

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. 3313 FILED BY COMFORT FRIDDLE

**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. 3313 (the “Claim”) filed by the Comfort Friddle (the “Claimant”) as follows:

Claimant	Claim #	Amount	Basis for Disposition	Recommended Disposition
Comfort Friddle c/o Julie Bracker Bothwell Bracker & Vann 304 Macy Drive Roswell, GA 30076	3313	\$278,842.08	<p>The Claimant asserts a claim against the Debtor’s estate for damages suffered as a result of an allegedly retaliatory discharge action under the False Claims Act (31 U.S.C. § 3730(h)).</p> <p>The Claimant fails to attach a single supporting document or explanation for the Claim, including but not limited to any support for the calculation of damages allegedly suffered by the Claimant or any breakdown of each of the components of the Claim, since it appears that the Claim consists of interest, damages relating to the allegedly retaliatory discharge, and/or other items.</p> <p>The Plan Trustee is aware of a lawsuit (the “Complaint”) filed by the law firm of Bothwell Bracker P.C. on behalf of the United States, the Claimant, and Stephanie Kennedy on December 12, 2006 against TBW, HAM and various other individuals (collectively, the “Defendants”) in the U.S. District Court for the Northern District of Georgia, Atlanta Division (Case No. 06-CV-3023) (the “Qui Tam Adversary”). Count I of the Complaint seeks an award of treble damages and imposition of civil money penalties against the Defendants for violations of section 3729 of the False Claims Act, 31 U.S.C. § 3729. Counts II, III and IV of the Complaint seek an award of damages against the Defendants on behalf of the Claimant and Kennedy in their individual capacities for the Defendants having allegedly retaliated against the</p>	Disallow Claim No. 3313.

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”).

			<p>Claimant and Kennedy in violation of the whistleblower provisions of the False Claims Act set forth under 31 U.S.C. § 3730(h), and on behalf of Kennedy in her individual capacity for the Defendants’ alleged breach of the terms of her contract of employment. The Qui Tam Adversary was stayed as to TBW and HAM because of their respective bankruptcies, but a First Amended Complaint [ECF# 114] was filed on April 23, 2012 against all defendants.</p> <p>The Claim is almost identical² to Claim No. 3304 filed by the Claimant against the estate of TBW. As a result and because of the Claimant’s failure to attach any explanation or supporting document to the Claim, the Plan Trustee objects to the Claim on all the same grounds as he objected to Claim No. 3304. The Claimant asserts a claim for interest in the amount of \$53,321.25 at an 18% interest rate. The Plan Trustee has reviewed 31 U.S.C. § 3730(h) and has not located any provision providing the Claimant interest at an 18% rate. Further, the Claimant is not entitled to recover interest on a general unsecured claim and the Plan Trustee objects to the Claim on the basis that it includes interest.</p> <p>To the extent the Claim includes any claims for penalties, the Plan Trustee objects to the classification of the Claim as a general unsecured claim on the basis that all “Subordinated Claims (including Claims for fines, penalties, forfeitures and punitive damages, as described in § 726(a)(4)...” should be classified as HAM Class 4, TBW Class 10 or REO Class 4.</p> <p>At all times, the Claimant was an employee of HAM, not TBW. Therefore, the Plan Trustee objects to the Claim to the extent it seeks payment of back pay from the TBW estate, since the Claimant was a HAM employee.</p> <p>With regards to some of the allegations made in Complaint itself, which appear to provide a basis for the assertion of the Claim, the Claimant asserts that she witnessed “breathhtaking” fraud in early 2005, but the Qui Tam Adversary was not filed until the very end of 2006. Accordingly, the Plan Trustee</p>
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² Claim No. 3314 asserts a claim \$2.00 more than Claim No. 3304.

			<p>submits that the Claimant should be estopped from asserting the vast majority of the claims asserted in the Qui Tam Adversary on the basis that the Claimant continued to be a participant in the alleged fraud. The Plan Trustee hereby reserves any arguments or other defenses it could assert in the Qui Tam Adversary to the extent the matter was not stayed.</p> <p>Finally, the Plan Trustee objects to this Claim on the basis that it appears to be duplicative of both Claim No. 3304 filed by the Claimant against the TBW estate and of the claims filed by the U.S. Department of Justice on behalf of the U.S. Department of Housing and Urban Development (Claim Nos. 3306 and 3307).</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.

[INTENTIONALLY LEFT BLANK]

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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