Whistleblower News Review

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Final: Judge Triples Damages against Allied Home Mortgage to $268M

By ML McLaren

Allied Home Mortgage Capital Corporation has lost a decade-long battle in a verdict that tripled damages from $93 million to $268 million on September 14. United States Attorney for the Southern District of New York, Joon H. Kim, announced an additional judgement of $25 million against Allied Capital President and CEO, Jim Hodge, for False Claims Act and FIRREA violations involving the Federal Housing Administration (FHA) mortgage insurance program.

BRANCH MANAGER PETER BELLI CLAIMS ALLIED FALSELY CERTIFIED FHA-INSURANCE LOANS

Tuesday's verdict against Allied Capital started in 2011, when former Allied branch manager, Peter Belli, filed a qui tam whistleblower lawsuit against Allied and CEO Jim Hodge claiming the company was certifying high-risk loans as eligible for FHA insurance. Belli's case was one of just two major post mortgage meltdown cases that went to trial (the other being a Manhattan case against Countrywide).

> We filed this case as a whistleblower action, said [Brian] Mahany. "The late Peter Belli was a branch manager at Allied and knew what the company was doing. When senior management wouldn't listen to Mr. Belli, he filed a complaint under the False Claims Act. Unfortunately, he passed before he could see Tuesday's victory. He would be proud of the hard work by the Justice Department, HUD and all the other agencies that worked together to see justice prevail.

U.S. mortgage and bank fraud whistleblower lawyer, Brian Mahany, served as Belli's counsel. Mahany also acted as lead whistleblower counsel in the 2014 record-setting $16.65 billion settlement against Bank of America resolving claims surrounding Countrywide's sale of corrupt mortgage-backed securities.

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GOVERNMENT FILES SUIT AGAINST ALLIED CORPORATION, CEO JIM HODGE

In November 2011, the U.S. government intervened in Belli's qui tam lawsuit and filed an action against Allied Corporation, Allied Capital and President and CEO, Jim Hodge, claiming that Allied Capital certified thousands of ineligible loans for FHA insurance in violation of HUD's Direct Endorsement Lender (DEL) guidelines.

In addition, the government alleged that Hodge knowingly permitted Allied to originate the fraudulent loans out of over 100 shadow branch offices to hide their actions from the U.S. Department of Housing and Urban Development (HUD).

Hodge also allegedly ran an understaffed, inefficient compliance program and ordered staff to prepare fraudulent quality control reports for HUD auditors.

According to the government's complaint, "Allied utterly failed to conduct audits of its branches or review its early payment defaults as it was required to do by HUD… Even while it was operating 600 or more branches at a time, Allied maintained only two quality control employees in its corporate office… [Allied's] offshore employees had no mortgage experience and, according to multiple witnesses, 'did not even know what a mortgage was.'"

Specifically, the government claimed that Allied Capital:

- Originated FHA loans from over 100 branch offices not approved by HUD
- Falsely labelled the loans with HUD-approved branch location ID's
- Used the shadow branches to knowingly hide default rates
- Certified at least 1,192 ineligible loans for FHA insurance
- Knowingly operated a dysfunctional, understaffed compliance program employing unqualifed FHA-compliance reviewers
- Submitted false quality control reports to HUD
- Falsely certified that it was compliant with HUD QC requirements – annually

2016 JURY VERDICT AGAINST ALLIED / HODGE AWARDS GOVERNMENT $93 MILLION

On November 29th, 2016 the jury found in favor of the government under the False Claims Act and the Financial Institutions Reform Recovery and Enforcement Act of 1989 (FIRREA), ordering Allied to pay $85,612,643 in damages caused by defaulted loans. In addition, the jury ordered Hodge to pay $7,370,132 after concluding that Hodge's fraudulent conduct regarding the use of shadow branches and falsified QC reports resulted in losses to HUD.

"For years, Jim Hodge and Allied lied to the government, lied to employees and misled the public," said Mahany. "After a month-long trial, a jury held Hodge and Allied accountable for those lies and ordered them to pay up."

But the $93 million verdict isn't the end of the story. Allied and Hodge requested a new trial, seeking to challenge the jury verdict and convince the court that they were not responsible for any losses.

JUDGE HANKS TRIPLES VERDICT AGAINST ALLIED TO $268M, HODGE VERDICT HITS $23M

On September 14, U.S. District Court Judge George C. Hanks Jr. of the Southern District of Texas dismissed their motions and tripled the jury's $93

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million verdict to $268,757,929 plus interest against Allied Corporation and $23,140,296 plus interest against Jim Hodge under the False Claims Act and FIRREA.

“Even a cursory review of the trial record reflects that the United States presented significant and credible evidence from multiple sources from which a jury could conclude that Allied’s conduct of recklessly underwriting and originating loans from unregistered branch offices was a substantial factor in the submission of claims…” said Judge Hanks. “Rather than making an isolated or occasional mistake, Allied engaged in a prolonged, consistent enterprise of defrauding the United States.”

JUDGE IMPOSES MAX ALLOWED $1.1M FIRREA PER-VIOLATION PENALTY

Under the False Claims Act, jury verdicts are to be tripled as a matter of law. Each false claim is subject to a penalty per violation, which was $5,500 to $11,000 for each false claim at the time the misconduct occurred. Under FIRREA, each violation is subject of a penalty of up to $1.1 million. Judge Hanks imposed a total of $12,950,000 in False Claims Act penalties ($10,000 per violation) and a total of $6.6 million in FIRREA penalties (using the maximum allowed FIRREA penalty of $1.1 million for each violation).

“Even after the jury spoke, Allied and Hodge continued to avoid responsibility for their actions, said Mahany. “Tuesday’s ruling by the by Judge Hanks triples the damages the defendants must pay.”

Now that the court has ruled on post-trial motions, the defendants will likely appeal. The court could require the company and Hodge to post bonds covering the damages, however.

BELLI ESTATE COULD COLLECT UP TO $76 MILLION WHISTLEBLOWER AWARD

Unfortunately, the Allied insider who exposed the wrongdoing didn’t live to see Tuesday’s victory. Peter Belli passed away before the verdict was announced. Under the False Claims Act, Belli’s estate is entitled to a whistleblower award of between 15% and 30% of any monies collected by the government. Because the government intervened in the case, the whistleblower award is capped at 25%.

Under the FIRREA law, Belli’s estate is eligible for a second whistleblower award.

Tuesday’s victory is somewhat bittersweet for former Allied branch managers, employees and homeowners who have claims against the company. They aren’t likely to receive the payout they deserve. Many of the employees have accused executive Jim Hodge of thieving money from commission accounts.

Thousands of Americans who dream of becoming homeowners put their trust in the Federal Housing Administration (FHA) mortgage insurance program. When powerful companies like Allied Capital lie to consumers and regulators, they harm every American citizen.

“We encourage others within the industry to step forward,” said Mahany. “Whistleblowers are the new American heroes. Their actions save taxpayers billions of dollars each year.” ■