

NO RESPA PENALTY WITHOUT ACTUAL DAMAGES OR SIMILAR ACTS WITH OTHER BORROWERS

The U.S. Court of Appeals for the Eighth Circuit held that, under the federal Real Estate Settlement Procedures Act, because the borrower did not prove actual damages he also could not prove he was entitled to ‘additional’ statutory damages, and therefore failed to prove an essential element of his RESPA claim.

In so ruling, the Eighth Circuit also held that “[a] borrower cannot manufacture a pattern or practice by sending multiple requests in quick succession involving the same subject matter,” and “that two instances of noncompliance are not enough.”

Accordingly, the ruling of the trial court granting summary judgment in favor of the borrower was reversed.

A copy of the opinion in *Steven L. Wirtz v. Specialized Loan Servicing* is available at: [Link to Opinion](#).

The plaintiff borrower took out a mortgage loan in August 2001, which loan was serviced by the defendant servicer beginning in June 2013. As part of the servicing transfer, the servicer received the prior servicer’s payment records which included payment records beginning in June 11, 2011.

The partial payment history showed that the borrower was one-month delinquent on the loan as of the first entry for June 2011. The partial payment history also showed that the borrower fell behind by another payment between June 2011 and June 2013. Accordingly, the servicer sent the borrower a notice that loan payments were past due.

The borrower made several calls to the servicer disputing that the account was past due, and he made a complaint with the Minnesota Attorney General’s Office. The Attorney General’s office sent the servicer a letter on Oct. 9, 2013, to which the servicer responded on Oct. 18, 2013. In its response, the servicer noted that its records showed the borrower was delinquent by two months. The servicer further stated that if the borrower wished to challenge his delinquency, he needed to provide records from the prior loan servicer, and the front and back of cancelled checks showing that the prior servicer received all payments.

On Nov. 8, 12, and 25, 2013, the borrower's attorney sent a series of three qualified written requests to the servicer asking for information, including why the servicer believed the account was past due. The servicer responded to all three letters on Dec. 9, 2013 and reiterated that the borrower must provide the records described in the letter to the Attorney General's Office if he wished to convince the servicer that the account was current.

On Dec. 27, 2013 and Feb. 4, 2014, the borrower's attorney sent the servicer two more qualified written requests, in which he provided a complete copy of the borrower's payment history and his bank records from January 2012 to November 2013. The Dec. 27 letter stated that the borrower paid \$80 for the bank records but did not mention any costs for obtaining the loan payment history.

The servicer responded to the letters on Feb. 5 and March 13, 2014, respectively. The servicer provided a listing of the servicer's records for the loan beginning in November 2011 and repeated the servicer's position that the loan was delinquent.

The borrower then sued the servicer under RESPA and a Minnesota statute that piggybacks on RESPA by forbidding a servicer to violate a "federal law regulating residential mortgage loans." Minn. Stat. § 58.13, subdiv. 1 (a)(8).

The trial court granted summary judgment in favor of the borrower on his claims, concluding that the servicer failed to conduct a sufficient investigation into the borrower's letters regarding the pre-June 2011 delinquency and to provide the borrower with the information that he requested as required by RESPA.

The trial court awarded the borrower his actual damages of \$80 suffered in obtaining his bank records for 2012 to 2013, and found that the servicer engaged in a "pattern and practice" of noncompliance that entitled the borrower to \$2,000 in statutory damages. The borrower also received his attorneys' fees and costs.

On appeal to the Eighth Circuit, the servicer first argued that it responded adequately to the borrower's written requests. In analyzing the issue, the Eighth Circuit noted that "[w]hether [the servicer] failed to comply with RESPA depends on what type of investigation the statute requires in response to a qualified written request."

After reviewing the meaning of the word “investigation” and the purpose of RESPA, the Eighth Circuit concluded that “§2605(e)(2)(B)-(C) imposes a substantive obligation on mortgage loan servicers to conduct a reasonably thorough examination before responding to a borrower’s qualified written request.”

The Court further ruled that the servicer “[f]ailed to conduct a reasonable investigation of [the borrower’s] pre-June 2011 loan payment history,” because it “did not obtain, review, or provide the full payment history as [the borrower] requested,” rather it only referred back to its prior letter to the Attorney General’s Office. Because the servicer did not provide a full loan payment history, the borrower was required to obtain a copy himself.

The servicer argued that the pre-June 2011 payment history was “unavailable” because it did not receive it from the prior servicer, but the Court disagreed, determining that it could have obtained them through a reasonable investigation, which would have included asking the prior servicer. Thus, the servicer “failed to comply with § 2605(e)(2)(C)(i) when it did not provide the pre-2011 payment history in response to [the borrower’s] request.”

The servicer next argued that even if it failed to comply with certain duties under RESPA, the borrower’s claim still failed because he did not show damages, an essential element of a claim under RESPA. The Eighth Circuit agreed.

Although the borrower had to obtain a copy of the pre-2011 payment history from the prior servicer himself due to the servicer’s failure to provide a copy, he “did not claim that he paid any money for those records, and the district court did not award damages on that basis.” Instead, the district court awarded \$80 for his expenses incurred in obtaining 2012 to 2013 bank statements, but those records did not relate to the dispute between the borrower and servicer over whether he was past due before June 2011.

Thus, the borrower did not pay the \$80 “as a result of” the servicer’s failure to investigate and provide information about the pre-2011 payment history. The Eighth Circuit “therefore conclude[d] that [the borrower] did not submit sufficient evidence of actual damages under RESPA.”

Further, the Court held that “[b]ecause [the borrower] suffered no actual damages, the district court’s award of statutory damages must be reversed,”

because “the plain language of § 2605(f)(1)(B) requires a borrower to recover actual damages before he can be eligible to recover ‘additional’ statutory damages.”

Even if this were not the case, the Eighth Circuit ruled that the borrower still did not present sufficient evidence of “pattern or practice of noncompliance,” which requires that “a plaintiff must show that noncompliance with the statute ‘was the company’s standard operating procedure – the regular rather than the unusual practice.’”

The Court noted that “[t]here was no evidence that [the servicer] failed to investigate and respond reasonably to qualified written requests from other borrowers,” and the borrower conceded “that two instances of noncompliance are not enough.” Further, “[a] borrower cannot manufacture a pattern or practice by sending multiple requests in quick succession involving the same subject matter.”

In sum, “[b]ecause [the borrower] did not present evidence of damages resulting from [the servicer’s] failures to comply with RESPA, he failed to establish an essential element of his claim under RESPA. We therefore reverse the district court’s grant of summary judgment for [the borrower] and remand with directions to enter judgment for [the servicer] on the RESPA claim.”