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Franz Kafka, Sisyphus, and Foreclosures: Bank of America Fined $45 Million by Bankruptcy Court For Violation of Automatic Stay

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“Franz Kafka lives. This automatic stay violation case reveals that he works at Bank of America.” Thus begins an opinion stretching over 100 pages in length in which United States Bankruptcy Judge Christopher Klein fined Bank of America over $45 million for what he found to be an egregious violation of the automatic bankruptcy stay.

According to the order, the Sundquists, at the behest of advice given them by Bank of America, defaulted on their real property loan in 2009 so that they could be considered for a loan modification. The court found that this was followed by a “‘multi-year ‘dual tracking” game of cat-and-mouse” by Bank of America, which included repeated requests for information which had grown stale and incomprehensible denials of applications. Most central to the court’s holding was that, although the Sundquists filed a Chapter 13 bankruptcy petition in June 2010, Bank of America proceeded with a foreclosure sale even though it had notice of the Sundquists’ bankruptcy case. Clearly meaning to send a signal which would be heard in the bank’s highest offices (in addition to Kafka, the opinion also references the myth of Sisyphus and the Watergate scandal), the court was clearly moved by the emotional distress documented by the plaintiffs (which included discussions of suicide attempts).

The court found actual damages for violation of the stay to be slightly more than $1 million, but set punitive damages at an astonishing $45 million. (The Sundquists, however, are ordered to remit all but $5 million of that amount to two consumer and bankruptcy legal rights centers and to the five public law schools of the University of California system – and if Bank of America makes $30 million in payments to these institutions directly, it can reduce its punitive fine by $10 million, to $35 million.)

Bank of America, not surprisingly, is seeking redress. In addition to filing a notice of appeal to the bankruptcy appellate panel, it has also filed a motion with Judge Klein asking that the order be modified. Citing *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 502 (2008), among other cases, the bank argues that the court’s large punitive damage award (more than 40 times greater than compensatory damages) is excessive and violates federal due process. Although vulnerable to these and other arguments, Judge Klein’s order should serve as a stark reminder of the responsibilities imposed by the automatic stay and some of the possible repercussions of not abiding by them.

Topics

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