Boston Federal Court Allows HAMP Suit to Move Forward Against Bank of America Subsidiary

April 12, 2011 - A federal judge in Boston has ruled that a law suit filed against Bank of America for violations of the federal government's Home Affordable Modification Program (HAMP) can move forward under Massachusetts state consumer protection laws. The suit accuses B of A of violating the program's standards because consumers who filed for mortgage modifications with the bank were allegedly ignored or disregarded.

Tweet

(function() {
var s = document.createElement('SCRIPT'), s1 = document.getElementsByTagName('SCRIPT')[0];
s.type = 'text/javascript';
s.src = 'http://widgets.digg.com/buttons.js';
s1.parentNode.insertBefore(s, s1);
})();

The suit was filed in state court against BAC Home Loans Servicing (BAC), a Bank of America subsidiary. At the request of BAC, it was moved to a federal court. Many companies will do make such a request because the federal court system is generally believed to be more supportive of business interests.

Jennifer and Russell Morris filed the suit against BAC. They claim in the suit that BAC violated the state's consumer laws by failing to evaluate them for a mortgage modification under the HAMP program.

BAC had requested that the court dismiss the case because HAMP regulations do not give consumers a private right to sue. But MA state consumers laws do provide such a right. Judge Patti Saris ruled on April 4th that the suit can move forward with the caveat that the Morris's need to amend their claim within 30 days to prove that Bank of America violated HAMP rules. This shouldn't be too difficult for them based on information presented in court that was not included in their initial claim. The judge specifically states that a violation of HAMP can provide a right of private action under MA state law and she gave instructions to them about what evidence should be included based on the information their attorney presented in court.

Although similar cases in California have recently been thrown out, Judge Saris said that this case can't really be compared because California law does not provide consumers a private right to sue under HAMP. The law in Massachusetts does.

The Morris's are asking for actual damages, attorney's fees and a court order that BAC immediately evaluate them for a mortgage modification.

The ruling is blow to BAC and Bank of America because under MA law, violation of HAMP warrant triple damage awards if proven. It also opens the door to similar law suits from other plaintiffs in the state, as well as from other states that may have consumer laws that provide consumers with a right to file individual law suits.

It should also be noted that earlier this year, the Massachusetts Supreme Court entered a ruling that reversed a number of foreclosures that violated state laws. In that case, the court was addressing the fact that some banks were signing off on foreclosures without the proper documentation.

byJim Malmberg
Note: When posting a comment, please sign-in first if you want a response. If you are not registered, click here. Registration is easy and free.
Follow me on Twitter: