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## Defunct Lender's Loan Officers Win \$9M FLSA Award

By **Liz Hoffman**

Law360, New York (September 23, 2011, 5:42 PM ET) -- More than 160 New York-based loan officers claiming Premium Capital Funding LLC's mortgage unit withheld overtime and minimum wage pay won a \$9 million judgment Monday — one of the year's biggest jury awards in a Fair Labor Standards Act class action.

U.S. Judge Leonard Wexler approved the plaintiffs' request for double damages following a Sept. 12 jury verdict that found against TopDot Mortgage — Premium Capital's now-defunct home mortgage arm — and its executives.

The judgment came after nearly three years of litigation, during which TopDot faced several lawsuits over its lending practices and had its license revoked by the Federal Housing Administration for "gross violations" of underwriting standards.

"Our number one priority is to make a recovery for the people we represented," said plaintiffs' attorney Ryan F. Stephan of Stephan Zouras LLP. "It's been our position throughout that they worked extensive time and weren't compensated appropriately."

The plaintiffs, who sold mortgages to New York-area homeowners before the FHA suspended TopDot in 2010, will each receive an average payout of \$54,000 for two years of unpaid wages.

Stephan said that whether TopDot could actually pay the damages was "the \$9 million question." The lender lost its license after an FHA investigation and its website has since disappeared, though it has not filed for bankruptcy, according to Stephan and a search of bankruptcy petitions.

Counsel for the lender declined to comment.

The suit alleged that the loan officers worked on a commission-only basis, meaning they were not paid any minimum salary or wage and were not paid overtime when they worked more than 40 hours in a week. The company had responded that the workers were exempt from FLSA classification.

The parties had been negotiating a possible settlement as late as June 2010, according to the docket, but negotiations broke down that fall and the case went to trial.

The suit, originally filed in November 2008, named Premium Capital, its owners and sales manager Daniel Mansi as defendants. The jury found owners David Brown and Frank Fiore personally liable, but said Mansi should not be considered an employer under the FLSA and dropped the allegations against him in their single-day deliberation.

About \$4.5 million in actual damages were doubled because the jury found the defendants' violations were willful.

In January 2010, federal housing officials terminated Topdot as an issuer in the Government National Mortgage Association — better known as Ginnie Mae — mortgage-backed securities program, citing “gross violations” of underwriting standards.

Under that program, approved lenders can sell FHA home loans on the secondary mortgage market and Ginnie Mae backs those securities to investors.

TopDot is permanently barred as a primary FHA lender and an issuer of securities backed by those plans, according to a spokesman for the U.S. Department of Housing and Urban Development. Its \$181.2 million Ginnie Mae portfolio was transferred to another lender.

The judgment was one of the biggest this year in an overtime pay suit that went to trial. Other class actions have ended in large payouts, but most were reached by settlement, including a \$15.5 million win for Dicks Sporting Goods Inc. workers and a \$14 million deal between JPMorgan Chase & Co. and its underwriter employees.

“It is something of a rare thing to go the distance, but our priority was to make a recovery for our clients,” Stephan said. “The best possible way to do that was to try the case.”

Stephan Zouras also represents a class of Florida TopDot loan officers in a related case that was transferred to the Eastern District of New York in July 2010.

The plaintiffs were represented by Ryan F. Stephan and James B. Zouras of Stephan Zouras LLP and by Erik Harald Langeland PC.

The defendants were represented by the Law Office of Michael G. Barone.

The immediate case is Daniels et al. v. Premium Capital Funding et al., case number 08-cv-04736, in the U.S. District Court for the Eastern District of New York.

—Additional reporting by Pete Brush.

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