

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, EASTERN DIVISION

IN RE)
)
TORIANO J. AVERY,)
)
Debtor,)
)
TORIANO J. AVERY,)
)
Plaintiff,)
)
v.)
)
WELLS FARGO BANK N.A. d/b/a)
Wells Fargo Home Mortgage,)
Inc.,)
)
Defendant.)

CIVIL ACTION NO.
3:11cv486-MHT
(WO)

OPINION

Plaintiff Toriano J. Avery filed this lawsuit asserting that defendant Wells Fargo Bank, N.A., had improperly serviced her loan and violated the automatic bankruptcy stay. In a previous opinion, this court

affirmed in part and reversed in part the bankruptcy court's grant of summary judgment Wells Fargo. In re Avery, 434 B.R. 895 (M.D. Ala. 2010). Specifically, the court denied summary judgment because there existed a genuine issue of material fact as to the propriety of the fees assessed by Wells Fargo, and because the bankruptcy court had granted summary judgment on Avery's Fair Debt Collection Practices Act claim, 15 U.S.C. § 1692 et seq., though Wells Fargo had not moved for summary judgment on that claim. The case was remanded to the bankruptcy court to make proposed findings of fact and conclusions of law as to those issues.

This lawsuit is now before the court on the proposed findings of fact and conclusions of law of the United States Bankruptcy Judge. The bankruptcy judge finds that judgment should be entered in favor of Wells Fargo. There are no objections to the proposed findings of fact and conclusions of law. After an independent and de novo review of the record, the court concludes that the

bankruptcy judge's proposed findings of fact and conclusions of law should be adopted.

An appropriate judgment will be entered.

DONE, this the 27th of June, 2011.

 /s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE