

Foreclosure

Homeowners allege attorney conflict of interest

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By: Paola Iuspa-Abbott

Daniel and Alisa Cianciotto retained foreclosure defense attorney John Watson more than a year ago to help them fight lender Aurora Loan Services, which is foreclosing on their Boynton Beach home.

So when they learned two months ago that Watson also represents Littleton, Colo.-based Aurora in foreclosure suits against homeowners like them, they felt betrayed.

"I was completely devastated," Daniel Cianciotto said. "I felt like I was tricked and scammed. I never would have signed up with him if I knew he had anything to do with representing Aurora. These people are trying to throw me out of my house."

Cianciotto claims Watson never told him and his wife that the Fort Lauderdale lawyer often represents lenders, including Aurora, for the Law Offices of Marshall Watson in Fort Lauderdale, one of the nation's largest foreclosure firms, according to a court motion filed on April 8.

Marshall Watson and John Watson are brothers.

The Cianciottos contend John's work for his brother's firm represented a conflict of interest that they were not aware of. They hired another lawyer to press for Watson's disqualification and to handle their foreclosure defense against Aurora.

John and Marshall Watson did not return telephone calls seeking comment.

John Watson's lawyer, Dale Friedman, with Conroy Simberg Ganon Krevans Abel Lurvey Morrow & Schefer in Hollywood, declined to comment. John Watson hired Friedman to represent him at an April 29 hearing before Palm Beach Circuit Court Judge Meenu Sasser on a motion to disqualify him.

Web Extra:
[Motion for
 disqualification](#)

Amid a home foreclosure crisis now in its fourth year in South Florida, the Ciancottos' case illustrates how challenging the foreclosure legal process can be for beleaguered homeowners with limited knowledge of the system.

Consumers are already at a disadvantage in most residential foreclosure cases, Miami area foreclosure defense attorney Barry Cohen said.

Besides limited knowledge, many often don't have representation. In cases where they do have attorneys, the least they can expect is an advocate not beholden to lenders, he said.

"It is terribly unfair to the homeowner," Cohen said. "They don't know anything about what is going on ... whether their defense lawyer is doing a good job or not. They are very vulnerable."

Florida Bar rules state that one firm may not represent two clients at the opposite end of an issue if one client will be directly adverse to another client, or if there is a substantial risk that the representation of one client will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

A conflict can be waived under certain circumstances by a client.

Cianciotto said he never signed any conflict of interest waiver.

In early February, while John Watson was under retainer to help the couple keep their home, he appeared before a Broward Circuit Court judge on behalf of Aurora in a separate case, according to the Cianciottos' motion filed in Palm Beach Circuit Court. The motion is part of the ongoing foreclosure suit that Aurora filed against the Cianciottos in October 2008.

The couple recently retained Thomas Ice, a West Palm Beach foreclosure defense lawyer. Ice filed the motion to disqualify John Watson as their counsel and get their \$1,000 retainer back.

The motion contends the Cianciottos are not the only defense clients of John Watson who found that he appeared in court for a lender represented by his brother's firm.

"This is not the only case in which John Watson has represented defendants in cases brought by banks who are clients of the Marshall Watson firm," according to the motion.

In a March 31 letter to the Cianciottos' new lawyer, John Watson asserted he is not an attorney employed by his brother's



Daniel Cianciotto

law firm, but rather a solo practitioner who fills in for attorneys at his brother's firm when they are unable to attend hearings or depositions.

"In light of these facts, there exists no conflict of interest which violates any of the Canon of Ethics," Watson wrote in the letter sent Ice, of IceLegal in West Palm Beach.

In his motion, Ice rebutted John Watson's letter, saying Watson shares office space with his brother's firm, has an e-mail address at the firm, and that he appears as "of counsel" to the Marshall Watson firm.

The motion also points out a Florida Bar article on conflict of interest issues for "of counsel" attorneys.

"Before forming an 'of counsel' relationship, a firm should consider the fact that the 'of counsel' lawyer is treated as a firm member for conflict of interest analysis," The Florida Bar article states.

A firm's system for checking conflicts of interest must include a check against clients represented by the 'of counsel' lawyer outside the firm if the 'of counsel' lawyer engages in other practice."

Cohen, the Miami area defense attorney, said lawyers who represent banks are often biased against homeowners.

"[The lawyers] mind-set is not there," he said. "They just think that there are no defenses, that people have no rights. So they won't do anything good to defend the homeowners."

He advises owners to monitor the court docket to see whether their defense lawyers are filing motions and building a case against their lenders.

"If you notice something wrong, you'd better get rid of the lawyer and stop paying him any money."

Miami lawyer Warren Trazenfeld, who specializes in attorney malpractice law, said it as "an absolute conflict" for the same law firm and its of-counsel lawyers to represent borrowers defending against foreclosures when that same law firm represents lenders foreclosing on the borrowers.

"The poor borrower is in a terrible disadvantage because clearly the lawyer wants to favor the lender who sends it hundreds of cases," said Trazenfeld, who is not involved in the case.

After the Cianciottos filed their motion for disqualification, Watson agreed to step aside.

"After speaking with an attorney in the ethics department for The Florida Bar, I will be filing ... [a] motion to withdraw as counsel for the defendant," he wrote in an April 9 e-mail to Ice. At the time he said he wasn't sure whether he would return the \$1,000. But last week, Watson changed his mind about keeping the Cianciottos' money.

Cianciotto said he was on his way to the Palm Beach County Courthouse to do research when his wife called to tell him a FedEx package from John Watson had arrived. It contained a check for \$1,000. It also included a copy of Watson's motion to withdraw from the case.

Although the Cianciottos got what they wanted, they contend John Watson should be investigated.

"Does it mean that he is forgiven for what he's done or is the court going to look at it and say he did the wrong thing here?" Cianciotto asked.

The Florida Bar spokeswoman Karen Kirksey said John Watson has a clean disciplinary record and no complaints related to conflicts of interest have been filed against him.

Little action

Cianciotto, who owns a retractable awning business in Boynton Beach, said John Watson did not build a case against Aurora to defend his family against foreclosure, so he got nervous.

"I ended up selling almost all my furniture in the house because I was afraid," Cianciotto said. "The bank was calling and harassing me and belittling me."

Public records show that Watson filed a motion to dismiss the foreclosure lawsuit in November 2008 and later filed a motion to dismiss an amended complaint filed on June 2009.

But he never requested documents from the lender or interviewed Aurora officials to build a defense, Cianciotto said.

"In a year and a half, where is all the discovery?" he asked. "He definitely didn't represent me the way he should have."

In the March 31 letter, Watson told Ice he was about to send out "my usual discovery package to plaintiff's counsel," less than three months before Sasser was to rule on whether to allow a foreclosure auction of the Cianciottos' home.

Ice said most foreclosure defense lawyers don't wait until the summary final judgment to begin discovery.

"He should have been doing that a long time ago," he said.

A hearing on Aurora's motion for summary final judgment is set for July 20, according to the March 31 letter.

Cianciotto argues that while Watson represented him in his case against Aurora, Watson helped Aurora build a case against another homeowner being foreclosed, according to the motion.

Watson appeared on behalf of Aurora in a Feb. 8 hearing before Broward Circuit Court Judge Marc Gold in a foreclosure case against Diana Montoya. In that case, Watson appeared as "of counsel" on behalf of the Marshall Watson Firm.

Attorney Brian Tannebaum who defends lawyers in disciplinary matters and malpractice claims, said sometimes what appears to be a conflict of interest is not. He is not involved with the Cianciottos' case.

"Sometimes people allege all kind of strange things in conflicts, but technically there is no conflict," he said.

Tannebaum, with the law firm Tannebaum Weiss in Miami, also said people shouldn't read too much into Watson's decision to return the money and file a motion to withdraw.

"Is that an admission that there is a conflict?" he asked. "No."

The Cianciottos, with their two young children, bought their 2,903-square-foot home in January 2006.

They paid \$646,000 for it and took a mortgage for the entire purchase price, Cianciotto said.

The couple fell behind on their payments in March 2008. They soon worked out a payment plan and began wiring about \$3,000 a month to the lender. But the lender wired the September payment back to their bank account.

Eventually, the couple received a letter from Aurora saying there was no payment plan in place, and their loan was in default. The lender had accepted all the previous wired payments, Cianciotto said.

Aurora filed the foreclosure suit the following month.

"Would you believe something like that?" he asked. "I tried calling, but they didn't know what I was talking about."

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