Banks Score a Win in the First Ability-to-Repay Case to be Adjudicated
By Jeff Thompson, CRCM

At the end of March 2019, the U.S. District Court for the Southern District of Ohio gave the banking industry its first win in cases involving the ability-to-repay (ATR) and qualified mortgage (QM) rules that were enacted under the Dodd-Frank Act. In *Elliot v. First Federal Community Bank of Bucyrus*, the court rejected the plaintiff's attempt to block foreclosure based on the ATR/QM rules.

Briefly, the case revolved around a borrower who was legally separated from his spouse at the time of application, and a separation agreement that defined the various sources of income and expenses of the estranged couple. After numerous assurances that the couple was committed to the separation agreement, the bank calculated the borrower's debt-to-income ratio to be below the bank's 40% limit, and his credit score to be above their 660 minimum.

After the loan was originated, a messy divorce ensued, and the marital assets reapportioned. The spousal support that the borrower had been receiving was significantly reduced, and the borrower lost his job and incurred additional debts. All this led to delinquent mortgage payments and an ultimate default. In the court filing, the plaintiff claimed that the bank failed to make a "reasonable and good faith determination based on verified and documented information" that he had a "reasonable ability to repay the loan."

In rejecting the plaintiff's claim and granting summary judgment in favor of the bank, the court observed that "the bank did its due diligence to confirm Plaintiff would have the ability to make the payments on his mortgage," and the fact that the parties did not adhere to the settlement agreement "was not an event that was reasonably foreseeable to the bank." The court rejected the plaintiff's claim that the bank did not follow Appendix Q to Regulation Z, as he asserted the spousal support should not have been considered. The court ruled that tax returns provided the bank with ample evidence of the ability to repay the loan.

Important Takeaways

The bank had written underwriting guidelines, and followed those guidelines without exception in this case. The bank was able to demonstrate the level of due diligence they performed prior to making the loan. Because they did it right, the bank prevailed in the foreclosure, and was able to recoup court costs, accrued interest, and default interest. When considering your bank's underwriting and approval processes, don't worry about the regulators, worry about what could happen if you need to foreclose on the collateral real estate.