

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 NUMBERS 3061 AND 3063 FILED BY
BANK OF AMERICA, N.A. AS INDENTURE TRUSTEE, COLLATERAL
AGENT, CUSTODIAN AND DEPOSITORY AGENT FOR OCALA FUNDING, LLC**

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

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

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 its 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 reply 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 Rule 3007-1, hereby files this objection (the “Objection”) to Claim Numbers 3061 and 3063 (collectively, the “Claims”) filed by Bank of America, N.A. (the “Claimant”) as follows:

Background

1. The Claimant filed Claim No. 3061 on June 15, 2010 for damages allegedly arising from the Claimant’s transactions with Ocala Funding, LLC (“Ocala Funding”) and describes the claim as contingent and unliquidated. The Claimant does not file Claim No. 3061 on its own account, but as the replacement fiduciary for LaSalle Bank, for the benefit of Deutsche Bank and BNP Paribas. The Claimant also claims that TBW contractually assumed liability to the fiduciary (the Claimant) for the Claimant’s own losses.

2. The Claimant filed Claim No. 3063 on June 15, 2010 and claimed “at least \$1,750,000,000.00” against the estate of the Debtor.² The Claimant states in Claim No. 3063 that the amount owed by TBW is “at least” the \$1,750,000,000 asserted because some portions of its claim are subject to trebling and others are merely contingent and unliquidated. Claim No. 3063 is also related to the Claimant’s transactions with Ocala Funding.

3. However, the Claims have been on file for over two years since the filing of the Claims without any further amendments to the Claims to demonstrate the Claimant’s efforts to

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 “TBW Plan”), August 10, 2011, the Debtors and the Official Committee of Unsecured Creditors have been replaced, in most part and according to the terms of the Plan, by the Taylor, Bean & Whitaker Plan Trust (the “Plan Trust”).

² The Plan Trustee previously filed an Objection to Claim No. 3063 [ECF# 5007] on March 8, 2012 on the basis that no portion of Claim No. 3063 should be afforded priority under section 507(a)(2) of the Bankruptcy Code. The deadline to respond to this Objection has been extended by agreed motions.

further liquidate the Claims. To the Plan Trustee's knowledge, no amendments have been filed to the Claims and the Claimant has not provided any other updated claim data relating to the Claims.

4. On June 21, 2011, the Bankruptcy Court entered an Order [ECF# 3419] approving a settlement agreement between TBW, the Official Committee of Unsecured Creditors, and the Claimant (the "BOA Settlement Agreement"), whereby Ocala Funding was deemed to hold an allowed TBW Class 8 general unsecured claim in the amount of \$1,606,084,009, subject to possible increases (the "Ocala Funding Claim") (Claim No. 3442).

5. The BOA Settlement Agreement acknowledges the duplicity between the Ocala Funding Claim and a number of other claims filed by the Claimant, BNP Paribas Mortgage Corporation ("BNP"), and Deutsche Bank AG (London Branch) ("Deutsche Bank"). Specifically, the BOA Settlement Agreement provides in Article I, Section 1.1, that to the extent that any portion of the Deutsche Bank Claims, BNP Claims, or the Claimant's Claims, as those terms are defined in the BOA Settlement Agreement, "are ultimately deemed allowed claims that include duplication of amounts compromising the Ocala Funding Allowed Claim...the Ocala Funding Allowed Claim will be reduced in corresponding amounts so as to eliminate such duplication."

6. Recently, Ocala Funding, LLC ("Ocala Funding") filed a voluntary petition under Chapter 11. TBW is the sole member and manager of Ocala Funding. In connection with the Ocala Funding bankruptcy, Ocala Funding, the Claimant, BNP, the Plan Trust, Deutsche Bank, the Federal Deposit Insurance Corporation as receiver for Colonial Bank, and the Federal Deposit Insurance Corporation as receiver for Platinum Community Bank, signed a Restructuring and Plan Support Agreement (the "RSA").

7. The RSA requires the Plan Trust and Ocala Funding to seek simultaneous Bankruptcy Court approval of an increase in the amount of the Ocala Funding Claim from \$1,606,084,009 to \$1,750,000.00 on account of reconciling duplicative claims, which includes Claim Numbers 3061 and Claim No. 3063 filed by the Claimant, Claim No. 2927 filed by Deutsche Bank, and Claim Numbers 2609 and 2610 filed by BNP, all filed against the TBW estate. In addition, the RSA notes that the other duplicative claims of the Ocala Funding Claim include Claim No. 1308 filed by the Claimant against the estate of REO Specialists, LLC and Claim No. 1379 filed by the Claimant against Home America Mortgage Corp³.

8. As a result of the RSA, Claim Numbers 3061, 3063 and other duplicative claims will be withdrawn or extinguished upon the Effective Date of the Ocala Funding Plan, as those terms are defined in the RSA.

Basis for Objecting

9. The Plan Trustee objects to Claim Numbers 3061 and 3063 on the basis that the Claims are duplicative of the Ocala Funding Claim, as acknowledged by Claimant in the RSA and the BOA Settlement Agreement. The Claimant should not be allowed to recover amounts from the Debtor's estate that are deemed allowed as a claim held by Ocala Funding against TBW.

10. The Plan Trustee further objects to Claim Numbers 3061 and 3063 on the basis that they are duplicative of each other. The Claims are also in part duplicative of Claim No. 2927 filed by Deutsche Bank against TBW's estate, and Claim Numbers 2609 and 2610 filed by BNP against TBW's estate. Again, the basis for the BOA Settlement Agreement, the amounts claimed in each of the Claims by the Claimant, and the BOA Settlement Agreement all

³ Claim Numbers 1379 and 1380 were disallowed pursuant to the Court's Order [ECF# 3626].

substantiate the Plan Trustee's position that Claim Numbers 3061 and 3063 are duplicative of each other and claims filed by Deutsche Bank and BNP.

11. The Plan Trustee further objects to Claim Numbers 3061 and 3063 on the basis that the Claimant lacks standing to file the claims because the losses, if any, were suffered in the first instance by Ocala Funding itself, not the Claimant.

12. The RSA provides that the claims mentioned in paragraph 9 and 10 of this Objection will be withdrawn or extinguished upon the Effective Date of the Ocala Funding Plan, as those terms are defined in the RSA.

13. In an abundance of caution and in the event that one or more of the events that could lead to the termination of the RSA (see Section 11 of the RSA) occur, the Plan Trustee objects to Claim No. 3061 and 3063 on the foregoing bases.

14. 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 claims 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

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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.

Dated: August 10, 2012.

Respectfully submitted,
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Taylor, Bean & Whitaker Plan Trust*
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