



An **ALM** Web site

New Jersey Law Journal

STATEWIDE LEGAL AUTHORITY SINCE 1878

SUBSCRIBE

- Free Limited Access
- NJLJ 30-Day Free Trial

This Site | [Law.com Network](#) | [Legal Web](#)

Search the Legal Web [Go >>](#)

you are here: [njlj home](#) > [news](#) > bank of america sued in class action over flouting of foreclosure rules

NEWS

font size: [+](#) [-](#) [Print](#) [Email](#) [Comment](#) [Reprints & Permissions](#)

Bank of America Sued in Class Action Over Flouting of Foreclosure Rules

By Charles Toutant
New Jersey Law Journal
October 21, 2010

Bank of America has been hit with a class action on behalf of homeowners seeking damages for alleged disregard of foreclosure process rules.

The suit, filed Wednesday in federal court in Newark, accuses Bank of America and two subsidiaries, LaSalle Bank and BAC Home Loans Servicing, of "an undisciplined rush to seize homes" through "pervasive and willful disregard of knowledge, facts and statutes."

Bank of America has filed foreclosure proceedings on many mortgages in New Jersey without holding the necessary rights as the mortgagee or assignee at the time of foreclosure, the suit says.

"Many thousands of foreclosures are plainly void under statute and settled New Jersey case law. Many borrowers never obtain statutorily required notices, and many foreclosure suits are filed entirely based in inaccurate recitations concerning ownership of the mortgage, the note, or the assignment," the suit says.

The putative class in the suit, *Beals v. Bank of America, N.A.*, 10-cv-05427, consists of all named defendants in pending New Jersey foreclosure actions initiated by Bank of America or its affiliates. The complaint includes counts of common-law fraud, breach of the covenant of good faith and fair dealing and violations of the New Jersey Fair Foreclosure Act and Consumer Fraud Act.

The plaintiffs cite a recent, well-publicized admission by a Bank of America official in a Massachusetts foreclosure case that she signed thousands of foreclosure complaints without reviewing them.

They also say the fact that the bank and its affiliates, by imposing a moratorium on foreclosures from Oct. 8 to Oct. 18 while reviewing their procedures, "have admitted that in all of their foreclosure cases, they, as a moving party, prosecute their claims with a complete disregard of whether or not they have met their burden."

The plaintiffs claim they are entitled to compensation for emotional distress, damage to their credit scores and time lost from work for attorney meetings and foreclosure proceedings.

They also seek punitive damages and attorneys' fees as well as declaratory and injunctive relief dismissing the foreclosures of class members, with prejudice, declaring the mortgages and promissory notes of class members void and unenforceable and rescinding or reforming the mortgages and promissory notes to conform to plaintiffs' reasonable expectations.

The suit was brought by Lawrence Friscia, head of a Newark firm that counsels distressed homeowners, and his associate, Jonathan Minkove, who say they've found that Bank of America regularly negotiates binding agreements to modify mortgage terms and then fails to honor the terms.

The seven named plaintiffs are all New Jersey residents in danger of foreclosure, among them Jose Grullon of Passaic, whose binding arbitration agreement ending his foreclosure was ignored by Bank of America, and Tanya Beals of Roselle, who received a mortgage modification but was nonetheless found in default by Bank of America when she made mortgage payments at her new, reduced rate.

"There's a difference in the fact pattern [among individual cases] but there's pattern and a practice of blatant disregard for process," says Minkove. "Any lawyer who's worth his salt will tell you process matters."

And when judges call them to case management conferences in their foreclosure cases, outside counsel for Bank of America regularly fail to show up, says Friscia. Worse still, New Jersey's judges don't seem to be bothered by such behavior, he says.

"There's a shocking deference given to Bank of America on the part of the judicial system," Friscia says.

In the firm's negotiations on behalf of homeowners, the bank doesn't bargain in good faith, says Minkove. For example, the legal department will tell them to speak to the loss mitigation department, which will order them to send in documentation. They comply, but bank officials "regularly say they never received it. Therefore, part of what prompted us to action is [the realization that] this is a systemic problem. The left hand doesn't speak to the right hand," Minkove says.

A Bank of America spokesman in New York, T.J. Crawford, referred a reporter's inquiry about the suit to other

ADVERTISEMENT



MOST VIEWED ARTICLES

[Chumminess in Court Gets Two Judges In Ethics Trouble](#)

[Judge-cum-Comedian's Appeal Tests N.J. Court System's Sense of Humor](#)

[E-ZPass Toll Entries Held Admissible as Business-Records Hearsay Exception](#)

[Public Entities Can't Limit Right To Sue The Way Private Ones Can, Court Says](#)

[Favre/Jets 'Sexting' Probe Is a Company's Worst Nightmare](#)



10/22/2010

Bank of America Sued in Class Action O...

spokespersons in California, who did not respond to telephone and e-mail messages.

The case has been assigned to District Judge Katharine Sweeney Hayden.

[Terms & Conditions](#) | [Privacy](#) | [About njlj.com](#)
