

NO HARM CAUSED BY SERVICER'S QWR RESPONSE

The U.S. Court of Appeals for the Seventh Circuit recently held that a borrower failed to establish an actual harm resulting from his mortgage servicer's response to a Qualified Written Request ("QWR"), thus affirming the lower court's grant of summary judgment in favor of the servicer. The use of QWRs is a common and growing tactic employed by borrowers as an attempt to thwart mortgage servicers who are lawfully exercising their rights in default situations. Thus, this decision comes as welcome news that the courts may impose limits on use of technical QWR-related claims to frustrate collection efforts. The case is [*Moore v. Wells Fargo Bank, N.A.*](#), No. 18-1564, 2018 U.S. App. LEXIS 31534, 2018 WL 5816723 (7th Cir. Nov. 7, 2018).

In November 2012, a Wisconsin state court entered a foreclosure judgment against Terrence Moore due to his longstanding payment default on a mortgage serviced by Wells Fargo. Following multiple delays arising out of loss mitigation efforts and Moore's bankruptcy filing, a sheriff's sale was finally scheduled for October 2016. In August of that year, Moore sent a letter to Wells Fargo containing "twenty-two wide-ranging questions about his account." Wells Fargo treated the letter as a QWR under the Real Estate Settlement Procedures Act ("RESPA"), acknowledged receipt, and indicated that a substantive response would be provided by the statutory prescribed deadline of September 30.

Two days prior to the response deadline – on September 28 – Moore filed suit in the district court, alleging that by failing to respond to the QWR, Wells Fargo had violated RESPA and Wisconsin law. Moore claimed that he was harmed by this alleged failure because he was going to use the responses to plan his "next steps" in relation to the upcoming sheriff's sale, but instead received "no answers." Moore further claimed that Wells Fargo's lack of response caused him to suffer emotional distress because he feared losing his home "unfairly, without knowing whether the lender had a right to foreclose." Wells Fargo provided its substantive response as promised on September 30.

The district court granted Wells Fargo's summary judgment motion, finding that Moore failed to provide evidence that Wells Fargo violated RESPA or state law, and failed to show how any alleged failure, even had it occurred, caused him harm.

As formulated by the Seventh Circuit, the central issue on appeal was “whether a borrower can recover damages under 12 U.S.C. § 2605(f) when the only harm alleged is that the response to his qualified written request did not contain information he wanted to help him fight a state-court mortgage foreclosure he had already lost in state court.” The Court answered in the negative.

Although the district court found insufficient evidence that Wells Fargo violated RESPA, the appellate court nonetheless assumed for the purpose of its opinion that at least some part of Wells Fargo’s correspondence might have violated RESPA, but then went on to explain why, even if a violation had occurred, Moore failed to demonstrate any actual harm caused by Wells Fargo’s alleged failure to comply with the statute.

Specifically, the Court rejected Moore’s argument that the fees he paid to an attorney to review Wells Fargo’s response “could be a cost incurred as a result of an alleged violation” of RESPA, and it ruled that the mere fact of having to file suit does not constitute sufficient harm. The Court also rejected Moore’s claims for physical and emotional distress related to the upcoming foreclosure because his “stress had essentially nothing to do with any arguable RESPA violations.” Rather, “the obvious sources of his stress were the facts that he was not able to make timely payments toward his mortgage, that the lender had won a judgment of foreclosure, and that sale and eviction were imminent.”