

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

**FREDERICK JOINER and ELEANOR  
JOINER,**

\*

## **Plaintiffs,**

\* CV 08-429-CG-B

V.

## **BAYROCK MORTGAGE CORP., et al.**

### **Defendants.**

## **DEFAULT JUDGMENT**

For the reasons set forth in the Report and Recommendation dated March 5, 2009 (Doc. 34), as adopted by this court's order dated Mach 23, 2009 (Doc. 35), judgment by default is due to be entered against all three Defendants, Bayrock Mortgage Corp. ("Bayrock"), 1<sup>st</sup> Continental Mortgage, Inc. ("Continental") and Pleska & Douglas, LLC ("Pleska"). Upon review of the allegations asserted against each of the Defendants, it is hereby determined that judgment be entered against each of the Defendants as follows:

## **DEFENDANT BAYROCK**

Judgment is hereby rendered against Defendant Bayrock on the claim asserted in Count One of the Complaint for violations of the Truth-in-Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.* for statutory damages in the amount of \$4,000, as provided in 15 U.S.C. § 1640(a).

As set out in Count Two of the Complaint, Plaintiffs also assert a claim against Bayrock under the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §2601 *et seq.* The focus of this claim is the fee collected by Bayrock and Continental as a "yield spread premium" in the amount of \$14,137.50. Pursuant to 12 U.S.C. § 2607(d)(2), Bayrock is liable in an amount equal

to three times this charge, or \$42,412.50. Because, as set forth below, judgment is also entered against Continental on Plaintiff's RESPA claim, which attacks the same "yield spread premium" charge, Bayrock is jointly and severally liable with Continental on this judgment for \$42,412.50.

**DEFENDANT FIRST CONTINENTAL MORTGAGE**

Plaintiffs' sole claim against Continental is the RESPA claim set out in Count Two of the Complaint. Judgment is hereby rendered against Continental, pursuant to 12 U.S.C. § 2607(d)(2) in the amount of three times the improper charge, in the total amount of \$42,412.50. Continental's liability for this amount is joint and several with Bayrock.

**DEFENDANT PLESKA & DOUGLAS**

Plaintiffs' sole claim against Pleska is for violation of RESPA concerning certain specified settlement charges imposed on Plaintiffs. This claim is set out in Count Three of the Complaint. The charges identified in the Complaint as improper include the "settlement or closing fee" (\$850), the charge for "postclos\file maint" (\$200), the "courier\rec\doc\prep" charge (\$425) and the charge for "recording fees" (\$103.50). The total amount of these charges is \$1,578.50. Pursuant to 12 U.S.C. § 2607(d)(2), Pleska is liable for statutory damages in the amount equal to three times the amount of these charges, or \$4,735.50.

**ATTORNEYS FEES**

In addition to recovery of the statutory fees as described above, the court finds that Plaintiffs are entitled to recover costs and reasonable attorney fees pursuant to 15 U.S.C. § 1640(a)(3) and 12 U.S.C. § 2607(d)(5). Pursuant to Local Rule 54.3, Plaintiffs are directed to submit an application for costs and fees which specifies the amounts incurred. Said application shall be submitted within ten (10) days of the date of this order. Liability for costs and attorney fees shall be joint and several among all three defendants.

**DONE and ORDERED** this 7<sup>th</sup> day of April, 2009.

/s/ Callie V. S. Granade

CHIEF UNITED STATES DISTRICT JUDGE

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