

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

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

CASE NO.: 09-7047-3F1

CASE NO.: 09-10022-3F1

CASE NO.: 09-10023-3F1

Debtors.

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CASSANDRA BOYD,

Claimant,

TAYLOR, BEAN & W HITAKER
MORTGAGE CORP.,

Applicable Debtor

**ORDER DENYING CASSANRA BOYD'S MOTION FOR DEFAULT AND
DENYING WITHOUT PREJUDICE PLAN TRUSTEE'S REQUEST FOR AN
ORDER COMPELLING CASSANDRA BOYD'S PRESENCE AT A DEPOSITION
PURSUANT TO RULE 7030**

This case came before the Court upon Notice Default Objecter's Preliminary Witness List and Exhibits (Doc. 4895) which the Court construes as a Motion for Default (the "Motion for Default") and Plan Trustee's (A) Response to Notices of Default Submitted by Cassandra Boyd-Bey and (B) Request for an Order Compelling Cassandra Boyd-Bey's Presence at a Deposition Pursuant to Rule 7030 of the Federal Rules of Bankruptcy Procedure (the "Response"). The Court finds it appropriate to Deny the Motion for Default and to Deny the Request for an Order Compelling Cassandra Boyd-Bey's Presence at a Deposition Pursuant to Rule 7030 of the Federal Rules of Bankruptcy Procedure.

On May 14, 2010 Ms. Boyd (“Claimant”) filed a proof of claim (Claim No. 1569) in the bankruptcy case. On December 9, 2010 Taylor, Bean & Whitaker Mortgage Corp., the Debtor¹, objected to Claim No. 1569. On January 7, 2011 Claimant filed a response to the Debtor’s objection to Claim No. 1569. On September 23, 2011 the Court entered Order Setting Evidentiary Hearing and Pretrial Schedule (the “Scheduling Order”). The Scheduling Order set a hearing on the objection to claim for March 21, 2012. The Scheduling Order required Claimant to serve Debtor with a witness and exhibit list on or before December 16, 2011 and required Debtor to serve Claimant with a witness and exhibit list no later than January 13, 2012.

The Motion for Default seeks to have the Court enter a default against the Plan Trust, alleging that the Plan Trustee failed to serve his exhibit and witness list upon Claimant on or before January 13, 2012. The Plan Trustee states in the Response that on January 13, 2012 he served Claimant via Federal Express with the requisite witness and exhibit lists at P.O. Box 362074, Decatur, GA 30036, the only address, which she has listed in pleadings filed with the Court. The Plan Trustee also states that he was notified on January 17, 2012 that Federal Express was unable to deliver the Plan Trustee’s witness and exhibit lists, at which point he immediately placed a copy of the witness and exhibit lists into the U.S. mail. The Plan Trustee requests that the Court deny the Motion for Default.

The Plan Trustee also states in the Response that he has attempted to personally serve Claimant with a subpoena to attend a February 24, 2012 deposition in connection

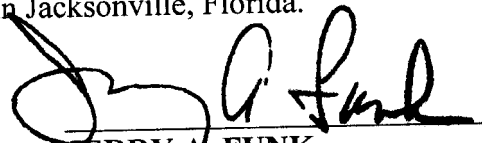
¹ As of August 10, 2011 the effective date of the Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors (Doc. 3240), the Debtors and the Official Committee of Unsecured Creditors have been replaced by the Taylor, Bean & Whitaker Plan Trust. Neil F. Luria, as Plan Trustee, and the Plan Trust have been substituted as the objecting party.

with this matter but has been unable to do so. The Plan Trustee seeks the entry of an order requiring Claimant to appear at a deposition on February 24, 2012 and deeming Claimant properly served with the Rule 7030 Notice of Deposition Duces Tecum. It is

ORDERED:

1. Claimant's Motion for Default is denied.
2. The Plan Trustee's Request for an Order Compelling Claimant to appear at the February 24, 2012 deposition and for an Order deeming Claimant properly served with the Rule 7030 Notice of Deposition Duces Tecum is denied without prejudice to seeking a continuance of the March 21, 2012 hearing and following the deposition procedures set forth in the Federal Rules of Civil Procedure.

DATED this 16 day of February, 2012 in Jacksonville, Florida.


JERRY A. FUNK
United States Bankruptcy Judge