

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

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In re:

TAYLOR, BEAN & WHITAKER  
MORTGAGE CORP.,

Case No. 3:09-bk-07047-JAF

Applicable Debtor.

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**ORDER SUSTAINING OBJECTION TO CLAIM  
NUMBER 219 FILED BY SANDY SMITH**

THIS MATTER came before the Court on June 28, 2013 at 10 a.m. on (a) the Objection (the "Objection") [D.E. 5876] filed by Neil F. Luria, Plan Trustee for the Taylor, Bean & Whitaker Plan Trust, to Claim No. 219 filed by Sandy Smith ("Smith") and (b) the Response [D.E. 6139] filed in opposition thereto by Smith. The Court, having reviewed Claim No. 219, the Objection and the Response, having considered the exhibits offered by the Plan Trustee and the arguments of counsel, and noting Smith's failure to appear at the June 28<sup>th</sup> hearing, does thereupon find:

1. The Plan Trustee filed the Objection to Claim No. 219 based on a number of grounds. Smith claims she is entitled to an allowed claim in the amount of \$136,000 for fraud and breach of contract. Smith does not attach supporting documents to Claim No. 219 and the Plan Trustee objected on the basis that Claim No. 219 is wholly unsubstantiated

2. On September 13, 2012, Smith filed the Response and described the procedural history of certain pleadings filed by Smith and a number of other *pro se* claimants in TBW's bankruptcy case. In the Response, Smith raises a number of questions wholly unrelated to her claim, including but not limited to questions about the compensation of counsel for parties in the TBW bankruptcy case, questions about the effect of confirmation of the Plan, and other meritless assertions. Smith also includes various statutes relating to the employment of professionals in a bankruptcy case. The Response did not, however, address how the general allegations of fraud allegedly committed by TBW or any of its employees or affiliates caused any injury to Smith, nor did the Response address the breach of contract claim.

3. Sandy Smith, along with Sue Ann Smith, obtained a mortgage on March 9, 2007 through TBW. Following a default under the loan obligations the loan was referred for foreclosure on March 31, 2008. Bank of America, N.A. now owns the property by way of a corrective substitute trustee's deed dated June 6, 2011.

4. The Court held a scheduling conference on the Claim Objection on November 16, 2012. On November 20, 2012, the Court noticed the Objection and Response for a final evidentiary hearing on June 28, 2013 [Notice, D.E. 6589].

5. Smith received timely notice of the June 28<sup>th</sup> evidentiary hearing [Certificate of Mailing, D.E. 6632] over six months in advance of the June 28<sup>th</sup> hearing. However, Smith filed a motion (the "Continuance Motion") [D.E. 7385] less than ten days before the June 28<sup>th</sup> hearing seeking to continue the hearing. The Plan Trustee filed a response in opposition [D.E. 7388] based on Smith's failure to articulate a legitimate reason for continuing the June 28<sup>th</sup> hearing. On June 24, 2013, the Court entered an order (the "Continuance Order") [D.E. 7397] denying the

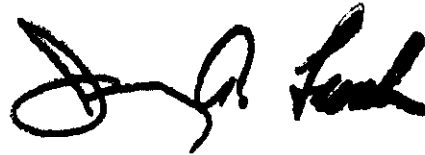
Continuance Motion. Smith received timely Notice of the Continuance Order [Certificate of Mailing, D.E. 7399]. However, Smith did not appear at the June 28<sup>th</sup> hearing.

6. Based on the records offered into evidence the Court finds Smith is estopped from challenging the validity of her loan having accepted the loan funds and having made payments without objection for a period of one year prior to defaulting on the loan obligations. In addition, Smith is estopped from raising here any claims she could have raised in defense of the foreclosure action. The Court further finds the Claim does not explain or substantiate the allegations and the Claimant failed to appear to explain her position.

**IT IS THEREFORE ORDERED AND ADJUDGED** as follows:

1. The Objection, as it relates to Claim No. 219 filed by Sandy Smith, is **SUSTAINED**.
2. Claim No. 219 is **DISALLOWED**.
3. The Court retains jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

**DATED** this 8 day of July, 2013, in Jacksonville, Florida.



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Jerry A. Funk  
United States Bankruptcy Judge

Copies to:

Alisa Paige Mason, Esq.

*(Attorney Mason is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.)*