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REPORTER'S RECORD  
CAUSE NO. 342-262692-12  
COURT OF APPEALS NO. 02-20-00379-CV  
VOLUME 20 OF 20 VOLUMES  
HARRIET NICHOLSON )  
VS )  
THE BANK OF NEW YORK )  
MELLON )  
IN THE DISTRICT COURT )  
TARRANT COUNTY, TEXAS )  
342ND JUDICIAL DISTRICT )  
FILED IN  
2nd COURT OF APPEALS  
FORT WORTH, TEXAS  
02/07/2021 2:58:50 PM  
DEBRA SRISAK  
Clerk

\*\*\*\*\*

EXHIBITS

\*\*\*\*\*

HOLLY BISHOP, TEXAS CSR NO. 3095  
OFFICIAL COURT REPORTER  
342ND DISTRICT COURT  
100 N. Calhoun Street, 5th Floor  
Tom Vandergriff Civil Courts Building  
Fort Worth, Texas 76196  
817.884.2712

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1 THE STATE OF TEXAS )

2 COUNTY OF TARRANT )

3 I, Holly Bishop, Official Court Reporter in and for the  
4 342nd District Court of Tarrant County, State of Texas, do  
5 hereby certify that the above and foregoing contains a true  
6 and correct transcription of all portions of evidence and  
7 other proceedings requested in writing by counsel for the  
8 parties to be included in this volume of the Reporter's  
9 Record, in the above-styled and numbered cause, all of which  
10 occurred in open court or in chambers and were reported by  
11 me.

12 I further certify that this Reporter's Record of the  
13 proceedings truly and correctly reflects the exhibits, if  
14 any, admitted by the respective parties.

15 I further certify that the total cost for the  
16 preparation of the Reporter's Record is \$0.00 and was ordered  
17 by the Plaintiff who claims to be indigent.

18 WITNESS MY OFFICIAL HAND this the 7th day of  
19 February 2021.

20 /s/ Holly Bishop  
21 HOLLY BISHOP, TEXAS CSR 3095  
22 Expiration Date: 12-31-22  
23 Official Court Reporter  
24 342nd District Court  
25 100 N. Calhoun Street  
Fort Worth, Texas 76196  
T - 817.884.2712  
F - 817.884.3322  
M - hbbishop@tarrantcounty.com

**Holly Bishop, CSR**  
**Official Court Reporter, 342nd District Court**

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VOLUME 15

MOTION TO RECONSIDER SCHEDULING ORDER OR IN THE ALTERNATIVE,  
MOTION FOR LEAVE TO FILE AMENDED PLEADINGS

PLAINTIFF'S MOTION TO VACATE/RECONSIDER ORDER DENYING  
PLAINTIFF'S VERIFIED PLEA IN ABATEMENT

AUGUST 27, 2020	PAGE	VOL.
Proceedings	4	15
Remarks by Ms. Nicholson	4	15
Remarks by Mr. Troiano	10	15
Remarks by Mr. Danner	14	15
Court's Ruling	14, 22	15
Reporter's Certificate	24	15

PLAINTIFF'S EXHIBITS

NO.	DESCRIPTION	ADMITTED	VOL.
4	Letter - 2-11-15, Re: Nationstar Reference Number NSM-01-15-00866 and NSM-02-15-04561 with documents attached	17	15
5	Letter - 4-19-16, Re: Indebtedness evidenced by Note in the original principal amount of \$125,048.00, originally payable to the order of Mid America Mortgage, Inc., dated January 16, 2001, and modified by the Amended and Restated Note in the principal amount of \$146,335.14, executed by Harriet H. Nicholson and payable to Countrywide Home Loans, Inc. secured by Property with the address of 2951 Santa Sabina Drive, Grand Prairie, Tx 75052	19	15
6	Letter - 6-20-2016, Re: Consumer Financial Protection Bureau Complaint Nos. with documents attached	20	15



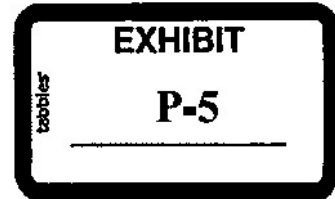
KELLY HARVEY PC.

P.O. Box  
131407

Houston, Texas  
77219

P:(832) 922-  
4000

F:(832) 922-  
6262



April 19, 2016

Via Certified and Regular Mail

Harriet H. Nicholson  
2951 Santa Sabina Drive  
Grand Prairie, TX 75052

RE: Indebtedness evidenced by Note in the original principal amount of \$125,048.00, originally payable to the order of Mid America Mortgage, Inc., dated January 16, 2001, and modified by the Amended and Restated Note in the principal amount of \$146,335.14 executed by Harriet H. Nicholson and payable to Countrywide Home Loans, Inc., secured by property with the address of 2951 Santa Sabina Drive, Grand Prairie, TX 75052

Last 4 Digits of Loan No. 1724

**RESCISSION OF ACCELERATION OF MATURITY OF INDEBTEDNESS**

**\*\* This communication is from a debt collector and this is an attempt to collect a debt and any information obtained will be used for that purpose. \*\***

This law firm represents the current lienholder and Nationstar Mortgage LLC, the mortgage servicer, with respect to the above referenced Indebtedness.

As you may be aware prior demand was made to cure the default in regard to the above referenced Indebtedness. In the event the default was not cured, the letter gave notice of intent to accelerate the entire amount due and owing under the Note. The Note was subsequently accelerated on April 24, 2012 by notice of acceleration.

Pursuant to Section 16.038 of the Texas Civil Practice and Remedies Code ("Section 16.038"), Nationstar Mortgage LLC and the lienholder have elected to rescind the acceleration of the maturity of the Indebtedness. A notice served under Section 16.038 does not affect a lienholder's right to accelerate the maturity of the debt in the future nor does it waive past defaults.

Please see the additional information below that may be applicable to this Indebtedness.

Sincerely,  
Harvey Law Group

**ADDITIONAL IMPORTANT INFORMATION THAT MAY BE APPLICABLE**

**\*If you have received a bankruptcy discharge** - *If you have filed bankruptcy and received a discharge of the above referenced debt, and if the debt was not reaffirmed in the bankruptcy case, the foregoing Notice is not an attempt to collect or offset the debt but is sent for information only and to proceed with foreclosure of the lien securing the debt.*

**\*\*If your loan is a Texas Home Equity or Reverse Mortgage Loan** - *If your loan is a Texas home equity loan or reverse mortgage, Section 50(a)(6)(C), Article XVI of the Texas Constitution provides that the loan is given without personal liability against each owner of the property and against the spouse of each owner unless the owner or spouse obtained the loan by actual fraud. This means that, absent such actual fraud, the lender may enforce its rights under the security instrument solely against the property securing the loan and it may not seek a deficiency judgment against the owner of the property or the spouse of an owner. Therefore, if your loan is a Texas home equity loan or reverse mortgage, the foregoing Notice is not an attempt to collect the debt against you personally but is provided for information only and to proceed with foreclosure of the lien securing the debt. However, the lender reserves its right to seek a deficiency in the event of actual fraud in obtaining the loan. If you have received any notice concerning this loan from anyone that claims the lender may seek a deficiency without a finding of actual fraud, this notice shall act as a "cure" of such notice.*

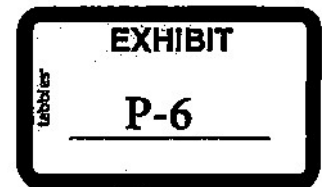
**\*\*\* If you are not a borrower, obligor or guarantor** - *If you have received the foregoing Notice and you are not a borrower, guarantor or an obligor under the terms of the loan, the notice is being sent for informational purposes only.*



R. DWAYNE DANNER  
Direct: (214) 445-2408  
ddanner@mcglinchey.com

ATTORNEYS AT LAW

CALIFORNIA FLORIDA LOUISIANA MISSISSIPPI NEW YORK OHIO TEXAS



June 20, 2016

**Certified Mail RRR**  
**No. 9414 7266 9904 2022 7469 85**  
**and Regular Mail**  
Ms. Harriett Nicholson  
2951 Santa Sabina Drive  
Grand Prairie, Texas 75052

RE: Consumer Financial Protection Bureau ("CFPB") Complaint Nos.:

- 160525-001071
- 160525-001724
- 160527-000546
- 160529-000060
- 160529-000082
- 160530-000196
- 160531-001218
- 160525-001570
- 160601-002264
- 160522-000072
- 160605-000073
- 160605-000319

Dear Ms. Nicholson:

Bank of America N.A ("Bank of America") is in receipt of your twelve (12) CFPB complaints and this letter will respond to all current complaints. While each of your complaints contains some slight difference in facts, all appear to be related to the fact that there was a prior foreclosure, a rescission of that foreclosure, and subsequently a rescission of the acceleration. Your complaints appear to question why there was a zero balance at one point in time on your account and now there is again a balance with the new servicer, Nationstar Mortgage, LLC, and various complaints related to the credit reporting.



Ms. Harriett Nicholson  
CFPB Complaints  
June 20, 2016  
Page 2

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Enclosed for your review are copies of the following documents:

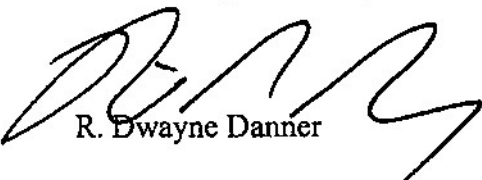
- 1) Letter to you related to prior CFPB complaints and Exhibits A through G thereto, dated May 6, 2014 (Exhibit 1);
- 2) Service release letter, dated November 12, 2014 (Exhibit 2);
- 3) Rescission of Substitute Trustee's Sale and Cancellation of Substitute Trustee's Deed, recorded in Tarrant County on July 31, 2014 (Exhibit 3).

As indicated in the attached service release letter, Bank of America ceased servicing your loan on December 1, 2014. Subsequent to that point, Nationstar Mortgage, LLC has been the servicer of your loan. The reason there was at one time a zero balance on your loan was because of the July 3, 2012, foreclosure. After the foreclosure the loan would have been moved to a zero balance due to the loan being foreclosed. Subsequently, on July 24, 2014, the rescission was filed, reinstating the lien on the property and you as the owner of the property. It would be at that time that the loan would again have a balance. Bank of America has no further interest in your loan and has not since December 1, 2014. You will need to discuss these issues with the current servicer.

Finally, as you are aware, you have a current lawsuit against Bank of America, styled *Harriet Nicholson v. Bank of America, N.A., Bank of New York Mellon, ReconTrust Company N.A.; and Melanie Cowan*, Cause No. 4:13-cv-00310-Y, pending in the United States District Court for the Northern District of Texas, Fort Worth Division. This lawsuit deals with issues related to the servicing of the loan prior to the above-referenced service transfer. Due to this matter being involved in litigation, please direct any further inquiries regarding issues that transpired prior to the service transfer date to the undersigned.

Sincerely,

McGlinchey Stafford, PLLC



R. Dwayne Danner

Enclosures

cc: **Certified Mail RRR**  
**No. 9414 7266 9904 2022 7469 92**  
Consumer Financial Protection Bureau  
PO Box 4503  
Iowa City, IA 52244



May 6, 2014

Ms. Harriet Nicholson  
2951 Santa Sabina Drive  
Grand Prairie, Texas 75052

Bank of America account ending: 5134  
CFPB Complaint number(s): 140421-000784 and 140422-000733  
Inquiry received date: April 21, 2014 and April 22, 2014

Dear Ms. Nicholson:

We are writing to inform you that Bank of America, N.A. ("Bank of America") has received your inquiries submitted to the Consumer Financial Protection Bureau related to the above referenced account. As you are aware, your dispute with Bank of America is the subject of a lawsuit currently pending in the United States District Court for the Northern District of Texas styled *Harriet Nicholson v. Bank of America, N.A., et al.*, under Civil Action No. 4:13-CV-00310-Y in which Bank of America's motion to dismiss your amended complaint is currently pending ruling from the court (the "Current Litigation").

### **Background**

Based upon Bank of America's review of its records, you obtained a purchase money loan on January 16, 2001 in the amount of \$125,048.00<sup>1</sup> which was secured by a lien on your home in Grand Prairie, Texas.<sup>2</sup> Under the terms of the promissory note, your monthly principal and interest payment was \$827.75.<sup>3</sup> On May 16, 2012, your mortgage was assigned to The Bank of New York Mellon, as Trustee for the Certificateholders of CWMBS Reforming Loan REMIC Trust Certificate Series 2005-R2 (the "Bank of New York").<sup>4</sup> Bank of America acts as a mortgage servicer for the Bank of New York.

Beginning in July, 2004, you became delinquent on your monthly mortgage payments. Consequently, on or about November 22, 2006 you obtained a loan modification which allowed you to capitalize the amount then due on your mortgage of \$15,223.12 (the "First Modification"). After the First Modification was put into place, the unpaid principal balance on your mortgage was \$146,335.14. You failed to adhere to the terms of the First Modification by timely making the required payments. Specifically, beginning in February 2007 you began failing to timely make your modified monthly payments under the First Modification.

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<sup>1</sup> See Promissory Note attached hereto as Exhibit "A".

<sup>2</sup> See Deed of Trust attached hereto as Exhibit "B".

<sup>3</sup> See Exhibit "A".

<sup>4</sup> See Assignment attached hereto as Exhibit "C".

You then entered into a second loan modification with Bank of America on or about September 25, 2009 (the "Second Modification"). Under the terms of the Second Modification, you were allowed to capitalize the amount then due on your mortgage of \$13,967.45. After the Second Modification was put into place, the unpaid principal balance on your mortgage was \$166,925.13. You then failed to adhere to the terms of the Second Modification by timely making the required payments. Specifically, beginning in May 2010 you began failing to timely make your modified monthly payments under the Second Modification.

As a result of your default under the Second Modification, Bank of America notified you on or about June 6, 2011 that you were in default of your repayment obligations, that the total amount needed to bring your account current was \$4,762.63 which was due on or before July 11, 2011, and that your failure to tender this amount would result in the acceleration of your loan in full and the commencement of the foreclosure process.<sup>5</sup> You failed to tender the amount due and owing, and Bank of America notified you on or about June 12, 2012 that your property was posted for foreclosure on July 3, 2012.<sup>6</sup> On July 3, 2012, the foreclosure occurred and the Bank of New York purchased the property.<sup>7</sup> At the time of the July 3, 2012 foreclosure, your account was paid through March, 2011.

### **Response to Your Allegations**

On or about January 24, 2014, Bank of America sent you a notification which stated the amount needed to pay your account in full was \$212,584.52.<sup>8</sup> This notification was sent to you in error and the July 3, 2012 foreclosure remains in place. Your account is not considered active and has not been assessed with any late fees or penalties that would have accrued after the July 3, 2012 foreclosure. Additionally, the January 24, 2014 correspondence indicates the notice was for informational purposes only and was not a request for payment from you.

Because you have initiated litigation against Bank of America, any inquiries must be sent to our counsel of record, Mr. Nathan T. Anderson, McGlinchey Stafford, PLLC, 2711 N. Haskell Ave., Suite 2750, LB 38 Dallas, Texas 75204. Please direct any and all future inquiries to our attorney of record.

Bank of America provided you with two modifications of your loan – one on November 22, 2006 and the other on September 25, 2009. You failed to adhere to the terms of both of these modifications when you failed to timely make the monthly payments. As a result of your default, Bank of America was authorized to enforce the terms of your loan by foreclosing upon the property on July 3, 2012.

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<sup>5</sup> See Notice of Default attached hereto as **Exhibit "D"**.

<sup>6</sup> See Sale Notice attached hereto as **Exhibit "E"**.

<sup>7</sup> See Trustee's Deed attached hereto as **Exhibit "F"**.

<sup>8</sup> See January 24, 2014 Correspondence attached hereto as **Exhibit "G"**.

Sincerely,

Kevin Castro  
Customer Advocate  
Office of the CEO and President

cc: Consumer Financial Protection Bureau (CFPB), Case numbers: 140421-000784 and  
140422-000733