IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Wells Fargo Bank, N.A.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Joseph Orozco, Susan M. Orozco a/k/a Susan Marie Orozco; United States of America; Corporate America Family Credit Union; Discover Bank; Unknown Owners and Nonrecord Claimants,	)	No. 11 CH 16004
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

A court has inherent authority to impose sanctions on a party that violates a court order. The facts and circumstances presented here indicate that Wells Fargo failed to mediate with the Orozcos in good faith in violation of Circuit Court Rule 20.01. Sanctions will be imposed on Wells Fargo, but the remainder of the Orozcos' motion is denied. Wells Fargo is also permitted to withdraw its original response brief and replace it with an amended version.

FACTS

On July 20, 2005, the Orozcos executed a $328,000 promissory note to Wells Fargo secured by a mortgage on the property located at 17807 Westbridge Road, Tinley Park, Illinois. The mortgage requires the Orozcos to pay "all taxes, assessments, charges, fines, and impositions" that could take priority over the note and to discharge promptly any lien that "has priority over this Security Instrument. . . ." Amd. Resp. Br., Ex. 1, ¶ 4. From 2009 to 2011, the Orozcos worked with Wells Fargo to obtain a loan modification. Wells Fargo offered one in 2010, but later withdrew it. The record does not indicate the basis for the withdrawal.

As of January 1, 2011, the Orozcos had defaulted on the note,[1] and on May 2, 2011 Wells Fargo filed its foreclosure action. In June 2011, Wells Fargo informed the Orozcos that the bank had appointed a home retention specialist to their case, but did not tell them the name of the person or how to contact him or her. Only after the Orozcos called Wells Fargo did they learn of her name, Michelle Zaragosa.

After this point, events occurred independently in the litigation as well as in the Orozcos' interaction with the bank. On July 1, 2011, the court referred the case to mediation pursuant to the local rule. Cir. Ct. Cook Cty. R. 21.02. While a case is in court-annexed mediation, "[p]arties and their representatives are required to mediate in good faith. . . ." Cir. Ct. Cook Cty.

[1] Wells Fargo's misstates that the Orozcos defaulted on the note in 2009, Amd. Resp. Br. at 1; that is two years earlier than the January 1, 2011 date alleged in the bank's complaint. Cmplt., ¶ 3(J).

R. 21.01. On August 31, 2011, the Orozcos submitted to Zaragosa a loan modification application under the Home Affordable Mortgage Program.[2] Throughout the remainder of 2011, the Orozcos submitted additional documents as requested by Wells Fargo.

On October 20, 2011, Wells Fargo's attorneys contacted the Orozcos' housing counselor with a request for additional documents. The Orozcos had previously submitted many of those documents, but on November 17, 2011 they resupplied Wells Fargo's attorneys with the requested documents. That same day, Wells Fargo informed the Orozcos that the bank had named Daniel Castagnola as their new home preservation specialist.[3]

On November 19, 2011, the Orozcos received two letters from Wells Fargo. One, dated November 17, 2011, stated that the bank had denied the Orozcos' HAMP application because they had withdrawn their request. Amd. Motion, Ex. G. The Orozcos had, in fact, not done so. The second letter, dated November 18, 2011, thanked the Orozcos for their recent document submission. Amd. Motion, Ex. H. Susan Orozco called Wells Fargo and spoke with Zaragosa, who indicated that she no longer worked on the file and provided no explanation for the assignment change. Zaragosa transferred the call to Castagnola, but he was unavailable. Zaragosa stated that she would send Castagnola an e-mail instructing him to call Susan. Zaragosa then transferred Susan to a supervisor, Noemi, who told Susan that the denial letter had been initiated by the bank's litigation department and that the Orozcos would have to submit a new application.

After Susan did not hear from Castagnola for three days, she called him on November 22, 2011. Castagnola told Susan that Wells Fargo had previously mishandled the Orozcos file and that they needed to submit new documents to him by e-mail. The Orozcos did so, and spoke with Castagnola frequently in subsequent months. During one conversation, Castagnola told Susan that he was unfamiliar with the mediation process. On December 5, 2011, Castagnola called and told Susan that their file "looked good," but that he needed new paystubs and bank statements. The Orozcos e-mailed those documents to Castagnola and requested an update by December 28. They did not receive one.

On February 13, 2012, Castagnola called the Orozcos and requested new documents; the Orozcos e-mailed them on February 20, 2012. Susan stayed up late on February 28, 2012 gathering new documents in case Wells Fargo would make additional requests at the mediation scheduled for the next day. Both parties and their attorneys attended the February 29, 2012 mediation either in person or by telephone. Amber, a Wells Fargo representative who attended by conference call, stated that the bank had offered the Orozcos a modification in 2010 on which they had defaulted and asked, "What more do you want?" The Orozcos stated that they had not defaulted, but that Wells Fargo had withdrawn the offer. Amber also stated that the bank had not received any documents from the Orozcos since December 2011. The Orozcos countered that they had, in fact, been sending documents to Castagnola over the past few months. Amber stated

[2] The Orozcos state this was a "new HAMP application," Amd. Motion, ¶ 4, but they do not indicate when or if they had previously submitted an application.

[3] It is unclear whether a home preservation specialist – Castagnola's position – is different than a home retention specialist – Zaragosa's position.

that she had no record of Castagnola working at Wells Fargo. At that point, Susan showed Wells Fargo's attorney, who attended the mediation in person, letters they had received from Castagnola, but Amber refused to acknowledge the letters or Castagnola's employment.

Amber then stated that Wells Fargo was going to ignore all of the documents submitted. At that point, Susan began to cry. The Orozcos had brought a complete modification application to the mediation and offered it to Wells Fargo's attorney. Amber and the attorney refused to accept the application. At the end of the mediation, the mediator attempted to schedule another mediation date, but Amber refused, saying, "We've gone far enough with these people."

After the Orozcos returned home following the mediation, they found that they had received two letters from Castagnola. One, dated February 28, stated that they did not qualify for mortgage assistance because they had failed to supply Wells Fargo with all the necessary information within the required time. Amd. Motion, Ex. K. A second, dated February 29, thanked the Orozcos for their recent document submission. Amd. Motion, Ex. L.

After reading the letters, Susan immediately called Castagnola. He asked Susan why the Orozcos had not attended the mediation and said that the bank's computer system showed that only Wells Fargo and its attorney had attended. Susan said that was untrue and asked Castagnola to correct the computer entry. Susan asked Castagnola why Amber had represented that Castagnola did not work for Wells Fargo and that the Orozcos had not submitted any documents after December 2011. Castagnola merely responded that on February 27, a supervisor took the file from Castagnola because it was going to mediation. Castagnola stated that he was not supposed to speak with the Orozcos but that he would continue to do so since they were close to receiving a modification.

Castagnola continued to ask the Orozcos for additional documents. On March 1, 22, and 27, 2012, the Orozcos send him documents by facsimile. On March 27, the Orozcos explained various junior liens on their property, a fact Wells Fargo had previously known. On April 5, 2012, Wells Fargo sent the Orozcos a trial-period-plan notice indicating that they were ineligible for a HAMP loan modification but that they did qualify for a Freddie Mac loan modification. Amd. Motion, Ex. N. The TPP notice explained that the Orozcos could accept a temporary payment schedule for May through July 2012. The TPP notice and three pages of frequently-asked-questions and answers (made part of the letter) included the following statements:

> The good news – you may be eligible for a modification offered by Freddie Mac (the owner of the loan).
>
> ***
>
> With this modification, new affordable payments will be required during a trial period. This is the first step toward qualifying for more affordable mortgage payments.
>
> ***
>
> To qualify for a permanent modification, under the Trial Period Plan (described below) trial period payments must be made in a timely manner instead of the normal monthly mortgage payments.
>
> ***

> After all trial period payments are timely made, the mortgage will be permanently modified. (The existing loan and loan requirements remain in effect and unchanged during the trial period.)
>
> ***
>
> Q. Is there a trial period I have to complete? Yes. There is a trial period for the Freddie Mac Loan Modification. There is a required trial period prior to entering into a permanent Loan Modification Agreement. The loan will not be permanently modified until successful completion of the Trial Period Plan and enter [sic] into a Loan Modification Agreement.
>
> ***
>
> Q. When will I know if the loan can be modified permanently and how will the modified loan balance be determined? Once all of the trial period payments on time [sic], we will send a Loan Modification Agreement detailing the terms of the modified loan. The modification agreement will become effective once you and we have signed it.

Id.

The Orozcos made the TPP's three payments, the last of which was due on July 1, 2012. Five days earlier, on June 25, 2012, the Illinois Department of Revenue had recorded an $829.24 individual income tax lien against the Orozcos' property. Amd. Resp. Br., Ex. 3. Wells Fargo knew of four other liens that had previously been recorded against the property or were due and owing: (1) $52,798.32 to the Internal Revenue Service; (2) $11,623.11 to Corporate American Family Credit Union; (3) $13,522.76 to Discover Card; and (4) $1,714.60 also to the Internal Revenue Service. Amd. Motion, Ex. R. Wells Fargo certainly knew of these liens and lienholders as of May 2, 2011, the day the bank filed suit and named each as a defendant.

On June 29, 2012, Wells Fargo informed the Orozcos that Caitlin Osier would be their new home preservation specialist. Susan and Osier spoke often in July 2012, and Osier stated that she was aware of the property liens. Osier later said that she could not speak any longer with Orozco since the case was in litigation.

On August 1, 2012, Wells Fargo's attorney confirmed in an e-mail the bank's receipt of the Orozcos' trial-period payments, but stated that the bank would not modify the loan through a permanent modification because of the outstanding liens. *Id.* Wells Fargo confirmed that communication in an October 3, 2012 letter to the Orozcos in which the bank stated that they did not meet the requirements for a Freddie Mac modification because "[t]here are additional liens on your property that prevent us from completing your request for mortgage assistance." Amd. Motion, Ex. T.

On November 14, 2012, the Orozcos filed against Wells Fargo a motion for sanctions and to enforce a settlement agreement; they amended the motion on February 13, 2013. The motion seeks: (1) sanctions for Wells Fargo's failure to participate in the mediation process in good faith; and (2) to enforce a settlement agreement memorialized in the April 5, 2012 TPP notice.

Wells Fargo then reopened negotiations concerning a possible loan modification,[4] and on February 22, 2013, offered the Orozcos a permanent loan modification. Amd. Resp. Br., Exs. 4A & 4B. In e-mail correspondence between Wells Fargo and the Orozcos' attorney, a bank representative admitted that the bank had offered the loan modification explicitly "to resolve the pending motion for sanctions and to enforce settlement agreement. . . ." Amd. Resp. Br., Ex. 4A. On March 27, 2013, the Orozcos rejected the offer. *Id.* The next day, March 28, the bank provided an additional cash incentive, but the Orozcos rejected that modification later the same day. *Id.*

On April 3, 2013, Wells Fargo responded to the Orozcos' motion. On April 17, 2013, the Orozcos filed a motion to strike portions of Wells Fargo's response brief and to redact personal information. That information includes the $829.24 individual income tax lien against the Orozcos' property, which the Orozcos argue is irrelevant because the lien was not the source of Wells Fargo's refusal to issue a permanent modification. The Orozcos also argue that Wells Fargo violated Illinois Rule of Evidence 408(a) and Illinois Supreme Court Rule 138 by disclosing confidential information, including the Orozcos' financial account numbers and settlement negotiations, throughout the response brief and in attached exhibits.

On April 26, 2013, Wells Fargo filed an amended response to the Orozcos' amended motion, and on May 15, 2013 filed a response to the Orozcos' motion to strike portions of Wells Fargo's response brief by seeking to withdraw the previous response and replacing it with one that redacted the Orozcos' confidential information. The Orozcos filed their last reply brief on May 29, 2013.

ANALYSIS

I. Wells Fargo's Amended Response Brief Corrects The Defects Contained In Its First Response Brief.

After Wells Fargo filed its original response brief, the Orozcos filed a motion to strike and redact portions of that pleading pursuant to Illinois Supreme Court Rule 138 and Illinois Rule of Evidence 408. The Orozcos appear to claim that: (1) exhibits 2 and 4B contain personal financial information that Wells Fargo failed to redact; (2) exhibits 3, 4A, and 4B contain irrelevant lien information; and (3) exhibits 4, 4A, and 4B include inadmissible evidence relating to settlement discussions.[5] The Orozcos' arguments are wrong for two reasons.

First, Rule 138 is temporally inapplicable. The language the Orozcos cite in their motion becomes effective July 1, 2013. The current version of Rule 138 applies to Social Security numbers only, and these are not included in any of Wells Fargo's exhibits. Either in an abundance of caution or because it failed to catch the Orozcos' error, Wells Fargo filed a motion

[4] During the course of those discussions, the Orozcos indicated that they no longer wished to pursue that portion of their motion seeking to enforce a settlement agreement. They failed, however, to seek leave to withdraw that portion of their amended motion; consequently, the court addresses it in section II.

[5] The Orozcos' prayer for relief does not seek a remedy for exhibit 2, although Wells Fargo's amended response provides one.

to withdraw its response brief and seek leave to file an amended response brief that redacts confidential financial information from exhibits 2 and 4B. Regardless of whether a rule violation occurred, the redacted version is the better one, and the court indicates below how the clerk should address this change.

Second, Rule of Evidence 408 is substantively inapplicable. The Orozcos invoke the rule as a means to strike information from Wells Fargo's response brief information concerning tax liens, settlement discussions, and related matters. The rule provides:

> (a) Prohibited Uses. Evidence of the following is not admissible on behalf of any party, when offered to prove liability for, invalidity of, or amount of a claim that was disputed as to validity or amount, or to impeach through a prior inconsistent statement or contradiction: (1) furnishing or offering or promising to furnish – or accepting or offering or promising to accept – a valuable consideration in compromising or attempting to compromise the claim; and (2) conduct or statements made in compromise negotiations regarding the claim.
>
> (b) Permitted Uses. This rule does not require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of settlement negotiations. This rule also does not require exclusion if the evidence is offered for purposes not prohibited by subdivision (a). Examples of permissible purposes include proving a witness' bias or prejudice; negating an assertion of undue delay; establishing bad faith; and proving an effort to obstruct a criminal investigation or prosecution.

Ill. R. Evid. 408.

The rule's plain language shows that it is inapplicable to the introduction into evidence of the Orozcos' liens or their settlement negotiations with Wells Fargo. The bank did not raise those subjects to prove the Orozcos' liability or the amount they owed or to impeach their averments. Those allegations are supported by the complaint's exhibits and are acknowledged by the Orozcos in their motions and exhibits. The Orozcos seek to prove too much by arguing that Wells Fargo's mention of the $829.24 individual income tax lien infers that it caused the bank to withhold a permanent modification. Rather, the only reasonable inference is that the lien had no effect on the bank's decision given the approximately $80,000 in other liens on the Orozcos' property. Further, the lien proved irrelevant because Wells Fargo ultimately offered the Orozcos a permanent loan modification, plus a sweetener. In short, there is no need to strike any information concerning liens or settlement discussions from exhibits 3, 4A, or 4B.

II. The Trial-Period-Plan Notice Did Not Constitute An Enforceable Contract.

The Orozcos' argue that: "[b]y paying the three trial period payments outlined [sic] Wells Fargo's letter, dated April 5, 2012, Defendants entered into a unilateral contract with Wells Fargo. Wells Fargo's obligation to 'permanently modify' Defendants [sic] loan is overdue." Amd. Motion, ¶ 35. Implicit in the Orozcos' argument is the belief that the April 5, 2012 TPP notice constituted an enforceable contract, a belief apparently founded on the sentence that

states: "After all trial period payments are timely made, the mortgage will be permanently modified." Amd. Motion, Ex. N. A determination of whether the TPP notice is enforceable against Wells Fargo thus requires an analysis of whether the TPP notice is a contract.

A contract is "a promise or set of promises for the breach of which the law gives a remedy or the performance of which the law in some way recognizes as a duty." Restatement (Second) of Contracts § 1 (1981). A valid contract requires an offer, acceptance, and consideration based on sufficiently definite terms. *DiLorenzo v. Valve & Primer Corp.*, 347 Ill. App. 3d 194, 199-200 (1st Dist. 2004), *quoting Halloran v. Dickerson*, 287 Ill. App. 3d 857, 867-68 (5th Dist. 1997). While some contract terms may be missing or left open, a contract does not exist if essential terms are so uncertain that a court is unable to determine whether a party breached the agreement. *Id.*

The TPP notice's plain language read in its entirety indicates that a single sentence cannot be taken out of context to constitute an enforceable contract. Rather than a promise or a duty, the TPP notice explains the possibility of a permanent loan modification if the Orozcos satisfied a variety of conditions. The conditional language begins as early as the second sentence – "you *may* be eligible for a modification" – and continues in the next paragraph – "new affordable payments will be required during a trial period. This is the *first step toward qualifying* for more affordable mortgage payments." Amd. Motion, Ex. N (emphasis added). The notice's conditional nature is echoed in an attached "Frequently Asked Questions" summary, which reads, in part:

> Q. Is there a trial period I have to complete? Yes. There is a trial period for the Freddie Mac Loan Modification. There is a required trial period prior to entering into a permanent Loan Modification Agreement. The loan will not be permanently modified until successful completion of the trial period Plan and [sic] enter into a Loan Modification Agreement.

Id. Despite Wells Fargo's failure to proofread, there is no question that fulfilling the TPP notice's terms was merely the first hurdle the Orozcos had to overcome before qualifying for a permanent loan modification.

Even if the TPP notice were an enforceable contract, the Orozcos would still have no cause of action for breach for the simple and overwhelming reason that Wells Fargo did, ultimately, offer them a permanent loan modification, plus a cash sweetener. There is nothing in the notice requiring Wells Fargo to offer a permanent loan modification on terms the Orozcos would find acceptable or affordable. The Orozcos' rejection of the permanent loan modification, therefore, denies them a remedy.

These conclusions do not excuse the TPP notice's form or content. The document is confusing, verbose, seemingly contradictory, and replete with grammatical and syntactical errors. It is a prime example of how not to write. The notice begs the question of what Wells Fargo hoped to achieve by mailing it to persons such as the Orozcos who are unsophisticated in the area of mortgage foreclosure. Wells Fargo would be wise to rewrite this master document in its entirety before mailing it to mortgagors.

III. Wells Fargo's Conduct During Mediation Was Sanctionable.

A circuit court has inherent authority, independent of any statute or Supreme Court Rule, to sanction a party for the violation of a court order, out of a need to control the court's docket, to prevent undue delay, and to punish other procedural misconduct. *See Sander v. Dow Chem. Co.*, 166 Ill. 2d 48, 65-66 (1995), *citing Bejda v. SGL Indus., Inc.*, 82 Ill. 2d 322, 328 (1980), and other cases. Such authority extends, by necessity, to a party's violation of local circuit court rules referring cases to mediation and requiring the parties to mediate in good faith. *See, e.g.*, Cir. Ct. Cook Cty. R. 21.01 & 21.02. The facts and circumstances presented here lead to the conclusion that Wells Fargo violated Rule 21.01 by failing to mediate in good faith.

The court referred this case to mediation on July 1, 2011; consequently, all conduct from that date to the present is subject to the court-imposed duty to mediate in good faith because the case is still on the mediation call. Although Illinois law has yet to define what constitutes good or bad faith in mediation, it is plain that a court has discretion to impose sanctions after considering "the totality of the circumstances." *Johnson v. United Airlines*, 203 Ill. 2d 121, 135 (2003) (good faith under Contribution Act), *citing Dubina v. Mesirow Realty Dev., Inc.*, 197 Ill. 2d 185, 191-92 (2001). *See also Forest Preserve Dist. v. First Nat'l Bk.*, 2011 IL 110759 ¶ 64 (court to consider pleadings, depositions, and affidavits to determine good faith in eminent domain negotiations); *Criscione v. Sears, Roebuck & Co.*, 66 Ill. App. 3d 664, 668-69 (1st Dist. 1978) (court to look for abusive pattern in labor negotiations). The Orozcos and Wells Fargo both cite as analogous cases addressing good-faith participation in arbitration under Illinois Supreme Court Rule 91. *See, e.g., State Farm Ins. Co. v. Harmon*, 335 Ill. App. 3d 687, 690 (1st Dist. 2002) (bad faith includes "inept preparation or intentional disregard for the process"); *Schmidt v. Joseph*, 315 Ill. App. 3d 77, 84-85 (1st Dist. 2000) (bad faith if a party fails to "subject the case to the type of adversarial testing that would be expected at a trial); *Employer's Consortium, Inc. v. Aaron*, 298 Ill. App. 3d 187, 190 (2d Dist. 1998) (failure to present evidence constitutes bad faith). These cases are consistent with the general rule.

Wells Fargo argues that it did not act in bad faith during mediation because the bank ultimately offered the Orozcos a permanent loan modification. Amd. Resp. Br. at 11. The bank argues more specifically that the Orozcos' complaints about the bank's bad-faith conduct are limited to four instances: (1) Wells Fargo came to the mediation unprepared; (2) Amber had never heard of Castagnola; (3) duplicative document requests and different bank contacts had proved irksome to the Orozcos; and (4) the bank offered a TPP and accepted payments despite junior liens that would have to be satisfied before a permanent modification could be offered. *Id.* at 13. This is a purposefully narrow reading of the Orozcos' grievances.

The Orozcos do not argue that the bank acted in bad faith by failing to issue a permanent modification. Indeed, the Orozcos recognize that their rejection of the permanent loan modification leaves them no remedy. Rather, the Orozcos argue broadly that Wells Fargo failed "to abide by this Court's mediation referral order," Amd. Motion at 1, because the bank's conduct throughout the mediation process was abusive. To that end, the Orozcos detail a variety of bank actions and inactions that they argue, taken in combination, constitute bad faith. This court accepts as true the Orozcos' statement of events since Wells Fargo chose not to present an alternative version supported by bank employees' sworn affidavits.

The record indicates that Wells Fargo requested and that the Orozcos submitted documents on at least 10 separate occasions between July 2011 and March 2012. In some instances, those submissions were complete reapplications. While Wells Fargo's need for up-to-date and complete financial information is understandable, it is fair to infer that many of these requests were unnecessary since Castagnola admitted to the Orozcos that Wells Fargo had been mishandling the file before he took it over. In other words, Wells Fargo now seeks to shift to the Orozcos the blame for its internal mismanagement.

On more than one occasion, Wells Fargo sent the Orozcos letters that were confusing if not completely contradictory and just plain wrong. In November 2011, for example, the Orozcos received a letter stating that the bank had denied the Orozcos' HAMP application because they had withdrawn their request. That was simply untrue. A second bank letter received the same day thanked the Orozcos for their document submission. Three months later, in February 2012, the Orozcos received one letter stating that they did not qualify for mortgage assistance because they had failed to supply Wells Fargo with all necessary information within the time required. A second letter received the same day thanked the Orozcos, once again, for their document submission. These letters amount to Wells Fargo ghostwriting its institutional incompetence at the expense of its and its employees' credibility. Worse, the letters indicate that the bank failed to consider how the Orozcos were to interpret what amounts to nothing more than fill-in-the-blank word processing.

The greatest criticism of Wells Fargo is reserved for Amber's conduct at the mediation. She was patently unprepared as evidenced by her misstatement that Wells Fargo had offered the Orozcos a modification in 2010 on which they had defaulted. Amber denied that Castagnola worked at Wells Fargo, from which it is fair to infer that she was accusing the Orozcos of lying. Blinded by hubris, Amber even refused to acknowledge her colleague's existence despite the Orozcos showing his correspondence to Wells Fargo's attorney. It is assumed that Amber had the file with her, and it is beyond credulity that Castagnola's name did not appear in the file given that he had been working on it for several months. Further, someone took the file from Castagnola a few days before the mediation and gave it to Amber. If, on the other hand, Amber did not have the file, she was, once again, unprepared. Thus, the answer to Amber's question: "What more do you want?" is, "Someone who is familiar with the file and prepared to mediate with the defendants."

Amber was also unprofessional in the way she handled the issue of Castagnola's identity. She should have acknowledged her error and then moved on to substantive matters. She was also unprofessional by stating that the bank was going to ignore all of the documents the Orozcos had submitted and by failing to justify her unilateral and arbitrary decision. She was also unprofessional by refusing to accept the complete modification application the Orozcos had brought to the mediation, once again, without explanation. Finally, Amber was unprofessional by refusing to schedule another mediation session, again, with no explanation, telling the mediator that: "We've gone far enough with these people." Yet, she had not. It may be fairly inferred that Amber affirmatively misrepresented the truth by entering or having entered in Wells Fargo's computer records a notation that the Orozcos had failed to attend the mediation. That conduct, alone, is sanctionable.

Amber lacked the capacity and skill to address persons from outside the banking industry who face the complexity of the foreclosure process and their own strained personal finances. She also lacked the empathy to appreciate the emotional toll a foreclosure imposes on persons who are likely to lose their single, greatest financial asset and, along with it, a substantial component of their ego as physically manifested in their home. Despite Amber's opprobrious conduct, Wells Fargo states with temerity that: "If the Wells Fargo representative [sic] allegedly less polite than the Orozcos preferred, that is also not evidence of bad faith."[6] Amd. Resp. at 14, n.11. Yes, it is. The point is not whether the Orozcos would have preferred to deal with a professional, knowledgeable, and civilly spoken bank representative. At a minimum, that is what they deserved and what Wells Fargo had a duty to provide under Rule 20.01.

An appropriate sanction must balance the court's need to address Wells Fargo's violations of Rule 20.01 without placing the Orozcos into a position they would otherwise not be entitled. Since the court has concluded that Wells Fargo violated Rule 20.01 after this case went to mediation, it is reasonable that the sanction should cover the period from the July 1, 2011 referral order to the present. In this instance, it is appropriate that Wells Fargo reimburse the Orozcos for their reasonable attorneys' fees and costs during this period, including those associated with bringing the motions the court had to consider to arrive at this order.

It is ordered that:

1. the Orozcos' motion to strike portions of Wells Fargo's response and amended response briefs is granted in part and denied in part;
2. Wells Fargo's motion to withdraw its original response brief and file an amended response brief is granted instanter;
3. the court clerk is instructed to: (a) place Wells Fargo's April 3, 2013 response and exhibits under seal; (b) delete the scanned versions of those documents from the clerk's electronically accessible computer system; and (c) replace the electronic version of those documents with the April 26, 2013 amended response and exhibits;
4. the Orozcos' motion to enforce the settlement agreement is denied;
5. the Orozcos' motion for sanctions is granted;
6. the Orozcos are to file no later than June 19, 2013, a bill of their attorneys' fees and costs from July 1, 2011 to the present, which will be presented to the court at a status to be held on June 26, 2013 at 10:30 a.m. in courtroom 2806;
7. Wells Fargo is required to present to the court at the June 26, 2013 status a sworn affidavit from Amber and each of her two immediate supervisors averring that each was presented with and read a copy of this memorandum opinion and order; and;

[6] The court feels compelled to comment about Wells Fargo's lack of attention to its pleadings apart from various proofreading and fact checking errors. The bank has consistently filed pleadings in this case under case number 10 CH 23730, which is *Wells Fargo Bank, N.A. v. Ayala*, a case on a different calendar before a different judge. The bank also filed both its response and amended response briefs in violation of the Chancery Division's standing order prohibiting the filing of briefs in excess of 15 pages without prior leave of court.

8. the hearing scheduled for June 12, 2013, at 3:00 p.m., in courtroom 2806 is stricken.

ENTERED

DATED: 10 June 2013

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

JUN 10 2013

Circuit Court 2075