**Creditor Abuse and Mortgage Fraud Targeted in Nationwide Settlements and Inter-Agency 'Sweep'**

By
Clifford J. White III
Director, Executive Office for United States Trustees

Combating creditor abuse, particularly in the mortgage servicing area, has been a top priority of the United States Trustee Program (USTP) for the past several years. Through internal detection by the USTP and referrals from trustees, the bankruptcy court, bankruptcy clerks and other third parties, the Program has uncovered potential wrongdoing and pursued civil enforcement actions against those who prey upon vulnerable consumers. Where appropriate, the USTP has also referred suspected criminal conduct to our law enforcement partners.

Last year, the USTP took more than 9,000 consumer protection actions, such as filing enforcement motions or conducting informal discovery against petition preparers, creditors and some attorneys. Of most significance, the USTP coordinated litigation and investigations in multiple districts and, for the first time in its history, reached three nationwide settlements that involved major financial institutions. The USTP also contributed significantly to "Operation Stolen Dreams," a nationwide mortgage fraud sweep coordinated by the President's Financial Fraud Enforcement Task Force.

## Nationwide Settlements

In October of 2008, the USTP reached a settlement with Capital One Bank (USA), N.A. (Capital One) to resolve USTP allegations that Capital One sought to collect debts that had been discharged in prior bankruptcy cases. The settlement agreement required Capital One to hire an independent auditor to supervise the conduct of an audit to ensure all improperly received funds were returned to affected debtors and their estates. The audit is ongoing and indications are that the number of affected debtors first identified by Capital One has more than doubled and the amount of refunds is projected to be significantly higher than first estimated.

In July of 2009, the USTP settled with First Tennessee Bank National Association (First Tennessee) to resolve complaints involving the improper disclosure of privacy protected information in approximately 3,000 proofs of claim filed in 87 judicial districts in 48 states. Under the settlement, First Tennessee provided notice to debtors whose private information it had disclosed, amended papers filed in bankruptcy court to redact the private information and changed internal procedures. The bank also agreed to provide periodic updates to the Office of the Comptroller of the Currency of its actions to restrict access to improperly filed proofs of claim, and to notify the agency of any disclosure of sensitive customer information.

Most recently, in June of this year, the USTP reached a settlement with Countrywide Home Loans, Inc., and BAC Home Loans Servicing LP (Countrywide). These two entities are affiliates of Bank of America, N.A., and, combined, are the nation's largest consumer mortgage servicer. More than three years ago, as part of its commitment to protect homeowners in bankruptcy, the USTP opened investigations of Countrywide, as well as other mortgage lenders, after receiving complaints about their chronic accounting irregularities. Based on its findings, the USTP initiated litigation throughout the country that focused on three of Countrywide's practices: inflating the mortgage claims it made against homeowners in chapter 13 bankruptcy; failing to properly credit homeowners with payments made; and failing to notify homeowners of extra charges added to mortgage bills. These improper accounting and billing practices can be catastrophic to debtors, who may emerge from bankruptcy only to be required to pay previously undisclosed charges or risk foreclosure, and unfair to other creditors, who may receive less than their fair share from the bankruptcy estate because the mortgage company claimed more than it was entitled to receive.

For two years the USTP worked closely with the Federal Trade Commission (FTC) to carry out parallel investigations relating to Countrywide's improper conduct in servicing home loans of borrowers in default or in bankruptcy. On June 7, 2010, the FTC announced a consent order with Countrywide that resolved an FTC complaint and the USTP's litigation in bankruptcy courts concerning Countrywide's mortgage servicing practices. The consent order provides one of the largest monetary remedies in the history of the FTC, and the largest monetary remedy in the history of the USTP.

The consent order contains three major provisions:

- Countrywide paid $108 million into a fund administered by the FTC to compensate homeowners, including a significant number of chapter 13 debtors, who were harmed by the company's violations;

- Countrywide will establish internal procedures, including a data integrity program, to ensure that the charges imposed and claims filed in bankruptcy court are accurate, and will hire an independent third party to verify compliance with the prescribed procedures; and

- Countrywide will no longer impose hidden charges and will provide adequate notice to debtors of its charges and required monthly payments throughout the bankruptcy case. Further, Countrywide is prohibited from collecting fees, i.e., fees or escrow shortages incurred during the bankruptcy case, unless it obtains court approval or provides prior notice as required, so that trustees, debtors and bankruptcy courts can evaluate the legitimacy of the claims.

Importantly, the consent order does not bind non-parties, including debtors and bankruptcy trustees.

In the chapter 7 context, Countrywide's improper practices have an impact on a trustee's ability to properly administer estates because the mortgage company may have claimed more than it is entitled to receive. In addition, trustees may get questions from debtors who have converted from chapter 13 to chapter 7 and whose mortgages were or currently are serviced by Countrywide. Trustees should refer debtors seeking information about eligibility for a refund to the FTC Web site at www.ftc.gov/countrywide. The FTC Web site also contains links to other mortgage-related consumer information such as the cost of defaulting on a mortgage and steps the consumer debtor can take to make sure payments are properly applied.

**<u>'Operation Stolen Dreams'</u>**

On June 17, 2010, Attorney General Eric Holder announced "Operation Stolen Dreams," a nationwide sweep of mortgage fraud cases coordinated by the Financial Fraud Enforcement Task Force. The sweep featured both civil and criminal cases, and emphasized the strong combined actions taken by federal, state and local law enforcement authorities over a three and one-half month period. More than 1,500 criminal defendants were named in the sweep and nearly 200 civil enforcement actions were taken. The USTP contributed about 20 percent of the civil cases, which addressed a wide range of violations, including actions taken against mortgage servicers, foreclosure rescue operators, loan origination and loan modification scammers and real estate Ponzi scheme operators. The USTP's settlement with Countrywide was included as one of the highlighted case examples. In addition, more than two dozen of the criminal cases cited in Operation Stolen Dreams were attributable to the Program. We are pleased to have been a partner in this important collaborative effort.

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The USTP is committed to continuing its fight against mortgage servicer abuse and other consumer-targeted fraud in order to preserve the integrity of the bankruptcy system. Mortgage servicers must be held to the same standard of accuracy and completeness in their filings as are other creditors and debtors. Homeowners who file for bankruptcy protection and obey the rules are entitled to a fresh start. The settlement with Countrywide, as well as the other actions highlighted in this article, help to ensure that debtors will receive that legally protected fresh start.