

**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.

TAYLOR, BEAN & WHITAKER
MORTGAGE CORP.,

Objector,

v.

THE FEDERAL HOME LOAN MORTGAGE
CORPORATION,

Claimant.

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

CONTESTED MATTER

**DEBTOR'S OBJECTION TO THE PURPORTED ADMINISTRATIVE PRIORITY
CLASSIFICATION AND AMOUNT OF CLAIM NO 2929 FILED BY
THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

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 administrative priority classification of a portion of Claim No. 2929 (the "Claim"), as well as the amount of the Claim, filed by the U.S. Department of Housing and Urban Development ("HUD"). 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 HUD, as more fully set forth in paragraph 19 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. On July 21, 2011, the Court entered its Order Confirming Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors [Dkt. No. 3420 in the Main Bankruptcy Case] (the “Confirmation Order”), which confirmed the Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors [Dkt. No. 3240] (the “Plan”), including the terms of the Plan Supplement (as defined in the Confirmation Order) and all documents attached to the Plan Supplement [Dkt. No. 3322].

8. The Plan will likely be effective on or about August 10, 2011.

9. To the extent it is an allowed claim, the Plan Proponents – i.e., the Debtor and the Committee – have classified HUD’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 Plan and the Bankruptcy Code.

10. HUD filed its Claim in the amount of \$42,122,128.60, which included a purported “Priority Claim” under 11 U.S.C. § 507(a) in the amount of \$17,934,587.93 (“Unsecured Administrative Priority Claim Amount”). Attachment A to the Claim provides a summary explanation of the amounts claimed.

RELIEF REQUESTED

11. 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 Plan.

I. HUD’S CLAIM IS NOT ENTITLED TO PRIORITY CLASSIFICATION

12. In short, HUD asserts that priority treatment is appropriate for alleged damages it has suffered or monies it has been required to pay since the Petition Date. However, the legal bases for the claim are agreements with or conduct of the Debtor, all of which occurred *prior to* the Petition Date.

13. The only basis for priority treatment asserted by HUD is the timing of its purported damages or payment. It is universally held that a claim based on a pre-petition contract or pre-petition conduct is a pre-petition claim even if the injury does not manifest itself

until after the petition is filed. Jeld-Wen, Inc. v. Van Brunt (In re Grossman's, Inc.) (3rd Cir. 2010); Epstein v. Official Committee of Unsecured Creditors (In re Piper Aircraft Corp.), 58 F.3rd 1573 (11th Cir. 1995).

14. Hence, there is no basis for treating any portion of HUD's Claim as a Priority Claim. To the extent that any of the Unsecured Priority Claim Amount is appropriate for inclusion in HUD's Claim, it is an unsecured Class 8 claim under the Plan.

II. HUD'S CLAIM SHOULD BE DISALLOWED OR REDUCED

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

15. The total amount of HUD's Claim is \$42,122,128.60, comprised of multiple categories.

16. While HUD provides limited information regarding the basis of the Claim, 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 HUD 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. HUD's Claim Appears to Seek the Allowance of Amounts to which it is not Entitled.

17. On its face, it is evident that the HUD Claim seeks recovery for losses that were contingent as of the Petition Date.

18. The Debtor is informed and believes that, with the passage of time, certain of the contingencies did not materialize. Hence, the Claim includes mortgages and/or amounts should be removed from altogether or with respect to which that amounts claimed should be reduced.

NON-WAIVER AND RESERVATION OF RIGHTS

19. 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 HUD via the initiation of a contested matter or 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, HUD's Claim be classified as a TBW Class 8 general unsecured claim. The Debtor further requests HUD's Claim be disallowed in its entirety unless and until HUD provides the Debtor with documentation sufficient to fully determine whether the categories and amounts of recovery sought by HUD are appropriate. Finally, the Debtor requests that HUD's Claim, if and when it is substantiated by HUD, be reduced to HUD's net actual losses.

Dated this 9th day of August, 2011.

[signatures on following page]

/s/ Jeffrey W. Kelley

Jeffrey W. Kelley (GA Bar No. 412296)

jeff.kelley@troutmansanders.com

J. David Dantzler, Jr. (GA Bar No. 205125)

david.dantzler@troutmansanders.com

TROUTMAN SANDERS LLP

600 Peachtree Street, Suite 5200

Atlanta, Georgia 30308

Telephone No: 404-885-3358

Facsimile No.: 404-885-3995

**SPECIAL COUNSEL FOR THE DEBTOR AND
DEBTOR IN POSSESSION**

/s/ Russell M. Blain

Russell M. Blain (Fla. Bar No. 236314)

rblain@srbp.com

Edward J. Peterson (Fla. Bar No. 0014612)

epeterson@srbp.com

STICHTER, RIEDEL, BLAIN & PROSSER, P.A.

110 East Madison Street, Suite 200

Tampa, Florida 33602

Telephone No.: 813-229-0144

Facsimile No.: 813-229-1811

ATTORNEYS FOR DEBTOR