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Emotional Distress Damages May be Recovered for RESPA Violations

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Emotional distress damages are recoverable under RESPA. Although the First Circuit has yet to address the issue, the District of Maine recently held a borrower asserting claims for mortgage servicing violations may recover emotional distress damages. *Benner v. Wells Fargo Bank, N.A., et. al.*, Docket No. 2:16-cv-00467-NT (D. Me. Mar. 29, 2018).

In *Benner*, the borrower brought a claim under RESPA and Regulation X (1024.41) alleging that the mortgage servicer failed to process her loan modification timely and then failed to properly transfer her loan to a new servicer which was unaware a modification application was pending. The borrower testified that due to the delay she was unable to sleep or concentrate, that she had vivid nightmares, and cried easily.

The District Court rejected the mortgage servicer's argument that actual damages under RESPA do not include emotional distress damages. The Court acknowledged that the First Circuit has yet to rule on the issue, but cited other federal cases from Massachusetts and New Hampshire which reached the same conclusion. The Court noted that the First Circuit construes consumer protection statutes like RESPA "liberally in favor of consumers."

Whether the borrower prevails and recovers emotional distress damages will be determined by a jury trial scheduled in June. Regardless of the outcome, the case is a good reminder to mortgage servicers that potential exposure for RESPA violations goes beyond monetary harm.