
)) **SUPERIOR COURT OF NEW JERSEY**
IN THE MATTER OF RESIDENTIAL) **CHANCERY DIVISION-**
MORTGAGE FORECLOSURE) **GENERAL EQUITY PART**
PLEADING AND DOCUMENT) **MERCER COUNTY**
IRREGULARITIES)
DOCKET NO. F-059553-10
CIVIL ACTION
RECOMMENDED STIPULATION

This Recommended Stipulation is entered into by and between Edward J. Dauber, Esq., as counsel appointed pursuant to the December 20, 2010 Order to Show Cause ("the OTSC") entered in this matter ("the Court appointed counsel") and BAC Home Loans Servicing, LP, Citibank, N.A., Citi Residential Lending, Inc., GMAC Mortgage, LLC, JPMorgan Chase Bank, N.A., Chase Home Finance, LLC, OneWest Bank, FSB, Wells Fargo Bank, N.A., Wells Fargo Financial New Jersey, Inc. and Wells Fargo Financial America, Inc., and any affiliated entities which service any residential mortgage loan contained in the Servicer Portfolio (as defined in paragraph 5) (collectively the "Respondents").

WHEREAS the Honorable Mary C. Jacobson, P.J. Ch., of the Chancery Division, General Equity Part of the Superior Court, Mercer County ("Judge Jacobson"), entered the OTSC on December 20, 2010, directed to the Respondents and relating to the manner in which uncontested residential mortgage foreclosures are being conducted in the State of New Jersey;

WHEREAS the Superior Court seeks to ensure that documents filed with the Courts of New Jersey in currently pending or future filed uncontested residential mortgage foreclosures are accurate and comply with the Rules of Court;

WHEREAS the judiciary undertook additional actions on December 20, 2010, including the issuance of Administrative Order 01-2010, amended on January 31, 2011 (the "Administrative Order") and the Order of the Supreme Court, amended on January 31, 2011, adopting amendments to Rules of Court 1:5-6, 4:64-1, and 4:64-2 (the "Rule Adoption Order"),

WHEREAS the Supreme Court opened a period from January 31, 2011, to February 28, 2011 for comment from the public as to the amended Rules of Court 1:5-6, 4:64-1, and 4:64-2 ("the Rule Amendments"),

WHEREAS the Respondents responded to the OTSC with filings that contested both the legal and factual bases for the entry of the OTSC, including but not limited to arguments that these actions violated the Constitution of the United States of America, the Constitution of the State of New Jersey, the New Jersey Rules of Court and other federal and state laws and that the Judiciary lacked any evidentiary record to support the factual assumptions and presumptions underlying the OTSC and other judicial actions taken on December 20, 2010:

WHEREAS the Respondents each accompanied their responses with affidavits or certifications maintaining that even prior to December 20, 2010, Respondents had already strengthened their policies, procedures, training and auditing of uncontested residential mortgage foreclosure case processing, and describing the steps taken;

WHEREAS all Respondents share the goal of the Judiciary in assuring the accuracy and procedural compliance of any filings made in pending and future uncontested residential mortgage foreclosure proceedings in New Jersey;

WHEREAS the Judiciary and Respondents mutually recognize that new residential mortgage foreclosure filings are inevitable and unavoidable in 2011 and that an efficient, fully functional, accurate, transparent, and normalized foreclosure process is in the interests of the

Judiciary, the State of New Jersey and its citizens and communities, the residential housing market and the broader economy, as well as of the Respondents, so long as that residential mortgage foreclosure process moves forward consistent with all applicable laws and based upon verified facts;

WHEREAS the Judiciary will be impacted by the increase in residential mortgage foreclosure filings and supplemental filings pursuant to the Rule Amendments;

WHEREAS this Recommended Stipulation arises following a series of settlement conversations, discussions, and negotiations, between and among counsel for the Respondents and the Court appointed counsel,

IT IS THEREFORE STIPULATED and AGREED:

1. With respect to each Respondent, this Recommended Stipulation governs their participation in the residential mortgage foreclosure process in their capacities as servicer, it being recognized that in most cases, it is the servicer that either has the information or has direct access to the information that is required to be provided under the Rules. Servicers manage, maintain, and handle the accounting for the mortgages that they service and, as such, in the case of default or non-payment on the part of a mortgagor, it is the servicer, and not necessarily the mortgagee or named plaintiff in the resulting mortgage foreclosure action, that either has the information or has direct access to the information concerning the default or non-payment. The Six Respondents, acting as servicers, account for a majority of the residential mortgage foreclosure matters pending in the Courts of the State of New Jersey, both contested and uncontested. As of the date of the entry of this Recommended Stipulation, each Respondent is responsible for servicing the mortgages being foreclosed in the actions set forth in its respective Servicer Portfolio as defined in Paragraph 5 herein. This Recommended Stipulation thus does

not apply to any residential mortgage foreclosure filed in the name of a Respondent or an affiliated entity solely in its capacity as trustee for a securitized trust, in that a securitized trust acts for the most part through its servicer and not through the trustee, whose name appears in style of the residential mortgage foreclosure action as the named plaintiff. However, nothing in this Recommended Stipulation shall diminish or affect the responsibilities of Respondents, acting in any other capacity, or otherwise as named plaintiff in any residential mortgage foreclosure action, to abide fully with all Rules of Court and other law.

2. The Parties agree to the appointment of the Honorable Richard J. Williams, Ret. as special master (the "Special Master") pursuant to New Jersey Court Rule 4.41-1 for the specific purposes set forth in this Recommended Stipulation and for a period of 12 months from the date of the respective Respondent's resumption of prosecuting pending residential mortgage foreclosure actions pursuant to Paragraph 7. The powers of the Special Master shall be limited to those powers specifically enumerated in this Recommended Stipulation and anything necessary or attendant thereto. The Special Master shall serve at the expense of the Respondents; provided however that the Master's fees and expenses shall be limited to those that are reasonable and reasonably necessary to carry out the powers specifically enumerated in the Recommended Stipulation, and the Respondents shall have the right to review and object to any fee applications submitted by the Special Master. Any objections to the Special Master's fee applications will be heard by Judge Jacobson

3. Each Respondent will participate in the Special Master process set forth in Paragraphs 4 through 7 below ("the Special Master process") in its capacity as a servicer.

4. After execution and entry of this Recommended Stipulation and on or before April 1, 2011, each Respondent shall, through certifications or affidavits of an individual or

individuals having personal knowledge of the Respondent's foreclosure processes, answer the following two questions:

A. Does the servicer have processes and procedures in place which, if adhered to, will ensure that the information set forth in affidavits/certification submitted in foreclosure proceedings is personally reviewed by an affiant authorized to act on behalf of the plaintiff in the foreclosure action and that each affidavit or certification submitted is properly executed and is based upon knowledge gained through a personal review of records made in the regular course of business and it was the regular practice of that business to make it ("Business Records")?

B. Is the Respondent prepared to follow these processes and procedures upon the resumption of residential mortgage foreclosure activities in New Jersey?

This prima facie showing shall include responses and information on the following issues ("Prima Facie Showing"), with regard to the Servicer Portfolio:

(a) If the Respondent is acting on behalf of a mortgagee, but is not the mortgagee itself, provide examples of the source of the Respondent's authority to act, including providing representative samples of documentation evidencing the authority to act on behalf of mortgagees,

(b) Does the Respondent have a record keeping system of Business Records that provides accurate up to date information on the payment history and status of the loan? If so, describe the system;

(c) Describe the Respondent's case processing steps for the review of information contained in, and the execution of, affidavits/certifications submitted in support of foreclosure proceedings;

(d) Has the Respondent established specific procedures for staff to ensure that the information set forth in affidavits/certifications submitted in foreclosure proceedings is based on a personal review of Business Records? If so

- (i) Describe the procedures;
- (ii) Produce all documents evidencing establishment of the procedures;
- (iii) Produce samples of all documents or screens reviewed by staff in the affidavit/certification of indebtedness process; and

(iv) Provide the numerical range and average of how much time is spent per loan to review the Respondent's business records and complete an affidavit/certification of indebtedness.

(e) Has the Respondent implemented a training program for its staff to review relevant Business Records and source documents and complete foreclosure affidavits/certifications based on a personal review of such materials? If so.

- (i) Describe the program;
- (ii) Produce copies of all written materials used and screen samples from any powerpoint or other presentations, and
- (iii) Produce a statement that all staff who are preparing affidavits/certifications have received this training

(f) Has the Respondent established quality assurance procedures to insure that the established procedures for review of relevant source documents and completion of foreclosure affidavits/ certifications based on a personal review of Business Records are followed in each case? If so.

- (i) Describe the procedures; and
- (ii) Produce copies of all documents evidencing establishment of quality assurance procedures

(g) Does the Respondent have a process for insuring effective and timely communication with foreclosure counsel in connection with the completion and execution of foreclosure affidavits/certifications? If so.

- (i) Describe the process; and
- (ii) Describe the procedures that will enable foreclosure counsel to comply with their duties concerning the completion and execution of foreclosure affidavits/certifications, under the Court Rules as they are finally adopted by the New Jersey Supreme Court.

In connection with the Prima Facie Showing, Respondents may incorporate by reference materials which were filed in this matter on January 5, 2011 in response to the OTSC, and additionally produce, to the extent each Respondent deems necessary: (1) written policies currently in place that govern the processes relating to uncontested residential mortgage foreclosures in New Jersey, and/or (2) the materials used to train employees in the processes

relating to uncontested residential mortgage foreclosures in New Jersey; and/or (3) samples of affidavits of indebtedness prepared using the Respondent's current process for the execution of same, together with the source documents or screen prints used to prepare and review the affidavits, and/or (4) whatever other evidence the respective Respondent wishes to submit in order to make the Prima Facie Showing.

5. At the time of the Prima Facie Showing each Respondent shall provide a list, by caption and docket number, of all of its residential mortgage foreclosure matters pending in the Superior Court as of December 20, 2010 (the "Servicer Portfolio"). The Servicer Portfolio shall indicate whether the matter is contested or uncontested, as defined by Rule 4.64-1(c). Respondent shall provide an updated Servicer Portfolio when reasonably requested by the Special Master during the time of his appointment

6. Within a reasonable time after each Respondent's written submission, or presentation if same is requested by the Special Master, if the Special Master determines that more data or information is necessary for the individual Respondent to make the required Prima Facie Showing, the Special Master may request that such additional information be provided. Within a reasonable time after receipt of all information, the Special Master shall make a determination as to whether that Respondent has made the required Prima Facie Showing. A Respondent shall be permitted to resume prosecution of the uncontested residential mortgage foreclosure proceedings included in its Servicer Portfolio (including related proceedings such as obtaining writs of execution and writs of possession and completing Sheriff's sales) after, (a) the Special Master has made a proposed determination that the Respondent has made the Prima Facie Showing; (b) such determination has been accepted by Judge Jacobson; and (c) the Respondent has filed with the Special Master a certification that all uncontested residential

mortgage foreclosures set forth in the Servicer Portfolio will be prosecuted under the processes outlined in the Prima Facie Showing. Any objections to a negative determination made by the Special Master or any other action under this Paragraph will be heard by Judge Jacobson.

7. At the time a Respondent files the certification described in Paragraph 6 herein, that Respondent will provide an updated Servicer Portfolio, irrespective of whether a Servicer Portfolio was previously provided. As to each Respondent, for a period of 12 months following the resumption of pending, uncontested residential mortgage foreclosure proceedings as described in paragraph 6, the Special Master may, in his discretion, review a reasonable sample of files from the Servicer Portfolio or new residential mortgage foreclosure filings made by that Respondent, as he deems necessary. The sole purpose of such sampling will be to satisfy the Special Master that the processes described by any particular Respondent in the Prima Facie Showing are being followed. If that sampling gives the Special Master a reasonable concern the processes outlined in the Prima Facie Showing were not followed, the Special Master will promptly notify the Respondent of his specific concerns and may request supplemental information from the Respondent to address those concerns; such supplemental information may include, at the Respondent's expense, the presentation in New Jersey of individuals who have personally reviewed the Business Records of the case(s) about which the Special Master has raised an issue. Should the Special Master determine that the results of his sample review and the additional information from the Respondent establish that the foreclosure affidavit execution processes described by the Respondent in the Prima Facie Showing have not been implemented as promised, the Special Master may recommend to Judge Jacobson that the Respondent's prosecution of uncontested residential mortgage foreclosure matters be suspended until the Respondent confirms to the Special Master's satisfaction that the processes are in place and

operational. Any objections to the Special Master's determinations or actions under this Paragraph will be heard by Judge Jacobson.

8. During the process described in Paragraphs 4 through 7, each Respondent will be operating independently of the others. More specifically, no Respondent's timetable for its written submission and/or presentation to the Special Master and its ability to resume prosecution of pending uncontested residential mortgage foreclosures pursuant to Paragraph 6, will be dependent upon or tied to the performance of any other Respondent.

9. All documents, materials and other information provided by Respondents under this Recommended Stipulation and to which no claim of confidentiality is being made, shall be filed with the Acting Clerk of the Superior Court, P.O. Box 971, 25 Market Street, Trenton, New Jersey 08625, with a copy to the Special Master, Richard J. Williams, JAD (Ret.) and a copy to the Special Counsel, Edward Dauber, Esquire. With regard to any materials to which any Respondent is making a claim of confidentiality, that Respondent shall not submit the materials to the Special Master or Special Counsel, but shall first move on short notice and on an expedited basis before Judge Jacobson for an Order to seal such materials in accordance with Court Rule 1:38-11. Should Judge Jacobson grant the motion to seal, such materials shall be separately submitted only to the Special Master and to the Special Counsel, Mr. Dauber, and shall be marked "confidential" and treated as such by the Special Master and the Special Counsel, Mr. Dauber. Should Judge Jacobson deny the motion to seal, the Respondent may choose whether to file the materials with the Acting Clerk of the Superior Court, with a copy to the Special Master and a copy to Special Counsel, or whether to proceed with an attempt to make the Prima Facie Showing without the information and materials which Respondent considers confidential, but for which the motion to seal has been denied.

10 Nothing in this Recommended Stipulation will be deemed to prevent any one of the Respondents or its affiliates from making independent judgments concerning the best interests of its customers, shareholders and employees, without regard to those of its competitors, and nothing in this Stipulation shall be taken as evidence of any agreement or decision to act in concert.

11 Nothing in this Recommended Stipulation shall be construed to be an admission of liability or wrongdoing on the part of any Respondent

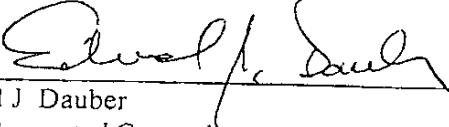
12. Except as herein provided, nothing in this Recommended Stipulation shall constitute consent or an agreement by any or all of the Respondents or their affiliates to be the subject of examination, general oversight, inspection, regulation, supervision, enforcement, prosecution, requests for the production of documents, or other visitorial powers, including but not limited to the visitorial powers listed at 12 C F R 4.7000 (collectively, "Visitorial Powers"), regardless of whether the attempted invocation of Visitorial Powers is undertaken by the legislative, judicial or executive branches of New Jersey's state government and regardless of form or name given to the invocation, or attempted invocation, of Visitorial Powers. Furthermore, the Respondents and their affiliates do not waive, and expressly reserve, every procedural and substantive right and mechanism available under State and Federal law, but not limited to, the applicable rules of court and applicable rules of civil procedure, to challenge the invocation, or attempted invocation, of Visitorial Powers, whether such challenge is presented by any or all of the Respondents or their affiliates in State or Federal Court, or This reservation of rights includes, but is not limited to, the right of any or all of the Respondents and their affiliates to assert that actions by, or conduct of, the State of New Jersey, any of its branches of government, any State official, State governmental body, or State agent are

preempted, expressly preempted, and/or completely preempted by the National Bank Act, Home Owners Loan Act, Title 12 of the United States Code of Federal Regulations, interpretive case law, or other federal law

13. Upon entry of an Order adopting this Recommended Stipulation as a resolution of the OTSC, the Court retains jurisdiction solely to enforce the terms of this Recommended Stipulation and the Order adopting same

14. The Respondents shall pay the reasonable attorneys' fees and costs incurred through the date of the entry of this Recommended Stipulation by Edward J. Dauber, Esq., and the law firm of Greenberg Dauber Epstein & Tucker in connection with their duties performed as the Court appointed counsel. Mr. Dauber and the law firm of Greenberg Dauber Epstein & Tucker shall remain as Special Counsel to the Special Master, and the Respondents shall pay the reasonable attorneys' fees and costs incurred by Mr. Dauber and the law firm of Greenberg Dauber Epstein & Tucker in connection with their duties as Special Counsel to the Special Master. The Respondents shall have the right to review and object to any fee application submitted by Mr. Dauber or the law firm of Greenberg Dauber Epstein & Tucker.

GREENBERG, DAUBER, EPSTEIN & TUCKER, P.C.

BY 
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