

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

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In re:

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,

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

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

**OBJECTION TO CLAIM NO. 3439 FILED BY MILLIE ESPOSITO**

**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. 3439 (the “Claim”) filed by Millie Esposito (“the Claimant”) as follows:

<b>Claimant</b>	<b>Claim #</b>	<b>Amount</b>	<b>Basis for Disposition</b>	<b>Recommended Disposition</b>
Millie Esposito c/o Elizabeth Ashley, Esq. 1880 E Warm Springs Rd , #130 Las Vegas, NV 89119	3439	\$159,500.00	<p>The Claimant asserts an unsecured claim for “negligence / fraud in lending.” The Claimant fails to attach a single supporting document to its Claim.</p> <p>The Debtor believes that the Claim relates to post-petition litigation originally filed in Nevada state court by the Claimant and now pending after removal in the District Court for Clark County, Nevada (Case No. 2:11-CV-00958-PMP-RJJ) against Marie Heilberg, Patricia Ann Bascom, Lawyers Title of Nevada, Inc., Paula L. Divalvio, National Alliance Title Company, the Debtor, SunTrust Mortgage, Inc., and Federal Home Loan Mortgage Corporation. The Complaint alleged that the Claimant and her husband acquired a home in Nevada for cash in 1993. While the Claimant’s daughter lived in her home, the daughter allegedly fraudulently obtained loans from SunTrust and the Debtor which were secured by the property at issue in the Claim. The Claimant claims no knowledge of the aforementioned loans, no receipt of loan proceeds and denies she executed any of the loan documents. The home was foreclosed and title was taken by Freddie Mac. Freddie Mac moved to evict her from the premises. The only counts asserted against the Debtor are count nine for conversion, count ten for negligence, count eleven</p>	Disallow Claim No. 3439

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

			<p>for negligent misrepresentation and count twelve for intentional misrepresentation. The Claimant alleged that the Debtor converted her interest in the property through a fraudulent financing transaction, the Debtor negligently originated the loan, and the Debtor made negligent or intentional misrepresentations to Freddie Mac regarding the legitimacy of the loan when it sold it to Freddie Mac. After adjudications of Motions to Dismiss, the Complaint was re-filed solely against Freddie Mac. Freddie Mac answered the lawsuit and asserted a third-party claim against the Debtor for indemnification and contribution which appears never to have been served on the Debtor. On June 22, 2012, the District Court in Nevada entered judgment in favor of Freddie Mac, declaring two forged deeds of trust void <i>ab initio</i> and prohibiting Freddie Mac from attempting to evict the Claimant.</p> <p>Accordingly, the Plan Trustee submits that because the Claimant appears to be able to keep her home and the deeds are declared void, she has no further claim against the Debtor. She has not sufficiently explained whether the Claim consists of damages solely, and how she has suffered damages, to the extent she has, as a result of the foreclosure.</p> <p>Furthermore, to the extent that the Claimant has received monetary or other relief from other parties, the Claim should be reduced accordingly</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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