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
TAYLOR, BEAN & WHITAKER MORTGAGE CORP., Objector, v. THE FEDERAL HOME LOAN MORTGAGE CORPORATION, Claimant.	CONTESTED MATTER

DEBTOR'S OBJECTION TO THE PURPORTED PRIORITY CLASSIFICATION AND AMOUNT OF CLAIM NO 2629 FILED BY THE FEDERAL HOME LOAN MORTGAGE CORPORATION

Taylor, Bean & Whitaker Mortgage Corp. (the ("Debtor") hereby files this objection (the "Objection") pursuant to 11 U.S.C. §§ 105 and 502, Rule 3007 of the Federal Rules of Bankruptcy Procedure, and Local Rule 3007-1. As addressed in more detail below, the Debtor objects to the purported priority classification and amount of Claim No. 2629 (the "Claim") filed by the Federal Home Loan Mortgage Corporation ("Freddie Mac"). A copy of the Claim is attached hereto as Exhibit A. The Debtor expressly reserves all of its rights to object to the Claim on other grounds as well as its right to assert affirmative claims against Freddie Mac, as more fully set forth in paragraph 39 below.

In support of its Objection, the Debtor respectfully shows as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Objection pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Objection is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408.

2. The statutory predicates for the relief sought in this Objection are Sections 105 and 502 of Title 11 of the United States Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rule 3007-1.

BACKGROUND

3. On August 24, 2009 (the "Petition Date"), the Debtor filed with this Court its voluntary petition for relief under Chapter 11 of Title 11 of the United States Code.

4. The Debtor continues to manage its property as a debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

5. On September 11, 2009, the Office of the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee").

6. No trustee or examiner has been appointed in this case.

7. The Debtor's final reconciliation report was filed with the Court on July 1, 2010 (the "Final Reconciliation Report") [Docket No. 1644].

8. On September 21, 2010, the Debtor and the Committee filed the Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors [Docket No. 1966], along with the related Disclosure Statement [Docket No. 1968]. A First Amended and Restated Disclosure Statement was filed on November 4, 2010 and approved at a hearing on November 5, 2010, as reflected in the Order Approving First Amended and Restated Disclosure Statement entered on November 10, 2010 [Docket No. 2136].

9. On November 12, 2010, the Debtor and the Committee filed the Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors (the "Revised Plan") [Docket No. 2143], along with the Second Amended and Restated Disclosure Statement (the "Revised Disclosure Statement") [Docket No. 2144]. The Revised Disclosure Statement was approved at a hearing on November 19, 2010, as reflected in the Order Approving Second Amended and Restated Disclosure Statement, Scheduling Confirmation Hearing, and Fixing Time for Filing Acceptances or Rejection of Second Amended and Restated Joint Plan of Liquidation [Docket No. 2190].

10. The Revised Disclosure Statement discloses that, to the extent it is an allowed claim, the plan proponents have classified Freddie Mac's Claim as a TBW Class 8 general unsecured claim, subject to the rights of the Plan Proponents and other creditors to object to the Claim in accordance with the terms of the Revised Plan and the Bankruptcy Code.

11. Freddie Mac filed its Claim in the amount of $1,782,255,016.51 as a "Priority Claim," under 11 U.S.C. § 507(a), and identified 12 U.S.C. § 4617(b)(15) as the purported basis for its priority. Freddie Mac included no information in its Claim supporting the purported "Unsecured Priority Claim Amount," nor did it provide any facts allegedly giving rise to the applicability of 12 U.S.C. § 4617(b)(15). Rather, Freddie Mac merely reserved its rights under Section 4617(b)(15)(D). Moreover, Exhibit A to the Claim consists of 55 subcategories, which account for the amount of the Claim; however, Freddie Mac provided no explanation of these amounts and did not attach any documentation supporting its right to recover the types of categories sought or to substantiate the amounts claimed.

RELIEF REQUESTED

12. For the reasons described below, the Debtor seeks entry of an order pursuant to Sections 105 and 502 of the Bankruptcy Code, Bankruptcy Rule 3007, and Local Rule 3007-1

classifying the Claim as a TBW Class 8 Claim and reducing the amount of the Claim, to the extent the Claim is allowed, in all respects subject to the reservations of rights contained herein and in the Revised Plan.

I. FREDDIE MAC'S CLAIM IS NOT ENTITLED TO PRIORITY CLASSIFICATION

A. 12 U.S.C. § 4617(b) Does Not Grant Freddie Mac's Claim Priority Status

13. Freddie Mac's invocation of 12 U.S.C. § 4617(b) is improper because the plain reading of this section shows that it has no application, whatsoever, to the Claim.

14. On September 6, 2008, the Director of the Federal Housing Finance Agency ("FHFA" or "Conservator") placed Freddie Mac into conservatorship pursuant to the Housing and Economic Recovery Act of 2008 ("HERA"). HERA is codified in 11 U.S.C. § 4617, which sets forth FHFA's powers as Conservator of Freddie Mac.

15. 12 U.S.C. §4617(b)(15) provides:

> 15) Fraudulent transfers.
>
> (A) In general. The Agency, as conservator or receiver, may avoid a transfer of any interest of an entity-affiliated party, or any person determined by the conservator or receiver to be a debtor of the regulated entity, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Agency was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the regulated entity, the Agency, the conservator, or receiver.
>
> (B) Right of recovery. To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the regulated entity, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—
>
> (i) the initial transferee of such transfer or the entity-affiliated party or person for whose benefit such transfer was made; or
>
> (ii) any immediate or mediate transferee of any such initial transferee.

> (C) Rights of transferee or obligee. The conservator or receiver may not recover under subparagraph (B) from—
>
> (i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or
>
> (ii) any immediate or mediate good faith transferee of such transferee.
>
> (D) Rights under this paragraph. The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

16. On its face, Section 4617(b)(15) does not modify the priority of claims codified at 11 U.S.C. § 507, nor does the section have any application to the administration of the Debtor's claims in general. Rather, the section merely provides the Conservator with the right to recover certain transfers made with the actual intent to hinder, delay, or defraud the Conservator or Freddie Mac. In this limited circumstance, the statute provides that the Conservator's rights "shall be superior to the rights of a trustee or any other party . . . under title 11, United States Code." Thus, the section might apply, if at all, to competing claims by the Debtor and FHFA seeking the avoidance and recovery of identical fraudulent transfers, not to Freddie Mac's Claim against the Debtor's bankruptcy estate.

17. Here, Freddie Mac has not identified any competing claims for the recovery of any transfers made by TBW, and the Debtor is not aware of any alleged transfers that could form the basis of the Conservator's alleged superior rights. Rather, the Debtor's analysis shows that Freddie Mac may have been the recipient and/or beneficiary of substantial fraudulent transfers made by TBW. Accordingly, the Claim, to the extent any of it is allowed, should be classified as a Class 8 Unsecured Claim, subject to the reservation of rights contained herein and in the Revised Plan.

B. Freddie Mac Did Not Provide Sufficient Information and Documentation to Support Priority Claim Status

18. Even if Section 4617(b)(15) did provide a basis for Priority Claim classification in a bankruptcy case, the Claim is stated merely as a reservation of rights under Section 4617(b)(15)(D), with no specifics regarding any transfers as to which the Conservator may have superior rights.

19. To comply with the requirements for filing a claim, a "claimant must allege facts sufficient to support a legal basis for the claim." *In re Planet Hollywood Int'l*, 274 B.R. 391, 395 (Bankr. D. Del. 2001). Taken together, Bankruptcy Rule 3001 and Official Form 10 "rightfully require creditors to attach minimal supporting documentation for their claims so that a debtor can evaluate their validity without discovery or extraordinary expense." *In re Taylor*, 363 B.R. 303, 308 (Bankr. M.D. Fla. 2007) (citing *In re Armstrong*, 320 B.R. 97, 104-105 (Bankr. N.D. Tex. 2005) ("The documentation required by Bankruptcy Rule 3001 and Official Form 10 allows the debtor and the Chapter 13 Trustee to have enough information to fully determine whether or not a valid claim in the proper amount has been filed.")). Where a claimant fails to attach to its proof of claim the requisite documentation, the claim is deprived of the *prima facie* validity under Bankruptcy Rule 3001. *In re Taylor*, 363 B.R. at 308.

20. Assuming *arguendo* that Section 4617(b)(15) can apply to provide the Claim with Priority status, Freddie Mac has not provided any of the information necessary to support a Priority Claim. For example, Freddie Mac has not identified any purportedly fraudulent transfers made by TBW; has not provided any information showing that those transfers were made with the intent to hinder, delay, or defraud Freddie Mac (or the Conservator); and has not indicated whether and how the Debtor has recovered those transfers in order for Freddie Mac to have a Priority Claim.

21. Accordingly, even if Section 4617(b) could apply to provide Freddie Mac a Priority Claim, Freddie Mac's Claim should not be treated as a Priority Claim unless and until Freddie Mac provides additional information sufficient to show that its Claim is entitled to Priority Status.

II. FREDDIE MAC'S CLAIM SHOULD BE DISALLOWED OR REDUCED

A. Freddie Mac Did Not Provide Sufficient Information or Documentation to Substantiate the Amount of Its Claim.

22. The total amount of Freddie Mac's Claim is $1,782,255,016.51. However, the Claim is fatally deficient. Freddie Mac does not provide any documents or other information that demonstrate that it is entitled to recover the types of losses identified in the Claim or support the amounts sought.

23. Freddie Mac's Claim is comprised of four large categories: (1) Freddie Mac Expenses – $561,040.62; (2) Interim Servicer Expenses – $19,094.55; (3) Servicing Expenses – $89,380,570.83; and (4) Outstanding Obligations – $1,692,294,310.51. While these four categories are divided into 55 subcategories (s*ee* Exhibit A to the Claim), the Claim is merely a summary of thousands of individual transactions that Freddie Mac has lumped together in an apparent effort to inflate its claim.

24. Freddie Mac provided no supporting documentation, information, or analysis of any of the 55 subcategories. There is no explanation of or reference to the contractual or legal bases for Freddie Mac's entitlement to receive payment of any of the amounts requested, nor does the Claim include any of the information supporting the any of the amounts.

25. Because the Claim is devoid of any supporting information or analysis, it is impossible for the Debtor to "to evaluate [the Claim's] validity without discovery or extraordinary expense." *In re Taylor*, 363 B.R. at 308 (citations omitted). Consequently, the

Claim lacks any indicia of *prima facie* validity and should be disallowed unless and until Freddie Mac provides sufficient documentation and information for the Debtor and other creditors to "fully determine whether or not a valid claim in the proper amount has been filed." *In re Armstrong*, 320 B.R. at 104-105.

B. Freddie Mac's Claim Appears to Seek the Allowance of Amounts to which it is not Entitled.

26. As addressed in Section II(A) above, it is impossible to determine the specific basis for much of the almost $1.8 billion sought by Freddie Mac. Even so, from the summaries included in the Claim, it is evident that several categories of recovery sought by Freddie Mac are improper and should be disallowed in their entirety.

27. Prior to its termination by Freddie Mac on August 4, 2009, TBW's relationship with Freddie Mac was governed by a number of documents, including Freddie Mac's Single Family Seller/Servicer Guide (the "Guide"). The Guide is a two volume set of documents that defined most of TBW's obligations as a Freddie Mac Seller and Servicer.

28. Under the Guide, TBW owed Freddie Mac only limited obligations with respect to the transfer of TBW's Freddie Mac servicing portfolio upon Freddie Mac's termination of TBW. Consistent with these obligations, TBW worked with Freddie Mac to "transfer servicing" of its Freddie Mac portfolio to a number of interim servicer providers.

29. The Guide imposes upon TBW only minimal financial obligations ***incident to*** the transfer of servicing. For example, under Section 73.5 of the Guide, Freddie Mac is entitled to recover from the Debtor "reimbursement for . . . any loss, damage, or expense ***incident to the Transfer of Servicing."*** (Emphasis added).

30. Despite this limited obligation, Freddie Mac's Claim appears to include almost $100 million in expenses purportedly incurred by Freddie Mac and its interim servicers ***after***

TBW completed the transfer of servicing. For example, the Claim's Servicing Expenses category – which seeks the recovery of $89,380,570.83 – is comprised almost entirely of the servicing fees paid by Freddie Mac to the interim servicers and the post-termination, post-transfer advances made by the interim servicers. Clearly, these post-transfer amounts (even if accurate), do not constitute loss, damage, or expense "incident to the Transfer of Servicing" and, thus, are not recoverable. *See Mortgage Lenders Network USA, Inc. v. Wells Fargo Bank, NA*, 406 B.R. 213, ____ (D. Del. 2009).

31. The Debtor believes that additional categories of loss claimed by Freddie Mac also are improper but, as addressed above, Freddie Mac did not include sufficient documentation in support of its Claim to allow TBW and other creditors to fully analyze the Claim.

C. Freddie Mac's Claim Grossly Overstates Freddie Mac's Losses.

32. In addition to the deficiencies addressed above, the Claim grossly overstates the amount of alleged losses that Freddie Mac seeks to recover from the Estate.

33. In the "Outstanding Obligations" category, Freddie Mac seeks to recover $1,692,294,310.51, which is comprised primarily of:

a. approximately $440 million in alleged shortfalls in principal and interest ("P&I") and taxes and insurance payments ("T&I") purportedly due to Freddie Mac;

b. $63 million related to "Net Funded" loans; and,

c. $1.15 billion in current and "projected" repurchase obligations.[1]

Assuming, *arguendo*, that Freddie Mac is entitled to a claim in some amount for these types of losses, the amount claimed is overstated by hundreds of millions of dollars.

[1] Freddie Mac includes no explanation of any of these categories, so it is unclear whether Freddie Mac has asserted a valid Claim for any amount.

34. ***P&I and T&I Shortfall.*** First, as demonstrated by the Servicing Reconciliation and set forth in the Debtor's Final Reconciliation Report (the "Final Reconciliation Report") [Docket No. 1644], the total shortfall in Freddie Mac's P&I and T&I accounts (including EDCA shortfalls is $5,038,086, not the $440 million set forth in the Claim. (See, Table 4, Final Reconciliation Report, p. 40.) Accordingly, this category is overstated by almost $435 million in the Claim and should be reduced accordingly.

35. ***Net Funded Loans.*** Freddie Mac claims that it incurred $63 million in expenses related to Net Funded loans when, in reality, Freddie Mac's Claim related to Net Funded loans should be $0. Net funding is a process by which TBW would refinance a loan by issuing a new mortgage loan without funds to pay off the old mortgage loan at closing.[2] Instead, TBW would sell the new mortgage loan to Freddie Mac and, upon receipt of the sales proceeds, would pay off the old mortgage loan. Thus, net funding resulted in borrowers improperly having two mortgages during the time between the closing of the new loan and the sale of that loan and the repayment of the old mortgage loan. When TBW collapsed, 751 borrowers, many of whom had original mortgages owned by Freddie Mac, found themselves and their properties in this circumstance. It appears that Freddie Mac has included the principal unpaid principal balance of its loans, rather than the cost to cure. In addition, Freddie Mac fails to address issues such as knowledge and consent, which should reduce this claim to $0.

36. ***Repurchases.*** Finally, Freddie Mac claims to be owed $697,000,000 for "Current Repurchases" and $450,359,186 for "Projected Repurchases" totaling $1,147,359,186. (Lines 52 and 53 of the Claim.) Under the Guide, TBW was, under certain circumstances, required to repurchase certain loans from Freddie Mac. Repurchase transactions were a regular occurrence,

[2] A more thorough explanation of the net funded loans issue is set forth in the Debtor's Motion for Approval of Protocol to Resolve Borrower Issues [Docket No. 927].

though that amount of repurchases escalated in the years prior to TBW's collapse. When a repurchase occurred, TBW was required to pay the full unpaid principal balance ("UPB") remaining on the mortgage loan in exchange for Freddie Mac's transfer of the note and other loan documents back to TBW. Alternatively, TBW made a "make whole" payment to Freddie Mac, which was in an amount equal to the difference between the UPB remaining on the mortgage minus the value of the underlying collateral. With make whole payments, Freddie Mac retained the note and loan documents. In either circumstance, the value of the underlying collateral inured to the benefit of TBW in the transaction. Freddie Mac's Claim, however, seeks to recover from TBW $1.15 billion UPB, but Freddie Mac has not offered to transfer the underlying collateral back to the Debtor – *i.e.,* Freddie Mac seeks full payment on the loans and seeks to retain the underlying collateral.

37. Freddie Mac's Claim for repurchases is improper and overstated for various reasons including:

a. Lack of sufficient supporting information;

b. Historically, approximately 30% of Freddie Mac's repurchase claims were improper after review by TBW. There is no reason to believe that these repurchase claims are any different.

c. It is evident that Freddie Mac has not reduced the amount of its Claim by the value of the underlying collateral, which the Debtor believes could be 60% or more of the amount claimed.

d. The "Projected Repurchases" are speculative.

In addition, Freddie Mac fails to address issues such as its knowledge regarding the quality of loans it purchased from TBW, which could result in further reduction of the claimed amount.

38. Of course, it is Freddie Mac's burden to provide documentation sufficient to show both that the Debtor is obligated to make any of the repurchases and to establish the amount of Freddie Mac's actual losses related to those repurchases. Freddie Mac's Claim does neither.

NON-WAIVER AND RESERVATION OF RIGHTS

39. By filing this Objection, the Debtor does not waive and expressly reserves its right to amend, modify, or supplement this Objection and to file additional objections to the Claim, including, but not limited to objections to the amount of the Claim and objections based on 11 U.S.C. § 502(d). The Debtor further expressly reserves its right to bring affirmative claims against Freddie Mac via the initiation of an adversary proceeding, including, but not limited to subordination of the Claim pursuant to Section 510(c) of the Bankruptcy Code and claims arising under Chapter 5 of the Bankruptcy Code, state law, and/or common law.

CONCLUSION

For the reasons set forth above, the Debtor respectfully requests that, to the extent it is allowed at all, Freddie Mac's Claim be classified as a TBW Class 8 general unsecured claim. The Debtor further requests Freddie Mac's Claim be disallowed in its entirety unless and until Freddie Mac provides the Debtor with documentation sufficient to fully determine whether the categories and amounts of recovery sought by Freddie Mac are appropriate. Finally, the Debtor requests that Freddie Mac's Claim, if and when it is substantiated by Freddie Mac, be reduced to Freddie Mac's net actual losses.

Dated this 6th day of December, 2010.

/s/ J. David Dantzler, Jr.
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