

Court Rules in Favor of Nationstar in Reverse Mortgage Servicing Portfolio Dispute
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A dispute arising out of a 2015 purchasing agreement where Nationstar Mortgage acquired the reverse mortgage servicing portfolio of former reverse mortgage lender Generation Mortgage has been decided in favor of Nationstar, which has sought indemnification from Generation over certain losses on the purchased servicing portfolio. This is according to court documents obtained by RMD.

With the original case stemming from a foreclosure action made after a borrower who originated a reverse mortgage with Generation passed away, issues related to the property in that matter ultimately led to Nationstar seeking compensation from Generation for additional expenses related to the property, leading to the original dispute according to court filings.

Portfolio purchase, and property issue

In 2015, Nationstar Mortgage entered into a purchasing agreement with Generation Mortgage to acquire a portfolio of reverse mortgage servicing rights. Nationstar paid \$192 million to Generation Mortgage and received reverse mortgage net assets valued at \$233 million, comprising \$4.9 billion of unpaid principal balance assets and \$4.6 billion of assumed liabilities, according to a government filing made at the time of the agreement.

Three years later, Nationstar brought suit against Generation Mortgage and its guarantor, alleging that they had breached the original purchasing agreement by failing “to indemnify Nationstar pursuant to the explicit terms of the Agreement, and for declaratory relief establishing that Defendants owe Nationstar a duty to defend and indemnify it pursuant to the explicit terms of the Agreement,” according to the original 2018 complaint filed in the Southern District Court of New York.

Part of the agreement was the purchase of the mortgage servicing right (MSR) to a reverse mortgage loan in Maryland, and at the time of the purchase Nationstar was not apprised of the fact that the secured property contained lead paint. When the borrower passed away and Nationstar initiated a foreclosure with the intent to immediately sell the property, they also had to deal with a previously unknown illegal occupant in addition to rectifying the lead paint situation, “at great expense” according to the complaint.

After that, however, the family of a child alleging personal injury stemming from the lead paint sued Nationstar as the servicer of the loan for damages, the complaint said. Nationstar, as a result, sought indemnification from Generation over the expenses incurred.

2019 and 2021 decisions

The purchase agreement contained a “survival period” — or a negotiated timeframe within which the MSR purchaser has to provide notice of any claims against the MSR seller for indemnification — and Generation alleged that the damages incurred by Nationstar had to have happened before the period’s termination.

In December of 2019, a trial court sided with Generation to dismiss the case. However, last week the New York Appellate Court, First Division decided that the indemnification claim “should not be dismissed,” instead saying that there isn’t anything in the purchase agreement which limits damages to those which were realized by Nationstar within the five-year contractual limitations period.

“To the contrary, the agreement provides that a claim is timely made where plaintiff gives defendants sufficient information and documentation to establish the basis for the claim, and there is no requirement that the documentation show that plaintiff actually realized the loss,” the new decision reads.

Prior history

Generation Mortgage, which by 2014 had become a top-10 reverse mortgage lender in the industry with over 3,100 HECM endorsements between July 2013 and July 2014, announced its intent to exit the reverse mortgage industry in October of that year.

“The decision to exit the origination business was not an easy one, but was made inevitable by the wave of recent regulatory changes,” said then-Generation Mortgage CEO Colin Cushman to RMD in October, 2014. “As a result of those changes, the industry has seen a reduction in the number of units, as well as a reduction in loan balances, significantly reducing origination revenues while increasing expenses.”

At the time the news had emerged of the lender’s exit, Nationstar had already been rumored to be eyeing Generation’s reverse mortgage servicing portfolio. In May of 2015, Nationstar purchased the portfolio and the news was publicized that August. The original complaint of the indemnification suit was filed three years later, in August of 2018, according to court filings.