

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

DAVID HARRIS, III,	}	
	}	
Plaintiff	}	
	}	CIVIL ACTION NO.
v.	}	12-AR-3780-S
	}	
USAA FEDERAL SAVINGS BANK, et	}	
al.,	}	
	}	
Defendants.	}	

MEMORANDUM OPINION

By order entered on November 28, 2012, this court set for oral argument at 10:00 a.m., December 14, 2012, the separate motions to dismiss filed by defendants, USAA Federal Savings Bank, and U.S. Bancorp. Plaintiff, David Harris, III, *pro se*, was notified of the hearing. When the motions were called at 10:05 a.m., December 14, 2012, Harris did not appear. Counsel for both defendants did appear in support of defendants' motions.

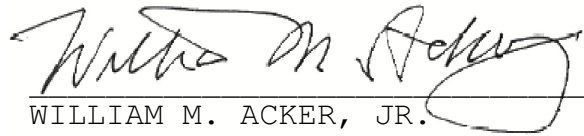
The court has considered the motions and the materials submitted in support of and in opposition to them. The court finds that the motions are well taken, and are due to be granted. Neither of the papers filed by plaintiff on November 26, 2012, comes close to getting around the pleading requirements of *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, or *Ashcroft v. Iqbal*, 129 S.Ct. 1937, or demonstrates that the matters complained of are within the protection either of the Real Estate Settlement

Procedures Act, or The Service Members Civil Relief Act, the statutes invoked by Harris.

It is hard for a court to deny relief to a *pro se* plaintiff who, without any legal training, has obviously tried his best. The court doubts that a good lawyer could have helped him in this case on the facts he alleges. Because neither defendant filed a counterclaim for a deficiency, defendants are precluded from claiming a deficiency if there is a gap between what was recovered at the foreclosure sale, and what Harris owed.

The motions to dismiss will be granted by separate order.

DONE this 17th day of December, 2012.


WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE