SERVICER DOES NOT HAVE DUTY TO RESPOND TO MULTIPLE MODIFICATION APPLICATIONS UNDER RESPA

The United States Court of Appeals for the Sixth Circuit recently upheld the dismissal of a borrower's Real Estate Settlement Procedures Act ("RESPA") complaint, holding that a loan servicer was not required to respond to the borrower's repeated modification requests. See Brimm v. Wells Fargo Bank, N.A., 2017 WL 1628996 (6th Cir. May 2, 2017). In the case, the borrower executed a mortgage in 2006 and defaulted on the loan in 2008. He modified the loan twice, in 2009 and 2010, but continued to default and a foreclosure action was commenced in 2012. Although the borrower made several more modifications requests between 2012 and July 2014, they were all rejected for various reasons. The property was sold at a foreclosure sale in January 2015. The borrower then brought an action against the servicer in which he alleged, among other things, that the servicer had violated 12 CFR 1024.41 and the implied covenant of good faith and fair dealing. Specifically, he argued that the servicer did not adequately respond to his final July 2014 modification request. Under 12 CFR 1024.41, if a servicer receives a loss mitigation application from a mortgagor more than 37 days prior to a foreclosure sale, it must evaluate all loss mitigation options and inform the borrower in writing of its determination regarding the same. 12 CFR 1024.41(c). A servicer may not conduct a foreclosure sale while a timely and properly-filed application is pending. Nonetheless, the district court rejected the borrower's claim and dismissed the action.

On appeal, the Sixth Circuit affirmed the lower court's decision. First, it held that the servicer did respond to the July 2014 modification response by informing the borrower that the application was incomplete. Although the borrower disputed this claim, he was unable to submit proof to the court that his application was complete. More importantly, the court held that 12 CFR 1024.41(i) states, "[a] servicer is only required to comply with the requirements of this section for a single complete loss mitigation application for a borrower's mortgage loan account." (emphasis added). Thus, even if the servicer had not responded to the final modification request, it was not required to do so because it had responded to previous requests. Finally, the court held that the servicer did not breach the implied covenant of good faith and fair dealing because nothing in the mortgage documents required it to address modification requests.