

Dated: June 13, 2025
The following is ORDERED:



M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

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

In re
Wayne Lenard Bins
Debtor

Case No. 19-22677
Chapter 13

**OPINION AND ORDER GRANTING DEBTOR'S MOTION FOR
DETERMINATION OF FINAL CURE AND PAYMENT, DISALLOWING
CREDITOR'S AMENDED CLAIM AND
AWARDING DEBTOR'S ATTORNEY'S FEES, IF ANY**

This matter is before the Court on the Chapter 13 Trustee's Notice of Final Cure Payment and Completion of Plan Payments [DE 100], the Response [DE 104] and Amended Response [DE 107] to the Notice of Final Cure filed by Creditor U.S. Bank Trust National Association, Debtor's Motion for Determination of Final Cure and Payment [DE 105] and Creditor's Amended Claim

No. 2-3. Creditor's counsel and the Chapter 13 trustee appeared at the hearing on May 7, 2025, for argument.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), (K) and (O). Accordingly, the Court has both the statutory and constitutional authority to hear and determine these proceedings subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII ("Bankruptcy Appeals") of the Federal Rules of Bankruptcy Procedure. This decision constitutes the Court's findings of fact and conclusions of law under FED. R. CIV. P. 52, made applicable to this contested matter by FED. R. BANKR. P. 7052. Regardless of whether specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel, considered the testimony given in this matter, considered all of the evidence, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court hereby determines that the Debtor's Motion for Determination of Final Cure and Payment is granted, Creditor's Amended Claim #2-3 is disallowed and Debtor is awarded his attorney's fees and expenses, if any, for prosecution of the Motion.

DISCUSSION OF BACKGROUND FACTS AND PROCEDURAL HISTORY OF THE CASE

The pertinent facts of this case are undisputed and can be gleaned with reference to the Court's docket. Creditor U.S. Bank Trust National Association is the holder of a claim secured by the Debtor's principal residence. The Debtor commenced this Chapter 13 case on April 1, 2019, and Creditor timely filed its claim in the amount of \$104,620.35 on May 7, 2019. [Claim #2-1] The Chapter 13 Plan, confirmed on June 28, 2019, set up payments for the ongoing mortgage in the amount of \$1,110.04 per month, with the first post-petition payment to be disbursed July 1, 2019. The Plan also included payments of \$252 per month to cure the pre-petition mortgage

arrearage of \$14,269.69. All Plan payments to be disbursed to Creditor were set in accordance with its Proof of Claim.

As the case proceeded, Creditor filed documentation evidencing several assignments/transfers of the claim and several notices of changes to the mortgage payment. As the Chapter 13 plan neared completion and the case moved towards discharge, the Chapter 13 trustee had paid Creditor's claim for pre-petition arrearages and paid the ongoing monthly post-petition mortgage payments, so she accordingly filed, pursuant to FED. R. BANKR. P. 3002.1(f), the Notice of Final Cure Payment and Completion of Plan Payments on July 16, 2024, directing Creditor to file a statement within 21 days indicating whether it agreed that the Debtor had paid in full all amounts required to bring the mortgage current. [DE 100]

As directed, Creditor timely filed its first Response to Notice of Final Cure on August 6, 2024, stating that although pre-petition arrearages were paid, Debtor was still contractually obligated for a post-petition obligation of \$1,926.67. [DE 104] Pursuant to FED. R. BANKR. P. 3002.1(h), the Debtor filed a Motion for Determination of Final Cure Payment on August 27, 2024 [DE 105] seeking an order determining that the Debtor has cured, through the Chapter 13 Plan, all of the mortgage default amounts and paid all required post-petition mortgage payments, fees, charges, expenses, escrow and costs, to bring the mortgage current. Creditor filed no response or objection to the Debtor's Motion, but instead on August 29, 2024 amended its Response to the Trustee's Notice of Final Cure Payment to assert that the Debtor's mortgage is current and all amounts owed, pre-petition and post-petition, were paid in full. [DE 107] Since that time, Creditor twice amended its Claim #2 on December 26, 2024 and January 16, 2025, with the most recent amendment [Claim 2-3] asserting a claim for two GAP¹ payments totaling \$2,220.08 due and

¹ It is common practice in this jurisdiction that the first post-petition ongoing monthly mortgage payment will generally not be paid until the second or third month after the case is commenced, according to the

owing for May and June of 2019. It is Creditor's Amended Claim 2-3 that is the crux of this dispute.

LAW AND ANALYSIS

The focus of the Court's analysis is found in FED. R. BANKR. P. 3002.1, titled Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence, which provides in pertinent part as follows:

(f) **Notice of Final Cure Payment.** Within 30 days after the debtor completes all payments under the plan, the trustee shall file and serve on the holder of the claim, the debtor, and debtor's counsel a notice stating that the debtor has paid in full the amount required to cure any default on the claim. The notice shall also inform the [mortgagee] to file and serve a response under subdivision (g). . . .

(g) **Response to Notice of Final Cure Payment.** Within 21 days after service of the notice under subdivision (f) of this rule, the holder shall file and serve on 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. The statement shall itemize the required cure or postpetition amounts, if any, that the [mortgagee] contends remain unpaid as of the date of the statement. The statement shall be filed as a supplement to the [mortgagee's] proof of claim and is not subject to Rule 3001(f).

(h) **Determination of Final Cure and Payment.** On motion of the debtor or trustee filed within 21 days after service of the statement under subdivision (g) of this rule, the court shall, after notice and a hearing, determine whether the debtor has cured the default and paid all required postpetition amounts.

(i) **Failure to Notify.** If the [mortgagee] fails to provide any information as required by subdivision (b), (c), or (g) of this rule, the court may, after notice and hearing, take either or both of the following actions:

(1) preclude the [mortgagee] from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or harmless; or

"mortgage payment start date" set forth in a debtor's proposed Chapter 13 plan. These "missed" payments, or "gap payments" are not paid through the Chapter 13 plan as post-petition ongoing monthly payments, but are included in the mortgagee's arrearage claim even though they are actually due post-petition. *See In re Rayford*, No. 16-29914, 2020 WL 8551780 at *3 (Bankr. W.D. Tenn. December 17, 2020).

(2) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.

Key to the Court's analysis are the instructions for the Creditor mandated in (g). As one bankruptcy court recently emphasized:

The purpose of Rule 3002.1 is to "provide[] a mechanism to ensure that the debtor has cured all arrearages and is current with respect to all mortgage obligations at the end of the case, [and] . . . also provide[] the information which the parties need to address any outstanding amounts due under the mortgage so that there are no 'surprises' later." *In re Dewitt*, 651 B.R. 215, 225 (Bankr. S.D. Ohio 2023). That can hardly be done if the creditor supplies inaccurate information. As several courts have explained, to "provide the information," as required by Rule 3002.1(g), the creditor must respond to a notice of final cure with *accurate* statements. *See, e.g. In re Rayford*, No 16-29914, 2020 WL 8551780, at *5 (Bankr. W.D. Tenn. Dec. 17, 2020); *In re Tollstrup*, 2018 WL 1384378, at *3 (Bankr. D. Or. March 16, 2018) ("[T]he provision of inaccurate information is equivalent to a failure to provide information. The purpose of Rule 3002.1 . . . is served only if the creditor provides correct information."); *In re Ferrell*, 580 B.R. 181, 187-88 (Bankr. D.S.C. 2017) ("The filing of an incorrect and inaccurate Rule 3002.1(g) statement is the equivalent of filing no statement at all. Indeed, an incorrect statement could be viewed as worse than no statement."); *In re Howard*, 563 B.R. 308, 315 (Bankr. N.D. Cal. 2016) ("An inaccurate response under Rule 3002.1(g) complies neither with the letter nor the spirit of Rule 3002.1 and defeats the very purpose for which Rule 3002.1 was enacted.")

In re Himes, 668 B.R. 214, 219 (Bankr. E.D. Wis. 2025). In this case, Creditor's failure to file an accurate response to the Trustee's Notice of Final Cure is a failure to comply with the mandates of Rule 3002.1(g), and puts the Debtor, who has completed his Plan payments, in a troublesome position on the eve of his long-awaited Chapter 13 discharge. The only thing standing between the Debtor and his discharge is Creditor's amended proof of claim for amounts owed, filed six months after the Trustee's Notice of Final Cure Payment. The Amended Proof of Claim does not satisfy the Creditor's obligations to file a response under Rule 3002.1(g). The Creditor's Amended Response to the Notice, declaring the mortgage current, is the final accounting received from

Creditor pursuant to the Rule.² The Court accordingly finds that Creditor's Response to the Trustee's Notice fails to "itemize the required cure or postpetition amounts, if any, that the [mortgagee] contends remain unpaid as of the date of the statement." FED. R. BANKR. P. 3002.1(g). For these reasons, the Court hereby grants the Debtor's Motion and determines that the Debtor has cured the pre-petition default and paid all required post-petition amounts, and finds that the Creditor's Amended Claim 2-3 for GAP payments is disallowed in its entirety as a remedy provided under FED. R. BANKR. P. 3002.1(i)(1). Further, Creditor is prohibited from assessing Debtor's account or otherwise charging the Debtor for any fees or expenses related to this bankruptcy proceeding incurred prior to the date of entry of this Opinion and Order. In addition and also pursuant to FED. R. BANKR. P. 3002.1(i)(2), the Court finds that Debtor is entitled to recover from Creditor his attorney's fees and expenses, if any, for prosecution of the Motion.

CONCLUSION

Based on the facts presented, the Court finds that Debtor's Motion for Determination of Final Cure and Payment is granted, Creditor's Amended Claim #2-3 is disallowed and Debtor is awarded his attorney's fees, if any, for prosecution of the Motion. Debtor's Counsel is hereby directed to file an application for attorney's fees and expenses, itemizing time and expenses expended, if any, within 14 days after entry of this Opinion and Order. If Debtor's counsel fails to submit an application within 14 days, Debtor's right to any attorney fee award pursuant to this Opinion and Order will be deemed waived.

The Bankruptcy Court Clerk shall serve a copy of this Opinion and Order on the following interested parties:

² As noted, the Creditor also failed to respond to the Debtor's Motion for Determination of Final Cure Payment [DE 105].

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