



On March 4, 2022, FHFA filed an objection to Mr. Duff's motion to allocate his fees and costs to the bank accounts associated with specific properties insofar as it would allocate any costs to the Enterprise Properties ("Initial Objection"). Dkts. 1107, 1209. FHFA objected on the grounds that the allocation of fees and costs to the Enterprise Properties violates federal law, including the mandates that: (i) "no court may take any action to restrain or affect the exercise of powers or functions of [FHFA] as a conservator," 12 U.S.C. § 4617(f); and that (ii) conservatorship property is not "subject to levy, attachment, garnishment, foreclosure, or sale without [FHFA's] consent," 12 U.S.C. § 4617(j)(3). *See* Dkt. 1209; *see also* Dkt. 1266. On June 22, 2022, Magistrate Judge Kim overruled FHFA's objection, Dkts. 1257, 1258 ("First MJ Decision"). On July 7, 2022, FHFA objected to Magistrate Judge Kim's decision under Rule 72. Dkt. 1266.

On October 17, 2022, the Court affirmed the First MJ Decision. Dkt. 1325 ("First Ruling"). FHFA timely moved for the Court to certify the First Ruling for immediate appeal under 28 U.S.C. § 1292(b) and filed a notice of appeal under 28 U.S.C. § 1292(a). Dkts. 1334, 1336. On December 21, 2022, the Court denied FHFA's motion to certify, Dkt. 1358, leaving only the § 1292(a) appeal of right pending in the Seventh Circuit as to the First Ruling. That appeal remains pending, subject to a fully briefed motion to dismiss. *See* Case No. 22-3073 (7th Cir.) ("First Appeal").

On April 14, 2023, FHFA and the Enterprises filed an objection to Mr. Duff's second motion to allocate his fees and costs to bank accounts associated with specific properties insofar as it would allocate any costs to the Enterprises' Properties ("Second Objection"). Dkts. 1321, 1442. Magistrate Judge Kim overruled FHFA and the Enterprises' objection and granted the motion. Dkts. 1490, 1491 ("Second MJ Decision"). FHFA and the Enterprises timely objected to this Court. Dkt. 1502. On July 21, 2023, the Court sustained the Second MJ Decision and overruled the Second Objection. Dkt. 1511 ("Second Ruling"). FHFA and the Enterprises timely

moved for the Court to certify the Second Ruling for immediate appeal under 28 U.S.C. § 1292(b) and filed a notice of appeal under 28 U.S.C. § 1292(a). Dkts. 1519, 1522. On September 12, 2023, the Court denied FHFA and the Enterprises' motion to certify, Dkt. 1533, and the Seventh Circuit consolidated this § 1292(a) appeal with the First Appeal ("Consolidated Appeal"). *See* Case No. 23-2668 (7th Cir.), Dkt. 16. The Consolidated Appeal is currently subject to a joint motion to stay pending ongoing settlement discussions between FHFA, the Enterprises, and Mr. Duff. *Id.* at Dkt. 19.

As explained in FHFA's Initial and Second Objections, in FHFA's subsequent briefing on its objections to the First and Second MJ Decisions, and the motions to certify the First and Second Rulings for immediate appeal under 28 U.S.C. § 1292(b), allocating fees and costs to the Enterprises' Properties necessarily dissipates the collateral securing each Enterprise's loan, thereby depriving the Conservator of a property interest and impermissibly restraining the Conservator's federal powers to collect on obligations due the Enterprises and to preserve and conserve conservatorship property. And this Court, in several fee-related orders staying distributions of Mr. Duff's fees allocated to the Enterprises' Properties, has aptly recognized the practical issues that may arise in the event Mr. Duff's fees are disbursed before the Seventh Circuit can resolve FHFA and the Enterprises' objections. *See, e.g.*, Dkts. 1366; 1452, 1469, 1510, 1511, 1573.

Accordingly, and to preserve FHFA and the Enterprises' position as to any further allocations of Mr. Duff's fees and costs to Enterprises' Properties, FHFA and the Enterprises object to the Motion to the extent that it seeks to allocate fees and costs to the Enterprises' Properties. In that regard, FHFA and the Enterprises respectfully rely upon and incorporate herein by reference the arguments in FHFA's Initial and Second Objections, subsequent briefing on its

objections to the First and Second MJ Decisions, and both motions to certify the First and Second Rulings for immediate appeal under 28 U.S.C. § 1292(b). *See* Dkts. 1209, 1266, 1279, 1334, 1335, 1442, 1502, 1519, 1520. To be clear, FHFA and the Enterprises' position is that the fees and costs set forth in the Motion cannot be allocated to or assessed against collateral representing the Enterprises' Properties under governing federal law at 12 U.S.C. § 4617. FHFA and the Enterprises may have additional objections in the future to the fees and costs for their properties not included within this objection.

Further, in the event the Court overrules this objection, FHFA and the Enterprises request the Court again exercise its discretion to withhold payment to Mr. Duff of any fees and expenses allocated to the Enterprises' Properties. And if Mr. Duff subsequently moves for approval of property-by-property fee allocations against the Enterprises' Properties, FHFA and the Enterprises reserve the right to assert (and intend to assert) their opposition to any future motion on the basis that doing so violates federal law.

FHFA and the Enterprises object to Mr. Duff's Motion to the extent its fees and costs are allocated to the Enterprises' Properties, as such action is precluded by federal law. The Court should carve out the Enterprises' Properties from the allocation request and deny Mr. Duff's Motion to the extent the fees and costs are allocated against Enterprises' Properties.

Dated: February 28, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 28, 2024, I caused the foregoing **Federal Housing Finance Agency, Fannie Mae, and Freddie Mac's Joint Objection to Mr. Duff's Twenty-second Interim Application and Motion for Court Approval of Payment of Fees and Expenses of Receiver and Receiver's Retained Professionals As Pertains to the Allocation of Such Fees and Expenses to the Funds Held Relating to the Enterprise Properties** to be electronically filed with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification of such filing to all parties of record.

/s/ Daniel E. Raymond