

## **Banks Lose Pivotal Foreclosure Case**

A recent decision by the Massachusetts Supreme Judicial Court is expected to have sweeping implications for the nation's banking industry when it comes to how they've approved foreclosures and may even invalidate thousands of foreclosures across the country.

The court, in affirming a lower court's ruling, invalidated two mortgage foreclosure sales because the banks failed to prove the home owners actually owed the mortgages at the time of foreclosure.

In recent months, the industry has been under fire across the country for using "robo signing" to review foreclosure affidavits, a process in which low-level employees went through hundreds of foreclosure affidavits a day without verifying any of the documents. Such blanket procedures have hurt the banks' ability to prove that they owned the mortgages.

In the Massachusetts case, the court found that the banks — who were not the original mortgagee — failed to show that they held the mortgages at the time of foreclosure, which called into question whether the foreclosure sale was valid.

"There is no dispute that the mortgagors of the properties in question had defaulted on their obligations, and that the mortgaged properties were subject to foreclosure," wrote Justice Robert Cordy about the court's decision. "Before commencing such an action, however, the holder of an assigned mortgage needs to take care to ensure that his legal paperwork is in order."

Attorney Paul Collier III, who represents Antonio Ibanez, one of the home owners in the case, said the ruling stands to affect thousands of mortgages across the country.

"For home owners and foreclosures in general, it means that any mortgage foreclosure which was initiated by a securitized trust at a time when the trust had not obtained a mortgage assignment which gave it the lawful right to do so is void," Collier told the Associated Press. "Those home owners, like Mr. Ibanez, still own the property."

*Source: ["Highest Massachusetts Court Rules Against 2 Big Banks in Pivotal Mortgage Foreclosure Case," Associated Press \(Jan. 7, 2011\)](#)*