

The “Fractional Interest” Bankruptcy Foreclosure Scam, an Old Scheme Finds New Life

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In the March Commercial Task Force Newsletter David Leibowitz wrote an excellent and timely article about a mortgage rescue scam in Texas. In this article I will describe my personal experience with the fractional interest bankruptcy foreclosure scams, report on the task force that the United States Bankruptcy Court for the Central District of California formed in 1996 to investigate bankruptcy foreclosure scams, and talk about a recent indictment in Topeka, Kansas of a California man for allegedly perpetrating a bankruptcy foreclosure scam.

Since the early 1990s I have been local counsel to a California law firm which represents secured creditors in bankruptcy proceedings across the country. Most of the matters I have handled have been standard relief from the stay motions in chapter 7 and chapter 13 cases. Beginning in the mid-1990s, I started to notice a new type of case, the “fractional interest” case. In these cases, a corporation would file a bankruptcy proceeding in New York and then a California homeowner would transfer a fractional interest in his or her home to this entity, thereby staying a pending foreclosure. The Debtor in these cases usually did not file schedules, appear at the Section 341 meeting, or oppose the relief from stay motion. Many times I would file more than one motion in the same case for relief from the stay, each motion for a different property. Those same properties frequently would be the subject of a motion in a different case, sometimes in a different district. In each case, the lawyer on the petition was not listed in my lawyer’s diary and phone calls to their office were not answered. I decided to go to the addresses given on the petitions for the debtors and each time the address was a mailbox business and not a real office. Through discussion with the law firm in California, I learned that fractional interests of the same properties that were the subject of the motions in New York were transferred to

debtors in Atlanta, Detroit, Miami, and other cities. Each time a bankruptcy court granted relief from the stay in one district, a fractional interest was transferred to a debtor in another district to obtain a new stay of the pending foreclosure proceeding.

Once this pattern became evident, lenders filed complaints with the authorities, including the Federal Bureau of Investigation. In 1996, Chief Judge Geraldine Mund of the United States Bankruptcy Court for the Central District of California formed the Bankruptcy Foreclosure Scam Task Force (the "Task Force") to investigate the scam and recommend solutions. The members of the Task Force included the bankruptcy judges of the Central District of California, two assistant United States Trustees from that district, one of the standing chapter 13 trustees of that district, two assistant United States Attorneys, as well as members of the FBI, the IRS, the FTC, the California State Department of Real Estate, and the Los Angeles County District Attorney's Office. The final report of the Task force is posted at abiworld.org and can be found in the *American Bankruptcy Institute Law Review*, Volume 7, Number 1, Spring 1999.

The Task Force identified five foreclosure scams including the fractional interest scam. This is how the fractional interest scam worked: a California homeowner whose house was in foreclosure was approached by someone promising foreclosure relief or they saw an advertisement promising foreclosure relief. The perpetrator of the scam would promise the homeowner that they could save the home by delaying the foreclosure and helping them to refinance. All the homeowner had to do was sign some papers, pay an up-front fee of \$250 to \$800, and agree to pay "rent" until the promised refinance. What the homeowner did not know was that the papers included deeds to the property giving fractional interests to several different entities. The perpetrator then transferred the fractional interests to debtors around the country, delaying the foreclosure while at the same time collecting rent from the homeowner. The Task

Force found one California property linked to 24 different bankruptcy cases! The homeowners did not know about the bankruptcy filings and all of them eventually lost their home.

Because of the work of the Task Force and the investigations by the FBI and the United States Trustee, the government put an end to the scam. One Los Angeles area perpetrator received a sentence of 71 months in prison and was ordered to pay restitution to homeowners. The Task Force issued its report and made recommendations for changes to both the Bankruptcy Code and Title 18. Many of those recommendations formed the basis for the new provisions about serial filings and in rem stay relief.

After a hiatus of several years, the fractional interest bankruptcy foreclosure scam has reappeared. David Leibowitz in the March newsletter alerted us to one in Texas and just last month a California man was indicted in the United States District Court for the District of Kansas, Topeka Division. The indictment accuses Isaac Yass of Los Angeles of six counts of mail fraud and six counts of identity theft. According to the indictment, Yass operated a company called STOPCO that solicited homeowners who were going through foreclosure proceedings and told them that for a fee he could help them keep their homes. Yass transferred fractional interests of the properties to nonexistent businesses and then filed bankruptcy petitions in the bankruptcy courts in Topeka, Wichita, and Kansas City, Kansas in the names of the nonexistent businesses.

Yass is out of business, but this does not mean that the fractional interest bankruptcy foreclosure scam is dead. All of us need to be vigilant in watching out for this scam. United States Trustees across the country have worked hard to detect these scams and they have been a major reason why many of them have been put out of business. Lenders must be alert when the same property becomes the subject of multiple bankruptcy cases. Trustees should look out for pro se petitions

without schedules, a series of debtors with similar petitions or schedules, and debtors that fail to show at the section 341 meeting. Judges can flag these cases when they begin to see this pattern in stay relief motions. Attorneys and analysts in the United States Trustees offices must look out for these scams and alert the FBI. Bankruptcy foreclosure scams hurt all of us because they threaten the integrity of the bankruptcy system. All of us have an obligation to help end this form of fraud.