

**U.S. BANKRUPTCY COURT
District of South Carolina**

Case Number: **15-04439-jw**

ORDER AND FURTHER RULE TO SHOW CAUSE

The relief set forth on the following pages, for a total of 7 pages including this page, is hereby ORDERED.

**FILED BY THE COURT
12/04/2015**



Entered: 12/07/2015

A handwritten signature in cursive script that reads "John E. Waites". The signature is written in black ink and is positioned above a horizontal line.

US Bankruptcy Judge
District of South Carolina

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re,
Alexander Graham McCall,

Debtor.

C/A No. 15-04439-jw

Chapter 13

**ORDER AND FURTHER RULE TO
SHOW CAUSE**

THIS MATTER comes before the Court on a Motion to Enforce Order Requiring Loss Mitigation (“Motion”) filed by Alexander Graham McCall (“Debtor”). In response to the Motion, this Court entered an Order and Rule to Show Cause as to Ditech Financial LLC f/k/a Green Tree Servicing LLC (“Ditech”) on November 9, 2015. Ditech filed an objection to the Motion and a hearing was held on November 19, 2015. In attendance at the hearing was Eric S. Reed on behalf of Debtor, B. Lindsay Crawford III and Theodore von Keller on behalf of Ditech, and Latasha Price, a representative of Ditech. Upon review of the evidence and testimony provided, a further hearing is necessary for the Court to adequately address the matter.

A recital of the pleadings and testimony provided in this matter demonstrates the Court’s need for a further hearing on the Motion and Rule to Show Cause. On August 31, 2015, Debtor filed a Notice and Motion for Loss Mitigation/Mediation regarding the mortgage loan on his principal residence, and after no objection, the Court entered an Order Requiring Loss Mitigation/Mortgage Modification on September 25, 2015 (“LM/MM Order”). The LM/MM Order provides in part that:

[T]he Debtor, Debtor’s Counsel, [Ditech] and its counsel, and any participating co-borrower or obligor shall . . . engage in the Loss Mitigation/Mortgage Modification process in good faith, and that the failure to do so may result in the scheduling of a hearing to consider sanctions or other relief.

No party filed a motion to reconsider or an appeal regarding the LM/MM Order.

On September 28, 2015, Ditech mailed a loss mitigation denial letter to Debtor’s counsel (“Denial Letter”) stating that, based upon the eligibility requirements of U.S. Bank, the owner of the

mortgage loan, Debtor is not eligible for a loan modification because Debtor is in an active bankruptcy case.¹ The Denial Letter also states that Ditech is “a Walter Company” and that an appeal of the loss mitigation denial should be sent to the email address “HAMPDisputes@ditech.com.” On September 30, 2015, Ditech filed a Proof of Claim for the mortgage loan in the stated capacity as authorized servicer of Mid-State Trust X as owner and holder of account and contract originated by JIM WALTER HOMES, INC.²

On October 6, 2015, Debtor uploaded his loss mitigation package through the DMM Portal. On October 7, 2015, Ditech acknowledged the loss mitigation package and promptly denied loss mitigation based on Debtor’s active bankruptcy case. On October 12, 2015, Debtor filed an appeal of the loss mitigation denial and on that same day, Ditech denied the appeal.

On November 2, 2015, Debtor filed the Motion and the Court issued an Order and Rule to Show Cause requiring that “the representative/employee of Ditech Financial, LLC/Green Tree who is most knowledgeable regarding Debtor’s loan and, if different, the representative/employee most knowledgeable regarding its policies regarding loss mitigation/mortgage modification” appear before the Court to explain Ditech’s failure to comply with the LM/MM Order and to show cause why Ditech should not be held in contempt and/or have sanctions imposed against it. On November 10, 2015, Ditech filed an Amended Proof of Claim, listing Ditech as the authorized servicer and Mid-State Trust X as the owner of the loan. On November 17, 2015, Ditech, through counsel, filed an objection to the Motion stating that Walter Investment Management Corp. (“Walter”), a subsidiary of Ditech, is the current servicer on the loan and that Walter is required to follow certain

¹ At this time, the Court will not address whether the Denial Letter was in violation of Loss Mitigation/Mortgage Modification and Mediation Program procedures under Operating Order 15-01 (Bankr. D.S.C. Apr. 20, 2015), which provides that “[o]nce the Order [Requiring Loss Mitigation/Mortgage Modification] is issued, all communications between the parties regarding the loss mitigation review should be sent through a secure portal for document exchange.”

² The Court notes that, per the Court’s Claims Register, the Proof of Claim was entered by Green Tree Servicing, LLC.

guidelines regarding loss mitigation, including that a borrower in an active bankruptcy case may not be considered for loss mitigation.

At the hearing, Ms. Price, a Bankruptcy Mediation Specialist employed by Ditech,³ testified that U.S. Bank is the owner of the loan, that Walter is the servicer of the loan, and that Ditech is an agent of Walter assisting with the servicing of the loan.⁴ Also, Ms. Price testified that the loss mitigation policies for Debtor's loan are set by Walter and that Walter has a national uniform policy that no borrowers in an active bankruptcy case may be considered for a loan modification. Further, Ms. Price stated that, in her role as an employee of Ditech, the majority of the loans she reviews for loss mitigation result in an approval, estimating that "maybe 80%" result in a loss mitigation approval. During her testimony, Ms. Price admitted that her knowledge of the loss mitigation history of Debtor's loan was confined to the review conducted during Debtor's bankruptcy case and that she was unfamiliar with the pre-petition loss mitigation history of the loan. As such, Ms. Price was unable to answer several questions relating to the loan during her testimony.

Also at the hearing, Ditech submitted into evidence a servicing protocol regarding the Walter Investment Management Corp. Portfolio for First Liens ("Servicing Protocol"), which Ditech employees rely upon for loss mitigation guidelines for certain loans, including Debtor's loan. At the request of Ditech and with the consent of Debtor's counsel, the Court entered an Order of Protection for the Servicing Protocol.

This Court relies on the pleadings and testimony presented to it. At this time, the Court cannot reconcile the testimony and documentation provided by Ditech. Ms. Price testified that the owner of the loan is U.S. Bank while Ditech has filed a Proof of Claim and Amended Proof of

³ At the hearing, Ms. Price testified that she is one of 19 bankruptcy and foreclosure mediation specialists employed by Ditech. Ms. Price testified that she reviews loss mitigation for borrowers in active bankruptcy cases in Florida, New York and South Carolina.

⁴ During her testimony, Ms. Price stated that both U.S. Bank and Walter were the investor on the loan. No documentation was provided to the Court regarding whether U.S. Bank or Walter is the investor on the loan.

Claim stating that the owner is Mid-State Trust X. Additionally, Ms. Price testified that Walter Investment Management Corp. is the servicer of the loan while Ditech's Amended Proof of Claim, filed November 10, 2015, states that Ditech is the authorized servicer of the loan. Further, Ditech's Denial Letter suggests that Ditech is a subsidiary of Walter; whereas, Ditech's counsel has represented that Walter is a subsidiary of Ditech. The Denial Letter also states that Debtor did not qualify for loss mitigation because of U.S. Bank's eligibility requirements; whereas, Ms. Price testified that the loss mitigation eligibility was based on Walter's policies and procedures.⁵ Further Ms. Price testified that the loan is not eligible for any government modification programs, such as the Home Affordable Modification Program (also known as HAMP); whereas, the Denial Letter makes reference to HAMP by requiring that Debtor's loss mitigation appeal should be sent to "HAMPDIsputes@ditech.com." In sum, the information provided by Ditech paints an unclear picture for the Court regarding the entities involved in the loss mitigation review of Debtor's loan and whether the entities have acted in good faith.

While it is not the intention of this Court to force loss mitigation when it is not otherwise appropriate, the pleadings and testimony provided by Ditech are not sufficient at this time for the Court to make a determination as to whether Ditech, Walter or U.S. Bank has acted in good faith during the loss mitigation review and whether Debtor's Motion should be granted. It is therefore,

ORDERED that the representatives/employees from Ditech, U.S. Bank and Walter who are most knowledgeable regarding the policies and procedures related to the loss mitigation/mortgage modification review of Debtor's loan as well as the roles, duties and authority of each entity involved with Debtor's loan,⁶ shall appear in person at **10:30 A.M. on January 12, 2016 at the J.**

⁵ Ms. Price stated that U.S. Bank authorized Walter to service the loan pursuant to Walter's policies and procedures. No documentation was provided to the Court regarding Walter's authority as servicer to establish loss mitigation procedures for Debtor's loan.

⁶ While the Court appreciates the testimony of Ms. Price, there were several questions that Ms. Price was unable to answer. Several of these questions related to the pre-petition loss mitigation history of Debtor's loan as well as the roles

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29201 to further explain its failure to comply with the LM/MM Order by failing to consider loss mitigation/mortgage modification via the Portal and to show cause, if any, why it should not be held in contempt and/or have sanctions imposed against it, including attorney's fees to Debtor's Counsel, pursuant to 11 U.S.C. § 105, as well as this Court's inherent authority to regulate litigants before it and to address improper conduct as recognized by the Fourth Circuit Court of Appeals in In re Weiss, 111 F.3d. 1159 (1997) and by this Court in In re Grimsley, C/A No. 04-02072-jw, slip op. (Bankr. D.S.C. May 26, 2006) and In re Henderson, C/A No. 05-14925-W, slip op. Bankr. D.S.C. Oct. 4, 2006). **Ditech, Walter and U.S. Bank shall submit supporting documentation in addition to any testimony their representatives/employees provide to the Court, including such documentation as: (1) any trust, pooling, servicing or investor agreements for Debtor's loan, (2) any documents establishing or modifying the loss mitigation procedures for Debtor's loan and (3) any other document needed to establish (a) what entities are involved and have the authority to establish loss mitigation procedures for Debtor's loan, (b) what entities in fact created the specific loss mitigation procedures for Debtor's loans, and (c) what entities service Debtor's loan and/or review the Debtor for loss mitigation.**

Further, if the parties resolve the matter prior to the January 12, 2016 hearing, the parties may notify the Court by filing a correspondence on the docket that the matter is resolved and the Court will remove the hearing from the docket.

and authority of the various entities involved with Debtor's loan. Therefore, the Court requests that a different representative/employee with additional knowledge regarding these matters appear at the January 12, 2016 hearing.

The Clerk of Court is hereby directed to provide notice of this Order and the January 12, 2016 hearing to Ditech Financial LLC, Walter Investment Management Corp.,⁷ U.S. Bank National Association,⁸ the Chapter 13 Trustee and the United States Trustee.

AND IT IS SO ORDERED.

⁷ The Clerk's office shall serve this Order on Walter at the address listed for Walter's registered agent as reported by the Secretary of State of Maryland (Walter Investment Management Corp., c/o The Corporation Trust Incorporated, 351 West Camden Street, Baltimore, MD 21201).

⁸ The Clerk's office shall serve this Order on U.S. Bank National Association at the address listed for its registered agent as reported by the Secretary of State of South Carolina (U.S. Bank National Association, c/o C T Corporation System, 2 Office Park Court, Suite 103, Columbia, S.C. 29223).