

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.

**CORRECTED PLAN TRUSTEE'S RESPONSE IN OPPOSITION TO MOTION
FILED BY SANDY SMITH REQUESTING ADJOURNMENT OF
FEBRUARY 14, 2013 HEARING ON MOTION TO APPROVE
SETTLEMENT BETWEEN THE U.S. DEPARTMENT OF HUD, THE
FHA, AND THE TAYLOR, BEAN & WHITAKER PLAN TRUST [D.E. 6701]**

Neil F. Luria as Plan Trustee (the "Plan Trustee") for the Taylor, Bean & Whitaker Plan Trust¹ (the "Plan Trust"), by and through undersigned counsel, files this response in opposition (the "Response") to the *Motion Requesting Extension of 60 Day Extension of the Scheduled Hearing for February 14, 2013 at 1:30 Docket 6857 Requesting Time to Discuss Mortgage of Sandy Smith and Other Matters that Relate to Said Mortgage* (the "Motion") [D.E. 6925] filed by *pro se* claimant Sandy Smith. The Plan Trustee states in support thereof:

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* (the "Plan") [D.E. 3240], August 10, 2011, the Debtors have been replaced for the most part by the Plan Trust as the party in interest in these matters.

1. On December 18, 2013, the Plan Trustee filed the *Motion to Approve Settlement Agreement Between the United States Department of Housing and Urban Development, the Federal Housing Administration and the Taylor, Bean & Whitaker Plan Trust* (the “Settlement Motion”) [D.E. 6701]. The Settlement Motion seeks to approve a resolution of Claim No. 2929, as amended by Claim No. 3464, filed by the U.S. Department of Housing and Urban Development (“HUD”) in the amount of \$42,122,128.60.

2. Since the filing of Claim Nos. 2929 and 3464 (collectively, the “HUD-FHA Claim”), the Plan Trustee, HUD, and the Federal Housing Administration (“FHA”) (FHA, together with the Plan Trustee and HUD, the “Parties”) have been actively working together to resolve the HUD-FHA Claim, a complex and significant claim. The Plan Trust has devoted significant resources to working with this government agency to find a fair resolution. In December 2012, the Parties entered into a settlement agreement (the “Agreement”) resolving the HUD-FHA Claim. The Settlement Motion seeks the Court’s approval of the Agreement.

3. The Agreement marks the resolution of one of the larger claims asserted against the estate of the Debtor, Taylor, Bean & Whitaker Mortgage Corp. Specifically, the Agreement provides that HUD-FHA shall have an allowed TBW Class 8 Claim in the reduced amount of \$18,690,992.09 and that the HUD-FHA Claim shall be amended accordingly. The Plan Trustee respectfully refers the Court to the Settlement Motion and Agreement for more details regarding the terms of the settlement agreement between the Parties.

4. To date, the only objections filed to the Settlement Motion have been filed by certain *pro se* claimants [D.E. Nos. 6892, 6885, 6885, 6804, 6782] (collectively, the “Objections”). The Objections are all virtually identical, suggesting a common drafter, and contain a number of baseless (and frankly irrelevant) accusations regarding the good faith of the

Plan Trust, counsel to the Plan Trustee, members of the former Official Committee of Unsecured Creditors, and current members of the Plan Advisory Committee.

5. The Objections also express a general dissatisfaction with the TBW bankruptcy, but do not describe how the objecting claimants are harmed by the settlement of the HUD-FHA Claim. It is noteworthy that none of the objecting parties have filed an objection to the HUD-FHA claim and did not participate in any of the settlement negotiations. Further, the objecting parties do not explain how they are at all negatively impacted by the Agreement proposing to allow the HUD-FHA Claim in a reduced amount and do not articulate a basis as to how or why it should be resolved on more favorable terms to the estate.

6. The Plan Trustee submits that the objecting claimants, including Smith, benefit from the Agreement regarding the HUD-FHA Claim. If the Court eventually determines that any of the claims of the objecting *pro se* claimants are in fact allowed claims, including those of Smith, those claimants actually benefit from an agreement allowing the reduced HUD-FHA Claim in the amount of \$18,690,992.09, rather than in an amount exceeding \$42 million. It therefore appears that Smith simply seeks to derail and stall the approval of the Agreement for some other undisclosed motive.

7. The Court originally set the Settlement Motion for a hearing on February 8, 2013, but subsequently re-noticed the hearing to February 14, 2013. Thus, close to two months will have passed from the date of the filing of the Settlement Motion and the hearing on the Settlement Motion presently set for February 14, 2013.

8. On January 30, 2013, Sandy Smith filed the Motion requesting that the Court adjourn the February 14, 2013 hearing for sixty (60) days. In the Motion requesting the adjournment, Smith simultaneously requests two hours to discuss her interest in the “proceeding”

and requests certain documents, including but not limited to certain SEC filings. Smith does not provide any other explanation or basis for her request to adjourn the February 14, 2013 hearing on the Settlement Motion, except that there are “uncontrolled circumstances.” Thus, the Motion fails to explain why Smith needs more than eight weeks to fully prepare for a hearing on the Settlement Motion.

9. By way of further background, the Plan Trustee filed an objection [D.E. 5876] to Smith’s Claim Nos. 219 and 3498 (the “Smith Claims”) on August 10, 2012. The Plan Trustee objected to the Smith Claims on a number of grounds, including but not limited to the duplicative nature of the Smith Claims and the relationship between Claim No. 3498 and a settlement proposal submitted by Smith in connection with a class action lawsuit initiated by Smith and other *pro se* plaintiffs. That class action lawsuit (3:11-ap-326-JAF) was eventually dismissed and the Court entered an order foreclosing Smith and her fellow *pro se* litigants from bringing any more actions for damages against the Debtors. Interestingly, all of the *pro se* claimants objecting to the Motion were also *pro se* plaintiffs in the aforementioned class action.

10. The Court set a final evidentiary hearing on the Plan Trustee’s objection to the Smith Claims for June 28, 2013. Smith now has approximately five months to prepare for that hearing and to present evidence on her claims and her mortgage in particular if she so chooses. Against this back drop, the Smith Motion does not provide the court with any basis to understand why Smith will be prejudiced if the Court denies her request to adjourn the February 14, 2013 hearing on the Settlement Motion.

11. To conclude, Smith’s Motion does not sufficiently explain why an adjournment of the February 14, 2013 hearing on resolution of the HUD-FHA Claim is necessary, especially when Smith appears only to be a potential beneficiary of the Agreement and the resulting

settlement of the HUD-FHA Claim, and has not raised an objection to the HUD-FHA Claim. Additionally, Smith's Claim Nos. 219 and 3498 are set to be addressed in June of 2013 at an evidentiary hearing on the Plan Trustee's objection to those claims, at which Smith can present evidence in connection with her mortgage.

WHEREFORE the Plan Trustee respectfully requests the Court deny the Motion filed by Sandy Smith and grant any other relief that may be just or necessary.

Dated: February 5, 2013

Respectfully submitted,

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By: /s/ James D. Gassenheimer

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