Banking and Finance Law Daily Wrap Up, TOP STORY—E.D. Pa.: Philadelphia sues Wells Fargo over consumer mortgage loan practices, (May 16, 2017)

Banking and Finance Law Daily Wrap Up

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By Richard A. Roth, J.D.

In a suit likely encouraged by the Supreme Court's recent acceptance of Miami's Fair Housing Act claims against two banks, Philadelphia has sued Wells Fargo for alleged abusive and discriminatory mortgage lending practices. Philadelphia claims the bank engaged in "a continuous and unbroken discriminatory pattern and practice of issuing higher cost or more onerous mortgage loans to minority borrowers" while offering better terms to the city's white residents (*City of Philadelphia v. Wells Fargo & Co.*).

Philadelphia claims that Wells Fargo has maintained a long-standing pattern of both redlining and reverse redlining. Redlining is the practice of refusing to make loans in minority neighborhoods. Reverse redlining is the practice of making loans in such neighborhoods, but only at a higher cost or with less favorable terms. The city's complaint describes a pattern of knowing and even intentional discrimination by the bank, relying on both statistical analyses and information provided by confidential witnesses who were Wells Fargo employees involved in mortgage lending activities in Philadelphia.

Alleged effects. According to the city, the loans about which it is complaining were clustered in four neighborhoods that have high poverty rates and significant Hispanic and African American populations. These neighborhoods have suffered from foreclosures and abandoned homes.

The statistical analyses cited in the complaint found that a loan for a home in a predominantly minority neighborhood was 4.7 times more likely to go into foreclosure than a loan on a home in a mainly white neighborhood. African American borrowers were more than twice as likely to receive a high-cost loan as white borrowers, and Hispanic borrowers more than 1.5 times as likely. Indications of discrimination were even more clear when credit scores were considered—when only borrowers with FICO scores of more than 660 were included, African American borrowers were more than 2.5 times more likely than white borrowers to receive a high cost loan, and Hispanic borrowers more than twice as likely.

As a result of the foreclosures and vacant homes, the city says it suffered diminished property tax revenue and had to pay more for police and fire protection and other municipal services.

Miami suit decision. The Supreme Court recently said that similar claims by the City of Miami were adequate to make the city an "aggrieved persons" that has standing to sue Wells Fargo and Bank of America under the Fair Housing Act (see *Banking and Finance Law Daily*, May 1, 2017). However, the five-justice majority believed that Miami's allegations might not have described injuries to the city that were proximately caused by the bank's FHA violations.

According to the justices, Miami's injuries appeared to have been caused by the banks' lending practices, but that was not enough to establish proximate cause. The city had to describe an injury that was closely connected to the claimed statutory violations. There were several steps between the banks' challenged lending practices and Miami's injuries, and those steps might have meant the necessary close connection was missing.

The Court returned Miami's suit to the U.S. Court of Appeals for the Eleventh Circuit to consider how the requirement of a close connection would apply to Miami's claims of lost property taxes and increased municipal expenses.

The monetary injuries described by Philadelphia are the same as those described by Miami. Philadelphia does appear to have put additional effort into outlining harm to its fair housing and integration goals, probably in an effort to strengthen its proximate cause argument.

However, it remains to be seen whether the claims by either city can clear the proximate cause hurdle.

The case is No. 2:17-cv-02203-LDD.

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Companies: Wells Fargo Bank, N.A.; Wells Fargo & Co.

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