NEW YORKERS FOR RESPONSIBLE LENDING

JUDICIAL DECISIONS REFLECTING BANK & LOAN SERVICER DELAY

Mortgage Working Group, June 2014

Date	County	Judge	Court's Description of Servicer Delay
12/12/13	Kings	Sherman	*America Home Mortgage Servicing v. Bobbitt:* Court found that Plaintiff failed to negotiate in good faith because it claimed that investor restrictions prevented modification but failed/refused to produce the relevant Pooling and Servicing Agreement as ordered several times by the presiding referee. Plaintiff also unduly delayed potential resolution of the case, in which conferences were held from April 2009 to February 2011, by repeatedly failing to present a representative with authority to waive the alleged investor restrictions.
11/25/13	Queens	McDonald	*U.S. Bank v. Gioia:* Court found that Plaintiff servicer failed to negotiate in good faith when it filed suit in November 2011 but allowed the case to "linger" in the shadow docket and, after homeowner filed the RJI in July 2013 to remove the case from the shadow docket, failed to respond to multiple modification applications submitted by the homeowner and then filed a motion to discontinue the suit.
09/19/13	Kings	Demarest	*Deutsche Bank v. Hinds:* after numerous opportunities, Plaintiff servicer failed to produce evidence that it had standing to sue. Case dismissed.
6/21/13	Bronx	Torres	*Citibank v. Barclay:* Plaintiff servicer filed suit in 2009 but even by 2011 Plaintiff could not identify what documents it claimed were missing from homeowner's request for a mortgage loan modification. The court found that plaintiff made it impossible for the homeowner to comply with its "conflicting, ever changing never written requests for documentation" over the course of 9 settlement conferences, stating that the homeowner "appeared at every settlement conference and has provided every document that the plaintiff has required in a timely manner. Plaintiff's bit by bit requests at each conference only serve to unnecessarily delay the modification application process while tacking up interest, fees, and penalties to the plaintiff's benefit ant [the homeowner's] detriment."
3/26/13	Dutchess	Pagones	*HSBC v. Gashi:* At the first two settlement conferences, Plaintiff's counsel did not know who serviced the loan, and then for the next four conferences gave conflicting and/or inaccurate information about whether the homeowner's modification request was complete. "This homeowner has appeared at every conference and has provided every document plaintiff has requested in a timely manner. Plaintiff's piecemeal requests at each conference only serve to unnecessarily delay the modification application process while racking up interest, fees, and penalties to plaintiff's benefit and homeowner's detriment."

10/23/12	Kings	Solomon	*Deutsche Bank v. Soriano:* The presiding settlement conference referee summarized his experience: "Nine conferences without plaintiff's cooperation. Plaintiff refuses to participate in negotiations to settle this matter. Plaintiff continues to procrastinate and avoid scheduled conferences." After 18 months of fruitless settlement conferences (in a second foreclosure action after Plaintiff had discontinued the first, in which settlement conferences were also held), the referee referred the matter to the Supreme Court, which found that Plaintiff servicer (Wells Fargo) was "totally disorganized, without process or procedure to assure that documents are not repeatedly lost or misplaced. There is nothing to suggest any process which directed documentation to the appropriate person with the capacity and authority to evaluate the application within the HAMP guidelines or anything approaching a reasonable time."
5/25/12	Suffolk	Jones	*Aurora Loan Services v. Dunning:* Undisputed evidence before the court demonstrated that Plaintiff had sufficient financial information from homeowners to approve a loan modification as early as May 2010. "It was not until more than one year later . . . that Aurora indicated its willingness to offer the [homeowners] a traditional loan modification . . ." That loan modification offer included payment for over $80,000 in interest that accumulated during the year-long delay. Court found that "the statutorily-mandated court conference program was frustrated as a result of the inordinate delays cause by Aurora in failing to process the defendants' loan modification application promptly and efficiently, and by both Aurora as well as its attorneys in failing to maintain accurate records . . ."
5/17/12	Putnam	Degatano	*HSBC v. Meisner:* Over the course of 9 conferences from March 2010 through August 2011, the homeowners "were clearly eligible for a loan modification under HAMP," but the servicer refused to review under HAMP, claimed investor restrictions it could not prove, refused to put any HAMP or non-HAMP modification offer in writing, and repeatedly made false claims that the homeowner's modification application was missing documents when it wasn't.
6/29/11	Kings	Kramer	*Deutsche Bank v. Davis:* Between April 2009 and February 2011 there were 17 settlement conferences held and the homeowner submitted 5 separate complete modification application packages. The court found that plaintiff engaged in repeated dilatory tactics, including claiming that it lost 3 of the 5 modification applications and repeatedly improperly reviewing the homeowner's modification request, using improper standards and numbers.