

Bank of America pays debt instead of losing furniture



Written by
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Two burly Collier County sheriff's deputies and a homeowner's attorney strode into the Bank of America branch on Davis Boulevard in Naples with a court order and an ultimatum for Manager Erich Fahrner.

Fahrner's choice: Write out a check for \$2,534 in attorney's fees for the couple wrongfully slapped with a foreclosure lawsuit by the bank, or a William C. Hoff Storage moving crew waiting outside would start hauling out furniture to be sold at public auction.

"I'm leaving the building with either cash, a check or a whole lot of furniture," attorney Todd Allen said just before walking in.



Attorney Todd Allen, waits outside of a branch of Bank of America in Naples while members of the Collier County Sheriff's Office delivered a writ of execution for his clients, Waren and Maureen Nyerges Friday, June 3, 2011 The bank wrote a check for an undisclosed amount of the money to the sheriff's office to satisfy the debt. / Andrew West/news-press.com



Attorney Todd Allen, talks to client and Naples resident, Maureen Nyerges after members of the Collier County Sheriff's Office delivered a writ of execution to the Bank of America in Naples Friday 6/3/2011.

After an hour of talks between the deputies and Fahrner, bank officials opted for writing the check. The check is made out to the sheriff's office, which will then pay the couple: retired Bay Village, Ohio, police Sgt. Warren Nyerges and his wife, Maureen. Collier court documents show that they bought a house in Golden Gate from the bank for \$165,000 in 2009. They paid cash, no mortgage.

But somehow the bank and its attorney, the David J. Stern law firm, became convinced that the couple had a mortgage and was behind in the payments, Allen said. Bank of America filed for foreclosure Feb. 16, 2010.

The bank voluntarily dropped the case two months later, but never paid the couple for Allen's fee despite an order by Circuit Judge Cynthia Pivacek.

Allen said he tried numerous times to contact Stern and the bank, but got no response and eventually had to obtain a writ of enforcement to seize the assets.

"I don't know of any other way way we could have done it," Allen said, noting that he tried numerous times to get the bank to satisfy the debt, including an April 13 registered letter to Bank of America's general counsel, Ed O'Keefe.

The story drew chuckles and kudos for the Nyergeses and their attorney from laymen and lawyers alike, and no sympathy for the bank.

"It's sad it had to go that far," said Karen Bas, a hairstylist at Kings Lake Hair Salon in the strip shopping mall adjacent to the bank branch. "It takes a lot for one person to get what's rightfully theirs."

Another Kings Lake hairstylist, Alicia Withrow, said her clients often tell her of mistreatment at the hands of banks. "We've lost clients who are moving out of the area because they lost their homes," Withrow said,

Attorneys who handle a lot of foreclosures said actions such as Allen's are a recent development.

"It is a new thing to get orders granting lawyer fees against banks in this setting, so this kind of collection is likewise new," said April Charney, a Jacksonville-area legal aid attorney who's an expert on foreclosure issues.

"We apologize to Mr. Nyerges that there was a delay in receiving the funds," said Christine Toth, Southeast media relations manager for the bank. "The original request went to an outside attorney who is no longer in business."

But experts said the incident revealed problems in Bank of America's operations. "How embarrassing is that?" Fort Myers-based foreclosure defense attorney Kevin Jursinski said with a chuckle. "Clearly they legally should have paid it off. It seems like an oversight of BOA or whoever was representing them."

Actually, nobody was representing them on Friday, Allen said: Stern had withdrawn from the case a week before and hadn't been replaced.

John McIlwain, senior resident fellow for housing for the private, nonprofit Urban Land Institute, said bluntly that "somebody should get fired" at Bank of America, preferably a higher-up official.

Bad behavior by creditors and debtors alike in the foreclosure crisis is undermining the sense of fair play that has to exist for society to function, McIlwain said.

"We have to sort through who's being screwed and who's playing the system," McIlwain said. "It's ultimately not healthy for society that people are trying to play these games."

1:02 p.m.

Two Collier County sheriff's deputies and a creditor's attorney arrived this morning at the Naples business, ready to start hauling away furniture to satisfy an unpaid debt.

After meeting with the deputies for about an hour, the debtor finally cut a check to cover the debt.

It's a common occurrence in economically beaten-down Southwest Florida — except that the deadbeat company was Bank of America.

The creditors were Maureen and Warren Nyerges, a Golden Gate couple who bought their home from Bank of America for \$165,000 two years ago.

Court documents show that the bank mistakenly sued them for foreclosure and didn't admit its mistake until late last year.

Even after dropping the suit, the bank ignored requests by the couple to be reimbursed for their attorney's fees of \$2,534, said Todd Allen, their lawyer.

Allen said he's still not sure the debt's been satisfied because he wasn't allowed in on the discussions between the deputies and bank branch manager Erich Fahrner that resulted in the check to the sheriff's department.

Fahrner "indicated the writ was satisfied" but refused to say more, Allen said after the deputies left.

"I'm disappointed" that the discussions were held without him, Allen said.

He said getting a court order to remove property from the bank was a dramatic but necessary move.

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