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Judges' Frustration Grows With Mortgage Servicers

By JOHN COLLINS RUDOLF

PHOENIX — Bobbi Giguere had no luck in securing a loan modification from her mortgage servicer, [Wells Fargo](#). For months, she had sent the bank the financial documents it requested to process her modification. But each time she called to check on the request, she was told to send her paperwork again.

"I submitted the paperwork three times, and nothing happened," said Mrs. Giguere, 41, who has a high school education and worked as restaurant manager before losing her job.

On Thursday, something happened. She questioned a Wells Fargo official about the bank's lack of response — under oath.

The spectacle of a high-ranking banking executive being grilled by an ordinary homeowner was the result of an unusual decision by Judge Randolph J. Haines of the United States Bankruptcy Court to summon a senior executive from Wells Fargo to appear in Mrs. Giguere's bankruptcy case.

At the hearing, Judge Haines made it clear that he was acting out of concerns about Wells Fargo's mortgage modification practices generally.

"This is certainly not an isolated case," he said. "The kind of story I hear from this debtor is one that I and other bankruptcy judges around the country are hearing over and over and over again."

With consumers complaining about the difficulty of getting any response from their mortgage servicers, the effectiveness of the Obama administration's plan to provide homeowner relief is being threatened. As they wait for an answer on whether they might qualify, homeowners are succumbing to foreclosure and bankruptcy proceedings and winding up in courts — at times in front of judges who are also frustrated.

Ms. Giguere filed for bankruptcy protection as she was trying to keep her three-bedroom house in a Phoenix suburb, where she lives with her 15-year-old son. Representing the bank at her hearing on Thursday was Joseph Ohayon, senior vice president of Wells Fargo Home Mortgage Servicing.

Under preliminary questioning by one of the bank's lawyers, Mr. Ohayon stated that Mrs. Giguere had repeatedly failed to provide a financial worksheet, a critical document in processing a loan modification.

Under cross-examination by Mrs. Giguere (who had a little assistance from Judge Haines), the bank's defense withered. From her files, Mrs. Giguere produced a letter from Wells Fargo describing the paperwork that she needed to file for a loan modification. In the witness chair, Mr. Ohayon read the letter.

"Mrs. Giguere is right," Mr. Ohayon concluded. "The letter did not ask for a financial worksheet."

Experts said the hearing in Phoenix reflected rising frustration by federal bankruptcy judges with mortgage servicers, which process payments for banks and the investors who own large pools of loans. In recent months, judges in Ohio and Pennsylvania have chastened mortgage servicers for failing to process payments properly and for errors in foreclosure filings, among other concerns.

"The judges are seeing more and more of a pattern of indifference to record-keeping and good business practices," said Robert Lawless, a law professor at the [University of Illinois](#) who specializes in bankruptcy law.

One of the biggest complaints by homeowners has been poor communication by mortgage servicers on the status of their applications for loan modifications. In the case of Mrs. Giguere, Wells Fargo decided back in March shortly after she faxed the bank her application that she did not qualify for the Home Affordable Modification Program.

She did not learn of the bank's decision until Thursday.

"When did you tell the debtors that their loan was no longer being considered for modification?" Judge Haines asked Mr. Ohayon.

"We haven't. They've never been told," said Mr. Ohayon, adding: "Customer communication is something we're taking a serious look at, your honor."

The hearing with Wells Fargo did not result in any sanctions against the bank for its failure to provide timely information to Mrs. Giguere about her mortgage modification application. But the bank did pledge to improve its communications with customers and to explore avenues for increasing the ease with which homeowners can seek loan modifications.

Wells Fargo has also scheduled a three-day seminar at the Phoenix Convention Center, beginning on Tuesday, in which customers who have submitted loan modification applications can meet with a bank representative in person and learn whether their application has been approved or denied.

Wells Fargo has been criticized for its slow pace in modifying mortgages under the [Treasury Department's](#) foreclosure prevention initiative, which was begun in April. The bank has started trial modifications on about 20,000 home loans under the program, or 6 percent of those who meet the program's guidelines. [JPMorgan Chase](#), by comparison, has begun modifications on nearly 20 percent of such loans. The banks' information was issued in a recent report from the Treasury on the progress of the program.

At the hearing, Wells Fargo blamed a series of revisions in the program by the government for the slow pace.

It has also pledged to renew negotiations with Mrs. Giguere over modifying her home mortgage. Yet difficult financial circumstances make it unclear whether she will ultimately be able to keep her home, mortgage modification or not. She has recently gone on food stamps and is receiving free state medical aid; her \$240 weekly unemployment check is her main form of income.

When her home shot up in value, she refinanced it several times, pulling out equity to pay off credit card debt

and other expenses. She and her husband are divorcing, and he is no longer willing to help pay the mortgage. With little in savings, she has not made a full mortgage payment since November.

"I'm not perfect, I'll be the first to admit that," Mrs. Giguere said. "I've fallen behind."

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