

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DAWN TARDIBUONO-QUIGLEY, on  
behalf of herself and all others similarly  
situated,

Plaintiff,

v.

HSBC MORTGAGE CORPORATION  
(USA) and HSBC BANK USA, N.A.,

Defendants.

Case No. 7:15-cv-06940-KMK-JCM

~~PROPOSED~~ PRELIMINARY APPROVAL ORDER

WHEREAS, on April 24, 2019, all parties to the above-captioned Action (the "Action") entered into a Stipulation and Agreement of Settlement (the "Settlement Agreement") which is subject to review and approval by this Court and which, together with the exhibits thereto, sets forth the terms and conditions for the proposed Settlement of the claims alleged in the Action and dismissal of the Action with prejudice;

WHEREAS, Plaintiff in the Action has moved, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for an Order that, among other things, preliminarily approves the Settlement Agreement and the Settlement embodied therein, certifies a Class solely for the purposes of settlement, and provides for notice to potential members of the Class; and

WHEREAS, the Court has read and considered the Settlement Agreement and the exhibits thereto; all parties to the Settlement Agreement have consented to the entry of this Order; and the Court has found that substantial and sufficient grounds exist for entering this Order:

NOW, THEREFORE, IT IS HEREBY ORDERED, this 9<sup>th</sup> day of January, 2020 that:

1. The Court, for purposes of this Order, adopts all defined terms as set forth in the Settlement Agreement. Any inconsistencies in terminology between the Settlement Agreement and the Class Notice or this Order will be controlled by the language of the Settlement Agreement.

2. The Court hereby preliminarily certifies the following class for the purposes of settlement only (the "Class"), pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure:

(a) All persons who, between July 31, 1992 and December 31, 2000, entered into a mortgage agreement with HSBC Mortgage Corporation (USA) and/or HSBC Bank USA, N.A., concerning the purchase of a residential property in New York that is not part of a cooperative, and who, at any time between September 2, 2012 and December 31, 2017, were assessed fees by HSBC Mortgage Corporation (USA), HSBC Bank USA, N.A., and/or any of their agents, for property inspections and/or broker price opinions;

(b) All persons who entered into a security agreement with HSBC Mortgage Corporation (USA) and/or HSBC Bank USA, N.A., concerning the purchase of a unit in a New York cooperative, and who, at any time between September 2, 2012 and December 31, 2017, were assessed fees by HSBC Mortgage Corporation (USA), HSBC Bank USA, N.A., and/or any of their agents, for property inspections and/or broker price opinions;

(c) All persons who, during the relevant period as set forth in the attached Exhibit A, entered into a mortgage agreement or security agreement with HSBC Mortgage Corporation (USA) and/or HSBC Bank USA, N.A., concerning the purchase of residential property in a state other than New York, and who, at any time between

September 2, 2012 and December 31, 2017, were assessed fees by HSBC Mortgage Corporation (USA), HSBC Bank USA, N.A., and/or any of their agents, for property inspections; and

- (d) All persons who, during the relevant period as set forth in the attached Exhibit A, entered into a mortgage agreement or security agreement with HSBC Mortgage Corporation (USA) and/or HSBC Bank USA, N.A., concerning the purchase of residential property in a state other than New York, and who, at any time between September 2, 2012 and December 31, 2017, were assessed fees by HSBC Mortgage Corporation (USA), HSBC Bank USA, N.A., and/or any of their agents, for Broker Price Opinions that satisfies the Specified Criteria set forth in Section 2.33 of the Settlement Agreement.

Excluded from the Classes are Defendants, their parents, subsidiaries, affiliates, officers, and directors, any entity in which Defendants have controlling interest, all Class Members who make a timely election to be excluded, and all judges assigned to hear any aspect of this litigation as well as their immediate family members.

3. Solely for purposes of effectuating the Settlement, the Court preliminarily finds that the prerequisites to class action certification under Fed. R. Civ. P. 23(a) and 23(b)(3) have been satisfied for the Class defined herein, in that:

- (a) the number of Class Members is so numerous that joinder of all Class Members is impracticable;
- (b) there are questions of law and fact common to the Class Members;
- (c) Plaintiff's claims are typical of the Class's claims;

(d) Plaintiff and Class Counsel (as appointed herein) have and will fairly and adequately represent and protect the interests of the Class;

(e) the questions of law and fact common to the Class Members predominate over any individual questions; and

(f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. The Court finds that Plaintiff Dawn Tardibuono-Quigley is an adequate representative of the Class and certifies her as the Class Representative for the Class.

5. The Court finds that counsel for the Class Representative, D. Gregory Blankinship, Todd S. Garber, and Bradley F. Silverman of Finkelstein, Blankinship, Frei-Pearson & Garber LLP, 445 Hamilton Avenue, Suite 605, White Plains, NY 10601, have adequately represented the Class and appoints them to be Class Counsel for the Class.

6. The Court preliminarily finds that:

(a) the proposed Settlement resulted from informed, extensive arm's-length negotiations between the Settling Parties, including mediation under the direction of an experienced, neutral mediator;

(b) Class Counsel has concluded that the proposed Settlement as embodied in the Settlement Agreement is fair, reasonable and adequate;

(c) the proposed Settlement and the terms set forth in the Settlement Agreement are sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Class, taking into account the costs, risks, and delay of trial and appeal, the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-

member claims, and the terms of the proposed award of attorney's fees and expenses, including timing of payment; and

(d) the proposed Settlement treats class members equitably relative to each other

7. A hearing (the "Settlement Hearing") is hereby scheduled to be held before the Court on May 20, 2020, at 10:30 a.m., at the United States District Court, Southern District of New York, The Hon. Charles L. Brieant Jr. Federal Building and United States Courthouse, 300 Quarropas St., White Plains, NY 10601-4150, for the following purposes:

(a) to determine whether the proposed Settlement, as embodied in the Settlement Agreement (including, but not limited to, the terms governing the Claim Payments to be paid to Approved Claimants and the procedures for submission of Proof of Claims, review and determination of the validity of such Proof of Claims and the distribution of Claim Payments to Approved Claimants), is fair, reasonable, and adequate, and should be approved by the Court;

(b) to determine whether the Judgment, substantially in the form attached as Exhibit C to the Settlement Agreement, should be entered herein;

(c) to determine whether the Action should be finally certified, for settlement purposes, as a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure:

(d) to consider Class Counsel's application for an award of Class Counsel Fees;

(e) to consider the Class Representative's request for a Service Award for the time and effort expended in prosecuting the Action on behalf of the Class; and

(f) to rule upon such other matters as the Court may deem appropriate.

8. The Court approves the appointment of Angeion Group as the Settlement Administrator.

9. The Court approves the form, substance and requirements of the Website Notice, the Postcard Notice, and the Reminder Notice (collectively, the “Class Notice”), and of the Proof of Claim, each substantially in the form annexed as Exhibits D, E, F, and G, respectively, to the Settlement Agreement. The Court finds that the procedures established for mailing and distribution of the Class Notice and Proof of Claim substantially in the manner and form set forth in paragraphs 10 and 11 of this Order constitute the best notice practicable under the circumstances, are in full compliance with the notice requirements of due process and Rule 23 of the Federal Rules of Civil Procedure, and shall constitute due and sufficient notice to all persons entitled to notice.

10. The procedures for mailing and distribution of the Class Notice shall be as follows:

(a) Within ten (10) calendar days following the entry of this Order, Defendants shall provide the Settlement Administrator with the Class Members E-File;

(b) The Settlement Administrator shall cause the Postcard Notice to be mailed, by first class mail, postage pre-paid, within thirty (30) calendar days following the entry of this Order, to all Class Members identified in the Class Members E-File at the addresses set forth therein or at such other addresses as the Settlement Administrator identifies pursuant to the procedures set forth in Sections 4.4 and 4.5 of the Settlement Agreement;

(c) The Settlement Administrator shall cause the Reminder Notice to be mailed, by first class mail, postage pre-paid, within sixty (60) calendar days following the entry of this Order, to all Class Members identified in the Class Members E-File at the addresses set forth therein or at such other addresses as the Settlement Administrator identifies pursuant to the procedures set forth in Sections 4.4 and 4.5 of the Settlement Agreement, provided that no Reminder Notice shall be sent to any Class Member (i) who submits a Proof of Claim prior to the date when the Reminder Notice is to be sent or (ii) whose Postcard Notice was returned as

undeliverable despite the Settlement Administrator's use of a Revised Current Address pursuant to the procedures set forth in Section 4.5 of the Settlement Agreement;

(d) The Settlement Administrator shall, within thirty (30) calendar days following the entry of this Order, create the Settlement Website, which shall contain the documents (including, but not limited to, the Website Notice, the Settlement Agreement, the Proof of Claim, and this Preliminary Approval Order), information and functionality set forth in Section 4.7 of the Settlement Agreement; and

(e) Class Counsel shall, at or before the Settlement Hearing, file with the Court proof of (i) mailing of the Postcard Notice and the Reminder Notice and (ii) establishment of the Settlement Website containing the requisite documents, information and functionality as provided for herein.

11. The Settlement Administrator shall, within thirty (30) calendar days following the entry of this Order, post on the Settlement Website the Proof of Claim. The Settlement Administrator shall ensure, as provided in Sections 4.7 and 4.10 of the Settlement Agreement, that the Proof of Claim (i) can be printed from the Settlement Website; (ii) can be completed and submitted electronically through the Settlement Website; and (iii) will be mailed, either by first class mail, postage pre-paid, or electronically, to those Class Members who request the Settlement Administrator to make such a mailing.

12. To be entitled to receive a Claim Payment, in the event the Effective Date occurs, each Settlement Class Member must take the following Action and shall be subject to the following conditions:

(a) Fully complete and timely submit a valid Proof of Claim in accordance with the instructions contained therein. All Proof of Claims must be submitted no later than ninety (90)



calendar days following the entry of this Order. Each Proof of Claim shall be deemed to have been submitted on the date submitted on-line through the Settlement Website or when postmarked (if properly addressed and mailed by first class mail, postage pre-paid); and

(b) The determination of whether a Proof of Claim was fully completed, valid and timely submitted and should be approved or rejected shall be made pursuant to the criteria and procedures set forth in Sections 5.1 through 5.17 of the Settlement Agreement.

13. Any Settlement Class Member who does not timely submit a fully completed and valid Proof of Claim shall be barred from receiving any Claim Payment, unless otherwise ordered by the Court, but shall nevertheless be bound by any Judgment entered by the Court. Every Settlement Class Member who submits a Proof of Claim shall be deemed to have voluntarily submitted to the jurisdiction of the Court with respect to the Proof of Claim submitted.

14. Class Members shall be bound by the Settlement Agreement and all determinations and judgments in this Action concerning the Settlement, including, but not limited to the releases provided for therein, whether favorable or unfavorable, unless they request exclusion from the Class in a timely and proper manner, as hereinafter provided. A Class Member wishing to make a request for exclusion must submit a written request, by first class mail, postage pre-paid, to the address designated in the Class Notice that is postmarked no later than ninety (90) days after entry of this Order. Such a written request for exclusion must clearly provide all of the following information: (a) the name and current mailing address of the person and/or entity seeking exclusion; (b) the unique identification number provided on the Postcard Notice and/or Reminder Notice sent to the Class Member or the address of the Property for which the Class Member was the Mortgagor Party; and (c) a signed statement that the person and/or entity wishes to be excluded from the Class and the Settlement in *Tardibuono-Quigley v. HSBC Mortgage Corporation (USA)*



*et. al*, No. 7:15-cv-06940-KMK-JCM (S.D.N.Y.). If the exclusion request is made by someone other than the Class Member directly, the person or entity submitting the exclusion request must provide documentation evidencing authority to submit the exclusion request on behalf of the Class Member. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above, or the exclusion is otherwise accepted by the Court.

15. Putative Class Members who are excluded from the Class shall not be entitled to receive any Claim Payment, as described in the Settlement Agreement and Class Notice, and shall not be bound by the Judgment, if entered in this Action, nor subject to terms of the Settlement Agreement, if approved by the Court.

16. Class Counsel shall submit papers in support of final approval of the Settlement, as embodied in the Settlement Agreement, its application for an award of Class Counsel Fees and the Class Representative's requests for a Service Award by no later than twenty-one (21) calendar days prior to the Settlement Hearing. Any reply papers, if necessary, shall be submitted one week prior to the Settlement Hearing.

17. The Court will consider objections by any Class Member to the Settlement Agreement (and the Settlement embodied therein) and with respect to any other matter identified in this Order to be addressed at the Settlement Hearing only if the Class Member has not requested exclusion from the Class and only if such objections and any supporting papers (accompanied by due proof of service upon Class Counsel and Defendants' Counsel in the time and manner provided below), are filed in writing with the Clerk of Court, United States District Court, Southern District of New York, The Hon. Charles L. Briant Jr. Federal Building and United States Courthouse, 300 Quarropas St., White Plains, NY 10601-4150, no later than ninety (90) days after entry of this

Order and copies of all such papers and briefs are served by hand, mail or overnight delivery, such that they are received no later than ninety-seven (97) days after entry of this Order, by each of the following: (i) Todd S. Garber, D. Gregory Blankinship, and Bradley F. Silverman, Finkelstein, Blankinship, Frei-Pearson & Garber, LLP, 445 Hamilton Avenue, Suite 605, White Plains, NY 10601, on behalf of the Class Representative and the Class; and (ii) James L. Bernard, Stroock & Stroock & Lavan LLP, 10 Maiden Lane, New York, NY 10038, on behalf of Defendants. Class Counsel and Defendants' Counsel shall promptly furnish each other with copies of any and all objections that come into their possession.

18. Any Class Members who intend to object must include in their filing all the following information: (a) the Class Member's name and current mailing address; (b) the unique identification number provided on the Postcard Notice and/or Reminder Notice sent to the Class Member or the address of the Property for which the Class Member was the Mortgagor Party; and (c) a signed statement that the Class Member objects to the Settlement in *Tardibuono-Quigley v. HSBC Mortgage Corporation (USA) et. al*, No. 7:15-cv-06940-KMK-JCM (S.D.N.Y.); (d) a statement of whether the objection applies only to the objector, to a specific subset of the class, or to the entire class; (e) a statement of your specific objections as well as the specific grounds for those objections (including any documents you would like the Court to consider); and (f) a list of all other class action cases in which you or your counsel have filed objections to settlements. Attendance at the Settlement Hearing is not necessary for Class Members to object to any matters to be presented at the Settlement Hearing. Class Members wishing to appear, however, to be heard orally to oppose any matters to be presented at the Settlement Hearing (including the approval of the Settlement) and/or present evidence at the Settlement Hearing, must submit with their written filing a notice of their intention to appear at the Settlement Hearing and the identity of any

witnesses they may seek to call to testify and exhibits they may seek to introduce into evidence at the Settlement Hearing. Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval of any matters to be presented at the Settlement Hearing (including the approval of the Settlement).

19. Unless the Court orders otherwise, no member of the Class or other person shall be entitled to object to any matters to be presented at the Settlement Hearing, or otherwise be heard at the Settlement Hearing, except by serving and filing written objections as described above. Any person who does not object in the manner prescribed above shall be deemed to have waived such objection and shall be bound by all the terms and provisions of the Settlement Agreement and by all proceedings, orders and judgments in the Action.

20. All proceedings in the Action are hereby stayed until further order of the Court, except as may be necessary to implement the Settlement or comply with the terms of the Settlement Agreement. Pending final determination of whether the Settlement should be approved, the Class Representative, all Class Members, and each of them, and anyone who acts or purports to act on their behalf, shall not institute, commence, maintain or prosecute, and are hereby barred and enjoined from instituting, commencing, maintaining, or prosecuting, any action in any court or tribunal that asserts Settled Claims against any Released Party.

21. If the Effective Date fails to occur for any reason whatsoever, the Settlement Agreement and the Settlement embodied therein shall be null and void, and without prejudice to any party, and none of their terms shall be effective or enforceable and the fact of the Settlement Agreement and the Settlement embodied therein shall not be admissible in any trial of this Action for any purpose, and all parties to this Action shall be deemed to have reverted to their respective status in this Action immediately prior to May 15, 2018, and, except as otherwise expressly

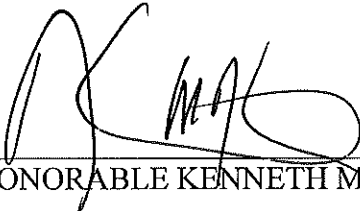
provided in the Settlement Agreement, the parties shall proceed in all respects as if the Settlement Agreement, this Preliminary Approval Order, and any related orders had not been entered.

22. The Court shall consider any application for an award of Class Counsel Fees to Class Counsel or the award of a Service Award to the Class Representative separately from the fairness, reasonableness, and adequacy of the Settlement Agreement and the Settlement embodied therein, the approval of the Settlement and the final certification of the Class as a class action. The approval and entry of the Judgment is not dependent upon, and may proceed separately from, the award, if any, of Class Counsel Fees to Class Counsel and of a Service Award to the Class Representative.

23. The Court expressly reserves the right to do the following without further notice to members of the Class: (a) reschedule the Settlement Hearing; (b) approve the Settlement Agreement with modifications(s) approved by the Settling Parties; (c) award such Class Counsel Fees as the Court finds fair and reasonable, subject to such limitations set forth in the Settlement Agreement; and (d) award a Service Award to the Class Representative, subject to such limitations as are set forth in the Settlement Agreement.

24. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the Settlement Agreement and the Settlement embodied therein.

Dated: January 8, 2020

  
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HONORABLE KENNETH M. KARAS, U.S.D.J.