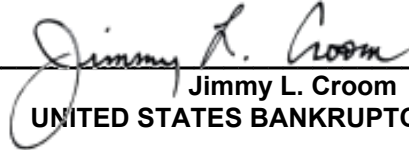




Dated: September 11, 2015
The following is SO ORDERED:



Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

In re: ROY E. LONGMIRE, JR.)	Case No. 09-14629
)	
Debtor.)	Chapter 13
)	

**MEMORANDUM OPINION RE: MOTION FOR SANCTIONS UNDER RULE 3002.1(i)
AND MOTION UNDER RULE 3002.1(h)**

At issue is Roy E. Longmire’s (“Debtor”) “Motion for Sanctions Under Rule 3002.1(i) and Motion under Rule 3002.1(h)” against Regions Mortgage, Inc. (“Regions”), for failure to respond to Trustee’s Notice of Final Cure Payment and Completion of Plan Payments. Debtor contends that all amounts required to cure all defaults have been paid in full and that all pre-petition and post-petition payments due to Regions have been paid in accordance with 11 U.S.C. § 1322(b)(5). Regions failed to respond that they agree or disagree that the mortgage arrearage has been cured and that the monthly mortgage payments are current as of January 1, 2015. However, Regions threatened foreclosure proceedings against Debtor soon after the debtor received his Chapter 13 discharge. Consequently, Debtor and his attorney filed the immediate motions.

The Court conducted a hearing on Debtor's motion on August 27, 2015, pursuant to Federal Rule of Bankruptcy Procedure 3002.1(h) & (i).

I. JURISDICTION

This proceeding arises in a case referred to this Court by the Standing Order of Reference, Misc. Order No. 84-30 in the United States District Court for the Western District of Tennessee, Western and Eastern Divisions, and is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B),(O). This Court has jurisdiction over core proceedings pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This Court has the authority to enter a final order in this proceeding. *In re Thongta*, 480 B.R. 317, 318-19 (Bankr. E.D. Wis. 2012) (holding that a motion brought pursuant to Rule 3002.1 is a core, non-*Stern* claim). This memorandum opinion shall serve as the Court's findings of facts and conclusions of law. Fed. R. Bankr. P. 7052.

II. FACTS

Debtor executed a Promissory Note on April 10, 2009, in favor of Regions Bank d/b/a Regions Mortgage in the amount of \$137,362.00 secured by a real property Deed of Trust for property located at 8265 Highway 424 Yuma, TN 38390. The same property is Debtor's principal residence. Seven months after execution of the Promissory Note, Debtor filed a voluntary Chapter 13 petition on November 9, 2009, and filed a proposed plan the same day. The proposed plan listed Regions as a home mortgage creditor that would be paid outside of the Chapter 13 plan for debts owed on Debtor's home located at 8265 Highway 424 Yuma, TN 38390. Debtor's plan was confirmed on February 18, 2010.

During the pendency of the Chapter 13 plan, Debtor fell behind on his mortgage payments to Regions. On May 27, 2010, Regions filed a Motion for Relief from Stay pursuant to Debtor's failure to pay his home mortgage for the first five months of 2010. An Agreed Order was signed on July 21, 2010, conditionally denying Regions' Motion for Relief from Stay. The denial was conditioned upon Regions being allowed to add the ongoing mortgage payment and an arrearage claim into the Chapter 13 plan.

Additionally at this time, Debtor filed a Motion to Add Post-Petition Home Mortgage Arrearage into the plan which was granted by Order on July 19, 2010. Soon thereafter on July 23, 2010, Regions filed a Proof of Claim (Claim No. 5-1) in the amount of \$142,380.12 which included an arrearage of \$6,188.02. An Administrative Order was entered on August 5, 2010, reflecting that Regions had filed the proof of claim and that the Trustee would begin disbursing the ongoing mortgage and the monthly payment on the arrears.

Approximately one year later on July 15, 2011, the Chapter 13 Trustee filed a Motion to Dismiss due to Debtor's failure to keep his home mortgage payment current. On August 19, 2011, this Court conditionally denied the Trustee's Motion contingent upon (1) the Debtor making future payments in a timely manner and in the modified amount required for execution of the plan and (2) taking such action within 60 days from entry of the Order as is necessary to place the home mortgage in a current status according to the records of the Trustee.

Approximately one week prior to the entry of the order conditionally denying the Trustee's Motion to Dismiss, Debtor moved for additional post-petition mortgage arrears to be included back into his plan payments. With no objection or response from Regions, the Court granted Debtor's motion by order entered September 8, 2011. The order allowed the Debtor to add the post-petition mortgage arrearages into the Chapter 13 plan at the rate of \$933.21 per month with interest to accrue at 0% per annum and allowed the debtor to pay the arrearage over the life of the plan.¹ Regions did not file an amended Proof of Claim for the new arrearages, and therefore did not receive a payment on same. From 2011-2014, Regions filed annual Notices of Mortgage Payment Changes.

On August 8, 2014, Debtor filed a Certificate of Plan Completion and Request for Discharge. The Chapter 13 Trustee then filed a Notice of Final Cure Payment and Completion of Plan Payments on December 19, 2014. Nothing was filed by Creditor in

¹ The order listed the amount of arrears at \$933.21 per month, but failed to mention the total amount of months or total arrearages due to Regions. At the hearing on August 27, 2015, Debtor testified that this arrearage was for three months.

response to the Notice of Final Cure. Debtor received his Chapter 13 discharge on January 20, 2015.

At the hearing for the instant motion, Debtor testified on the record that soon after receiving his discharge, Regions contacted him and threatened foreclosure based upon its allegations that Debtor is in arrears for three months' worth of payments totaling \$3,728.54. As a result, Debtor filed a Motion to Reopen the Case and an order was entered granting said motion on June 23, 2015.

Debtor now seeks to determine whether all amounts required to cure all arrearages have been paid in full and that all pre-petition and post-petition payments due to Regions have been paid in accordance with 11 U.S.C. § 1322(b)(5).² Debtor also seeks attorney fees and expenses connected with the instant motions. At the conclusion of the hearing, the Court instructed Debtor's attorney to file an itemized statement for fees and expenses. Debtor's attorney filed this information on September 2, 2015.

III. ANALYSIS

The Bankruptcy Code allows for certain arrearages on home mortgages to be cured and ongoing mortgage payments to be maintained as part of a debtor's Chapter 13 plan. *See generally* 11 U.S.C. § 1322(b)(5) (limiting the cure to any unsecured claim or secured claim on which the last payment is due after the date on which the final payment under the plan is due). Rule 3002.1 was added to the Federal Rules of Bankruptcy Procedure in 2011 to aid in the implementation of § 1322(b)(5) and applies regardless of whether the trustee or the debtor serves as the disbursing agent for post-petition mortgage payments. Fed. R. Bankr. P. 3002.1 Advisory Committee Notes. This rule dictates creditors' requirements of giving notice to debtors and Chapter 13 trustees of the exact amounts needed to cure any pre-petition arrearages as well as any changes in post-petition payment obligations related to home mortgages. *Id.* It is important to note

² At the hearing on August 27, 2015, the Court also took Debtor's Motion for Default Judgment under advisement. However, because the Court is addressing the merits of Debtor's Rule 3002.1 motion, it concludes that the Motion for Default Judgment is moot. The Court will enter a separate order on the default judgment motion.

that the Response to Notice of Final Cure Payment “shall be filed as a supplement to the holder’s proof of claim and is not subject to Rule 3002.1(f).” Fed. R. Bankr. P. 3002.1(g).

As is the case with Debtor in this matter, Rule 3002.1 “addresses the all-too-common situation when, after completion of the plan, the creditor asserts the debtor is still delinquent and restarts the foreclosure cycle the chapter 13 petition was filed to prevent.” *In re Holman*, No. 12-50023, 2013 WL 1100705, at *4-5 (Bankr. E.D. Ky. Mar. 15, 2013). The *Holman* Court also reiterated that the requirements of Rule 3002.1 allow debtors to adjust payments to cure pre-petition arrearages during the life of the plan and ensures that debtors are current in post-petition payments when the plan is complete. *Id.* (citing Fed. R. Bankr. P. 3002.1). Be that as it may, debtors have difficulty doing so with no communication and/or responses from their creditors.

This lack of responsive communication leads to debtors being left without answers to the inquiry of whether all defaults have been cured and whether post-petition mortgage payments are current. This is precisely where Rule 3002.1(g) comes into context. Rule 3002.1(g) states:

Within 21 days after service of the notice under subdivision (f) of this rule, the holder *shall* file and serve on the debtor, debtor's counsel, and the trustee a statement indicating (1) whether it agrees that the debtor has paid in full the amount required to cure the default on the claim, and (2) whether the debtor is otherwise current on all payments consistent with § 1322(b)(5) of the Code [11 USCS § 1322(b)(5)]. The statement shall itemize the required cure or post-petition amounts, if any, that the holder contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the holder's proof of claim and is not subject to Rule 3001(f).

Fed. R. Bankr. P. 3002.1(g) (emphasis added). A debtor then has the option of moving the court for a determination of whether he has cured the default and paid all required post-petition amounts. Fed. R. Bankr. P. 3002.1(h); *Bodrick v. Chase Home Fin., Inc.*, (*In re Bodrick*), 498 B.R. 793, 802 (N.D. Ohio 2013) (stating that 3002.1(h) does not and cannot create an obligation on the part of the debtor to file such a motion and that subdivision (h) was intended to provide a debtor with a procedure to seek a determination of the status of his mortgage prior to the closure of the bankruptcy case). In conformity with this process, Debtor brings the instant motion before the Court seeking this Court’s

determination of whether all defaults have been cured and all required pre-petition and post-petition amounts due mortgagee have been paid in full.³

On July 23, 2010, Regions filed a proof of claim (Claim No. 5-1) in the amount of \$142,380.12 with an arrearage of \$6,188.02. After that filing, Regions never revised or updated its proof of claim with the exception of annual notices listing changes in escrow payments. Yet, on September 8, 2011, an order was entered granting Debtor's Motion to Add Post-Petition Home Mortgage Arrearage. At that time, Regions had the opportunity to file an amended proof of claim listing the additional arrearages due them as part of the plan payments, but did not do so.

Failure to amend the proof of claim resulted in the Chapter 13 Trustee's records reflecting that all arrearages and defaults connected with creditor's proof of claim had been resolved. The Chapter 13 Trustee issued a Notice of Final Cure Payment and Completion of Plan Payments on December 19, 2014, which put Regions Mortgage on notice of this fact. The Notice of Final Cure likewise instructed Regions Mortgage that as of mid-December 2014, the ongoing mortgage payment was currently due for January 1, 2015. The Notice further instructed Regions that they must file and serve a statement indicating whether they agree or disagree that the debtor has paid in full the amount required to cure the default and whether, consistent with § 1322(b)(5), the debtor is otherwise current on all payments.

By failing to respond to the Notice of Final Cure, Regions has willfully failed to adhere to Rule 3002.1(g). Regions also failed to appear in Court or otherwise respond to the current motions at issue. Consistent with Rule 3002.1(i)(1), this Court concludes that

³ The language of Rule 3002.1(h) seems to condition the debtor's option of filing a motion to determine final cure upon the creditor's filing of a response to the Trustee's Notice of Final Cure. Thus, it was unnecessary for the Debtor to seek relief under Rule 3002.1(h). The Court notes that the sanctions under Rule 3002.1(i)(1) have the same effect as they preclude Regions from bringing forth information to contradict prior pleadings by both the Debtor and Trustee related to alleged defaults or arrearages of Debtor's mortgage payments through December 2014. See Fed. R. Bankr. P. 3002.1(h) (stating that the debtor's or trustee's motion is to be filed within 21 days after service of the statement under subdivision (g)); Fed. R. Bankr. P. 3002.1(i) (precluding the holder of a claim from presenting any omitted information required by subdivision (g)).

Regions should be precluded from presenting any omitted information that should have been filed in an amended proof of claim or in a response to the Notice of Final Cure. This preclusion is in effect as to any information in any form to be used as evidence against this Debtor in any contested matter or adversary proceeding unless this Court determines that the failure was substantially justified or is harmless. As a result, this Court finds that Debtor's mortgage due Creditor is deemed current through December 2014.

Turning to the issue of sanctions, the Court is authorized pursuant to Rule 3002.1(i)(2) to award reasonable expenses and attorney's fees caused by Regions' failure to provide any required information. The Court has reviewed the itemized attorney's fees and expenses submitted by Debtor's attorney in connection with the instant motions. Debtor's attorney's itemized breakdown totaled \$4,131.20. Expenses listed in the itemized breakdown included court costs in the amount of \$235.00 for reopening the case, but counsel failed to include that specific expense in the total of fees requested. The Court approves this cost in addition to the total amount of fees and expenses. Debtor's attorney is awarded \$4,366.20 in expenses and fees associated with this matter.

IV. Conclusion

For the reasons stated herein, the Court concludes that Debtor is entitled to the relief requested in its Motion for Sanctions Under Rule 3002.1(i) and Motion under Rule 3002.1(h). The Court concludes that all arrearages have been cured and all required pre-petition and post-petition amounts due to mortgagee through December 2014 have been paid in full. Additionally, the Court will award Debtor's attorney the \$4,366.20 in fees and costs for the additional proceedings necessary to resolve this issue.

The Court will enter a separate order in accordance herewith.

Mailing list

Kenneth Walker, Attorney for Debtor

Tim Ivy, Chapter 13 Trustee

Regions Mortgage, Inc. PO Box 1860, Memphis, TN 38101-1860

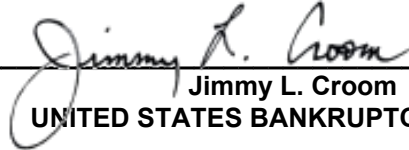
Regions Bank, dba Regions Mortgage, 7130 Goodlett Farms Pkwy, Cordova, TN 38016

Registered Agent: Corporation Service Company, 2908 Poston Ave., Nashville, TN

37203-1312



Dated: September 11, 2015
The following is SO ORDERED:



Jimmy L. Croom
UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

In re: ROY E. LONGMIRE, JR.)	Case No. 09-14629
)	
Debtor.)	Chapter 13
)	

**ORDER GRANTING DEBTOR'S MOTION FOR SANCTIONS UNDER RULE 3002.1(i)
AND MOTION UNDER RULE 3002.1(h)**

For the reasons set forth in the Court's Memorandum Opinion entered in accordance herewith, the Debtor's Motion for Sanctions Under Rule 3002.1(i) and Motion under Rule 3002.1(h) (ECF No. 100) is **GRANTED**. The Court concludes that all arrearages have been cured and all required pre-petition and post-petition amounts due to mortgagee through December 2014 have been paid in full. Additionally, the Court awards \$4,366.20 in attorney fees and costs for the additional proceedings necessary to resolve this issue.

IT IS SO ORDERED.

Mailing list

Kenneth Walker, Attorney for Debtor

Tim Ivy, Chapter 13 Trustee

Regions Mortgage, Inc. PO Box 1860, Memphis, TN 38101-1860

Regions Bank, dba Regions Mortgage, 7130 Goodlett Farms Pkwy, Cordova, TN 38016

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