

RESPA DAMAGES DENIED FOR DELINQUENT MORTGAGOR

The Real Estate Settlement Procedures Act, 12 U.S.C. §2601 *et. seq.*, or RESPA, imposes duties on loan servicers that receive borrower information requests, referred to by statute as “qualified written requests,” or in common parlance as “QWRs.” A QWR is broadly viewed as any reasonably stated written request for account information, assuming the borrower’s request includes sufficient account identifying information. Once a servicer receives such correspondence, they are required to appropriately respond within certain time frames. Should a servicer fail to meet their required duties, RESPA provides a private right of action for resulting “actual damages” befalling a borrower. A recent Seventh Circuit opinion provides much needed clarification on what constitutes “actual damages.”

In *Moore v. Wells Fargo Bank, N.A.*, 2018 U.S. App. LEXIS 31534, borrowers sent a QWR approximately four years after a judgment of foreclosure was entered in the servicer’s favor. The QWR included 22 wide-ranging questions about the account, including details on each and every loss-mitigation attempt over the loan’s lifetime.

Two days prior to the servicer’s response deadline, the Moores filed actions in both federal and state court alleging RESPA violations for failure to respond and seeking damages for their fees and costs, as well as damages for emotional distress. The borrowers claimed they were harmed by the servicer’s failure to respond because they “were going to use the responses to plan their next steps” regarding the upcoming sale, but “instead had to fight the foreclosure action with ‘no answers.’” The borrowers further argued that the lack of response caused them to suffer emotional distress “because they feared losing their home unfairly, without knowing whether the lender had a right to foreclose.”

However, after the actions were filed, the servicer did timely respond with a three-page letter including 58 pages of attachments. According to the Seventh Circuit, the servicer addressed most of the borrowers’ questions, but not all of them, including the questions regarding prior loss mitigation. The servicer instead stated that several of the questions were “too broad,” but invited the borrower to provide further details so that the servicer could re-review. The borrowers apparently failed to take the servicer up on their offer.

First, the Seventh Circuit stated that the servicer owed no RESPA legal duty to Mrs. Moore, who was not named in the title, nor was she named on the note or the mortgage. Turning to Mr. Moore's claims, the court telegraphed their conclusion by clarifying the main issue before them as "whether a borrower can recover damages ... 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." In analyzing the issue, the Court stated that "**RESPA DOES NOT PROVIDE RELIEF FOR MERE PROCEDURAL VIOLATIONS. PLAINTIFFS BRINGING CLAIMS UNDER RESPA MUST SHOW ACTUAL INJURY.**"

To determine actual injury, the court first reviewed Mr. Moore's out-of-pocket expenses, which consisted solely of attorney's fees for reviewing the servicer's response. In rejecting this amount, the court reasoned that "[t]his theory would allow a borrower to create a RESPA claim that pulls itself up by its own bootstraps, creating the required damages by pursuing the inquiry itself, at least with the help of a lawyer." The court further clarified that "**RESPA requires a borrower to provide evidence of actual damages that result from the failure of the servicer to comply with RESPA, and noted that "simply having to file suit ... does not suffice as a harm warranting actual damages."**"

In reviewing Moore's claims for damages related to emotional distress, the court noted that the distress suffered must have actually been caused by a RESPA violation. Once again, however, the borrower's claims fell short. The court stated that the borrower's stress was more likely that he was unable to make timely payments, that the lender had won a foreclosure judgment, and that sale and eviction were therefore imminent—none of which were related to the RESPA violations.

The court additionally distinguished their analysis from an earlier 2011 Seventh Circuit opinion where emotional distress resulting from a defendant's "egregious RESPA violations," had been alleged, noting that in the 2011 decision, the plaintiff was "actually making their mortgage payments."

The court also rejected Mr. Moore's claim that having the requested information would have given him a greater chance of reopening the state foreclosure action, finding it to be "too attenuated; it relies too much on

speculation about what a state court might have done under other, unknowable circumstances, to qualify as actual harm under RESPA.”

Additionally, although the court recognized that emotional distress doesn’t need to solely be caused by a RESPA violation, it stated that nothing before them indicated that the borrower’s distress was caused by anything other than the foreclosure, which had occurred four years earlier.

In ultimately concluding that the borrower failed to present evidence that a RESPA violation caused any actual harm, the court stated that, “**RESPA was not intended to give people who cannot pay their mortgages the means to engage in burdensome fishing expeditions in the hope of somehow passing the blame for their foreclosure onto the mortgage servicers in state court.**”

How lower courts utilize this analysis remains to be seen, but it appears as though delinquent mortgagors alleging RESPA violations may well face an uphill battle, at least in the Seventh Circuit.