

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

In re:

Chapter 11 Case

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

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

Debtors

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

\_\_\_\_\_  
In re:

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,

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

\_\_\_\_\_  
Applicable Debtor.

**OBJECTION TO CLAIM NO. 474 FILED BY JOHN STAATS**

**IMPORTANT NOTICE TO CREDITOR:  
THIS IS AN OBJECTION TO YOUR CLAIM**

**This objection seeks to disallow your claim. Please read this objection carefully to identify which claim is objected to and what disposition of your claim is recommended.**

**If you disagree with the objection or the recommended treatment, you must file a written response WITHIN 30 DAYS from August 14, 2012, explaining why your claim should be allowed as presently filed, and you must mail a copy to the undersigned attorneys OR YOUR CLAIM MAY BE DISPOSED OF IN ACCORDANCE WITH THE RECOMMENDATION IN THIS OBJECTION.**

**Any written response must include the following: (i) the approved case caption and the title of the objection to which the response is directed; (ii) the name of the claimant and the official claim number; (iii) a description of the basis for the amount of the underlying proof of claim or scheduled claim; (iv) a concise statement setting forth the reasons why the Court should not sustain the objection, including, but not limited to, the specific factual and legal bases upon which the claimant will rely in opposing the objection; and (v) a telephone number, email address and other contact information.**

**Any written response must be filed with the Clerk of the United States Bankruptcy Court, Bryan Simpson United States Courthouse, 300 North Hogan Street, Suite 3-350, Jacksonville, FL 32202 with a copy to Alisa Paige Mason, Esq., Berger Singerman LLP, 1450 Brickell Avenue, Suite 1900, Miami, FL 33131-3453.**

Neil F. Luria, as Plan Trustee (“Plan Trustee”) for the Taylor, Bean & Whitaker Plan Trust<sup>1</sup> (the “Plan Trust”) and on behalf of the Debtor, Taylor, Bean & Whitaker Mortgage Corp. (“Debtor” or “TBW”), by and through undersigned counsel, and pursuant to Federal Rule of Bankruptcy Procedure 3007 and Local Rules 3007-1 and 2002-4, hereby files this objection (the “Objection”) to Claim No. 474 (the “Claim”) filed by John Staats (the “Claimant”) as follows:

| Claimant  | Claim # | Amount       | Basis for Disposition  | Recommended Disposition |
|---|---------|--------------|--|-------------------------|
| John Staats<br>Cynthia A.<br>Majestro, Esq.<br>Mountain State<br>Justice Inc.<br>1031 Quarrier St.<br>Ste. 200<br>Charleston, WV<br>25301 | 474     | \$250,000.00 | <p>The Claimant asserts a claim based on a predatory lending civil suit asserted by the Claimant against TBW, Century Title &amp; Escrow Services, Ltd., and Kristina L. Spader in the Circuit Court for Kanawha County, West Virginia (Case No. 08-C-3407) (the “Adversary”).</p> <p>In the Amended Complaint filed in the Adversary by the Claimant, the Claimant includes a number of counts: unconscionable inducement; fraud, unauthorized practice of law; illegal debt collection; and joint venture, conspiracy, and agency.</p> <p>TBW, before filing its chapter 11 petition on August 24, 2009, filed a Motion to Dismiss the Amended Complaint. As with the Motion to Dismiss the Claimant’s original Complaint, which was amended to add the joint venture, conspiracy and agency count, TBW asserted that the Claimant’s loan with TBW only became unaffordable to them <u>after</u> they obtained the loan, not at the time they took it out. The documents provided to the Claimant clearly indicated the purchase price of the home and the loan amounts. In addition, to the extent there was any misconduct in connection with the origination of the</p> | Disallow Claim No. 474. |

<sup>1</sup> As of the effective date of the *Third Amended and Restated Joint Plan of Liquidation of the Debtors and the Official Committee of Unsecured Creditors* [ECF# 3240] (the “Plan”), August 10, 2011, the Debtors and the Official Committee of Unsecured Creditors have been replaced, for the part and according to the terms of the Plan, by the Taylor, Bean & Whitaker Plan Trust (the “Plan Trust”).

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|  |  |  | <p>Claimant's loan, such actions can clearly be attributed to the mortgage broker involved in the transaction who is mysteriously absent from the defendant list in the Adversary. The Plan Trustee hereby incorporates all assertions made in the pleadings filed by TBW in the Adversary as a defense to the Claim presently being asserted against the TBW estate.</p> <p>In the Claim, the Claimant fails to substantiate the amount he claims against the Debtor's estate. The note attached to the Claim indicates that the principal of the Claimant's loan was only \$90,783.00 and that he seeks certain damages via the Adversary, but there is no support provided for the \$250,000.00 asserted claim.</p> <p>The Plan Trustee further objects to the Claim on the basis that the Plan Trust is entitled to set off the amounts still owing on the Claimant's loan from the amounts asserted in the Claim.</p> <p>Finally, the Adversary was actually dismissed on April 11, 2012 on the basis that there was no activity in the Adversary for a period of more than one year. Accordingly, the action upon which the Claimant bases its claim is no longer a pending adversary against TBW and the Claimant should not be entitled to recover from the Debtor's estate.</p> |  |
|--|--|--|--|--|

The Plan Trustee reserves the right to amend this objection, to object on additional grounds not set forth herein, and/or to object to any further claims not presently set forth herein. By filing this Objection, the Plan Trustee does not waive the right to file further objections or to pursue avoidance actions or other causes of action.

**WHEREFORE**, the Plan Trustee respectfully requests that the Court (1) dispose of the claim set forth herein, as recommended by the Plan Trustee, on the grounds set forth in this Objection, without prejudice to the rights of the Plan Trustee or other interested parties to file further objections or to pursue avoidance actions or other causes of action, and (2) grant such other and

further relief as is just and appropriate.

**I HEREBY CERTIFY** that I am admitted to the Bar of the United States District Court for the Middle District of Florida and I am in compliance with the additional qualifications to practice in this court set forth in Local Rule 2090-1(a).

Dated: August 10, 2012.

Respectfully submitted,

BERGER SINGERMAN LLP  
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Taylor, Bean & Whitaker Plan Trust*  
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By: /s/ Alisa Paige Mason  
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