FINANCIAL DISPUTE RESOLUTION

Father loses house guaranteeing son's business loan

Sam took out a $10,000 loan with a finance company to help with his struggling business. To secure this loan, Sam's father, Joseph, provided a guarantee, which was secured by a mortgage on Joseph's home.

Sam's business continued to struggle and eventually, he was unable to make any more payments on the loan. The amount of the loan was now $55,000, because of missed payments, interest, and non-payment penalty fees. Joseph was now on the hook to pay Sam's loan. Unfortunately, Joseph couldn't repay the loan. Under the terms of the guarantee he'd signed, Joseph was forced to sell his home through a mortgagee sale to repay the loan.

Joseph complained to FDRS that the finance company's decision to force the mortgagee sale was an unfair practice and that he had been unaware that his home could be sold if the loan wasn't repaid.

In reviewing the case, there was evidence that the finance company recommended that Sam and Joseph get legal advice; that they received information on the penalty interest rate and fees if Sam didn't repay the loan; and that Joseph had signed the mortgage and loan documents. The finance company acted within its rights to force the mortgagee sale.

However, the finance company could have acted differently as well. For example, it could have done more at the start to assess Sam's ability to repay the loan and it could have asked for the loan to be repaid earlier (such as when payments were missed or when the debt was getting out of hand and repayment looking increasingly unlikely).