

DAILY BUSINESS REVIEW

MORTGAGE MELTDOWN Fannie Mae defends firing Ben-Ezra

FORECLOSURE FIRM SEEKS REVERSAL OF INJUNCTION

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Fannie Mae defended its termination of the Hollywood foreclosure law firm Ben-Ezra & Katz in February and asked the 4th District Court of Appeal during oral arguments Tuesday to uphold an injunction entered against the firm by a Broward Circuit Court judge.

Marc Ben-Ezra asked the 4th DCA to salvage what he could of what was once one of the state's largest foreclosure firms. Battered by the so-called "robo-signing" scandal, Ben-Ezra was caught up in accusations it used fraudulent affidavits. It was summarily fired by the Federal National Mortgage Association and forced to hand over 15,000 foreclosure case files.

Circuit Court Judge Mily Rodriguez-Powell granted Fannie Mae's motion but ordered the posting of a \$5 million injunction bond to replace the files, over which Ben-Ezra was asserting a lien.

Representing Ben-Ezra, Adam Hodkin of Padula Hodkin in Boca Raton asserted the injunction was in error and asked the appellate panel to reverse it. He asked the 4th DCA to release the \$5 million bond to Ben-Ezra and remand the case to the circuit court to seek further damages.

Ben-Ezra is claiming \$10.4 million in billings, but Fannie Mae asserts that \$8.2 million of that amount was not invoiced.

Fannie Mae's attorney, Jeffrey C. Schneider of Levine Kellogg Lehman Schneider + Grossman in Miami, seeks to stop Ben-Ezra's appeal and compel the firm to arbitration, as required by their agreement.

Hodkin argued Fannie Mae never properly established there was an emergency that could not have been resolved without terminating Ben-Ezra, and causing it irreparable harm.

"Not every case had upcoming events scheduled," Hodkin told the DCA panel. "You won't find findings of act as to what is an emergency."



J. ALBERT DIAZ

Fannie Mae's attorney, Jeffrey C. Schneider of Levine Kellogg Lehman Schneider + Grossman in Miami, seeks to stop Ben-Ezra's appeal and compel the firm to arbitration, as required by their agreement.

Ben-Ezra is not seeking the return of the files, only damages. The law firm is a shell of its former self, having been forced in the spring to lay off hundreds of employees and endure judicial sanctions.

Defending the trial court's decision, Schneider noted Hodkin did not ask for an evidentiary hearing.

"The trial court made more than enough findings for this court's meaningful review," Schneider said. "There couldn't be a better

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Jeffrey C. Schneider
Counsel for Fannie Mae

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Hearings, foreclosure sales, mediations and other activities were occurring on a daily basis, Hodkin said.

Judge Cory Ciklin described the situation was a "rolling emergency" where events that might expose bad practices would be an ongoing concern.

Chief Judge Melanie May appeared unconvinced by Ben-Ezra's case, reading verbatim from the engagement agreement to emphasize Fannie Mae's right to terminate with or without cause.

"How could that be any clearer?" she asked.

"They don't get to insist on contractual compliance if they didn't pay for the files," Hodkin replied.

But May said it is often the case that the non-paying party in a breach of contract situation claims payment was withheld because the other party didn't do the right thing.

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