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Fannie Mae Sued Over Refi Plan That Led Mortgagors To Default

By Heather MacGregor

When the MidCoast Mortgage Corp. offered Nancy and Irving Selem a temporary reduction of their monthly mortgage payment on their four-bedroom home in Rahway, the couple considered it the first step in refinancing.

What they apparently didn't realize was that they were defaulting on their mortgage — and that they would be forced to pay an \$11,735 deficiency at

tract. They are seeking \$300,000 in damages, not only for the lost ability to refinance at a low interest rate but also for emotional distress, deteriorating health and attorneys' fees.

Their attorney, Princeton solo practitioner Glenn Bergenfield, contends that his clients were forced into Chapter 11 status to avoid foreclosure on the house, because they were not informed of the implications of temporarily reducing their mortgage payments.

Under the procedures of the Federal National Mortgage Association (Fannie Mae), which held the mortgage, before a mortgage can be modified, a forbearance agreement is issued that puts the mortgagor in default, Bergenfield says.

"The plan was horribly wrong-headed. In addition, the worst parts of the plan [the potential default and required repayment] were not disclosed to the Selems," Bergenfield alleges in response to a defense summary judgment motion to dismiss the claim, which is expected to be heard later this month in Newark federal court by Judge William Bassler.

Bergenfield filed the complaint in Union County Superior Court in September 1996. It was later moved to federal court on a diversity motion filed in

June 1997 by attorneys for PNC Bank, the servicing mortgagee, which is headquartered in Pennsylvania.

The Selems sought to refinance through MidCoast in March 1995, when interest rates hit 6.75 percent, compared with the 10.625 percent rate on their existing mortgage. In October 1995, the Selems were approved for a special forbearance agreement that permitted them to temporarily reduce their payments by \$1,294 while the application was under



'WRONG-HEADED PLAN': Plaintiffs' attorney Glenn Bergenfield, above, is critical of a Fannie Mae procedure that put his clients into default.

consideration.

But in March 1996, MidCoast rejected their application. Gerald Petroff, a former MidCoast loan specialist, said during a deposition that the Selems were not approved because Fannie Mae decided to stop modifying mortgages, according to Bergenfield's papers.

Petroff also said that until that point, every applicant who had been granted a forbearance agreement was later approved for a loan modification. As a result, he said, there was no reason to tell the Selems that money would be due if they were denied the reduced mortgage.

PNC contends that the plaintiffs should be restricted to damages for alleged breach of contract because a claimant may not recover for personal injuries resulting from such a breach.

once or face foreclosure if the refinancing fell through, which it did.

Now the Selems have sued, alleging negligence, bad faith and breach of con-

After getting the word from Fannie Mae, MidCoast demanded \$11,735 for back payment and late fees for the five months that had elapsed during the processing of the application.

Neither Fannie Mae's lawyer, Steven Pastor, a partner with Princeton's Hill Wallack, nor PNC's attorney, Steven Mignogna, a partner with Archer & Greiner in Haddonfield, would comment on the case. MidCoast's attorney, Catherine Trinkle, a partner with Carpenter, Bennett & Morrissey of Newark, did not return telephone calls.

But in a brief in support of the summary judgment motion, Mignogna argued that the plaintiffs should be restricted to damages for alleged breach of contract because a claimant may not recover for personal injuries resulting from that alleged breach.

"No tort duty of reasonable care or other 'special' duty arising from a fiduciary relationship or other arrangement has ever existed between the parties," he said.

"Even if this court determines that an emotional distress claim is cognizable, because defendants' conduct was not wanton and outrageous, and because plaintiffs' alleged damages weren't fore-

The Selems' refinancing application was not approved because Fannie Mae decided to stop modifying mortgages, according to court papers.

seeable, summary judgment is appropriate," he added.

The suit alleges that the bank was negligent in failing to act promptly on the application. The plaintiffs contend that as a result, they suffered damages, including the inability to refinance at a low interest rate, a tarnished credit record and Irving Selem's deteriorating health.

On the bad faith breach of contract count, the suit alleges that MidCoast had an obligation to tell the Selems that the full amount would be due if their application was denied.

Bergenfield adds that the Selems had not requested the temporary repayment plan and that the defendants had not informed the Selems that they would be in default by making the reduced payments.

The Chapter 11 case has been put on hold while the suit against the financial institutions is sorted out. In the meantime, the Selems were able to stay in their home because their three children bought it.

"Now we are threatened with losing it simply because we followed a bank's recommendations," says one of their children, Stacey Selem, an associate with Callan Regenstreich Koster & Brady in Shrewsbury. MidCoast "served them up a dish of candy and didn't tell them there was potentially poison inside, so they took a bite," she adds.

Timothy Key, an Atlanta-based case manager for Fannie Mae on the Selems file, said in a deposition Monday that he was unaware of another case such as the Selems', according to Bergenfield. ■