**USTP Actions Against Mortgage Fraud and Abuse
Are Part of Financial Fraud Enforcement Task Force Sweep**

By

*Gail Geiger, Acting Associate General Counsel for Civil Enforcement,
Executive Office for U.S. Trustees,*

*and Sandra Taliani Rasnak, Assistant United States Trustee, Chicago,
and Co-Chair, Foreclosure Rescue Working Group*

Task Force Mortgage Fraud Sweep

For the last several years, combating mortgage fraud and abuse has been a top priority of the United States Trustee Program ("USTP" or "Program"). The Program has dedicated significant civil and criminal enforcement resources to address an array of issues ranging from mortgage servicer abuse to rescue and loan modification schemes, many of which have been discussed in a series of articles published in the *ABI Journal*.[1] Through internal detection by the USTP and referrals from the bankruptcy court, trustees, bankruptcy clerks and other third parties, the Program has uncovered potential wrongdoing and pursued civil enforcement actions against those who prey upon vulnerable consumers and, where appropriate, referred suspected criminal conduct to our law enforcement partners. The Federal Bureau of Investigation recently reported that the use of the bankruptcy system by those engaged in rescue schemes is increasing as "perpetrators seize opportunities created by the current housing crisis and the more than 2.1 million properties in foreclosure."[2]

In support of our efforts, the Program is pleased to be a member of the President's interagency Financial Fraud Enforcement Task Force ("FFETF").[3] On June 17, 2010, the FFETF announced Operation Stolen Dreams, a nationwide sweep targeting mortgage fraudsters throughout the country.[4] Starting on March 1, more than 1,500 criminal defendants were charged and more than 190 civil enforcement actions were taken by federal agencies, regulatory authorities, inspectors general and state and local law enforcement as part of a coordinated,

[1] Sandra Taliani Rasnak, *"USTP's Civil Enforcement Activity Targets Mortgage Fraud and Mortgage Rescue Schemes,"* ABI JOURNAL, March 2010, at 72-73; Sandra R. Klein, *"USTP Initiative Combats Bankruptcy-Related Mortgage and Real Estate Fraud,"* ABI JOURNAL, July-August 2009, at 18; and Sandra R. Klein & Philip Crewson, *"USTP's Report on Criminal Referrals Highlights Criminal Enforcement Activity,"* ABI JOURNAL, November 2009, at 20.

[2] Federal Bureau of Investigation, 2009 Mortgage Fraud Report "Year in Review," www.fbi.gov/publications/fraud/mortgage_fraud09.htm, at 18.

[3] The FFETF is working to improve efforts across the federal executive branch and with state and local partners, to investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, combat discrimination in the lending and financial markets, and recover proceeds for victims of financial crimes. For more information on the task force, visit www.StopFraud.gov.

[4] The Department of Justice's press release is posted at http://www.justice.gov/opa/pr/2010/June/10-opa-708.html.

multifaceted strategy to hold accountable those who engage in such conduct. The Program participated in the sweep, contributing 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 scams and real estate Ponzi schemes. In addition, more than two dozen of the criminal cases cited in Operation Stolen Dreams were attributable to the Program.

Mortgage Servicing Abuse

One of the most significant bankruptcy-related cases included in the sweep was a major global settlement entered into by Countrywide Home Loans, Inc. and BAC Home Loans Servicing LP (Countrywide), the Federal Trade Commission (FTC) and the USTP. 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 of chronic accounting irregularities by mortgage servicing companies. The USTP litigation against Countrywide focused on three types of practices: inflating the mortgage claims Countrywide 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 their mortgage bills. These improper accounting and billing practices can be catastrophic to debtors, who may emerge from bankruptcy only to end up losing the family home, 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.

Over a two-year period, the USTP worked closely with the FTC to carry out parallel investigations relating to Countrywide's improper conduct in servicing home loans of borrowers in default or chapter 13 bankruptcy. On June 7, 2010, the FTC and the USTP announced the settlement under which Countrywide will pay $108 million to settle charges that they inflated fees charged to cash-strapped homeowners whose mortgages Countrywide was serving, made false or unsupported claims about amounts owed by homeowners in bankruptcy, and attempted to collect fees from borrowers that were not disclosed until after the borrower's bankruptcy case was closed.[5]

The FTC consent order entered on June 15, 2010, resolves the FTC's complaint as well as the Program's challenges to Countrywide's mortgage servicing practices in bankruptcy court litigation throughout the country. Under the settlement, overcharged bankruptcy debtors and other borrowers whose loans were serviced by Countrywide before it was acquired by Bank of America in July 2008 will receive compensation from a $108 million redress fund administered by the FTC; Countrywide will establish internal procedures to be verified by a third party to ensure the accuracy of the data used to service homeowners' loans; and Countrywide will provide homeowners in bankruptcy with adequate notice of its charges.

Rescue Fraud

[5] The USTP's press release; the statement of Clifford J. White III, Director of the Executive Office for U.S. Trustees; and the complaint and consent order filed by the FTC are posted on the USTP's press release page at http://www.justice.gov/ust/eo/public_affairs/press/index.htm.

Over half of the USTP's sweep cases involved foreclosure rescue fraud schemes targeting financially distressed homeowners, including non-English speakers and minorities, in which the perpetrators used the bankruptcy system to further the scheme. As the FBI noted in its *2009 Mortgage Fraud Report*: "Mortgage fraud perpetrators are exploiting the U.S. bankruptcy system by filing fraudulent bankruptcy petitions to delay the foreclosure process and extract the maximum profit from victims during the commission of advance fee, fractional transfer, and sale-leaseback-repurchase foreclosure rescue schemes."[6] In addition, the FBI reported that perpetrators involved in loan modification schemes in the form of advanced fee rescue schemes also file bankruptcy cases to take advantage of the automatic stay and stall foreclosure, allowing them to collect more fees from their victims. These schemes are increasing in popularity and involve soliciting homeowners with offers to help them stop the foreclosure process on their homes.[7] Homeowners are falsely told that the perpetrators will renegotiate their mortgages, including covering delinquent payments, and that their monthly mortgage payments will be reduced. Perpetrators require substantial up-front payments from the homeowners and oftentimes instruct homeowners to stop making mortgage payments and communicating with their lenders.[8]

Several cases included in Operation Stolen Dreams illustrate the USTP's civil enforcement efforts against rescue fraud.[9] In one case, the U.S. Trustee's Atlanta office filed a complaint against six defendants alleging they targeted Hispanic consumers in a fraudulent mortgage foreclosure rescue scheme. The U.S. Trustee asked the bankruptcy court to permanently bar the defendants from performing document preparation services for consumers, award damages to each affected consumer and impose civil penalties and fines under 11 U.S.C. § 110. According to the complaint, the defendants, promising foreclosure relief, charged homeowners $1,000 to $2,545 in up-front fees. The U.S. Trustee also alleged that one of the defendants contracted with agents of a paralegal service to prepare bankruptcy petitions for the homeowners, and that the defendants collected inflated fees and prepared faulty bankruptcy documents. The U.S. Trustee's litigation is ongoing.

Another example demonstrates the coordinated efforts of multiple U.S. Trustee offices. Four offices in three states have filed actions against a California law firm seeking sanctions, disgorgement and injunctive relief. The USTP alleges the law firm engaged in unfair, deceptive or unlawful practices in connection with offering debt settlement, loan modification and bankruptcy services to financially distressed homeowners facing foreclosure. In their complaints and motions, the U.S. Trustees allege homeowners paid significant fees to the defendant for loan modification services that produced no results. Further, they allege the defendant persuaded the homeowners to file bankruptcy and charged them additional fees for bankruptcy document preparation services and purported legal representation. Although the defendant prepared the bankruptcy documents, it failed to make the required bankruptcy disclosures that would have

[6] Federal Bureau of Investigation, supra note 2, at 18.
[7] Id. at 21.
[8] Id.
[9] Several of the civil case examples included in this article involve motions or complaints that are not yet resolved by court order and contain allegations that may be disputed by other parties.

revealed the significant fees it received from the debtors for its loan modification and bankruptcy services. The U.S. Trustees' litigation is ongoing.

The U.S. Trustee's San Diego office filed complaints against three defendants alleging violations of section 110 in multiple bankruptcy cases filed on behalf of four debtors as part of a fraudulent loan modification scheme. The complaints sought fines and disgorgement of fees. The U.S. Trustee alleged the defendants fraudulently induced homeowners to engage their services with promises of assistance with modification of their mortgages. Rather than providing such assistance, the defendants allegedly filed multiple bankruptcy cases in the names of the homeowners to stall foreclosure. The defendants were also named in 64 separate enforcement actions seeking the imposition of additional fines and disgorgement of fees for violations of section 110. In those matters, the defendants allegedly filed multiple bankruptcy cases on behalf of debtors, but those cases were dismissed by the bankruptcy court because no bankruptcy schedules were filed. The U.S. Trustee is seeking the entry of default judgments

Debtor Fraud and Abuse

The USTP also addressed fraud and abuse by debtors in connection with mortgage fraud schemes as part of Operation Stolen Dreams. As the following cases illustrate, these debtors were not innocent victims but rather were active participants in the schemes who sought to use the bankruptcy system to escape paying the losses sustained as a result of their schemes.

In one case, two defendants entered into a stipulation waiving their bankruptcy discharges to resolve a complaint filed under 11 U.S.C. § 727 by the U.S. Trustee's Oklahoma City office. The U.S. Trustee alleged the debtors concealed significant transfers of real estate, concealed their ownership of bank accounts and other assets and substantially under-reported their income. According to the U.S. Trustee's investigation and the allegations contained in 21 dischargeability lawsuits filed by 35 victims, the debtors created two entities to market their mortgage rescue program to homeowners facing foreclosure. The debtors convinced homeowners to transfer their houses into trusts created by the debtors; the debtors then found renters for each property to generate cash flow purportedly to service the mortgages. In some cases, the debtors falsely led renters into believing they were purchasing the homes via rent-to-own or land contracts. In addition, the debtors allegedly diverted the rent proceeds. The waiver of the defendants' discharges resolved all pending complaints.

In another case, the U.S. Trustee's Milwaukee office successfully prevented a debtor from receiving a discharge of about $1 million of unsecured debt related to his purchase of nine properties. At trial on the U.S. Trustee's objection to discharge, the debtor admitted that he served as a purchaser for nine properties and that he failed to disclose in his bankruptcy documents rent proceeds, income from property purchases, bank accounts and businesses he owned. The U.S. Trustee also uncovered a number of significant undisclosed deposits into the debtor's bank accounts, for which the debtor could not provide adequate explanation. The U.S. Bankruptcy Court for the Eastern District of Wisconsin entered an order denying the debtor's discharge and finding that the debtor did not keep or preserve records; did not disclose all of his income, bank accounts or required information; and provided false information on his bankruptcy schedules.

In a third case, the U.S. Trustee's Cleveland office filed a motion to dismiss a debtor's chapter 7 case for bad faith. The U.S. Trustee alleged that the debtor was seeking to discharge over $3.7 million dollars in unsecured mortgage debt incurred as part of a mortgage fraud scheme, that she never intended to repay the debt and that it would be an abuse of the system for the debtor to receive a discharge. The motion also alleged that the debtor had previously pleaded guilty to charges arising out of a mortgage fraud scheme and that the unsecured mortgage obligations listed in her case arose out of the same scheme. The U.S. Bankruptcy Court for the Northern District of Ohio granted the U.S. Trustee's motion and dismissed the case with prejudice.

Conclusion

The Program is committed to continuing its fight against mortgage servicer abuses, rescue fraud schemes and debtor fraud through civil and criminal enforcement actions. As a member of the FFETF, the USTP will continue to work with our partners in addressing financial crimes and abuses that affect all segments of the nation's economy. Additional information about mortgage and financial fraud schemes can be found at the task force's Web site, www.StopFraud.gov, and the FTC's Web site, www.ftc.gov. As always, we encourage bankruptcy judges, attorneys, trustees and others in the bankruptcy community to report suspected bankruptcy fraud and abuse to the U.S. Trustee Program, either through your local field office or through our Internet fraud hotline at USTP.Bankruptcy.Fraud@usdoj.gov.