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The CFPB Is A Champion for Americans Across The Country

David J Reiss

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Republicans like Sen. Ted Cruz (R-Texas) have been arguing that consumers should be freed from the Consumer Financial Protection Bureau’s “regulatory blockades and financial activism.” House Financial Services Committee Chairman Jeb Hensarling (R-Texas) accuses the CFPB of engaging in “financial shakedowns” of lenders. These accusations are weighty.

But let’s take a look at the types of behaviors consumers are facing from those put-upon lenders. A recent decision in federal bankruptcy court, Sundquist v. Bank of America, shows how consumers can be treated by them. You can tell from the first two sentences of the judge’s opinion that it goes poorly for the consumers: “Franz Kafka lives. This automatic stay violation case reveals that he works at Bank of America.”

The judge continues, “The mirage of promised mortgage modification lured the plaintiff debtors into a Kafka-esque nightmare of stay-violating foreclosure and unlawful detainer, tardy foreclosure rescission kept secret for months, home looted while the debtors were dispossessed, emotional distress, lost income, apparent heart attack, suicide attempt, and post-traumatic stress disorder, for all of which Bank of America disclaims responsibility.”

Homeowners who reads this opinion will feel a pit in their stomachs, knowing that if they were in the Sundquists’ shoes they would also tremble with rage and fear from the way Bank of America treated them: 20 or so loan modification requests or supplements were “lost;” declared insufficient, incomplete or stale; or denied with no clear explanation.

Over the years, I have documented similar cases on REFinBlog.com. In U.S. Bank, N.A. v. David Sawyer et al., the Maine Supreme Judicial Court documented how loan servicers demanded various documents which were provided numerous times over the course of four court-ordered mediations and how the servicers made numerous promises about modifications that they did not keep. In Federal National Mortgage Assoc. v. Singer, the court documents the multiple delays and misrepresentations that the lender’s agents made to the homeowners.

The good news is that in those three cases, judges punished the servicers and lenders for their pattern of Kafka-esque abuse of the homeowners. Indeed, the Sundquist judge fined Bank of America a whopping $45 million to send it a message about its horrible treatment of borrowers.

But a fairy tale ending for a handful of borrowers who are lucky enough to have a good lawyer with the resources to fully litigate one of these crazy cases is not a solution for the thousands upon thousands of borrowers who had to give up because they did not have the resources, patience, or mental fortitude to take on big lenders who were happy to drag these matters on for years and years through court proceeding after court proceeding.

What homeowners need is a champion that will stand up for all of them, one that will create fair procedures that govern the origination and servicing of mortgages, one that will enforce those procedures, and one that will study and monitor the mortgage market to ensure that new forms of predatory behavior do not have the opportunity to take root. This is just what the Consumer
Financial Protection Bureau has done. It has promulgated the qualified mortgage and ability-to-repay rules and has worked to ensure that lenders comply with them.

Kafka himself said that it was “the blend of absurd, surreal and mundane which gave rise to the adjective ‘kafkaesque.’” Most certainly that is the experience of borrowers like the Sundquists as they jump through hoop after hoop only to be told to jump once again, higher this time.

When we read a book like Kafka’s *The Trial*, we are left with a sense of dislocation. What if the world was the way Kafka described it to be? But if we go through an experience like the Sundquists’, it is so much worse. It turns out that an actor in the real world is insidiously working to destroy us, bit by bit.

The occasional win in court won’t save the vast majority of homeowners from abusive lending practices. A regulator like the Consumer Financial Protection Bureau can. And in fact it does.