

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE DIVISION

**FILED**  
JACKSONVILLE, FLORIDA  
OCT 12 2012  
CLERK, U. S. BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA

In Re:	) Chapter 11
	)
TAYLOR, BEAN AND WHITAKER MORTGAGE CORP	) Case No. 3:09-bk-07047-JAF
REO SPECIALISTS, LLC, and	) Case No. 3:09-bk-100022-JAF
HOME AMERICA MORTGAGE, INC.	) Case No. 3:09-bk-10023-JAF
	)
	) Jointly Administered Under
Debtors	) Case No. 3:09-bk-07047
	)
	)
<u>APPLICABLE DEBTOR</u>	)
	)
TAYLOR, BEAN AND WHITAKER MORTGAGE CORP	)
(Case No. 3:09-bk-07047-JAF)	)
	)
	)

**(i)CLAIMANTS CHARLES TANNER AND JONI COX-TANNER'S REQUEST FOR FEDERAL BANKRUPTCY JUDICIAL RULING CLARIFICATION OF (THE) LETTER SENT BY ALISA PAIGE MASON (OF BERGER SINGERMAN) ON BEHALF OF NEIL F. LURIA, PLAN TRUSTEE REGARDING SCHEDULING HEARING ON NOVEMBER 16, 2012 AND (ii) REQUEST TO PROVIDE PERTINENT INFORMATION TO SAID COURT, AS WELL AS (ANY/ALL) CREDITORS, AFFECTED TAX PAYERS AND THE PLAN TRUSTEE, NEIL F. LURIA AND NAVIGANT CONSULTING (ACTING AS AN INVESTIGATIVE FIRM REPRESENTING THE PUBLIC SECTOR) PERTAINING TO THE ABOVE REFERENCED CASES REGARDING PAUL S. SINGERMAN AND BERGER SINGERMAN RESPECTUFLLY, AND (iii) DEMAND FOR JUDICIAL EXPLANATION TO QUESTIONS PERTAINING TO SAID BANKRUPTCY COURT TO CLAIMANTS.**

**TO THE HONORABLE JUDGE JERRY A. FUNK, PRESIDING JUDGE IN ABOVE REFERENCED BANKRUPTCY CASE(S):**

**WHEREFORE** Claimant(s) Charles Tanner and Joni Cox-Tanner hereby files this Pleading of Request For Federal Bankruptcy Ruling Clarification pertaining to a (the) letter mailed on 28 September 2012, by Alisa Paige Mason on behalf of the Plan Trustee, Neil F. Luria pertaining to Scheduling Conference Hearing on November 16, 2012. Attached is **“Exhibit A”** or the Letter sent on behalf of Plan Trustee, Neil F. Luria by his representing firm Berger Singerman, who once was Counsel for the Official Unsecured Creditor’s Committee and now has been place as Legal Counsel on behalf of the Plan Trust, in which one questions by what authority this would be allowed in a Bankruptcy Court with numerous Claimants and Middle-Class Taxpayers who were not represented fairly by the Official Unsecured Creditor’s Committee in said Court, who now represent the Plan Trustee, Neil F. Luria, while Creditors and have been spending time, money and effort to obtain justice pertaining to their “Claim(s)”.

The essence of nomocracy, the rule of law, is limitation of the discretion of officials, and providing a process by which errors or abuse of discretion can be corrected. Some discretion is unavoidable, because law cannot anticipate every eventuality or how to decide which law may apply to a given situation. What guidance the law cannot provide is supposed to be provided by standard principles of justice and due process, reason, and the facts of each case. Ideally, officials should be mutually consistent and interchangeable, making similar decisions in similar cases, so that no one can gain an undue advantage by choosing the official or exercising undue influence on the official or on the process he operates. We trust officials to exercise such discretion as they have with wisdom, justice, and competence.

Within the public sector, discretion can be exercised by legislative, executive, or judicial officials. Within the private sector, discretion may be exercised by private officials, such as

agents, trustees or corporate officers, who are in principle subject to the supervision of the courts. The focus here is on judicial discretion, and the abuse of it. The first major check on the discretion of judges was the jury. A judge, holding office over the course of multiple cases, and selected by appointment or election, is susceptible to undue influence. A jury, chosen by sortition, or lot, for a single case, just before the case, is less likely to be corrupted, and having multiple jurors render verdicts collectively provides a check by each on the others. What they might lack in knowledge of the law is offset by their connection to the nonlegal environment in which most people subject to the law must operate.

*Stare decisis* is the doctrine according to which a judge in a current case treats decisions in past similar cases as authoritative precedents, and refuses to make the decision in a way that departs from such precedents, regarding all of them as correctly decided. There is a place for giving weight to precedents, especially in civil cases and matters of equity, and to clarify ambiguities in the black letter law, but it is an abuse of judicial discretion to treat precedents as though they are law, equal or superior to black letter law, especially when that black letter law is a written constitution. Only the edict, the finding and the order, are law in a judicial decision, and only for the parties involved. The opinion concerning how the decision was reached may be persuasive on its merits, and indicative of how the same court might decide a similar case, but it is dictum, or commentary, not law, and it is an abuse of judicial discretion to fail to exhaust textual analysis and legislative history before considering precedent, and making sure that the chain of precedents has not wandered away from the bounds of the black letter law.

*Pro se* litigants: Instead of accommodating to the lack of legal knowledge of lay persons

who either cannot afford a lawyer, or who don't trust lawyers who are subject to the control of the courts, judges and court personnel systematically discriminate against litigants who appear *pro se* or *in propria persona*, often dismissing their petitions or motions out of hand, regardless of their merits. That is abuse of judicial discretion

A conflict of interest is of no deference to the continued partnerships, interests, relationships outside and inside of said Court or for any possible violation which could be alleged and warrant investigation to allow fair justice for all participants of Court.

On January 7, 2010, Pro Se Creditor, Sandy Smith appeared telephonically to represent herself as well as other Claimants regarding the alleged violations of Lender Processing Services or LPS, The Official Committee for the Unsecured Creditor's Committee Chair. At that time and continuing is an ongoing investigation(s) of LPS and their Company DocX by the Florida Attorney General's Office, as well as, the notorious case involving the death of Tracey L. Lawrence, a former employee of LPS who was found dead on the day she was to testify against the Berger Singerman represented litigant LPS. Wherefore it is apparent the allegations of misconduct and possible illegal actions of the above mentioned individuals has not jeopardized their ability to serve themselves with unimaginable amounts of monetary gain from this Court and Plan Trust..

Pertinent information was provided to said Court and Judge to enable an action to revoke LPS from the Committee, however, notwithstanding, the Court allowed LPS to represent all Unsecured Claimants.

Paul S. Singerman, of Berger Singerman was hired to represent the Official Committee for Unsecured Creditors by Lender Processing Services, prior to being involved with other

alleged bankruptcy misconduct. Attached is **“Exhibit B”** the Office of Thrift Supervision Order No: SE-10-046, whereby on page 2, 3(a) the following statement is made:

“The Association with an ineffective Bank Secrecy Act/Anti-Money Laundering compliance program”. The filing of said OTS Order was against Gibraltar Private Bank and Trust Company, “A Financial Wealth Management Corporation”, Coral Gables, Florida, OTS Docket No. 08007. The demise of the Gibraltar Bank and Trust Company, fell upon the “Scott Rothstein conviction” for money laundering by his firm Rothstein, Rosenfeldt and Adler, PA, and was a partner in Gibraltar Bank with Mr. Paul S. Singerman, who was also appointed Trustee in the 2010 Bankruptcy case of Scott Rothstein’s Company as well as his own self served ownership in The Gibraltar Bank and Trust Company.

This information is given as a good faith effort to provide additional pertinent proof of misconduct for the Honorable Judge Jerry A. Funk, presiding Judge. The following Judicial Questions which are demanded by Creditors to be requested and answered by said Court are as follows:

1. Creditors received notice to appear in said Court on November 16, 2012, however, Plan Trustee, Neil Luria requested a letter to be sent on his behalf by Alisa Paige Mason of Berger Singerman explaining that Creditors do not need to appear period. How can the Plan Trustee override said Court order?

2. How has this Bankruptcy Case been allowed to continue without a U.S. Trustee who oversees the Trust and the amount and approval of the Plan Trustee of Attorney Fees which were paid depleting the Trust leaving the Unsecured Creditors without an opportunity to receive their due amounts of claim(s)?

3. Why, after many diligent requests by the Creditors for a de novo review of said Bankruptcy Case, (and proof that a de novo review was necessary) weren't any of those requests investigated or questioned by The Honorable Judge Jerry Funk or The Judicial Council of the 11<sup>th</sup> Circuit of the Atlanta, Georgia?

4. Who, by name, was responsible for the Unsecured Creditors demise in said Bankruptcy Court?

5. Why will said Court not take Claimants statements, motions, requests, concerns, etc. for face value and provide a fair opportunity to come before the said Court to represent evidence pertaining to their Claims?

6. How with the magnitude of fraud that was perpetrated in said Court can the Honorable Judge Jerry A. Funk ignore the fact that Claimants and Middle-Class Homeowners were not in fact injured by these predicate acts and allow Claims to be heard in Court?

In closing, Creditors request and Demand answers to the above questions in which resulted in incestuous relationships and cover-ups by the Plan Trustee in said Court.. Creditors also request that a formal explanation be given in regards to the Scheduling Conference Hearing and conflicting letter sent on September 28, 2012 to Creditors by Plan Trustee Legal Council Representative of Berger Singerman.

**“EXHIBIT A”**

Alisa Paige Mason  
(305) 714-4345  
pmason@bergersingerman.com

September 28, 2012

**VIA U.S. MAIL**

Charles and Joni Tanner  
2403 Terrace Ave.  
Midland, TX 79705

Re: In re Taylor Bean & Whitaker Mortgage Corp., et al.  
Case No.: 3:09-bk-07047-JAF - Claim No. 3352 and 3500

Dear Mr. and Mrs. Tanner:

My firm represents the Neil F. Luria, the Plan Trustee for the Taylor, Bean & Whitaker Mortgage Plan Trust. We have filed a number of objections to claims presently asserted against the estate of Taylor, Bean & Whitaker Mortgage Corp. (one of the Debtors being jointly administered under Case No. 3:09-bk-07047-JAF). If you are receiving this letter, it is because the Plan Trustee filed an objection to your claim, you filed a response on a *pro se* basis (meaning you are not represented by an attorney), and the Court has set the matter for a Scheduling Conference.

The purpose of this letter is to provide a further explanation to you regarding the upcoming Scheduling Conference on the response you filed to the Plan Trustee's objection to your claim. The purpose of the Scheduling Conference is to discuss setting the matter for a final evidentiary hearing if the matter has not been resolved by you and the Plan Trustee in advance. By now, you will have received a Notice in the mail from the Court or BMC Group (the claims and noticing agent in this bankruptcy case) indicating that your response has been set for a Scheduling Conference. You are not required to appear in person at this Scheduling Conference, but you may appear via telephone if you so desire. If you wish to appear by telephone, please contact Ray Readdick, the Courtroom Administrator for Judge Funk, at 904-301-6566 no later than 3 p.m. (Eastern Standard Time) the day before the date of your Scheduling Conference.

If you decide not to appear via telephone or in person at the Scheduling Conference, the objection to your claim and your response shall be set for a final evidentiary hearing. You will receive a Notice of Hearing in the mail providing you with the date of the final evidentiary hearing and other important information related to the hearing. If you are unable to attend the final evidentiary hearing in person, which you are required to do, please advise Mr. Readdick no later than ten days within receipt of the Notice of Hearing and Mr. Readdick will work with you to obtain a new hearing date. Please also review Judge Funk's rules and procedures, which are

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Charles and Joni Tanner  
September 28, 2012  
Page 2

easily accessible online at <http://www.flmb.uscourts.gov/funk/>, for all other inquiries relating to final evidentiary hearing.

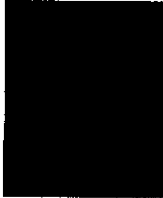
Please do not hesitate to contact me directly if you have further questions.

Sincerely,

Berger Singerman LLP

A handwritten signature in black ink, appearing to read "Alisa Paige Mason". The signature is fluid and cursive, with the first name being the most prominent.

Alisa Paige Mason



Boca Raton Fort Lauderdale Miami Tallahassee

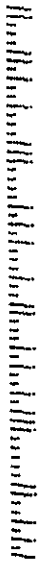
we deliver creative and effective business solutions and counsel

**BERGER SINGERMANN**  
attorneys at law

1450 Brickell Avenue Suite 1900 Miami, Florida 33131-3453

Charles and Joni Tanner  
2403 Terrace Ave.  
Midland, TX 79705

79705879322 0055



**“EXHIBIT B”**

**UNITED STATES OF AMERICA  
Before the  
OFFICE OF THRIFT SUPERVISION**

	)	
In the Matter of	)	Order No.: SE-10-046
	)	
<b>GIBRALTAR PRIVATE BANK</b>	)	Effective Date: October 15, 2010
<b>AND TRUST COMPANY</b>	)	
	)	
Coral Gables, Florida	)	
OTS Docket No. 08007	)	
	)	

**STIPULATION AND CONSENT TO ISSUANCE OF ORDER TO CEASE AND DESIST**

**WHEREAS**, the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Southeast Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed Gibraltar Private Bank and Trust Company, Coral Gables, Florida, OTS Docket No. 08007 (Association), that the OTS is of the opinion that grounds exist to initiate an administrative proceeding against the Association pursuant to 12 U.S.C. § 1818(b);

**WHEREAS**, the Regional Director, pursuant to delegated authority, is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order; and

**WHEREAS**, the Association desires to cooperate with the OTS to avoid the time and expense of such administrative cease and desist proceeding by entering into this Stipulation and Consent to Issuance of Order to Cease and Desist (Stipulation) and, without admitting or denying that such grounds exist, but only admitting the statements and conclusions in Paragraphs 1 and 2

below concerning Jurisdiction, hereby stipulates and agrees to the following terms:

**Jurisdiction.**

1. The Association is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, the Association is “an insured depository institution” as that term is defined in 12 U.S.C. § 1813(c).
2. Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the “appropriate Federal banking agency” with jurisdiction to maintain an administrative enforcement proceeding against a savings association. Therefore, the Association is subject to the authority of the OTS to initiate and maintain an administrative cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b).

**OTS Findings of Fact.**

3. Based on its May 5, 2010 examination of the Association (2010 ROE), the OTS finds that the Association has engaged in unsafe or unsound banking practices including, but not limited to, operating:

- (a) the Association with an ineffective Bank Secrecy Act/Anti-Money Laundering compliance program;
- (b) the Association with an excessive level of adversely classified loans or assets, delinquent loans, and nonaccrual loans;
- (c) with an asset liability policy that does not address all requirements of the Interagency Policy Statement on Funding and Liquidity Risk Management contained in CEO Memorandum No. 342 (March 17, 2010); and
- (d) in contravention of supervisory policy statements and other regulatory guidance, including, but not limited to:

- (i) Interagency Guidelines Establishing Standards for Safety and Soundness;
- (ii) Interagency Guidelines for Real Estate Lending Policies; and
- (iii) Federal Financial Institutions Examination Council *Bank Secrecy Act/Anti-Money Laundering Examination Manual*.

4. Based on its 2010 ROE of the Association, the OTS finds that the Association has engaged in violations of law and regulation, including:

- (a) 12 C.F.R. § 563.177(c)(1);
- (b) 12 C.F.R. § 563.177(c)(4);
- (c) 12 C.F.R. § 563.180(d)(3)(iv)(C);
- (d) 12 C.F.R. § 563.180(d)(5);
- (e) 12 C.F.R. § 563.180(d)(10); and
- (f) 12 C.F.R. § 563.180(d)(12).

**Consent.**

5. The Association consents to the issuance by the OTS of the accompanying Order to Cease and Desist (Order). The Association further agrees to comply with the terms of the Order upon the Effective Date of the Order and stipulates that the Order complies with all requirements of law.

**Finality.**

6. The Order is issued by the OTS under 12 U.S.C. § 1818(b). Upon the Effective Date, the Order shall be a final order, effective, and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

**Waivers.**

7. The Association waives the following:

- (a) the right to be served with a written notice of the OTS's charges against it as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- (b) the right to an administrative hearing of the OTS's charges as provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- (c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Order; and
- (d) any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs, or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, federal statutes, or otherwise.

**OTS Authority Not Affected.**

8. Nothing in this Stipulation or accompanying Order shall inhibit, estop, bar, or otherwise prevent the OTS from taking any other action affecting the Association if at any time the OTS deems it appropriate to do so to fulfill the responsibilities placed upon the OTS by law.

**Other Governmental Actions Not Affected.**

9. The Association acknowledges and agrees that its consent to the issuance of the Order is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 8 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the Association that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than the OTS.

**Miscellaneous.**

10. The laws of the United States of America shall govern the construction and validity of this Stipulation and of the Order.

11. If any provision of this Stipulation and/or the Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.

12. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns.

13. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the interpretation of this Stipulation or the Order.

14. The terms of this Stipulation and of the Order represent the final agreement of the parties with respect to the subject matters thereof, and constitute the sole agreement of the parties with respect to such subject matters.

15. The Stipulation and Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Regional Director or other authorized representative.

**Signature of Directors/Board Resolution.**

16. Each Director signing this Stipulation attests that he or she voted in favor of a Board Resolution authorizing the consent of the Association to the issuance of the Order and the execution of the Stipulation.



**WHEREFORE**, the Association, by its directors, executes this Stipulation.

Accepted by:

**GIBRALTAR PRIVATE BANK**  
Coral Gables, Florida

**OFFICE OF THRIFT SUPERVISION**

By:           /s/            
Steven D. Hayworth  
Chairman

By:           /s/            
James G. Price  
Regional Director, Southeast Region

Date: See Effective Date on page 1

          /s/            
Gail Birks, Director

          /s/            
Eduardo Cisneros, Director

          /s/            
Robert Dickinson, Director

          /s/            
James Dyke, Director

          /s/            
Russell Galbut, Director

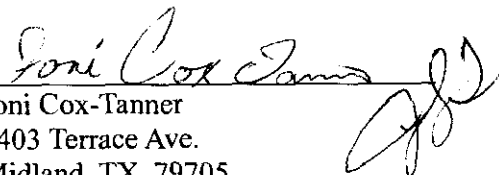
          /s/            
Jeremy Hubball, Director

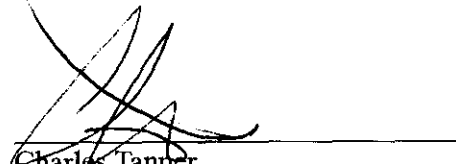
          /s/            
David Kirkland, Director

          /s/            
Ronald G. Stone, Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served via mail to:  
**The United States Bankruptcy Court, Bryan Simpson United States Courthouse, 300 North Hogan Street, Jacksonville Florida, 32202:** To: Elena Escamilla, Trial Attorney, Office of the United States Trustee. U.S. Department of Justice Florida Bar No: 898414, 135 W. Central Blvd., Suite 620 Orlando FL. 32801 and served to via mail to: Edward J. Peterson, III (FBN 014612) **STRICHTER, RIEDEL, BLAIN & PROSSER, P.A., (Attorneys for the Debtor)** 110 East Madison Street, Suite 200 Tampa, FL 33602, and to Jeffrey W. Kelley (GABN 412296) and **BERGER SINGERMAN (Counsel to Neil F. Luria, Plan Trustee for the Taylor, Bean and Whitaker Plan Trust** 1450 Brickell Avenue, Suite 1900, Miami, Florida 33131.

  
\_\_\_\_\_  
Joni Cox-Tanner  
2403 Terrace Ave.  
Midland, TX 79705  
432-349-3006

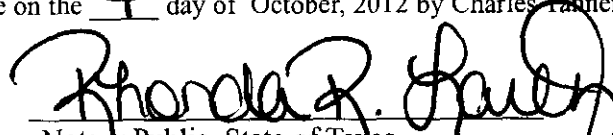
  
\_\_\_\_\_  
Charles Tanner  
2403 Terrace Ave.  
Midland, TX 79705  
432-349-3006

AFFIDAVIT

STATE OF TEXAS §

COUNTY OF MIDLAND §

This instrument was acknowledged before me on the 4<sup>th</sup> day of October, 2012 by Charles Tanner and Joni Cox-Tanner on the capacity stated therein.

  
\_\_\_\_\_  
Notary Public, State of Texas

