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Whistleblower Says Bank of America Defrauded HAMP ^[1]

By Jessica Dye

NEW YORK, March 7 | Wed Mar 7, 2012 7:57pm EST

(Reuters) - Bank of America NA prevented homeowners from receiving mortgage-loan modifications under a federal program in order to avoid millions of dollars in losses while benefitting from financial incentives for participating in the program, according to a complaint unsealed in federal court Wednesday.

The suit is the second whistleblower complaint unsealed so far with apparent ties to the \$1 billion False Claims Act settlement announced by Bank of America and the U.S. Attorney's Office for the Eastern District of New York on February 9.

The Bank of America settlement is also part of the sweeping \$25 billion agreement reached between state and federal authorities.

Final settlement documents have yet to be filed in the BoA settlement, which the U.S. Attorney's Office said was the largest ever False Claims Act payout related to mortgage fraud.

The settlement resolved claims that Bank of America's Countywide Financial subsidiaries defrauded the Federal Housing Administration by inflating appraisals used for government-insured home loans, as well as claims involving the Home Affordable Modification Program, a federal program to help American homeowners facing foreclosure.

The complaint unsealed Wednesday was filed by whistleblower Gregory Mackler, a Colorado resident who said he worked alongside Bank of America executives while an employee at Urban Lending Solutions, a company to which Bank of America contracted some of its HAMP work.

While working at Urban Lending, Mackler said he saw BofA and its loan servicing subsidiary, BAC Homes Loans Servicing LP, implement "business practices designed to intentionally prevent scores of eligible homeowners from becoming eligible or staying eligible for permanent HAMP modification."

The bank and its agents routinely pretended to have lost homeowners' documents, failed to credit

payments during trial modifications and intentionally misled homeowners about their eligibility for the program, the complaint alleged.

BoA let through just enough HAMP modifications to avert suspicion and allay congressional critics, while not enough to incur any substantial losses to its own bottom line, according to the complaint.

"In other words, BoA has had it both ways. BoA has continued to maximize the value of its mortgage portfolio with anti-HAMP modification practices and managed to make money by committing fraud on homeowner," the lawsuit said.

A lawyer for Mackler could neither confirm nor deny that the complaint was tied to the settlement. A spokesman for the U.S. attorney's office and a representative for Bank of America declined to comment.

In February, a whistleblower complaint was unsealed from Kyle Lagow, a former employee in a Countrywide appraisal unit which detailed allegations of Countrywide's "corrupt underwriting and appraisal process." Bank of America purchased Countywide in June 2008.

Under the False Claims Act, successful whistleblower complaints can earn that whistleblower up to 25 percent of the settlement amount.

According to the docket, the U.S. Department of Justice has until March 16 to decide whether to intervene in both the Mackler and Lagow case. The case is United States of America v. Bank of America NA et al., in the U.S. District Court for the Eastern District of New York, no. 11-3270.

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The complaint is available at <http://www.scribd.com/doc/84503965/V-Bank-of-America-NA?olddoc=1> [2].

Printed: August 12, 2020

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