

## **11th Circuit Draws a Line on Actual Damages Under RESPA**

In *Baez v. Specialized Loan Servicing, LLC*, 16-17292, 2017 WL 4220292 (11th Cir. Sept. 22, 2017) the Eleventh Circuit Court of Appeal recognized a limit to the requirement to the phrase “actual damages” in Section 2605 of the Real Estate Settlement Procedures Act (“RESPA”)

The facts of the case were as follows: Counsel for Baez sent Specialized Loan Servicing, LLC a request for information pursuant to Regulation X and RESPA seeking certain information. Allegedly, the response Baez received did not satisfy the requirements of Regulation X and RESPA so Baez sued for actual damages. The actual damages she sought were a few dollars in postage and attorney’s fees incurred reviewing the allegedly defective response. The District Court entered summary judgment in the case in favor of the defendant, finding those damages lacked a causal connection to any RESPA violation because the postage was incurred sending the request (and thus antedated any violation of RESPA) and the flat fee rate structure Baez had with her counsel meant she incurred no added cost for her representation by virtue of any defect in the response.

For purposes of the appeal, the 11th Circuit operated under the assumption that the response by Specialized Loan Servicing, LLC did not satisfy the requirements of RESPA. The Eleventh Circuit noted the absence of a causal connection between either the postage or the fees in question. With respect to the argument on appeal that the simple informational injury of denying *Baez* information to which she was entitled under RESPA, the Court declined to reach the issue because it had not been sufficiently preserved at the trial level by counsel for *Baez*.

It is important to temper expectations on the importance of the *Baez* opinion. If Baez’s counsel had sent another letter after the violation or billed *Baez* hourly and alleged increased time was required to review the deficient response, the outcome of the appeal may have been different. Counsel for Baez had already filed a form complaint on behalf of other clients that takes some of these arguments into account.

The Court also declined to rule on two interesting points: first, whether RESPA permits recovery for non-pecuniary injuries, and second, whether RESPA would allow recovery for an alleged informational injury – i.e. that the servicer failed to provide information which either the borrower simply

had a statutory right to, or which would have influenced the borrower to take certain action like file a separate RESPA lawsuit or a foreclosure defense.

Previously, the Eleventh Circuit has recognized that a **PLAINTIFF COULD POTENTIALLY PROVE ACTUAL DAMAGES FOR PURPOSES OF RESPA BY SHOWING THAT THE SERVICER'S DEFICIENT RESPONSE "PREVENTED HER FROM TAKING SOME IMPORTANT ACTION."** *Bates v. JPMorgan Chase Bank, NA*, 768 F.3d 1126, 1135 (11th Cir. 2014). In *Baez*, the Eleventh Circuit duly noted that "plaintiff, in order to have standing to bring such a claim, must establish "a concrete injury even in the context of a statutory violation." Citing to the recent opinion in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016).

Thus, while an important victory against those who seek to shoehorn themselves into the actual damages provisions of RESPA – the door is not completely closed and the issue is unlikely to go away soon.