

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

FORMAL FILE

WATERSTONE MORTGAGE CORPORATION

and

Case 30-CA-073190

PAMELA E. HERRINGTON, AN INDIVIDUAL

AMENDED COMPLAINT AND NOTICE OF HEARING

This Amended Complaint and Notice of Hearing, which is based on a charge filed by Pamela E. Herrington, an Individual, (Charging Party) is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (Board), and alleges that Waterstone Mortgage Corporation (Respondent) has violated the Act by engaging in the following unfair labor practices:

1. (a) The charge in this proceeding was filed by the Charging Party on January 26, 2012, and a copy was served by regular mail on Respondent on that same date.

(b) The first amended charge in this proceeding was filed by the Charging Party on August 1, 2012, and a copy was served by regular mail on Respondent on August 2, 2012.

2. (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 2(a), derived gross revenues in excess of \$500,000.

(c) In conducting its operations during the time period described above in paragraph 2(b), Respondent performed services valued in excess of \$50,000 in States other than the State of Wisconsin.

(d) 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.

3. At all material times the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act:

Chris Randall	- Area Manager
Eric J. Egenhoefer	- President
Debbie Hernandez	- Assistant to Chris Randall and/or Human Resources Representative
Linda Hall	- Scottsdale, Arizona, Branch Manager

4. (a) About April 2011, and at all material times, Respondent has promulgated, maintained, and enforced individual arbitration agreements with its current and former employees, which include the following provision in paragraph 13:

...In the event that 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) Since about April 2011, and at all material times, Respondent has required employees to enter into the agreements referenced in paragraph 4(a) as a condition of employment.

5. (a) About July 23, 2012, and at all material times, Respondent has promulgated, maintained, and enforced individual arbitration agreements with its current and former employees, which required, by introductory letter dated July 23, 2012, employees to choose to adhere to one of two options, Option A or Option B, by about July 31, 2012. The introductory letter dated July 23, 2012 is attached as Exhibit 1, Option A is attached as Exhibit 2, and Option B is attached as Exhibit 3.

(b) Since about July 23, 2012, and at all material times, Respondent has required employees to enter into either Option A or Option B referenced in paragraph 5(a) as a condition of employment.

6. By the conduct described above in paragraphs 4 and 5 and their respective subparagraphs, 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.

7. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Amended Complaint. The answer must be **received by this office on or before August 24, 2012 or postmarked on or before August 23, 2012.**

Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

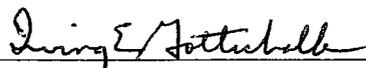
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by

traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Amended Complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on August 28, 2012, at 9:00 a.m. at the **Hearing Room, National Labor Relations Board, 310 W. Wisconsin Avenue, Suite 700W, Milwaukee, WI**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Amended Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: August 10, 2012



Irving E. Gottschalk, Regional Director
National Labor Relations Board
Region 30
310 West Wisconsin Avenue, Suite 700W
Milwaukee, WI 53203

Dear Loan Originators,

In an effort to take into consideration recent nationwide legal developments in the way courts will analyze and interpret arbitration provisions contained in employment agreements, I am providing you with the attached proposed Amendment to your Loan Originator Employment Agreement. Please read the Amendment carefully as you will have the option of replacing the paragraph in your Loan Originator Employment Agreement entitled "Arbitration/Governing Law/Consent to Jurisdiction" with either Option A or Option B as set forth in the attached Amendment. The main difference between the two options, which you should carefully review, is that Option A will allow you to pursue any claims against Waterstone in arbitration in your home state, while Option B will allow you to pursue any claims against Waterstone in the courts of Wisconsin (or in any other forum directed by those courts). Under either Option A or Option B, you will be permitted to join together with other Waterstone employees in pursuit of any claims against Waterstone.

In addition, it is also important that you realize that by executing the attached Amendment you may jeopardize any right you may have to join an arbitration proceeding filed by a former Waterstone employee, Pamela Herrington, alleging that loan officers were not paid properly and were not treated in accordance with their employment agreements. You are included in the description of the class in the arbitration proceeding and executing the Amendment will impact your right to potentially join that arbitration against Waterstone.

Should you have any questions regarding the Amendment, please contact your Branch Manager. I would appreciate it if you would complete and return this Amendment to your Branch Manager by July 31, 2012. Thank you for your cooperation and understanding.

Eric Egenhoefer

Enclosure

cc: All Branch Managers

Exhibit 1

JULY 23, 2012 AMENDMENT TO
LOAN ORIGINATOR EMPLOYMENT AGREEMENT

This Amendment pertains to the paragraph of the Loan Originator Employment Agreement entitled, "Arbitration/Governing Law/Consent to Jurisdiction", which is hereby deleted and shall be replaced by one of the following two options, as elected by the Employee and indicated below:

Option A

ARBITRATION/GOVERNING LAW/CONSENT TO JURISDICTION

This Agreement is made and entered into in the State of Wisconsin and shall in all respects be interpreted, enforced, and governed by and in accordance with the laws of the State of Wisconsin. By execution of this Agreement, the parties are consenting to personal jurisdiction and venue in any state in the United States of America with respect to matters concerning the employment relationship between them.

In the event the parties cannot resolve a dispute concerning the wages, hours, working conditions, terms, rights, responsibilities or obligations between them or arising out of their employment relationship and/or this Agreement, including the determination of the scope or applicability of this agreement to arbitrate, they shall submit such dispute to binding arbitration administered by JAMS Arbitration and Mediation Services ("JAMS") and proceeding in the state and county where Employee worked for Employer and/or where Employee lives. Employee also may join or be joined by other employees in any JAMS arbitration exclusively through the procedures set forth in Federal Rules of Civil Procedure 20 and 24. The Arbitrator must otherwise apply the law applicable to such claims.

Except as otherwise set forth herein, the parties will share equally in the cost of such Arbitration, and shall be responsible for their own attorneys' fees, provided that if the Arbitration is brought pursuant to any statutory claim for which attorneys fees were expressly recoverable, the Arbitrator shall award such attorneys' fees and costs consistent with the statute at issue.

Nothing herein shall preclude a party from seeking temporary injunctive relief in a court of competent jurisdiction to prevent irreparable harm, pending any ruling obtained through Arbitration.

Nothing herein shall preclude or limit Employee from filing any complaint or charge with a State, Federal, or Court agency.

Option B

GOVERNING LAW/CONSENT TO JURISDICTION

This Agreement is made and entered into in the State of Wisconsin and shall in all respects be interpreted, enforced, and governed by and in accordance with the laws of the State of Wisconsin. By execution of this Agreement, the parties are consenting to personal jurisdiction and venue in Wisconsin with respect to matters concerning the employment relationship between them.

In the event the parties cannot resolve a dispute concerning the wages, hours, working conditions, terms, rights, responsibilities or obligations between them or arising out of their employment relationship, they shall bring such litigation in either (1) the United States District Court for the Western District of Wisconsin; (2) only if subject matter jurisdiction is lacking, in a Wisconsin State Court located in Waukesha County; or (3) any other forum to the extent it is directed by the foregoing court(s).

Nothing herein shall preclude a party from seeking temporary injunctive relief in a court of competent jurisdiction to prevent irreparable harm, pending any ruling obtained through Arbitration.

Nothing herein shall preclude or limit Employee from filing any complaint or charge with a State, Federal, or Court agency.

I ELECT OPTION _____.

Loan Officer Signature

Branch Manager Signature

Loan Officer Name

Branch Manager Name

NMLS ID

Date

Accepted:

Waterstone Mortgage Corporation

By: _____
Eric J. Egenhoefer - President

Date

NATIONAL LABOR RELATIONS BOARD
NOTICE

Amended C&NOH August 10, 2012

Case 30-CA-073190

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour and place indicated. Postponements will not be granted unless good and sufficient grounds are shown and the following requirements are met:

- 1) *The request must be in writing. An original and two copies must be served on the Regional Director;*
- 2) *Grounds thereafter must be set forth in detail;*
- 3) *Alternatives dates for any rescheduled hearing must be given;*
- 4) *The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and*
- 5) *Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.*

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

CERTIFIED

ARI KAREN, ESQ.
OFFIT/KURMAN
SUITE 200
8171 MAPLE LAWN BOULEVARD
MAPLE LAWN, MD 20759

RUSSELL B. BERGER, ESQ.
OFFIT/KURMAN
300 E. LOMBARD STREET
SUITE 2010
BALTIMORE, MD 21202

DAN GETMAN, ESQ.
MATTHEW DUNN, ESQ.
ARTEMIO GUERRA, ESQ.
GETMAN & SWEENEY, PLLC
9 PARADIES LN
NEW PALTZ, NY 12561-4017

REGULAR

PAMELA E. HERRINGTON
27035 N 56TH ST
SCOTTSDALE, AZ 85266-8723

WATERSTONE MORTGAGE
CORPORATION
1133 QUAIL CT
PEWAUKEE, WI 53072-3750

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

(OVER)

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

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

AB
Rochel

WATERSTONE MORTGAGE CORPORATION

Case 30-CA-073190

and

PAMELA E. HERRINGTON, an Individual

AFFIDAVIT OF SERVICE OF: Amended Complaint and Notice of Hearing, dated August 10, 2012.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **August 10, 2012**, I served the above-entitled document(s) by **certified or regular mail**, as noted below, upon the following persons, addressed to them at the following addresses:

CERTIFIED MAIL

REGULAR MAIL

ARI KAREN , ESQ.
OFFIT/ KURMAN, ATTORNEYS AT LAW
8171 MAPLE LAWN BLVD
STE 200
MAPLE LAWN, MD 20759-2519

WATERSTONE MORTGAGE
CORPORATION
1133 QUAIL CT
PEWAUKEE, WI 53072-3750

RUSSELL B. BERGER , ESQ.
OFFIT/KURMAN
300 E. LOMBARD STREET
SUITE 2010
BALTIMORE, MD 21202

PAMELA E. HERRINGTON
27035 N 56TH ST
SCOTTSDALE, AZ 85266

DAN GETMAN, ESQ.
MATTHEW DUNN , ESQ
ARTEMIO GUERRA , ESQ
GETMAN & SWEENEY, PLLC
9 PARADIES LN
NEW PALTZ, NY 12561-4017

August 10, 2012

June Czarneski, Designated Agent of
NLRB

Date

Name



Signature

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 ARI KAREN, ESQ.
 OFFIT / KURMAN
 8171 MAPLE LAWN BLVD, STE 200
 MAPLE LAWN, MD 20759-2519

CA - 073190

2. Article Number
 (Transfer from service label)

7010 3090 0003 4074 5692

PS Form 3811; February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

Agent
 Addressee

B. Received by (Printed Name)
[Signature]

C. Date of Delivery
 3/9/12

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No



3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 RUSSELL B. BERGER, ESQ.
 OFFIT/KURMAN
 300 EAST LOMBARD ST. STE. 2010
 BALTIMORE, MD 21202

CA - 073190

2. Article Number
 (Transfer from service label)

7010 3090 0003 4074 5739

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery
 3/9/12

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
 DAN GETMAN, ESQ.
 MATTHEW DUNN, ESQ.
 GETMAN & SWEENEY, PLLC
 9 PARADISE LN
 NEW PALTZ, NY 12561-4017

CA - 073190

2. Article Number
 (Transfer from service label)

7010 3090 0003 4074 5746

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery
 3/9/12

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes