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CONSUMER BANKRUPTCY

Delaware Judge Faults Ocwen for Pushing Homeowners to Bankruptcy

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By PEG BRICKLEY

It's not one of the multibillion-dollar settlements or multimillion-dollar jury awards designed to spur reform of such allegedly abusive mortgage-servicing practices as falsified court documents, improper fees and other misconduct. But a recent ruling from a Delaware judge is a step forward for people making a last stand in bankruptcy to hang on to their homes, one attorney says.

Judge Brendan Shannon of the U.S. Bankruptcy Court in Wilmington, Del., on Friday **ordered** Ocwen Loan Servicing LLC to pay the fees and costs of a Delaware couple's bankruptcy on the grounds that Ocwen's "unfounded and incorrect assertion" that they had defaulted on their mortgage loan was what drove them to seek court protection.

Richard J. and Mary Ann Williams were never materially behind on their mortgage payments, the judge said, but they were pushed into bankruptcy to keep Ocwen from taking their home in foreclosure.

"Basically, they were kicking two older people out of their home for no reason whatsoever other than they think they can get away with it," was attorney Peter K. Schaeffer Jr.'s take on his clients' plight. It still happens, even after a series of reforms designed to rein in abuses by mortgage lenders and loan services, he said.

"Ocwen is reviewing the court's ruling to determine the company's course of action," said Margaret Popper, spokeswoman for the company.

To University of California at Irvine law professor Katherine Porter, Judge Shannon's decision is proof that regulation, reforms and settlements can only bring so much improvement to an industry where customers largely remain uninformed and disengaged.

The customers Ms. Porter is talking about aren't homeowners; they're investors who buy the securities backed by mortgage loans and who take losses when the loans go sour.

While the Williamses faced losing their home, "some investor was about to lose money," she said. Appointed to monitor the multibillion-dollar National Mortgage Settlement for California Attorney General Kamala Harris, Ms. Porter says the settlements and reforms have improved industry practices "without a doubt."

However, the industry continues to suffer from chronic under-investment in technology and the lack of a common platform to handle the transfer of loans from one servicer to another, as well as the special requirements of bankruptcy accounting, she said.

"Ocwen strives to deliver best-in-class servicing and will continue to invest heavily in technology to support this effort," said Ms. Popper, the Ocwen spokeswoman.

Illness and job loss caused the Williamses to file for Chapter 13 protection in 2006. The Delaware couple had their loan transferred to new servicer Ocwen after they emerged from bankruptcy—a double whammy under Ms. Porter's analysis. They completed the five-year repayment plan successfully but ran into trouble with Ocwen shortly after emerging from court protection.

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Judge Shannon found Ocwen had no evidence the Delaware couple had defaulted on their home loan when it initiated foreclosure proceedings in 2012. It also couldn't prove they owed more than \$43,000 in back payments, the amount Ocwen claimed was due.

The judge ran the numbers himself and said the couple owed Ocwen about 12 months of mortgage payments—\$16,164.24. That's how much they had tendered to the servicer after it had declared them in default, but Ocwen had refused to accept.

"The judge basically said, 'You have no idea what's going on here, Ocwen,'" Ms. Porter said. "This is someone whose technical skills in financial litigation put him in the top dozen in the country and he has to say, 'You don't know what you're doing, so I can't make a ruling based on the facts.'"

Delaware's financially sophisticated judges are the source of influential pro-consumer rulings, Ms. Porter said. That's because the Delaware judges "are used to seeing competent creditor behavior. They know what a large corporation can do, properly prepared for trial," she said. When mortgage servicers show up to battle consumers in bankruptcy court, she said, "the documents aren't all there. The story doesn't make sense."

Unlike courts where judges overlook such failings to keep their crowded consumer dockets moving, "judges in Delaware have no difficulty saying, 'I expect you to have your case together when you come to my court,'" Ms. Porter said.

In most cases, homeowners don't have the resources to litigate, so servicers prevail, Mr. Schaeffer said. "We won this, but I'm worried about the 99 out of 100 who can't fight," he said.

Ms. Porter has a different take on the economics. Loan servicers work for the loan owners—ultimately, the investors. When investors start demanding better performance, such as fewer costly foreclosures and more loan-saving modifications, loan servicers will start spending on better systems for tracking data, she said.

"A lot of what debtors and their counsel experience as sort of morally bad conduct by servicers is actually incompetence driven by under-investment in technology," Ms. Porter said. "The mortgage servicer is not setting out to do this kind of stuff, not these days, not in the regulatory climate we're in now."

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