

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JAMES W. WARD, *et al.*,

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Plaintiffs,

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v.

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Civil Action No. RDB-07-3266

NANCY R. SIMPERS, *et al.*,

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Defendants.

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MEMORANDUM OPINION

Plaintiffs James W. Ward (“Ward”), Golden Arrow Real Estate, Inc., and Golden Arrow Financial, Inc. (collectively, “Plaintiffs”) filed this civil action against Nancy R. Simperts and Sarah Bloom Raskin (collectively, “Defendants”). Ward is licensed as a real estate broker by the Maryland Real Estate Commission (“MREC”), which is located in Maryland’s Department of Labor, Licensing, and Regulation. Ward is the president of both Golden Arrow Real Estate, a real estate brokerage firm, and Golden Arrow Financial, a mortgage brokerage business licensed by the Commissioner of Financial Regulation (“Commissioner”), also located in Maryland’s Department of Labor, Licensing, and Regulation. Defendant Simperts is the Chairperson of the MREC and Defendant Raskin is the Commissioner of Financial Regulation.

Plaintiffs’ Complaint seeks preliminary and permanent injunctive relief from two administrative proceedings currently being brought by Defendants as a result of certain real estate and financial transactions undertaken by the various Plaintiffs. Plaintiffs’ request for relief is based on two separate counts: Count I alleges that federal law preempts the state statutes and

regulations under which Defendants have brought administrative charges against Plaintiffs; and Count II alleges that the same state statutes violate the Fourteenth Amendment to the United States Constitution.

Currently pending before this Court are Plaintiffs' Motion for Preliminary Injunction (Paper No. 6) and Defendants' Motion to Dismiss (Paper No. 10). The parties' submissions have been reviewed and no hearing is necessary. *See* Local Rule 105.6 (D. Md. 2008). For the reasons set forth below, Defendants' Motion to Dismiss is GRANTED and Plaintiffs' Motion for Preliminary Injunction is DENIED AS MOOT.

BACKGROUND

Bound to accept all well-pleaded allegations as true, this Court has taken the following factual allegations largely from Plaintiffs' Complaint. *See Ibarra v. United States*, 120 F.3d 472, 473 (4th Cir. 1997). The background of this case involves two discrete sets of transactions undertaken by Plaintiffs, referred to below as the HUD transactions and the Simpson transaction. As a result of these transactions, Simperts, as the Chairperson of the MREC, and Commissioner Raskin each initiated separate administrative charges in the Maryland Office of Administrative Hearings ("OAH") seeking to revoke licenses previously granted by the State of Maryland to Ward and Golden Arrow Financial, respectively.¹

¹ Plaintiffs in this case include Ward, Golden Arrow Real Estate, and Golden Arrow Financial. The MREC has brought administrative charges against Ward under the Maryland Real Estate Brokers Law, and the Commissioner has brought administrative charges against Golden Arrow Financial under Maryland Mortgage Lender Law. Therefore, there are no direct administrative charges levied against the third Plaintiff, Golden Arrow Real Estate.

Defendants have not raised the issue of whether Golden Arrow Real Estate has standing to sue in this case. This Court will presume, however, that Golden Arrow Real Estate has standing based on the alleged injury contained in the Complaint; namely, that, Golden Arrow

I. Plaintiffs' Alleged Unlawful Activity

A. The HUD Transactions

Ward, via Golden Arrow Real Estate, represented clients who were interested in purchasing "HUD homes," which are single-family homes repossessed by the United States Department of Housing and Urban Development ("HUD"). (Compl. ¶ 11.) As a HUD Qualified Real Estate Broker, Ward had completed certain registration and certification requirements in order to be able to sell HUD homes. (*Id.* ¶ 12) In addition, Ward was required to abide by certain HUD restrictions. (*Id.*)

After receiving an external complaint, the MREC completed an investigation into Ward's activities. Upon completion of the investigation, the MREC charged that Ward unlawfully altered money orders submitted by his clients to purchase HUD homes by changing the payee names on the money orders. (*Id.* ¶ 13.) It was alleged that by doing so Ward could use the same money order as evidence of earnest money deposits on more than one open HUD contract at a time. (*Id.*) In addition, the MREC charged that Ward failed to forfeit earnest money deposits to HUD after the cancellation or expiration of contracts. (*Id.* ¶ 14.) Instead, Ward returned the earnest money deposits to his clients. (*Id.*)

As a result of these alleged improprieties, Simperts, as the Chairperson of the MREC, brought an administrative action against Ward pursuant to the Maryland Real Estate Brokers Law, Md. Code Ann., Bus. Occ. & Prof. § 17-101 *et seq.* (LexisNexis 2005) and various state administrative regulations. Specifically, Ward was charged under sections 17-322(b) and 17-

Real Estate will be left without a licensed Real Estate Broker if the administrative charges against Ward have merit.

502(b) of the Maryland Real Estate Brokers Law, as well as under sections 09.11.02.01 and 09.11.02.02 of the Code of Maryland Regulations (“COMAR”).² (Compl. ¶ 23.) The MREC sought to revoke Ward’s license at a hearing held on March 27, 2008. (*Id.* ¶ 24.)

B. The Simpson Transaction

Golden Arrow Financial was the mortgage broker for a failed refinance involving several individuals, collectively referred to in the Complaint as the Simpsons. (*Id.* ¶ 15.) Unknown to Golden Arrow Financial, the lender, or the closing company, the mortgage that the Simpsons sought to refinance was in default, which caused the refinance to fail. (*Id.* ¶ 16.) After a third party arranged for the Simpsons to receive a private loan from two individuals, a Golden Arrow Financial officer, referred to in the Complaint as D.W., notarized the documents without reading them or determining what they were. (*Id.* ¶ 17.) Commissioner Raskin, as the Commissioner of Financial Regulation, alleged that one of the notarized documents was a promissory note that was not drafted by an attorney and included an usurious rate of interest. (*Id.* ¶ 18.)

Commissioner Raskin brought an administrative action against Golden Arrow Financial pursuant to the Maryland Mortgage Lender Law, Md. Code Ann., Fin. Inst. § 11-501, *et seq.* (LexisNexis 2005). Although the charges were brought strictly against Golden Arrow Financial as the licensee, the basis of the charges were Ward’s involvement in the HUD Transactions as well as D.W.’s involvement in the Simpson Transaction. Specifically, Commissioner Raskin charged Golden Arrow Financial under sections 11-517(a)(3) and 11-517(a)(5), which permit the

² Specifically, the MREC alleged that Ward violated, and is subject to, sections 17-322(b)(3), (22), (25), (31), (32) and (33), 17-502(b), and 17-532(c)(1)(iv), (v), and (vii) of the Maryland Real Estate Brokers Law. The MREC also charged Ward with violating the following provisions of COMAR: 09.11.01.07; 09.11.02.01C; 09.11.02.01F; and 09.11.02.02A.

Commissioner to suspend or revoke a mortgage broker's license for fraud, illegal or dishonest activity, failing to disclose material facts, and other misconduct specified in the statute.

After a hearing, the administrative law judge ("ALJ") issued a Proposed Decision on September 26, 2007, in which Golden Arrow Financial was found to have violated the Maryland Mortgage Lender Law. The ALJ therefore recommended the revocation of Golden Arrow Financial's license. (Compl. ¶ 21.) Commissioner Raskin largely adopted the ALJ's Proposed Decision in a separate order issued on September 28, 2007, including revoking Golden Arrow Financial's license. (*Id.*) Pursuant to COMAR 09.01.03.09, Golden Arrow Financial requested an Exceptions Hearing, which was scheduled to be held on January 17, 2008. (*Id.* ¶ 22.)

II. Plaintiffs' Complaint in This Court

During the pendency of the administrative charges brought by the State of Maryland, Plaintiffs collectively filed an action in this Court on December 5, 2007, seeking preliminary and permanent injunctive relief, but not monetary relief. Plaintiffs' Complaint contains two separate Counts for this Court to provide the relief requested. In Count I, Plaintiffs contend that the state statutes and regulations under which Plaintiffs are being charged are preempted by the Supremacy Clause, federal statutory law, and HUD's regulations. (Compl. ¶ 29.) In Count II, Plaintiffs contend that section 17-322(b)(25) of the Maryland Real Estate Brokers Law,³ section 11-517(a)(5) of the Maryland Mortgage Lender Law,⁴ and COMAR 09.11.02.01⁵ are all

³ Section 17-322(b)(25) authorizes the MREC, presently chaired by Defendant Simpser, to revoke a real estate broker's license if the licensee "engages in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent, or improper dealings." Md. Code Ann., Bus. Occ. & Prof. § 17-322(b)(25).

⁴ Section 11-517(a)(5) authorizes the Commissioner of Financial Regulation to suspend or revoke a mortgage broker's license if "the licensee . . . otherwise demonstrates unworthiness,

unconstitutionally vague under the Fourteenth Amendment of the United States Constitution because “they fail to provide persons of ordinary intelligence a reasonable opportunity to know what is prohibited, fail to set forth relatively clear guidelines as to prohibited conduct and fail to provide objective criteria to evaluate whether an individual has performed a prohibited act.” (*Id.* ¶ 38.)

Plaintiffs filed the pending Motion for Preliminary Injunction on December 14, 2007 (Paper No. 6), and Defendants filed the pending Motion to Dismiss on January 16, 2008. (Paper No. 10.) On February 8, 2008, Plaintiffs filed, in one docket entry, their Opposition to Defendants’ Motion to Dismiss and their Reply to Defendants’ Opposition to Motion for a Preliminary Injunction. (Paper No. 12.) On February 20, 2008, Defendants filed their Reply to Plaintiffs’ Opposition to Motion to Dismiss.⁶ (Paper No. 13.)

bad faith, dishonesty, or any other quality that indicates that the business of the licensee has not been or will not be conducted honestly, fairly, equitably, and efficiently.” Md. Code Ann., Fin. Inst. § 11-517(a)(5).

⁵ COMAR 09.11.02.01 requires that a licensed real estate broker “endeavor to eliminate in the community any practices which could be damaging to the public or to the dignity and integrity of the real estate profession.”

⁶ After Plaintiffs submitted their Motion for Preliminary Injunction and replied to Defendants’ Motion to Dismiss, Plaintiffs’ counsel filed a Motion to Withdraw as Attorney for all Plaintiffs on March 27, 2008 (Paper No. 14), which this Court granted by Order dated April 1, 2008 (Paper No. 15).

After that Order was issued, the Clerk’s Office notified Ward *via* letter that he would be appearing *pro se* until new counsel entered an appearance on his behalf. (Paper No. 16.) Additionally, in a separate letter also sent on April 1, 2008, the Court notified Ward that he could not represent the corporate plaintiffs *pro se* and appearance of counsel was required within 30 days. An attorney entered an appearance for Plaintiffs, but was rejected because the attorney was not admitted to practice in this Court. Thus, Plaintiff Ward is presently proceeding *pro se*. Plaintiffs Golden Arrow Real Estate and Golden Arrow Financial are not presently represented by counsel and are therefore in violation of Local Rule 101.1.a. of this Court. *See* Local Rule 101.1.a. (D. Md. 2008).

DISCUSSION

Within ten days of filing the Complaint, Plaintiffs filed their pending Motion for Preliminary Injunction, which seeks temporary and permanent injunctive relief from pending administrative actions initiated by Defendants. Before reaching Plaintiffs' Motion, however, this Court must first address Defendants' Motion to Dismiss, which requests that this Court abstain from exercising jurisdiction under *Younger v. Harris*, 401 U.S. 37 (1971). Pursuant to *Younger*, this Court finds that abstaining from exercising jurisdiction in this case is required, and therefore Defendants' Motion to Dismiss is GRANTED. The application of the *Younger* doctrine requires that this Court dismiss Plaintiffs' Complaint with prejudice; consequently, this Court will not engage in a purely hypothetical discussion on the merits of Plaintiffs' Motion for Preliminary Injunction. Therefore, Plaintiffs' Motion for Preliminary Injunction is DENIED AS MOOT.

I. Defendants' Motion to Dismiss (Paper No. 10)

Defendants assert in their Motion to Dismiss that this Court should abstain from exercising jurisdiction to hear the instant action under *Younger v. Harris*. The *Younger* doctrine holds that

a federal court should abstain from interfering in a state proceeding, even though it has jurisdiction to reach the merits, if there is (1) an ongoing state judicial proceeding, instituted prior to any substantial progress in the federal proceeding; that (2) implicates important, substantial, or vital state interests; and (3) provides an adequate opportunity for the plaintiff to raise the federal constitutional claim advanced in the federal lawsuit.

Moore v. City of Asheville, 396 F.3d 385, 390 (4th Cir. 2005) (citations omitted). The *Younger* doctrine, rooted in federalism, is principally concerned with the dual notions of equity and comity, *Nivens v. Gilchrist* ("*Nivens I*"), 319 F.3d 151, 153 (4th Cir. 2003), and the "belief that

the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.” *Younger*, 401 U.S. at 44. Because of these underlying principles, the *Younger* doctrine places a heavy burden on a federal plaintiff seeking to enjoin ongoing state proceedings. *See id.* at 390 (stating that “the normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions”).

Moreover, “*Younger* is not merely a principle of abstention; rather, the case sets forth a mandatory rule of equitable restraint, requiring the dismissal of a federal action.” *Nivens v. Gilchrist* (“*Nivens II*”), 444 F.3d 237, 247 (4th Cir. 2006) (quoting *Juluke v. Hodel*, 811 F.2d 1553, 1556 (D.C. Cir. 1987)). When the three-part test is satisfied, the *Younger* doctrine “contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the state courts.” *Id.* at 246-47 (quoting *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973)).

A. Ongoing Judicial Proceeding

In this case, Plaintiffs seek to enjoin two state administrative enforcement actions, both of which are judicial in nature. In both actions, the State of Maryland seeks to revoke licenses it previously granted, and therefore this case falls neatly into the class of cases that the Supreme Court has explained “may in proper circumstances command the respect due court proceedings.” *See id.* (quoting *Gibson*, 411 U.S. at 576-77). More importantly, both administrative actions require adversarial, trial-like hearings before the license may be revoked under the applicable statute. *See* Bus. Occ. & Prof. § 17-324; Fin. Inst. § 11-517(a)(5). Therefore, the administrative actions constitute quasi-judicial proceedings that “investigate[], declare[,] and enforce[]

liabilities as they stand on present or past facts and under law supposed already to exist.” *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 370-71 (1989) (“*NOPSI*”) (citing *Prentis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226 (1908)). As such, the *Younger* doctrine is applicable. See *Ohio Civil Rights Comm’n v. Dayton Christian Schools*, 477 U.S. 619, 627 (1986) (holding that *Younger* principles apply to state administrative proceedings “in which important state interests are vindicated, so long as in the course of those proceedings the federal plaintiff would have a full and fair opportunity to litigate his constitutional claim”).

Moreover, the administrative actions are ongoing under the *Younger* doctrine despite the fact that, at present, a hearing has been conducted in both administrative actions, and that an opinion has already been rendered and approved by the Commissioner of Financial Regulation in the action against Golden Arrow Financial. In *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), the Supreme Court held that “a necessary concomitant of *Younger* is that a party must exhaust his state appellate remedies before seeking relief in the District Court.” *Id.* at 608; see also *NOPSI*, 491 U.S. 350, 369 (1989) (holding that “a party may not procure federal intervention by terminating the state judicial process prematurely—forgoing the state appeal to attack the trial court’s judgment in federal court”).

In *Moore v. City of Asheville*, *supra*, the Fourth Circuit, relying on *Huffman* and *Ohio Civil Rights Commission*, explicitly held that “a defendant to a coercive state administrative proceeding must exhaust his state administrative *and* judicial remedies and may not bypass them in favor of a federal court proceeding in which he seeks effectively ‘to annul the results’ of a state administrative body.” 396 F.3d at 390 (emphasis added) (citing *Huffman*, 420 U.S. at 608-09). Therefore, the *Huffman* holding applies even if the administrative action is complete when

the defendant files an action in federal court, even if its completion is due to the failure to file an administrative appeal or to exhaust post-administrative judicial remedies.⁷

Under both the Maryland Real Estate Brokers Law, Bus. Occ. & Prof. § 17-329, and the Maryland Mortgage Lender Law, Fin. Inst. § 11-517(a)(5), Plaintiff Ward and Plaintiff Golden Arrow Financial are clearly entitled to judicial review in a Maryland circuit court after the completion of the state administrative actions. *See* Maryland Administrative Procedure Act, Md. Code Ann., State Gov't § 10-222(a)(1) (“[A] party who is aggrieved by the final decision in a contested case is entitled to judicial review of the decision as provided in this section.”). Because they have not exhausted their state judicial remedies, the administrative actions remain ongoing.⁸

B. Important State Interest

Turning to the second *Younger* factor, this Court finds that both administrative actions implicate important state interests. In *NOPSI*, the Supreme Court explained that the proper inquiry is not into the relative importance of the specific charges against the federal plaintiff, but

⁷ To this Court’s knowledge, the first administrative action against Ward was scheduled to be heard before Office of Administrative Hearings on March 27, 2008. The second administrative action against Golden Arrow Financial is even further along the administrative process—Golden Arrow Financial has requested an Exceptions Hearing, scheduled for January 17, 2008, as a result of the Commissioner adopting the ALJ’s Proposed Decision, in which Golden Arrow Financial’s license was revoked.

This Court remains uncertain whether either of the administrative proceedings are presently complete, but, as *Moore* makes clear, it would be immaterial even if they were complete since Plaintiffs have not exhausted their state judicial remedies.

⁸ Moreover, the proceedings before this Court are hardly developed on any level, let alone so substantially developed on the merits to warrant retaining jurisdiction. No discovery has occurred and there have been no proceedings. The procedural history of this case consists almost entirely of the two motions pending before this Court.

rather “the importance of the generic proceedings to the State.” 491 U.S. at 365. Maryland has a “substantial, legitimate interest” in enforcing the licensing provisions in the Maryland Real Estate Brokers Law and the Maryland Mortgage Lender Law. *Id.*

The statutes protect the public by providing uniform licensing requirements and, as Defendants point out in their Motion to Dismiss, “[o]nly through state proceedings such as the two which Plaintiffs attempt to thwart [in this Court] can the State of Maryland protect its citizens from licensees who transgress the statutory prohibitions enacted by the Maryland General Assembly, and the regulatory requirements imposed by the state agencies charged with enforcement of the law.” (Defs.’ Mem. Supp. Mot. to Dismiss 14.) This Court concludes that the administrative enforcement of the licensing provisions contained in the Maryland Real Estate Brokers Law and the Maryland Mortgage Lender Law constitute a substantial, legitimate interest for the State of Maryland.

C. Ability to Present Federal Claims

As to the third and final *Younger* factor, Plaintiffs have not demonstrated any basis for this Court to conclude that the administrative hearing and the subsequent opportunity for state court review fail to provide an adequate opportunity to present the federal claims of preemption and vagueness. This Court has previously noted that “Plaintiffs bear the burden of showing inadequacy or unavailability.” *Williams v. Lubin*, 516 F.Supp.2d 535, 539 (D. Md. 2007) (citing *Penzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 (1987)).

Plaintiffs not only had the opportunity to raise their argument that the provisions at issue are unconstitutionally vague under the Fourteenth Amendment at the administrative hearings, they were required to do so. *See Insurance Comm’r v. Equitable Life Assurance Soc’y*, 339 Md.

596, 622-623 (1995) (“[A] constitutional challenge to a statute, whether on its face or as applied, must be initially litigated in the administrative proceeding.”). With respect to Plaintiffs’ preemption argument, the Supreme Court has explained that even substantial claims of federal preemption do not preclude *Younger* abstention.⁹ *NOPSI*, 491 U.S. at 365. A review of Plaintiffs’ claim, however, reveals that it is clearly not a substantial claim of federal preemption, as there is no basis in the Fair Housing Act, 42 U.S.C. §§ 3601, *et seq.* or the federal regulations cited by Plaintiffs to support preemption of the state statutes and regulations at issue.

Plaintiffs have an adequate opportunity to present any claim of federal preemption during state court judicial review of the administrative proceedings. *See Ohio Civil Rights Comm’n*, 477 U.S. at 629 (holding that “it is sufficient . . . that constitutional claims may be raised in state-court judicial review of the administrative proceeding”). The Maryland Administrative Procedure Act permits the reviewing circuit court to “reverse or modify [a] decision” if it “is unconstitutional” or “exceeds the statutory authority or jurisdiction of the final decision maker.” State Gov’t, § 10-222(h). After circuit court review, Plaintiffs have an appeal of right to the Maryland Court of Special Appeals.

Moreover, the Maryland state judicial system, at an absolute minimum, provides an adequate forum for Plaintiffs to raise the claims they assert before this Court. Maryland State courts have routinely been asked to decide constitutional challenges on the basis of vagueness.

⁹ Defendants inform the Court that Golden Arrow Financial “has finally raised its preemption and vagueness challenges in its recently filed Second Supplemental Statement of Exceptions in the matter before the Commissioner.” (Defs.’ Mem. Supp. Mot. to Dismiss 16.) There has been no indication by either party that Ward has similarly raised claims in the administrative proceedings against him, and the Commissioner’s decision revoking his license does not mention the claims having been raised.

See, e.g., Finucan v. Board of Physicians, 846 A.2d 377 (Md. 2004) (finding Health Occupations Article prohibition of “immoral or unprofessional conduct” not unconstitutionally vague); *Blaker v. State Board*, 717 A.2d 964 (Md. Ct. Spec. App. 1998) (finding that disciplinary statute governing professional incompetence not void for vagueness). Maryland state courts are likewise capable of resolving claims of federal preemption, as evidenced by the recent case of *Montgomery County v. Glenmont Hills Associates Privacy World*, 936 A.2d 325 (Md. 2007). In *Glenmont Hills*, the Court of Appeals of Maryland determined that the Housing and Urban Development Act of 1965 and HUD’s implementing regulations did not preempt a county housing discrimination ordinance.

In conclusion, as all three prongs of the *Younger* test have been met, this Court must invoke the “mandatory rule of equitable restraint,” *Nivens II*, 444 F.3d at 247, and dismiss Plaintiffs’ attempt to seek a federal forum to resolve their claims.¹⁰ Therefore, Defendants’

¹⁰ In opposition to Defendants’ Motion to Dismiss, Plaintiffs do not offer a substantial argument that the aforementioned elements work in their favor as opposed to Defendants. Instead, Plaintiffs urge this Court to find that the *Younger* doctrine is altogether inapplicable. Defendants argue that “[s]ince this case is brought pursuant to 42 U.S.C. § 1983, *inter alia*, . . . , this case is excluded from the prohibition found in 22 U.S.C. § 2283 [the Anti-Injunction Act] and should also, therefore, be excluded from the *Younger* abstention doctrine.” (Pls.’ Opp. 4.)

Plaintiffs fundamentally misconstrue the relationship between the *Younger* doctrine and the Anti-Injunction Act. The two doctrines work independently to prevent federal court injunctions of state proceedings, and an exception to the Anti-Injunction Act does not, by implication alone, equate to a similar exception to the *Younger* doctrine. For example, Plaintiffs’ section 1983 claim quite clearly falls within the “authorized by Act of Congress” exception to Anti-Injunction Act. *See Mitchum v. Foster*, 407 U.S. 225 (1972). As explained by the United States Court of Appeals for the Second Circuit in *Anonymous J. v. Bar Ass’n of Erie County*, 515 F.2d 435 (2d Cir. 1975), *cert. denied*, 423 U.S. 840 (1975), however, “it is equally clear that section 1983 is not exempted from the *Younger* abstention doctrine.” 515 F.2d at 437. Therefore, although Plaintiffs have located an exception to Anti-Injunction Act, they still must overcome the *Younger* doctrine as a separate obstacle to federal court jurisdiction, which they have failed to do.

Motion to Dismiss is GRANTED.

II. Plaintiffs' Motion for Preliminary Injunction (Paper No. 6)

As discussed above, this Court declines to exercise jurisdiction over Plaintiffs' claims under the *Younger* doctrine as any action by this Court would interfere with an ongoing state administrative proceeding that directly implicates the important state interests of regulating licensed mortgage brokers and real estate brokers. Unlike other abstention doctrines, the Fourth Circuit has made clear that the *Younger* doctrine "contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the state courts." *Nivens*, 444 F.3d at 247 (citing *Gibson*, 411 U.S. at 577). As such, a "district court abstaining under *Younger* is not retaining jurisdiction, but rather refusing to take jurisdiction over the question of whether to enjoin the pending prosecution." *Id.*

Therefore, as the *Younger* abstention doctrine applies to Plaintiffs' entire cause of action, it is unnecessary and inappropriate for this Court to engage in a hypothetical discussion on the merits of Plaintiffs' case. Accordingly, Plaintiffs' Motion for Preliminary Injunction is DENIED AS MOOT.

CONCLUSION

For the reasons stated, Defendants' Motion to Dismiss (Paper No. 10) is GRANTED and Plaintiffs' Motion for Preliminary Injunction is DENIED AS MOOT. A separate Order follows.

Plaintiffs secondary arguments that the allegations in their Complaint are clearly preempted by federal law and that the state action is flagrantly and patently unconstitutional are likewise without merit.

Dated: May 29, 2008

/s/

Richard D. Bennett
United States District Judge

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ORDER

For the reasons stated in the foregoing Memorandum Opinion, it is this 29th day of May 2008, ORDERED that:

1. The Motion to Dismiss filed by Defendants Nancy R. Simperts and Sarah Bloom Raskin (Paper No. 10) is GRANTED;
2. The Motion for Preliminary Injunction filed by Plaintiffs James W. Ward, Golden Arrow Real Estate, Inc., and Golden Arrow Financial, Inc.(Paper No. 6) is DENIED AS MOOT;
3. The Clerk of the Court transmit copies of this Order and accompanying Memorandum Opinion to counsel for the Defendants and *pro se* Plaintiff; and
4. The Clerk of the Court CLOSE THIS CASE.

/s/ _____

Richard D. Bennett
United States District Judge