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Homework Regulators Aren't Doing

By GRETCHEN MORGENSON

“ONE too many times, this court has been witness to the shoddy practices and sloppy accountings of the mortgage service industry. With each revelation, one hopes that the bottom of the barrel has been reached and that the industry will self correct. Sadly, this does not appear to be reality.”

This trenchant take comes courtesy of Elizabeth W. Magner, a bankruptcy court judge in the Eastern District of Louisiana. In an April 7 opinion involving a couple whose bank tried to foreclose on them even though they were current on their mortgage, you can sense Ms. Magner’s frustration with financial institutions that administer home loan payments and records.

Ms. Magner is just one of many judges overseeing cases involving troubled borrowers, of course. But because her judicial duties seem to have made her an expert on mortgage servicing, Ms. Magner’s views could not be more timely and important. This is especially true, given that state attorneys general seem intent on [striking a settlement](#) with servicers before they have conducted a comprehensive and thorough examination of industry practices.

By presiding over a variety of cases involving borrower abuse, Ms. Magner has probably done more investigating than some of the attorneys general who are so eager to cut a deal with the banks.

Her April 7 ruling involved two borrowers, Ron and LaRhonda Wilson, who tried to save their home by filing for bankruptcy in 2007. Having come up with a payment plan the court approved, they began submitting their monthly mortgage checks as agreed. Soon, however, a misstep at Lender Processing Services, an administrative company whose software system was used by the Wilsons’ lender, sucked them into the foreclosure machine.

The United States Trustee for the region got involved in the case and asked Ms. Magner to impose sanctions

against Lender Processing. She did so in the recent ruling; the amount has not yet been determined.

You may recall Lender Processing Services — it's the company whose Georgia-based document processing unit, DocX, was ground zero for the robo-signing scandal. DocX was acquired by [Fidelity National Information Services](#) in 2005, and was later spun off with Lender Processing. DocX was [the rubber-stamp operation](#) where employees signed hundreds of foreclosure documents a day attesting to facts and figures that they rarely bothered to check. Some of the signatures on DocX papers were so different they appeared to be forged.

Lender Processing shut down DocX in February 2010. But the parent company is still under scrutiny for its much larger business of providing payment processing software systems to a vast majority of mortgage servicers. Indeed, Lender Processing was among the 12 financial institutions that consented to change their mortgage processing and foreclosure practices last week after receiving cease and desist orders from [federal banking regulators](#).

Lender Processing's two biggest bank customers are [Wells Fargo](#) and [JPMorgan Chase](#). Neither bank would comment.

Ms. Kersch, the spokeswoman for Lender Processing, said: "The consent order does not make any findings of fact or conclusions of wrongdoing, nor does L.P.S. admit any fault or liability."

Returning to the Wilson case: Their mortgage servicing woes began in the fall of 2007, after they filed for bankruptcy protection. The court had approved their mortgage payment plan and they began submitting monthly checks as instructed.

The first problem arose when the Lender Processing software was not updated to reflect that the Wilsons were operating under a payment plan approved by a bankruptcy court. Then, the couple's checks were not posted to their account by a lawyer for their lender, who inexplicably held onto the checks.

So Lender Processing's automated system started the foreclosure process on behalf of the Wilsons' lender, even though the couple had made all their necessary payments. A robo-signer from DocX arrived on the scene, legally attesting to the Wilsons' purported delinquency, because Lender Processing's system did not reflect that the Wilsons' checks were sitting, uncashed, with their bank's lawyer.

Luckily, a lawyer for the Wilsons battled back, documenting to the bankruptcy court that the couple were in fact current on their mortgage. Ms. Wagner was the judge overseeing this messy chain of events.

Officials at Lender Processing say that the Wilson case is an anomaly and that the document execution process that occurred in the case “is no longer provided” by the company, a reference to the robo-signing practices at DocX. In a statement, Ms. Kersch, the Lender Processing spokeswoman, said that mortgage servicers and their lawyers were using Lender Processing’s systems in foreclosures and bankruptcies they were overseeing. “Neither L.P.S.’s staff nor its technology make decisions regarding the foreclosure process,” she added.

Ms. Kersch is right. The company’s systems let banks servicing home loans dictate when fees are automatically charged, for example, how payments are applied to borrowers’ accounts and when actions, like foreclosure appraisals, are prompted.

But how some banks have deployed the Lender Processing systems disturbs Ms. Magner, according to opinions she has written in other cases. In the Wilson ruling, she cites other problematic cases she has overseen where banks servicing borrowers’ loans used Lender Processing systems improperly.

In one case, Ms. Magner said, she discovered “a highly automated software package owned by L.P.S.” to administer loans that “was programmed to apply payments contrary to the terms of the notes and mortgages.” Such terms typically require that a loan administrator apply payments first to real estate taxes, principle and interest, then to other things like late fees or default charges. But in one case before Ms. Magner, the bank applied payments first to late fees and property inspection charges.

In another case, Ms. Magner concluded that Wells Fargo had made “errors in the methodology for fees and costs posted to a debtor’s account” using a Lender Processing system.

The L.P.S. spokeswoman said that because the company was not a named party in the other cases cited by the judge, it was unable to comment on Ms. Magner’s references to the other cases.

THE use of a robo-signer in the Wilson matter seemed to be the last straw for Ms. Magner. In sanctioning Lender Processing, she wrote: “The fraud perpetrated on the court, debtors and trustee would be shocking if this court had less experience concerning the conduct of mortgage services.”

She added: “Serious problems persist in mortgage loan administration. But for the dogged determination of the United States Trustee’s office and debtors’ counsel, these issues would not come to light and countless debtors would suffer.”

For those who argue that servicing errors encountered by troubled borrowers are rare mistakes, Ms. Magner’s rulings should be required reading. “The deference afforded the lending community has resulted in

an abuse of trust," she wrote in the Wilson ruling.

Truer words were never spoken.



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