

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. 3013 FILED BY ALICE DERFLINGER,
WAYNE DERFLINGER, SR., AND MARY MASON**

**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. 3013 (the “Claim”) filed by Alice Derflinger, Wayne Derflinger, Sr., and Mary Mason (collectively, the “Claimants”) as follows:

Claimant	Claim #	Amount	Basis for Disposition	Recommended Disposition
Alice Derflinger, Wayne Derflinger, Sr., and Mary Mason C/O Aaron Amore, ESQ 211 Washington St. Charles Town, WV 25414	3013	\$100,000.00	The Claimants assert a claim against TBW related to alleged violations of state and federal law. In support of their Claim, the Claimants attach (a) a Notice of Removal of a state court action brought by the Claimants against TBW and other defendants and (b) the original complaint filed by the Claimants in the Circuit Court of Berkeley County, West Virginia against TBW, Freedom Title Services, and American Mortgage Group, Inc. (Case No. 07-c-1410). The complaint (removed to the U.S. District Court for the Northern District of West Virginia, Case No. 3:08-cv-00015-JPB) contains the following counts: (a) Claim for Breach of Duty of Good Faith and Fair Dealing; (b) Illegal Loan Origination/Closing; (c) Predatory Lending; (d) Illegal Mortgage Solicitation-Broker; (e) Breach of Fiduciary Duty-Broker; (f) Joint Venture, Conspiracy, and Agency; and (g) Consumer Credit Action Violations. On September 2, 2009, the District Court stayed the Claimants’ action because of the TBW Chapter 11 bankruptcy. Although undisclosed in the Claim, TBW asserted a counterclaim against the Claimants on March 31,	Disallow Claim No. 3013.

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>2008 for approximately \$211,131.88 plus certain fees and costs on the basis that as of March 28, 2008, Alice Derflinger (one of the Claimants and the borrower on the notes in favor of TBW) had been in default since November 2007 and owed \$24,237.65 in past due loan payments. TBW also asserted a cross-claim [ECF# #70] on November 13, 2008 against co-defendants Freedom Title Services, American Mortgage Group, Inc. d/b/a Zen Loans for their failure to properly secure and close the loans at issue and a third party complaint against Charles L. Black, Mr., Paul K. Barnett, III, Jennifer Canby, and Robert Bryson [ECF# #71].</p> <p>Finally, TBW filed a Motion for Summary Judgment in the Alternative to Enforce Settlement Agreement [ECF# #121] on the basis that counsel for TBW accepted the Claimants' counteroffer to lift the <i>lis pendens</i> filed by the Claimants and permit an uncontested foreclosure of the property at issue.</p> <p>The attorneys for the Claimants (Plaintiffs in the aforementioned adversary) filed a Motion to Dismiss Case No. 3:08-cv-00015-JPB on May 19, 2011 [ECF# 158] and asserted that "the Plaintiffs believe it is not an economic efficient use of the resources of the parties or this Court to proceed further with this litigation."</p> <p>First, the Plan Trustee objects to the Claim for every reason set forth in the pleadings filed by TBW in Case No. 3:08-cv-00015-JPB.</p> <p>Second, and upon information and belief, one of the loans addressed in the Claim is being serviced by Roundpoint (a nondebtor entity) for TBW and is presently in default. Accordingly, the Plan Trustee objects to the Claim to the extent that it does not take into consideration any amounts that the Claimants owe TBW in connection with the second mortgage.</p> <p>Third, the Claimants provide no support in connection with their calculation of the alleged claim owed by TBW. The Claimants' complaint, attached to the Claim, simply requests a declaration that the defendants violated certain West Virginia Code sections, civil penalty of \$4,230, actual and punitive damages, and certain fees and costs. However, the Claimants do not provide any</p>	
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			<p>explanation as to what the \$100,000 claim consists of, and the only actual amount listed in the complaint is the civil penalty amount for \$4,230.</p> <p>Based on the foregoing, the Plan Trustee submits that the Claim should be disallowed.</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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