

Investor battles loan company

Mortgage servicing » **EMC** settled unlawful practices charges with the FTC, but beefs linger.

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For years, Californian Michael Pines bought and sold investment properties without a hitch. Then came his sale of a home in West Jordan.

He contends that home loan servicing company **EMC Mortgage Corp.** not only bungled the payoff of the mortgages on that home, but that the company fouled up loans on other properties, as well, marring Pine's credit record in the process.

Pines, an attorney, eventually filed suit against EMC, a company that late last year was ordered pay \$28 million to settle charges by the Federal Trade Commission related to unlawful practices in servicing consumers' home mortgage loans in a number of states.

The FTC said that 86,000 consumers who had mortgage loans serviced by EMC have been mailed checks totaling nearly \$28 million as part of the settlement action. Consumers receiving checks either paid unlawful fees or had their homes improperly foreclosed, or both.

Pines wasn't part of that settlement. He's pursuing his beef with EMC in federal court in Utah. He has also become an outspoken critic of the company, which once was owned by defunct **Bear Stearns** and today is operated by banking giant JP Morgan Chase.

EMC doesn't comment on lawsuits, said a company spokeswoman, who added that EMC made changes to its operations even before the FTC settlement.

Like other mortgage servicing companies, EMC doesn't grant loans. The company is in charge only of what comes after a loan is made, such as accepting and recording payments from borrowers.

That's where Pines says everything went wrong for him, and he's among thousands of borrowers nationwide who lodge complaints against their mortgage servicing companies.

Pines, a real estate investor who at one time had loans on four properties serviced by EMC, says his troubles with EMC began after he sold an investment property in West Jordan. He said loans on that property and the three others had recently been transferred to EMC. In some documents he received after closing the West Jordan sale, he said he noticed a few errors -- in his favor, he adds -- so he wrote EMC.

He says he heard nothing until a check came in the mail for more than \$70,000, to which he says he wasn't entitled.

Figuring the company eventually would demand the extra sum back, he called EMC and wrote a letter to alert it about the error. The company eventually canceled the check.

In his lawsuit, Pines alleges that the company began misapplying payments on the loans on the other three properties, leading to the company attempting to foreclose on a property in Eagle Mountain on the west side of Utah Lake.

Although the four properties that were purchased with loans serviced by EMC have since been sold and the loans satisfied, Pines says his credit has been damaged.

"I had perfect credit before all of this -- there was not a single negative item in my report," he laments in explaining his fight with the company in court.

Although Pines is not part of the FTC settlement, his complaints are similar to those whose experiences with

EMC led to the government order.

According to the FTC, EMC allegedly misrepresented the amounts borrowers owed on loans and charged late penalties and other unauthorized fees, such as property inspection fees and loan modification fees.

The federal agency also said the company engaged in unlawful and abusive collection practices. Under the settlement, the company has been ordered to stop the practices and institute a data integrity program to ensure the accuracy and completeness of consumers' loan information.

In announcing the settlement last year, Lydia Parnes, director of the FTC's Bureau of Consumer Protection, said mortgage servicing companies have a great responsibility. "Consumers have the right to expect accuracy from the company that collects their mortgage payments," she said.

According to the FTC, EMC's servicing portfolio ultimately grew to 475,000 mortgage loans totaling \$80 billion at the time of the settlement. Yet the agency contends that the company failed to obtain timely and accurate information on consumers' loans, made inaccurate claims to consumers, and engaged in unlawful collection and servicing practices. The agency underscores the fact that the alleged problems and the settlement occurred before the acquisition by JP Morgan Chase in May.

The FTC said the company allegedly made harassing collection calls, falsely represented the character, amount, or legal status of consumers' debts and failed to communicate with credit-reporting agencies that debts were disputed.

"There's an obligation [on behalf of the mortgage servicing company] to report when the consumer has disputed the information," said Lucy Morris, an attorney with the FTC's Bureau of Consumer Protection.

In most financial endeavors, it pays to shop around and carefully investigate any companies you want to do business with. But this time-honored advice doesn't work with mortgage servicing companies.

For starters, consumers may be able to pick who they get their mortgage loans from, but there is no guarantee that the company that originates the loan will end up servicing it. And there's no guarantee the company that is servicing the loan will continue to do so. In fact, the loan may be transferred from one servicing company to another over a period of years.

What should consumers do? Keep good records, review statements and call a lender immediately if there is a problem.

And back up every complaint in writing, said Morris of the FTC.

If the servicing company reports erroneous information about you to credit-reporting agencies, contact all three bureaus -- Experian, Equifax, TransUnion -- and dispute the incorrect information.

You can also involve a third party if you have a problem with your loan servicing company, said Eva Rees, supervisor of consumer credit and compliance with the Utah Department of Financial Institutions. Among other responsibilities, Rees fields complaints about mortgage servicing outfits.

If the company is under her agency's purview, Rees can contact a servicing company on a consumer's behalf. If the servicing company is regulated at the federal level, she can refer consumers to the appropriate agency.

Many of the complaints Rees hears about concern companies that don't post payments in a timely manner or that force borrowers to buy homeowner's insurance when they already have it.

Sometimes, the servicing company hasn't really done anything wrong other than fail to respond to a consumer in a favorable way.

But even state and federal regulators can't force a lender or servicing company to comply with a borrower's wishes.

Still, Rees said consumers "can always call us. If we can, we'll take a complaint, or we'll direct them to the appropriate regulator who can help them."

For his part, California investor Pines, who has put up the Web site www.emcvictim.com, continues to wrangle with EMC in court on a servicing issue he first discovered more than two and a half years ago.

He said he has no plans to give up. "What they did, it's absolutely ridiculous."

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Have complaints about a mortgage servicing company?

In Utah » Call the Utah Department of Financial Institutions at 801-538-8830. The state agency regulates several dozen servicers. Even if it is not responsible for yours, it will direct you to the appropriate regulator.

Nationwide » The U.S. Department of Housing & Urban Development is another resource. For information about your rights, go to www.hud.gov and click on "Consumer Info" on the right-hand side of the Web page. Then click on "Your Rights and the Responsibilities of the Mortgage Servicer."

Learn about EMC's settlement

The Federal Trade Commission has established a hot line, 1-877-787-3941, for consumers who are interested in knowing about the settlement with EMC Mortgage Corp. Information also is available at <http://www.ftc.gov>.

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