AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

PAMELA HERRINGTON, individually and on behalf of all others similarly situated,

Claimant,

and

WATERSTONE MORTGAGE CORPORATION,

Respondent.

AAA No. 51 160 00393 12

Before:
George C. Pratt
Arbitrator

DECISION ON ERRONEOUS ADDRESSES FOR NOTICE TO CLASS

(June 18, 2014)

By emailed letter dated June 4, 2014, Waterstone's Counsel informed me of "an accidental error in the production of addresses to opposing counsel" in the list provided to Class Counsel for mailing the class notice. He reported that "291 of 939 last known addresses produced by Waterstone to Class Counsel . . . were subject to a data entry error that altered the address." The error was an increase by one digit in the actual address, referred to as "the plus one error".

Waterstone's Counsel asserted that Class Counsel has now been provided "the correct original addresses for those individuals subject to the plus one error". As a

remedy for this “highly unfortunate mistake” Waterstone proposed that Class Counsel resend the Notice to the affected individuals, that the opt-in period for the affected individuals be restarted with the new mailing, and that Waterstone pay the costs associated with mailing the new notice to the 291 affected individuals.

Class Counsel responded on June 9, 2014. They regarded Waterstone’s proposed solution as only a “partial remedy”. They asserted that Waterstone’s Notice list contained many other errors and omissions, including approximately 20% erroneous email addresses. After referring to other cases where Waterstone apparently had provided inaccurate mailing information, and to Waterstone’s alleged efforts in this arbitration to reduce class participation, Class Counsel urged that there be a full investigation of Waterstone’s conduct in preparing and providing the Notice list. They asked for extensive discovery as to the Notice list; a change from an opt-in to an opt-out class; an extension of the opt-in period (should the opt-out request be denied) to 90 days past the judgment in this case; issuance of a new Notice after the investigation is completed, the full complement of errors has been discovered and corrected, and that the accuracy of the new Notice list be affirmed under oath. They also asked that Waterstone be sanctioned and required to pay Class Counsel’s fees incurred in the process.

On June 17, 2014, Waterstone submitted an explanatory affidavit with exhibits and professed good faith in processing the Notice list.

Class Counsel responded on June 16, 2014, taking its arguments still further, and concluding:

> The plus one error and the lack of correct email addresses, had they evaded discovery by counsel, would have saved

> Waterstone hundreds of thousands of dollars or more in exposure and would have prevented hundreds of Class Members from being able to join this case. It may be that the error was innocent. But if it was innocent, grave lack of care caused the problem and that lack of care coincidentally redounded to Waterstone's benefit and to the disadvantage of hundreds of Class Members.
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> The remedies proposed in Claimants' response letter remain important to remedy the situation created by Waterstone's failure to supply correct contact information.

Waterstone's Counsel's further response, dated June 16, 2014, denies that "lack of care" caused the plus one error, and asserts that "the plus one error (now rectified) has neither benefitted nor harmed any class members."

Oral argument of this latest dispute between the parties is not necessary.

The most important factor in the present situation is the need to assure that the Notice to the greatest number of potential claimants as is practicable. The bulk of the list errors were identified by Waterstone with its list of the 291 plus one errors. There may be some others, as argued by Class Counsel, but compared to the total of over 900 names and addresses, the number of additional errors does not seem to be great. Discovery and an investigation aimed at achieving greater precision and accuracy in the addresses would significantly delay the hearing in this class arbitration, which already has been delayed too long.

Therefore, Class Counsel shall promptly send a new Notice, differing from the original only in the date of mailing the new Notice and the date, 60 days thereafter, by which the Consent to Sue Form must be returned. The new Notice shall be sent to the persons at the addresses identified in Exhibit 9 attached to Ari Karen's letter to me of

June 4, 2014, and to any other corrected addressees that Class Counsel may have discovered. Waterstone shall pay the costs of the new mailing.

Along with the new Notice, Class Counsel shall include a brief explanatory letter, to be approved by me. The letter shall include the following:

> A prior Notice of the arbitration proceeding between Pamela Herrington and Waterstone was sent to Waterstone's eligible employees, but an addressing error had occurred with a significant number of letters. Since you may not have received the prior Notice, this new Notice is now being sent to you to be sure you have the opportunity to join in the arbitration, if you wish to do so. Note that if you wish to join, you must opt in by returning the completed Consent to Sue Form not later than [**insert date 60 days from mailing**].

Mailing of the new Notice and letter, combined with the original mailing, will provide to the putative class the best notice practicable under the circumstances.

Class Counsel's questions and arguments about Waterstone's handling of the original contact list do present potentially serious questions, at least about the degree of care Waterstone devoted to the process, if not the good faith, or lack of it, with which the process was carried out. Although the investigation cannot be pursued at this time because it would would unreasonably disrupt the progress of the arbitration, such an investigation may be appropriate at a future time. Accordingly, Class Counsel's requests for an immediate investigation, discovery, sanctions, and related attorney's fees are all denied, but without prejudice to renewal at a later date when the merits of the arbitration have been determined.

Class Counsel's requests to change this class arbitration from "opt in" to "opt out", and to extend the opt-in period "until 90 days past the judgment in this case" are denied. Notwithstanding the cut-off dates included in the original Notice and the new Notice, up until the close of the merits hearing I will consider an application to opt-in by

any qualified Waterstone employee who can establish both his or her failure to receive either of the Notices, and prompt application upon learning of the opportunity to opt in to the arbitration, or any other good cause for not having timely opted in.

SO ORDERED.
June 18, 2014

George C. Pratt
Arbitrator