

Business Day

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Shamed Into Altering A Mortgage

In physics, the Heisenberg Uncertainty Principle states that the process of observing subatomic particles affects their behavior.

We have a similar principle in

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journalism: the process of reporting a story can sometimes affect the behavior of those being reported on. Last Wednesday, the Heisenberg Journalism Principle was on full display in a courtroom at the Queens County Courthouse, in New York.

The case involved Lilla Roberts, the 73-year-old retired physical therapist I wrote about last month, whose home in Jamaica, N.Y., had been foreclosed on last summer by Bank of America without her knowledge and turned over to Fannie Mae, which was in the process of trying to evict her. With the help of a young public interest lawyer, Elizabeth Lynch, Ms. Roberts filed a lawsuit aimed at stopping the eviction and reversing the foreclosure, something Ms. Lynch conceded was a long shot.

Ms. Roberts's story — buttressed with ample documentation provided by Ms. Lynch — was both awful and emblematic of the whole foreclosure mess. Having fallen behind on her mortgage when her upstairs tenant stopped paying his rent, Ms.

Bank of America modifies a loan for a Queens woman, 73.

Roberts spent the next three years banging her head against a wall trying to get a mortgage modification.

Three times she had gotten a short-term "forbearance agreement" requiring her to fork over thousands of dollars up front while her servicer — first Wilshire Credit, and then, in early 2010, Bank of America — supposedly worked out a modification. A formal loan modification never materialized. In her anxiety over keeping her house, Ms. Roberts sent mortgage checks when her forbearance agreement ran out, only to have them returned uncashed. She constantly got the runaround.

She had to deal with a brutal foreclosure mill law firm, Steven J. Baum, which tried to get her to sign away her legal rights. Right up until it foreclosed, Bank of America was telling Ms. Roberts that a modification plan was in the works. Ms. Lynch, for her part, discovered enough examples of shoddy and perhaps deceptive paperwork to suggest that Bank of America might not have even had the legal standing to foreclose.

A pleasant and modest woman,

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Bank of America Is Shamed Into Modifying a Mortgage

From First Business Page

cent interest rate and a 40-year term. It would require Ms. Roberts to make monthly payments of \$1,140 a month.

It was, unquestionably, a great deal, one that would allow Ms. Roberts to live in her house the rest of her life, and avoid having to move to a shelter, something she feared greatly. But there were two sticking points. The loan included \$12,000 in unexplained fees, which Ms. Lynch viewed as a sneaky effort to pay the bank's lawyers, something the judge presiding over the case, Duane A. Hart, had already said he wouldn't allow. And it had a big balloon payment at the end that included nearly \$50,000 in accumulated interest.

Such balloon payments have become common features in mortgage modifications because the banks get to avoid writing down principal — and everyone involved gets to kick the can. Ms. Lynch didn't object to the balloon payment, but it bothered her that Bank of America had drafted a mortgage that allowed it to be made whole. She felt the bank should be compelled to feel a little pain because of the pain it had put her client through. So she insisted that it swallow half the interest in the balloon payment. The bank refused. With neither side willing to budge, they took their disagreement to Judge Hart on Wednesday morning.

Things quickly changed after my column was published. Within days, Fannie Mae handed the house back to Bank of America and washed its hands of the deal. Bank of America then did what it should have done in the first place: investigate whether Ms. Roberts was a good candidate for a loan modification. And what dya know? She was!

It wasn't long before Ms. Lynch and the bank hammered out the outline of a loan modification plan. Ms. Lynch insisted that her client pay no more than \$1,200 a month, and that she have a fixed-rate mortgage. The bank agreed. It offered her a \$374,000 mortgage — the approximate value of her home — with a 2 per-

cent interest rate and a 40-year term. It would require Ms. Roberts to make monthly payments of \$1,140 a month.



TODD HEILER/THE NEW YORK TIMES
Bank of America has agreed to adjust the mortgage for Lilla Roberts, 73, who has lived in her house in Queens since 1988.

less lawyer.) When I did a Google search, I discovered that he has been censured twice for actions on the bench that can best be described as improper bullying. He also struck me, though, as someone whose heart was fundamen-

ting counsel were standing before him. It did not begin well for Bank of America. The first thing Judge Hart did was toss out the \$12,000 in unexplained fees. Then, as I sat in the jury box taking notes — and with everybody knowing exactly what I was doing there — one of the bank's lawyers, Andrew B. Messite of Reed Smith, explained to the judge that while the bank's modification proposal was "excellent," his side was "not comfortable discussing it publicly."

An example of the trouble homeowners are facing in the foreclosure mess.

The judge responded angrily. "We do things out in the open in this courtroom," he said. He shoos the lawyers back to their seats while he got his clerk to find a court reporter. Not only were the proceedings going to be discussed out on the open; they would be transcribed for posterity.

Fifteen minutes later, the lawyers resumed their posts, this time accompanied by their respective clients: an outreach specialist for Bank of America; and

Ms. Roberts herself, who had come to court dressed in a colorful sweater and a bright green beanie. Caren L. Samplin, a lawyer with Steven J. Baum who was also representing Bank of America, quickly laid out the terms. Judge Hart's eyes lit up as he listened.

"This is consistent with what I've been asking the banks to do every since this crisis started," he said after she had finished. Then he added sarcastically, "And you'll do this for everyone even when The New York Times is not writing about it?"

Ms. Samplin replied, lamely, "There are different circumstances in every case." She added that the bank was waiving a number of fees to make this mortgage work.

After asking Ms. Roberts a few questions, Judge Hart turned his attention to Ms. Lynch. What, he wanted to know, was she objecting to? She began to explain the sheer hell that Ms. Roberts had been through and why she thought the size of the balloon payment was onerous. "She'd have to be the third-oldest person in America for her to live to see that balloon," Judge Hart replied. "It is interesting that should have been paid and wasn't," chimed in Mr. Messite.

"But it means they've done nothing wrong!" Ms. Lynch blurted out. The judge looked at her sternly. "We strive for fairness around here," he said. "This is fair. A flat balloon payment is 40 years away."

"The house could be worth \$750,000 by then," Ms. Samplin said. This, of course, is exactly the kind of thinking that gave us the foreclosure crisis in the first place. But never mind.

Judge Hart wasn't finished yet. Turning again to Ms. Lynch, he

said, "Your duty is to represent your client, not to carry the torch for the entire Western world. Does it suit Ms. Roberts?"

"Yes," replied Ms. Lynch. "I assume you will take it," Judge Hart said. With that, he set a date for a new hearing — just in case — and let the parties go to settle their now negligible differences.

When I called James Mahoney, a Bank of America spokesman, he made the point, as he had before, that Bank of America had made a lot of loan modifications — nearly 800,000. But it also served another 1.3 million people whose mortgages were in trouble. Then he said he would e-mail me a statement.

"This case is unfortunately like hundreds of thousands across the country during the housing boom," it read. "The borrower refinanced and extracted a large sum of cash from the equity in the home, then fell behind and missed 27 monthly payments. We need to resolve these cases either through loan mods when possible or foreclosures when unavoidable — only then will we get the housing market and the economy back on track."

Whether or not you agree with his mean-spirited analysis of the particulars — and I'm far from convinced — one thing is undeniable: a mere seven months ago, Ms. Roberts's home was, by the bank's lights, in the category of unavoidable foreclosure. Now, though her financial circumstances are unchanged, she is on the verge of getting a loan modification that will suit her, the bank, and the investors owning the mortgage.

If only the bank could have come to this conclusion without having to be prodded by the Heilberg Journalism Principle.