

# PUBLICATION

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## No Damages, No Award: Loan Servicer Prevails in Alleged RESPA Violation Suit

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**The only thing better than prevailing in court is not going to court in the first place. A recent decision from the Eleventh Circuit illustrates how an alleged violation of the Real Estate Settlement Procedures Act (RESPA) spurred lengthy litigation against a loan servicing company. It began with what the plaintiff alleged was an insufficient response to a request for information (RFI) and ended with the Circuit Court drawing some bright lines around what constitutes recoverable damages.**

Although the loan servicer ultimately prevailed, the case serves as a reminder that servicers should be diligent in properly responding to RFIs in order to minimize their risk of litigation arising from alleged RESPA violations.

On September 22, 2017, the Eleventh Circuit Court of Appeals issued an opinion in *Jaki Baez v. Specialized Loan Servicing, LLC (SLS)* discussing what constitutes "actual damages" in a case alleging a violation of the provisions of Regulation X, 12 C.F.R. part 1024, which implements the Real Estate Settlement Procedures Act (RESPA). Specifically, Ms. Baez alleged that SLS failed to comply with its obligation to provide her certain information upon request as mandated by RESPA.

Baez alleged that SLS violated the regulation that creates a duty for a loan servicer to respond to a borrower's written request for information, or "RFI." Under the provision that Baez accused SLS violated, within 30 days of receipt of an RFI, the servicer must either provide the requested information or, after a reasonable investigation, notify the borrower in writing that it has determined that the information is not available and explain the basis for its decision. A servicer's failure to comply with its RESPA obligations allows a borrower to recover any actual damages as a result of the failure and any additional damages, not to exceed \$2,000, if there is a pattern or practice of noncompliance with RESPA.

Ms. Baez hired an attorney to negotiate a loan modification with SLS and defend against foreclosure. She paid her attorney a monthly retainer of \$400.00. The attorney sent an RFI to SLS, and when SLS allegedly sent an insufficient response, the attorney filed a lawsuit alleging a violation of RESPA. The alleged damages were the \$4.70 postage costs and the attorney's time for reviewing the allegedly insufficient response.

The district court granted summary judgment to SLS because Baez failed to properly allege damages and the Eleventh Circuit affirmed. The Court held that for actual damages to be a result of a servicer's noncompliance, the plaintiff must present evidence to establish a causal link between the servicer's noncompliance and her damages. The postage used to send the RFI would have been incurred whether or not SLS adequately responded, and the fact that the attorney was being paid a flat monthly retainer of \$400.00 meant that Baez did not incur any attorney's fees that she would not have incurred but for the inadequate response to the RFI.

The Eleventh Circuit made it clear that any expenses that were not directly caused by the RESPA violation itself do not constitute recoverable damages under RESPA. However, the Court left the door open to arguments that non-pecuniary damages such as mental anguish, pain and suffering, and embarrassment can constitute recoverable damages for a RESPA violation. The Court declined to specifically hold whether mental anguish damages were recoverable because Ms. Baez did not properly preserve the issue and because her claim was not causally connected to the alleged RESPA violation; rather, it was based on anguish allegedly caused throughout her entire dealings with SLS. Additionally, the Court declined to rule on whether

Ms. Baez's failure to obtain the information she sought constituted damages because she did not raise that argument in the trial court, and thus, failed to preserve it.

Finally, the Court declined to address SLS's argument that its obligation to respond to requests for information was limited to requests for information relating to "servicing" of the loan, which SLS contended does not include requests related to loan modification like the ones submitted to SLS by Baez. The Court declined to address the issue because the district court did not reach this issue, and the Court found it unnecessary to resolve the case because Baez failed to establish damages whether or not there was a RESPA violation.

While this case is helpful because it makes clear that actual damages causally flowing from the RESPA violation are required to state a claim, it could have presented additional claims had Baez's attorney properly preserved all arguments. While RESPA was meant to be a consumer protection statute, many attorneys are using it as a fee generator based on the statute's fee provision with little benefit to the client. Therefore, servicers need to be diligent in properly responding to RFIs to avoid litigation.

### **Key Takeaways:**

A plaintiff seeking relief for a RESPA violation must show actual damages that were directly caused by the RESPA violation in order to recover. Pecuniary or non-pecuniary damages that occurred without a violation or due to a course of dealing separate from the violation are not sufficient. The Eleventh Circuit has yet to determine whether it will permit non-pecuniary damages in RESPA cases or whether a document that requests information regarding loan modifications constitutes a request for information under RESPA that triggers a duty for a servicer to respond.