Dated: August 14, 2025
The following is ORDERED:

M. Ruthie Hagan
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

In re
Carolyn Ann Rivers Case No. 19-24646
Debtor Chapter 13

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART U.S. BANK TRUST NATIONAL ASSOCIATION'S MOTION TO DETERMINE RECOVERABILITY OF ESCROW ADVANCES AND VACATING THE COURT'S PRIOR ORDER OF DISCHARGE

This matter is before the Court on the Motion of secured creditor U.S. Bank Trust National Association ("Bank") to Determine Recoverability of Escrow Advances [DE 100] seeking the Court's determination of whether it may recover escrow advances made for property taxes and hazard insurance on behalf of the Debtor in order to protect its collateral. The Court conducted a hearing on June 18, 2025, and again on July 30, 2025, at which time counsel for the Bank, the

Debtor and the Chapter 13 trustee presented argument. The Court opted to take this matter under advisement.

This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (B), and (I). 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 all parties before the Court, including the Chapter 13 trustee, are equally responsible for payment of the outstanding balance owed to the Bank, and that the Order discharging the Debtor should be vacated and set aside so that further case administration may proceed.

DISCUSSION OF BACKGROUND FACTS AND PROCEDUAL HISTORY OF THE CASE

The pertinent facts of this case are undisputed and can be gleaned from a review of the Court's docket. The Debtor commenced this Chapter 13 case on June 17, 2019, and filed a proposed a Chapter 13 Plan [DE 2] the same day. The Plan provided that the Debtor's home mortgage would be paid directly by the Debtor, outside of the Plan. *Id.* There was no mortgage arrearage listed in the Plan, *id.*, and the parties agree that no prepetition mortgage arrearage existed at the time of filing. The Plan was confirmed, without objection from the Bank, on September 9, 2019. [DE 31] On September 13, 2019, the Chapter 13 trustee entered an Administrative Order

Allowing Claims [DE 34], allowing claim number 23 of PHH Mortgage Services in the amount of $18,622.15, which was designated to be paid outside the Plan.[1]

Soon thereafter the Debtor filed a Motion to Amend the Plan [DE 36], alleging that the Debtor had fallen behind on her mortgage payments and moved to have the mortgage debt re-amortized "and paid in full over the life of her plan," proposing to have the mortgage claim of $18,622.15 paid at 7.5% interest resulting in an ongoing monthly payment of $440. *Id.* Prior to the hearing on the Debtor's Motion to amend the Plan, the trustee entered an Amended Order Confirming Plan [DE 38] on September 20, 2019, listing the PHH mortgage debt but still providing for ongoing payments to be paid outside the Plan. *Id.* at ¶ 6.

The Debtor's Motion to amend the Plan was granted, without objection from the Bank, and the Order Granting Debtor's Motion to Amend Plan [DE 43] was entered October 8, 2019 setting forth the same repayment terms contained in the Motion and authorizing the Chapter 13 trustee to adjust the Debtor's Plan payments accordingly, to account for the addition of the $440 monthly mortgage payment. The trustee thereafter entered an Order increasing the Debtor's payroll deductions [DE 45] and the mortgage payments were commenced by the Chapter 13 trustee.

On January 14, 2020, pursuant to FED. R. BANKR. P. 3002.1(c), the Bank filed a Notice of Postpetition Mortgage Fees, Expenses and Charges for the attorney's fee related to its claim #23 [DE 51]. In addition, in order to account for increases in the Debtor's escrow expenses and pursuant to FED. R. BANKR. P. 3002.1(b), the Bank filed Notices of Mortgage Payment Changes on September 10, 2020 [DE 52], February 3, 2022 [DE 59], July 15, 2022 [DE 60], March 22, 2023 [DE 68], and January 4, 2024 [DE 81]. In spite of the Bank's notices evidencing an increase

[1] By this point, the Debtor's mortgage loan had been transferred by Ocwen Loan Servicing, LLC, the creditor listed on the original Plan, to PHH Mortgage Services. Another transfer of the claim occurred [DE 56] and the mortgage debt is now serviced by Movant U.S. Bank, National Association.

in the mortgage escrow payments, the Chapter 13 trustee — and the Debtor — continued to pay the $440 monthly payment until the amount of the Bank's original $18,622.15 claim with 7.5% interest was paid in February, 2023. The Bank has received no payments on its loan since that date.

The Chapter 13 case progressed and the Debtor received a discharge after completion of all Plan payments on February 7, 2025 [DE 98]. Soon thereafter, on April 1, 2025, the Bank filed its Motion to Determine Recoverability of Escrow Advances [DE 100] seeking a judgment in the amount of $18,389.29 for property taxes and hazard insurance premiums advanced on behalf of the Debtor in an effort to safeguard its lien. The Court held a hearing to consider the Motion and heard argument and testimony from Debtor's counsel, Bank's counsel, and the Chapter 13 trustee. It is against this factual backdrop that the Court must now consider the arguments before it.

LAW AND ANALYSIS

There is no dispute that the Bank expended $18,389.29 in order to keep the Debtor's property taxes current and hazard insurance in place on the Debtor's residence. The issue before the Court is determining which party — of the three parties involved in this matter — should bear the burden of that expense when all parties *in pari delicto* failed to act.

The Court first examines the arguments of the Chapter 13 trustee. The trustee explained to the Court that, under ordinary circumstances, when a mortgagee files notices of payment change, the trustee adjusts the amount of mortgage payments accordingly. In this case, however, because the Order Granting Debtor's Motion to Amend Plan [DE 43] provided that "the mortgage [should] be reammoritzed [sic] and paid in full over the life of her plan" and that the $18,622.15 claim would be paid at 7.5% interest with a monthly payment of $440, the trustee set up the debt as a "to be paid in full mortgage" so that the mortgagee's notices of payment change failed to trigger any action by the trustee to increase the mortgage payments. According to the trustee's records, the

original claim in the amount of $18,622.15 was paid in full in February, 2023, and the trustee made no more disbursements to the mortgagee after that date.

Upon the request of the Court, the parties returned to Court for additional argument on whether the trustee in this case is exempt from the requirements of Bankruptcy Rule 3002.1(f) as the debt at issue is "a claim that is secured by a security interest in the debtor's principal residence and for which the plan provides for the trustee or debtor to make contractual installment payments." FED. R. BANKR P. 3002.1(a). Rule 3002.1(f) provides as follows:

> (f) Notice of the Final Cure Payment.
>
> > (1) Content of a Notice. Within 30 days after the debtor completes all payments under a Chapter 13 plan, the trustee must file a notice:
> >
> > (A) stating that the debtor has paid in full the amount required to cure any default on the claim; and
> >
> > (B) informing the claim holder of its obligation to file and serve a response under (g).

The Rule further provides that if the trustee fails to file the Notice, the debtor may do so. FED. R. BANKR. P. 3002.1(f)(3). Bankruptcy Courts are split on whether the Notice is required in cases where no prepetition mortgage arrearage exists, and the Plan merely pays the ongoing monthly installment mortgage payments. *See In re Tollios*, 491 B.R. 886, 891 (Bankr. E.D. Ill. 2013) (language of Rule 3002.1 is clear that the rule was intended to apply to mortgage claims treated in a plan by continuing monthly mortgage payments when there are no pre-petition arrears); *In re Fitch*, 540 B.R. 13, 15 (Bankr. D. Maine 2015) ("Limiting the operation of the rule to circumstances involving a default to be cured would deprive some chapter 13 debtors of efficient access to important information regarding their mortgage loans.") *Compare with In re Weigel,* 485 B.R. 327, 328 (Bankr. E.D. Va. 2012) (Rule 3002.1 was not applicable because there were no prepetition arrearages to be cured).

In this case, the amounts still due and owing to the Bank should have come to light with the Rule 3002.1(f) case closing procedures. If the trustee — or the Debtor — had filed the Notice, the Bank would have undoubtedly been prompted to file its required response pursuant to Rule 3002.1(g) alerting all parties that, according to the Bank's records, the mortgage payments were not current and the loan was not "paid in full over the life of the plan."

The Court notes that Rule 3002.1 has recently undergone amendments to be effective December 1, 2025, and will provide after that date, in pertinent part:

> Rule 3002.1. Chapter 13—Claim Secured by a Security Interest in the Debtor's Principal Residence
>
> (a) In General. This rule applies in a Chapter 13 case to a claim that is secured by a security interest in the debtor's principal residence and for which the plan provides for the trustee or debtor to make payment on the debt. Unless the court orders otherwise, the requirements of this rule cease when an order terminating or annulling the automatic stay related to that residence becomes effective.
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> ***
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> (g) Trustee's End-of-Case Notice of Disbursements Made; Response; Court Determination.
>
> (1) *Timing and Content*. Within 45 days after the debtor completes all payments due to the trustee under a Chapter 13 plan, the trustee must file a notice:
>
> (A) stating what amount the trustee disbursed to the claim holder to cure any default and whether it has been cured;
>
> (B) stating what amount the trustee disbursed to the claim holder for payments that came due during the pendency of the case and whether such payments are current as of the date of the notice; and
> (C) informing the claim holder of its obligation to respond under (g)(3).

FED. R. BANKR. P. 3002.1 as amended and effective December 1, 2025. The Committee's Note accompanying the proposed changes states that:

> Subdivision (a), which describes the rule's applicability, is amended to delete the words "contractual" and "installment" in the phrase "contractual installment payments" in order to clarify and broaden

> the rule's applicability. The deletion of "contractual" is intended to make the rule applicable to home mortgages that may be modified and are being paid according to the terms of the plan rather than strictly according to the contract, including mortgages being paid in full during the term of the plan.
>
> ***
>
> Under subdivision (g), within 45 days after the last plan payment is made to the trustee, the trustee must file an End-of-Case Notice of Disbursements Made. An Official Form has been adopted for this purpose. The notice will state the amount that the trustee has paid to cure any default on the claim and whether the default has been cured. It will also state the amount that the trustee has disbursed on obligations that came due during the case and whether those payments are current as of the date of the notice. If the trustee has disbursed no amounts to the claim holder under either or both categories, the notice should be filed stating $0 for the amount disbursed.

AMENDMENT TO FED. R. BANKR. P. 3002.1 Advisory Committee Notes (2025). Clearly under the circumstances presented in this case, there is no doubt that the amended Rule requires the trustee to file the End of Case Notice outlined in (g) above. In light of Congress' recent clarification of the application of the Rule and based on the persuasive caselaw and the facts of this case, the Court hereby adopts the reasoning of the *In re Tollios* and *In re Fitch* line of cases, finding that, even though there was no prepetition mortgage arrearage, current Rule 3002.1(f) is nevertheless applicable, and the trustee failed to comply with the mandates of the Rule. However, the Court notes that the trustee's failure to file the Notice of Final Cure Payment is, under the facts before the Court, of little consequence since even if the Notice had been filed, the parties would likely be in the same problematic posture they now find themselves in here at the finish line of this Chapter 13 case.

The Court does not fathom, however, why the trustee — and the Debtor — ignored the Bank's five Notices of Payment Change properly filed on the Court's docket pursuant to Rule 3002.1(b) throughout the course of this case. A Chapter 13 trustee is charged with the affirmative

duty to "investigate the financial affairs of the debtor." 11 U.S.C. §§ 704(a) and 1302(b)(1). Reviewing the Court's docket to oversee the case administration should have put the trustee on notice to "investigate the financial affairs of the Debtor" — namely, the notifications of increases in the ongoing mortgage payments. The Court finds that the trustee's inaction under these circumstances and her failure to investigate the financial affairs of the Debtor constitutes negligence on the part of the trustee, for which she is liable in her official capacity. *See Warren Inv., Inc. v. Gen. Casualty of Wisconsin (In re J & J Video, LLC)*, Nos. 08-56835-SWR, 11-12038, Adv. No,. 10-07092 (D. Mich. Aug. 1, 2011) ("The law in this Circuit is clear: 'A bankruptcy trustee is liable in h[er] *official* capacity for acts of negligence. . . .'").

The same can be said of the Debtor, who was served with each of the Bank's Notices and yet failed to take any action. "[T]he drafters [of Rule 3002.1] hoped that by requiring lenders to give periodic notice of payment changes, debtors could avoid the shock that some have experienced at the end of their plan terms upon discovering that, despite having made all payments in good faith, their mortgage arrears quietly grew – in some instances, substantially." *In re Pillow,* 2013 WL 10252924 at *2 (Bankr. W.D. Mich. March 18, 2013). As one bankruptcy court recently noted, "[b]y requiring the mortgagee to share accurate and complete information on a timely basis, Rule 3002.1 provides a system whereby any outstanding amounts can be addressed by the debtor, the Chapter 13 Trustee, and the Court while the Chapter 13 case is pending. This information sharing mechanism is central to the integrity of Chapter 13." *In re Dewitt*, 651 B.R. 215, 224 - 25 (Bankr. S.D. Ohio 2023). The Court is troubled by the inattention that the trustee and the Debtor exhibited to the Bank's properly filed Notices of Payment Change. The Court also notes that Debtor's unsecured creditors were paid at 100% [DE 49] while Debtor's mortgage lender was receiving disbursements in an insufficient amount, or no payments whatsoever. The Debtor is the

party who has reaped the benefit under the existing circumstances and has been unjustly enriched, with the Bank satisfying her annual property taxes and hazard insurance premiums on her behalf.

The Court also considers the role of the Bank in this quandary. Although the Bank was filing its Notices of Payment Change, the Bank failed to even once amend its proof of claim [Claim #23] to reflect the delinquent escrow amounts and failed to object to the Debtor's Motion to amend the plan to re-amortize the mortgage debt and pay it "in full over the life of the plan." [DE 36] Further, the Bank received its final payment on this debt in February 2023, yet failed to request relief from the automatic stay as the postpetition mortgage escrow arrearages mounted year after year. This Court does not often witness mortgage lenders sitting on their rights in the face of such a postpetition mortgage default. If the Bank had pursued some avenue to approach the Court for repayment of the escrow advances prior to the Debtor's discharge, this matter may very well have been resolved while the case was still active and being administered. Instead, the Debtor is deprived of the fresh start intended by Congress upon completion of a Chapter 13 bankruptcy plan.

CONCLUSION AND ORDER

Based on the foregoing, the Court hereby determines that all three parties to this matter are collectively and equally responsible for the post-discharge financial dilemma now before the Court, and elects to divide the responsibility accordingly. Of the $18,389.29 at issue, the Debtor shall be responsible for payment to the Bank for 1/3, the Chapter 13 trustee shall be responsible for payment to the Bank for 1/3, and the Bank's recovery of the delinquent escrow claim is accordingly reduced by the remaining 1/3. The Court hereby vacates and sets aside the Order of discharge [DE 98] so that this case can be further administered in accordance with the Court's Opinion and Order as set forth herein. Once the parties have successfully complied with their

financial responsibilities herein, or reached an alternative settlement, this case can proceed to discharge and the case may then be closed accordingly.

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

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