Written by Bob Adelmann on March 29, 2017

Bank of America Fined Again; Board Likely to Laugh It Off

Bankruptcy Judge Christopher Klein fined Bank of America $45 million on Thursday for deliberately and intentionally harming a young couple who got caught up the real estate collapse and had to downsize. Erik and Renee Sundquist made a down payment on a smaller home and borrowed the balance from Countrywide Home Loans. When they couldn't make the payments on that loan, the couple was advised by Bank of America, which owned Countrywide, to default as a precondition for a loan modification in order to lower their payments.

Klein described what happened next in his ruling in *Sundquist v. Bank of America* as a series of events so fantastic and bizarre as to be nearly incomprehensible:

> The mirage of promised mortgage modification lured the plaintiff debtors into a Kafkaesque 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.

In his 109-page ruling, Judge Klein explained that the Sundquists tried to do the right thing, but were thwarted at every turn by Bank of America:

> The Sundquists were reluctant to agree to the new loan because monthly payments on the loan were higher than what they had been seeking, but they were stampeded into closing the transaction by the threat of a sale to an all-cash buyer and by the promise of their loan broker (whom they trusted based on his work for them on two prior refinances and a business loan) that they could refinance or modify the loan immediately.

They were reluctant to default but were pressured into doing so by the bank:

> Their sole reason for defaulting, which they did with considerable reluctance (their credit score had been above 800), was acquiescence [to] Bank of America's demand that they default as a precondition for loan modification discussions with Bank of America.
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> The Sundquists expected to be able to cure (with Renée Sundquist's mother's assistance) any default once a loan-modification was achieved. They further expected that Bank of America would deal with them in good faith and make a reasonably prompt decision.

That trust in the bank's promise was sorely misplaced, wrote Klein: "Those expectations of prompt and good-faith dealings turned out to be improvident."

The harrowing experience cost the Sundquists dearly:

> The Sundquists entered their ordeal with Bank of America as physically strong people. Throughout the chapter 13 phase of the ordeal, a significant emotional and physical toll debilitated them. They

> had been elite athletes. He had been a member of a NCAA National Championship Soccer Team. She was an ice skater on Italy's Olympic team and was teaching ice skating.
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> He emerged from the ordeal restricted to exercising only on an elliptical trainer and had attempted suicide. She was hospitalized with heart attack symptoms that were found to be stress-related, has been diagnosed with post-traumatic stress disorder, and was left with near-daily debilitating migraine headaches that persist into the present and that constrain her ability to engage in a wide range of activities.

All of which was deliberately intentional, wrote the judge: "Throughout, the conduct of Bank of America has been intentional."

Klein concluded:

> Bank of America willfully violated the automatic stay by, among other things, foreclosing on the Sundquist residence, prosecuting an unlawful detainer action, forcing them to move, secretly rescinding the foreclosure, failing to protect the residence from looting, refusing to pay for Sundquist property lost, and subjecting the Sundquists to a mortgage modification charade.
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> Pursuant to § 362 (k) (1), Bank of America is liable for all damages incurred between the initial violation of the automatic stay and the time the stay violation is fully remedied (which remedy comes in this decision and accompanying judgment).
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> The actual § 362 (k) (1) damages are $1,074,581.50 [to the Sundquists]. The appropriate § 362 (k) (1) punitive damages are $45,000,000.00.

Klein made clear in his ruling that he intended the fine to be significant enough to catch the attention the bank's board of directors:

> The high degree of reprehensibility, coupled with the significant involvement by the office of the Bank of America Chief Executive Officer, calls for punitive damages of an amount sufficient to have a deterrent effect on Bank of America and *not be laughed off* in the boardroom as petty cash or "chump change." [Emphasis added.]

That appears to be the only error Klein made. Bank of America is the second-largest bank in the United States, with assets, as of 2016, of $2.2 trillion and revenues of $83.7 billion. The $45 million judgment against BofA will no doubt indeed be laughed off by the board when compared to other fines its predatory behaviors have cost it in the past.

In 2010 the bank was accused by the U.S. government of defrauding hospitals, schools, and dozens of state and local government organizations and paid a fine of $137 million to settle the case.

In March 2014 the bank settled a lawsuit brought by the U.S. attorney in Manhattan and TARP (Troubled Asset Relief Program) for $6.3 *billion* to be paid to Fannie and Mae and Freddie Mac, and another $3.2 *billion* to buy back worthless mortgage bonds it had sold.

In August 2014 the bank agreed to pay nearly $17 *billion* in fines and restitution to customers it had damaged and defrauded. The Department of Justice called it "the largest civil settlement with a single entity in American history."

This sordid history of rip-offs got the attention of Matt Taibbi, who wrote in *Rolling Stone*:

> This bank is like the world's worst-behaved teenager, taking your car and running over kittens and fire hydrants on the way to Vegas for the weekend, maxing out your credit cards in the three days

> you spend at your aunt's funeral.
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> They're out of control, yet they'll never do time or go out of business, because the government remains creepily committed to their survival, like overindulgent parents who refuse to believe their 40-year-old live-at-home son could possibly be responsible for those dead hookers in the backyard.…
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> Bank of America has systematically ripped off almost everyone with whom it has a significant business relationship, cheating investors, insurers, depositors, homeowners, shareholders, pensioners and taxpayers. It brought tens of thousands of Americans to foreclosure court using bogus, "robo-signed" evidence — a type of mass perjury that it helped pioneer.
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> It hawked worthless mortgages to dozens of unions and state pension funds, draining them of hundreds of millions in value. And when it wasn't ripping off workers and pensioners, it was helping to push insurance giants like AMBAC into bankruptcy by fraudulently inducing them to spend hundreds of millions insuring those same worthless mortgages.

The $45 million judgment levied on Bank of America will indeed no doubt elicit a laugh in its boardroom, but it does serve as a reminder that the bank continues to be one of the largest financial predators in history.

Photo of Bank of America headquarters in Charlotte, N.C.: AP Images

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