



## Facing Foreclosure: Brooklyn Retiree on Verge of Losing Home as Subprime Lenders Target Cash-Poor Black Seniors

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There was a time when Simeon Ferguson grew tomatoes and callaloo leaves in the garden behind his three-story brownstone in Crown Heights, Brooklyn, the home he has owned since 1975. He would give out the excess harvest to friends and neighbors, according to his daughter, and cook up the rest. Ferguson, 86, is now retired, after working for more than 20 years as a chef at Long Island College Hospital. But his remaining years of rest and relaxation are facing a major obstacle — his home is at risk of foreclosure.

In early 2006, Michael Bocelli, a mortgage broker with the Long Island-based Global Financial Inc., sold Ferguson a new \$450,000 option adjustable rate mortgage (ARM) that was fairly guaranteed to put his house in foreclosure, according to Ferguson's attorney. His fixed-rate 30-year mortgage at 5.95 percent interest was refinanced into a complex subprime mortgage that offered him a teaser interest rate of 1 percent — which lasted all of six weeks before jumping to 7 percent, and eventually, higher.

“Option” ARM mortgages, such as the one sold to Ferguson, have been called “time bombs for all but the most financially sophisticated.” *BusinessWeek* magazine calls them “the riskiest and most complicated home loan product ever created.”

Mr. Ferguson, a retiree on a fixed income, had no attorney or family members present during the closing, but was apparently quite happy with the deal. He later told his daughter Karlene that he had negotiated a new, more affordable fixed-rate mortgage. In fact the monthly payment of \$1,480 on even the “teaser” rate was greater than his entire monthly income of \$1,100.

Bocelli, the broker, did well by the transaction. On top of his \$6,675 broker's fee he was paid an additional \$14,420 by IndyMac, the California-based bank that gave Ferguson the loan. This fee was contingent on signing Ferguson up to a “No Income No Asset Loan,” which carries a higher interest rate, according to documents obtained by South Brooklyn Legal Services. In its own paperwork, IndyMac explicitly instructs the broker that, “The file must not contain any documents that reference income or assets.” In fact, Ferguson has only a few sources of easily documented income — social security and a pension.

Depending on when you speak with Ferguson though, he may or may not remember the details. That's because he has dementia, a condition he was diagnosed with in 2005.

Ferguson, a squat bespectacled man whose Jamaican lilt plays up his gentlemanly manner of speaking, regularly forgets things, important as well as trivial. He often forgets that he visited his daughter Ruth in Jamaica shortly before she died of cancer two summers ago. He may not remember his move to Brooklyn more than 30 years ago by way of London and Jamaica. He could easily forget the amount of his mortgage payment, for example, or his interest rate.

These days Ferguson's financial and legal affairs are managed by his daughter Karlene Grant, a cost accountant at a large Manhattan property management firm. Grant was forced to confront her father's baffling new mortgage in 2006 after he fell behind on his bills during a five-month stay in the hospital for a serious bone infection.

"It's not that my father went out to buy a home he couldn't afford, that's not what happened here," says Grant. "Somebody solicited him and made him think he was getting a better deal. Then they made some money and ran."

## **THE COLOR LINE**

Ferguson's story is no anomaly.

Many black seniors in New York and around the country are at risk of losing decades-worth of equity in their homes. Some are facing homelessness. People of color are more than three times more likely to hold subprime loans, according to federal data. And in New York City, subprime loans made up 27 percent of all refinances last year, compared with the national average of 17 percent. That means if the housing market falls precipitously here as it has across much of the nation, a cascade of foreclosures is likely to follow. An alarming number of those losing their homes will likely be black seniors.

In New York, the subprime crisis has also brought the racial disparity into stark relief. By the fall of 2007, one in four homeowners with subprime mortgages in the historically black neighborhoods of Crown Heights and Bedford-Stuyvesant were in foreclosure, according to the Federal Reserve Bank of New York. These northern Brooklyn communities have a subprime mortgage foreclosure rate almost four times the national average.

But in Brooklyn neighborhoods, like Bensonhurst and Borough Park, which have income levels similar to Crown Heights and Bed-Stuy, only 5 percent of mortgages are subprime. The main difference is race. Bed-Stuy and Crown Heights are about 70 percent African American; Bensonhurst and Borough Park are only 1 percent black.

Like many cities across the country, the neighborhoods with the highest rates of subprime mortgages in New York are overwhelmingly African American or Latino.

The subprime lending debacle has caused the greatest loss of wealth to people of color in modern U.S. history, according to a recent study by United for a Fair Economy, stripping African-American homeowners in communities such as Crown Heights of as much as \$92 billion over the past eight years. As Ferguson's story illustrates, one of the traditional avenues for building and holding on to family wealth in the black community is being obliterated, one home at a time.

"If you were a profiteer looking to make money, you're going to go into these communities with instruments that make refinancing or ownership look much more attractive," says Dr. Julianne Malveaux, economist and president of Bennett College for Women in North Carolina. "And you're going to do that by taking advantage of a historic antipathy between the black community and banks."

Many critics say the subprime mortgage industry is guilty of "predatory lending" by deliberately exploiting such vulnerable communities. Like other homeowners in peril, Simeon Ferguson appears to be a textbook victim of predatory lending, as defined by the U.S. Department of Housing and Urban Development.

HUD states on its website that predatory lending is any transaction in which a lender or a broker "encourages borrowers to lie about their income, expenses, or cash available for down-payments in order to get a loan;" "charges high interest rates to borrowers based on their race or national origin and not on their credit history;" "pressures borrowers to accept higher-risk loans such as balloon loans, interest only payments, and steep pre-payment penalties," or "strips homeowners' equity from their homes by convincing them to refinance again and again when there is no benefit to the borrower."

### **'SITTING DUCKS'**

Housing advocates and attorneys use hunting terms such as "perfect targets," "sitting ducks" or "easy marks" to describe the ways seniors were targeted by subprime lenders and brokers. In the subprime feeding frenzy of the last few years, black seniors with decades of equity in their homes were the lowest hanging fruit.

"They were the first wave," says Josh Zinner, co-director of the Neighborhood Economic Development Advocacy Project, a Manhattan policy institute. "In fact it was only because so much equity was stripped from seniors that they started going after first-time homebuyers."

Before the subprime bubble burst in 2007 and the issue became front-page news, brokers and lenders perfected the art of "push marketing" to people like Ferguson — retirees who are often cash-poor but rich in home equity. By some accounts the targeting of seniors

hasn't slowed much. Just ask the men and women who regularly assemble at the Tompkins Park Senior Citizens Center in Bed-Stuy.

"I'm on the 'Do Not Call List,' but they still keep calling," says Marjorie Robinson, 57. "They talk to you in that really soft voice and then they say MONEY real loud!"

During their weekly group meeting these retirees talk about calls in the morning, calls in the afternoon, calls at night. They talk about fliers clogging their mailbox, and some complain about all of the mortgage-and-financing-related messages clogging up their email inboxes.

"They tell you you're pre-approved, offer cash for your property," adds Alvin McPherson, 78. "I think they buy your name from some kind of list of retirees."

Homeowners 65 and over are three times more likely to hold a subprime mortgage loan than those 35 and under, according to AARP, a nonprofit seniors' advocacy organization. AARP and other groups are still scrambling to get the most accurate numbers on how many of those now facing foreclosure are seniors, but it's not easy. While the federal government requires lenders to list race on the mortgage loans they sell, it does not require them to list the age of the borrower.

To date only one major U.S. news organization, *The Seattle Times*, has published a thorough investigation of the ways in which seniors as a group have been affected by the subprime fallout. Reporters Susan Kelleher and Justin Mayo found that older, cash-strapped homeowners were the typical subprime borrowers in Seattle — not first-time homebuyers, as many industry defenders often claim. A separate study by the Center for Responsible Lending found that subprime mortgages made between 1998 and 2006 will lead to a net loss of homeownership for almost one million families in the United States.

"All my clients tell the same story; it's almost like a script," says Donna Dougherty, a staff attorney with Queens Legal Services for the Elderly, and co-counsel on the Ferguson case. Typically, a homeowner falls behind on his taxes, a credit card bill or is hit with an unexpected medical bill. As a result he ends up on a credit agency list of homeowners in debt or with a less than perfect credit score, but substantial home equity. That's when the phone calls begin.

"When somebody calls out of the blue and says 'We'll help you so you don't lose your home,' it's almost like a white knight showing up," says Dougherty. "Seniors are absolutely one of the key targeted groups. They're vulnerable to sales pitches, to persuasion."

## OFF THE HOOK

On the other end of the receiver, South Brooklyn Legal Services had to shut down its housing hotline when the number of calls ballooned from around 10 per day to more than 10 per hour. One of the first things Jessica Attie noticed in the spring of 2007, when the barrage of desperate calls began, was the high number of older people with extremely complicated loans. South Brooklyn has filed suit against IndyMac and Global Financial Inc. on behalf of Simeon Ferguson, for violations of the Truth in Lending Act.

“For most of our clients, their financial security is in their homes,” says Attie, co-director of the Foreclosure Prevention Program at South Brooklyn Legal Services and an attorney on Ferguson’s case. “They often don’t have 401Ks or other sources of savings they can live off if they lose their house.”

Attie describes the mortgage documents she sees as so complex that most people depended on the broker or loan officer to “explain” the rate structure. The result being that the vast majority of her clients didn’t understand they were signing an adjustable rate mortgage.

A spokesman for IndyMac, which sold Ferguson his loan, makes it clear the company leaves it to the broker to work out the best arrangement with their clients.

“Some of the new products that were created in the last few years had a lot of moving parts,” says Evan Wagner of IndyMac. “These were good for very specific borrowers, people who are self-employed or who expect their income to jump in the next year or so. But for people who got these loans that weren’t really intended for them, it’s kind of like taking a medication that isn’t intended for what it’s meant to do, and sometimes there are bad side effects.”

Artee McKoy of Jamaica, Queens, is one of those reeling from bad side effects. At age 93, and a homeowner for almost 50 of those years, he is still confused about how somebody could take his home out from under him without his knowledge or consent and saddle it with a new \$315,000 mortgage from Fremont Investment & Loan, until recently one of the country’s biggest subprime lenders. McKoy is also confused why the three-bedroom duplex where he used to make his own ice cream for his three children is currently in foreclosure. Like Simeon Ferguson, he suffers from dementia, a symptom of Alzheimer’s disease, which he was diagnosed with in 2005.

McKoy’s story is particularly egregious since he was also the victim of deed theft, a common real estate crime often involving senior citizens or low-income homeowners. In this case the perpetrators were recently indicted by the Queens district attorney on charges of grand larceny for fraudulently refinancing his property. This has not slowed the foreclosure action being pursued by HSBC, the current holder of the loan on McKoy’s home. An

attorney for HSBC declined to comment on the particulars of the case, as it is currently under litigation.

But if the student-led “McKoy Team” at the St. John’s University Law School Elder Law Clinic in Queens can make its case, McKoy will not lose his home. They fault the perpetrators of the deed theft — but they also cite Fremont Investment & Loan (the originator of the mortgage) and HSBC for aiding and abetting the fraud.

“It’s a huge warning sign when a 93-year-old man with no attorney present can take out a \$300,000 mortgage,” says Professor Ann Goldweber, director of the Elder Law Clinic. “They should have used more due diligence.”

After moving his family to New York from North Carolina in the 1950s, McKoy worked two jobs for decades: as a barber by day and airport security at John F. Kennedy International Airport by night. McKoy bought his Jamaica property in 1959, and except for payments on a small home-improvement loan, it was all paid off — and he is proud of the fact.

Now McKoy’s financial stresses are tumbling down the generational ladder and mostly landing on his daughter’s shoulders. Mary Thompson, 66, recently took an unpaid leave from her job at a New Jersey hospital to take care of her father and to shepherd him through the legal system as they fight to keep his home.

“I know how hard my father worked,” says Thompson. “For him to not be able to sit down and enjoy a little peace of mind at his age, it’s awful.”

New York City is attempting to stem the bloodletting by launching the Center for NYC Neighborhoods. With \$5.5 million from the mayor’s office, the Department of Housing Preservation and Development and the Open Society Institute, the Center’s purpose is to improve loan-counseling services across the city and help borrowers renegotiate loans or refinance troubled properties.

The city’s initiative is similar to proposals currently under debate in Washington that would provide \$100 million to expand foreclosure counseling services nationwide. Some observers criticize it as a tepid solution when 8,000 homeowners are tumbling into foreclosure on a daily basis, according to some economists.

Counseling offers little immediate hope to Karlene Grant as she spends hours of her spare time every week consulting with the attorneys on her father’s case, and renovating his house so they can bring in a tenant or two to help pay the ever-expanding mortgage payments. And Grant considers herself one of the fortunate ones, since her father has pro bono legal representation.

“I think that Daddy doesn’t really understand what happened because he just goes on about his business,” says Grant. “But he’d understand if he lost his home.”

As for Simeon Ferguson, he hopes to enjoy his garden now that it’s spring. “I love anything to do with the land,” Ferguson says. “I used to grow tomatoes in the garden out back; sometimes I’d harvest two pounds! If the weather permits I’ll grow them again.”

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