

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: The Matter of
WILLIAM B. BUTLER

ANSWER

Misc. File No. 13-49 (MJD)

William Bernard Butler (“Respondent”), for his Answer to the Court’s December 2, 2013 Order to Show Cause in this matter, states and alleges as follows:

1. Respondent denies each and every allegation contained in the Order to Show Cause and asserts that this Court bears the burden of proving the unsupported allegations in the Order to Show Cause.
2. Respondent has not violated Rules 3.1, 3.3(a), 3.4(c), and 8.4(d) of the Minnesota Rules of Professional Conduct.
3. Respondent has made no knowingly false statement of law or fact to this Court. Minn. R. Prof. Cond. 3.1.
4. Respondent has not failed to disclose controlling law to this Court. Minn. R. Prof. Cond. 3.3(a).
5. Respondent did not disobey an obligation under the rules of this Court. Minn. R. Prof. Cond. 3.4(c).
6. Respondent did not engage in conduct that is prejudicial to the administration of justice. Minn. R. Prof. Cond. 8.4(d).

OBJECTIONS AND AFFIRMATIVE DEFENSES

1. The Order to Show Cause does not comply with Rule 8 of the Federal Rules of Civil Procedure. The Order to Show Cause does not contain one factual charge or allegation.
2. The charges in the Report of Special Disciplinary Counsel are without legal merit and without factual foundation. Special Disciplinary Counsel's Report completely fails to acknowledge 150 years of Minnesota quiet title law and the fact that the burden of proof is on the defendant in an action brought under Chapter 559 of the Minnesota Statutes. Special Disciplinary Counsel's Report completely lacks factual foundation. As support for the Report, Special Disciplinary Counsel's Report relies solely on commentary from opinion Orders of this Court. Special Disciplinary Counsel ignored the 352 factual document outlines that Respondent provided to Special Disciplinary Counsel.
3. Local Rule 83.6 requires "notice and an opportunity to be heard" *before* a probable cause finding. **Attached hereto as Exhibit 1** is Respondent's submission to Special Disciplinary Counsel, and **attached as Exhibits 2 and 3** are Special Disciplinary Counsel's October 31, 2013 letter and report. The 352 document outlines provided to Special Disciplinary Counsel show the factual and legal basis for every case decided by this Court.
4. The Court's proposed procedure in this case violates due process. Local Rule 83.6(e) requires an independent review panel. Both Judge Tunheim and Judge Erickson have executed orders consistent with the sanctions orders in this case.

- Neither Judge Tunheim nor Judge Erickson have acknowledged that the burden of proof in a quiet title action is on the defendant. Respondent demands an impartial finder of fact: either a jury or a panel of three Minnesota certified real estate specialists.
5. Respondent previously provided to Special Disciplinary Counsel document outlines relating to cases decided by this Court. These documents show securitized mortgages (most originated from 2001 to 2008) with the first executed assignment of mortgage dated years after the original closing of the loan.
 6. All securitized loans have a mortgage loan servicer and a “trust” or “special purpose vehicle” that is the “legal owner” of the mortgage. **See Exhibit 4**, pp. 19-27, Professor Adam Levitin’s Written Testimony to Congress relating to the legal structure of securitized mortgage loans.
 7. The vast majority of securitized loans are governed by New York law. New York trust law requires that a trustee receive physical delivery of trust property in accordance with the terms and timing of the trust agreement as a condition precedent to exercising legal title over the trust property. N.Y. Code – Estates, Powers and Trusts, §§ 7-1.18; 7-2.4. *See Glaski v. Bank of America, N.A.*, 218 Cal.Rptr.4th 1079 (2013). *See also, Saldivar v. JPMorgan Chase*, WL 2452699 (Bky. SD Tex. 6/5/13) (holding that trustee mortgagee's position is void if notes and assignments of mortgage not delivered within 90 day of closing of trust); *Wells Fargo v. Erobo*, 2013 WL 1831799 (NY Slip Op. 4/29/13)

(holding that NY trust law governs securitization and that notes and assignments of mortgage must be physically delivered to trustee within 90 days of closing for trustee to have claim of ownership). **See attached Exhibits 5 and 6.**

8. Fannie Mae securitized loans are governed by a Trust Indenture. (**See Exhibit 7.**) Fannie Mae loans require that Fannie Mae receive fully executed assignments of mortgage and original, endorsed promissory notes prior to the “Issue Date” of the mortgage-backed securities (“MBS”) that Fannie Mae sells to investors. **See attached Exhibit 8**, Custodial Agreement, Exhibit C to the Trust Indenture. Fannie Mae loans are governed by District of Columbia law. (**See Ex. 7, p. 32.**) District of Columbia trust law requires that a trustee holding trust property identify itself as trustee or identify the trust instrument in conveyance of trust property. D.C. Code § 19-1304.18. Minnesota foreclosure law requires: (a) the recording of all executed assignments of mortgage prior to the commencement of a foreclosure by advertisement. *See Hathorn v. Butler*, 75 N.W. 743 (Minn. 1898); Minn. Stat. § 580.02; (b) listing of all mortgage assignees on the Notice of Foreclosure. *See Hathorn*; Minn. Stat. § 580.04; and (c) recordation of all powers of attorney authorizing such foreclosure prior to the sheriff’s sale in a foreclosure by advertisement. Minn. Stat. § 580.05.
9. Freddie Mac loans are governed by a Custodial Agreement. **See attached Exhibit 9.** Freddie Mac loans require that Freddie Mac receive fully executed

assignments of mortgage and properly endorsed notes prior to the Freddie Mac Delivery Date specified in the purchase documents. Freddie Mac loans are governed by “United States law” to be construed in accordance with New York law. (See Ex. 9, p. 17). As indicated above, New York law requires physical delivery of trust property to the trustee as a condition precedent to the trustee exercising legal title. E.P.T.L. §§ 7-1.18; 7-2.4. See *Glaski*. See also, *Saldivar*; *Erobobo*. Minnesota foreclosure law requires: (a) the recording of all executed assignments of mortgage prior to the commencement of a foreclosure by advertisement. See *Hathorn v. Butler*, 75 N.W. 743 (Minn. 1898); Minn. Stat. § 580.02; (b) listing of all mortgage assignees on the Notice of Foreclosure. See *Hathorn*, 75 N.W. 743 (Minn. 1898); Minn. Stat. § 580.04; and (c) recordation of all powers of attorney authorizing such foreclosure prior to the sheriff’s sale in a foreclosure by advertisement. Minn. Stat. § 580.05.

10. The document outlines provided to Special Disciplinary Counsel show:

- A. All non-agency (non-Fannie and non-Freddie) loans originated between 2001 and 2008 with an identifiable “trust” or “servicer” show assignments of mortgage executed years after the closing of the securitization trust. The vast majority of these are governed by New York law. (Respondent is aware of only one securitization governed by law other than New York law). Every one of these assignments of mortgage executed more than 90 to 120 days after the closing of the trust is void according to New York trust law.

- B. All Fannie Mae loans show: (i) the instrument to Fannie does not identify Fannie as trustee and does not identify any trust agreement; (ii) in most cases, there is no recorded assignment of mortgage to Fannie Mae prior to the foreclosure and Fannie Mae is not identified on the Notice of Foreclosure; (iii) in cases where there is an assignment of mortgage to Fannie Mae, the assignment is executed years after the original loan date and long after the last possible “Issue Date” for the MBS.
- C. All Freddie Mac loans show: (i) no recorded assignment of mortgage to Freddie Mac, despite numerous admissions to the contrary originating from Freddie Mac’s own website, which admissions plainly state the date Freddie Mac acquired the mortgage and the Freddie Mac “settlement date” relating to the closing of the securitization trust. *See, e.g., Exhibit 10 attached hereto.*

RESPECTFULLY SUBMITTED,

BUTLER LIBERTY LAW, LLC

Dated: December 31, 2013

/s/ William B. Butler

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