

## MEMORANDUM

TO: New Orleans Legal Assistance Corporation  
FROM: Heather Ansert  
RE: Unnamed Client  
DATE: July 31, 2006

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### **FACTS**

CLIENT was charged an origination percentage of 5.507, and the broker fee totaled \$2487.00 to refinance her mortgage.

### **QUESTION PRESENTED**

Whether case law establishes origination or broker's fees as a single percentage rate or number rounded up in amount under TILA and HOEPA?

### **ARGUMENT**

The loan origination fee on a refinanced mortgage is customarily a 1% or 2% fee and the broker fee is usually a whole number that is rounded. In *Brazier v. Security Pacific Mortgage*, the facts included the mortgage broker's failure to disclose ... that the broker would receive ... a 1.5% yield spread premium from the lender. 245 F.Supp.2d. 1136 (W.D. Wash. 2003). The plaintiff argued that he had no knowledge that the broker would receive a fee if the plaintiff did not pay origination fees. The court held the disclosure to be inadequate on a summary judgment motion, and as

a matter of law, “the failure to disclose the mortgage broker fee was a violation of RESPA and TILA. After finding that the failure to disclose a mortgage broker fee was a violation of these federal statutes, the court recognized that Washington law specifically incorporated RESPA's and TILA's disclosure requirements.” *Id.* Further, in *F.T.C. v. OSI Financial Services, Inc.*, the court denied the defendant’s summary judgment motion where “after deduction of broker’s fees, the proceeds were insufficient to pay for the home improvements.” The plaintiff paid a rounded \$9000.00 broker fee to refinance her residential mortgage, not an obscure numeric amount. Not Reported in F.Supp.2d., 2003 WL 1904013, (N.D.Ill., 2003). Unlike CLIENT, the mortgagee was charged a rounded dollar amount for the broker fee on a \$90,000.00 refinanced loan. The court reasoned that discovery, and depositions were proper since this is not a case that “is entitled to prompt disposition on summary judgment.” *Id.* at 2.

Additionally, in *Pierce v. NovaStar Mortg., Inc.*, the court reasoned that “to compensate the broker for services, the borrowers agree to pay a fee that is either paid out of pocket or taken directly from the proceeds of the loan at the time the loan is funded. This fee is most commonly referred to as an "origination fee" or "broker fee." This fee is usually computed as a percentage of the loan amount, and typically amounts to one percent of the loan's value. The broker is also paid a yield spread premium by the lender for referring the loan at an interest rate that is higher than what the lender would have otherwise charged for the loan. Essentially, the higher the interest rate, the greater the yield spread premium received by the mortgage broker.” 422 F.Supp.2d 1230, (W.D.Wash.,2006). Here, the court discusses the typical formula used to determine the broker’s fees and yield spread premiums. The court defines origination and broker fees and leads the reader to understand that a mortgage broker has a higher gain from higher interest mortgage rates. Unlike CLIENT, the fees in *Pierce* were

likely equal to the one percent of the loan amount, and the court denied the defendant's motion to dismiss. The court held that a factual analysis "is not appropriate under Fed.R.Civ.P. 12(b)(6) motion to dismiss." *Id.* at 1237.

Furthermore, in *Tandiama v. NovaStar Mortg., Inc.*, the court reasoned " the estimates disclose an anticipated interest rate of 9.25% and 14%, as well as an anticipated "mortgage broker fee" of 2%." Not Reported in F.Supp.2d, 2005 WL 1287996, (W.D.Wash., 2005). The court granted in part and denied in part the plaintiff's motion for partial summary judgment.

In conclusion, a refinanced mortgage usually incurs a rounded dollar amount for the broker's fee, \$9000.00, and the loan origination fee is typically between one and two percents. Thus, CLIENT refinanced mortgage likely constitutes an unusual percentage and dollar amount charged for the broker and loan origination fee.