

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GEORGE D. DERNIS, as an individual,
Plaintiff,
v.
FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER FOR
PREMIER BANK, DR. ZULFIKAR ESMAIL,
SHAMIM ESMAIL, ALIYA HUSSAINI,
ALIYA HUSSAINI 2006 IRREVOCABLE
TRUST, KASSIM ESMAIL, KASSIM
ESMAIL 2006 IRREVOCABLE TRUST,
AMYNA ESMAIL, AMYNA ESMAIL 2006
IRREVOCABLE TRUST,
Defendants.

Case No. 12 cv 2856
Judge Gary Feinerman
Magistrate Judge Maria Valdez

MOTION OF THE FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER
TO STAY PROCEEDINGS PENDING EXHAUSTION OF STATUTORILY
MANDATED ADMINISTRATIVE REMEDIES AND MEMORANDUM IN SUPPORT

The Federal Deposit Insurance Corporation, as Receiver for Premier Bank ("FDIC-R"),
pursuant to 12 U.S.C. § 1821(d)(3)-(8) and (13), hereby moves this Court to stay certain portions
of these proceedings pending exhaustion of statutorily mandated administrative remedies. In
further support, the FDIC-R states:

1. On March 23, 2012, Premier Bank ("Premier") was closed by the Illinois
Department of Financial and Professional Regulation, Division of Banking, and the FDIC was
appointed as Receiver thereof. True and correct copies of the Illinois Department of
Financial and Professional Regulation notice and the FDIC's acceptance of appointment as
Receiver pursuant to 12 U.S.C. § 1821(c)(3)(A) are attached hereto as Exhibit A. Also, on March
23, 2012, the FDIC accepted the appointment as Receiver.

2. The claims in the above-captioned matter asserted by the plaintiff George D. Dornis (“Plaintiff”) against Premier constitute potential liabilities of the FDIC-R. A true and correct copy of Plaintiff’s Complaint against Premier is attached to the Notice of Removal previously filed with this Court (Docket No. 3). In Count I, Plaintiff seeks a declaration against the rights of Premier (now FDIC-R) to enforce a mortgage and note; in Count II, Plaintiff alleges fraud against Premier; in Count III, Plaintiff alleges negligent misrepresentation against Premier; in Count IV, Plaintiff alleges that Premier engaged in a conspiracy to commit fraud; in Count V, Plaintiff alleges violation of the Illinois Consumer Fraud and Deceptive Business Practices Act against Premier; and in Count VI, Plaintiff alleges unjust enrichment against Premier. In Counts II, III, IV and VI, other defendants are also named.

3. The FDIC-R has succeeded to all rights, titles, and powers and privileges of Premier, pursuant to 12 U.S.C. § 1821 (c)(3)(A).

4. As will be demonstrated herein, this case must be stayed pending Plaintiff’s participation in the FDIC’s administrative review process with respect to its claims against Premier’s receivership estate because administrative review is a mandatory jurisdictional prerequisite for seeking relief with this Court.

THE ADMINISTRATIVE REVIEW PROCESS

5. Congress set forth the rights and duties that govern the receivership of a failed institution in the Financial Institutions, Reform, Recovery and Enforcement Act of 1989 (the “Act”) Pub. L. No. 101-73, § 183 *et seq.*

6. The Act establishes, at 12 U.S.C. § 1821(d)(3)-(13), a claim procedure for all claims asserted against the assets of the failed institution, regardless as to whether lawsuits enforcing those claims were initiated prior to the appointment of a receiver. *See Marquis v.*

FDIC, 965 F.2d 1148 (1st Cir. 1992).

7. All creditors having claims against Premier must first present them to the FDIC for an administrative determination of whether they should be paid. 12 U.S.C. § 1821(d)(3)-(5); *see also Maher v. Harris Trust and Savings Bank*, 75 F.3d 1182 (7th Cir. 1995).

8. Creditors have ninety (90) days to present their claims against the assets of the failed institution upon receiving notice from the FDIC. 12 U.S.C. § 1821(d)(3)(B)(i). Once the claim is presented, the FDIC has 180 days within which to consider the claim and notify the claimant whether it has been allowed or disallowed. 12 U.S.C. § 1821(d)(5)(A)(i). When the creditor has been notified of a receiver's determination, or when the 180 day period has expired, the creditor may either request administrative review, file suit on the claim, or continue an action commenced before the appointment of a receiver in the federal district court where the failed bank's principal place of business is located. 12 U.S.C. § 1821(d)(6)(A).

9. In this case, Plaintiff has filed a Verified Complaint against Premier, for which the FDIC is now Receiver. Hence, Plaintiff is seeking recovery from a failed institution that is now under the FDIC's receivership. *See* 12 U.S.C. § 1821(d)(12)(D). Therefore, Plaintiff's claims must be submitted to the FDIC for administrative review.

BASIS FOR STAY OF THE INSTANT CASE

10. The Act requires mandatory compliance with the administrative claims review process. *Brown Leasing Co. v. FDIC*, 833 F.Supp. 672 (N.D. Ill. 1993).

11. Congress specifically deprived courts of subject matter jurisdiction over claims not presented for administrative review. Specifically, the Act provides:

“Limitation on judicial review
Except as otherwise provided in this subsection, no court shall have
jurisdiction over –

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any depository institution for which the [FDIC] has been appointed receiver, including assets which the [FDIC] may acquire from itself as such receiver; or
(ii) any claim relating to any act or omission of such institution or the [FDIC] as receiver. 12 U.S.C. § 1821(d)(13)(D).”

12. Courts are empowered to stay pending litigation “to permit exhaustion of the mandatory administrative claims review process.” *Brown Leasing Co.*, 833 F.Supp. at 675 (quoting *Marquis*, 965 F.2d at 1151).

13. Thus, the pending action against the FDIC must be stayed until Plaintiff’s claims have been submitted to the FDIC for administrative review and either the FDIC has made a determination to disallow the claim or the 180 day administrative review period has expired. *See* 12 U.S.C. § 1821(d)(5)(A)(i). *See also FDIC v. Glynn*, Nos. 91 C 3723, 91 C 3726, 1993 WL 413958, at *3-4 (N.D.Ill. Oct. 15, 1993).

14. As Congress manifested intent to require mandatory compliance with the administrative review process in the Act, it follows that Congress manifested an intent to require a stay of all claims against a failed institution pending review of those claims by the FDIC. *See Brown Leasing Co.*, 833 F.Supp 672; *Glynn*, 1993 WL 413958, at *3-4.

CONCLUSION

15. Because Plaintiff’s claims are against Premier, which is a failed institution under the receivership of the FDIC, Plaintiff’s participation in the FDIC’s administrative review process is mandated. Because the administrative review process is a prerequisite to seeking relief before this Court, a stay of the instant case until Plaintiff exhausts its administrative remedies with the FDIC-R is also mandated.

WHEREFORE, for the reasons stated above, the FDIC-R respectfully requests that

this Court enter an Order staying this litigation for a period commencing on the date that the Order is entered on the docket and ending on the earlier of 180 days from the date on which Plaintiff files its claims with the FDIC-R or the date the FDIC-R disallows the claims, and for such other and further relief, legal or equitable, this Court deems best.

<p>Vilia M. Dedinas (ARDC No. 6191614) Andrew J. Abrams (ARDC No. 6271836) Jasmina Dj. Varvitsiotis (ARDC No. 6256929) Boodell & Domanskis, LLC 205 N. Michigan Avenue, #4307 Chicago, Illinois 60601 Phone: (312) 938-4070 Fax: (312) 540-1162</p>	<p>Respectfully submitted,</p> <p>FEDERAL DEPOSIT INSURANCE CORPORATION, AS RECEIVER FOR PREMIER BANK</p> <p>By: <u>/s/ Andrew J. Abrams</u> One its attorneys</p>
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