



FACT SHEET

Aviles v. Norton Law Group, LLC

CONTACT MEDIA RELATIONS

Lawyers' Committee for Civil Rights Under Law: Stacie B. Royster

Phone: (202) 662-8317

Email: sroyster@lawyerscommittee.org

Davis Polk & Wardwell LLP: Katie Harter

Public Relations Office

Phone: (212) 450-3039

Email: katie.harter@davispolk.com

All statements below are allegations provided by the plaintiffs. None of these allegations have been proven yet.

ABOUT Aviles v. Norton Law Group, LLC

Eleven homeowners from New York filed a lawsuit against a loan modification company based in Long Island, New York, as well as their owner and chief employee, asserting several causes of action arising out of the companies' loan modification activities including those for breach of contract, fraud, legal malpractice, and violations of consumer protection statutes in New York. The lawsuit alleges that the defendants operated a fraudulent scheme in which they lured homeowners in need of mortgage assistance with false promises of guaranteed mortgage loan modifications, encouraged them to stop paying their mortgage payments, and then failed to deliver on their promises after collecting thousands of dollars in upfront fees from the homeowners. The plaintiffs now seek monetary and injunctive relief against the defendants for their damages caused by the Defendants' loan modification scams. The Lawyers Committee for Civil Rights Under Law and Davis Polk & Wardwell LLP are representing the plaintiffs free of charge.

ABOUT THE PLAINTIFFS

The plaintiffs in Aviles v. Norton Law Group, LLC include:

Mr. Timothy Kelly and Mrs. Pamela Kelly (Oakdale, New York) (¶¶ 52-86):

- Mr. and Mrs. Kelly are a married couple who own a house in Oakdale, NY. Tim is an instructor at Dowling College, and Pam is a special education teacher at Islip High School. They have one mortgage on their home.

- In 2009, the couple began struggling to make their mortgage payments, and began to research mortgage modification firms.
- Shortly after hearing a radio advertisement for the Norton Law Group, and finding the Norton Law Group’s website via a Google search, the Kellys scheduled an appointment with Kyle Norton in August 2009.
- Norton told the Kellys that he was very experienced in obtaining mortgage modifications, and could reduce both the principal and interest rate on their mortgage within 90 days. He emphasized that the Kellys should not make their mortgage payments, and to cut off all contact with their lender.
- Norton asked for a \$5,000 retainer fee at the initial meeting. He explained that he could likely perform the modification for less, so that the total cost to the Kellys would be below \$5,000. When Tim asked whether mortgage modification firms were permitted to ask for retainers, Norton told the Kellys that the retainer was required to cover certain administrative costs.
- Tim Kelly withdrew \$2,000 from his pension fund to make an initial payment to Norton, and the Kellys had paid the \$5,000 by November 2009.
- Between August 2009 and November 2009, Norton Law Group made no attempt to contact the Kellys to discuss their loan modification. Tim’s office was located close to the Norton law Group’s office, and he would often stop by to check on the status on the modification. Whenever he went to the office, no employee had any specific knowledge of the Kellys’ loan modification, and he was always told that Norton was not available to speak.
- The first contact that the Norton Law Group made with the Kellys was a bill in December 2009 for legal fees in excess of their \$5,000 retainer. Starting in December 2009, the Kellys received numerous bills from the Norton Law Group, sometimes receiving two in one day. Aside from the constant bills, the Norton Law Group made no contact with the Kellys to discuss their loan modification.
- Believing that they were being effectively represented by the Norton Law Group, the Kellys paid the bills they received from Norton. As a result, they slipped behind on their mortgage payments and began receiving warnings from their lender.
- Concerned by the warnings from their lender and the lack of contact from the Norton Law Group, the Kellys called their lender in March 2010. They received the stunning news that, aside from a single representation letter, the Norton Law Group had made no contact with the lender.
- Upset by this news, the Kellys made an appointment to speak with Norton. After keeping them waiting 90 minutes past their scheduled appointment time, Norton told the Kellys that their lender was “confused,” and that everything was proceeding normally. He grew angry at the Kellys for contacting their lender against his previous advice. A few days later, Norton sent the Kellys a letter further admonishing them for contacting their lender.
- After the March 2010 meeting with Norton, the Kellys continued to receive bills from the Norton Law Group and phone calls from employees demanding payment.
- The Kellys remained in contact with their lender after the March 2010 meeting. They frequently asked whether the Norton Law Group had made any additional contact with the lender—the answer was always no.
- Based on the Kellys’ discussions with their lender, they were offered a trial payment program in June 2010.

- Even after the Kellys' lender offered the trial payment program, the Norton Law Group continued to send the Kellys bills throughout 2010 and into 2011. When the Kellys asked for what work the Norton Law Group could possibly be billing them, considering that the lender had already offered a trial payment program, employees of the Norton Law Group responded that the bills reflected ongoing administrative costs.
- The Kellys eventually called the Norton Law Group to terminate representation. After the Kellys terminated representation, employees of the Norton Law Group continued to call them to request documentation related to the trial repayment program. The Kellys refused, concerned that the Norton Law Group would use its receipt of the documents as a pretense to generate more bills.
- Before ending their relationship with the Norton Law Group, the Kellys had paid the Norton Law Group over \$9,700 in fees.

Mrs. Dawn Sanchez and Mr. Steve Sanchez (North Babylon, New York) (¶¶ 210-257):

- Mr. and Mrs. Sanchez are a married couple who own a house in North Babylon, NY. Mrs. Sanchez is a homemaker and Mr. Sanchez works in construction. They have five children.
- The Sanchezes fell behind on their mortgage payments and, in September 2009, their bank initiated foreclosure proceedings. Several days later, they received a forbearance agreement from the bank offering to suspend the proceedings for six months and impose a smaller obligation for that time period.
- That month, Steve Sanchez heard a radio advertisement for the Norton Law Group. Struggling to make their mortgage payments, the Sanchezes attended a Norton Law Group consultation.
- The office they entered was Kyle Norton's; his law school diploma and other credentials decorated the office. The man they spoke to emphasized the importance of hiring a lawyer to represent them in negotiations with their bank. Unbeknownst to the Sanchezes, however, the man they spoke to was in fact Kevin O'Rourke, a non-lawyer.
- O'Rourke told the Sanchezes that the Norton Law Group had an extremely high success rate in the loan modification business, that he would be able to modify their loan, and that in their case he was sure that even if a loan modification was not successful, he would find a way to help them. He told them it would take anywhere between 30 and 90 days to obtain a modification. Finally, he emphasized that the Sanchezes should not make contact with or answer any phone calls from their lender.
- O'Rourke told the Sanchezes he charged a flat, up-front fee of \$3,500. The Sanchezes immediately paid \$1,000 in cash and paid the rest over the next two months.
- Over the next few months, the Sanchezes began repeatedly receiving bills for fees additional to the \$3,500 they had agreed to pay. They called repeatedly to dispute the bills but had difficulty reaching anyone. Contacting the Norton Law Group was a constant challenge—the Sanchezes would often have to call repeatedly before anyone answered, and when they finally did reach an employee, they were given no details about their modification, and were simply told that it was progressing normally.
- In February 2010, when the Sanchezes' forbearance agreement with their lender expired, the Sanchezes received paperwork from their lender. Mrs. Sanchez, surprised to see the paperwork being sent to her house rather than to the Norton Law Group, contacted the lender to determine what the Norton Law Group had been doing on their behalf.

- The agent for the lender informed Mrs. Sanchez that the lender had been contacted by the Norton Law Group only once, in October 2009, to obtain authorization to speak on the Sanchezes' behalf.
- Shocked at learning that the Norton Law Group had done no work on their behalf, the Sanchezes filled out the paperwork they had received from the lender themselves, had a paralegal at the Norton Law Group office fax it to the lender, and received a loan modification offer the next month. They then signed the modification papers and mailed them to the bank on their own.
- After receiving yet another bill from the Norton Law Group, Mrs. Sanchez sent them a letter officially terminating representation and disputing the bill.

ABOUT THE LEGAL CLAIMS

The plaintiffs are seeking monetary damages as well as injunctive relief against the defendants, asserting that without judicial intervention preventing the defendants from engaging in further scams, other homeowners will be at risk of losing thousands of dollars in illegal upfront fees and other financial penalties, and will be at risk of facing foreclosure proceedings. The complaint alleges various causes of action including:

- Violation of N.Y. General Business Law § 349 (“Deceptive Practices Act”) and § 350 (“False Advertisement”): The defendants are alleged to have made numerous false promises and misrepresentations to the plaintiffs in violation of the Deceptive Practices Act, including misrepresenting the nature and quality of their loan modification services, misrepresenting the progress of the plaintiffs’ loan modification applications, and encouraging the plaintiffs to stop paying their monthly mortgage payments and/or stop communicating with their lenders/servicers. Defendants also falsely advertised their services, on which plaintiffs relied to their detriment. (¶¶ 326-343)
- Violation of Real Property Law § 265-b: The defendants are alleged to have violated N.Y. Real Property Law § 265-b by accepting upfront fees from distressed homeowners in exchange for offering to negotiate the terms of their mortgage loans, and by performing consulting services without a proper consulting contract. According to the complaint, the defendants did not provide direct consulting services in the course of a “regular legal practice.” (¶¶ 352-362)
- Fraud, Violation of New York Banking Law § 590, and Legal Malpractice: The defendants’ false representations also constituted fraud and legal malpractice. For example, the defendants fraudulently concealed the progress of plaintiffs’ loan modification applications and virtually abandoned several plaintiffs after receiving their upfront fees. The defendants then refused to refund plaintiffs’ fees, despite the fact that plaintiffs never received any legal services and/or their “guaranteed” modification. Finally, New York Banking Law § 590 requires persons or entities “who are in the business of soliciting, processing, placing or negotiating mortgage loans” to register as “mortgage brokers” with the Superintendent of the New York State Banking Department. The defendants have flagrantly disregarded this registration requirement. (¶¶ 344-51, 363-82)