

7th Circ. Won't Revive Claims Mortgage Co. Misled HUD

By **Brent Godwin**

Law360 (June 15, 2023, 7:40 PM EDT) -- The Seventh Circuit did not revive a case brought by a former employee of a mortgage servicer who accused the company of violating the False Claims Act by making false representations when certifying residential mortgages for Federal Housing Administration insurance.

In an opinion written Wednesday by U.S. Circuit Judge Diane Wood, a three-judge panel ruled that whistleblower Michelle Calderon did not prove that Carrington Mortgage Services LLC's alleged misrepresentations to the U.S. Department of Housing and Urban Development caused the government any harm or monetary loss. Thus, the panel found, her appeal of the trial court's summary judgment failed.

"Because Calderon did not proffer evidence that would permit a reasonable trier of fact to find that Carrington's violations of the False Claims Act caused any harm to HUD, we affirm the judgment of the district court," Judge Wood wrote in the opinion.

Calderon sued Carrington Mortgage in 2016, alleging the company, where she had worked as a direct endorsement underwriter, had "reckless and inappropriate underwriting practices," and that if HUD had known of errors and deficiencies in Carrington loans, it would not have approved them for federal insurance.

Carrington Mortgage filed a motion for summary judgment, arguing that Calderon could not prove that the company's allegedly false representations to HUD were material to its decision, and that she could not show the agency suffered a loss as a result.

Henninger "Hank" Bullock of Mayer Brown, counsel for Carrington, said Thursday he and his client are pleased by the Seventh Circuit's decision.

The decision "clarifies the scope of False Claims Act liability that Federal Housing Administration mortgage originators may face — particularly, by making clear that the reason federally-insured mortgage loans defaulted is relevant to assessing FCA liability with respect to those loans," Bullock said in an emailed statement to Law360.

At issue during the trial was that the court did not allow Calderon to testify as an expert regarding the company's quality control in approving loans that were later federally insured.

The U.S. District Court for the Southern District of Indiana granted summary judgment in favor of the mortgage firm in March 2022, sparking Calderon's appeal to the Seventh Circuit.

Judge Wood said in the opinion Wednesday that the panel agreed with Calderon that she could prove the element of materiality, but that it still affirmed the trial court's ruling that she could not prove causation.

U.S. Circuit Judges Candace Rae Jackson-Akiwumi, John Z. Lee and Diane Wood sat on the panel.

Counsel for Calderon did not immediately respond to requests for comment Thursday.

Michelle Calderon is represented by Jennifer L. Blackwell and Michael J. Bruzzese of Orzeske Blackwell PC.

Carrington Mortgage is represented by Henninger S. Bullock, Niketa Patel, Eric White, Nick Rodriguez and Anjanique Watt of Mayer Brown LLP.

The case is Calderon v. Carrington Mortgage Services LLC, case number 22-1553, in the U.S. Court of Appeals for the Seventh Circuit.

--Editing by Covey Son.