

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 and Debtors in  
Possession.

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

HOME AMERICA MORTGAGE, INC.'S OPPOSITION TO MOTION  
FOR CONTINUANCE OF HEARING FILED BY JONI COX-TANNER  
AND CHARLES TANNER (CLAIM NO. 2621)

Home America Mortgage, Inc. (“**HAM**”) hereby opposes the (i) Motion for Continuance of Hearing Currently Scheduled for March 4, 2010 [sic], and (ii) Motion to Compel Inspection of Evidence (For Proof of Claim Number 2621) Provided to Said Court by and on Behalf of Creditors [Dkt. No. 2654] (the “**Motion to Continue**”). HAM opposes any continuance of the currently scheduled hearing (the “**Hearing**”) on Debtor’s Objection to Claim of Joni Cox-Tanner and Charles Tanner (Claim No. 2621) [Dkt. No. 2599] (the “**Objection**”), which is set for March 4, 2011, so that HAM, as well as its co-debtors (collectively, “**Debtors**”), may proceed with confirmation of their chapter 11 Plan.<sup>1</sup> In the alternative, HAM asks the Court to disallow the Claim<sup>2</sup> for voting purposes only. As a further alternative, Debtors propose to temporarily allow the Claim as a TBW Class 8 Claim for voting purposes only. Finally, Debtors oppose the motion’s request to “compel inspection of future evidence provided to said court by and on behalf of Creditors.” In support, Debtors shows the Court as follows:

<sup>1</sup> Second Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors, dated November 12, 2010 [Dkt. No. 2143-1] (the “**Plan**”).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the Objection.

1. As stated in the Objection, the Claim does not provide adequate information to determine the basis or proper amount, if any, of the Claim. Indeed, the Claim provides no basis whatsoever for a claim against HAM except for the bald assertion “Truth in Lending.” The Claim provides no further explanation or supporting documentation. The Motion to Continue provides no further explanation suggesting any legitimate claim against HAM.

2. Debtors have reviewed HAM’s books and records for any possible relationship between Claimants and HAM. The evidence will show unequivocally that HAM’s books and records reveal no such relationship. Instead, Debtors’ review of its books and records and the records of its co-debtor, Taylor, Bean & Whitaker Mortgage Corp. (“**TBW**”), shows that TBW was the lender to Claimants, not HAM. Indeed, Claimants’ Uniform Residential Loan Application, the HUD Addendum to the Uniform Residential Loan Application, the HUD1, and the Claimants’ Promissory Note all name TBW as the lender and Note holder. Further, in October, 2008, TBW, not HAM, processed a modification to Claimants’ loan with TBW. In short, Claimants’ loan documents show no relationship between Claimants and HAM, and there is no basis for any claim against HAM.

3. The Hearing is currently set for March 4, 2011, the same date as the Plan confirmation hearing. Any continuance of the Hearing to a date after the date of the confirmation hearing could delay confirmation. The Motion to Continue gives no explanation regarding the need for a continuance other than vague assertions of “prior obligations.” Plan confirmation should not be delayed based on such vague assertions, particularly where the underlying Claim is meritless and unsupported. Debtors have no objection to Claimants participating in the Hearing by telephone if they are unable or unwilling to travel to Jacksonville. Accordingly, the Court should deny the Motion to Continue.

4. In the alternative, the Court should disallow the Claim for voting purposes only. Pursuant to Bankruptcy Code Section 502(a), any claim for which a proof of claim has been filed shall be deemed allowed unless a party in interest objects. 11 U.S.C. § 502(a). Once a party objects, however, the Court has discretion to strike a ballot pursuant to Sections 1126 and 502 of the Bankruptcy Code or estimate the claim for purposes of voting. *See In the Matter of Gardinier, Inc.*, 55 B.R. 601 (Bankr. M.D. Fla. 1985). The Claim is invalid on its face and should be disallowed for voting purposes.

5. As a further alternative, because HAM's and TBW's records reveal that TBW, not HAM, was the lender on Claimants' loan, Debtors propose that the Court temporarily allow the Claim as a TBW Class 8 Claim for voting purposes only and disallow the Claim as a claim against HAM for voting purposes. The foregoing proposal, however, is not an admission by either HAM or TBW that the Claim has any validity whatsoever against either HAM or TBW. HAM and TBW specifically deny any liability whatsoever on the Claim and reserve all rights to object to the validity or amount of the Claim for purposes of distribution.

6. Finally, Debtors object to the Claimants' request to "compel inspection of future evidence provided to said court by and on behalf of Creditors." Debtors do not understand the request and are unable to determine what relief, if any, Claimants seek. The request to compel inspection of "future" evidence is incomprehensible to Debtors, and Debtors are not able to determine the "evidence," if any, to which Claimants refer. Debtors should not be compelled to comply with a request that it, and presumably the Court, is unable to understand.

#### **Reservation of Debtor's Rights**

7. Debtors hereby reserve all rights to object to the Claim on any grounds, including the right to continue to prosecute the Objection and to amend, modify and/or supplement the

Objection as may be necessary. Further, the Debtors reserve the right to object for any reason to any other claim filed by Claimants against any of the Debtors.

**Conclusion**

WHEREFORE, HAM respectfully requests that the Court 1) deny the Motion to Continue or, in the alternative, disallow the claim for voting purposes or, as a further alternative, temporarily allow the claim as a TBW Class 8 Claim for voting purposes only and disallow the Claim as a claim against HAM for voting purposes; 2) deny the request to compel inspection of evidence; and 3) grant such other and further relief as this Court deems just and proper.

Dated: February 21, 2011.

*/s/ Edward J. Peterson*

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