California Homeowner Bill of Rights blocks BofA foreclosure

[Kerri Ann Panchuk](http://www.housingwire.com/authors/8-kerri-panchuk/articles)

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A California man successfully halted a foreclosure sale on his property using the newly minted California Homeowner Bill of Rights to obtain a court injunction against two foreclosing parties: **Bank of America** and its **ReconTrust Co.** subsidiary.

For simply obtaining the HBOR injunction, the homeowner’s attorney is requesting $20,255 in legal fees and costs – a compensation request that is permissible under HBOR since the legislation allots borrowers reasonable attorneys fees and expenses for successfully obtaining an injunction.

Attorney Robert Jackson with **Jackson and Associates** out of California says the injunction alone may cost BofA/Recontrust upwards of $60,000 when calculating in attorneys fees and expenses from both sides.

"The biggest problem with the HBOR from the investor standpoint is the litigation risk of having to pay legal fees," Jackson said. "The way the thing breaks down is when you get an injunction, the prevailing borrower gets all of their legal fees paid by the servicer and the investor."

This is one of the first legal disputes to show the real strength of HBOR and it’s effectiveness in stalling proceedings and increasing expenses for servicers that are accused of violating one of the provisions of HBOR.

Jackson [has spent months warning servicers](http://www.housingwire.com/news/2013/05/01/foreshadowed-homeowner-bill-rights-movement-shifts-default-space) about the hidden litigation expenses facing firms when they pursue nonjudicial foreclosures in an HBOR world.

The new case in question – *Singh v. Bank of America (Recontrust Co.)* – was filed by a borrower who accused BofA and Recontrust of violating HBOR’s ban on dual-tracking.

Singh claimed the bank failed to respond to his request for a loan mod before filing for a foreclosure sale.

Using the HBOR provision against dual-tracking, Singh filed suit in the U.S. Eastern District of California, requesting injunctive relief to prevent the sale of his home during the pending dispute.

The court granted his motion and even noted the California Homeowner Bill of Rights "offers homeowners greater protection during the foreclosure process."

In evaluating HBOR and the plaintiff’s allegations, the court said the homeowner "has adequately shown he is likely to succeed on the merits in light of California’s new Homeowner Bill of Rights."

The court granted the injunction, which is loaded with potential attorneys fees.

If you add in the bank's own attorney fees, the injunction alone could carry a $60,000 price tag, Jackson estimates.

"They now have to file an answer to this thing, and they have to produce evidence showing they are in compliance before this case can go on," he added.

Not to mention, the bank is now subject to discovery – with those costs possibly running the financial firm another $50,000 at least, Jackson said.

The servicer also will have to pay legal fees and expenses to make a factual showing to set aside the injunction, which could be another $50,000 to $60,000 in legal expenses, Jackson suggested.

Meanwhile, the property in question has an online estimate of around $273,000, the veteran real estate attorney pointed out. So when you assess legal fees long-term, servicers could face $100,000 or more in legal expenses on a property not worth much more.

Jackson predicted early on that more servicers and investors would file judicial foreclosures, fearing litigation expenses stemming from HBOR. He believes the $20,000 in automatic attorneys fees for a successful injunction alone is proof of a legal landmine.

"This is just one motion that was granted," he said.

"Under HBOR, the injunction is in place until Bank of America proves that it didn’t violate the HBOR to the satisfaction of the court. They have to file an answer to this thing, and they have to produce evidence that they are in compliance before this case can go on," Jackson concluded.

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<http://www.housingwire.com/articles/california-homeowner-bill-rights-blocks-bofa-foreclosure>

**Bradburn v. Bank of America N.A., ReconTrust, et al. Court Order Declaring Bank of America's Foreclosure Sale to be Void and Setting it Aside**

From: [US Supra Business Advisor](http://www.jdsupra.com/legalnews/court-order-declaring-bank-of-americas-92666/?fb_action_ids=223894427796341&fb_action_types=og.likes&fb_source=other_multiline&action_object_map=%5b258485424321085%5d&action_type_map=%5b%22og.likes%22%5d&action_ref_map=%5b%5d)

2/11/2014  by [**Barry Fagan**](http://www.jdsupra.com/profile/barry_fagan_docs/)

Superior Court judge George Bowden ruled that Bank of America's actions had been "unfair and deceptive" and voided the foreclosure.

Judge George N. Bowden of the Superior Court in Washington State ruled against Bank of America (BoA) in a foreclosure battle that ended with the nonjudicial foreclosure sale under the Deed of Trust Act (DTA). Bowden acknowledged that this case was like most; “convoluted in the minefield” that is the Mortgage Electronic Registration System (MERS) system. Bradburn, the homeowner, was told by BoA “that he should stop making his mortgage payments so that he could qualify for refinancing.”

BoA ensured that this homeowner was in default of the mortgage by promising to refinance; then initiated litigation against the homeowner to retrieve the property for failure by Bradburn to remain current on his payments.

Bowden pointed out that the DTA “seems to contemplate a borrower and a lender with an independent trustee having the power to foreclose on the deed of trust in the event of default by the borrower. The lender would normally hold the underlying note and be the beneficiary of it. Here matters have been complicated by the sale of the underlying note from HomeStar Lending to Countrywide, which was later acquired by [BoA].”

This is another major victory against the unethical and illegal foreclosures industry that has left millions of Americans homeless. It's also a strike against the widespread practice of having companies that have an incentive to foreclose act as the "trustee" on the home—in this case it was ReconTrust, which itself is a subsidiary of Bank of America. They're supposed to be neutral under state law.

- See more at: <http://homeownersjustice.blogspot.com/2014/02/bradburn-v-bank-of-america-na.html#sthash.vMuZWErD.dpuf>

http://homeownersjustice.blogspot.com/2014/02/bradburn-v-bank-of-america-na.html