12-11028 appears on the online Court docket.

The district court docket no. 5:11-cv-539-WTH-TBS (Appeal 12-11028) shows entry of a decision by the U.S. Supreme Court February 21, 2013 at Doc. 28.

Document 28 - Notification from the U.S. Court of Appeals, 11th Circuit, that WRIT OF CERTIORARI has been denied by the U.S. Supreme Court Issued on 02/19/13. The court's mandate having previously issued, no further action will be taken by this court. (MJT) (Entered: 02/21/2013)

Tellingly, district court docket no. 5:10-cv-503 WTH-(DAB)-TBS (Appeal 12-11213) makes no mention of Petition No. 12-7747 or a decision by the U.S. Supreme Court.

Markers of fraud or impairment of Petition No. 12-7747 in the U.S. Eleventh Circuit

The U.S. Eleventh Circuit docket No. 12-11213 shows an entry August 27, 2012, twenty (20) days after entry of dismissal, likely part of the effort to deny my petition due process by getting Ms. Chapman out of the mail loop as counsel for Respondent Robert W. Bauer,

Returned Mail was received for Attorney Catherine Barbara Chapman for - The Law Office of Robert W. Bauer, P.A.. Address has NOT been verified and updated, and mail has NOT been issued again. 8/15;pro-3 (ENVELOPE STATES "NOT AT THIS ADDRESS"

The address shown below by the Eleventh Circuit was not one used by Ms Chapman at any time in this litigation.

Catherine Barbara Chapman  
Andrews Crabtree Knox & Andrews, LLP  
PO BOX 12800

TALLAHASSEE, FL 32317-2800

All Florida lawyers are required to inform The Florida Bar of the lawyer's current address, which is shown on The Florida Bar's online directory. Ms. Chapman's address shown on The Florida Bar's online directory:

Catherine Barbara Chapman  
Guilday, Tucker, Schwartz & Simpson, P.A.  
1983 Centre Pointe Boulevard, Suite 200  
Tallahassee, FL 32308-7823

My Rule 29 certificate of service, August 13, 2012 and August 29, 2012 to Ms. Chapman shows the above address as listed by The Florida Bar.

On September 20, 2012 I emailed Andrews Crabtree Knox & Andrews, LLP, and asked why does Eleventh Circuit have the wrong address for Catherine B. Chapman. Earlier that day I called and was informed that Ms. Chapman has not been employed by the firm for four years. I did not get a response from Andrews Crabtree.

The foregoing is illustrative but not exhaustive of the markers of fraud or impairment in Petition No. 12-7747. I will submit more evidence as time permits.

## Wrongful Foreclosure of a Home Equity Conversion Mortgage

The Eleventh Circuit's opinion in case no. 13-11585-B entered June 12, 2013 dismissed the appeal *sua sponte* for lack of jurisdiction. (Appendix A). The Court held:

BY THE COURT: This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. We are precluded from reviewing the district court's March 7, 2013 order and March 11, 2013 judgment remanding this case to state court because the district court found that it lacked federal subject matter jurisdiction. *See* 28 U.S.C. 1447(c), (d); *Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc.*, 561 F.3d 1294, 1296 (11th Cir. 2009); *New v. Sports & Recreation, Inc.*, 114 F.3d 1092, 1095-96 (11th Cir. 1997).

The Eleventh Circuit's Order denied rehearing. (Appendix B). The Court held:

BY THE COURT: Appellant Neil Gillespie's July 2, 2013 motion for reconsideration of our June 12, 2013 order dismissing this appeal for lack of jurisdiction is DENIED. All other outstanding motions are DENIED as moot. Should Gillespie wish to petition for mandamus relief, he may file a separate petition for a writ of mandamus or prohibition with this Court. *See* 28 U.S.C. § 1651; Fed.R.App.P. 21.

Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc.  
561 F.3d 1294, 1296 (11th Cir. 2009)

The Order Remanding Case was entered *sua sponte* without hearing from the Plaintiff:

“Although typically the Court would afford the Plaintiff leave to respond to the Objections, the law and the facts of this case conclusively establish that this Court is without subject matter jurisdiction, such that it would be a waste of attorney and judicial resources to wait for a response.” (U.S. Judge Hodges, Order Remanding Case, Doc. 19; page 2, last sentence).

The Court dismissed *sua sponte* for subject matter. 28 U.S.C. § 1915(e)(2). The Plaintiff did not file a motion to remand [28 USC § 1446(b)(2)(B)] or file other responsive pleading(s).

Tellingly the Court in the Order Remanding Case (Doc. 19) held, on page 4 at footnote 1:

[fn1] This Order should not be interpreted as a ruling concerning whether, or to what extent, Mr. Gillespie can sue HUD in a separate action. Rather, this Order is limited to whether the Court has subject matter jurisdiction over the specific action that has been removed to this Court.

The Court's ruling suggests I may sue HUD in a separate action under 28 U.S.C. § 1331. I may do so in a separate action, sue HUD, Bank of America, the Plaintiff, etc., if this appeal is denied.

Corporate Mgmt. Advisors, Inc. held the failure to allege facts sufficient to establish subject matter jurisdiction in a notice of removal is a defect in the removal procedure, and consequently, the district court cannot *sua sponte* remand a case to state court on that ground.

A writ of mandamus is the proper means by which a party may challenge a remand order. *Thermtron Products, Inc. v. Hermansdorfer*

A writ of mandamus is the proper means by which a party may challenge a remand order. Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336, 352-53, 96 S.Ct. 584, 593-94, 46 L.Ed.2d 542 (1976). A remand order based on subject matter jurisdiction is not reviewable by appeal. 28 U.S.C. § 1447(d). But such remand order entered *sua sponte* is a defect in the removal process within the meaning of § 1447(c), and may be challenged by writ of mandamus. New v. Sports & Recreation, Inc., 114 F.3d 1092, 1095-96 (11th Cir. 1997).

Amendment of pleadings in forma pauperis  
*Troville v. Venz*, 303 F.3d 1256, 1260, n. 5 (11th Cir. 2002)

On February 13, 2013 the U.S. Magistrate Judge issued a Report and Recommendation (Report) (Doc. 10), which recommended, pursuant to 28 U.S.C. § 1915(e)(2), that the motion to proceed *in forma pauperis* be denied, and this case be remanded to state court for lack of jurisdiction and a procedural defect in removal. (Doc. 19). I filed 58 pages of objections and exhibits (Doc. 18) to the Report, which the Court denied in its Order Remanding Case (Doc. 19).

The Report (Doc. 10) wrongly alleges on page 5, part B. "Procedural Defect in the Removal", and wrongly states this "civil action is removed solely under section 1441(a).

My notice of removal (Doc. 1) cites 5 grounds for removal and/or jurisdiction:

28 U.S.C. § 1441(a), on page 1  
28 U.S.C. § 1331 - Federal question, paragraph 7



5 U.S.C. § 702, Right of review, paragraph 7  
5 U.S.C. § 551 et seq., Administrative Procedures Act, paragraph 8  
Bennett v. Donovan 11-5288 D.C. Cir., paragraphs 5, 6, 10, with a copy of the  
decision in Bennett attached to the notice of removal.

On an amended notice of removal I would cite all 5 grounds together, and perhaps others.

The Plaintiff, Reverse Mortgage Solutions, Inc. (RMS), did not file any responsive pleadings. The Plaintiff did not file a motion to remand. 28 USC § 1446(b)(2)(B).

The Order Remanding Case (Doc. 19) states, page 2, last sentence, “Although typically the Court would afford the Plaintiff leave to respond to the Objections, the law and the facts of this case conclusively establish that this Court is without subject matter jurisdiction, such that it would be a waste of attorney and judicial resources to wait for a response.”

The Order Remanding Case (Doc. 19) states, page 5, last sentence, “Mr. Gillespie’s request to amend his Notice of Removal will also be Denied as futile because there is no set of facts or legal claims that can be raised which would give the Court jurisdiction over this case.”

The Eleventh Circuit held courts should permit a pro se litigant who is seeking *in forma pauperis* status the opportunity to amend a deficient complaint, which I construe to include a deficient notice of removal, before dismissal pursuant to 28 U.S.C. § 1915 et seq. for failure to state a claim. Troville v. Venz, 303 F.3d 1256, 1260, n. 5 (11th Cir. 2002). Troville was upheld by the Eleventh Circuit March 18, 2013 in Edwards v. Fernandez-Rundell, et al., Appeal No. 12-12938 (D.C. Docket No. 1:12-cv-20799-UU; Southern District, FL).

We review *de novo* a dismissal of a complaint for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). Troville v. Venz, 303 F.3d 1256, 1259 (11th Cir. 2002). We liberally construe *pro se* pleadings. Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008). [p.2]

We have held that even when the plaintiff did not seek leave to amend until after final judgment, where a more carefully drafted pleading might state a claim, a plaintiff must be given at least one chance to amend the complaint prior to dismissal. Bank v. Pitt, 928 F.2d 1108, 1112 (11th Cir. 1991). [p.3]

[P]*ro se* litigants are held to a less stringent standard, *see Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998)...” [p.3]

Under 28 U.S.C. § 1915(a), the Court may permit me to proceed IFP if I show by affidavit that I am unable to bear the fees and costs. Sec. 1915(e)(2)(B)(ii) does not allow the court to dismiss an *in forma pauperis* complaint without leave to amend under Fed.R.Civ.P. 15.

Rule 15(a)(1) Amending as a Matter of Course. A party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

The Plaintiff did not file a response to my motion to dismiss (Docs. 5, 5-1, 5-2, 5-3, 5-4, 5-5). Also,

- Motion<sup>4</sup> for leave to proceed on appeal *in forma pauperis* (Doc. 25) (17 pages)
- Appendix, motion for leave to proceed on appeal, IFP (Doc. 26) (31 pages)
- Affidavit of indigency (Doc. 27) (5 pages)

#### Procedural history of the case

Plaintiff filed Verified Complaint To Foreclose Home Equity Conversion Mortgage (Doc. 2) January 9, 2013 at 12:45 PM. Case No. 13-115-CAT Marion Co. FL Circuit Court

February 4, 2013 12:47 PM, I filed by hand, motion to dismiss in Case No. 13-115-CAT, Marion County Circuit Court, a response consisting of 559 pages of documents:

02-04-2013, Notice of Agreement to Extend Time (9 pages)  
02-04-2013, Defendants Motion to Dismiss (47 pages)  
02-04-2013, Defendants Motion to Dismiss, Exhibits (107 pages)  
02-04-2013, Defendants Composite A (85 pages)  
02-04-2013, Defendants Composite B (240 pages)  
02-04-2013, Notice of Filing Notice of Removal (3 pages)  
02-04-2013, Notice of Removal USDC Feb-04-2013 (67 pages)  
02-04-2013, Rule 2.516 notice NJG (1 page)

February 4, 2013 1:07 PM, I immediately removed the case to US District Court, Middle District, Florida, Ocala Division, 5:13-cv-58-oc-WTH-PRL, and filed by hand delivery:

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<sup>4</sup> On May 17, 2013 this Court notified me by letter that the district court does not allow this appeal *in forma pauperis*. I called Ms. Gaddis and determined the 30 day time period to file a motion to proceed IFP began May 17, 2013, the date on the letter. The 30 day time period ended Sunday June 16, 2013, extended to Monday June 17, 2013. (Rule 26(a)(1)(c). Before I timely filed my IFP motion, this Court entered the Order of Dismissal sua sponte June 12, 2013.

02-04-2013, Notice of Removal (Doc. 1)  
02-03-2013, Verified Complaint HECM Foreclosure (Doc. 2)  
02-04-2013, Motion Quash Service for Mark Gillespie, et al; Tiffany Caparas, Esq. (Doc. 3)  
02-04-2013, Notice of Filing Agreement Extend Time (Doc. 4)  
02-04-2013, Motion to Dismiss Verified Complaint (Doc. 5)  
02-04-2013, Exhibits to Motion to Dismiss (Doc. 5-1)  
02-04-2013, Defendants Composite A (Doc. 5-2)  
02-04-2013, Defendants Composite B (Doc. 5-3)  
02-04-2013, Appendix 1 to HUD complaint (Doc. 5-4)  
02-04-2013, Appendix 2 to HUD Complaint (Doc. 5-5)

Fed. R. Civ. Pro. 81(c) Removed Actions.(2) After removal, repleading is unnecessary....

02-13-2013, Magistrate Judge Report and Recommendation (Doc. 10)  
02-21-2013, RMS agreed Motion for Extension of Time (Doc. 11)  
02-22-13, Magistrate Judge Order on motion to extend time (Doc. 12)  
02-26-13, Rule 11 sanction motion, Ms. Parsons, McCalla Raymer (Doc. 15)  
02-26-13, Gillespie default motion, Rule 55 (Doc. 16)  
03-05-13, Gillespie Verified Objection to Magistrate Order Doc. 12 (Doc. 17)  
03-04-13, Gillespie Objections to Report and Recommendation (Doc. 18)  
03-07-13, U.S. Judge, Order Remanding Case (Doc. 19)  
03-11-13, Judgment in a Civil Case (Doc. 20)  
04-08-13, Rule 59(e) motion to alter-amend judgment (Doc. 21)  
04-08-13, Gillespie Affidavit 28 U.S.C. § 144 bias or prejudice of judge (Doc. 22)  
04-10-13, Gillespie Notice of Appeal (Doc. 23)  
04-12-13, U.S. Judge Order, Denied Rule 59(e) motion; Denied 28 U.S.C. § 144 (Doc. 24)  
05-06-13, Gillespie Motion for IFP on Appeal (17 pages) (Doc. 25)  
05-06-13, Gillespie APPENDIX for IFP on Appeal (32 pages) (Doc. 26)  
05-01-13, Gillespie Affidavit of IFP (5 page form) (Doc. 27)  
05-09-13, U.S. Judge Order, Denied Gillespie IFP on appeal (Doc. 28)  
06-06-13, Notice of Filing Florida Bar UPL investigation of Gillespie (Doc. 29)  
06-12-13, C.A.11 Order of Dismissal, lack of federal jurisdiction (Doc. 30)

#### Statement of facts and law - HECM “reverse” mortgage

This petition is to save my home from foreclosure. I am one of three (3) borrowers, with my mother Penelope Gillespie, and brother Mark Gillespie. Plaintiff’s state court *in rem* action<sup>1</sup>

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<sup>1</sup> Reverse Mortgage Solutions, Inc. v. Neil J. Gillespie, et al., Case No. 13-115-CAT Marion Co. FL Circuit Court. The Plaintiff’s complaint identifies seven (7) fictional defendants. On removal, any claims asserted by a plaintiff against fictional parties are due to be stricken, because there is no provision for fictitious party practice under federal law or rules of procedure. *Cf.* 28 U.S.C. § 1441(a). Green v. Pilgrim’s Pride Corporation, Civil Action No. 5:08-cv-0573-CLS, U.S. District Court, Northern District of Alabama, Northeastern Division, U.S. Judge Lynwood Smith held in a Memorandum Opinion entered May 8, 2008, at footnote 1.

alleges the 2009 death of Penelope Gillespie is grounds to foreclose a Home Equity Conversion Mortgage on my homestead residence, 8092 SW 115th Loop, Ocala, Marion County, Florida (“the property”) in a 55+ community, Oak Run Country Club (“Oak Run”), built and managed by Development and Construction Corporation of America (“DECCA”). The property’s market value is \$74,730. The mortgage balance is \$114,889. The property is “underwater” by \$40,159.

*A Home Equity Conversion Mortgage*, or HECM, is a Federal Housing Administration (FHA) “reverse” mortgage program administered by the Secretary, United States Department of Housing and Urban Development (Secretary or HUD) to enable home owners over 62 years old access the subject home's equity. 12 U.S.C. § 1715z20 et seq. and 24 C.F.R. Part 206. The record shows substantial violations of the HECM rules by the HUD-approved lender and lender parties.

A HECM does not require a homeowner to make mortgage payments as a conventional mortgage does. Instead, a HECM does not become due and payable until the last surviving homeowner dies or no longer lives in the home. 12 U.S.C. § 1715-z20(j) Safeguard to prevent displacement of homeowner. The HECM becomes due and payable in full “if a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor....and no other mortgagor retains title to the property.” 24 C.F.R. § 206.27(c).

*Disputed HECM Foreclosure: Substantial *disputed* issue of federal HECM law*  
is a necessary element of the state law foreclosure claim on a HECM

I am one of two surviving HECM mortgagors, and the only surviving homeowner living in the home, alone, in substantial compliance with the HECM Note, making this foreclosure of a HECM premature. My bother Mark Gillespie of Fort Worth Texas is also a surviving borrower, but he does not live in the home. The HECM becomes due and payable in full “if a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor....and no other mortgagor retains title to the property.” 24 C.F.R. § 206.27(c). Mortgagor Ms. Gillespie

died in 2009. But I am a surviving borrower or mortgagor living in the home as my principal residence, and retain title to the property. Therefore I dispute the Plaintiff's allegations in its "Verified Complaint to Foreclose Home Equity Conversion Mortgage". (Doc. 2). That means a substantial *disputed* issue of federal HECM law is a necessary element of the Plaintiff's state law foreclosure claim that this HECM is due and payable. The district court has subject matter jurisdiction under 28 U.S.C. § 1331 and the U.S. Constitution, Article III, Section 2 for "all cases, in law and equity, arising under this Constitution, [and] the laws of the United States...". (Doc. 18, page 2). Fed. R. Civ. Pro 13(g) permits a crossclaim by one party, me, against a coparty, HUD, "if the claim arises out of the transaction or occurrence that is the subject matter of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action." My home is property that is the subject matter of the original action. The Plaintiff's Complaint (Doc. 2) is an *in rem* action against my home (Doc. 1, ¶ 1, and ¶ 15) my primary residence (Doc. 5, ¶¶ 2, 6, 9, 20, 118, ) and homestead. (Doc. 9).

The terms "homeowner", "borrower" and "mortgagor" are not used consistently in HUD's HECM reverse mortgage program, and thus are void for vagueness. For example:

- a. The HECM Note: "Borrower" means each person signing at the end of this Note.
- b. "Homeowners" are safeguarded from displacement by 12 U.S.C. § 1715-z20(j).
- c. "Mortgagors" are safeguarded from displacement by 24 C.F.R. § 206.27(c).

The terms "homeowner", "borrower" and "mortgagor" are ordinary words, well-established in the vocabulary of elderly folks. It is unreasonable to expect the elderly to learn and understand new and nuanced meanings for those words in the context of a very complex HECM transaction.

The loan originator, lender and affiliated parties for the subject HECM include:

HECM originator:  
Liz Baize, The Park Avenue Bank

HECM consumer counseling:  
Susan Gray/CCCS/MMI

8375 SW Highway 200  
Ocala, Florida

5825 Phelan Blvd., Ste. #102  
Beaumont, TX 77706

HECM title company:  
Financial Title Company  
81 Blue Ravine Road, #220  
Folsom, CA, 95630

HECM assignee:  
Bank of America, N.A.  
100 North Tryon Street  
Charlotte, NC 28155

HECM lender:  
Liberty Reverse Mortgage, Inc.  
10951 White Rock Road, Suite 200  
Rancho Cordova, CA 95670

HECM servicer:  
BofA Reverse Servicing Dept  
BAC Home Loans Servicing

The Secretary has administrative authority, 12 U.S.C. § 1715-z20(h) and “may (1) enter into such contracts and agreements with Federal, State, and local agencies, public and private entities, and such other persons as the Secretary determines to be necessary or desirable to carry out the purposes of this section;”. The Secretary approved under 12 U.S.C. § 1715z–20(n), mortgage originators, and (2) all parties that participate in the origination of a mortgage to be insured under this section. Therefore the Secretary knew or should have known:

a. The Park Avenue Bank (PAB), Valdosta GA, was unsound, at risk of failure, entered a consent decree with the FDIC and State of Georgia on July 14, 2009, and failed April 29, 2011. PAB was the loan originator who broke HECM rules in a hopeless survival quest for big fees.

b. Financial Title Company closed July 30, 2008, two months after it mishandled the subject HECM, and with PAB, disregarded HECM regulations to earn fees. (Docs. 5-3, 5-4, 5-5).

c. Bank of America knowingly made loans insured by the FHA to unqualified home buyers. HUD reported February 9, 2012 “\$1 Billion To Be Paid By The Bank of America To The United States Largest False Claims Act Settlement Relating To Mortgage Fraud”. (Doc. 5-5)

d. Bank of America was a major contributor to Money Management International (MMI) a HUD approved counselor. MMI did not provide me or mom adequate counseling by a third

party, 12 U.S.C. 1715z-20(d)(2)(B), or comply with 1715z-20(f) Counseling services and information for mortgagors, when Bank of America was affiliated with the subject HECM.

e. Liberty Reverse Mortgage sold for \$50 million to Genworth Financial, Inc., a process began in 2007 and ended after our loan closed. Liberty cut corners to earn fees, sold our HECM Note and HECM Mortgage to Bank of America a week before I signed the HECM documents.

I became one of three HECM borrowers June 5, 2008 along with Penelope Gillespie, my mother, and Mark Gillespie, when we signed a first and second HECM Note, and a first and second HECM Mortgage, and other loan documents, as co-trustees for the Gillespie Family Living Trust. Penelope Gillespie also signed the first and second HECM Mortgages personally, although the body of the mortgage document(s) shows only three “Co-Trustees” as borrowers.

In 2012 I found the HECM mortgages filed with the Marion County Clerk of Court were altered by interlineation after execution to include Penelope Gillespie personally, but the changes were not initialed, and were made sometime after the loan closed. Florida case law holds a material alteration voids the instrument and destroys the identity of the contract rendering it unenforceable. Bland v. Fidelity Trust Co., 71 Fla. 499, 71 So. 630 (1916). Since a HECM reverse mortgage is a non-recourse loan, the void contract is unenforceable, and the lender, its successors and assigns, have no further means to collect the debt. (Doc. 5, 5-1, 5-2, 5-3, 5-4, 5-5)

On June 3, 2008 - two days before the loan closed - Liberty Reverse Mortgage somehow sold a nonexistent HECM Note and HECM Mortgage to Bank of America. Liberty’s Jessica Yee also made a “Direct Endorsement Allonge” - without recourse - May 29, 2008 that predates execution of the Note by a week. The Direct Endorsement Allonge was made “*Pay To The Order Of: Bank of America, N.A., a National Banking Association*”. The Allonge became “a permanent part of said Note on May 29, 2008”: (See Docs. 5, 5-1, 5-2, 5-3, 5-4, 5-5)

For purposes of further endorsement of the following described Note, this Allonge is affixed and becomes a permanent part of said Note on May 29, 2008.

On May 29, 2008 a Note did not exist. The Allonge has a fatal defect that vitiates the Note, making it unenforceable. The Allonge was made "Without Recourse" to Bank of America, N.A., and thus without recourse against the property. This defective chain of custody is fatal and vitiates the Assignment of Mortgage executed by BofA to the Plaintiff March 27, 2012.

Penelope Gillespie had Alzheimer's disease and died September 16, 2009 of dementia. The Plaintiff's Complaint alleges "Pursuant to Paragraph 9(a) of the subject mortgage, lender may require immediate payment in full if borrower dies and the property is not the principal residence of at least one surviving borrower." But I am a surviving borrower.

The HECM Note defines the parties in paragraph 1, DEFINITIONS:

- "Borrower" means each person signing at the end of this Note.
- "Lender" means Liberty Reverse Mortgage, Inc., and its successors and assigns.
- "Secretary" means the Secretary of Housing and Urban Development or his or her authorized representatives.

Three persons signed at the end of the Note making them borrowers:

- Penelope M. Gillespie, individually and trustee of the Trust
- Neil J. Gillespie, trustee of the Trust
- Mark Gillespie, trustee of the Trust

Borrower Lacked Capacity to Make a HECM

Borrower Penelope Gillespie had Alzheimer's disease and dementia and lacked capacity at the time of the HECM counseling session April 22, 2008. Ms. Gillespie lacked capacity at the time of the HECM loan closing June 5, 2008. Elizabeth "Liz" Baize of the Ocala office of The Park Avenue Bank was the HECM loan originator. I told Ms. Baize that Penelope Gillespie had Alzheimer's disease early in the origination process. Ms. Baize's only concern was whether a guardianship was in place for Ms. Gillespie. There was no guardianship. In February 2005 I moved into the property to care full-time for my mother, an unremarried widow. By then Ms.



Gillespie could no longer drive a car, could no longer balance her checkbook, and was being treated by a neurologist for Alzheimer's. In 2006 I was power of attorney for Ms. Gillespie, healthcare surrogate, living will proxy, and designated a personal representative in the will.

Liz Baize did not require anyone to act as power of attorney for Ms. Gillespie. Instead, the bank had me and Mark Gillespie added to the quit-claim deed along with Ms. Gillespie, and required us all to sign the HECM Notes and HECM Mortgages making us borrowers. When the HECM closed June 5, 2008, Penelope Gillespie age 77 was the only borrower age 62 or older qualified for a HECM. I was age 52. Mark Gillespie was age 49. (Doc. 5 through Doc. 5-5).

The Plaintiff responded May 24, 2012 to my Qualified Written Request for Bank of America's transfer of servicing account/loan no. 68011002615899 pursuant to RESPA, the Real Estate Settlement Procedures Act (12 U.S.C. 2605). Plaintiff's response is attached as Exhibit 2. Plaintiff's letter states, "The total loan balance became Due and Payable on December 16, 2009." Bennett noted a HECM foreclosure must commence within 6 months. 24 C.F.R. § 206.125(d)(1). Bank of America gave notice October 5, 2009 the mortgage was due and payable. The Plaintiff did not foreclose until January 9, 2013. The Plaintiff's May 24, 2012 letter also states in part:

The borrower listed on the loan is Penelope M. Gillespie. The trustees are listed on the deed as trustee, and not on the loan as borrowers. Please understand, the trustees do have rights to the property, however, this is a *reverse mortgage loan and the loan must be satisfied*. As Bank of America communicated to you previously, you are not a borrower and were not a beneficiary of the trust at the time of the loan origination. You were a trustee and now a successor beneficiary. What being trustee of the property means is that you do not have to go to court to have the estate probated. Therefore, if you as beneficiary trustee would like to retain the property the loan balance must be paid in full.

However the attached Assignment of Mortgage contradicted the statement about borrowers:

Original Borrower(s): PENELOPE M. GILLESPIE, INDIVIDUALLY AND AS TRUSTEE  
NEIL J. GILLESPIE AND MARK GILLESPIE, AS CO-TRUSTEES OF THE GILLESPIE  
FAMILY LIVING TRUST AGREEMENT DATED FEBRUARY 10, 1997

The Court rejected a definition of borrower to include only natural persons acting in their individual capacities. Isabel Santos, individually and as trustee and beneficiary of the Yolanda Maria Santos Trust, et al. v. Reverse Mortgage Solutions, et al, 12-3296-SC, USDC, N.D. Cal.<sup>2</sup>

“Defendants argue that the Santos Trust cannot be the borrower under the HECM Deed or the notes because the notes limit the definition of "borrower" to "each person signing at the end of this Note.”

“Defendants' argument is unavailing. First, Defendants do not account for the fact that, while the notes indeed define "borrower" in this way, the HECM Deed lists the borrower as Yolanda Maria Santos in her capacity as trustee for the Santos Trust. Second, Defendants apparently interpret the notes' definition of borrower to include only natural persons acting in their individual capacities. The Court is unconvinced that this narrow reading is the correct one. On the contrary, the HECM Deed specifically contemplates transfer of a borrower's interest in the property to or from a separate trust, HECM Deed ¶ 9(e), which suggests that trusts can hold the rights of borrowers under the HECM Deed, as well as their obligations under the notes. Defendants cite no contrary authority”

A Notice of Default and Intent to Foreclose dated June 8, 2012 from the Plaintiff appears at Exhibit 3. The notice informs Penelope Gillespie that the mortgage “ is in default because of the death of the primary mortgagor and the loan must be paid in full.” The notice demands \$108,056.19 to “cure default”. The notice arrived by certified mail to the property, addressed only on the envelope to me and Mark Gillespie individually. The Plaintiff did not send Mark Gillespie a notice of default where he lives in Texas, as required by the note. The Plaintiff did not send notice to the trust, or notice to the co-trustees. However I did respond to this:

IF YOU ARE UNABLE TO PAY YOUR ACCOUNT IN FULL, RMS offers consumer assistance programs designed to help resolve delinquencies and avoid FORECLOSURE. These services are provided without cost to our customers. You may be eligible for a loan workout plan or other similar alternatives. If you would like to learn more about these programs, you may contact the Loss Mitigation Department at (866) 503-5559, between the hours of 8:30 AM and 5:00 PM CST. WE ARE VERY INTERESTED IN ASSISTING YOU.

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<sup>2</sup> Page 11, Order, October 12, 2012 (Doc. 25) Denying Defendants’ Motion (1) For Judgment on the Pleadings and (2) To Dissolve or Modify Preliminary Injunction. See Doc. 5-2 for the case.

I called June 19, 2012 to RMS and eventually spoke with Valerie Castro and others. I disputed the claim, I asked about a loan workout and other such, all to no avail. Unfortunately a reverse mortgage cannot be refinanced, and there are no assistance programs or workouts, nothing.

On August 9, 2012 I made a written complaint to HUD and the Plaintiff, pursuant to the complaint procedure set forth in the HUD Reverse Mortgage Handbook 7610.01, Section 4-19. My complaint was 227 pages, with a CD recording of the 2008 HECM telephone counseling:

- HUD Complaint August 9, 2012 by Neil J. Gillespie, twenty-five (25) pages  
Exhibit A, a two page Notice of Default and Intend to Foreclose  
Exhibit B, CD audio recording of the April 22, 2008 HECM telephone counseling  
Separate Volume Appendix 1, Exhibits 1-21 (108 pages)  
Separate Volume Appendix 2, Exhibits 22-42 (92 pages)

In turn HUD provided the 25 page complaint, Exhibit A, but not the appendices, to the CFPB.

20. The Consumer Financial Protection Bureau (CFPB) is the federal agency that holds primary responsibility for regulating consumer protection with regard to financial products and services in the United States. Authority for CFPB is found in Dodd-Frank, 12 U.S.C. Chapter 53, Subchapter V - Bureau of Consumer Financial Protection. The CFPB opened an investigation January 4, 2013 on my complaint submitted August 9, 2012 to HUD and the Plaintiff. The CFPB closed the complaint March 19, 2013 because Bank of America claimed it could not discuss the loan with me due to privacy laws. But that issue was later resolved. Jason Powell of Bank of America notified me March 28, 2013 that he had the necessary documentation to respond. The letter is attached as Exhibit 4. I notified the CFPB by letter, but it did not reopen my complaint.

A HECM is a highly complicated financial product. It has taken me years to learn about the subject reverse mortgage and its many parts and defects. The subject HECM is a disaster for me as a homeowner, a predatory loan that charged high fees, stripped me of home equity, and threatens

to leave me homeless. On March 4, 2013 I notified the district court of a Rule 5.1 Constitutional Challenge in my Objections to the Report and Recommendation (Doc. 18), page 2:

Notice is also given under Rule 5.1, Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), of a Constitutional Challenge to 12 U.S.C. § 1715z–20 - Insurance of home equity conversion mortgage for elderly homeowners, set out in a separate Rule 5.1 pleading.

However the district court remanded the case sua sponte one day after getting my objections, without Plaintiff’s response, and before I could file the Rule 5.1 pleading, which states at ¶ 1:

1. Gillespie initiates under Fed. R. Civ. P. 5.1 a constitutional challenge to a statute affecting the public interest, 12 U.S.C. § 1715z–20, Insurance of home equity conversion mortgages [HECM] for elderly homeowners. In addition to and in the alternative to the Rule 5.1 relief sought, Gillespie seeks a Declaratory Judgment under Fed. R. Civ. P. 57 and 28 U.S.C. § 2201, Creation of remedy, including relief under the U.C.C., Article 3, Negotiable Instruments, § 3-305, Defenses and Claims in Recoupment. [Codified under Florida law as F.S. § 673.3051].

My challenge shows the HECM program is an unconstitutional financial burden on the public, harms elderly homeowners, age discrimination, and primarily benefits banks and lender parties:

- The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101-6107
- Fifth and Fourteenth Amendments, Due Process - U.S. Constitution
- The Void for Vagueness Doctrine. Terms “homeowner”, “borrower” and “mortgagor” are void for vagueness. Also, *see* Plaintiff’s responses (Doc. 5-3) to the HUD complaint Oct-15-2012; and the letter Jan-14-2009 of Karen Yantis, Bank of America, re negative growth, Doc. 5-5, Exhibit 37. (best read by a J.D. with a C.P.A.)
- Property Rights - Kingsford v. Salt Lake City Sch. Dist., U.S. Constitutional question
- First Amendment, Petition for Redress of Grievances - U.S. Constitution
- HECM program is burden on taxpayers, The Wall Street Journal, December 14, 2012 “Mortgages in Reverse, Taxpayers get hit by another federal housing money loser.”
- *See* the CFPB Report to Congress on Reverse Mortgages, June, 2012. Copy enclosed.
- When banks and lawyers [foreclosure mills] operate unfettered, people loose rights.

Judge Voids Reverse Mortgage, Says Counseling Fails to Prove Competency  
Matter of Doar (Brunson) 2009 NY Slip Op 29549 [28 Misc 3d 759] December 18, 2009

Charles J. Thomas, a New York Supreme Court Judge, voided a reverse mortgage and its subsequent refinancing on the grounds that the borrower's mental illness made her unable to understand the reverse mortgage. The Order appears at Exhibit 5, and a news story at Exhibit 6.

Matter of Doar (Brunson) 2009 NY Slip Op 29549 [28 Misc 3d 759] December 18, 2009 Thomas, J. Supreme Court, Queens County Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. As corrected through Thursday, October 7, 2010

Appellate Division continued to require that a mortgagee have knowledge of the mortgagor's incapacity before the contract which is otherwise voidable could be voided. In order to void a contract which is voidable because of incapacity, the mortgagor must establish that the mortgagee had knowledge of the "incapacity and were . . . not bona fide mortgagees for value." (See *Weisberg v DeMeo*, 254 AD2d 351, 351 [1998].)

Under these circumstances, the court finds that Hermina Brunson was incapable of understanding the agreements that she signed on April 21, 2003 and that Financial Freedom is charged with the responsibility to determine, and was in a position to know of her incapacity. Therefore, the court finds the mortgages on June 20, 2003 void.

A voice recording<sup>3</sup> of the April 22, 2008 HECM telephonic counseling session was made, attended by me, Ms. Gillespie, and Susan Gray of Consumer Credit Counseling Services, Money Management International Incorporated (CCCS/MMI), a HUD approved HECM counselor. The counseling session did not comply with HECM rules. Ms. Gillespie was not able to answer questions showing she understood a reverse mortgage. 12 U.S.C. 1715z-20(d)(2)(B), and 1715z-20(f). A transcript of the call was provided to the CFPB April 22, 2013. The HECM handbook 7610.1 states, Sec. 4-18 F. Issuing the Certificate of Counseling.

A counseling agency must withhold a certificate from a client who cannot successfully answer five of the ten review questions that are provided in Attachment B.10 of the Protocol. The client will be given adequate opportunities to correctly respond to the review questions in accordance with the requirements in Attachment B.10. The certificate cannot be withheld based on lack of payment.

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<sup>3</sup> All calls on home office telephone extension (352) 854-7807 are recorded for quality assurance purposes per the use exemption of Fla. Stat. ch. 934, § 934.02(4)(a)(1) and the holding of Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co., 924 F.2d 215 (11th Cir. 1991). This is, in part, a disability accommodation for me.

The recorded HECM telephonic counseling session shows Penelope Gillespie did not actively participate in the call or the counseling. Ms. Gray did not ask Ms. Gillespie to “successfully answer five of the ten review questions” or make other effort to determine if she understood basic information about reverse mortgages, which was impossible due to Alzheimer’s disease, but required under 12 USC § 1715z–20(f) Counseling services and information for mortgagors. Therefore Ms. Gray should not have issued the certificate to Ms. Gillespie. The subject HECM did not comply with 12 USC § 1715z–20(d) Eligibility requirements:

(2)(B) has received adequate counseling, as provided in subsection (f), by an independent third party that is not, either directly or indirectly, associated with or compensated by a party involved in— (i) originating or servicing the mortgage; (ii) funding the loan underlying the mortgage; or (iii) the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product;

CCCS/MMI was the HUD-approved housing counseling agency for this loan. According to Wikipedia, in its 2007 Annual Report, MMI identified Bank of America as a major contributor. Therefore the counseling was not adequate counseling by a third party because this HECM was compromised from the beginning by Bank of America.

The subject HECM charged high fees and stripped me of home equity. The HECM counseling session was a sham, and did not serve its intended purpose. The HECM reverse mortgage financial projections were beyond optimistic, they were fraudulent. The FHA's Monthly Adjustable HECM Loan Estimated Amortization Schedule for Penelope Gillespie and Neil Gillespie shows at year four (4) an ending loan balance of \$118,550, a home value of \$74,730, and equity of \$45,230. The value of the home is now \$78,675; the loan balance is ~~-\$40,159~~ ~~-\$85,389~~ \$114,889; the current deficit is ~~-\$36,214~~ ~~-\$81,444~~ ~~-\$85,389~~. The foregoing is contrary to 12 USC § 1715z–20(f) Counseling services and information for mortgagors, and 12 USC § 1715z–20(e)(4) did not disclose “depreciation rates” - or my \$81,144 deficit! The

borrowers did not receive full disclosure, as prescribed by the Secretary, of all costs charged to the mortgagor...than was not possible without disclosure of “depreciation rates”.

Statutory relief from HUD - Bennett v. Donovan 11-5288 D.C. Cir.  
12 USC § 1715z-20(i) Protection of homeowner and lender  
Exhibit 7 - National Consumer Law Center story on Bennett

Exhibit 8 - Bennett v. Donovan, 11-5288, 2013 WL 45879 (D.C. Cir. Jan. 4, 2013)

Bennett, cited statutory means for protection of homeowner and lender, pages 9-10:

“It does appear to us, however, that HUD has additional statutory means to provide complete relief to both appellants and their lenders, and at least one such avenue of relief would remove speculation as to independent third-party actions. That statutory provision is 12 U.S.C. § 1715z-20(i). This subsection is titled “Protection of homeowner and lender” and states in relevant part: (1) “[I]n order to further the purposes of the program authorized in this section, the Secretary shall take any action necessary — (A) to provide any mortgagor under this section with funds to which the mortgagor is entitled under the insured mortgage or ancillary contracts but that the mortgagor has not received because of the default of the party responsible for payment; (B) to obtain repayment of disbursements provided under subparagraph (A) from any source; and (C) to provide any mortgagee under this section with funds . . . to which the mortgagee is entitled under the terms of the insured mortgage or ancillary contracts authorized in this section. (2) Actions under paragraph (1) may include — (A) *disbursing funds to the mortgagor* or mortgagee from the Mutual Mortgage Insurance Fund; [and] (B) *accepting an assignment of the insured mortgage* notwithstanding that the mortgagor is not in default under its terms, and calculating the amount and making the payment of the insurance claim on such assigned mortgage . . . .”

The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures. [http://www.law.cornell.edu/wex/due\\_process](http://www.law.cornell.edu/wex/due_process)

A property right can be created only by state law. Once a property right is established, the determination of what process is due before that right can be deprived is a question answered by the federal Constitution. Kingsford v. Salt Lake City Sch. Dist., 247 F.3d 1123 (10th Cir. 2001).

U.S. Judge Thomas W. Thrash, Jr. in Thompson-El v. Bank of America, 1:12-CV-840-TWT, District Court, N.D. GA held in an Order entered December 12, 2012:

Federal question cases are those “arising under the Constitution, laws, or treaties of the United States. 28 U.S.C. § 1331 A case “arises under” federal law “if federal law creates the cause of action, or if a substantial disputed issue of federal law is a necessary element of a state law claim.” Pacheco de Perez v. AT&T Co., 139 F.3d 1368, 1373 (11th Cir. 1998) (citing Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for S. Cal., 463 U.S. 1, 13 (1983)).

The Order of Judge Thrash appears in the district court record (Doc. 26, Exhibit 9).

Here, my case “arises under” the federal law because a “substantial disputed issue of federal law is a necessary element” of a state law foreclosure.

Tellingly the Court in the Order Remanding Case (Doc. 19) held, on page 4 at footnote 1: [fn1]This Order should not be interpreted as a ruling concerning whether, or to what extent, Mr. Gillespie can sue HUD in a separate action. Rather, this Order is limited to whether the Court has subject matter jurisdiction over the specific action that has been removed to this Court.

Motion for Non-Criminal Justice Act Counsel Appointment.

The Florida Bar notified me May 14, 2013 of the Unlicensed Practice of Law (UPL) Investigation of Neil J. Gillespie, Case No. 20133090(5), for representing my interest pro se in this action. I filed notice thereof in the district court. (Doc. 29). I am indigent and financially unable to obtain adequate representation. I move for a counsel appointment in a separate motion, which is supported by a separate motion for disability accommodation.



## **Judicial misconduct and disability of U.S. Judge William Terrell Hodges**

U.S. Senator Bill Nelson provided in his letter to me May 28, 2013 information on how to make a complaint of judicial misconduct<sup>1</sup>. I believe the success rate is about zero for a pro se litigant who makes a complaint of judicial misconduct, regardless of the complaint's merits.

On April 8, 2013 I made and filed the Affidavit of Neil J. Gillespie - 28 U.S.C. 144, bias or prejudice of judge (Doc. 22), which required Judge Hodges "shall proceed no further therein, but another judge shall be assigned to hear such proceeding." My § 144 Affidavit contains seven (7) pages, supported by seven (7) exhibits for a total page count of 48 pages. The PACER location of my § 144 Affidavit is Case 5:13-cv-00058-WTH-PRL Document 22 Filed 04/08/13 Page 1 of 48 PageID 736.

28 U.S.C § 144 - Bias or prejudice of judge:

Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

Judge Hodges ignored the law in 28 U.S.C § 144 and continued to preside over the case himself. Judge Hoges entered an Order (Doc. 24; Appendix G) that denied relief but did not mention my § 144 Affidavit at all. Instead, Judge Hodges responded to my Rule 59(e) motion to alter or amend the judgment that sought, in part, his disqualification under both 28 U.S.C § 455 for

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<sup>1</sup> *Filing a Complaint of Judicial Misconduct or Judicial Disability Against A Federal Judge*. The process is governed by the Judicial Conduct and Disability Act of 1980, 28 U.S.C. §§ 351-364 ("Act"), and *Rules for Judicial-Conduct and Judicial-Disability Proceedings*, 248 F.R.D. 674 (2008)

cause, including his ownership of Bank of America stock, and 28 U.S.C § 144 for his bias in

Petition No. 12-7747 that was still active on April 8, 2013:

4. Petition No. 12-7747 for writ of certiorari is currently pending before the Supreme Court of the United States and argues Judge Hodges relinquished “the judicial power of the United States” to Ryan C. Rodems, a Florida lawyer in private practice in case no. 5:10-cv-503. The petition also argues that Judge Hodges’ membership in The Florida Bar is a corrupting power and influence to Article III judicial authority. The Florida Bar itself is of a rival to “the judicial power of the United States” described in Article III of the Constitution of the United States.

5. The docket in Petition No. 12-7747 shows a petition for rehearing was filed March 18, 2013 and distributed March 27, 2013 for conference April 12, 2013. (Exhibit 1).

6. Petition No. 12-7747 calls into question judgments entered by Judge Hodges in the following cases:

Neil J. Gillespie v. Thirteenth Judicial Circuit, Florida, et al., 5:10-cv-503-WTH-TBS

Neil J. Gillespie v. Thirteenth Judicial Circuit, Florida, et al., 5:11-cv-539-WTH-TBS

I believe a reasonable person reading the facts in this affidavit would conclude Judge Hodge's impartiality might be reasonably questioned.

Judge Hodges’s Order (Doc. 24; Appendix G) did not respond to the substantive matters in my Rule 59(e) motion (Doc. 21). Instead he denied there were any:

Gillespie has now filed a motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) (Doc. 21). In fact the motion does not seek to alter or amend the judgment at all. It is, instead, a motion to disqualify and, as such, is arguably moot.

In fact, my Rule 59(e) motion (Doc. 21) shows grounds to alter or amend the judgment because I showed the Court had federal jurisdiction, which Judge Hodges claimed no federal jurisdiction:

3. The Court erred in its Order Remanding Case (Doc. 19) because this Court has jurisdiction. The subject foreclosure is on a disputed Home Equity Conversion Mortgage, also called a HECM or a “reverse” mortgage. HECM is a federal mortgage insurance program administered by HUD - the U.S. Department of Housing and Urban Development, and is codified at 12 USC § 1715z-20, Insurance of home equity conversion mortgages for elderly homeowners. HUD is a coparty Defendant.

4. The lender and affiliated parties required Gillespie to sign the HECM note, mortgage, and other documents, making them borrowers. Since Gillespie is a borrower living in the home in substantial compliance with the documents he signed, this

foreclosure is premature.

5. A ruling in the Santos<sup>2</sup> case rejected a definition of borrower to include only natural persons acting in their individual capacities. A decision January 4, 2013 in Bennett, et al., v. Secretary/HUD, No. 11-5288, U.S.C.A, D.C., the Court held:

....HUD itself has the capability to provide complete relief to the lenders and mortgagors alike....(page 1)

....HUD could accept assignment of the mortgage, pay off the balance of the loans to the lenders, and then decline to foreclose...(page 10)

6. The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures.  
[http://www.law.cornell.edu/wex/due\\_process](http://www.law.cornell.edu/wex/due_process)

7. A property right can be created only by state law. Once a property right is established, the determination of what process is due before that right can be deprived is a question answered by the federal Constitution. Kingsford v. Salt Lake City Sch. Dist., 247 F.3d 1123 (10th Cir. 2001). A case "arises under" federal law "if federal law creates the cause of action, or if a substantial disputed issue of federal law is a necessary element of a state law claim." Pacheco de Perez v. AT&T Co., 139 F.3d 1368, 1373 (11th Cir. 1998) (citing Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for S. Cal., 463 U.S. 1, 13 (1983)). Here, Gillespie's case arises under the federal HECM statute 12 USC § 1715z-20 because a substantial disputed issue of federal law is a necessary element of a state law claim, my rights under the HECM.

8. A homeowner in a disputed HECM foreclosure with RMS for Bank of America should have a judge decide the case who is not a shareholder of Bank of America.

9. Unfortunately, I do not believe I can get a fair hearing in any Florida state or federal court due to the corrupting power and influence of The Florida Bar set forth in Petition 12-7747 for writ of certiorari to the Supreme Court of the United States.

10. Judge Hodgers failed to recuse for conflict of interest with Bank of America, N.A. set forth in Objections to the Report and Recommendation. (Doc. 18)

---

<sup>2</sup> Isabel Santos, individually and as trustee and beneficiary of the Yolanda Maria Santos Trust, et al. v. Reverse Mortgage Solutions, et al., No. 12-3296-SC, U.S District Court, Northern District of California. Page 11, Order, October 12, 2012 (Doc. 25) Denying Defendants' Motion (1) For Judgment on the Pleadings and (2) To Dissolve or Modify Preliminary Injunction

11. The Court failed to grant Defendants leave to proceed in forma pauperis. (Doc. 6, Doc. 8)
12. The Court failed to grant Defendants permission to e-file on the CM/ECF system. (Doc. 7)
13. The Court failed to require Plaintiff's compliance, Rule 7.1 Disclosure Statement. (Doc. 14)
14. The Court failed to rule on Defendants Rule 11 motion for sanctions. (Doc. 15)
15. The Court failed to rule on Defendants Rule 55 motion for default judgment. (Doc. 16)
16. The Court failed to rule on Defendants Rule 72 objection to magistrate's order. (Doc. 17)
17. The Court failed to rule on Defendants Rule 60(b)(3) relief from magistrate order. (Doc. 17).
18. The Court failed to consider Defendants Rule 5.1 constitutional challenge to 12 U.S.C. § 1715z-20 - Insurance of home equity conversion mortgage for elderly homeowners. (Doc. 18).

I wrote U.S. Senator Elizabeth Warren March 15, 2013 about Judge Hodges and the Consumer Financial Protection Bureau. The letter appears as Exhibit 4 to my § 144 Affidavit (Doc. 22). The letter appears at Appendix J to this petition, and states in relevant parts:

Thank you [fn1] for working to create the Consumer Financial Protection Bureau, the CFPB... ..Unfortunately a senior federal judge in Florida, and his magistrate judge, will not acknowledge either the CFPB or the Dodd-Frank Act in orders responsive to my pleadings in a contested HECM reverse mortgage foreclosure by Reverse Mortgage Solutions, Inc. for Bank of America. The senior federal judge is a shareholder in Bank of America, the Hon. Wm. Terrell Hodges [fn2] U.S. District Court, Middle District, Ocala, FL. The interest list for Judge Hodges and Bank of America is enclosed, as filed on PACER at Case 5:13-cv-00058-WTH-PRL Document 18-1 Filed 03/06/13 Page 3 of 29 PageID 695 (page 1, ¶1 and ¶3)

Bank of America owns the subject HECM mortgage, and was identified as the party at interest by the CFPB in a letter addressed to me that did not mention RMS. The CFPB assigned case no. 120914-000082 to my complaint. The CFPB letter is enclosed as it appears on PACER at Case 5:13-cv-00058-WTH-PRL Document 18-1 Filed 03/06/13 Page 2 of 29 PageID 694, and Case 5:13-cv-00058-WTH-PRL Document 5-3 Filed 02/04/13 Page 2 of 40 PageID 326. (page 2, ¶2)

In my view a homeowner in a disputed HECM foreclosure with RMS for Bank of America should have a judge decide the case who is not a shareholder of Bank of America. Thank you. (page 5, ¶3)

### Unlicensed Practice of Law (UPL) in the state of Florida

UPL is a 3d felony subject to 5-yrs in prison (§454.23), defined by Florida Bar Rule 10-2.1(a):

**(a) Unlicensed Practice of Law.** The unlicensed practice of law shall mean the practice of law, as prohibited by statute, court rule, and case law of the state of Florida.

Mr. Rodems' UPL complaint against me appears in this petition at Appendix L and alleges:

Neil J. Gillespie is not a lawyer. He has...represented a Trust in state and federal court litigation, and as a "personal representative" of the "Estate of Penelope Gillespie"...

I am not a lawyer. I appear pro se because I am indigent and financially unable to obtain counsel.

I deny Mr. Rodems' allegation that I "represented a Trust in state and federal court litigation, and as a "personal representative" of the "Estate of Penelope Gillespie"..." I represent only my personal interest for myself, and my personal interest as co-trustee, as permitted by law:

- First Amendment *right to petition the Governmental for a redress of grievances*.
- 28 U.S.C. § 1654 - Appearance personally or by counsel.
- Fed.R.Civ.Pro. 17 capacity (a) real interest (1) own name (E) trustee of express trust
- Fla Const, Art I, Sec 21: Access to courts. The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.
- Florida Statutes, § 454.18, "any person, whether an attorney or not . . . may conduct his or her own cause in any court of this state."
- Fla. Prob. Rule 5.030(a) Exception, see Lituchy v. Estate of Lituchy. I appear for my own interest in the Estate. No one was appointed "personal representative" of the Estate by Court Order. The *last will and testament* of my Mother names Mark Gillespie "personal representative" and me as substitute "personal representative".
- Mark Gillespie, et al, represented in foreclosure by Tiffany Caparas Esq., Kaufman, Englett and Lynd, PLLC; Notice of Consent to Judgment filed in 42-2013CA-000115 because they have no interest in the property. I only represent my interest in the trust.
- Pro se litigants are held to a less stringent standard, see Tannenbaum v. United States.
- The Courts failed to make a counsel appoint for me on basis of mental, physical and speech disability. I plan to make a new motion for counsel appointment ASAP.
- Order of Judge Cook attached to Rodems' UPL complaint is a sham. see U.S. v Terry
- The ICCPR provides me additional rights to represent my own interest in a fair court.
- I was a client of ~~FLSMF~~ and got legal advice on the foreclosure, no advice of UPL.

CLSMF

UPL by Mr. Rodems: Represented the state of Florida in 5:10-cv-503, June 21, 2011, prohibited:

Only the Attorney General of Florida may represent the State of Florida in a federal court action, Fla. Const. Art IV § 4, F.S. § 16.01, State ex rel. Shevin v. Weinstein.

Mr. Castagliuolo, misprision of felony 18 U.S.C. § 4, June 21, 2011 failed to report Rodems UPL.

UPL by Mr. Rodems: Gillespie v. Barker, Rodems & Cook, 05-CA-7205 (and 20 related cases), prohibited by Fla. Bar Rules 4-1.7, 4-1.9, 4-1.10, and McPartland v. ISI Inv. Services, Inc.

UPL by paralegal Yolanda I. Martinez, McCalla Raymer, Rule 10-2.1(a), Ethics Opinion 70-62, "activity which requires the attorney's personal judgment and participation"; Florida Court, see emails Aug-07-2013 Gillespie-Martinez (Sep. Vol. App No. 2); District Court, see Rule 11 sanction motion (Doc. 15); Rule 55 motion for default judgment, (Doc. 16); Rule 72/Rule 60(b)(3) Verified Objection to Magistrate Order (Doc. 17); Affidavit 28 U.S.C. § 144 (Doc. 22)

U.S. v. Terry, No. 11-4130, C.A. 6 - Judge Martha Jean Cook and Ryan Christopher Rodems

A decision February 14, 2013 in U.S. v. Terry, No. 11-4130, U.S. Sixth Circuit is of a substantial or controlling effect, which I submitted April 10, 2013 in Petition No. 12-7747 but was returned out-of-time by the Clerk April 15, 2013, the same day the case closed.

U.S. v. Terry affirmed a jury conviction against former Judge Steven J. Terry of several honest services fraud violations, citing federal anti-corruption statutes, one of which prohibits an official from accepting things of value “in return for” official acts. 18 U.S.C. § 201(b)(2).

In U.S. v. Terry, the government proved to a jury that Terry accepted from political benefactor Frank Russo campaign donations, a thing of value, in return for official acts, improper rulings on summary judgment. An FBI wiretap provided evidence of the crime. The government proved that the defendant used the mail to carry out a “scheme or artifice to defraud” another, 18 U.S.C. § 1341, of “the intangible right of honest services.” 18 U.S.C. § 1346.

In my case, Respondent Judge Martha J. Cook accepted campaign donations from Respondent Ryan C. Rodems, and two of my former lawyers, his partners William J. Cook and Jonathan Alpert, in return for improper rulings on summary judgment, and civil contempt, during ex parte hearings September 28, 2010 in Gillespie v. Barker, Rodems & Cook, 05-CA-7205. Hillsborough Deputy Christopher E. Brown, and Major James Livingston, provided evidence the Respondents falsified the record of the hearing. The Respondents used the mail to carry out their “scheme or artifice to defraud” me of “the intangible right of honest services.” 18 U.S.C. § 1346.

I only attended one of three hearings before Judge Cook September 28, 2010. The first was my spoken motion to disqualify Judge Cook on the basis that she was a Defendant in Gillespie v. The Thirteenth Judicial Circuit, Florida, et al, 5:10-cv-503, a § 1983 civil rights and ADA disability lawsuit. Judge Cook did not recuse, accused me in open court of feigning

disability, and ordered Deputy Brown to remove me. Caperton v. A.T. Massey Coal Co., Inc. required recusal because “the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable”. The Affidavit of Neil J. Gillespie shows the above, and appears in a separate appendix. (See trial record Doc. 58-2, Exh 14, response to show cause).

Judge Cook falsified the record that I “elected to leave” the hearing, in violation of F.S. § 839.13(1) and § 837.06. The transcript and errata sheet appear in a separate volume appendix.

Judge Cook proceeded ex parte with the summary judgment hearing, and Mr. Rodems complied with her instruction to create a false record, which false testimony went unchallenged because no one represented me. Judge Cook then granted summary judgment for Mr. Rodems, and immediately signed, without reading, a six page order at Mr. Rodems’ request, one he prepared in advance. [Appendix 1]. Judge Cook mailed me a conformed copy order in a postage prepaid envelope bearing her name & address, and mine. [Appendix 2]. See footnote<sup>1</sup>.

Next, Judge Cook proceeded ex parte with the civil contempt hearing, again falsified the record that I elected to leave in violation of F.S. § 839.13(1), and found me guilty. Because this was civil contempt, and not criminal contempt, appointment of counsel was not required under Gideon v. Wainwright. (The defender was appointed May 27, 2011, but relieved by the court).

Two days later September 30, 2010 Judge Cook signed an improper order holding me in civil contempt [Appendix 4], filed October 1, 2010. This is the same proposed order that Mr. Rodems provided by mail<sup>2</sup>, and instructed Judge Cook to sign, together with postage paid envelopes. [Appendix 5]. Judge Cook obeyed Mr. Rodems and signed the order. The *Order*

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<sup>1</sup> The record shows I established a cause of action for fraud and breach of contract by order January 13, 2006 [Appendix 3], making any subsequent summary judgment improper. May 5, 2010 I filed Plaintiff’s First Amended Complaint, w/motion, on permission of Judge Barton, but Judge Cook refused to consider the motion and denied ex parte leave to amend even one time.

<sup>2</sup> Also enclosed was Mr. Rodems’ notice of voluntary dismissal of a vexatious counterclaim.

*Adjudging Plaintiff Neil J. Gillespie In Contempt* states at footnote 1:

Prior to this motion being heard, the Court heard Defendants' motion for summary judgment. During that hearing, Plaintiff Neil J. Gillespie voluntarily left the hearing and did not return.

Fortunately Deputy Brown told his Commander, Major James Livingston that I did not leave the hearing voluntarily, and that I was ordered removed by Judge Cook. Major Livingston in turn provided me a letter dated January 12, 2011 describing what happened. Appendix B.

Judicial elections in Florida are different than those of other elected officials, and as described in Terry. Judicial elections are nonpartisan. Only qualified lawyers can run for judicial office, putting judicial races in a unique category. Within the pool of lawyers qualified to seek judicial office, there is pressure not to oppose a sitting judge. Lucy Morgan of the Tampa Bay Times wrote May 2, 2008, *Unopposed judges quietly keep their seats*: [Appendix 8].

...Few incumbents have lost since Florida began electing judges in nonpartisan races in the 1970s, but the early qualifying date lets even more avoid opposition, according to a review of election results over the past 12 years. Judges frequently escape opposition because only lawyers can run for the jobs, and few lawyers are willing to risk angering a judge before whom they must appear. In recent years few incumbent circuit judges have faced opposition, and only five have been defeated...

...For the qualifying that closed Friday, there were 283 circuit judge positions statewide. Twenty-three of those are open seats and will be contested. Of the 260 remaining seats, only eight will be contested. The other 252 won unopposed...Supreme Court and District Court justices run under a merit retention system. No judge has been denied another term since the merit retention system was adopted in the 1970s...

As in Terry, Judge Cook's collaboration came relatively cheap, \$300 in her initial 2002 bid. See Appendix 9 for the donation records of Messrs. Rodems, Cook, and Alpert - \$100 each. An honest services fraud agreement need not spell out which payments control which act, just that Judge Cook was expected to act favorably to the donor as opportunities arose. Terry at p. 6. Unfortunately, Judge Cook failed to discharge her judicial duties without fraud, concealment, bias, favoritism or conflict of interest, but acted like Mr. Rodems' "marionette". Terry at p. 11.



# **CASTAGLIUOLO LAW, P. A.**

801 West Bay Drive • Suite 301  
Largo, FL 33770

(727) 712-3333

June 19, 2013

Susan Varner Bloemendaal  
Chief Branch Discipline Counsel  
THE FLORIDA BAR  
4200 George J. Bean Parkway, Suite 2580  
Tampa, FL 33607-1496

RE: **Complaint by Neil J. Gillespie**  
**The Florida Bar File No. 2013-10,162 (6D)**

Dear Ms. Bloemendaal:

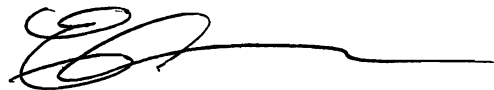
I am in receipt of my copy of your letter to Gillespie dated June 13, 2013. Evidently, Gillespie "appealed" Mr. Clark's decision to close the above-referenced file, which is interesting, because he failed to provide me with any notice whatsoever of his "appeal." Your letter was my first notice of this action.

While I am pleased to learn that this loser has not broken his "losing streak" (which has included losing before the SCOTUS), I am appalled that he failed to serve any notice of his "appeal" upon me.

I have collected a large pile of the many, many documents filed in various places by Gillespie over the past several years, and I am looking forward to furnishing that pile to the SSDI abuse investigator for Florida. **Therefore, I am hereby requesting, from either your office or from the "complainant" himself, complete and exhaustive copies of any papers whatsoever filed by Gillespie in his "appeal" of Mr. Clark's decision.** I will be adding these new documents to the pile. Once the SSA reviews the fruits of Gillespie's labor, I'm confident that his "handicap" status will be very much at issue.

Thank you for your anticipated prompt attention to this request.

Very truly yours,



EUGENE P. CASTAGLIUOLO

cc: Robert W. Bauer, Esquire (by e-mail)  
Ryan Christopher Rodems, Esquire (by e-mail)  
Office of the Inspector General, Social Security Disability Administration (by regular U. S. Mail)

Gillespie  
8092 SW 115<sup>th</sup> Loop  
Ocala, FL 34481

**SPECIAL RAPPORTEUR ON THE INDEPENDENCE OF JUDGES AND LAWYERS  
UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS  
UNITED NATIONS OFFICE AT GENEVA**

**SPECIAL RAPPORTEUR ON DISABILITY UNITED NATIONS ENABLE  
SECRETARIAT FOR THE CONVENTION OF RIGHTS OF PERSONS WITH DISABILITIES  
DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS, NEW YORK, NY**

STATE OF FLORIDA  
SUPREME COURT OF FLORIDA

THE FLORIDA BAR  
Ghunise L. Coaxum, UPL Bar Counsel  
Unlicensed Practice of Law Department,  
Orlando Branch Office  
VS.  
Neil J. Gillespie, Case No. 20133090(5)  
Unlicensed Practice of Law (UPL) Investigation, on  
complaint by Ryan Christopher Rodems, Esq.



My safe room at home since June 1, 2011

**AFFIDAVIT OF NEIL J. GILLESPIE**

*I have a well-founded fear of political persecution*

I, Neil J. Gillespie, under oath, testify as follows:

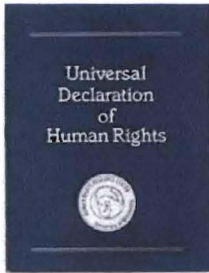
1. My name is Neil J. Gillespie. I was the Petitioner pro se in Gillespie v. Thirteenth Judicial Circuit Florida, et al, Petition No. 12-7747 for writ of certiorari, U.S. Supreme Court. The petition was denied February 19, 2013. Rehearing was denied April 15, 2013.
2. On Friday, April 19, 2013 at 9:32 AM I received harassing email from attorney Ryan C. Rodems, taunting me about Petition No. 12-7747. I responded to Mr. Rodems by letter April 29, 2013 instructing him "Mr. Rodems, this case is over. Move on with your life. Do not contact me again." I provided a PDF copy of my letter by email to 31 people including Fla. Gov. Scott, AG Bondi, Florida Bar officials, and American Bar Association officials. (the letter attached hereto).
3. Two days later, May 1, 2013, Mr. Rodems made a written complaint against me to The Florida Bar for the unlicensed practice of law (UPL), for appearing pro se for my own interest. The complaint is vexatious and without merit. The Florida Bar opened a UPL investigation of me May 14, 2013. UPL is a felony, F.S. § 454.23, with punishment up to 5 years incarceration.
4. On June 1, 2011 Mr. Rodems corruptly got a civil "bodily attachment" arrest order issued for a coercive confinement settlement June 21st of my federal claims at the Tampa courthouse.
5. I have a well-founded of the sheriff breaking down my door to arrest me on a fraudulent charge concocted by The Florida Bar and/or Mr. Rodems, who has terrorized me since 2006.

FURTHER AFFIANT SAYETH NAUGHT. I solemnly swear, under penalty of perjury, that the foregoing facts are true, correct, and complete, so help me God.

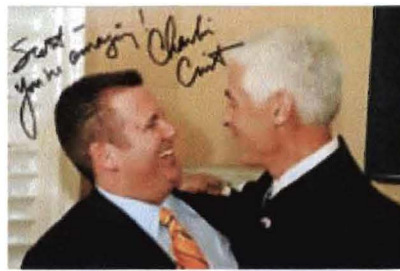
Dated this 22nd day of October 2013.

  
NEIL J. GILLESPIE

## REASONS FOR GRANTING THE PETITION



United Nations and Human Rights



Gov. Crist (r) and Scott Rothstein<sup>1</sup> (l)

I ask the Supreme Court to grant the petition or further relief. I request any assistance available from the United Nations High Commissioner for Human Rights. I ask the Human Rights Committee to receive and consider communications in this matter under article 41, the International Covenant on Civil and Political Rights (ICCPR).

This petition is incomplete, but this is as far as I could get by the deadline. I have more to say, but not sufficient time or health now. Unfortunately there may be a one day delay in serving all persons on the Rule 29 Proof of Service. I will prioritize my efforts today, and finish tomorrow. Today I will serve the petition by email to all those for whom I have an email address.

## CONCLUSION

The petition for writ of certiorari should be granted, together with such other and further relief as The Supreme Court of The United States deems just and equitable.

Respectfully submitted, October 23, 2013.

A handwritten signature in blue ink that reads "Neil J. Gillespie". Below the signature, the name "Neil J. Gillespie, petitioner pro se" is printed in a standard black font.

Neil J. Gillespie, petitioner pro se

---

<sup>1</sup> Former Florida Gov. Charlie Crist (r) to Scott Rothstein (l): "*Scott - You are amazing!*"

Scott Rothstein, a member in good standing with The Florida Bar, operated a \$1.2 billion Ponzi scheme from the law offices of Rothstein Rosenfeldt Adler P.A. right under the Bar's nose, and while serving on a Florida Bar grievance committee. Rothstein was also appointed August 25, 2008 by Florida Gov. Charlie Crist to serve as a Commissioner on the Fourth Appellate District Judicial Nomination Commission, arguably at the height of his racketeering activities, to which he plead guilty and on June 9, 2010 received a 50-year prison sentence.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

No. 13-11585-B  
5:13-CV-58-OC-10PRL

REVERSE MORTGAGE SOLUTIONS, INC.,

Plaintiff-Appellee,

versus

NEIL J. GILLESPIE AS CO-TRUSTEES,  
of the Gillespie Family Living Trust  
Agreement Dated February 10, 1997,  
NEIL J. GILLESPIE,

Defendants-Appellants,

MARK GILLESPIE AS CO-TRUSTEES, etc., et al.,

Defendants.

---

Appeal from the United States District Court  
for the Middle District of Florida

---

Before: BARKETT, MARCUS and JORDAN, Circuit Judges.

BY THE COURT:

This appeal is DISMISSED, *sua sponte*, for lack of jurisdiction. We are precluded from reviewing the district court's March 7, 2013 order and March 11, 2013 judgment remanding this case to state court because the district court found that it lacked federal subject matter jurisdiction. See 28 U.S.C. 1447(c), (d); *Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc.*, 561 F.3d 1294, 1296 (11th Cir. 2009); *New v. Sports & Recreation, Inc.*, 114 F.3d 1092, 1095-96 (11th Cir. 1997).

EXHIBIT

Appendix A

No motion for reconsideration may be filed unless it complies with the timing and other requirements of 11th Cir.R. 27-2 and all other applicable rules.

Case: 13-11585 Date Filed: 06/12/2013 Page: 1 of 1

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

June 12, 2013

Sheryl L. Loesch  
U.S. District Court  
207 NW 2ND ST  
OCALA, FL 34475

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

The enclosed copy of this Court's Order of Dismissal is issued as the mandate of this court. See 11th Cir. R. 41-4. Counsel and pro se parties are advised that pursuant to 11th Cir. R. 27-2, "a motion to reconsider, vacate, or modify an order must be filed within 21 days of the entry of such order. No additional time shall be allowed for mailing."

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B  
Phone #: (404) 335-6187

Enclosure(s)

DIS-4 Multi-purpose dismissal letter



IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

---

No. 13-11585-B

---

REVERSE MORTGAGE SOLUTIONS, INC.,

Plaintiff-Appellee,

versus

NEIL J. GILLESPIE AS CO-TRUSTEES,  
of the Gillespie Family Living Trust  
Agreement Dated February 10, 1997,  
NEIL J. GILLESPIE,

Defendants-Appellants,

MARK GILLESPIE AS CO-TRUSTEES, etc., et al.,

Defendants.

---

Appeal from the United States District Court  
for the Middle District of Florida

---

Before: HULL, WILSON and JORDAN, Circuit Judges.

BY THE COURT:

Appellant Neil Gillespie's July 2, 2013 motion for reconsideration of our June 12, 2013 order dismissing this appeal for lack of jurisdiction is DENIED. All other outstanding motions are DENIED as moot. Should Gillespie wish to petition for mandamus relief, he may file a separate petition for a writ of mandamus or prohibition with this Court. *See* 28 U.S.C. § 1651; Fed.R.App.P. 21.

**EXHIBIT**

**Appendix B**

**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

July 25, 2013

Neil J. Gillespie  
8092 SW 115TH LOOP  
OCALA, FL 34481

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

**This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause.**

The enclosed order has been ENTERED.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B/rvg  
Phone #: (404) 335-6187

MOT-2 Notice of Court Action



**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.ca11.uscourts.gov](http://www.ca11.uscourts.gov)

July 26, 2013

Neil J. Gillespie  
8092 SW 115TH LOOP  
OCALA, FL 34481

Appeal Number: 13-11585-B  
Case Style: Reverse Mortgage Solutions, In v. Neil Gillespie, et al  
District Court Docket No: 5:13-cv-00058-WTH-PRL

I am returning to you unfiled the papers which you have submitted.

We are in receipt of your correspondence received on 07/22/2013. It appears that this case was dismissed on 06/12/2013 and the motion for reconsideration was denied on 07/25/2013.

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Melanie Gaddis, B  
Phone #: (404) 335-6187

PRO-3 Letter Returning Papers Unfiled



**INFORMATION SHEET FOR PRO SE PARTY PROCEEDING IN FORMA PAUPERIS**

**FILING A PETITION FOR A WRIT OF CERTIORARI**

Review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for compelling reasons. See Rule 10, Rules of the Supreme Court of the United States (Sup. Ct. Rule), for considerations governing review on certiorari.

1. A petition must be filed within 90 days of entry of judgment, in both criminal and civil cases. Judgment is entered at the time an opinion is filed. The time does not run from the issuance of the mandate. If a petition for rehearing (not solely a suggestion of rehearing en banc) is timely filed, the time runs from the date of the denial of the petition for rehearing or the entry of a subsequent judgment.
2. A motion for leave to proceed in forma pauperis, together with a notarized affidavit or declaration in support thereof, must accompany the petition. (A party not proceeding in forma pauperis should consult the Supreme Court's website noted below for current docket fee and filing information.)
3. The lower court opinion(s), judgment(s), and any order on rehearing must be included in an appendix to the petition. See Sup. Ct. Rule 14 for the required contents of a petition.
4. Unless incarcerated, a pro se party proceeding in forma pauperis must file: (a) an original and ten copies of a motion to proceed in forma pauperis and notarized affidavit or declaration in support thereof, (b) an original and ten copies of the petition with appendix, and (c) one original Proof of Service as described in Sup. Ct. Rule 29. An incarcerated pro se party proceeding in forma pauperis need file only an original of these documents.
5. The petition may not exceed 40 pages, excluding the pages that precede Page 1 of the petition (questions presented, list of parties and corporate disclosure statement, table of contents, table of authorities) and excluding the appendix. Pages must be 8 1/2 by 11 inches in size. Text must be double spaced, except for indented quotations, which must be single spaced. The original must be signed by the pro se party. The petition must have a cover page as described in Sup. Ct. Rule 34.
6. The clerk of the court having possession of the record shall keep it until notified by the Clerk of the Supreme Court that the record is to be certified and transmitted. The record will not be transmitted to the Supreme Court at the request of a party.
7. The Rules of the Supreme Court of the United States, as revised, are contained in Title 28, United States Code.

**FOR SPECIFIC INFORMATION:**

Clerk  
Supreme Court of the United States  
1 First Street, N.E.  
Washington, D.C. 20543

Telephone Number: 202-479-3000  
Website: [www.supremecourtus.gov](http://www.supremecourtus.gov)

MISC-13  
5/06

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff,

-VS-

Case No. 5:13-cv-58-Oc-10PRL

NEIL J. GILLESPIE AS CO-TRUSTEES,  
MARK GILLESPIE AS CO-TRUSTEES,  
OAK RUN HOMEOWNERS  
ASSOCIATION, INC., UNITED STATES  
OF AMERICA, ELIZABETH BAUERLE,  
MARK GILLESPIE, NEIL J. GILLESPIE,  
DEVELOPMENT & CONSTRUCTION  
CORPORATION OF AMERICA,  
UNKNOWN SPOUSE, UNKNOWN  
SPOUSE, UNKNOWN SPOUSE,  
UNKNOWN SETTLORS AND/OR  
/BENEFICIARIES, UNKNOWN  
TRUSTEES, SETTLERS AND  
BENEFICIARIES, UNKNOWN TENANT  
IN POSSESSION 1 AND UNKNOWN  
TENANT IN POSSESSION 2,

Defendants.

\_\_\_\_\_ /

**ORDER REMANDING CASE**

On January 2, 2013, the Plaintiff, Reverse Mortgage Solutions, Inc., filed a foreclosure action in the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida against numerous defendants, both known and unknown (Doc. 2). The Complaint alleges state court causes of action only, pursuant to Fla. Stat. § 26.012.

On February 4, 2013, one of the Defendants, Neil. J. Gillespie, proceeding *pro*



se, filed a Notice of Removal pursuant to 28 U.S.C. § 1441(a), 28 U.S.C. § 1331, and 5 U.S.C. § 702 (Doc. 1). The Notice of Removal states that Mr. Gillespie intends to raise various counterclaims and affirmative defenses under the Administrative Procedures Act, 5 U.S.C. § 701, *et seq.*, and intends to file cross-claims against Defendant United States of America, Department of Housing and Urban Development (“HUD”) (*Id.*, pp. 2-3). Mr. Gillespie has also filed a motion for leave to proceed *in forma pauperis* (Doc. 6).

On February 13, 2013, the United States Magistrate Judge issued a Report and Recommendation (Doc. 10), which recommended, pursuant to 28 U.S.C. § 1915(e)(2), that the motion to proceed *in forma pauperis* be denied, and this case be remanded to state court for lack of subject matter jurisdiction. See Fed. R. Civ. P. 12(h)(3). Specifically, the Magistrate Judge held that remand is proper both because this Court lacks subject matter jurisdiction under the “well-pleaded complaint” rule, see Caterpillar, Inc. v. Williams, 482 U.S. 386, 392, 107 S. Ct. 2425, 2429 (1987), and because there is a procedural defect in the notice of removal.

Mr. Gillespie has filed 58 pages of objections and exhibits challenging the Magistrate Judge’s Report and Recommendation, as well as seeking recusal of both the undersigned and the Magistrate Judge (Doc. 18). Although typically the Court would afford the Plaintiff leave to respond to the Objections, the law and the facts of this case conclusively establish that this Court is without subject matter jurisdiction, such that it would be a waste of attorney and judicial resources to wait for a response.

The Magistrate Judge noted that the decision whether a claim arises under federal law for purposes of § 1331 is generally determined by the well-pleaded complaint rule, “which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” Smith v. GTE Corp., 236 F.3d 1292, 1310 (11th Cir. 2001) (citing Caterpillar, 482 U.S. at 392). Under the well-pleaded complaint rule, “merely having a federal defense to a state law claim is insufficient to support removal.” Lontz v. Tharp, 413 F.3d 435, 439 (4th Cir. 2005). Moreover, the Supreme Court has held that a counterclaim cannot serve as the basis for “arising under” federal question jurisdiction. Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 832, 122 S. Ct. 1889, 1894 (2002). See also Mortgage Electronic Registration Systems, Inc. v. Malugen, No. 6:11-cv-2033-Orl-22, 2012 WL 1382265 at \* 8 (M.D. Fla. Apr. 3, 2012) (“Thus, the law is well settled that federal claims raised in a counterclaim may not serve as a basis for removal jurisdiction.”).

The Magistrate Judge found that the only issues of federal law in this case were raised in Mr. Gillespie’s anticipated defenses “or other such claim,” and thus, under the well-pleaded complaint rule, this Court was without subject matter jurisdiction (Doc. 10, p. 5). Mr. Gillespie’s primary objections focus on the fact that he intends to raise questions of federal law not only in his counterclaims and defenses, but also in cross-claims he intends to assert against HUD. This is a distinction without a difference. “The basic principle is that defendants may remove only on the basis of claims brought

against them and not on the basis of counterclaims, cross-claims, or defenses asserted by them.” Image 1 Studios, LLC v. Youngblood, No. 6:12-cv-1570-Orl-22DAB, 2012 WL 5415629 at \* 1 (M.D. Fla. Oct. 22, 2012) (quoting 14C Charles Alan Wright, Arthur R. Miller Edward H. Cooper & Joan E. Steinman, *FEDERAL PRACTICE AND PROCEDURE* § 3730 (4th ed. 2009)). See also Chevy Chase Bank, F.S.B. v. Carrington, No. 6:09-cv-2132-Orl-31GJK, 2010 WL 1854123 at \* 3 (M.D. Fla. May 10, 2010) (remanding case to state court where the only claims that arose under federal law were contained in the defendant’s cross-claims). Thus, whether Mr. Gillespie asserts a federal cause of action in his counterclaim, affirmative defense, or cross-claim, is irrelevant for purposes of determining subject matter jurisdiction. The Court is limited solely to a review of the Plaintiff’s Complaint, which in this case clearly and explicitly only raises issues of state foreclosure law.<sup>1</sup> Mr. Gillespie’s objection on this point shall be Overruled.

Mr. Gillespie also objects to the Magistrate Judge’s finding that the notice of removal was procedurally defective because it does not contain the consent and/or joinder of all other Defendants in the removal. Specifically, Mr. Gillespie contends that he is the only defendant with a real interest in this case, and that the other defendants were neither properly joined or served. This objection is based on both hearsay and

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<sup>1</sup>This Order should not be interpreted as a ruling concerning whether, or to what extent, Mr. Gillespie can sue HUD in a separate action. Rather, this Order is limited to whether the Court has subject matter jurisdiction over the specific action that has been removed to this Court.

supposition on the part of Mr. Gillespie – the fact remains that several other defendants have been served and have not consented or joined in the notice of removal. This is sufficient to warrant remand. Moreover, this objection does not change the fact that this Court lacks subject matter jurisdiction and must remand regardless of the validity of the procedures used for removal. This objection shall be Overruled.

Mr. Gillespie next objects to the Magistrate Judge's report and recommendation, on the ground that the mere inclusion of the United States as a defendant automatically gives this Court subject matter jurisdiction over the entire case. Mr. Gillespie is mistaken. Simply listing the United States as a defendant does not automatically clothe this Court with jurisdiction – rather it gives the United States the right to seek removal of the case to federal court. Unless and until the United States seeks removal, this Court is without jurisdiction. Moreover, the Court has reviewed the very narrow circumstances when it would have jurisdiction over cases where the United States is listed as a defendant, and this case does not fall within any of those circumstances. See 28 U.S.C. §§ 1346, 2409, 2409a. This objection will also be Overruled.

Mr. Gillespie's other objections are either irrelevant (objection to the date the Plaintiff's actually filed their complaint in state court), or redundant (arguing that his anticipated federal cross-claims against HUD establish jurisdiction). They warrant no further discussion, and will be Overruled. Mr. Gillespie's request to amend his Notice of Removal will also be Denied as futile because there is no set of facts or legal claims that can be raised which would give the Court jurisdiction over this case.

Lastly, Mr. Gillespie seeks to recuse the undersigned and the Magistrate Judge. Because the Court does not have subject matter jurisdiction, it would appear that this request is now moot. In any event, the Court finds that the request is also without legal merit. Mr. Gillespie seeks the undersigned's recusal on the basis that I have a financial interest in Bank of America, which Mr. Gillespie contends is the real party in interest in this case. However, Bank of America is not listed as a party, and the evidence submitted by Mr. Gillespie, which consists of correspondence between Mr. Gillespie and Bank of America in which Mr. Gillespie is requesting information about various accounts, does not appear to have anything to do with this case.

Mr. Gillespie seeks recusal of the Magistrate Judge on the grounds that the Magistrate Judge's report and recommendation contains misstatements of law and fact, and therefore calls into question the Magistrate Judge's fairness and impartiality. The Magistrate Judge has not misstated any law or facts, rather he has correctly determined that there is no subject matter jurisdiction. Besides, any such claim would relate to judicial acts rather than extra-judicial bias, and it is insufficient to work a disqualification as a matter of law. And the fact that Mr. Gillespie does not agree with the Magistrate Judge's well-founded report and recommendation does not establish any legally cognizable bias either. See 28 U.S.C. §§ 144, 455(a), and 455(b)(1).

Accordingly, upon due consideration it is hereby ORDERED as follows:

(1) The United States Magistrate Judge's Report and Recommendation (Doc. 10) is ADOPTED, CONFIRMED, AND MADE A PART HEREOF;



(2) Defendant Neil J. Gillespie's Objections (Doc. 18) are OVERRULED, and his requests for leave to amend his Notice of Removal and for recusal of the undersigned and the Magistrate Judge are all DENIED;

(3) Defendant Neil J. Gillespie's Motion for Leave to Proceed *In Forma Pauperis* (Doc. 6) is DENIED;

(4) The Clerk is directed to remand this case to the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida; and

(5) The Clerk is further directed to enter judgment accordingly, terminate all other pending motions, and close the file.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 7th day of March, 2013.



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UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record  
Hon. Philip R. Lammens  
Maurya McSheehy

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

**REVERSE MORTGAGE  
SOLUTIONS, INC.,**

**Plaintiff,**

**Case No. 5:13-cv-58-Oc-10PRL**

**-vs-**

**NEIL J. GILLESPIE, AS CO-TRUSTEES, et al.,**

**Defendants.**

**JUDGMENT IN A CIVIL CASE**

**Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED**

Pursuant to the Court's Order entered on March 7, 2013, this case is dismissed and remanded to the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida.

Date: March 11, 2013

SHERYL L. LOESCH, CLERK

L. Burget  
By: L. Burget, Deputy Clerk

Copies furnished to:

Counsel of Record  
Unrepresented Parties



**CIVIL APPEALS JURISDICTION CHECKLIST**

1. **Appealable Orders:** Courts of Appeals have jurisdiction conferred and strictly limited by statute:
  - (a) **Appeals from final orders pursuant to 28 U.S.C. Section 1291:** Only final orders and judgments of district courts, or final orders of bankruptcy courts which have been appealed to and fully resolved by a district court under 28 U.S.C. Section 158, generally are appealable. A final decision is one that “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Pitney Bowes, Inc. V. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983). A magistrate judge’s report and recommendation is not final and appealable until judgment thereon is entered by a district court judge. 28 U.S.C. Section 636(c).
  - (b) **In cases involving multiple parties or multiple claims,** a judgment as to fewer than all parties or all claims is not a final, appealable decision unless the district court has certified the judgment for immediate review under Fed.R.Civ.P. 54(b), Williams v. Bishop, 732 F.2d 885, 885-86 (11th Cir. 1984). A judgment which resolves all issues except matters, such as attorneys’ fees and costs, that are collateral to the merits, is immediately appealable. Budinich v. Becton Dickinson & Co., 486 U.S. 196, 201, 108 S. Ct. 1717, 1721-22, 100 L.Ed.2d 178 (1988); LaChance v. Duffy’s Draft House, Inc., 146 F.3d 832, 837 (11th Cir. 1998).
  - (c) **Appeals pursuant to 28 U.S.C. Section 1292(a):** Appeals are permitted from orders “granting, continuing, modifying, refusing or dissolving injunctions or refusing to dissolve or modify injunctions...” and from “[i]nterlocutory decrees...determining the rights and liabilities of parties to admiralty cases in which appeals from final decrees are allowed.” Interlocutory appeals from orders denying temporary restraining orders are not permitted.
  - (d) **Appeals pursuant to 28 U.S.C. Section 1292(b) and Fed.R.App.P.5:** The certification specified in 28 U.S.C. Section 1292(b) must be obtained before a petition for permission to appeal is filed in the Court of Appeals. The district court’s denial of a motion for certification is not itself appealable.
  - (e) **Appeals pursuant to judicially created exceptions to the finality rule:** Limited exceptions are discussed in cases including, but not limited to: Cohen V. Beneficial Indus. Loan Corp., 337 U.S. 541, 546, 69 S.Ct. 1221, 1225-26, 93 L.Ed. 1528 (1949); Atlantic Fed. Sav. & Loan Ass’n v. Blythe Eastman Paine Webber, Inc., 890 F.2d 371, 376 (11th Cir. 1989); Gillespie v. United States Steel Corp., 379 U.S. 148, 157, 85 S. Ct. 308, 312, 13 L.Ed.2d 199 (1964).
2. **Time for Filing:** The timely filing of a notice of appeal is mandatory and jurisdictional. Rinaldo v. Corbett, 256 F.3d 1276, 1278 (11th Cir. 2001). In civil cases, Fed.R.App.P.4(a) and (c) set the following time limits:
  - (a) **Fed.R.App.P. 4(a)(1):** A notice of appeal in compliance with the requirements set forth in Fed.R.App.P. 3 must be filed in the district court within 30 days after the entry of the order or judgment appealed from. However, if the United States or an officer or agency thereof is a party, the notice of appeal must be filed in the district court within 60 days after such entry. **THE NOTICE MUST BE RECEIVED AND FILED IN THE DISTRICT COURT NO LATER THAN THE LAST DAY OF THE APPEAL PERIOD - no additional days are provided for mailing.** Special filing provisions for inmates are discussed below.
  - (b) **Fed.R.App.P. 4(a)(3):** “If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.”
  - (c) **Fed.R.App.P.4(a)(4):** If any party makes a timely motion in the district court under the Federal Rules of Civil Procedure of a type specified in this rule, the time for appeal for all parties runs from the date of entry of the order disposing of the last such timely filed motion.
  - (d) **Fed.R.App.P.4(a)(5) and 4(a)(6):** Under certain limited circumstances, the district court may extend the time to file a notice of appeal. Under Rule 4(a)(5), the time may be extended if a motion for an extension is filed within 30 days after expiration of the time otherwise provided to file a notice of appeal, upon a showing of excusable neglect or good cause. Under Rule 4(a)(6), the time may be extended if the district court finds upon motion that a party did not timely receive notice of the entry of the judgment or order, and that no party would be prejudiced by an extension.
  - (e) **Fed.R.App.P.4(c):** If an inmate confined to an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely if it is deposited in the institution’s internal mail system on or before the last day for filing. Timely filing may be shown by a declaration in compliance with 28 U.S.C. Section 1746 or a notarized statement, either of which must set forth the date of deposit and state that first-class postage has been prepaid.
3. **Format of the notice of appeal:** Form 1, Appendix of Forms to the Federal Rules of Appellate Procedure, is a suitable format. See also Fed.R.App.P. 3(c). A pro se notice of appeal must be signed by the appellant
4. **Effect of a notice of appeal:** A district court loses jurisdiction (authority) to act after the filing of a timely notice of appeal, except for actions in aid of appellate jurisdiction or to rule on a timely motion of the type specified in Fed.R.App.P. 4(a)(4).

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff,

-VS-

Case No. 5:13-cv-58-Oc-10PRL

NEIL J. GILLESPIE AS CO-TRUSTEES,  
MARK GILLESPIE AS CO-TRUSTEES,  
OAK RUN HOMEOWNERS  
ASSOCIATION, INC., UNITED STATES  
OF AMERICA, ELIZABETH BAUERLE,  
MARK GILLESPIE, NEIL J. GILLESPIE,  
DEVELOPMENT & CONSTRUCTION  
CORPORATION OF AMERICA,  
UNKNOWN SPOUSE, UNKNOWN  
SPOUSE, UNKNOWN SPOUSE,  
UNKNOWN SETTLORS AND/OR  
/BENEFICIARIES, UNKNOWN  
TRUSTEES, SETTLERS AND  
BENEFICIARIES, UNKNOWN TENANT  
IN POSSESSION 1 AND UNKNOWN  
TENANT IN POSSESSION 2,

Defendants.

**ORDER**

This mortgage foreclosure action was filed in state court on January 9, 2013, and was removed to this Court by Defendant Neil J. Gillespie, acting *pro se*, on February 4, 2013 (Doc. 1). On March 19, 2013, the Court remanded the case to state court because this Court lacked subject matter jurisdiction (Doc. 19). The Court denied Mr. Gillespie's motion to alter or amend judgment on April 12, 2013 (Doc. 24).

**EXHIBIT**

**Appendix F**

Mr. Gillespie has filed a Notice of Appeal (Doc. 23), and he has now moved for leave to proceed *in forma pauperis* on appeal (Doc. 25). Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith.” For the reasons stated in the Court’s Orders dated March 7, 2013 and April 12, 2013 (Docs. 19, 24), it is clear that the Court lacks subject matter jurisdiction over this matter, and therefore Mr. Gillespie’s appeal of the dismissal of his case on that ground is utterly frivolous.

In addition, Mr. Gillespie seeks to raise several issues on appeal regarding the Court’s purported failure to sanction the Plaintiff under Fed. R. Civ. P. 11, failure to sustain Mr. Gillespie’s objections to the Magistrate Judge’s reports and recommendations, and failure of the Court to recuse itself (Doc. 23). The Court has also addressed these issues in its prior orders and found them to be without any legal merit. Therefore, Mr. Gillespie’s appeal of these issues is also frivolous. As such, the Court certifies that Mr. Gillespie’s appeal has not been taken in good faith, and his motion for leave to appeal *in forma pauperis* (Doc. 25) is DENIED.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 9th day of May, 2013.



UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record  
Neil J. Gillespie, *pro se*  
Maurya McSheehy

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff,

-VS-

Case No. 5:13-cv-58-Oc-10PRL

NEIL J. GILLESPIE AS CO-TRUSTEES,  
MARK GILLESPIE AS CO-TRUSTEES,  
OAK RUN HOMEOWNERS  
ASSOCIATION, INC., UNITED STATES  
OF AMERICA, ELIZABETH BAUERLE,  
MARK GILLESPIE, NEIL J. GILLESPIE,  
DEVELOPMENT & CONSTRUCTION  
CORPORATION OF AMERICA,  
UNKNOWN SPOUSE, UNKNOWN  
SPOUSE, UNKNOWN SPOUSE,  
UNKNOWN SETTLORS AND/OR  
/BENEFICIARIES, UNKNOWN  
TRUSTEES, SETTLERS AND  
BENEFICIARIES, UNKNOWN TENANT  
IN POSSESSION 1 AND UNKNOWN  
TENANT IN POSSESSION 2,

Defendants.

\_\_\_\_\_ /

**ORDER**

This mortgage foreclosure action was filed in state court on January 9, 2013, and was removed to this Court by Defendant Neil J. Gillespie, acting *pro se*, on February 4, 2013 (Doc. 1). Gillespie then filed a motion (Doc. 6) for leave to proceed *in forma pauperis*. The United States Magistrate Judge, by reference, initially considered that motion and recommend that it be denied and that the case be remanded to state court

for lack of federal jurisdiction (Doc. 10). See 28 U.S.C. § 1915(e)(2) and Fed. R. Civ. P. 12(h)(3).

Gillespie filed lengthy Objections to the Magistrate Judge's Report and Recommendation (Doc. 18). In that document, (Id., p. 7, ¶ 11), Gillespie noted that the undersigned has listed a financial interest in Bank of America. He then referred to certain correspondence he had addressed to Bank of America, and to pending investigations and/or administrative proceedings allegedly involving Bank of America, none of which appeared to have any relationship to this case (Id., pp. 7-8, ¶¶ 12-17). Nevertheless, Gillespie declared on the strength of that evidence that Bank of America was "a real party in interest" (Id., p. 9, ¶ 18), and that the undersigned had a duty to recuse (Id., p. 26, ¶ 42).

The Court overruled Gillespie's objections to the Magistrate Judge's Report and Recommendation; and, as he had recommended, the Court ordered that the case be remanded to the state court (Doc. 19). In that Order, the Court noted Gillespie's suggestion of recusal but observed that Bank of America is not listed as a party and that despite his *ipse dixit* declaration that Bank of America is a party in interest, his proffered justification for that assertion did not support it.<sup>1</sup>

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<sup>1</sup>Of course, if it did appear that Bank of America had any interest in this litigation, the undersigned would be disqualified under 28 U.S.C. § 455(b)(4) and no motion would be required. The statute is self executing.

Gillespie has now filed a motion to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e) (Doc. 21). In fact the motion does not seek to alter or amend the judgment at all. It is, instead, a motion to disqualify and, as such, is arguably moot. As noted, however, 28 U.S.C. § 455(b)(4) is self executing, and if the undersigned was disqualified before the judgment was entered, the judgment would no doubt be void. The Court will, therefore, address the motion on its merits.

Although Gillespie's motion makes several arguments – that adverse rulings are indicative of bias and that senior federal judges are unconstitutional – none merit further discussion except for his repeated assertion that Bank of America is a real party in interest.

The record is still devoid of any evidence to support Gillespie's claim. In fact, the only pertinent document that is of record tends to affirmatively refute it. Attached to the Plaintiff's Complaint is an Assignment dated March 27, 2012, months before this litigation was commenced, whereby Bank of America assigned to the Plaintiff, Reverse Mortgage Solutions, Inc., “. . . all beneficial interest under that certain Mortgage described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights secured or to accrue under said Mortgage.” (Doc. 2, p. 38).

Of course, as a matter of pure conjecture, it is conceivable that Bank of America through some separate document or agreement may have retained some contingent interest in the subject note(s) and mortgage, but § 455 disqualifications cannot be



justified by speculation and conjecture. There is, to be sure, an absolute and automatic duty to disqualify whenever it becomes established that the judge “has a financial interest . . . in a party to the proceeding. . . .” 28 U.S.C. § 455(b)(4). There is also a concomitant duty, however, not to disqualify under § 455 on the basis of a fanciful or wholly speculative assertion. Otherwise, judges could be tempted to invoke the statute as a basis for avoiding hard or distasteful cases, with resulting injury to the collegiality of the court, and lawyers could be tempted to invoke the statute on transparently thin grounds as a tool for forum shopping.

In the language of the statute, the undersigned does not “know” that he has a financial interest in a party to the proceeding, and does not have any personal bias against Gillespie that would impel a *sua sponte* recusal.

The Motion to Alter or Amend Judgment (Doc. 21) is DENIED.<sup>2</sup>

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 12th day of April, 2013.



UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record  
Neil J. Gillespie, *pro se*  
Maurya McSheehy

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<sup>2</sup>The Court acknowledges that on April 10, 2013, Mr. Gillespie filed a Notice of Appeal with the Eleventh Circuit Court of Appeals (Doc. 23). Nevertheless, the Court has retained jurisdiction to consider the present motion. See Fed. R. App. P. 4(a)(4).

**U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA (OCALA)  
CASE NO: 5:13-cv-00058-WTH-PRL**

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff,

vs.

NEIL J. GILLESPIE AND MARK  
GILLESPIE AS CO-TRUSTEES OF THE  
GILLESPIE FAMILY LIVING TRUST  
AGREEMENT DATED FEBRUARY 10,  
1997, et al.,

Defendants.

/

**AGREED MOTION FOR EXTENSION OF TIME**

Plaintiff, REVERSE MORTGAGE SOLUTIONS, INC., by and through its undersigned counsel pursuant to Florida Rules of Civil Procedure, hereby files this Motion for Extension of Time to file a response to Defendant, NEIL GILLESPIE's, Motion to Dismiss and in support thereof, states as follows:

1. On or about February 6, 2013, Defendant, Neil Gillespie, filed its Motion to Dismiss with the Court.
2. Pursuant to the Federal Rules of Civil Procedure, a response is due to the Motion to Dismiss on or about February 21, 2013.
3. Plaintiff requires additional time to file its response as it requires additional information.
4. Plaintiff seeks this extension in good faith and not for the purposes of delay.
5. No parties will be prejudiced by the granting of this extension of time.

WHEREFORE Plaintiff, REVERSE MORTGAGE SOLUTIONS, INC., respectfully requests this Honorable Court extend the time for filing of Plaintiff's response to Defendant's Motion to Dismiss for (20) twenty day or until March 13, 2013, and to grant such other and further relief as

the Court deems just and appropriate.

**CERTIFICATION PURSUANT TO MIDDLE DISTRICT LOCAL RULE 3.01(g)**

Counsel for Plaintiff hereby advises this Honorable Court that it has attempted in good faith to confer with pro se Defendant, Neil Gillespie via electronic mail as this is the only form of communication we have. Counsel sent an email to Mr. Gillespie advising him that we were in need of an extension. Defendant, Neil Gillespie, has agreed to the within request for an extension of time.

/s/ Danielle N. Parsons, Esq.  
Danielle N. Parsons, Esq.  
McCalla Raymer, LLC  
Attorney for Plaintiff  
225 E. Robinson St. Suite 660  
Orlando, FL 32801  
Phone: (407) 674-1850  
Fax: (321) 248-0420  
Email: MRService@mccallaraymer.com  
Fla. Bar No.: 0029364

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21<sup>st</sup> day of February, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties, either via transmission of Notice of Electronic Filing generated by CM/ECF or via electronic mail and/or U.S. Mail.

/s/ Danielle N. Parsons, Esq.  
Danielle N. Parsons, Esq.  
McCalla Raymer, LLC  
Attorney for Plaintiff  
225 E. Robinson St. Suite 660  
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Phone: (407) 674-1850  
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c/o Registered Agent: Priya Ghumman  
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Unknown spouse of Elizabeth Bauerle  
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Unknown spouse of Mark Gillespie  
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Ft. Worth, TX 76123

Unknown spouse of Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, FL 34481

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION**

**REVERSE MORTGAGE SOLUTIONS,  
INC.,**

**Plaintiff,**

**v.**

**Case No: 5:13-CV-58-Oc-10PRL**

**NEIL J. GILLESPIE AS CO-TRUSTEES,  
MARK GILLESPIE AS CO-TRUSTEES,  
OAK RUN HOMEOWNERS  
ASSOCIATION, INC., UNITED STATES  
OF AMERICA, ELIZABETH BAUERLE,  
MARK GILLESPIE, NEIL J. GILLESPIE,  
DEVELOPMENT & CONSTRUCTION  
CORPORATION OF AMERICA,  
UNKNOWN SPOUSE, UNKNOWN  
SPOUSE, UNKNOWN SPOUSE,  
UNKNOWN  
SETTLORS/BENEFICIARIES,  
UNKNOWN TRUSTEES, SETTLERS AND  
BENEFICIARIES, UNKNOWN TENANT  
IN POSSESSION 1 and UNKNOWN  
TENANT IN POSSESSION 2**

**Defendants.**

---

**REPORT AND RECOMMENDATION<sup>1</sup>**

This cause is before the Court on Defendant Neil Gillespie's Affidavit of Indigency (Doc. 6), which the Court construes as a Motion for Leave to Proceed *In Forma Pauperis*. The Court has also reviewed Mr. Gillespie's Notice of Removal (Doc. 1), his Supplement to Affidavit of Indigency (Doc. 8), and Plaintiff's Complaint (Doc. 2). For the reasons that follow, the

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<sup>1</sup> Specific written objections may be filed in accordance with 28 U.S.C. § 636, and Rule 6.02, Local Rules, M.D. Fla., within fourteen (14) days after service of this report and recommendation. Failure to file timely objections shall bar the party from a *de novo* determination by a district judge and from attacking factual findings on appeal.

undersigned respectfully recommends that Defendant's Motion (Doc. 6) be **denied** and this case be **remanded** to state court.

## **I. BACKGROUND**

On January 2, 2013, Plaintiff initiated this action in the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida, against Mr. Neil Gillespie (and other Defendants) to foreclose a reverse mortgage on real property in Marion County, Florida, pursuant to Fla. Stat. § 26.012. (Doc. 2, ¶ 1). Subsequently, on February 4, 2013, Mr. Gillespie filed a Notice of Removal (Doc. 1), removing this action to federal court pursuant to 28 U.S.C. § 1441, and alleging that this Court has jurisdiction per 28 U.S.C. § 1331 (federal question jurisdiction) and 5 U.S.C. § 702 (Administrative Procedures Act) ("APA"). (See Doc. 1, p.1 & ¶ 7).

## **II. DISCUSSION**

Prior to deciding whether Mr. Gillespie qualifies to proceed *in forma pauperis*, the Court has the authority, pursuant to 28 U.S.C. § 1915(e)(2), to determine whether Mr. Gillespie should be permitted to proceed *in forma pauperis* by determining "whether there is a 'factual and legal basis . . . for the asserted wrong, however inartfully pleaded.'" *Id.* (quoting *Watson v. Ault*, 525 F.2d 886, 892 (5th Cir. 1976)). Critical to this analysis is a showing that the claim is within the limited jurisdiction of this federal court. See *Cogdell v. Wyeth*, 366 F.3d 1245, 1247-48 (11th Cir. 2004). "This analysis is equally compelling where a *Defendant* seeks to proceed as a pauper in a case he had improvidently removed." See *HSBC Bank U.S.A., N.A. v. Anderson*, 2012 WL 4896686, at \*3 (M.D. Fla. Sept. 24, 2012) (*adopted by* 2012 WL 4896686 (M.D. Fla. Sept. 24, 2012)) (emphasis added); see also *U.S. Bank National Ass'n v. Cavalcante*, 2012 WL 4466514, at \*3 (M.D. Fla. Sept. 11, 2012) (*adopted by* 2012 WL 4466452 (M.D. Fla. Sept. 27, 2012)). Upon a review of the Complaint and the file as a whole, the Court finds that it has no jurisdiction

over this state court matter, and recommends that Mr. Gillespie's Motion to Proceed *In Forma Pauperis* be denied and this case be remanded.

Removal statutes are to be strictly construed against removal. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 108, 61 S.Ct. 868, 85 L.Ed. 1214 (1941); *Burns v. Windosor Ins. Co.*, 31 F.3d 1092, 1095 (11th Cir. 1994) (“[R]emoval statutes are construed narrowly; when the parties dispute jurisdiction, uncertainties are resolved in favor of remand.”). Any doubt as to proper subject matter jurisdiction should be resolved against removal. *Butler v. Polk*, 592 F.2d 1293, 1296 (5th Cir. 1979). The removing party has the burden of proving that federal jurisdiction exists by a preponderance of the evidence and the removing party must present facts establishing its right to remove. *Williams v. Best Buy Co.*, 269 F.3d 1316, 1319 (11th Cir. 2001). When the defendant fails to do so, the case must be remanded. *Id.* at 1321.

There are “two grounds for remanding a removed case: (1) lack of subject matter jurisdiction; or (2) [a] procedural defect in the removal of the case.” *Russell Corp. v. American Home Assurance Co.*, 264 F.3d 1040, 1043-44 (11th Cir. 2001) (citations omitted). Upon review of Mr. Gillespie's Notice of Removal (Doc. 1) and Plaintiff's Complaint (Doc. 2), this case should be remanded to state court because this Court lacks subject matter jurisdiction and there is a procedural defect in the removal.

#### *A. Subject Matter Jurisdiction*

Federal courts are courts of limited jurisdiction and therefore, have an obligation to inquire into their subject matter jurisdiction. *See Kirkland v. Midland Mortgage Co.*, 243 F.3d 1277, 1279-80 (11th Cir. 2001). “In a given case, a federal district court must have at least one of three types of subject matter jurisdiction: (1) jurisdiction under a specific statutory grant; (2) federal question jurisdiction pursuant to 28 U.S.C. § 1331; or (3) diversity jurisdiction pursuant

to 28 U.S.C. § 1332(a).” *Baltin v. Alaron Trading, Corp.*, 128 F.3d 1466, 1469 (11th Cir. 1997.) Notably, the Court’s subject matter jurisdiction over a case is determined by reference to the “well-pleaded complaint rule.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429 (1987). This rule provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly-pleaded complaint. *Id.*

Counterclaims and affirmative defenses raised by a defendant cannot establish subject matter jurisdiction. *See Holmes Grp., Inc. v. Vornado Air Circulation Systems, Inc.*, 535 U.S. 826, 122 S.Ct. 1889 (2002) (“[A] counterclaim – which appears as part of the defendant’s answer, not as part of the plaintiff’s complaint – cannot serve as the basis for ‘arising under’ jurisdiction); *Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 6, 123 S.Ct. 2058, 156 L.Ed.2d 1 (2003) (“To determine whether the claim arises under federal law, we examine the ‘well pleaded’ allegations of the complaint and ignore potential defenses.”); *Pan Am. Petroleum Corp. v. Superior Court of Del.*, 366 U.S. 656, 663, 81 S.Ct. 1303, 6 L.Ed.2d 584 (1961) (noting that if the plaintiff does not raise a federal question in the complaint, “it is no substitute that the defendant is almost certain to raise a federal defense”); *Bd. of Educ. of Atlanta v. Am. Fed’n of State, Cnty. & Mun. Employees*, 401 F. Supp. 687, 690 (N.D.Ga.1975) (“Stated simply, a federal district court’s original federal question jurisdiction must be posited upon the plaintiff’s pleading of his own case, and not by defendant’s response or even plaintiff’s anticipation of a federal element in that response.”).

Here, Mr. Gillespie claims that this Court has federal question jurisdiction or jurisdiction pursuant to the APA. (*See* Doc. 1, ¶ 7). However, applying the “well-pleaded complaint rule” and looking to the face of the Complaint, it is clear that the Complaint only alleges state law claims; specifically, this is a mortgage foreclosure action pursuant to Florida law. (*See* Doc. 2, ¶



1). The Complaint simply does not assert any federal claims or a basis for diversity jurisdiction; thus, the case should not have been removed. The fact that Mr. Gillespie has asserted a defense in his Notice of Removal (Doc. 1) does not change this result. Specifically, Mr. Gillespie seeks to procure this Court's jurisdiction through a defense, that is, he "seeks redress under the Administrative Procedures Act . . . against a Defendant . . . ." (Doc. 1, ¶ 8). As noted above, Mr. Gillespie cannot obtain federal court jurisdiction through a defense or other such claim. Accordingly, this Court lacks subject matter jurisdiction over this case. Moreover, in accordance with Fed. R. Civ. P. 12(h)(3), which requires the Court to dismiss any action at any time if the Court determines it lacks subject matter jurisdiction, this case cannot remain in federal court.

*B. Procedural Defect in the Removal*

Mr. Gillespie's Notice of Removal is also procedurally defective. "A defendant or defendants desiring to remove any civil action . . . shall file in the district court . . . a notice of removal . . . ." 28 U.S.C. § 1446(a). "When a civil action is removed solely under section 1441(a), all defendants who have been properly joined and served must join in or consent to the removal of the action." 28 U.S.C. § 1446(2)(A). Failure to comply with this requirement is grounds for remand as a "defect in the removal process." *Russell Corp.*, 264 F.3d at 1044 (citing *In re Bethesda Mem'l Hosp. Inc.*, 123 F.3d 1407, 1410 & n.2 (11th Cir. 1997); *In re Ocean Marine Mut. Protection and Indem. Ass'n, Ltd.*, 3 F.3d 353, 355-56 (11th Cir. 1993)).

Here, Mr. Gillespie removed this action to federal court solely based on Section 1441(a); however, of all defendants in this case only "Neil J. Gillespie and Neil J. Gillespie Co-Trustee of the Gillespie Family Living Trust Agreement" have joined in the removal. (*See* Doc. 1, at 1). Thus, since not all of the defendants (who were served) joined in the removal, Mr. Gillespie's Notice of Removal is procedurally defective and this case should be remanded.

### **III. RECOMMENDATION**

In light of the foregoing, it is **RESPECTFULLY RECOMMENDED** that Mr. Neil Gillespie's Motion for Leave to Proceed *In Forma Pauperis* (Doc. 6), be **DENIED** and this cause be **REMANDED** to state court.<sup>2</sup>

**IN CHAMBERS** in Ocala, Florida on February 13, 2013.



PHILIP R. LAMMENS  
United States Magistrate Judge

Copies furnished to:

The Honorable Wm. Terrell Hodges  
Unrepresented Parties  
Counsel of Record

---

<sup>2</sup> Notably, although Defendants' (Mark Gillespie and Joetta Gillespie a/k/a Unknown Spouse of Mark Gillespie) Motion to Quash Service of Process (Doc. 3) and Mr. Gillespie's Motion for Authorization to File Electronically (Doc. 7) are also referred to the undersigned, because the Court finds that subject matter jurisdiction is lacking and recommends remand, these Motions are due to be **terminated** if this Report and Recommendation is adopted.

VIA U.P.S. No. 1Z64589FNY95280437

March 15, 2013

U.S. Senator Elizabeth Warren  
Russell Senate Office Building  
2 Russell Courtyard  
Washington, DC 20510

RE: Consumer Financial Protection Bureau, Case Number 120914-000082

- Bank of America Account No.: 68011002615899
- Reverse Mortgage Solutions, Inc. vs. Neil J. Gillespie, et al., U.S. District Court, Middle District, Florida Case No. 5:13-cv-58-oc-WTH-PRL, Ocala Division
- Reverse Mortgage Solutions, Inc. vs. Neil J. Gillespie, et al., Case No. 13-115-CAT, Marion County Circuit Court, Fifth Judicial Circuit, Florida

Dear Senator Warren:

Thank you<sup>1</sup> for working to create the Consumer Financial Protection Bureau, the CFPB, an agency that “is arguably the most important part of the Dodd-Frank financial reform” according to an Editorial in the New York Times:

When Senator-elect Elizabeth Warren gave her victory speech on election night at a party where loudspeakers blared “Ain’t No Stoppin’ Us Now,” she pledged to “hold the big guys accountable.” Now, some bankers, their lobbyists and their Republican allies on the Senate banking committee reportedly would like nothing better than to keep Ms. Warren off the powerful bank panel — where she could do the most harm to the status quo, and the most good for the country....Sending Ms. Warren to the banking committee should be a no-brainer. - NYT: “Their Problem With Elizabeth Warren”, November 23, 2012.

Unfortunately a senior federal judge in Florida, and his magistrate judge, will not acknowledge either the CFPB or the Dodd-Frank Act in orders responsive to my pleadings in a contested HECM reverse mortgage foreclosure by Reverse Mortgage Solutions, Inc. for Bank of America. The senior federal judge is a shareholder in Bank of America, the Hon. Wm. Terrell Hodges<sup>2</sup>, U.S. District Court, Middle District, Ocala, FL. The interest list for Judge Hodges and Bank of America is enclosed, as filed on PACER at Case 5:13-cv-00058-WTH-PRL Document 18-1 Filed 03/06/13 Page 3 of 29 PageID 695

My home is in foreclosure on a Home Equity Conversion Mortgage, also called a HECM or a “reverse” mortgage. HECM is a federal mortgage insurance program administered by HUD - the U.S. Department of Housing and Urban Development, and is codified at 12 USC § 1715z-20,

<sup>1</sup> A copy of this letter will be provided Monday March 18, 2013 to the Supreme Court of the United States in support of my motion for leave to appear *in forma pauperis* on a petition for the rehearing of an order denying a petition for a writ of certiorari, No. 12-7747 that seeks better protection for consumers of legal and court services affecting interstate commerce.

<sup>2</sup> Judge Hodges was also the trial judge in the cases on petition for certiorari in No. 12-7747.

**EXHIBIT**  
Appendix J

**EXHIBIT**  
~~4~~

U.S. Senator Elizabeth Warren  
The CFPB and The Dodd-Frank Act

March 15, 2013  
Page - 2

Insurance of home equity conversion mortgages for elderly homeowners. HUD is a coparty Defendant with me and others in the above captioned lawsuits, which I removed to federal court.

My initial complaint was sent August 9, 2012 to HUD as provided by Section 4-19 of the HUD Reverse Mortgage Handbook 7610.01, and disputed a Notice of Default and Intent to Foreclose, on acct./loan no. 68011002615899 from RMS - Reverse Mortgage Solutions. RMS is the debt collector for Bank of America.

Bank of America owns the subject HECM mortgage, and was identified as the party at interest by the CFPB in a letter addressed to me that did not mention RMS. The CFPB assigned case no. 120914-000082 to my complaint. The CFPB letter is enclosed as it appears on PACER at Case 5:13-cv-00058-WTH-PRL Document 18-1 Filed 03/06/13 Page 2 of 29 PageID 694, and Case 5:13-cv-00058-WTH-PRL Document 5-3 Filed 02/04/13 Page 2 of 40 PageID 326.

My CFPB complaint shows the lenders and affiliated parties made a HECM reverse mortgage June 5, 2008 to my mother, Penelope Gillespie, who was incompetent due to Alzheimer's dementia. Mom died from dementia fifteen months later, September 16, 2009. Bank of America and RMS claim a right to foreclose and demand immediate payment in full if the borrower dies and the property is not the principal residence of at least one surviving borrower. But I am a surviving borrower living in the home as my principal residence. The home, valued at \$78,675, is in a family trust. The mortgage is \$109,800. The home is underwater with -\$31,125 negative equity. I am indigent and not able to refinance. I rely on Social Security disability income.

The lender and affiliated parties required me and my brother to sign the HECM note, mortgage, and other documents, making us all borrowers. Since I am a borrower living in the home in substantial compliance with the documents I signed, I believe this foreclosure is premature.

A ruling in the Santos<sup>3</sup> case rejected a definition of borrower to include only natural persons acting in their individual capacities. A decision January 4, 2013 in Bennett, et al., v. Secretary/HUD, No. 11-5288, U.S.C.A., D.C., the Court held:

....HUD itself has the capability to provide complete relief to the lenders and mortgagors alike....(page 1)

....HUD could accept assignment of the mortgage, pay off the balance of the loans to the lenders, and then decline to foreclose...(page 10)

But none of that mattered to Judge Hodges in Ocala District Court, and he refused to even mention those cases in his order remaining the case back to state court. In doing so Judge Hodges departed from the following cases and constitutional protections.

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<sup>3</sup> Isabel Santos, individually and as trustee and beneficiary of the Yolanda Maria Santos Trust, et al. v. Reverse Mortgage Solutions, et al., No. 12-3296-SC, U.S District Court, Northern District of California. Page 11, Order, October 12, 2012 (Doc. 25) Denying Defendants' Motion (1) For Judgment on the Pleadings and (2) To Dissolve or Modify Preliminary Injunction

U.S. Senator Elizabeth Warren  
The CFPB and The Dodd-Frank Act

March 15, 2013  
Page - 3

The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law." The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures. [http://www.law.cornell.edu/wex/due\\_process](http://www.law.cornell.edu/wex/due_process)

A property right can be created only by state law. Once a property right is established, the determination of what process is due before that right can be deprived is a question answered by the federal Constitution. Kingsford v. Salt Lake City Sch. Dist., 247 F.3d 1123 (10th Cir. 2001). A case "arises under" federal law "if federal law creates the cause of action, or if a substantial disputed issue of federal law is a necessary element of a state law claim." Pacheco de Perez v. AT&T Co., 139 F.3d 1368, 1373 (11th Cir. 1998) (citing Franchise Tax Bd. of Cal. v. Construction Laborers Vacation Trust for S. Cal., 463 U.S. 1, 13 (1983)). Here, my case arises under the federal HECM statute 12 USC § 1715z-20 because a substantial disputed issue of federal law is a necessary element of a state law claim, my rights under the HECM.

My HUD/CFPB complaint shows the HECM reverse mortgage was essentially sold to us as an investment that the heirs could rely upon, which I cited in a motion to dismiss (Doc. 5, ¶ 13):

13. The subject HECM reverse mortgage charged high fees and stripped the family of home equity. The HECM reverse mortgage counseling session was a sham, and did not serve its intended purpose. The HECM reverse mortgage financial projections were beyond optimistic, they were fraudulent. The FHA's Monthly Adjustable HECM Loan Estimated Amortization Schedule for Penelope Gillespie and Neil Gillespie shows at year four (4) an ending loan balance of \$118,550, a home value of \$163,780, and equity of \$45,230. The value of the home is now \$78,675; the loan balance is \$109,345; the current deficit is -(\$30,670); equity difference is -(\$75,900). The Plaintiff is now seeking to compound the Gillespie Family's loss of \$75,900 with a demand in the Complaint, paragraph 8, for "interest from September 16, 2009, late charges, advancements, and all costs of collection including, but not limited to, title search expense for ascertaining necessary parties to this action and reasonable attorney's fees."

The HUD/CFPB complaint shows multiple violations of 12 USC § 1715z-20, including:

Failure to comply with 12 USC § 1715z-20(d) Eligibility requirements.

(2)(B) has received adequate counseling, as provided in subsection (f), by an independent third party that is not, either directly or indirectly, associated with or compensated by a party involved in—

- (i) originating or servicing the mortgage;
- (ii) funding the loan underlying the mortgage; or
- (iii) the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product;

U.S. Senator Elizabeth Warren  
The CFPB and The Dodd-Frank Act

March 15, 2013  
Page - 4

Consumer Credit Counseling Services, Money Management International Incorporated (CCCS/MMI) was the HUD-approved housing counseling agency for this loan. According to Wikipedia, in its 2007 Annual Report, MMI identified Bank of America as a major contributor. Therefore the counseling was not "adequate counseling by a third party (other than the lender)" because this HECM was compromised from the beginning by Bank of America.

My HUD/CFPB complaint also shows on page 12:

A voice recording of the telephonic counseling session was made in .wav format. A CD copy is enclosed. All calls made to home office telephone extension (352) 854-7807 are recorded for quality assurance purposes pursuant to Florida Statutes chapter 934, section 934.02(4)(a)(1) and the holding of Royal Health Care Servs., Inc. v. Jefferson-Pilot Life Ins. Co., 924 F.2d 215 (11th Cir. 1991). This was to keep an accurate record of Ms. Gillespie's medically-related calls from doctors, and as a disability accommodation for Neil Gillespie.

Some of the information provided to Penelope and Neil Gillespie April 22, 2008 by Susan Gray/CCCS/MMI during this counseling session was not accurate. For example, Ms. Gray said (at 26 minutes, 21 seconds in the recording) that in year 10 the balance on the loan would be \$150,000, and the home value would be \$207,000, resulting in equity of \$57,000. However today, four years into the reverse mortgage, the home value is \$85,564, resulting in an equity deficit of -\$22,492 (\$85,564 value - \$108,056 RMA demand Jun-08-12).

At the end of the call, Ms. Gray said "Your home should maintain positive equity for a long time". (at 33 minutes, 50 seconds in the recording). Clearly this was inaccurate information. Ms. Gray did not state that the property could decline in value. When Neil Gillespie asked about the buyer's margin interest rate, Ms. Gray was unable to answer, and said "and I'll be honest Neil, I don't understand the mathematical reasoning either other than it has something to do with the floor that was used when they made up these factor tables". When Neil Gillespie asked what "floor" meant, Ms. Gray did not know. (at 41 minutes, 30 seconds).

U.S. Congressman Elijah E. Cummings wrote February 25, 2011 to Inspector General Steve A. Linick of Federal Housing Finance Agency (FHFA) asking that he initiate an investigation into widespread allegations of abuse by private attorneys and law firms hired to process foreclosures as part of the "Retained Attorney Network" established by Fannie Mae." Homeowners face a gauntlet of abusive practices if it becomes necessary to defend a HECM foreclosure, such as my experience with McCalla Raymer, LLC in the above captioned cases.

McCalla Raymer, LLC was one firm Rep. Cummings mentioned by name:

"Another firm in the Retained Attorney Network, McCalla Raymer, L.L.C., is a defendant in a federal lawsuit in which the plaintiffs allege that it engaged in fraud, racketeering, and the manufacture of fraudulent foreclosure documents. Reportedly, this firm established operations in Florida under the name Stone, McGehee & Silver and

U.S. Senator Elizabeth Warren  
The CFPB and The Dodd-Frank Act

March 15, 2013  
Page - 5

hired ten former Stern law firm employees. The firm Stone, McGehee and Silver, LLC, dba McCalla Raymer currently appears as a "Designated Counsel/Trustee" in Florida for Freddie Mac."

Rep. Cummings' six-page letter is enclosed. Unfortunately U.S. Senator Bill Nelson will not respond to matters involving The Florida Bar, lawyers or court matters. However Sen. Nelson did facilitate correspondence with the Office of Comptroller of the Currency, which I can provide. Otherwise Sen. Nelson has been very good responding to other constituent matters.

I am not requesting assistance from your office, and have provided this information in the public interest. Your staff assistant Audel said you may be able to look at this on a national context.

In my view a homeowner in a disputed HECM foreclosure with RMS for Bank of America should have a judge decide the case who is not a shareholder of Bank of America. Thank you.

Sincerely,



Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, Florida 34481

Telephone: (352) 854-7807  
Email: neilgillespie@mfi.net

Enclosures

**Senior United States District Judge William Terrell Hodges**  
**List of Financial Interests**

**Bank of America**





FILED

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
OCALA DIVISION

2013 JUN -7 AM 11:13  
CLERK, US DISTRICT COURT  
MIDDLE DISTRICT OF FL  
OCALA FLORIDA

REVERSE MORTGAGE SOLUTIONS,  
INC.,

Plaintiff,

v.

CASE NO.: 5:13-CV-58-Oc-WTH-PRL  
APPEAL NO.: 13-11585-B (C.A.11)

NEIL J. GILLESPIE, AS CO-TRUSTEES,  
et. al,

Defendants.

NOTICE OF FILING - THE FLORIDA BAR CASE NO. 20133090(5)  
Unlicensed Practice of Law Investigation of Neil J. Gillespie

Defendants Neil J. Gillespie, as co-trustee, and Neil J. Gillespie, ("Gillespie") hereby file a copy of The Florida Bar Case No. 20133090(5), May 14, 2013, the Unlicensed Practice of Law Investigation of Neil J. Gillespie for appearing pro se to defend the foreclosure of his home in this action<sup>1</sup>, and to make record thereof for consideration in Appeal No. 13-11585-B.

RESPECTFULLY SUBMITTED June 6, 2013.

I HEREBY CERTIFY that I have furnished a true and correct copy of the foregoing to Danielle N. Parsons, Esq., McCalla Raymer LLC, 225 E. Robinson St. Suite 660, Orlando, FL 32801, MRService@mccallaraymer.com, by email today June 6, 2013, and to parties on the attached service list by email.



NEIL J. GILLESPIE  
8092 SW 115th Loop  
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Email: neilgillespie@mfi.net  
Phone: 352-854-7807

<sup>1</sup> The Complaint also alleges UPL in an unrelated case in this Court, 5:11-cv-539.

EXHIBIT

Appendix L

SERVICE LIST

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United States of America, on behalf of the Secretary of Housing and Urban Development  
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May 14, 2013

Mr. Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, FL 34481

Re: Unlicensed Practice of Law Investigation of Neil J. Gillespie;  
Case No. 20133090(5)

Dear Mr. Gillespie:

Please give us your written position concerning the attached correspondence from Ryan Christopher Rodems, Esq.. I would appreciate receiving your written response no later than twenty (20) days from the date of this letter. Responses should not exceed twenty-five (25) pages and may refer to any additional documents or exhibits that are available on request. A reply from you will assist my office in determining whether this is a matter which should be referred to an unlicensed practice of law committee. Any response by you will become a part of the UPL record in this matter and become accessible to the public upon closure of the case.

Thank you for your cooperation.

Sincerely,

Ghunise L. Coaxum  
Bar Counsel  
UPL Department, Orlando

GLC/ct  
Enclosure  
cc: Ryan Christopher Rodems, Esq.

# The Florida Bar

## Unlicensed Practice of Law Complaint Form

Please carefully review this complaint form once you have included all information. Note that there is a requirement for you to execute the oath at the end of this form. False statements made in bad faith or with malice may subject you to civil or criminal liability. A copy of your complaint may be sent to the nonlawyer during the course of the investigation. Additionally, if the nonlawyer asks who complained, your name will be provided. Further information may be found in the pamphlet "Filing an Unlicensed Practice of Law Complaint."

Your Name: Ryan Christopher Rodems, Esquire  
Address: 501 E. Kennedy Blvd., Suite 790  
Tampa, FL 33602  
Telephone: (813) 489-1001

Nonlawyer's Name: Neil J. Gillespie  
Address: 8092 SW 115<sup>th</sup> Loop  
Ocala, Florida 34481  
Telephone: ( )

DESCRIBE YOUR COMPLAINT, PROVIDE DATES AND FACTS OF ALLEGED MISCONDUCT AND ATTACH A COPY OF RELEVANT DOCUMENTS. YOUR COMPLAINT AND DOCUMENTS WILL BE SCANNED. PLEASE LIMIT COMPLAINT AND ATTACHMENTS TO 25 PAGES. (Use a separate sheet if necessary. Do not write on the back of this form!)

Neil J. Gillespie is not a lawyer. He has, however, represented a Trust in state and federal court litigation, and as a "personal representative" of the "Estate of Penelope Gillespie" in another case.

The cases are: (1) Reverse Mortgage Solutions Inc v. Neil J. Gillespie and Mark Gillespie as Co-Trustees of the Gillespie Family Living Trust, et al., pending in the Florida 5<sup>th</sup> Judicial circuit, Case No. 42-2013-CA-000115-AXXX-XX; Mr. Gillespie, acting as Trustee, removed the case to the United States District Court, Middle District of Florida, Ocala Division, Case No. 5:13-cv-00058-OC-WTH-PRL; (2) Estate of Penelope Gillespie v. Thirteenth Judicial Circuit, Florida, which was filed in the United States District Court, Middle District of Florida, Ocala Division, Case No. 5:11-cv-539-OC-10TBS.

A non-lawyer trustee may not act as attorney for the trust. It constitutes an unlicensed practice of law. EHOF Trust v. S & A Capital Partners, Inc., 947 So. 2d 606 (Fla. 4th DCA 2007) ("The notice of appeal filed by appellant, a trust, was not signed by an attorney licensed to practice law in Florida. Section 454.23, Florida Statutes (2006), prohibiting the unlicensed practice of law, provides no exception for representation of a trust. Although Florida has not previously addressed the issue, other states have concluded that a trustee cannot appear pro se on behalf of the trust, because the trustee represents the interests of others and would therefore be engaged in the unauthorized practice of law.").

Similarly, a non-lawyer may not act as an attorney in the role of "personal representative" of an Estate. Mr. Gillespie's allegations that he was the "personal representative" of the "Estate of Penelope Gillespie" appear to be false. There is no record of an action to open such an estate, and no Order appointing him to be the "personal representative."

In a case in which I was counsel of record, Mr. Gillespie previously represented himself in the Florida 13<sup>th</sup> Judicial Circuit and was found by the Court to be an abusive litigant and barred from further self-representation. A copy of the Order is attached hereto.

Under penalty of perjury, I declare that I have read the foregoing document and that to the best of my knowledge and belief the facts stated in it are true.

Signature

Date

20133090(5)  
**SCANNED**  
5/13/13 CK

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY  
GENERAL CIVIL DIVISION

NEIL J. GILLESPIE,  
Plaintiff,

CASE ID: 05-CA-7205

v.

BARKER, RODEMS & COOK, P.A.,  
a Florida corporation; and  
WILLIAM J. COOK,  
Defendants.

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DIVISION: G

**ORDER PROHIBITING PLAINTIFF FROM APPEARING PRO SE**

THIS MATTER is before the Court on Defendants' "motion for an order to show cause as to why Plaintiff should not be prohibited from henceforth appearing *pro se*," filed on July 29, 2010. It is alleged that Plaintiff is an abusive litigant who should not be permitted to file further pleadings in this cause unless they are first reviewed and signed by an attorney licensed to practice law in this state. Defendants allege that Plaintiff's prosecution is an affront to the dignity of the judicial system and an unacceptable burden on its resources. On November 4, 2010, this court issued the order to show cause why Plaintiff should not be prohibited from appearing *pro se*.

Among Plaintiff's response were his fourth and fifth attempts to disqualify this court. This response is typical of Plaintiff's litigation style. And his continuing course of conduct in this case is all the more troublesome because this case is presently pending appellate review of a final summary judgment order. There is nothing left to litigate at this time. Yet Plaintiff continues to file spurious pleadings with this court, each of which must be reviewed and evaluated by members of the court staff. For these reasons and the reasons enumerated in the motion, the Court hereby finds that Plaintiff is an abusive litigant and, in order to preserve both the dignity and the efficient operation of the judicial system, his right to full access to the court should be curtailed to the extent described in this order. Plaintiff is hereby **PROHIBITED** from filing any paper with this court which is not signed by an attorney duly licensed to practice law in the State of Florida.

The Court therefore **ORDERS** as follows:

1. Plaintiff **SHALL CEASE** filing any pleading, correspondence, or other document in this case unless the document is signed by an attorney who is duly licensed to practice law in the State of Florida.
2. The Clerk of Court **SHALL REJECT** for filing any document received from Plaintiff which does not bear the clear and conspicuous signature of an attorney duly licensed to practice law in this state.
3. The Clerk of Court **SHALL NOT DOCKET** any pleading, correspondence or other document received from Plaintiff which is prohibited by this order.

**DONE AND ORDERED** in Chambers in Hillsborough County, Florida, this 15<sup>th</sup> day of November, 2010.

ORIGINAL SIGNED

NOV 15 2010

MARTHA J. COOK  
CIRCUIT JUDGE

**MARTHA J. COOK**, Circuit Judge

Send copies to:

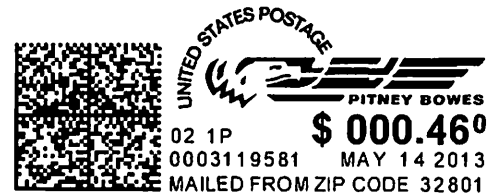
Neil J. Gillespie  
Plaintiff  
8092 SW 115<sup>th</sup> Loop  
Ocala, FL 34481

Ryan Christopher Rodems, Esquire  
Attorney for Defendant  
400 N Ashley Drive  
Suite 2100  
Tampa, FL 33602



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*Visit our website: [www.FLORIDABAR.org](http://www.FLORIDABAR.org)*



Mr. Neil J. Gillespie  
8092 SW 115th Loop  
Ocala, FL 34481

34481\$3567 R067

