

Dodd-Frank news - TILA - July, 2014

Alaimo v. HSBC Mortgage Services, Inc., 2014 WL 930787 (S.D. Fla. March 10, 2014)

In *Alaimo v. HSBC Mortgage Services, Inc.*, the Honorable Robert N. Scola extended his previous decision in *Signori v. Fed. Nat'l Mortg. Assoc.*, 934 F.Supp.2d 1364, 1367 (S.D.Fla. 2013), holding that an assignee of a mortgage loan cannot be held liable for its servicer's violation of section 1641(f)(2) of the Truth in Lending Act ("TILA") or section 226.36(c)(1) (iii) or Regulation Z.

Section 1641(f)(2) requires a servicer to identify and provide certain contact information for the owner or master servicer of a borrower's loan upon written request. Section 226.36(c)(1)(iii) of Regulation Z requires a pay-off statement be provided upon request. Plaintiff alleged that HSBC's servicer had violated both provisions and that therefore HSBC should be held liable. It is worth noting that both parties agreed TILA and Regulation Z do not provide a provision for the servicer itself to be held liable. Both parties also agreed that HSBC was an assignee, and not the initial creditor, of the subject loan.

Previously, in *Signori*, Judge Scola had held that an assignee cannot be held liable for a servicer's violation of Section 1641(f)(2) of TILA because Section 1641 expressly limits the liability of assignees to violations which are "apparent on the face" of "initial disclosures." Since a violation of Section 1641(f)(2) can only occur post origination and in no case would be apparent on the face of initial disclosures, Judge Scola held liability could not be imputed to an assignee for a servicer's violation of the statute, and dismissed an action brought on such claims.

In *Alaimo*, Judge Scola was asked to reconsider his ruling in *Signori* based on new and novel arguments that Section 1641(g) of TILA, which mentions "new creditors," means that liability for violations of 1641(f)(2) should extend to assignees. In the absence of such an interpretation, the plaintiff argued, assignees would free to retain the "sloppiest servicers" without concern of imputed liability. However, Judge Scola recognized that while such policy concerns may have merit, it was not for the court to deviate from the plain meaning of the statute's limitation on assignee liability which evidenced Congress's intent to limit assignee liability from violations, such as section 1641(f)(2) or section 226.36(c)(1)(iii) of Regulation Z. This opinion has even more wide ranging implications than *Signori* because it contains dicta which suggests that an assignee may not be held liable for violations of section 1641(g) in addition to reaffirming the court's prior holding that no such liability can be had for violations of section 1641(f)(2) or section 226.36(c)(1)(iii) of Regulation Z.