

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT NEW YORK

In re:
RESIDENTIAL CAPITAL, LLC, et al.
Debtors

Case No. 12-12020 (MG)
Administratively Consolidated

RICHARD D. RODE, et al.
individually, and as proposed Representative
Plaintiffs for the Class of Similarly Situated
Homeowners,
Plaintiffs
v.

Adv. No. 16-01015

RESCAP BORROWER CLAIMS TRUST, a Delaware Statutory Trust, et al.
Defendants

RESPONSE OF ATTORNEY WENDY ALISON NORA TO
JUDGE GLENN'S ORAL ORDER SOUNDING AS AN ORDER TO SHOW CAUSE
STATED ON THE RECORD OF PROCEEDINGS CONDUCTED ON MARCH 10, 2016

Wendy Alison Nora (Nora), on her own behalf and with the support of Plaintiffs Richard D. Rode and Tia Danielle Smith, files this Response to Judge Glenn's Oral Order Sounding as an Order to Show Cause Stated on the Record of Proceedings Conducted on March 10, 2016 and shows the Court:

1. Nora was admitted, pro hac vice, to represent Mr. Rode and Ms. Smith in the United States Bankruptcy Court for the Southern District of New York on November 2, 2015. (Doc. 9297 and Doc. 9295, respectively.)

2. The language of the pro hac vice Order does not restrict Nora to exclusively to representing either Mr. Rode or Ms. Smith in the contested claims cases initiated as to Ms. Smith



by the RESCAP Liquidating Trust (Liquidating Trust) on June 25, 2014 (Doc. 7188; supported by Liquidating Trust employee Deanna Horst's Declaration, Doc. 7188-2) or as to Mr. Rode by the RESCAP Borrower Claims Trust (Claims Trust) on April 9, 2015 by Declaration of Kathy Priore, an employee of the Liquidating Trust (Doc. 8452-3).

3. In the course of representing Mr. Rode and Ms. Smith, Nora reviewed the Trust Agreement for the Claims Trust (Doc. 6136-), which, among various other provisions, provides at 6.2:

6.2 Resolution of Disputed Borrower Claims.

(a) **The Borrower Claims Trustee, or one or more Borrower Claims Trust Agents designated by the Borrower Claims Trustee if, and to the extent, authorized by the Trust Committee, shall be authorized to resolve, on behalf of the Borrower Claims Trust, all Disputed Borrower Claims** without further Bankruptcy Court order, provided, however, that the Borrower Claims Trustee must obtain the prior approval of the Trust Committee in the event the resolution of a Disputed Borrower Claim would result in an Allowed Claim that exceeds \$100,000. **Without limiting the foregoing, the Borrower Claims Trust may, as successor-in-interest to the Debtors, continue to prosecute objections to Borrower Claims** pursuant to the Case Management and Servicing Orders as the same may be amended or replaced from time to time or pursuant to any other order of the Bankruptcy Court, **as determined by the Trust Committee.**

(b) If the Borrower Claims Trust and the holder of a Disputed Borrower Claim are unable to reach a settlement on a Disputed Borrower Claim, or if the Borrower Claims Trust determines to disallow a Disputed Borrower Claim, such Disputed Borrower Claim shall be submitted to the Bankruptcy Court for adjudication by way of an objection to such Borrower Claim. **If it is determined that the Bankruptcy Court does not have jurisdiction to resolve any Disputed Borrower Claim, then such Disputed Borrower Claim shall be submitted to the District Court or other court of appropriate jurisdiction for resolution. The Borrower Claims Trust shall file with the Bankruptcy Court a quarterly notice of Disputed Borrower Claims resolved and/or settled during the prior quarter following the end of each fiscal quarter, starting with the first complete fiscal quarter after the Effective Date.**

(c) **Disputed Borrower Claims that become Allowed, in whole or in part, shall be satisfied exclusively out of the Disputed Claims Reserve**, in the manner provided in Article IV, and in the order in which such Disputed Borrower Claims are Allowed. In the event the Cash remaining in the Disputed Claims Reserve shall be insufficient to satisfy all of the Disputed Borrower Claims that have become Allowed and are due to be

satisfied with distributions from the Disputed Claims Reserve, such Disputed Borrower Claims shall be satisfied pro rata in proportion to their respective Allowed Claim amounts. After (i) all Cash has been distributed from the Disputed Claims Reserve, (ii) no available Cash remains in the Borrower Claims Trust Assets that is not otherwise reserved for use for other purposes in accordance with the provisions of this Borrower Claims Trust Agreement, and (iii) the Trust Committee does not have a reasonable expectation that additional funds will be added to the Borrower Claims Trust Assets in the future, no further distributions shall be made in respect of Disputed Borrower Claims. (d) The Trust Committee may, from time to time, make immaterial technical adjustments, or seek an adjusted determination from the Bankruptcy Court of, the Estimated Amounts of the Disputed Borrower Claims.

4. The Claims Trustee did not attempt to resolve the claims of Mr. Rode and Ms. Smith and there is no evidence in the record or the website published by the Claims Trust at <http://www.rescapborrowerclaimstrust.com/> that the Claims Trust Committee determined that the Claims of Mr. Rode and Ms. Smith should be prosecuted by Objections to the Claims.

5. Neither the Claims Trustee nor a Claims Trust Agent contacted Mr. Rode or Ms. Smith prior to the initiation of contested claims action which are being prosecuted against them.

6. Neither Mr. Rode nor Ms. Smith was ever informed of the existence of the Claims Trust's informational website at <http://www.rescapborrowerclaimstrust.com/>.

7. When counsel for Mr. Rode and Ms. Smith located the Claims Trust's website, she found that the link to contact Claims Trust provided by the website was not available.

<http://www.rescapborrowerclaimstrust.com/contact.html> (Adversary Complaint, Exhibit 1.)

8. Mr. Rode was never contacted by the Claims Trustee or a Claims Trust Agent before April 9, 2015 for the purpose of resolving his Claims.

9. Ms. Smith was never contacted by the Claims Trustee or a Claims Trust Agent before June 25, 2014 for the purpose of resolving her Claims.

10. The Claims of both Mr. Rode and Ms. Smith could have been resolved by stipulation

to grant each of them equitable relief. Because neither of them were contacted by the Claims Trustee or a Claims Trust Agent, equitable relief was not made available to Mr. Rode or Ms. Smith.

11. Both Mr. Rode and Ms. Smith would have accepted equitable relief in the form of allowing the automatic stay to be lifted, so that they could continue to prosecute their claims in their respective state or federal courts, subject to the enforcement of their claims remaining subject to the jurisdiction of the United States Bankruptcy Court for the Southern District of New York, but the Claims Trust never inquired as to what equitable relief might be required to resolve the Rode and Smith Claims.

12. Both Mr. Rode and Ms. Smith have discovered evidence that employees of the RESCAP Debtors forged documents which have been used to create the appearance the their Collateral Documents have been lawfully transferred and conveyed to supposed Real Estate Mortgage Investment Conduit (REMIC) Trusts, reported by employees of the RESCAP Debtors as being located in the State of Minnesota.

13. In defense of their homes, both Mr. Rode and Ms. Smith seek equitable relief from the use of forged documents against them, but equitable relief is not available to them in contested claims proceedings, may no longer be available to Ms. Smith (outside of the adversary proceedings or similar action in a Court of competent jurisdiction), and may yet be available to Mr. Rode prior to the contested claims proceeding. (See 11, above.)

14. According to the plain reading of Section 6.2(b) of the Trust Agreement, the Claims Trust is required to file quarterly notices (reports) with the Bankruptcy Court of Disputed Borrower Claims resolved and/or settled during the prior quarter following the end of each fiscal

quarter, starting with the first complete fiscal quarter after the Effective Date. Upon reasonably diligent review of over 9700 filings in this case, this counsel has been unable to ascertain whether or not any such notice has ever been filed for any fiscal quarter after the Effective Date. Upon exhaustive review of the Claims Trust website, no such notices (reports) have ever been published. Because it would be logical to publish fiscal quarterly notices (reports) on the Claims Trust website, unless discovery in an action for equitable relief establishes otherwise, Nora must assume that the Claims Trust has not filed the required notices

15. The Trust Agreement for the Claims Trust (Doc. 6136-4) further provides at 6.3:

6.3 Disputed Claims Reserve.

(a) On or as soon as practicable following the Effective Date, the Borrower Claims Trust shall establish the Disputed Claims Reserve.

(b) The Borrower Claims Trustee shall, at the direction of the Trust Committee, cause to be added to and maintained in the Disputed Claims Reserve, from time to time, at least that amount of Cash sufficient (i) to make Borrower Claims Payments in respect of all Disputed Borrower Claims or in the case of Borrower Convenience Claims or ETS Borrower Claims, the amount provided in Section 4.1(c), as if such Claims had been Allowed in the amount of their respective Estimated Amounts and (ii) to pay to such holders, other than in respect of Borrower Convenience Claims and ETS Borrower Claims, the amount of all distributions made to holders of Borrower Claims Trust Beneficial Interests since the Effective Date as if such holders of Disputed Borrower Claims had received Borrower Claims Trust Beneficial Interest corresponding to the Estimated Amount of such Claims; provided that Cash shall only be required to be added to the Disputed Claims Reserve to the extent of available Cash included in the Borrower Claims Trust Assets that is not otherwise reserved for use for other purposes in accordance with the provisions of this Borrower Claims Trust Agreement.

(c) All Cash held in the Disputed Claims Reserve shall be maintained with a United States FDIC insured financial institution, and may be maintained in an interest -bearing account, as the Trust Committee may from time to time determine. The Cash in the Disputed Claims Reserve shall be held separately and shall not be commingled with any other Cash constituting Borrower Claims Trust Assets.

17. Nora, working at the direction of her clients, Mr. Rode and Ms. Smith, has determined that no Disputed Claims Reserve was ever created by the Claims Trust as required by

section 6.3 of the Trust Agreement. See <http://www.rescapborrowerclaimstrust.com/reports.html>

18. The Claim Trust Agreement at Sections 6.02 and 6.03 has been breached and relief from the breach of the Trust Agreement is warranted.

19. Mr. Rode and Ms. Smith, in good faith, asked the undersigned to file the Adversary Complaint to pursue their rights to equitable relief and to recover their damages from the apparent breaches of fiduciary duty alleged therein.

20. Nora respectfully responds to Judge Glenn's Oral Order to Show Cause entered on March 10, 2016 on the suggested issue of unauthorized practice of law by filing the Adversary Complaint and simply refers the Court to Docs. 9295 and 9297, which did not limit Nora's admission in this case exclusively to appearances for Mr. Rode and Ms. Smith at contested claims proceedings but admitted her generally into the main case, in which the Adversary Complaint was filed.

21. Respectfully, no Adversary Proceeding unless there is a Bankruptcy Case and an Adversary Proceeding does not stand a part from the main case.

22. Therefore, Nora declines to seek admission pro hac vice to represent Mr. Rode and Ms. Smith in the Adversary Proceeding.

23. Mr. Rode and Ms. Smith have not yet sought certification of their Adversary Proceeding as a class action. When and if they seek such certification, Nora will brief the issue of whether or not her pro hac vice admission for representation of the lead class plaintiffs in a proposed class action qualifies her to act as counsel for the class. Nora had not yet considered whether or not she will seek to be qualified as class counsel, which depends on her capabilities to act as class counsel at some time in the future.

24. With respect to Judge Glenn's contention that Nora engaged in "serious misconduct" before the Court on February 9, 2016 when, before the commencement of the evidentiary proceeding in the contested claims matter in which she represented Ms. Smith, an Oral Order to Sounding as an Order to Show Cause does not provide Nora with sufficient due process protections for such a charge.

25. Judge Glenn's Oral Order was based on a hearsay report of an unnamed "court reporter" and whatever the unnamed third party witness reported to Judge Glenn (aside from the fact that it can be shown to be largely untrue in evidentiary proceedings which are constitutionally required) the conduct alleged did not occur in Judge Glenn's presence, occurred more than one month before the Oral Order was entered and, without a written Order to Show Cause, Nora cannot completely and accurately defend herself against Judge Glenn's charges unless the charges are clearly known in advance. See *In re Ruffalo*, 390 U.S. 544, 551(1968), holding lawyer disciplinary matters to be quasi-criminal in nature, citing to *In re Oliver*, 333 U.S. 257, 273 (1948) and incorporating the due process standards of *In re Gault*, 387 U. S. 1, 33, in lawyer disciplinary proceedings. Nora is entitled to written notice of the charges against her and the rights enumerated in *In re Oliver*, supra 274-275. She could not order and receive a written transcript to aid her in responding to the Oral Order Sounding as an Order to Show Cause and file her response within the five (5) days provided.

26. Moreover, since Judge Glenn is the charging party, there is doubt whether or not he is competent to preside over the Order to Show Cause Proceedings which might be brought because it has long been established that a man may not be the judge of his own cause. *In re Oliver*, supra, at 274-275. See also *In re Murchison*, 349 U.S. 133 (1955).

WHEREFORE, Nora respectfully denies that she was unauthorized by the Court to file the Adversary Complaint, her authority having been conclusively demonstrated on the record at Docs. 9295 and 9297; and Nora requests a written Order to Show Cause be entered and that all processes enumerated at *In re Oliver*, supra, 274-275 and guaranteed by the due process clause the Fifth Amendment to *the United States Constitution*.

Dated at Minneapolis, Minnesota this 15th day of March, 2016.

/s/ Wendy Alison Nora

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DECLARATION OF SERVICE

Wendy Alison Nora declares under penalty of perjury pursuant to 11 U.S.C. sec. 1746, that she filed the above-captioned document via CM/ECF and thereby served all parties and their counsel capable of service thereby.

Dated at Minneapolis, Minnesota the 15th day of March, 2016.

/s/ Wendy Alison Nora

Wendy Alison Nora