

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 30**

WATERSTONE MORTGAGE CORPORATION

and

Case 30-CA-073190

PAMELA E. HERRINGTON, AN INDIVIDUAL

JOINT MOTION AND STIPULATION OF FACTS

This is a joint motion by the parties to the above-captioned case, Waterstone Mortgage Corporation (Respondent or Employer); Pamela E. Herrington (Charging Party); and Counsel for the Acting General Counsel, to transfer the proceedings to the National Labor Relations Board (Board), to waive a hearing and decision by the Administrative Law Judge, and to submit this case directly to the Board pursuant to Section 102.35(a)(9) of the Board's Rules and Regulations for a decision based on the record of this case as defined herein. The granting of the motion will effectuate the purposes of the Act and avoid unnecessary costs and delay.

If this motion is granted, the parties agree to the following:

1. The record in this case consists of the Charge, First Amended Charge, Complaint and Notice of Hearing, Answer, Amended Complaint, Answer to the Amended Complaint, Order Rescheduling Hearing, Order Rescheduling Hearing, Order Rescheduling Hearing, Order Postponing Hearing Indefinitely, Joint Motion and Stipulation of Facts (and its attachments), Statement of Issues Presented (contained herein), and each party's Statement of Position.

2. This case is submitted directly to the Board for issuance of findings of fact, conclusions of law, and an Order.

3. The parties waive a hearing, findings of fact, conclusions of law and order by an Administrative Law Judge.

4. The Board should set a time for the filing of briefs.

STIPULATION OF FACTS

1. The charge in this proceeding was filed by the Charging Party on January 26, 2012, and a copy was served by mail on Respondent on that same date. Respondent acknowledges receipt of the charge. A copy of the Charge and its service sheet are attached as Exhibit A.

2. On April 26, 2012, the Regional Director for Region Thirty of the National Labor Relations Board (Board) issued a Complaint and Notice of Hearing in this proceeding alleging the Respondent violated the National Labor Relations Act (Act). Respondent and the Charging Party each acknowledge receipt of a copy of the Complaint and Notice of Hearing, which was served on both by mail on that same date. A copy of the Complaint and Notice of Hearing and its service sheet are attached as Exhibit B.

3. Respondent filed an Answer to Complaint on May 10, 2012. A copy of Respondent's Answer with Certificate of Service is attached as Exhibit C. The Answer was served by electronic filing and electronic mail on the Charging Party's Attorney on May 10, 2012. Counsel for the Acting General Counsel and the Charging Party acknowledge receipt of the Answer.

4. On June 7, 2012, the Regional Director for Region Thirty of the National Labor Relations Board issued an Order Rescheduling Hearing, a copy of which, along with its service sheet, is attached as Exhibit D. Respondent and the Charging Party each

acknowledge receipt of the Order Rescheduling Hearing, which was served on both by mail on that same date.

5. On July 25, 2012, the Regional Director for Region Thirty of the National Labor Relations Board issued an Order Rescheduling Hearing, a copy of which, along with its service sheet, is attached as Exhibit E. Respondent and the Charging Party each acknowledge receipt of the Order Rescheduling Hearing, which was served on both by mail on that same date.

6. On August 1, 2012, the Charging Party filed a First Amended Charge in this proceeding, and a copy was served by mail on Respondent on August 2, 2012. Respondent acknowledges receipt of the charge. A copy of the First Amended Charge and its service sheet are attached as Exhibit F.

7. On August 6, 2012, the Regional Director for Region Thirty of the National Labor Relations Board issued an Order Rescheduling Hearing, a copy of which, along with its service sheet, is attached as Exhibit G. Respondent and the Charging Party each acknowledge receipt of the Order Rescheduling Hearing, which was served on both by mail on that same date.

8. On August 10, 2012, the Regional Director for Region Thirty of the Board issued an Amended Complaint and Notice of Hearing in this proceeding alleging the Respondent violated the Act. Respondent and the Charging Party each acknowledge receipt of a copy of the Amended Complaint and Notice of Hearing, which was served on both by mail on that same date. A copy of the Amended Complaint and Notice of Hearing and its service sheet are attached as Exhibit H.

9. Respondent filed an Answer to the Amended Complaint on August 24, 2012. A copy of Respondent's Answer to the Amended Complaint with Certificate of Service is attached as Exhibit I. The Answer to the Amended Complaint was served by electronic filing and electronic mail on the Charging Party's Attorney on August 24, 2012. Counsel for the Acting General Counsel and the Charging Party acknowledge receipt of the Answer to the Amended Complaint.

10. On August 24, 2012, the Regional Director for Region Thirty of the Board issued an Order Postponing Hearing Indefinitely, a copy of which, along with its service sheet, is attached as Exhibit J. Respondent and the Charging Party each acknowledge receipt of the Order Postponing Hearing Indefinitely, which was served on both by mail on that same date.

11. (a) At all material times, Respondent, a Wisconsin corporation, with a principal office and place of business in Pewaukee, Wisconsin, and with various other office locations throughout the United States including in Gilbert, Arizona and Scottsdale, Arizona, has been engaged in the business of residential mortgage lending.

(b) During the calendar year ending December 31, 2011, Respondent, in conducting its operations described above in paragraph 11(a), derived gross revenues in excess of \$500,000.

(c) In conducting its operations during the time period described above in paragraph 11(b), Respondent performed services valued in excess of \$50,000 in States other than the State of Wisconsin.

12. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

13. (a) At all material times until July 10, 2012, Chris Randall held the position of Respondent's Area Manager for Arizona and was a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

(b) At all material times, Eric J. Egenhoefer held the position of Respondent's President and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

14. (a) Since about April 7, 2011, Respondent has promulgated, maintained, and enforced employment agreements with its current and former employees, which includes the following provision regarding individual arbitration (individual arbitration provision):

...Arbitration/Governing Law/Consent to Jurisdiction . . . In the event the parties cannot resolve a dispute by the ADR provisions contained herein, any dispute between the parties concerning the wages, hours, working conditions, terms, rights, responsibilities or obligations between them or arising out of their employment relationship shall be resolved through binding arbitration in accordance with the rules of the American Arbitration Association applicable to employment claims. Such arbitration may not be joined with or join or include any claims by any persons not party to this Agreement. . . .

(b) Between about April 7, 2011 and about July 23, 2012, Respondent required employees to enter into employment agreements containing the individual arbitration provision referenced in paragraph 14(a) as a condition of employment.

(c) As an example of such an agreement, Respondent's and the Charging Party's employment agreement dated April 7, 2011, which contains the

individual arbitration provision referenced in paragraph 14(a), is attached as Exhibit K. (See Exhibit K at page 6, ¶ 13.)

(d) Respondent contends that the individual arbitration provision referenced in paragraph 14(a) does not permit or contemplate a judicial forum for class and collective claims. In other words, Respondent contends that any dispute arising under the employment agreements referenced in paragraph 14(a) must be brought in an arbitral forum and further precludes any joint, collective, or class action through the arbitral forum.

(e) Although the agreements referenced in paragraph 14(a) have been replaced by other agreements as of about July 23, 2012, Respondent expressly reserves its right to enforce the individual arbitration provision described above in paragraph 14(a) for any and all disputes which arise under the employment agreements referenced in paragraph 14(a).

15. (a) On November 28, 2011, the Charging Party, individually and on behalf of all others similarly situated, filed a Class Action Complaint against Respondent in the United States District Court for the Western District of Wisconsin as case number 3:11-cv-00779-bbc, a copy of which is attached as Exhibit L.

(b) On December 12, 2011, Respondent filed a Motion to Dismiss or, In the Alternative, Motion to Compel Arbitration and Motion for Costs in the United States District Court for the Western District of Wisconsin for case 3:11-cv-00779-bbc, a copy of which is attached as Exhibit M. For its Motion to Dismiss, Respondent, in part, relied upon the individual arbitration provision referenced in paragraph 14(a), stating, in significant part:

...3. However, the terms of the [Employment] Agreement make unmistakably clear that “any dispute between the parties concerning the wages, hours, working conditions, terms, rights, responsibilities or obligations between them or arising out of their employment relationship shall be resolved through binding arbitration.” . . . The [Employment] Agreement specifically precludes collective actions and class actions in arbitration by stating, “Such arbitration may not be joined with or join or include any claims by any persons nor party to this Agreement.”

(c) On March 16, 2012, the Honorable District Court Judge Barbara B. Crabb issued an Opinion and Order in case 3:11-cv-00779-bbc, a copy of which is attached as Exhibit N, granting in part Respondent’s Motion to Dismiss referenced in paragraph 15(b). Among other things, and in significant part, Judge Crabb considered the Charging Party’s and Respondent’s arguments relating to the National Labor Relations Act, applied *D.R. Horton, Inc.*, 357 NLRB No. 184 (Jan. 3, 2012) and found the individual arbitration provision referenced above in paragraph 14(a) to be invalid under the Act, severed the individual arbitration provision referenced above in paragraph 14(a) from the rest of the Charging Party’s and Respondent’s employment agreement, granted Respondent’s motion to stay the case pending arbitration, and ordered that: “...Plaintiff Pamela Herrington’s claims must be resolved through arbitration, but she must be allowed to join other employees in her case. . . .” (See Exhibit N, page 18.)

(d) On March 23, 2012, the Charging Party, individually and on behalf of all others similarly situated, demanded arbitration against Respondent with the American Arbitration Association (AAA) as case number AAA No. 51 160 00393 12, a copy of which is attached as Exhibit O.

(e) On July 11, 2012, Arbitrator George C. Pratt issued a Partial Final Award on Clause Construction in case AAA No. 51 160 00393 12, a copy of which is

attached as Exhibit P. Considering Respondent's and the Charging Party's differing arguments as to whether the arbitration could proceed as a class action, Arbitrator Pratt decided, in pertinent part, and based in part on Judge Crabb's Order referenced in paragraph 15(c), that the Charging Party's arbitration can proceed on behalf of a class. Arbitrator Pratt stayed the arbitration so that the parties could seek review of the Partial Final Award on Clause Construction in a court of competent jurisdiction. (See Exhibit P at page 9.)

(f) On August 10, 2012, Respondent filed with the United States District Court for the Western District of Wisconsin an Application for Review of Arbitrator's Partial Final Award on Clause Construction, a copy of which is attached as Exhibit Q. Respondent expressly reserves its right to appeal Judge Crabb's decision referenced in paragraph 15(c), and specifically her application, and the validity, of *D.R. Horton, Inc.*, 357 NLRB No. 184 (Jan. 3, 2012). The Charging Party disputes whether Respondent has a right to appeal Judge Crabb's decision referenced in paragraph 15(c).

(g) The United States District Court for the Western District of Wisconsin has issued a briefing schedule and the Charging Party is opposing Respondent's Application for Review of Arbitrator's Partial Final Award on Clause Construction.

16. (a) Since about July 23, 2012, Respondent has promulgated, maintained, and enforced an Amendment to the Employee Agreement with its current employees and former employees employed as of July 23, 2012, which offered the employees Option A and Option B, one of which they could choose by July 31, 2012 to supplant the individual arbitration agreement referenced in paragraph 14(a).

Respondent's letter to employees introducing and attaching Options A and B is attached as Exhibit R. Options A and B are jointly attached as Exhibit S.

(b) Since about July 23, 2012, Respondent has required employees to enter into either Option A or Option B referenced in paragraph 16(a) as a replacement to the individual arbitration provision referenced in paragraph 14(a) as a condition of employment.

(c) Respondent's intention in introducing Options A and B to its current and future employees was to eliminate the individual arbitration provision referenced in paragraph 14(a) as of July 31, 2012.

(d) Respondent's intention in introducing Options A and B to its current and future employees was to limit the employees' options to either Option A or Option B, with no alternative agreements that would differ in substance.

(e) Since about July 23, 2012, and at all material times, Respondent has entered into an employment agreement containing Option A referenced in paragraph 16(a) with at least one of its current employees.

(f) On August 1, 2012, the Charging Party filed with the AAA Claimant's Motion for a Protective Order, Temporary Restraining Order, and Preliminary Injunction Related to Waterstone Soliciting Waivers from Class Members of their Right to Participate in this Action, with Brief in Support, a copy of which is attached as Exhibit T. On August 10, 2012, Respondent filed with the AAA Respondent Waterstone Mortgage Corporation's Jurisdictional Opposition to Claimants' Motion for a Protective Order, Temporary Restraining Order, and Preliminary Injunction, a copy of which is attached as Exhibit U. By e-mail dated August 14, 2012 sent at about 3:38 p.m. Eastern

Time (ET), Arbitrator Pratt ordered that Respondent file any additional opposition it may have to the Charging Party's motion by August 23, 2012 and ordered that the Charging Party file a reply brief by August 23, 2012. By e-mail dated August 14, 2012 sent at about 4:22 p.m. ET, Respondent requested a one-week extension for aforementioned deadlines. By e-mail dated August 14, 2012, sent at about 4:50 p.m. ET, Arbitrator Pratt granted Respondent's request. The aforementioned e-mails in this paragraph dated August 14, 2012 are attached as Exhibit V.

17. The issues presented in this matter are:

(a) Whether Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act by, from about April 7, 2011 until about July 23, 2012, requiring, as a condition of employment, employees to enter into employment agreements containing the individual arbitration provision referenced in paragraph 14(a) and by, since July 23, 2012, continuing to enforce the employment agreements containing the individual arbitration provision referenced in paragraph 14(a); and

(b) Whether Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act by, since about July 23, 2012, requiring, as a condition of employment, employees to choose either Option A or Option B referenced in paragraph 16(a).

18. Counsel for the Acting General Counsel's Statement of Position is attached as Exhibit W.

19. Respondent's Statement of Position is attached as Exhibit X.

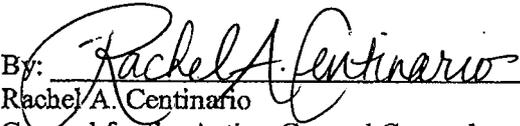
20. The Charging Party's Statement of Position is attached as Exhibit Y.

21. This Stipulation is made without prejudice to any objection that any party may have as to the relevancy of any facts stated herein.

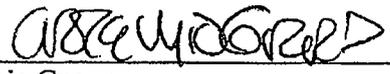
Dated: August 28, 2012

Respectfully submitted,

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