

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. 299 FILED BY JEFF A. MOYER, CHAPTER 7 TRUSTEE
FOR PAMELA WELLS WDMI #08-07591-SWD**

**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 Trust¹ (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. 299 (the “Claim”) filed by Jeff A. Moyer, Chapter 7 Trustee for Pamela Wells WDMI #08-07591-SWD (the “Claimant”) as follows:

Claimant	Claim #	Amount	Basis for Disposition	Recommended Disposition
Jeff A. Moyer, Chapter 7 Trustee for Pamela Wells, WDMI #08- 07591-SWD PO BOX 306 John T Piggins / Miller Johnson Grand Rapids, MI 49501-0306	299	\$196,000.00	The Claimant asserts an unsecured claim for “unperfected mortgage” and attaches a Complaint filed on June 10, 2009 seeking to avoid and recover the recordation of a mortgage within 90 days of Pamela Wells’ bankruptcy filing, as a preferential or fraudulent transfer (Adv. Pro. Case No.: 09-80267). The Debtor responded to the Complaint and asserted a number of defenses and affirmative defenses thereto. The proceeding was stayed due to the Debtor’s bankruptcy filing. Thereafter, the Claimant sought leave to amend the Complaint to add Bank of America and MERS as defendants to the adversary proceeding. The Bankruptcy Court denied the motion and entered an order conditionally dismissing the adversary proceeding without prejudice unless the Claimant filed a notice advising that relief from the automatic stay had been obtained from this Bankruptcy Court. No stay relief was sought or obtained by the Claimant and judgment was entered dismissing the proceeding without prejudice.	Disallow Claim No. 299.

¹ 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 most part and according to the terms of the Plan, by the Taylor, Bean & Whitaker Plan Trust (the “Plan Trust”).

			<p>The Claimant pursued a separate adversary proceeding against Bank of America and Mortgage Electronic Registration Systems, Inc. (“MERS”) for the same claims, which was ultimately settled (Adv. Pro. Case No.: 10-80562). The Debtor has no continuing interest in the Claimant’s loan and the Claimant recently filed a notice of abandonment of any interest in the home underlying the Claim.</p> <p>This Claim should be disallowed because the identical claims asserted against TBW were pursued against Bank of America and MERS and a resolution was obtained through settlement. The Claimant should not be entitled to an additional recovery against the Debtor on the same claims.</p> <p>Further, the claims asserted by the Claimant are subject to statutory and equitable defenses typical in fraudulent conveyance and preferential transfer cases, which would bar recovery on the Claim. These defenses are more particularly set forth in the responsive pleadings and answers set forth by the Debtor, Bank of America and MERS in the respective adversary proceedings. The Plan Trustee hereby incorporates all defenses set forth in the litigation related to the Claim.</p> <p>Further, the Debtor has no further interest in the loan to date. The Claimant’s abandonment of any interest in the property which served as collateral for the underlying loan at issue further bars any recovery in connection with the property. Finally, the Claim was improperly asserted by the Claimant after the period for commencement of an action by a trustee under 11 U.S.C. § 546(a), and therefore recovery thereon is barred.</p>	
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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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