

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

-----X  
NATIONSTAR MORTGAGE LLC,

*Plaintiff,*

-against-

ROBERT M. STATA; MERYL P STATA, DEEPGREEN BANK,  
CITIBANK (SOUTH DAKOTA) N.A.; ATLANTIC CREDIT  
& FINANCE SPECIAL FINANCE UNIT, LLC A/P/O CITIBANK,  
N.A.

*Defendants.*  
-----X

*Sherri L. Eisenpress, A.J.S.C.*

**DECISION AND ORDER**

Index No. 034950/2015

(Motion #2)

The following papers, numbered 1 to 7, were considered in connection with (i) a Notice of Motion filed by Plaintiff seeking a Judgment of Foreclosure and Sale and confirmation of the Referee’s Report of Amount Due, and related relief:

<u>PAPERS</u>	<u>NUMBERED</u>
Notice of Motion/Affirmation/Bill of Costs/Referee Report of Amount Due/ Exhibits "A"-“S”	1-4
Affirmation in Opposition/Affidavit of Robert Stata/Exhibits "A"-“J”	5-6
Affirmation in Reply/Exhibit "A"	7

The Court has pending before it a Notice of Motion filed by Plaintiff seeking a Judgment of Foreclosure and Sale and confirmation of the Referee’s Report of Amount Due. Defendants Robert Stata and Meryl Stata oppose the motion on the ground that neither they nor their counsel received any notice of a Referee’s hearing and thus did not have an opportunity to object to the calculations. Defendants note that the Referee’s report relies solely upon the Affidavit of Takesha Brown, which does not attach any evidence to support her computations such as a payment history, an escrow accounting or proof of interest computations. In reply,

Plaintiff asserts that Defendants waived their right to the hearing in that they defaulted in answering. It also contends that Defendant fails to demonstrate that the referee's report is either inaccurate or incomplete.

Civil Practice Law and Rules § 4313 states:

Except where the reference is to a judicial hearing officer or a special referee, upon the entry of an order of reference, the clerk shall send a copy of the order to the referee. Unless the order of reference otherwise provides, the referee shall forthwith notify the parties of a time and place for the first hearing to be held within twenty days after the date of the order or shall forthwith notify the court that he declines to serve.

In Aurora Loan Servs, LLC v. Taylor, 114 A.D.3d 627, 629, 980 N.Y.S.2d 475 (2d Dept. 2014), the Court held that it was error to confirm the Referee's report without hearing where defendants could not have received notice before the date on which their objections were due. See also 243 West 98h Condominium v. Shapiro, 12 A.D.3d 591, 786 N.Y.S.2d 67 (2d Dept. 2004). Plaintiff does not dispute that no notice of the Referee's hearing was sent to Plaintiff or the counsel which she has had since 2014. For that reason, the Court is remitting this matter to the Referee for a new computation, after Defendant's counsel is properly noticed of a hearing in accordance with the statutory requirements of Civil Practice Law and Rules § 4313.

Therefore, Plaintiff's Notice of Motion for a Judgment of Foreclosure and Sale is denied without prejudice to re-file after a new Referee computation/hearing is conducted. Plaintiff's counsel is directed to ensure that proper and timely notice is given to Defendants' counsel to provide said counsel an opportunity to present evidence at a hearing, and/or object to any evidence submitted by Plaintiff.

Accordingly, it is hereby

**ORDERED** that Plaintiff's Notice of Motion (#2) is denied without prejudice; and it is further

**ORDERED** that this action is again referred to Gerard Amalfitano, Esq. as Referee, to ascertain and compute the amount due to the plaintiff herein for principal, interest, and other disbursements advanced as provided for in the note and mortgage, excluding attorney's fees. upon which this action was brought, to examine and report whether or not the

mortgaged premises can be sold in parcels, and that Gerard Amalfitano, Esq. as Referee make his report to the Court with all convenient speed; and it is further

**ORDERED** that Referee Amalfitano, Esq. is directed to e-file a letter confirming his appointment through the NYSCEF system immediately; and it is further

**ORDERED** that Plaintiff's counsel shall ensure that proper notification of the Referee's computation is provided to counsel for Defendants and that they are given an opportunity to object and/or demand a hearing; and it is further

**ORDERED** that, pursuant to Civil Practice Law and Rules § 8003(a), the sum of TWO HUNDRED FIFTY DOLLARS (\$250.00) shall be paid to the Referee for the computation stage and upon the filing of his Report; and it is further

**ORDERED** that the Referee is prohibited from accepting or returning any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

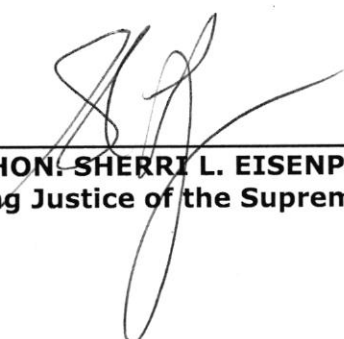
**ORDERED** that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including but not limited to, Section 36.2(c) (Disqualifications from Appointment) and Section 36.2(d) (Limitations on Appointments Based Upon Compensation); and it is further

**ORDERED** that this matter is scheduled for a conference on **MONDAY, NOVEMBER 19, 2018 at 9:45 a.m.** - appearances are required unless a new notice of motion for Judgment of Foreclosure and Sale has been e-filed prior to that date. Any motion for Judgment of Foreclosure and Sale must contain proof of the notice of the Referee's computation upon the defendant's counsel. If a motion for Judgment of Foreclosure and Sale has not been e-filed prior to that conference date, then appearances are required and Plaintiff's counsel will be required to explain the delay; and it is further

**ORDERED** that Plaintiff's counsel shall serve a copy of this Decision and Order upon the Court-appointed Referee.

The foregoing constitutes the Decision and Order of this Court on Motion #2

Dated: New City, New York  
September 26, 2018



---

**HON. SHERRIL L. EISENPRESS**  
Acting Justice of the Supreme Court

TO:

**by e-filing**

Davidson, Fink LLP  
Attorney for Plaintiff

Law Offices of Robert L. Reda, P.C.  
Attorney for Robert Stata and Meryl Stata

**by mail -**

Gerard Amalfitano  
Referee  
254 S Main Street, Suite 517  
New City, NY 10956

\*\*\* Referee Ramsey must file a letter confirming her appointment through the NYSCEF system immediately - all future notifications in this matter will be done solely through the NYSCEF system

Fein, Such & Crane, LLP  
Attorney for Defendant Deepgreen Bank  
1400 Old Country Road, Suite C103  
Westbury, New York 11590

Citibank (South Dakota) N.A.  
150 Motor Parkway  
Hauppauge, New York 11788

Atlantic Credit & Finance Special Finance Unit, LLC  
80 State Street  
Albany, New York 12207