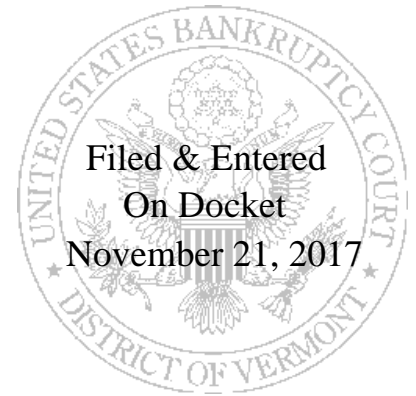


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



In re:

**Vicki Woodard and
Arthur Knapp, Jr.,
Debtors.**

**Chapter 13 Case
15-11078**

ORDER

**GRANTING THE DEBTORS' MOTION TO COMPEL AND REQUEST FOR SANCTIONS
AND DIRECTING FEDERAL NATIONAL MORTGAGE ASSOCIATION TO PAY SANCTIONS**

On December 26, 2016, the Debtors filed a motion asking this Court to direct mortgage creditor Federal National Mortgage Association (“FNMA”) to (1) send monthly mortgage loan statements to the Debtors, as required by Vt. LBR 3071-1(f), (2) reimburse the Debtors for the attorney’s fees incurred through the date of that motion, and (3) pay the Debtors \$5,000 in punitive damages. The Debtors asserted the damages were due based upon the time the Debtors had expended, and the frustration the Debtors had endured, as a result of FNMA’s misconduct, and sanctions in that amount would “serve as a deterrent to FNMA from engaging in behaviors contrary to and [sic] local bankruptcy rules and laws” (doc. # 39, hereafter, the “Motion to Compel”). On March 22, 2017, FNMA filed a Response to the Motion to Compel, stating it was “working with Debtors’ counsel to provide the requested documentation,” and would file a proof of claim. On that basis, it asked the Court to deny the Motion to Compel.

At a hearing held on November 17, 2017, Rebecca Rice, Esq., appeared on behalf of the Debtors, Jan Sensenich, Esq., appeared in his capacity as the chapter 13 trustee, and Jeffrey Hardiman, Esq., appeared on behalf of U.S. Bank, successor-in-interest to FNMA. At that hearing, Mr. Hardiman, whose firm had previously represented FNMA, acknowledged that FNMA had failed to timely produce or send the required monthly statements, and failed to properly apply the payments the Debtors made, over a sixteen-month period, and failed to timely respond to the related concerns of the trustee. The Court ruled on the Debtors’ request for sanctions at that time, and enters this Order to memorialize the Court’s bench ruling, and specify the amount and due date for payment of the sanctions.

Some background is necessary in order to put the Debtors' request for sanctions into context. This Court previously characterized the Motion to Compel issues as having "a long, and rather tortured, history" (doc. # 55). The critical facts are as follows: The Debtors filed a voluntary petition under Chapter 13 of the Bankruptcy Code on November 24, 2015 and the Court entered an order confirming the Debtors' plan of reorganization on March 18, 2016 (doc. # 32). That confirmed plan included conduit mortgage payments to PHH Mortgage Corp. ("PHH"), see VT. LBR 3015-2(j).

The mortgage creditor, PHH, was also required to send monthly mortgage statements to the Debtors. The pertinent local rule provides:

The Mortgage Creditor must provide monthly statements to each Chapter 12 or 13 debtor who has expressed an intent in his or her plan to retain the Mortgage Creditor's collateral and who has expressed an intent in his or her statement of intent to pay the Mortgage Creditor directly . . .

VT. LBR 3071-1(f). PHH failed to send the required monthly mortgage statements to either the Debtors or their attorney. On April 7, 2016, FNMA filed a notice of mortgage payment change (doc. # 34), but there was no proof of claim filed nor any other indication that the mortgage claim had been transferred from PHH to FNMA. The Debtors' then-attorney, Amy L. Klingler, Esq., expended significant time and effort attempting to resolve the issue and worked with the law firm that filed an appearance on behalf of FNMA, Schectman Halperin Savage, LLP. When, despite many months of effort, there was still no resolution, the Debtors' attorney filed the Motion to Compel on December 26, 2016 (doc. # 39).

On February 18, 2017, the chapter 13 trustee, Jan M. Sensenich, separately wrote a letter to the attorneys who had filed the FNMA notice of mortgage payment change, informing them that PHH had rejected and returned the mortgage payments he had sent to it, without explanation or proof that PHH had transferred or assigned the claim (doc. #41). He also requested that FNMA file a proof of claim, with evidence of the claim transfer, so that the trustee could send the mortgage payments to the proper party.

Finally, on May 12, 2017, FNMA filed a proof of claim, with an attachment showing PHH had assigned the mortgage to FNMA on December 16, 2015 (see claim # 20-1, page 16). On July 17, FNMA's counsel filed a transfer of claim form (doc. # 48) evidencing its transfer of the claim to US Bank Trust, N.A., as trustee of Bungalow Series F Trust.

The Court held a status hearing on the Motion to Compel on August 25, 2017, at which Derek Anthony Castello, Esq., appeared on behalf of FNMA, Rebecca Rice, Esq., appeared on behalf of the Debtors, and Jan Sensenich, Esq., appeared in his capacity as chapter 13 trustee. The Debtors stated they had not yet received any mortgage statements from FNMA. The Debtors also stated that FNMA had never sent them a 2016 Statement of Mortgage Interest Paid (Form 1098), and they were concerned they might be required to file an amended tax return when they ultimately received a (late) 2016 Form 1098.

FNMA acknowledged those facts were accurate. Therefore, the Court issued an order on September 22, 2017, directing that FNMA immediately commence issuing current monthly statements, provide an affidavit regarding the interest the Debtors paid in 2016, or an actual Form 1098 to the Debtors,¹ and deliver a copy of all back statements to the Debtors by September 28, 2017 (doc. # 55).

On September 28, 2017, the Court granted a stipulated motion to mediate the instant dispute and to postpone the scheduled hearing on the matter. At the rescheduled hearing on November 17, Mr. Hardiman appeared on behalf of U.S. Bank, and explained that FNMA is unable to comply with the Court's September 22nd Order (doc. # 55), because the prior servicer on the loan, Seterus, Inc., did not generate any monthly mortgage statements and, therefore, none could be provided to the Debtor. However, he said he would obtain and provide any specific information the Debtors needed with respect to loan transactions during that period.

The record unequivocally indicates, and U.S. Bank (as current holder of the mortgage) does not dispute, that from January 2016 to May 2017, FNMA and its servicer Seterus, failed to issue monthly mortgage statements, and failed to inform the Debtors or the chapter 13 trustee that it was not receiving any mortgage payments through the plan. The several transfers of the claim in this case² neither justify nor excuse the mortgage lender from properly applying payments or issuing monthly mortgage statements. PHH and FNMA failed to comply with their obligation to apply the payments they received from the trustee, failed to respond to the trustee's important and repeated requests for information about the holder of the claim, and failed to file a timely transfer of claim.

At the conclusion of the November 17th hearing, the Court granted the Debtors' request for sanctions, in the form of a monetary penalty for each month in which the mortgage creditor failed to send the required statements, plus reasonable attorney's fees for the time the Debtors' two attorneys expended to obtain the mortgage creditors' compliance with their obligations. On November 21st, Debtors' counsel filed an affidavit (doc. # 64) tabulating the total attorney's fees incurred in the matter to be \$2,860.³

¹ The Court will not address the missing 2016 Form 1098 because, at the November 17th hearing, the Debtors' attorney stated she had determined even if they had received the missing 1098 Form, the Debtors would not be eligible to itemize their 2016 deductions. The Debtors do, however, maintain their request that the mortgage creditor timely send them a 2017 Form 1098; this could influence the Debtors' tax return since they paid far more in mortgage interest than they did in 2016. FNMA's counsel is aware of this request.

² The record reflects the following parties held the mortgage on the following dates:

11/24/2015	(doc #1)	Chapter 13 Petition listing PHH Mortgage as plaintiff in foreclosure
3/18/2016	(doc. # 32)	Findings and Order Confirming Debtors' Plan, listing PHH as mortgagee
4/7/2016	(doc. # 34)	Notice of Mortgage Payment Change on behalf of FNMA
5/6/2016	(doc. # 35)	Notice of Mortgage Payment Change on behalf of FNMA
5/12/2017	(claim # 20)	Proof of Claim filed by FNMA (through attorney Derek Castello)
7/17/2017	(doc. # 48)	Notice of Transfer of Claim from FNMA to U.S. Bank NA (BSI servicer)
9/3/2017	(doc. # 54)	BSI Financial Services' Request for Notices

³ The affidavit includes \$925 in attorney's fees incurred by the Debtors' previous attorney, Amy Klingler, Esq., plus \$1,935 in fees for the Debtors' current attorney, Rebecca Rice, Esq., for a total attorneys' fee of \$2,860. See doc. # 64.

Based upon the record in this case, THE COURT FINDS that FNMA⁴ failed to provide monthly mortgage statements, in violation of Vermont Local Bankruptcy Rule 3071-1(f), and failed to timely and effectively respond to the reasonable concerns raised by the Debtors' attorney and the trustee. THE COURT FURTHER FINDS that FNMA failed to provide prior monthly statements by the deadline the Court set in its Order of September 22 (doc. # 55). Finally, THE COURT FURTHER FINDS this conduct warrants the imposition of sanctions and an award of attorneys' fees, and that the fees the Debtors' attorneys seek are reasonable.

Accordingly, IT IS HEREBY ORDERED that the Debtors' Motion to Compel and their request for sanctions are **GRANTED**.


IT IS FURTHER ORDERED that **by December 8, 2017**, FNMA or U.S. Bank shall deliver to Rebecca Rice, Esq. seven thousand six hundred sixty dollars (\$7,760.00), from which Attorney Rice will then immediately disburse funds to the Debtors and Amy Klingler, Esq., as follows:

1. to the Debtors: the sum of four thousand eight hundred dollars (\$4,800.00), a sum computed as \$300 per month for each of the sixteen months the mortgage creditor failed to apply the monthly mortgage statements, in breach of its duty under Vt. LBR P. 3071-1(f);⁵
2. to Amy Klingler, Esq.: the sum of nine hundred twenty-five dollars (\$925.00) for attorney's fees incurred in connection with the instant matter; and
3. to herself: the sum of one thousand, nine hundred thirty-five dollars (\$1,935.00).

IT IS FURTHER ORDERED that **by December 8, 2017**, the mortgage creditor's attorney shall file an affidavit affirming the mortgage creditor has made the payment required by this Order, specifying the date and mode of delivery of the payment.

SO ORDERED.

November 21, 2017
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge

⁴ The Court will not sanction U.S. Bank because it did not acquire the claim until July of 2017 (doc. #48), it has complied with the Court's order (#55) by providing current statements to the Debtor, it has cooperated with mediation efforts, and it has worked to provide the Debtors' attorney with all requested information. However, at the November 17th hearing, the mortgage creditor's attorney, Jeffrey Hardiman, Esq., made clear his position that the Court's order should be directed at U.S. Bank, rather than FNMA, remarking that, "to the extent there is a sanction to be entered . . . it should be directed at the current creditor, U.S. Bank, . . . to the extent anything needs to be paid, it will be paid by the current servicer for U.S. Bank, who will then, on their own, speak with the previous servicers who were the perpetrators of the missing statements" (see audio file of hearing at doc. # 65).

⁵ As the degree of FNMA's breach of Local Rule 3071-1(f) and this Court's Order of September 22nd (doc. #55) was less severe than in cases where a mortgage creditor failed to comply with FED. R. BANKR. P. 3002.1, the Court finds it appropriate to impose a correspondingly lower per month sanction. Compare In re Gravel, 556 B.R. 561 (Bankr. D. Vt 2016).