

BEFORE THE ARKANSAS SECURITIES COMMISSIONER

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ARKANSAS SECURITIES DEPT.

**CASE NO. C-14-0020
ORDER NO. C-14-0020-17-OR02**

IN THE MATTER OF:

**OCWEN LOAN SERVICING, LLC
NMLS No. 1852 and OCWEN MORTGAGE
SERVICING INC., NMLS No. 1089752**

REQUEST FOR CEASE AND DESIST ORDER

The Staff of the Arkansas Securities Department (“Staff”) has received information and has in its possession certain evidence that Ocwen Loan Servicing, LLC and Ocwen Mortgage Servicing, Inc. have engaged in, are engaging in, or are about to engage in acts or practices constituting violations of state and federal law and applicable provisions of the Arkansas Fair Mortgage Lending Act (“FMLA”), Ark. Code Ann. §§23-39-501 through 23-39-518 and the Rules of the FMLA (“Rules”).

ADMINISTRATIVE AUTHORITY

1. This matter is brought in connection with violations of sections of the FMLA and is therefore properly before the Arkansas Securities Commissioner (“Commissioner”) in accordance with Ark. Code Ann. § 23-39-514(d).

PARTIES AND JURISDICTION

2. Ocwen Financial Corporation (“OFC”) is a Florida corporation with headquarters in West Palm Beach, Florida. Ocwen Mortgage Servicing, Inc. (“OMS”) is a U.S. Virgin Islands corporation with headquarters in St. Croix, US Virgin Islands and an assigned NMLS identifier number of 1089752. Ocwen Loan Servicing, LLC (“OLS”) is a Delaware limited liability company with headquarters located in West Palm Beach, Florida and an assigned

NMLS identifier number of 1852. OLS at all relevant times herein was a wholly-owned subsidiary of OMS, which is a wholly-owned subsidiary of OFC (collectively referred to herein as “Ocwen”).

3. OMS is licensed by the Commissioner as a mortgage broker and mortgage servicer under Ark. Code Ann. § 23-39-503(b).
4. OLS is licensed by the Commissioner as a mortgage broker and mortgage servicer under Ark. Code Ann. § 23-39-503(b).
5. The Arkansas Securities Department (“Department”) has jurisdiction over the licensing and regulation of persons and entities engaged in the business of residential mortgage loan servicing in Arkansas pursuant to the FMLA and the Rules.
6. Pursuant to Ark. Code Ann. § 23-39-511 the Department is authorized to inspect the books, accounts, papers, records, and files of licensees transacting business in Arkansas to determine compliance with the provisions of the Act, and any rule, or regulation issued thereunder, and with any law, rule, or regulation applicable to the conduct of the licensed business.
7. The Multi-State Mortgage Committee (“MMC”) is a committee of state mortgage regulators who have agreed to address their enforcement concerns with Ocwen in a collective and coordinated manner. On February 28, 2015, the states of Florida, Maryland, Massachusetts, Mississippi, Montana, and Washington (collectively, the “Examining States”) conducted a Multi-State Examination of Ocwen in order to determine Ocwen’s compliance with applicable federal and state laws and regulations, financial condition, and control and supervision of the licensed mortgage servicing operations. The Multi-State Examination of Ocwen covered the period of January 1, 2013 to February 28, 2015.

FACTS SUPPORTING REQUEST FOR CEASE AND DESIST ORDER

8. A mortgage servicer is entrusted with borrower mortgage payments and is required to safeguard and account for any money received. It is responsible for accepting, timely crediting, and keeping an accurate accounting of all borrower mortgage payments. Mortgage payments must be properly applied to insurance, taxes, interest, principal, and late fees, if any. The servicer must ensure that the proper amount of interest and principal is paid to the note holder and that taxes and insurance are paid as they become due. The mortgage servicer must maintain accurate records of all borrower payments and must annually calculate the proper amount that should be held in escrow to cover the upcoming year's tax and insurance payments.
9. A mortgage borrower has no choice in the entity that services their mortgage loan. The borrower has no ability to change mortgage servicers. Mortgage borrowers are simply notified that their mortgage servicing rights have been transferred and are instructed to direct their payments to a new entity.
10. During the examination, the Examining States identified several violations of state and federal law, including, but not limited to, mismanagement of borrower escrow accounts, which resulted in failure to timely pay escrow items, the failure to correctly maintain escrow account minimum balances, and the failure to correctly estimate escrow disbursement amounts. Additionally, it was determined that Ocwen's financial condition was significantly deteriorating, which impacts Ocwen's ability to remain in business.
11. The MMC examination found that Ocwen has been unable to accurately manage many of the borrower escrow accounts in its portfolio. Borrower escrow accounts are accounts that contain borrower funds held for the payment of taxes and insurance. The MMC

examination further found that Ocwen failed to make timely disbursements to pay for taxes and insurance from escrow accounts on numerous loans. The MMC examination also found that Ocwen routinely sent borrowers inaccurate, confusing and/or misleading escrow statements.

12. Ocwen lost \$472 million in 2014, \$247 million in 2015, and \$200 million in 2016. Ocwen's losses stem from declines in loan servicing income and continued high operating costs. In 2015, Ocwen sold the servicing rights to loans totaling approximately \$88 billion. Although the sale provided significant liquidity that Ocwen primarily used to reduce debt, the sale significantly reduced income and contributed to ongoing losses that have eroded capital. Ocwen's operating costs have been high due to the costs of operating deficiencies related to servicing acquisition integrations, regulatory fines, industry litigation, and ongoing monitoring required by regulatory settlements.
13. Ocwen's liquidity remains less than satisfactory due to uncertainty surrounding Ocwen's ability to maintain and refinance borrowing facilities at competitive rates in light of Ocwen's deteriorating financial condition.
14. Since 2014, Ocwen has lost a total of \$919 million and when combined with \$320 million in stock repurchases, capital has been reduced by \$1.15 billion, or 63 percent. Additionally, OCN's stock value has declined from a high of \$59.97 on October 25, 2013 to a range of \$1.50 to \$7.36 dollars per share in 2016 and \$4.24 to \$5.94 dollars per share in 2017, which has impeded Ocwen's ability to raise additional capital.
15. In 2015 and 2016, Ocwen failed to timely provide key financial documents and reconcilements of its financial statements to regulators.

16. Based on the findings of the examination and subsequent communications with OFC, the state regulators and Ocwen entered into a Memorandum of Understanding (MOU) on December 7, 2016.
17. The MOU required Ocwen to retain an independent auditing firm to perform a comprehensive audit and reconciliation of all borrower escrow accounts, with a report to be furnished by the Auditor to Ocwen and the MMC within five business days thereafter. The audit plan was to be submitted to the MMC no later than January 13, 2017.
18. Ocwen's response to the state regulators on January 13, 2017, was that the reconciliation of escrow accounts, which is paramount in ensuring the appropriate management of borrower funds, would cost \$1.5 billion and was well beyond Ocwen's financial capacity. Ocwen has suggested instead that a sample of 457 escrow accounts be reconciled out of 2.5 million active first lien escrow accounts that Ocwen has serviced since January 2013. This proposal could leave a vast number of borrowers with unaudited and inaccurate escrow accounts.
19. Ocwen services over 6,500 loans for Arkansas borrowers out of almost 1,400,000 loans serviced by Ocwen nationwide as of December 31, 2016. Ocwen's mismanagement of escrow accounts has resulted in significant harm to those Arkansas borrowers.
20. The MOU required Ocwen to provide, among other things, a viable going forward business plan that encompassed an analysis of its financial condition going forward. The purpose of the plan was to analyze Ocwen's future financial condition incorporating and encompassing all known or reasonably certain liabilities.
21. Ocwen's going forward plan submitted in response to the MOU did not provide a complete assessment of its financial condition because it excluded significant liabilities. If the going

forward plan accurately accounted for known or anticipated regulatory penalties and other operational costs, including, but not limited to, the expenses of moving to a new servicing platform and complete reconciliation of borrower escrow accounts with restitution to impacted borrowers, it would indicate the company would not continue as a going concern.

22. Ocwen has an extensive history of serious mismanagement of borrower escrow accounts resulting in significant harm to Arkansas borrowers who have no ability to avoid the harm.

APPLICABLE LAW

23. Ark. Code Ann. § 23-39-510(a) states that a licensee shall safeguard and account for any money received for, from, or on behalf of a borrower.
24. Ark. Code Ann. § 23-39-510(b) states that a licensee shall follow reasonable and lawful instructions from a borrower.
25. Ark. Code Ann. § 23-39-510(c) states that a licensee shall act with reasonable skill, care, and diligence.
26. Ark. Code Ann. § 23-39-513(3) states that it is unlawful for any person to fail to account for any funds, documents, or other thing of value obtained in connection with a mortgage loan.
27. Ark. Code Ann. § 23-39-513(6) states that it is unlawful for any person to fail to disburse funds in accordance with a written agreement to service a mortgage loan.
28. Ark. Code Ann. § 23-39-513(7) states that it is unlawful for any person to service a loan that is not in good faith or fair dealing or is misleading or deceptive.
29. Ark. Code Ann. § 23-39-513(11) states that it is unlawful for any person to service a loan in violation of any state or federal law.

30. Ark. Code Ann. § 23-39-513(15) states that is unlawful for any person to fail to make payments in a timely manner from an escrow account held for the borrower to pay insurance, taxes, and other charges concerning the mortgage property without good cause, and the failure to pay results in late penalties or other negative activity.

CONCLUSIONS OF LAW

31. Ocwen has not complied and is not complying with the duties of a mortgage servicer under Arkansas law as required by Ark. Code Ann. § 23-39-510, including:

- a. Failing to safeguard and account for any money handled for the borrower;
- b. Failing to follow reasonable and lawful instructions from the borrower; and
- c. Failing to act with reasonable skill, care, and diligence.

32. Ocwen has engaged in, is engaging in, or is about to engage in, acts or practices that support a finding that the company is not operating honestly or fairly as required by Ark. Code Ann. § 23-39-513(7).

33. Ocwen is violating prohibitions governing the conduct of an Arkansas mortgage broker and mortgage servicer including, but not limited to:

- a. Servicing a loan in violation of any state or federal law, Ark. Code Ann. § 23-39-513(11);
- b. Failing to comply with the mortgage loan servicing transfer, escrow account administration, or borrower inquiry response requirements imposed by the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. 2601, et seq., and regulations adopted under that act, Ark. Code Ann. § 23-39-513(11);
- c. Failing to account for any funds, documents, or other thing of value obtained in connection with a mortgage loan, Ark. Code Ann. § 23-39-513(3);

- d. Failing to disburse funds in accordance with a written agreement to service a mortgage loan, Ark. Code Ann. § 23-39-513(6); and
- e. Failing to make all payments in a timely manner from any escrow account held for the borrower for insurance, taxes, and other charges with respect to the property, Ark. Code Ann. § 23-39-513(15).

34. Ocwen's failure to comply with Arkansas law has caused and will continue to cause irreparable harm to Arkansas borrowers who cannot avoid the harm. The public interest will be irreparably harmed by delay in issuing a cease and desist order to Ocwen.

LEGAL AUTHORITY TO ISSUE CEASE AND DESIST ORDER

35. Ark. Code Ann. § 23-39-514(e)(1) provides that whenever it appears to the Commissioner, upon sufficient grounds or evidence satisfactory to the Commissioner, that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of the FMLA, or any rule or order under the FMLA, the Commissioner may summarily order the person to cease and desist from the act or practice.

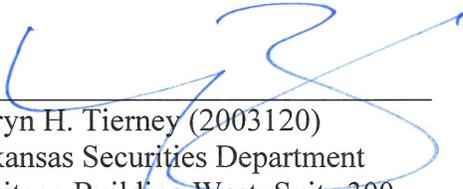
PRAYER FOR RELIEF

WHEREFORE, the Staff respectfully requests that the Commissioner summarily order Ocwen Mortgage Servicing, Inc. and Ocwen Loan Servicing, LLC to immediately cease and desist from:

- (a) acquiring new mortgage servicing rights, and acquiring or originating new residential mortgages which will be serviced by OMS and/or OLS;
 - i. Until Ocwen can show it is a going concern by providing a financial analysis that encompasses all of the liabilities Ocwen currently maintains, as well as liabilities it has knowledge it will incur in the course of its business;

- ii. Show that it is a going concern by providing a financial analysis that encompasses all of the liabilities Ocwen currently maintains, as well as liabilities it has knowledge it will incur in the course of its business;
 - iii. Provide the Department with a third party audit of its Arkansas escrow accounts showing that borrower funds are appropriately collected, properly calculated, and disbursed accurately and timely; and make any and all corrections of whatever type necessary to remedy all mistakes, errors, and improprieties occurring due to Ocwen's actions; and
- (b) and for all other relief to which the Staff may be entitled.

Respectfully Submitted,



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