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HEADLINE: Fairbanks in Settlement Talks After W. Va. Judge Blocks Foreclosures

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BODY:
Fairbanks Capital Corp. was in settlement talks with class-action attorneys last week after a West Virginia judge blocked the nation's largest subprime servicer from taking any foreclosure actions in the state.

The West Virginia Circuit Court judge issued a temporary injunction against the Salt Lake City-based servicing company to "prevent potentially unjustified foreclosures."

The lawsuit, Jackie Lucas v. Fairbanks, alleges the company operates a "highly sophisticated" operation designed to "extract illegal charges" from homeowners and "reap profits from forced foreclosure."

It appears that lately, Fairbanks has been become fair game for class-action attorneys. Moreover, earlier this month, Sen. Barbara Mikulski, D-Md., asked the Inspector General of the Department of Housing and Urban Development to investigate Fairbanks' business practices.

Fairbanks' officials have met with Sen. Mikulski and Maryland regulators.

People associated with the company claim that Fairbanks is being blamed for the problems it inherited when it bought servicing contracts from subprime lenders like ContiMortgage, which went bankrupt, and EquiCredit (a subsidiary of Bank of America), which exited the subprime market.

Fairbanks' detractors claim the servicer does not credit payments on time, charges improper late fees, and later adds unjustified property inspection and legal fees.

All of sudden, borrowers are told they have to pay $2,000 to $4,000 or else their "home will be sold," according to the Lucas complaint.

Glen Corso, senior vice president for The PMI Group, San Francisco, which is a majority owner of Fairbanks, claims the servicing company has grown very rapidly through its acquisition of subprime servicing rights.

Fairbanks has conducted a "tremendous cleanup operation" on the loans that were not previously serviced properly, he said. "In addition, they are dealing with subprime borrowers who are in very tenuous financial condition."

Another problem and a common source of disputes, according to Mr. Corso, is the lack of escrow money on many subprime accounts. When there is no money, the servicer, in this case Fairbanks, cannot pay the taxes and insurance.

However, disputes over escrows and fees has lead to class-action lawsuits (none certified) and new cases for legal services attorneys.

"Subprime servicing is a gigantic problem," said Ira Rheingold, executive director of the National Association of Consumer Advocates, adding that attorneys are seeing a growing number of clients who have problems with Fairbanks.

"They are the next lender who is going to go down in a big way," Mr. Rheingold recently told a group of consumer lawyers at a National Community Reinvestment Coalition conference.

Mr. Rheingold told this newspaper that the "buzz" about Fairbanks has "now reached the same (level of) conversation we had about Associates and Household."

Andrew Sandler, of the Washington law firm Skadden Arps, believes that the attention that was focused on the largest subprime lenders is now being turned on subprime servicers. Fairbanks is the biggest and most visible company in subprime servicing.

"But this is really just the next industry issue," he said. He added that there will be scrutiny on how subprime loans are serviced, what fees are charged and other industry practices.

Mr. Sandler is advising Fairbanks. He is also the company's counsel in the West Virginia case.

Meanwhile, Fairbanks is taking corrective action and it has set up a special resolution unit with 100 employees to handle customer disputes.

The company, which services 560,000 loans, also has formed a new unit that will take a second look at loans referred for foreclosure to make sure everything has been done to get the loan back to performing status. "They are just getting that underway right now," Mr. Corso said.

The company claims it had a 4% foreclosure rate in 2002 and 75% of the borrowers who enter the foreclosure process (four missed payments) get back on track.

The PMI executive also noted that Fairbanks' board or directors has instituted a very vigorous audit program for the operations side to see how management is running the company. PMI owns a 56.8% stake in Fairbanks and it has three directors on Fairbanks' eight-member board.

"We would like to see Fairbanks get to the point where it is setting the standard for the subprime servicing industry. That is definitely a segment of the industry that could use some best practices," Mr. Corso said.

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