

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER MORTGAGE
CORP., REO SPECIALISTS, LLC, and HOME
AMERICA MORTGAGE, INC.,

Debtors.

Chapter 11

Case No. 3:09-bk-07047-JAF
Case No. 3:09-bk-10022-JAF
Case No. 3:09-bk-10023-JAF

Jointly Administered Under
Case No. 3:09-bk-07047-JAF

**OBJECTION OF SOVEREIGN BANK TO THE DISCLOSURE STATEMENT
OF THE DEBTORS, PURSUANT TO SECTION 1125 OF THE BANKRUPTCY
CODE, WITH RESPECT TO JOINT PLAN OF LIQUIDATION OF THE
DEBTORS AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

Sovereign Bank, in its capacity as agent (in such capacity, “**Sovereign**”) for various lenders under a pre-petition Servicing Facility Agreement (as defined below) with Taylor, Bean & Whitaker Mortgage Corp. (“**TBW**”) hereby submits this objection to the entry of an order approving the Disclosure Statement of the Debtors, Pursuant to Section 1125 of the Bankruptcy Code, with Respect to Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors (the “**Disclosure Statement**”) (Doc. No. 1968) filed in conjunction with the Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors (the “**Proposed Plan**”) (Doc. No. 1966).¹ In support of its objection, Sovereign respectfully represents as follows:

¹ All capitalized terms not herein defined shall have the meanings given such terms in the Proposed Plan.

Background

1. Sovereign is the agent under that certain Sixth Amended and Restated Servicing Facility Loan and Security Agreement dated as of May 15, 2009 by and among TBW, the lenders party thereto and their successors (the “**Lenders**”), and Sovereign, as Agent (the “**Servicing Facility Agreement**”). Pursuant to previous versions of the Servicing Facility Agreement, the Lenders established a servicing line of credit for TBW, whereby each Lender advanced proceeds to TBW based on receivables due to TBW as servicer for certain mortgage loans.

2. As of the date of the commencement of this case, TBW owed the Lenders approximately \$164.9 million under the Servicing Facility Agreement. TBW’s obligations under the Servicing Facility Agreement are secured by liens on substantially all of TBW’s assets deriving from its servicing contracts and agreements and servicing rights (the “**Collateral**”). In addition, TBW’s obligations were guaranteed by REO Specialists, LLC (“**REO**”) and Home America Mortgage, Inc. (“**HAM**” and together with TBW and REO, the “**Debtors**”).

3. The servicing rights that are collateralized under the Servicing Facility Agreement relate to pools of mortgages owned by the Government National Mortgage Association (“**Ginnie Mae**”), the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”), and private investors (including the FDIC and Bank of America for loans in warehouse pending sale, servicing-retained to future investors). Upon information and belief, the outstanding balance of the pools of mortgages constituting the Collateral as of June 30, 2009 owned by (a) Ginnie Mae is approximately \$26 billion, (b) Freddie Mac is

approximately \$15-16 billion, (c) private investors is approximately \$3 billion and (d) warehouse loans held for sale to future investors, servicing-retained, is approximately \$6 billion.

4. On August 4, 2009, the United States Department of Housing and Urban Development sent a letter informing TBW that its HUD/FHA origination and underwriting approval had been suspended. On that same day, Ginnie Mae and Freddie Mac each sent a letter terminating TBW's eligibility to sell and service mortgage loans under their respective agreements.

5. On or about August 6, 2009, Colonial Bank ("**Colonial**"), TBW's primary deposit institution, denied TBW access to its bank accounts. TBW maintained approximately 108 accounts with Colonial including custodial accounts containing principal and interest and tax and insurance payments of mortgagors and operating accounts that contained, among other things, servicing fees earned by TBW.

6. On August 7, 2009, Sovereign sent a letter to TBW notifying TBW that it was in default under the Servicing Facility Agreement and declaring the entire outstanding amount owed under the Servicing Facility Agreement to be immediately due and payable (the "**Default Letter**"). Since receiving the Default Letter, TBW has failed to make any payments to Sovereign, as Agent for the Lenders.

7. On August 24, 2009, TBW filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the "**TBW Petition Date**"). On November 25, 2009, REO and HAM, two wholly-owned subsidiaries of TBW, each filed a voluntary petition for relief under Chapter 11. Pursuant to Sections 1107 and 1108 of the Bankruptcy Code, the Debtors

are continuing to operate their businesses and manage their property as a debtors-in-possession.

Sovereign's Objections to the Disclosure Statement

The Disclosure Statement Does Not Provide Adequate Information

8. Before a debtor can solicit votes on a plan, it must provide holders of claims or interests with a disclosure statement approved by the court as containing adequate information. *See* 11 U.S.C. § 1125(b). Section 1125 of the Bankruptcy Code defines “adequate information” as

information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor of the relevant class to make an informed judgment about the plan...and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information[.]

11 U.S.C. § 1125(a)(1). The omissions in the Disclosure Statement bar a hypothetical reasonable investor from making an informed judgment about the Proposed Plan. As explained more fully below, additional information is necessary to remedy the Disclosure Statement's inadequacies.

The Description of the Plan Trust Agreement is Inadequate

9. Pursuant to Section VI.D.4. of the Disclosure Statement, the Plan Trust will be formed on the Effective Date of the Proposed Plan. The Plan Trust will be administered in accordance with the Plan Trust Agreement, however, the Plan Trust Agreement will not be available to creditors until at least three (3) days prior to the Confirmation Hearing. *See*

Definitions Annex, definition of “Plan Supplement.” The Disclosure Statement purports to provide a general overview of the Plan Trust Agreement, but such an overview lacks sufficient information for a hypothetical investor to make an informed decision with respect to the Proposed Plan.

10. For example, the Disclosure Statement indicates that Neil Luria will be appointed as the Plan Trustee, but it fails to reveal the amount Mr. Luria will be compensated for that position. Currently, TBW employs Neil Luria and Edward Casas of Navigant at a monthly rate of \$250,000, in addition to paying for the services of other Navigant employees at their normal hourly rates. Upon information and belief, Navigant has been compensated for their work on behalf of the Debtors in excess of \$10 million over the past fifteen (15) months. Considering that the Proposed Plan contemplates that the Plan Trust will be in existence for at least five (5) years and that the Liquidating Trust Professionals and Support Staff will receive in excess of \$20 million in compensation during that time, a hypothetical investor would need additional information to make an informed decision as to whether the Proposed Plan is in the best interests of the creditors.

11. In addition, the Disclosure Statement further explains that an insulated group, containing three (3) current members of the unsecured creditors’ committee (the “**Plan Advisory Committee**”), will make decisions with respect to the removal of the Plan Trustee, review of the Plan Trustee’s compensation and any Material Decisions to be made by the Plan Trustee. The Disclosure Statement, however, fails to list the three members of the Plan Advisory Committee because such information will be contained in the Plan Trust Agreement.

12. Since the Plan Trust Agreement is the vehicle by which the Debtors will be operated post-confirmation, creditors should have the ability to review such agreement in its entirety prior to making a judgment about the Proposed Plan. In addition, the complexity of this case demands that creditors have more than three days before the Confirmation Hearing to review the Plan Trust Agreement.

The Disclosure Statement Fails to Provide Sufficient Information
Regarding the Compensation to Date of the Professionals in these Chapter 11 Cases

13. Pursuant to Section VI.B.1.b. of the Disclosure Statement, the Professionals will have sixty (60) days after the Effective Date of the Proposed Plan to file an application for final allowance of compensation and fees and to request additional compensation for making a substantial contribution in these Chapter 11 Cases. Although the Professionals (other than Navigant) have filed interim applications for compensation with the Court, it would be very difficult for a creditor to determine the extent of compensation paid to the Professionals in these Chapter 11 Cases because the TBW bankruptcy case, alone, has over 2000 entries on the Court's docket. The Disclosure Statement should include the total amount of compensation paid to Professionals in these Chapter 11 Cases to date (including Navigant) and an amount estimated to be paid through confirmation of the Proposed Plan. The Professionals, who have indicated that they may ask for a substantial contribution bonus *after* the Proposed Plan is confirmed, should be required to provide such information so that a hypothetical reasonable investor can make an informed judgment about the value of the Proposed Plan.

Adequate Information Regarding Sovereign's Liens

14. Although Section IV.H.5. of the Disclosure Statement cursorily notes that certain creditors received replacement liens as adequate protection pursuant to Orders of this Court permitting TBW's use of cash collateral (Doc Nos. 172, 357, 603, 634), it does not provide enough information with respect to Sovereign's replacement lien. Pursuant to the Third Order Authorizing Interim Use of Cash Collateral (Doc. No. 603), Sovereign was "granted a replacement lien—

in the amount, to the extent, and with the validity and priority as is determined to be Sovereign's lien position as of the date of filing the [TBW] petition—against the pool of loans that are reflected in the Debtor's records as being owned outright by the Debtor and not pledged to or held for the benefit of investors, lenders, or any other third party, including, without limitation—and net of payments on account of taxes and insurance, other advances, and reasonable expenses and fees in connection with servicing, collection, and disposition and net of reinvested principal and interest—the following: principal and interest payments on account of those loans, payments in full, refinances or short sales; proceeds from the sales of any REO properties resulting from foreclosure or similar actions on any defaulted loans; proceeds from any mortgage insurance, loan guaranty certificates, or property insurance policies; and proceeds of any government incentive fees received by [TBW] for modifying such loans.

The Disclosure Statement does not address Sovereign's replacement liens.

15. The Disclosure Statement also fails to provide for Sovereign retaining its liens pursuant to the Proposed Plan. The description of Sovereign's treatment as the sole creditor in TBW Class 4 of the Proposed Plan does not provide that Sovereign will retain its liens on the Collateral or retain its replacement lien as described above. After reading the Disclosure Statement a hypothetical investor may believe that Sovereign no longer holds a lien with respect to in excess of \$165 million owed to Sovereign by the Debtors, which would be

inaccurate. For the information provided in the Disclosure Statement to be adequate, it must be accurate. *See In re Adelpia Commc'ns Corp.*, 352 B.R. 592, 596-97 (Bankr. S.D.N.Y. 2006).

16. In addition, Section IV.H.9. of the Disclosure Statement touts a recovery of an estimated \$2 million in netting payments from termination of hedges since the TBW Petition Date. Pursuant to Section 4.2(a)(ix) of the Servicing Facility Agreement, Sovereign has a lien on, without limitation, any payments arising under any Hedging Agreement (as defined in the Servicing Facility Agreement). The Disclosure Statement should provide more information regarding this recovery, to enable the hypothetical investor to determine the value of such a recovery to the estate in light of Sovereign's lien.

The Disclosure Statement Should Not Be Approved Because the Proposed Plan is Patently Unconfirmable

17. The Disclosure Statement should not be approved because its seeks to solicit votes in favor of confirmation of a plan that is patently unconfirmable. *See In re Valrico Square Ltd. P'ship*, 113 B.R. 794, 796 (Bankr. S.D. Fla. 1990). This confirmability inquiry is a prerequisite to the consideration of the adequacy of a proposed disclosure statement. *See In re Main Street AC, Inc.*, 234 B.R. 771, 775 (Bankr. N.D. Ca. 1999).

The Proposed Plan Does Not Provide
Equal Treatment for the Two Classes of Unsecured Creditors

18. The Proposed Plan contains two classes for unsecured claims of TBW. The first class, TBW Class 8, includes general unsecured claims and the second class, TBW Class 9, includes unsecured claims filed by trade creditors only. Not only does TBW Class 9 receive up to \$15 million from the FDIC, it also gets to share in the pro rata distribution of all unsecured creditors in TBW Class 8. Thus, the unsecured creditors in TBW Class 9 are receiving a larger distribution on their claim than the unsecured creditors in TBW Class 8.

Reservation of Rights

19. Sovereign reserves the right to provide additional objections to the extent the Disclosure Statement or the Proposed Plan are amended.

20. Sovereign further reserves the right to object to the Proposed Plan to the extent the Disclosure Statement is approved and the Proposed Plan is solicited for confirmation.

Conclusion

21. For each of the foregoing reasons, Sovereign objects to the approval of the Disclosure Statement.

WHEREFORE, Sovereign respectfully requests that the Court deny approval of the Disclosure Statement, and grant such other and further relief as is just.

Dated: October 29, 2010

Respectfully submitted,

/s/ Robert A. Soriano

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Objection of Sovereign Bank to the Disclosure Statement of the Debtors, Pursuant to Section 1125 of the Bankruptcy Code, with Respect to Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors has been served this 29th day of October, 2010 to all attorneys who have appeared in this case via CM/ECF Electronic Noticing and by U.S. Mail to:

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