

Case Summary
In re Bolton, BK No. 11-14098
Bench decision issued December 12, 2012

Facts:

The Debtor requested to participate in loss mitigation with CCO Mortgage (“CCO”), which the Court granted. Several months later, the Debtor filed his first motion to compel compliance with the loss mitigation program against CCO. While the motion indicated that the parties exchanged and reviewed a completed loan modification application, the motion alleged that CCO failed to respond to Debtor’s counsel’s request to execute a joint status report. CCO did not oppose the motion to compel and the Court granted the motion, pursuant to which the Court ordered the parties to file a joint status report. Before the deadline had run for filing the joint status report, CCO sent a letter to the Debtor denying his request for a loan modification because a certain investor or group of investors who were servicing the Debtor’s loan had not given CCO the contractual authority to modify the loan with the Debtor under the Home Affordable Modification Program. Thereafter, the Debtor filed his second motion to compel, acknowledging the receipt of the denial letter, but asserting that CCO failed to respond to counsel’s request to file a joint status report. The Court granted the motion, seemingly again on the basis that it was unopposed, and ordered the parties to file a joint status report.¹ On the day after the deadline had passed for filing the joint status report, the Debtor filed a loss mitigation report and motion for sanctions, asserting yet again CCO’s failure to respond to Debtor’s counsel’s request to file a joint status report.

The Court conducted a hearing at which the Debtor’s counsel acknowledged his receipt of the denial letter, and for the first time, he alleged his dissatisfaction with the CCO’s denial

¹ The Honorable Arthur Votolato presided over these proceedings, and thus, the Court cannot articulate, and would not want to presume, precisely what the former judge thought that was not stated on the record. The Court merely draws an inference based upon the orders as entered.

letter because neither he nor the Debtor knew the identity of CCO's investors, and without such information, the Debtor could not discern whether he had received a good faith review under the loss mitigation program. The Court afforded Debtor's counsel an opportunity to file a supplemental memorandum citing legal authority for the Court to require disclosure of the identity of the investor group and other legal authorities for the Court to impose sanctions against CCO in light of its review of the Debtor's loan modification application and subsequent denial of such modification. The Court also advised Debtor's counsel that in the absence of citation to applicable legal authorities, the Court saw little basis to impose sanctions against CCO and its likelihood of terminating loss mitigation. Debtor's counsel filed no such memorandum.

Holding:

The Court found that CCO substantially complied with the loss mitigation and sanctions were not warranted for failure to file a joint status report with the Debtor once it had reviewed the Debtor's loan modification application and denied the request for reasons recited in the denial letter.

Reasoning:

The Court found that its prior orders to compel appeared to have been entered solely on the basis that they were unopposed.² The Court reasoned that while CCO's participation in the loss mitigation period was not without fault and was less than what is contemplated under the program, it nevertheless complied with the program's purpose of opening the lines of communication with the Debtor about possible loan restructuring. After the Court entered the order granting the Debtor's request for loss mitigation, CCO provided a loan modification application to the Debtor, reviewed the application, and issued a written determination denying the loan modification, citing the basis for such determination.

² Please refer to Footnote 1.

The Court explained that the loss mitigation program does not mandate that a creditor actually provide a loan modification. The Court made clear that by so concluding, it did not condone CCO's untimely participation or failure to file joint status reports, but that such failures did not seem sanctionable on the present facts and especially in light of CCO's compliance with the overall purpose of the loss mitigation program. The Debtor's dissatisfaction with CCO's denial of his request to modify his loan and CCO's subsequent failure to file a joint status report did not rise to the level of misconduct warranting sanctions, and the Court in its discretion declined to impose such sanctions. The Court concluded that there was no further reason to continue the loss mitigation process in light of the denial letter, and it denied the motion for sanctions and terminated loss mitigation.