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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

## Borrowers Get Class Cert. In Mortgage Lender Kickback Suit

By **Sydney Price**

Law360 (October 12, 2023, 7:28 PM EDT) -- A Maryland federal judge granted class certification to mortgage borrowers alleging Home Point Financial Corp. engaged in an illegal kickback scheme in exchange for payments from a title and settlement services company that were laundered through third parties.

U.S. District Judge Richard D. Bennett said the borrowers meet the criteria for class certification, and that they have common claims in alleging the kickback agreement violated the Real Estate Settlement Procedures Act, or RESPA, he said.

In the suit, which was originally filed in October 2020, the plaintiffs allege Home Point employees accepted illegal kickbacks from All Star Title Inc. in exchange for sending residential mortgage loans, refinances and reverse mortgages to All Star for title and settlement services. All Star is not a defendant in the suit.

To pay for the kickbacks, Home Point and All Star charged unnecessary fees for title and settlement services, the plaintiffs allege. All Star overcharged the borrowers and sent the kickbacks to a third-party marketing company to create the false impression that All Star was making a legitimate payment for marketing services, the suit alleges.

Home Point opposed the borrowers' bid for class certification in August by arguing that each borrower's claims are unique and should be addressed on an individual basis. The reasonable amount of fees charged for title and settlement services varies greatly by property, it said.

But Judge Bennett said Wednesday that the plaintiffs do not need to show that every putative class member has standing at the class certification stage.

"While plaintiffs will ultimately need to prove that each class member was injured, the fact that members of the Home Point class may have been overcharged by different amounts as a result of the kickbacks at issue neither destroys their standing nor the predominance of the common legal and factual issues related to their claims," Judge Bennett said.

The borrowers also allege Home Point fraudulently concealed their scheme, so the injury was not discovered until after the statute of limitations had already ended. Home Point argued equitable tolling also must be considered on a case-by-case basis, but Judge Bennett disagreed.

"As plaintiffs correctly note, the notice and due diligence elements of the fraudulent concealment test are objective inquiries that can be determined on a classwide basis," Judge Bennett said.

Smith Gildea & Schmidt LLC attorney Melissa English told Law360 in an email Thursday that class counsel was gratified with Wednesday's order.

"We look forward to proving at trial how the class of borrowers – many of whom are veterans – were harmed by the kickbacks Home Point Financial is alleged to have received and accepted over more than a year," English said. "We expect the evidence to show that the kickbacks unnecessarily increased the title and settlement service costs of the Home Point Class by hundreds of dollars on each of the more than 600 Home Point Class loans."

Counsel for Home Point did not immediately respond to requests for comment Wednesday.

The borrowers are represented by Melissa Lynn English and Michael Paul Smith of Smith Gildea & Schmidt LLC and Drew LaFramboise, Samuel Paul Morse, Timothy Francis Maloney and Veronica Byam Nannis of Joseph Greenwald & Laake PA.

Home Point is represented by Katherine Monks Bleicher, Christopher Comstock, Holly S. Bunting, Thomas V. Panoff and William McElhaney of Mayer Brown LLP.

The case is Moyer et al. v. Home Point Financial Corp., case number 1:20-cv-03449, in the U.S. District Court for the District of Maryland.

--Editing by John C. Davenport.

*Update: This story has been updated with comment from the plaintiffs' attorney.*

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