

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. 2643 FILED BY BANC OF AMERICA SECURITIES

**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 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 Rules 3007-1 and 2002-4, hereby files this objection (the “Objection”) to Claim No. 2643 (the “Claim”) filed by Banc of America Securities (the “Claimant”) as follows:

Claimant	Claim #	Amount	Basis for Disposition	Recommended Disposition
Banc of America Securities Attn: Agency Cmo Trading Desk (Michael Miller) & Legal One Bryant Park New York, NY 10036	2643	Contingent, unliquidated	<p>The Claimant asserts a contingent, unliquidated claim against Taylor, Bean & Whitaker Mortgage Corp. (“the Debtor” or “TBW”) related to potential claims under a Master Securities Forwarding Transactions Agreement (the “MSFTA”). The Claimant states in the Claim that it has suffered losses due to an alleged decline in the value of securities sold to the Claimant under the MSFTA and may have further losses relating to certain TBW conduct.</p> <p>The Claim has been on file since June 14, 2010, but the Claimant has made no effort to amend its claim to provide supporting data for amounts allegedly owing, or to provide a liquidated claim amount. The fact that the Debtor’s books and records do not support any claim owing to the Claimant, the Claimant has failed to timely provide any supporting evidence, other than the MSFTA, and the Claimant’s failure to timely liquidate its claims against TBW support the disallowance of the Claim.</p> <p>Further, the Claimant is the defendant in an adversary instituted by the former Official Committee of Unsecured Creditors on behalf of TBW under section 542 of the Bankruptcy Code (Case No. 3:10-0096-JAF) (the “Turnover Adversary”). In the Turnover Adversary, the plaintiff (now the Plan Trustee) asserted that the Claimant failed to turn over funds that were</p>	Disallow Claim No. 2643.

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

			<p>property of TBW's estate that were held in a brokerage account in connection with the MSFTA.</p> <p>Under section 502(d), "the court shall disallow any claim of any entity from which property is recoverable under section 542...." Accordingly, the Plan Trustee submits that the Claim should be disallowed because the Claimant currently holds property of the Debtor's estate (the funds in the brokerage account described in the pleadings filed in the Turnover Adversary) that is recoverable under section 502(d).</p> <p>To the extent that this Claim seeks amounts that the Claimant also seeks in the Turnover Adversary, including but not limited to setoff amounts, the Plan Trustee submits that the Claimant should be estopped from both recovering money from the estate in connection with the MSFTA and also setting off the identical amounts in order to reduce the Claimant's liability in the Turnover Adversary.</p> <p>Finally, the Plan Trustee hereby incorporates all claims asserted against the Claimant in the Turnover Adversary, including but not limited to set-off to the extent that the Claimant seeks a claim against the TBW estate for amounts less than the value of the estate property improperly held by the Claimant.</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/ James D. Gassenheimer
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