

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes, Special Referee

Appellate Case No. 2012-211187
Case No. 2010-CP-39-0352

US Bank National Association as Successor Trustee to the Bank of America National Assoc., Successor by Merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2007-3XS; and Americash Mortgage Corporation Respondents,

v.

Barbara E. Bebout; Robert A. Swaynham a/k/a Robert Alec Swaynham; Mortgage Electronic Registration Systems, Inc. (Min#1001419-0060908012-1); National Bank,

Of whom Barbara E. Bebout and Robert A. Swaynham are Appellants.

FINAL BRIEF OF AMERICASH MORTGAGE CORPORATION

Louis H. Lang, Esq. (SC Bar #03127)
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900

*Attorneys for Respondent,
Americash Mortgage Corporation*

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STATEMENT OF ISSUES ON APPEAL

I.

Was the dismissal with prejudice of Appellants' attorney preference claim against Americash error where such dismissal was supported by evidence adduced at trial which showed Americash complied with the requirements of S.C. Code Ann. § 37-10-102, Appellants acted on the notice of attorney preference in requesting a specific attorney and Appellants agreed to close the transaction using a different attorney to avoid delay?

II.

Was dismissal with prejudice of Appellants' attorney preference claim against Americash error when any violation of South Carolina's attorney preference statute was unintentional and, if it occurred, resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error?

STATEMENT OF THE CASE

Respondent, U.S. National Bank Association as Successor Trustee to Bank of America National Association, Successor by merger to LaSalle Bank National Association, as Trustee for Morgan Stanley Mortgage Loan Trust 2007-2XS (Bank) filed its foreclosure complaint on February 24, 2010. (Complaint, ROA 33). The pleadings upon which this case was tried were the Bank's foreclosure complaint, Appellants' second amended answer, counterclaim and third party complaint (Second Amended Answer, etc. ROA 39), Bank's reply to the counterclaim asserted in the Second Amended Answer, etc. (Bank's Reply to Second Amended Answer, etc., ROA 73), and the answer of Americash Mortgage Corporation (Americash) to the third party complaint asserted in the Second Amended Answer, etc. (Americash's Answer to Second Amended Answer, etc., ROA 64).

The case was tried non-jury before the Honorable R. Murray Hughes, Special Referee for Pickens County on September 29, 2011.

On March 2, 2012, the Special Referee filed two orders. One order dealt with the foreclosure aspects of this case and ordered the Bank's mortgage foreclosed and the property sold at public auction. (Special Referee's Report and Judgement of Foreclosure and Sale, ROA18) The second order dismissed with prejudice all the affirmative claims asserted by Appellants against the Bank and Americash. (Special Referee's Findings of Fact, etc., ROA 1).

This appeal followed.

STATEMENT OF FACTS

Bank sought to foreclose a \$400,000.00 first mortgage it held which encumbered the subject property. There was also a \$100,000.00 second mortgage, not held by the Bank, which also encumbered the subject property. (Bank's Complaint, ROA 33). Americash originated the loans secured by the \$400,000.00 first and \$100,000.00 second mortgages. (Special Referee's Findings of Fact, etc., ROA 1).

Americash is primarily an internet-based mortgage lender headquartered in California. (Hearing Transcript, p. 343, l. 22 - p. 344, l. 18; p. 363, ll. 6 - 7, ROA 339 - 340-359). Americash originates conventional loans underwritten to "Fannie Mae" and "Freddie Mac" standards and guidelines. It has both its own employees and outside counsel upon whom it relies for guidance concerning statutory and regulatory compliance matters (Hearing Transcript, p. 359, l. 24 - p. 360, l. 16, ROA 355 - 356). It also has standard operating procedures in place to assure compliance with the laws and regulations of states

in which it originates mortgage loans. (Hearing Transcript, p. 333, l. 15 - p. 334, l. 24, ROA 329 - 330).

At the time of the mortgage loan transaction in question, Americash was one of many lenders subscribing to the Lending Tree internet site service. Prospective borrowers would go to the Lending Tree internet site, fill out on line what was termed a “qualification form,” and send that form electronically to Lending Tree. Lending Tree, utilizing a computer program, would produce a “price quote” in regard to the type, size, etc., of the loan the Lending Tree internet site visitor described in their “qualification form.” Lending Tree would forward the price quote to one or more of Lending Tree’s subscribing lenders whose profile indicated it might be able to provide the loan the qualification form described. The subscribing lenders receiving the Lending Tree price quote could then follow-up with the prospective borrower by contacting them directly. (Hearing Transcript, p. 363, l. 1 - p. 364, l. 18, ROA 359 - 360).

Appellants visited the Lending Tree internet site around the end of August 2006. Americash was one of the lenders to which a price quote was forwarded and a loan officer from Americash contacted Appellants. As was the standard practice of Americash, a “prospect” file was immediately opened. Ultimately, this first prospect file was turned into a borrower file after the loan processing had advanced to a certain stage. In addition, a second prospect file was opened shortly after the first prospect file was created and that second prospect file also was turned into a borrower file. (Hearing Transcript, p. 356, l. 11 - p. 370, l. 7, ROA 352 - 366). Appellants’ primary goal in seeking a loan was a “cash out” refinance. (Defendants’ Ex. No. 9, ROA 450).

The preliminary information received by Americash from Appellants indicated the value of the subject property to be “north” of \$600,000.00. (Hearing Transcript, p. 372, ll. 1 - 21, ROA 368). However, a subsequent verbal value estimate received from an appraiser contacted by Americash indicated a lower value and a subsequently obtained written appraisal of the property showed a value lower still.¹ (Hearing Transcript, p. 370, l. 16 - p. 372, l. 20, ROA 366 - 368). While Appellants may have initially sought a single loan in the amount of \$500,000.00, because the property value was lower than initially indicated by Appellants, the ultimate loan had to be structured such that there were two loans, the first in the amount of \$400,000.00, to be secured by a first mortgage, and a second loan in the amount of \$100,000.00, to be secured by a second mortgage, the total of the two loans being the desired \$500,000.00. (Hearing Transcript, p. 370, l. 16 - 373, l. 2, and p. 353, l. 18 - p. 355, l. 1, and Defendant’s Ex. No. 9, ROA 366 - 369, 349 - 359 and 448 - 450).

On September 12, 2006, Americash contacted The Willoughby Law Firm requesting a title commitment, indicating the subject loan was a “cash-out refi” on a primary residence. (Defendants’ Ex. No. 8, ROA 445 - 447). On October 27, 2006, Appellants contacted Americash and requested the loan be closed by the Acker Law Firm. (Defendant’s Ex. No. 9, ROA 450). In an e-mail dated October 31, 2006, Christine Mendoza of Americash wrote Tamara Pacak, then employed by Americash, to the effect that she was “informed that the borrower wants to have the documents signed by the attorney bellow (sic).” Ms. Mendoza goes on to say that she “contacted the Acker Law Firm and [she] was informed that they do

¹ Americash’s records show the written appraisal value was \$90,000.00 less than the verbal value estimate. Defendants’ Ex. No. 9, ROA 448.

not do signings only, they must to (sic) the title work and disburse the loan as well.” The e-mail goes on to say that Ms. Mendoza has contacted the loan officer to find out if the Appellants want “to open title with this [Acker] attorney.” If that were the case, according to the e-mail, Americash would have to “cancel the open order with The Willoughby Law Firm and open the title with The Acker Law Firm.” The e-mail concludes with the request that the Appellants be contacted to determine if this is what they desire and observes that “this borrower is wanting to sign soon.” (Defendants’ Ex. No. 10, ROA 452). Handwritten on the e-mail is the notation, “ready to go . . . title issue is resolved.” (*Id.*)

The Appellants’ cash-out refinance transaction was closed on November 20, 2006. Appellants testified at trial they were contacted around 9:00 a.m. on the morning of the 20th by the Americash loan officer to set up the closing for 11:00 a.m. that same morning. (Hearing Transcript, p. 98, l. 11 - 99, l. 19, and p. 245, l. 22 - p. 246, l. 13, ROA 94 - 95 and 241 - 241). This is unlikely given the time difference between California, where Americash’s offices are located, and South Carolina. Someone in California calling Appellants at 9:00 a.m. in South Carolina would be doing so at 6:00 a.m. California time. The regular working hours of the Americash loan officer whom Appellants testified called them at 9:00 a.m. South Carolina time were 10:00 a.m. through 7:00 p.m., California time. (Hearing transcript, p. 343, l. 23 - p. 344, l. 18, ROA 339 - 340). Accordingly, to have contacted Appellants at 9:00 a.m., South Carolina time, the Americash loan officer would have called four hours before her regular workday began in California. Further, Americash does not schedule closings as it does not set appointments involving third parties. (Hearing transcript, p. 339, l. 24 - 341, l. 1, ROA 335 - 337).

The loan closing was supervised by Kevin B. Sandifer, a South Carolina-licensed attorney, admitted to practice in November 2000. At the time of the loan closing, Mr. Sandifer was working with Wyatt Willoughby in closing real estate loans. (Hearing Transcript, p. 195, ll. 1 - 22, ROA 191).

Prior to any loan closing he conducted, Mr. Sandifer looked over the documents and the title search or abstract. At the closing itself, he would explain all the terms of the documents to make sure they met the borrower's expectations. For example, Mr. Sandifer said he would inform the borrower who the lender was and when the first loan payment was due. (Hearing Transcript, p. 195, l. 2 - p. 203, l. 2, ROA 191 - 199). Mr. Sandifer would review the mortgage provisions with the borrower, "paragraph by paragraph." (Hearing Transcript, p. 203, l. 3 - p. 204, l. 7, ROA 199 - 200). He would also review the borrower's right of rescission in a refinance transaction such as the one in question. (Hearing Transcript, p. 204, l. 9 - p. 205, l. 4, ROA 200 - 201). If the loan terms differed from the expectations of the borrower, Mr. Sandifer would leave it to the borrower to decide if he or she wanted to proceed with the closing, and he could not recall ever advising a borrower if the terms of the loan differed from the borrower's expectations they could always refinance the loan later. (Hearing Transcript, p. 205, l. 4 - p. 206, l. 8, ROA 201 - 202). Mr. Sandifer testified he never recalled allowing a borrower to sign a document in blank and would not fill in a blank space, in this instance the attorney preference form signed by Appellant Bebout, without the borrower's permission. (Hearing Transcript, p. 207, l. 17 - p. 208, l. 22, ROA 203 - 204).

Also present at the closing was Walter Chris Castro, an attorney licensed to practice law in South Carolina. Mr. Castro was sworn into the South Carolina Bar on November 13, 2006, seven days prior to the closing in question. Mr. Castro acted as the witness for the

closing. He attended the closing to observe Mr. Sandifer close the transaction. Mr. Castro signed all the documents in the transaction which bear his signature and he signed those documents in the presence of the Appellants and Mr. Sandifer. (Castro deposition excerpt, page 11 - ll. 1 - 9; page 19, l. 15 - page 20, l. 21; page 21, ll. 7 - 25; page 22, ll. 11 - 16; page 25, l. 23 - page 26, l. 3; page 26, ll. 15 - 18; page 54, ll. 5 - 25; page 55, l. 13 - page 56, l. 7; page 56, l. 7 - page 58, l. 4, ROA 406, 407 - 408, 409, 410, 411, 412, 412, 413, 414 - 415, 415 - 417).

Included in the documents signed by Appellants and, where indicated, witnessed by Mr. Sandifer and Mr. Castro, are the \$400,000.00 Note (signed by Appellant Bebout), the \$400,000.00 mortgage (signed by both Appellants), attorney/insurance preference check list (signed by Appellant Bebout), good faith estimate (signed by Appellant Bebout), the settlement statement (signed by both Appellants), two residential loan applications (signed by Appellant Bebout), four truth-in-lending disclosure statements (signed by Appellant Bebout), four notices of right to cancel (two each signed individually by Appellant Bebout and Appellant Swaynham), South Carolina application notice (signed by Appellant Bebout²), Willoughby Law Firm engagement letter and Waiver of Conflict of Interest (signed by both Appellants), and the \$100,000.00 mortgage (signed by both Appellants). (Respectively, Plaintiff Ex. Nos. 1 and 2, Defendants Ex. Nos. 3 and 5, and Americash Ex. Nos. 1, 3, 4, 5, 6, 7, 8, 9, 13, 14, 10, 15 and 17, ROA 419, 423, 440, 442, 453, 455, 460, 461, 462, 463, 464, 465, 467, 468, 466, 469 and 472).

²

This document provides borrowers with the address and telephone numbers of the South Carolina Department of Consumer Affairs, saying that this is the agency “designated to receive complaints or inquiries about the origination and making” of the loan.

From the loan proceeds generated by the November 20, 2006 closing, a prior mortgage encumbering the subject property held by The Peoples National Bank having a balance of \$422,173.67, was paid. (Closing Statement, Americash Ex. No. 1, ROA 453). Appellants testified at trial this mortgage was “within days of coming due. . . .” (Hearing Transcript, p. 104, l. 24 - p. 105, l. 3, ROA 373 - 374). This was not true. Appellants’ credit report showed this mortgage to have a balloon payment due August of 2007, nearly a full nine months after the November 2006 closing. (Hearing Transcript, p. 377, l. 19 - p. 378, l. 17). Also paid at closing were county *ad valorem* taxes in the amount of \$4,385.01. (*Id.*). Disbursed to Appellants were excess loan proceeds totaling \$66,407.00. (Hearing Transcript p. 130, l. 6 - p. 132, l. 9, ROA 126 - 128).

Following the closing and up until the Bank filed its foreclosure complaint, Appellants did not complain about any aspect of the closing. (Transcript of Hearing, p. 265, ll. 9 - 13, ROA 261). They did, however, seek mortgage foreclosure intervention, contacting the mortgage servicer after default to explain the very unfortunate circumstances concerning the health of Appellant Bebout. (Americash Ex. No. 16). At no time, however, prior to the filing of this litigation, and particularly when Appellants sought foreclosure intervention, did Appellants complain about any aspect of the loan processing or closing. (*Id.*).

ARGUMENT

I.

Dismissal with prejudice of Appellants’ attorney preference claim against Americash was not error because such dismissal was supported by evidence adduced at trial which showed Americash complied with the requirements of S.C. Code Ann. § 37-10-102, Appellants acted on the notice of attorney preference by requesting a specific attorney and Appellants agreed to close the transaction using a different attorney to avoid delay.

Appellants' third party complaint against Americash asserted 10 affirmative claims. These claims were somewhat difficult to label but can be described as follows: (1) an alleged violation of S.C. Code § 37-10-102, the violation being the alleged failure of Americash to abide by the Bebout/Swaynghams' attorney preference and the failure of Americash to provide Appellants with a \$500,000.00, loan at an interest rate of 5.5%; (2), a violation of section 37-5-108, in that Americash knew Appellants could not make the required payments under the two loans closed on November 20, 2006, and that the loans were unconscionable; (3) a violation of section 40-58-10 in that Americash failed to have a mortgage broker's license and misrepresented the loan terms; (4) an alleged breach of fiduciary duty by Americash and negligence; (5) a violation of section 37-20-70(c), the allegation being the loan servicer, acting as agent of Americash failed in its servicing duties; (6) another violation of section 40-58-10, based on Americash's lack of a South Carolina mortgage broker's license; (7) a violation of Regulation Z in that the disclosures necessary under the Home Ownership and Equity Protection Act of 1994 were not made; (8) violations of section 6 of RESPA; (9) violations of the High Cost & Consumer Home Loan Act, section 37-23-40(1); and (10) a claim South Carolina's Unfair Trade Practices Act. (Second Amended Answer, etc., ROA 39).

The Special Referee dismissed all these affirmative claims with prejudice. (Special Referee's Findings of Fact, etc., ROA 1 - 13).

Appellants' statement of facts sets out their version of certain facts which appear to be relevant to some or all of affirmative claim numbers 2 - 10 above, as well as the portion of affirmative claim number 1 dealing with the asserted "promise" by Americash to provide

a \$500,000.00, loan at an interest rate of 5.5% per annum. However, in their statement of issues on appeal, Appellants set out six issues, all of which concern attorney preference and/or selection, i.e., a portion of affirmative claim number 1. Appellants frame these issues in the argument section of their brief as “. . . Defendants [Appellants] were denied a meaningful opportunity to have an attorney of there (sic) own choosing in all matters of the transaction relating to the closing.”

Americash respectfully submits the Special Referee’s dismissal with prejudice of affirmative claim numbers 2 - 10 listed above are not subject to this appeal and, thus, are the law of the case. SCACR, Rule 207(b)(1)(B) and *Windsor Prop. Inc. v. Dolphin Head Constr. Co. Inc.*, 331 S.C. 466, 598 S.E.2d 858 (1998). The Special Referee’s dismissal with prejudice of the affirmative claim concerning the \$500,000.00 loan at 5% per annum is likewise not the subject of this appeal and the law of this case. *Id.* Accordingly, only Appellants’ attorney preference claim remains.

In an action at law tried without a jury, the findings of fact of the judge will not be disturbed on appeal unless found to be without evidence which reasonably supports the judge’s findings, i.e., the scope of review in an action at law tried without a jury is the same as an action at law tried with a jury. *Townes Asso., Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976).

The Second Amended Answer, etc., alleged Americash “made no effort whatsoever to abide” by Appellants attorney preference and failed to “ascertain” their attorney preference “prior to closing.” (Second Amended Answer, etc., ROA 39, 42).

The Special Referee concluded otherwise. The Special Referee found the evidence and testimony adduced at trial showed Appellants informed Americash on or about October

27, 2006, of their desire to use the Acker Law Firm to close the loans in question and the reasonable inference to be drawn from this fact (a fact Appellants did not dispute at trial and do not dispute now) was Americash timely and properly made Appellants aware of their option to select an attorney to close the loans in question. (Special Referee's Findings of Fact, etc., ROA 1, 6, 7). The undisputed testimony of Americash was it had standard operating procedures in place at the time of the origination of the loan in question to assure compliance with the laws and regulations of the states, including South Carolina, in which it originates mortgage loans. (Hearing Transcript, p. 333, l. 15 - p. 334, l. 24, ROA 329 - 330). Americash testified at trial that "the initial disclosures go out within three days," (Hearing Transcript, p. 307, ll. 22- 23, ROA 303), "our practice is to send them [initial disclosures] out within three days," (Hearing Transcript, p. 309, ll. 10-12, ROA 305), and "if the borrower doesn't return it [the signed attorney preference form sent within three days of the loan application] we can't do anything about it. We'll send documents out, and oftentimes we won't get them back." (Hearing Transcript p. 334, l. 22 - p. 335, l. 1, ROA 330 - 331).

There was no dispute at trial that on or about October 27, 2006, Appellants contacted Americash saying they wanted the Acker Law Firm to close the subject transaction. This request was discussed by Americash with the Acker Law Firm, the result being if the Acker Law Firm was used to close the transaction some delay would result. (Defendants' Ex. Nos. 9 and 10, ROA 448, 452). The clear and reasonable inference to be drawn from this evidence is Appellants were provided with required attorney preference notice in accordance with S.C. Code Ann. § 37-10-102 in a timely manner, they acted upon that notice, Appellants' choice of attorney could have resulted in a delay in the closing and Appellants were "wanting to sign

[close the loan transactions] soon.” There is further no dispute that written on Defendants’ Ex. No. 10 is the comment “ready to close, title issue is resolved.” The only “title issue” raised in Defendants’ Ex. No. 10 concerns Appellants’ choice of attorney. The clear inference to be drawn from this comment is Appellants, to avoid delay, chose to proceed with the closing absent the Acker Law Firm. The Special Referee concluded as much and his finding is supported by evidence in the record. Finally, Appellant Bebout testified at trial that attorney Willoughby called her prior to the closing at which time she apparently did not think to insist the Acker Law Firm close the transaction or raise any issue with Americash regarding attorney preference. (Hearing Transcript, p. 96, l. 22 - p. 98, l. 4, ROA 92 - 94).³

Appellants complain Americash failed to “afford” them a “meaningful opportunity to have the attorney of choice” close the transaction, Americash failed to take “timely action” to ensure Appellants attorney preference was honored, and the actions of Americash “contributed” to a “situation where the Appellants [did] not have a meaningful opportunity to have representation of the attorney of their” choice. (Appellants’ opening brief, Statement of Issues at 1, issues 2, 3 and 4). To the extent any of these assertions are actionable, the evidence presented at trial supports the Special Referee’s finding that Americash complied with the provisions of section 37-10-102 in all respects and Appellants’ claims to the contrary were properly dismissed with prejudice.

Appellants complain generally about the conduct of the attorney who did close the transaction, asserting Mr. Castro closed the transaction, as opposed to Mr. Sandifer (Appellant’s brief at 5), that Mr. Sandifer was not present at the closing (Appellants’ brief at

³ Appellant Swaynham also testified he told Americash of his desire to use the Acker Law Firm. (Hearing Transcript, p. 245, ll. 4 - 10, ROA 241).

8), that Sandifer's and Castro's names were "switched" on some of the "forms" (*Id.*) and the like. To the extent any of those or similar assertions are actionable, none were appealed and, therefore, the Special Referee's conclusions as to all are the law of the case. SCACR, Rule 207(b)(1)(B) and *Windsor Prop. Inc.*

There is no dispute Appellants signed all the loan closing documents. In particular Appellant Bebout signed the attorney/insurance preference check list.⁴ (Defendants' Ex. No. 3, ROA 440). The attorney/insurance preference check list says "I have been informed by the lender [not by Mr. Sandifer or Mr. Castro] that I have the right to select legal counsel" and "[having] been informed of this right, and having no preference, I . . . select" Wyatt Willoughby.

There is no dispute Appellants signed four notices of right to cancel, all of which provided Appellants with an opportunity to cancel the transaction within three business days of the closing, a right Appellants chose not to exercise. There is no dispute Appellant Swaynham received copies of all the closing documents, took them home with him, and had every opportunity to review those documents within the rescission period. (Hearing Transcript, p. 296, l. 8 - p. 298, p. 2, ROA 292 - 294). Appellants' attorney preference claim was properly dismissed by the Special Referee and that dismissal should be affirmed.

4

The attorney - insurance preference form not only had the hand-written name of Wyatt Willoughby inserted on the appropriate line, but also the hand-written name of an insurance company - Allstate - and an insurance agent - Pat Campbell. (Defendants' Ex. No. 3, ROA 440). Appellant Bebout testified her husband, Appellant Swaynham, provided Americash this information prior to the loan closing. (Hearing Transcript p. 162, l. 5 - p. 163, l. 3, ROA 158 - 159). This testimony further supports the Special Referee's decision to dismiss with prejudice Appellants' attorney preference claims.

II.

Dismissal with prejudice of Appellants' attorney preference claim against Americash was not error because any violation of South Carolina's attorney preference statute was unintentional and, if it occurred, resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

This Court can affirm the lower court on any grounds appearing in the Record on Appeal. SCACR, Rules 208(b)(2) and 221(c) and *I'On, LLC v. Town of Mt. Pleasant*, 339 S.C. 406, 626 S.E.2d 716 (2000).

Section 37-10-102(B) provides no creditor "may be held liable" under the attorney preference statute if the violation was unintentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably calculated to avoid the error.

Americash submits the evidence showed it complied with the attorney preference statute in full. Appellants acted upon the notice of attorney preference by contacting Americash and requesting the Acker Law Firm close the transaction. That choice, however, could have resulted in a delay of the closing, and Appellants made the choice to proceed without the Acker Law Firm's closing services. Appellant Bebout's testimony to the effect that the name of the insurance company and insurance agent which appear on the attorney preference form and which were supplied to Americash by her husband further supports the Special Referee's conclusion to dismiss with prejudice Appellants' attorney preference claim.

In addition, the undisputed testimony adduced at trial was that Americash originates conventional loans underwritten to "Fannie Mae" and "Freddie Mac" standards and guidelines. It has both its own employees and outside counsel upon whom it relies for

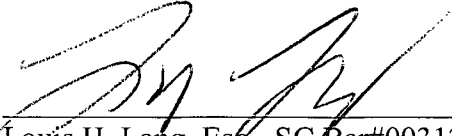
guidance concerning statutory and regulatory compliance matters (Hearing Transcript, p. 359, l. 24 - p. 360, l. 16, ROA 355 - 356). It also has standard operating procedures in place to assure compliance with the laws and regulations of states in which it originates mortgage loans. (Hearing Transcript, p. 333, l. 15 - p. 334, l. 24, ROA 329 - 330). It makes no difference to Americash what attorney closes its mortgage loan transaction. (Hearing Transcript, p. 356, l. 6 - p. 357, l. 12, ROA 352 - 353). Accordingly, if there was any error, which Americash denies, such error was unintentional and at the time of the closing Americash had in place procedures reasonably calculated to avoid any such errors.

CONCLUSION

The November 20, 2006, closing was a routine “cash-out” refinance mortgage transaction. The closing was supervised by an attorney licensed to practice in South Carolina and attended by a second licensed attorney who acted as witness. Appellants were provided all requisite notices and in particular, the attorney preference notice. The proceeds of the loans closed on November 20, 2006, paid a prior mortgage encumbering the subject property which was coming due in approximately nine months and provided Appellants with cash proceeds in excess of \$60,000.00, both benefits which Appellants enjoyed and failed to complain about until the filing of the Banks’ foreclosure action.

The Special Referee’s dismissal with prejudice of Appellants’ affirmative claims is supported by the evidence adduced at trial. Accordingly, the Special Referee should be affirmed.

CALLISON TIGHE & ROBINSON, LLC



Louis H. Lang, Esq., SC Bar#003127
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900

*Attorneys for Respondent,
Americash Mortgage Corporation*

May 24, 2013
Columbia, South Carolina

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v.

Barbara E. Bebout; Robert A. Swaynham a/k/a Robert Alec Swaynham; Mortgage Electronic Registration Systems, Inc. (Min#1001419-0060908012-1); National Bank,

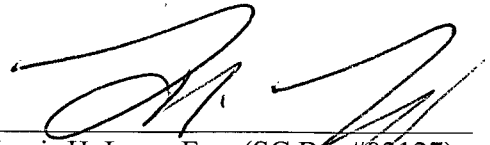
Of whom Barbara E. Bebout and Robert A. Swaynham are Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this **Final Brief of Americash Mortgage Corporation** complies with Rule 211(b), SCACR.

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CALLISON TIGHE & ROBINSON, LLC



Louis H. Lang, Esq. (SC Bar #03127)
Callison Tighe & Robinson, LLC
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900

*Attorneys for Respondent,
Americash Mortgage Corporation*

May 24, 2013
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

R. Murray Hughes, Special Referee

Appellate Case No. 2012-211187
Case No. 2010-CP-39-0352

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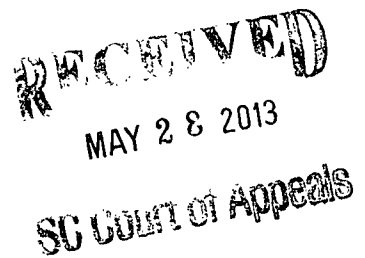
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CERTIFICATE OF SERVICE

I, Crystal Smith, an employee of Callison Tighe & Robinson LLC, Attorneys for the Respondent, do hereby certify that I have served a copy of the **Final Brief of Americash Mortgage Corporation**, by mailing it to him at his last known address, by deposited it in the United States Mail, postage prepaid, addressed to counsel of record at the following addresses:



J. Falkner Wilkes, Esq.
114 Whitsett St.
Greenville SC 29601


Crystal Smith

May 24, 2013
Columbia, South Carolina