

**Your Court Street Lawyer's
Quick Reference Guide**

Surplus Moneys Proceedings

in Foreclosure Actions under RPAPL §1361

By Richard A. Klass, Esq.



Richard A. Klass, Esq. maintains a law firm engaged in civil litigation in Brooklyn, New York. He may be reached by e-mail at richklass@courtstreetlaw.com or by phone at (718) COURT●ST with any questions. Prior results do not guarantee a similar outcome.

This book is designed for general information only. The information presented here should neither be construed to be formal legal advice nor the formation of a lawyer/client relationship.

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About Richard A. Klass, Esq.

PRACTICE AREAS: Commercial Litigation;
Real Estate Litigation; Legal Malpractice;
General Practice

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Biography

Richard A. Klass is the quintessential “Court Street lawyer,” as defined by *The New York Times*, a “street-smart sharpie with verve, hustle and a striver’s charisma.” Practicing law much like a critical care doctor functions, Klass is the lawyer clients appreciate when the issue is so vital. Practicing primarily in the areas of commercial litigation, debt collection and enforcement of judgments, legal malpractice, and real estate litigation, his firm also represents clients in bankruptcy, civil appeals, and federal court litigation. Mr. Klass lectures and writes extensively for lawyers and industry professionals.

Mr. Klass serves as an Officer of the Brooklyn Bar Association, Member of the Grievance Committee for the Appellate Division, Second Department, Former Chair of the General Practice Section of the New York State Bar Association, Co-Editor of the New York State Bar Association’s General Practice Section *One on One* Publication, and an Arbitrator, Small Claims Part of the Civil Court of the City of New York, County of Kings. He also served as a representative to the Statewide Special Counsel for the Supreme Court’s Commercial Division. Mr. Klass also serves as a Fee Arbitrator in the Part 137 Attorney-Client Fee Dispute Program. He has been selected for 5 consecutive years to the New York Super Lawyers List.

In 1989, Mr. Klass received his Bachelor of Arts at Hofstra University and his Juris Doctorate at New York Law School in 1992. He was the Recipient of the American Jurisprudence Award in Conflict of Laws. Mr. Klass is admitted to the following jurisdictions: State of New York (1992); State of New Jersey (1993); U.S. District Court for the Eastern District of New York

(1992); U.S. District Court for the Southern District of New York (1992); U.S. District Court for the District of New Jersey (1993); U.S. Court of Appeals for the Second Circuit (1999); and the U.S. Supreme Court (1997).

Richard Klass has been a formative voice within New York law circles both for the high standards of his work as well as his extensive writings, lectures, and appearances in the media. He reaches an audience of lawyers and non-lawyers equally through publications which include his quarterly newsletter, *Law Currents* and his blogs *Law Currents* and *The Legal Malpractice Blog, New York*. His books include *Hug of War instead of Tug of War: RPAPL 993* (2020), *A Man’s Home is (Not Always) his Castle: RPAPL 881 Licenses* (2019); *I Got Bloomed: Keeping Client Confidences and Loyalties* (2018), *Killing the “Zombies”: Recent Changes to New York State’s Foreclosure Laws* (2017), *Attorney’s Liens and Legal Fee Enforcement* (2015), *Retention and Withdrawal of Counsel: a guide for attorneys* (2015), and *Successfully Defending Your Credit Card Lawsuit* (2013). The newsletter and blog, *Law Currents*, with tens of thousands of readers combined, is particularly popular. Written in a style that appeals to nearly anyone who likes a good story, this two-page illustrated quarterly features entertaining and informative case studies written in plain English.

Richard A. Klass, Esq.

Litigation for the Legal Profession:

Legal Malpractice

Attorney fee collection

Consultation on and litigation of attorney’s
retaining and charging liens

Expert Witness analysis and testimony on
reasonable attorney’s fees and award

Surplus Moneys Proceedings in Foreclosure Actions:

The culmination of a mortgage foreclosure action is the auction sale of the mortgaged property. Once an auction has taken place, a referee appointed by the court to sell the property makes his/her report after closing title to the successful bidder. If the property sells at auction for less than the balance due to the foreclosing plaintiff, the defendant/obligor may be held liable for the deficiency (*see, RPAPL §1371*). If the property sells for more than the balance due to the plaintiff pursuant to the Judgment of Foreclosure and Sale, the remainder (the “Surplus Moneys”) is deposited with the court, to be held pending further order (*see, RPAPL §1354*).

Once the surplus moneys are deposited with the court¹, the Surplus Moneys remain there until someone claims them. If, after 5 years, no one has claimed the Surplus Moneys, then the clerk of the court turns it over to the NYS Office of the Comptroller as abandoned property.

A: Foreclosure sale and deposit of surplus moneys

In a foreclosure action, a judge signs the Judgment of Foreclosure and Sale (the “JFS”). Once the JFS has been entered by the clerk of the court, the foreclosing plaintiff will serve upon the defendants notice of its entry. The JFS will appoint an attorney as the referee assigned the task of selling the foreclosed property at an auction sale which is held at the courthouse. The plaintiff will coordinate with the court-appointed Referee on selecting a date for the auction of the property.²

Once an auction date has been selected, the plaintiff is required to serve a Notice of Sale upon the defendants, file proof of service of the Notice of Sale with the court and have the Notice of Sale published in a newspaper selected by the judge.³ The auction will take place at the court-designated location and the property knocked down (sold) to the highest bidder.

In many foreclosure auctions, either the plaintiff bids in the judgment balance due and takes back the property in full satisfaction of the judgment⁴ or a third party bids enough to satisfy the balance due so that the plaintiff forgoes pursuing a deficiency judgment against the mortgagor. At the auction, the plaintiff, successful bidder and the Referee will sign the Foreclosure Action Surplus Monies Form.⁵ Once the successful bidder has closed pursuant to the Terms of Sale posted by the Referee, the Referee will complete the Referee’s Report of Sale, which details all of the moneys paid out pursuant to the JFS. In the event there remains money left over after paying out everything due under the judgment, that remainder (“surplus moneys”) are deposited by the Referee with the clerk of court.

¹ In the counties comprising New York City, moneys deposited with the clerk of court are forwarded to the NYC Department of Finance.

² Each county has different foreclosure auction rules, including scheduling auction dates, the manner of conducting the sale and acceptable manner of payment. The reader should become familiar with the particular county’s rules as they also include rules regarding applications for surplus moneys once the sale has taken place.

³ The rules re: publication are laid out in Real Property Law §231.

⁴ Commonly referred to as an “REO” – real estate owned by the lender after an unsuccessful sale.

⁵ The court will calendar ahead 6 months to ensure that the Referee has filed the Report of Sale.

B: Confirmation of Referee's Report of Sale

The Claimant (the party who believes it is entitled to claim the surplus moneys (who may be the owner of the equity of redemption or a lien creditor ⁶)) will file a Notice of Claim to the surplus moneys, setting forth the basis for its claim.⁷ The party will also apply to obtain a Certificate of Deposit from the NYC Department of Finance/County Clerk to append to the prospective motion as an exhibit, demonstrating how much money is on deposit.⁸ In conjunction with the prospective motion, the party will obtain from the County Clerk two certificates: (1) Certificate of No Exceptions to the Referee's Report of Sale; and (2) Certificate as to Notices of Appearance and Claims to Surplus Moneys.

The Claimant will make a Motion to Confirm the Referee's Report of Sale ⁹, which will include the above certificates and a lien search showing any unsatisfied liens upon the foreclosed property. Service of the motion must be made upon all parties who appeared in the action; the New York State Attorney General; United States Attorney; and the Corporation Counsel for the City of New York (if within New York City). Upon granting the motion, the court will sign the Surplus Moneys Order, appointing a Surplus Moneys Referee to ascertain and report the amount due to the movant or any other party who has a lien upon the surplus moneys.¹⁰ In certain instances, the court may dispense with appointing a referee

⁶ A second mortgagee/lienor, as a party named in the foreclosure action, is not required to file a Notice of Claim to Surplus Moneys in order to preserve its right to satisfaction of its lien from surplus proceeds of a foreclosure sale. *Federal Home Loan Mortgage Corp. v. Grant*, 224 AD2d 656, 639 NYS2d 72 (2d Dept. 1996) (“As a party to the foreclosure action, the respondent, secondary mortgagee Marine Midland Bank, was not required to file a notice of claim to the surplus moneys in order to preserve its right to the satisfaction of its lien from the surplus proceeds of the foreclosure sale.”).

⁷ While a party to the foreclosure action may not need to file a Notice of Claim, it will have to establish its entitlement with sufficient evidence and priority over other parties. It is well settled that a defendant who defaulted in answering the foreclosure action is not precluded from proving its lien in a Surplus Money Proceeding. *Riverhead Savings Bank v. Garone* 183 AD2d 760, 583 NYS2d 483 (2d Dept. 1992), citing to *The Dime Savings Bank of Brooklyn v. Pine Drive Associates, Inc.*, 28 Misc.2d 648, 212 NYS2d 111 (Sup. Ct., Nassau Co. 1961).

⁸ If the surplus moneys have been become abandoned property, then the party will apply to the Office of the NYS Comptroller.

⁹ After filing of the Referee's Oath and Report of Sale after foreclosure auction sale, a party can move for confirmation of the Report of Sale more than 3 months but not later than 4 months after the filing of the Report of Sale. *RPAPL Section 1355*. Further, upon confirmation of the Report of Sale, and on motion of any party prior to or within 3 months of confirmation of the Report and Sale claiming the surplus moneys which have arisen from the foreclosure auction sale, the Supreme Court shall determine the priorities in such surplus moneys and order distributions thereof. *RPAPL Section 1361*.

The Second Department has held that the failure to move to appoint a Referee in a Surplus Money Proceeding following foreclosure of a mortgage within the time prescribed by statute is a mere irregularity which, in the absence of prejudice of any substantial right of a party, may be disregarded. *Associated Financial Services, Inc. v. Davis*, 183 AD2d 686, 583 NYS2d 274 (2d Dept. 1992).

¹⁰ New York courts have held that those respective rights in the surplus moneys, as enunciated by *Elsworth*, transfer from the “res” of the action, to wit: the land, to the surplus moneys. Where, under a mortgage foreclosure sale, a surplus is realized, and the premises are at the time of such sale subject to a second mortgage, the respective rights of the parties will be determined as of the date of the foreclosure sale. *Elsworth v. Woolsey*, 19 AD 385, 46 NYS 486 (1st Dept. 1897), *affirmed*, 154 NY 748, 49 NE 1096 (1897).

and direct the payment of the surplus moneys to the party (e.g. the owner of the equity of redemption has satisfied the court that there are no unsatisfied liens of record).

C: Surplus Money Referee's hearing

The Surplus Moneys Referee will execute his/her Oath and serve Notice of Hearing on the issues relating to the surplus moneys. The referee conducts the hearing as per CPLR Article 43.

The interests in or liens upon the property as existed before the sale, after the referee's deed, attach to the surplus moneys; and their priorities continue as before. The interest or lien may come into existence after the commencement of the action but before the actual sale, and it will be considered.¹¹ A referee may inquire into and determine all questions of law and fact, usury, fraud or the like, and every question tending to show the equities of the claims, to the end that it may be decided in such proceedings finally and on the merits to whom such surplus money belong.¹²

D: Confirmation of Surplus Money Referee's Report

Once the Surplus Moneys Referee has ascertained the party(ies) entitled to the surplus moneys and their lien priority, he/she will sign the Report as to Surplus Moneys. The referee will make findings of fact and conclusions of law. See, CPLR 4320(b).¹³

The Claimant will move to confirm the Surplus Moneys Report. The judge will sign the Distribution of Surplus Moneys Order. The party will then obtain a certified copy of the Order and submit it to the appropriate governmental agency holding onto the surplus moneys for payment. Payment will typically include payment of the Surplus Moneys Referee's commission as set by the court. It is important to note that, under RPAPL §1362(3), "If real property or an interest in real property which is liable to be disposed of as prescribed in article thirteen of the surrogate's court act¹, be sold to satisfy a mortgage or other lien thereon, which mortgage or lien accrued during the decedent's lifetime, the surplus money shall be paid in to the surrogate's court having jurisdiction to issue letters testamentary or of administration upon the estate of the decedent, in the following cases: (a) If eighteen months have not elapsed since the date when letters testamentary or of administration were first issued. (b) If a proceeding for a judicial settlement of the accounts of such executor or administrator has been commenced within eighteen months from the date of the issue of such letters and is still pending. (c) If no such letters have been issued and two years have not elapsed since the death of the decedent."

In *Roosevelt Savings Bank v. Goldberg*, 118 Misc.2d 220, 459 NYS2d 988 (Sup. Ct., Nassau Co. 1983), the court held:

"Surplus money realized upon a foreclosure sale is not a general asset of the owner of the equity of redemption, but stands in the place of the land for all purposes of distribution among persons having vested interests or liens upon the land. Surplus money takes the place of the equity of redemption, and only one who had a vested estate or interest in the land sold under foreclosure which was cut off by the foreclosure sale, is entitled to share in the surplus money, with priority in each creditor determined by the filing date of his lien or judgment."

¹¹ "Only judgments docketed on realty prior to delivery of the Referee's deed are liens on realty that pass to surplus money." *Tupper Lake Nat. Bank v Magedson*, 187 AD2d 147, 150 [3d Dept 1993]

¹² *American Holdings Inv. Corp. v Josey*, 71 AD3d 927 [2d Dept 2010]

¹³ (b) Report; transcript. The referee shall file his report, setting forth findings of fact and conclusions of law, within thirty days after the cause or matter is finally submitted. Unless otherwise stipulated, a transcript of the testimony together with the exhibits or copies thereof shall be filed with the report

Relevant statutes:

Real Property Actions and Proceedings Law (RPAPL):

§ 1354. Distribution of proceeds of sale

1. The officer conducting the sale shall pay, out of the proceeds, unless otherwise directed, the expenses of the sale, and pay to the plaintiff, or his attorney, the amount of the debt, interest and costs, or so much as the proceeds will pay and take the receipt of the plaintiff, or his attorney, for the amount so paid, and file the same with his report of sale.

2. The officer conducting the sale shall pay out of the proceeds all taxes, assessments, and water rates which are liens upon the property sold, and redeem the property sold from any sales for unpaid taxes, assessments or water rates which have not apparently become absolute. In any city having a population of three hundred thousand or more or any city having a population between one hundred twenty-five thousand and one hundred seventy-five thousand, such officer shall pay out of the proceeds any liens or incumbrances placed by a city agency upon the real property which have priority over the foreclosed mortgage. The sums necessary to make those payments and redemptions are deemed expenses of the sale. The provisions of this subdivision shall not apply to any judgment in an action wherein any municipal corporation of this state is the plaintiff and the purchaser at the foreclosure sale thereunder.

3. The officer conducting the sale after fully complying with the provisions of subdivisions one and two of this section and if the judgment of sale has so directed shall pay to the holder of any subordinate mortgage or his attorney from the then remaining proceeds the amount then due on such subordinate mortgage, or so much as the then remaining proceeds will pay and take the receipt of the holder, or his attorney for the amount so paid, and file the same with his report of sale.

4. All surplus moneys arising from the sale shall be paid into court by the officer conducting the sale within five days after the same shall be received.

§ 1355. Report of sale; confirmation

1. Within thirty days after completing the sale and executing the proper conveyance to the purchaser, unless such time be extended by the court within said thirty days, the officer making the sale shall file with the clerk his report under oath of the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payments were made.

2. A motion to confirm such report of sale shall not be made within three months after the filing of the report and shall in any event be made not later than four months after the filing of such report, except that if there be no surplus moneys arising from the sale of the mortgaged premises under such judgment, an application for confirmation of the report of sale may be made at any time after the report shall have been filed eight days. Where the report of sale shows surplus money the party moving for confirmation of the report of sale shall present with his motion papers a proper voucher for the surplus moneys showing that they have been paid into court, a certificate of the clerk specifying the notices of claim to the surplus moneys, if any, so filed with him, and an affidavit showing any other unsatisfied lien on the property.

§ 1361. Application for surplus; reference

1. Any person claiming the surplus moneys arising upon the sale of mortgaged premises, or any part thereof, either in his own name, or by his attorney, at any time before the confirmation of the report of sale, may file with the clerk in whose office the report of sale is filed, a written notice of such claim, stating the nature and extent of his claim and the address of himself or his attorney.
2. On the motion for confirmation, or at any time within three months thereafter, on notice to all parties who have appeared in the action or filed claims, on motion of any party to the action, or any person who has filed a notice of claim on the surplus moneys, the court, by reference or otherwise, shall ascertain and report the amount due to him or any other person who has a lien on such surplus moneys, and the priority of the several liens thereon and order distribution of surplus moneys.
3. The owner of the equity of redemption, or any party who has appeared in the action or any person who files a notice of claim or who has a recorded lien against the property shall be given notice by mail or in such other manner as the court shall direct, to attend any hearing on disposition of surplus money.

§ 1362. Payment of surplus out of court

1. Upon confirmation of the report of sale, or upon such proceedings as are provided in section 1361, the court shall order the payment of the surplus proceeds of sale out of court to such persons as are entitled thereto.
2. If the property sold has included a right to dower, whether inchoate or consummate, a tenancy by curtesy, or any other estate for life or years, the owner of such particular estate in the real property sold is entitled to receive from the surplus, in satisfaction of his estate or interest, either a sum in gross or the earnings of a sum invested for his benefit. The determination as to whether a sum in gross or the earnings of a sum invested shall be awarded to the owner of such particular estate shall be governed by the provisions of section 968 with respect to the proceeds of a sale in partition.
3. If real property or an interest in real property which is liable to be disposed of as prescribed in article thirteen of the surrogate's court act¹, be sold to satisfy a mortgage or other lien thereon, which mortgage or lien accrued during the decedent's lifetime, the surplus money shall be paid in to the surrogate's court having jurisdiction to issue letters testamentary or of administration upon the estate of the decedent, in the following cases: (a) If eighteen months have not elapsed since the date when letters testamentary or of administration were first issued. (b) If a proceeding for a judicial settlement of the accounts of such executor or administrator has been commenced within eighteen months from the date of the issue of such letters and is still pending. (c) If no such letters have been issued and two years have not elapsed since the death of the decedent.

Abandoned Property Law:

§ 1406. Claims for abandoned property heretofore or hereafter paid to the state (part)

2. (a) Claim in the amount or value of ten thousand dollars or more for any abandoned property heretofore paid to the state pursuant to section forty-four of chapter fifty-eight of the laws of nineteen hundred nine or as such section was amended by chapter two hundred seventeen of the laws of nineteen hundred thirty-three and chapter two hundred thirty-one of the laws of nineteen hundred thirty-eight, or hereafter paid to the state comptroller pursuant to paragraph (a) of subdivision one of section six hundred of this chapter, may be established only on order of the court which had original jurisdiction of the underlying matter,

after service of notice upon the state comptroller and upon due notice to all parties to the action or proceeding which resulted in the monies being paid into court. Such court withdrawal action shall be commenced in the court which had original jurisdiction of the underlying matter using the court index number of such original action. Notwithstanding any other provision of law to the contrary, no such withdrawal action shall be brought as a special proceeding against the state comptroller. Notwithstanding any other provision of law to the contrary, if an order directing payment by the state comptroller is made by the court, the claimant or the claimant's attorney shall serve upon the state comptroller a copy thereof, duly certified by the clerk of the court to be a true copy of the original of such order on file in the clerk's office.

(b) Where the value or amount of the claim is less than ten thousand dollars, payment may be made by the state comptroller on sworn application of the claimant when the identity of the claimant as the person entitled to payment is established to the satisfaction of the state comptroller. When, in the determination of the state comptroller, there is insufficient information to enable the state comptroller to make a determination of entitlement, any claim, including a claim the amount of which is less than ten thousand dollars, must be established on order of the court as set forth in paragraph (a) of this subdivision. The decision of the state comptroller that the information is insufficient shall not be deemed a denial of the claim.

§ 1416. Restriction on agreement to locate and/or retrieve abandoned property

1. For the purposes of this section, “abandoned property location services” shall include any service for a fee providing assistance to consumers for the purposes of locating and/or retrieving property held by the comptroller pursuant to this chapter.

2. This section shall apply to any person, corporation, association, partnership or other entity which sells or offers to sell abandoned property location services for abandoned property delivered to the state and held by the state comptroller; provided, however, that this section shall not apply to a client's agreement with an attorney or accountant where:

- (a) the services in question can only be performed by an attorney or accountant; or
- (b) there is a pre-existing relationship between the attorney or accountant and the client; or
- (c) the agreement results from an effort initiated by the client to engage the attorney or accountant.

3. No agreement for abandoned property location services pursuant to this chapter shall be valid unless such agreement:

- (a) is:
 - (i) in such form as may be prescribed by the comptroller;
 - (ii) in writing;
 - (iii) signed by the property owner; and
 - (iv) witnessed and acknowledged by a notary public;
- (b) discloses the nature of the property;
- (c) discloses the name and address of the comptroller; and
- (d) discloses, in a clear and conspicuous manner, and in at least twelve-point boldface type:

Your Court Street Lawyer's Quick Reference Guide
RPAPL §1361: Surplus Moneys Proceedings

“Abandoned funds held by the State can be obtained directly from the Office of the State Comptroller by the owner of such funds without paying a fee. These funds are held indefinitely by the Office of the State Comptroller. For more information, contact the Office of the State Comptroller at (insert the current telephone number established by the Office of the State Comptroller for receiving inquiries from consumers regarding unclaimed funds) or (insert the current address of the website of the Office of the State Comptroller)”.

4. No such agreement shall be valid if it provides for payment of a fee in excess of fifteen percent of the value of recoverable property.

5. Nothing in this section shall be construed to prevent an owner from asserting, at any time, that any agreement for abandoned property location services is based on an excessive or unjust consideration.

Civil Practice Law and Rules (CPLR):

Rule 2606. Obtaining order for payment out of court

Unless otherwise directed by the judgment or order under which the property was paid into court, an order for the payment of property out of court shall be made only:

1. on motion with notice to all parties who have appeared or filed a notice of claim to such property; or
2. by special proceeding. In either case the petition shall be accompanied by a copy of the judgment, order or other paper under which the property was paid into court, together with a certificate of the county treasurer or other depository of the property, showing the present condition and amount thereof, and stating separately, in the case of money, the amount of principal and interest.

Rule 2607. Payment of property paid into court

No property paid into court, or income from such property, shall be paid out except upon order of the court directing payment to a specified person, except that if the property so paid into court, or the income from such property, inclusive of interest, does not exceed fifty dollars, a county treasurer may pay the same, without a court order, to the person entitled thereto or his authorized attorney. When the whole or remaining balance of all payments of money into court in an action, or the whole or remaining balance of a distributive share thereof, or any security or other property, is directed to be paid out of court, the order must direct the payment of all accrued income belonging to the party to whom such money or distributive share or remaining balance thereof, or security or other property is paid. A certified copy of the order directing payment shall be delivered to the county treasurer or other custodian of the property. The custodian, in the case of money, shall draw a draft payable to the order of the party entitled thereto specifying the title of the cause or matter on account of which the draft is made and the date of the order authorizing the draft. A certified copy of the order, accompanied by a draft in the case of money, shall be delivered to the depository of the property before it shall pay out any property. If an order directs that periodic payments be made, the filing of one copy of the order shall be sufficient to authorize the payment of subsequent drafts in pursuance thereof. Any other provision of law to the contrary notwithstanding, if an order directing payment by the county treasurer is made by the court, the copy of the order to be delivered to the county treasurer and the depository as herein provided shall be certified by the clerk of the court to be a true copy of the original of such order on file in his office.

Sample documents in Surplus Moneys Proceedings and recent case law:

- 1 - Judgment of Foreclosure and Sale [001-011]
 - 2 - Notice of Sale [012]
 - 3 - Foreclosure Action Surplus Monies Form [013]
 - 4 - Terms and Memorandum of Sale [014-018]
 - 5 - Referee's Report of Sale [019-024]
 - 6 - Deposit of surplus moneys [025]
 - 7 - Notice of Claim to Surplus Moneys [026-028]
 - 8 - Certificate of Deposit [029]
 - 9 - Motion to confirm Referee's Report of Sale (9A: Clerk's Certificates) [030-035]
 - 10 - Surplus Money Order [036-037]
 - 11 – Affirmation to dispense with Surplus Moneys Referee [038]
 - 12 - Referee's Oath [039]
 - 13 - Referee's Notice of Hearing [040-041]
 - 14 - Referee's Report as to Surplus Moneys [042-044]
 - 15 - Motion to confirm Referee's Report [045-048]
 - 16 - Distribution of Surplus Moneys Order [049-050]
 - 17 – NYC Department of Finance – application for certificate of deposit [051-065]
 - 18 – NYS Comptroller – sample letter and forms re: unclaimed funds [066-072]
- NYCTL 1997-1 Trust. v Stell*, 184 AD3d 9 [2d Dept 2020], *lv to appeal denied*, 35 NY3d 913 [2020] [073]
- NYCTL 1998-2 Trust v. Avila*, 130 AD3d 993 [2d Dept 2015] [081]
- American Holdings Inv. Corp. v. Josey*, 71 AD3d 927 [2d Dept 2010] [083]
- NYCTL 1998-1 Trust v. Gabbay*, 16 Misc.3d 732 [Sup. Bronx Co. 2007] [087]
- Please feel free to contact me with any questions. — Richard A. Klass 

Surplus Moneys Proceedings 001

e835/2014 Judgment of foreclosure bid of colls

Page 3 of 21

At Part 8 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 2nd day of July, 2015.

PRESENT: HON. BERT A. BUNYAN, J.S.C.
Justice Presiding

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

NYCTL 2013-A TRUST AND THE BANK OF NEW YORK
MELLON, AS COLLATERAL AGENT AND CUSTODIAN,

Plaintiffs,

v.

THOMAS A. LAPIANA, JR. A/K/A THOMAS A. LAPIANA;
NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD
AND RICKY "DOE", SAID LAST NAME BEING
UNKNOWN TO PLAINTIFFS,

Defendants.

JUDGMENT OF
FORECLOSURE
AND SALE

Index No. 4935-2014

Foreclosure of:
1215 Gravesend Neck
Road
Brooklyn, New York

Block: 7373
Lot: 44

Upon the summons, complaint and notice of pendency, filed in this action on April 2, 2014, the Order of Reference dated December 1, 2014, and all proceedings thereon, and on reading and filing the affirmation of Anthony J. Iacchetta, Esq., of Phillips Lytle LLP attorneys for the plaintiffs, dated April 8, 2015, from which it appears that each of the defendants herein have been duly served with the summons and complaint in this action, or have voluntarily appeared personally or by their respective attorneys, and stating that more than the legally required number of days had elapsed since said defendants were so served and/or appeared; and that none of the defendants had served any answer to said complaint, nor has their time to do so

Printed: 7/10/2015

Printed 2/13/2019

Surplus Moneys Proceedings 002

been extended; and that the complaint herein and notice of pendency containing all the particulars required to be stated therein were duly filed in the Office of the Clerk of the County of Kings on April 2, 2014, and has not been amended to add new parties or to embrace real property not described in the original complaint, and a Referee having been duly appointed to compute the amount due to the plaintiffs upon the tax lien certificate set forth in the complaint and to examine and report whether the subject premises can be sold in parcels,

AND on reading the Report of [REDACTED] Esq., the Referee named in said Order of Reference, by which Report, bearing the date of March 25, 2015, attached hereto, it appears that the sum of \$7,947.60 was due thereon as of January 15, 2015, and that the subject premises should be sold in one parcel.

NOW, upon proof of due notice of this application upon all parties who have not waived the same, and upon proof of service of the Order of Reference as provided therein,

ON MOTION of Anthony J. Iacchetta, Esq., of Phillips Lytle LLP, attorneys for the plaintiffs, proof of service of the motion and motion adjournments, the appearance by attorneys for plaintiffs on June 10, 2015, and all defendants who received ^{notice} notice of motion have defaulted in appearing at the motion and no opposition having been received, it is ^{and the motion hereby is granted on default} ^{subject to the settlement of an debt} ^{on notice}

^{on default}
ORDERED, that the motion is granted; and it is further

ORDERED, ADJUDGED AND DECREED, that the said Report of [REDACTED] Esq., dated March 25, 2015, be, and the same is hereby, to the extent provided herein, ratified and confirmed; and it is further

Surplus Moneys Proceedings 003

4/23/2014 Judgment of foreclosure bid of costs

ORDERED, ADJUDGED AND DECREED, that the subject premises described in the complaint in this action and as hereafter described, the expenses of the sale and the costs of this action as provided by the Real Property Actions and Proceedings Law be sold, in one parcel, at public auction in Room 224 of Kings County Supreme Court, 360 Adams Street, Brooklyn, New York 11201, on a Thursday afternoon at 2:30 P.M., by and under the direction of _____, Esq., who is hereby appointed Referee for that purpose; that the said Referee shall set the date of sale and give public notice of the time and place of sale in accordance with RPAPL §231 in the Daily Challenge; and it is further

ORDERED, ADJUDGED AND DECREED, that said Referee shall accept at such sale the highest bid offered by a bidder, who shall be identified upon the court record, and shall require that such successful bidder immediately pay to the Referee in cash or certified or bank check payable to such Referee, ten percent of the sum bid and shall execute Terms of Sale for the purchase of the premises unless such successful bidder is the plaintiff herein, in which case, no deposit against the purchase price shall be required; and it is further

ORDERED, ADJUDGED AND DECREED, that in the event that the first successful bidder fails to immediately pay the ten percent deposit as provided herein or fails to execute the Terms of Sale immediately following the bidding upon the subject property, the property shall thereafter immediately, on the same day, be reoffered at auction; and it is further

Surplus Moneys Proceedings 004

4835/2014 Judgment of foreclosure bid of costs

ORDERED, ADJUDGED AND DECREED, that the closing of title shall take place at the office of the Referee or at such other location as the Referee shall determine within forty-five days after such sale unless otherwise stipulated by all parties. The Referee shall transfer title only to the successful bidder at the auction. Any delay or adjournment of the closing date beyond forty-five days may be stipulated among the parties, with the Referee's consent, up to ninety days from the date of sale, but any adjournment beyond ninety days may be set only with the approval of this Court; and it is further

ORDERED, ADJUDGED AND DECREED, that the Referee deposit all funds received pursuant to this Order in his/her own name as Referee in TD or in the Referee's own account in Brooklyn, NY Bank within the City of New York; and it is further

ORDERED, ADJUDGED AND DECREED, that said Referee on receiving the proceeds of such sale shall forthwith pay therefrom:

FIRST: The statutory fees and commissions of said Referee pursuant to CPLR Section 8003 (b) which shall not exceed \$500 unless the sale price (the amount of the accepted bid) exceeds \$50,000. In the event the sale price exceeds fifty thousand dollars and additional compensation (including commissions) in excess of \$500 is sought pursuant to CPLR Section 8003 (b), and if no surplus monies are produced by the sale, the parties may present a stipulation, signed by the Referee and all parties appearing, agreeing to a stated sum, to be so-ordered by the Court. Where surplus

Surplus Monies Proceedings 005

monies will be available following distribution of sums as provided herein, or where the parties are unable to agree to the Referee's proper compensation under CPLR Section 8003 (b), application shall be made to this Court on notice to all parties known to be entitled to claim against any surplus monies, including the defaulting owner of the equity of redemption. Such application shall be promptly submitted to the Court within five days of the transfer of the deed and prior to filing the Report of Sale. The five day period for payment of surplus money into Court as set forth in RPAPL Section 1354(4), and the thirty day period set forth in RPAPL Section 1355 for the filing of the Report of Sale shall be deemed extended pending the decision of the Court regarding such compensation.

In the event a scheduled sale is cancelled or postponed pursuant to CPLR Section 8003 (a), plaintiffs shall compensate the Referee in the sum of \$250.00 for each adjournment or cancellation unless the Referee has requested the delay. Such compensation may be recouped from the proceeds of sale as a cost to plaintiffs. This Order shall constitute the necessary prior authorization for compensation as set forth herein.

No compensation in excess of \$750, including compensation authorized pursuant to CPLR Section 8003 (a) for computation of the sum due to the plaintiffs, may be accepted by the Referee without Court approval and compliance with the filing provisions of Section 36.4 of the Rules of the Chief Judge.

Surplus Moneys Proceedings 006

4935/2014 Judgment of foreclosure bill of costs

Page 6 of 21

SECOND: The expenses of the sale, including the cost of advertising as shown on the bills presented and certified by said Referee to be correct, copies of which shall be annexed to the Report of Sale and the NYC Transfer Tax, pursuant to 19 RCNY 23-03(d)(2), if applicable, payable within 30 days of delivery of the deed pursuant to 19 RCNY 23-08(a).

The Referee shall not be held responsible for the payment of penalties or fees pursuant to this appointment. *Purchaser and any title company hired by the purchaser shall be responsible for any penalties or fees incurred as a result of a late payment of the tax as required pursuant to the City Administrative Code 19 RCNY 23-08(a) which requires payment within 30 days. The Purchaser shall hold the Referee harmless from any such penalties assessed as a result of late payment of these taxes.*

THIRD: Pursuant to Real Property Actions and Proceedings Law Section 1354, in accordance with their priority according to law, taxes, assessments, sewer rents, water rates and any charges placed upon the property by a city agency which have priority over the tax lien, which are liens on the premises at the time of sale with such interest or penalties which may have lawfully accrued thereon to the date of payment.



FOURTH: Said Referee shall also pay to the plaintiffs or its attorneys the sum of \$ ~~100~~ ^{1295.00} for costs and disbursements in this action to be taxed by the Clerk and inserted herein, with interest from the date hereof; and also the sum of \$7,947.60, the said amount so reported due as aforesaid,

Printed 7/10/2015

Printed: 2/13/2016

Surplus Moneys Proceedings 007

46352014 Judgment of foreclosure bid of cash

together with interest thereon pursuant to Chapter 3 of Title 11 of the New York City Administrative Code from January 15, 2015, the date interest was calculated to in said Report, to the date of entry of this Order, and thereafter at the statutory post-judgment rate to the date of transfer of title, or so much thereof as the purchase money of the subject premises will pay of the same, together with \$ 2,000.⁰⁰/₁₀₀ hereby awarded to the plaintiffs as reasonable legal fees, together with any advances as provided for in the New York City Administrative Code Section 11-335 and the tax lien certificate, which plaintiffs may have made for taxes, insurance, principal and interest and any other charges to maintain the premises pending consummation of this foreclosure sale, not previously included in the computation, upon presentation to the Referee of receipts for said expenditures, all together with interest thereon pursuant to the New York City Administrative Code Section 11-335 and the tax lien certificate as above provided. Copies of such receipts shall be annexed to the Referee's Report of Sale. Plaintiffs shall timely move to confirm the Referee's Report of Sale pursuant to RPAPL Section 1355; and it is further

ORDERED, ADJUDGED AND DECREED, that in case the plaintiffs be the purchaser of the subject premises at said sale, said Referee shall not require the plaintiffs to pay in cash the entire amount bid at said sale, but shall execute and deliver only to the plaintiffs a deed of the premises sold upon the payment to said Referee of the sum awarded to him or her under the above provisions marked "**FIRST**", "**SECOND**" and "**THIRD**" if such expenses were

Surplus Moneys Proceedings 008

paid by the Referee, or in lieu of the payment of said last mentioned amounts, upon filing with said Referee receipts of the proper municipal authorities showing payment thereof. The balance of the amount bid, after deducting therefrom the aforementioned payments to the Referee for compensation and expenses, taxes, assessments, sewer rents, water rates, and priority liens of a city agency, shall be allowed to the plaintiffs and applied by said Referee upon the amounts due to the plaintiffs as specified in item marked "FOURTH". If upon so applying the balance of the amount bid, there shall be a surplus over and above said amounts due to the plaintiffs, the plaintiffs shall pay to the said Referee, upon delivery to plaintiffs of said Referee's Deed, the amount of such surplus (which shall be applied by the Referee, upon motion made pursuant to RPAPL Section 1351(3) and proof satisfactory to the Referee of the sums due thereon, to any subordinate mortgage duly recorded against the property, pursuant to RPAPL Section 1354(3), which payment shall be reported in the Referee's Report of Sale.) Any surplus remaining after all payments as herein provided shall be deposited into Court in accordance with RPAPL Section 1354 (4) and the Referee shall immediately give notice of such surplus to the owner of the subject premises as identified by plaintiffs ^{and defendants} at the time of the sale; and it is further

ORDERED, ADJUDGED AND DECREED, that said Referee take the receipt of the plaintiffs or plaintiffs' attorney for the amounts paid as hereinbefore directed in item marked "FOURTH", and file it with his/her Report of Sale, that he/she deposit the surplus monies, if any, with the Kings County Clerk within five days after the same shall be received unless such period be deemed extended by the filing of an application for additional compensation as set forth herein, to the credit of this action, to be withdrawn only upon order of the Court, signed by a Justice of the Court; that said Referee make his/her Report of such Sale

Surplus Moneys Proceedings 009

4835/2014 Judgment of foreclosure bill of costs

Page 11 of 21

under oath showing the disposition of the proceeds of the sale, accompanied by the vouchers of the persons to whom payment was made, and file it with the Kings County Clerk, with a copy to the chambers of the appointing justice, within thirty days upon completing the sale and executing the proper conveyance to the purchaser or within thirty days of the decision of the court with respect to any application for additional compensation; and it is further

ORDERED, ADJUDGED AND DECREED, that the purchaser or purchasers at said sale be let into possession on production or delivery of the Referee's deed or deeds; and it is further

ORDERED, ADJUDGED AND DECREED, that each and all of the defendants in this action, and all persons claiming under any of them after the filing of such notice of pendency of this action, be and they are hereby forever barred and foreclosed of all right, claim, lien, title, interest and equity of redemption in the said premises and each and every part thereof; and it is further

ORDERED, ADJUDGED AND DECREED, that said premises is to be sold in one parcel in "as is" physical order and condition on the day of sale, subject to any state of facts that an inspection of the premises would disclose; any state of facts that an accurate survey of the premises would show; any covenants, restrictions, declarations, reservations, easements, rights of way and public utility agreements of record, any building and zoning ordinances of the municipality in which the subject premises is located and possible violations of same; any rights of tenants or person in possession of the subject premises; prior lien(s) of record, if any, except

Printed: 7/16/2015

Printed: 2/13/2016

Surplus Moneys Proceedings 010

those liens addressed in section 1354 of the Real Property Actions and Proceedings Law; and any equity of redemption of the United States of America to redeem the premises within 120 days from the date of the sale. Risk of loss shall not pass to purchaser until closing of title; and it is further

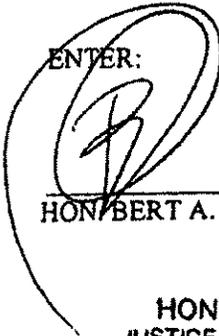
ORDERED, that in the absence of the Referee, the Court may designate a substitute Referee forthwith; and it is further

ORDERED, that the Referee appointed herein is subject to the requirements of Rule 36.2(c) of the Chief Judge, and if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall notify the appointing judge forthwith; and it is further

ORDERED, that a copy of this judgment with notice of entry shall be served upon the designated Referee, the owner of the equity of redemption as of the date of this Order, any tenants named in this action and any other party entitled to notice within twenty days of entry and no less than thirty days prior to sale; and it is further

Surplus Moneys Proceedings 011

ORDERED, that the plaintiffs shall serve a copy of the notice of sale upon the owner of equity of redemption at both his/her last known address and the property address (affidavit of such service shall be presented to the foreclosure clerk on or before the auction sale) and upon the foreclosure department at least ten (10) days prior to the scheduled sale.

ENTER:


 HON. BERT A. BUNYAN, J.S.C.
 HON. BERT A. BUNYAN
 JUSTICE N.Y.S. SUPREME COURT

Nancy T. Lumb
 Clerk

CLERK OF COUNTY CLERK
 2015 JUL -7 PM 1:34

Surplus Moneys Proceedings 012

SUPREME COURT - COUNTY OF KINGS

NYCTL 2013-A TRUST AND THE BANK OF NEW YORK MELLON, AS COLLATERAL AGENT AND CUSTODIAN, Plaintiffs against THOMAS A. LAPIANA, JR. A/K/A THOMAS A. LAPIANA, et al Defendant(s). Pursuant to a Judgment of Foreclosure and Sale entered herein on July 7, 2015, I, the undersigned Referee will sell at public auction at the Kings County Courthouse 360 Adams Street, Room 224, Brooklyn, NY on September 24, 2015 at 2:30 pm premises situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, known and designated as Block 7373 and Lot 44 on the Kings County Tax Assessment Map.

Said premises known as 1215 GRAVESEND NECK ROAD, BROOKLYN, NY

Approximate amount of lien \$ 7,947.60 plus interest & costs.

Premises will be sold subject to provisions of filed Judgment and Terms of Sale.

Index Number 4935/2014.

██████████ Esq., Referee

Phillips Lytle LLP

Attorney(s) for Plaintiffs

28 East Main Street, Suite 1400, Rochester NY 14614

{* DAILY CHAL*}

FILED MP
KINGS COUNTY CLERK
2015 DEC 31 AM 9:18

**TO BE COMPLETED FOR EVERY SALE BY A COURT-APPOINTED REFEREE AND
FILED WITH COUNTY CLERK AND CHAMBERS WITHIN 30 DAYS OF SALE**

FORECLOSURE ACTION SURPLUS MONIES FORM

SUPREME COURT OF THE STATE OF NEW YORK
_____ COUNTY

_____ Plaintiff(s) Part
-against- Hon. _____
_____ Defendant(s) Index No. _____

Property Address: _____

Judgment of Foreclosure Date _____ Sale Date _____

A. Were there surplus funds? Yes No

B. To be completed by the Referee

Amount of final judgment of foreclosure \$ _____
Sale price of property \$ _____
Upset price \$ _____
Surplus amount \$ _____

C. To be completed by Referee conducting the sale (please print)

Name: _____ Telephone: _____
Address: _____
E-mail Address: _____

Signature and Date: _____

D. To be completed by Plaintiff's
Representative

Name (please print) _____
Address: _____
E-mail Address: _____
Telephone: _____
Signature and Date: _____

E. To be completed by Purchaser

Name (please print) _____
Address: _____
E-mail Address: _____
Telephone: _____
Signature and Date: _____

SUPREME COURT: STATE OF NEW YORK
COUNTY OF KINGS

-----X
JOHN DOE

Index No.

Plaintiff,
- against -

TERMS OF SALE

JOHN DOE and JANE DOE

Defendants.

-----X

The premises described in the annexed notice of sale (the "Premises"), will be sold under the direction of Richard A. Klass, Esq., in accordance with the filed Order of this Court dated , 2020, and upon the following terms:

FIRST: Ten percent of the purchase price of said Premises based on the struck down bid at the auction (the "Purchase Price") will be required to be paid in cash, bank or certified check payable to the order of Richard A. Klass, Esq., Referee, at the time and place of sale, and for which the Referee's receipt will be given (the "Initial Payment").

SECOND: The residue of said Purchase Price will be required to be paid in cash, bank check or certified check payable to the order of the Referee, at the Referee's office located at 16 Court Street, 28th Floor, Brooklyn, New York 11241, at 2:00 p.m. on , 2020, when the referee's deed will be ready for delivery (hereinafter the "Closing Date"). Except as provided for herein, TIME IS OF THE ESSENCE with respect to the Closing Date to the Purchaser only.

THIRD: The referee shall conduct the sale only if plaintiff, its successors and/or assigns, or their representative is present at the sale or the referee has received a written bid and Terms of Sale from plaintiff, its successors and/or assigns, or its representative.

FOURTH: The Referee is not required to send any notice to the Purchaser and if Purchaser neglects to call or fails to appear, ready, willing and able to complete the purchase at the time and place above specified to receive the deed, the Purchaser will be in default of its obligations hereunder.

FIFTH: In the event that the Purchaser fails to close on the date specified in the Second paragraph, or fails to comply with any other of these Terms of Sale, all sums paid on account of the Purchaser's bid at the sale will be forfeited and paid over by the Referee to the plaintiff as liquidated damages.

SIXTH: In the event that the plaintiff shall in its sole and absolute discretion, agrees to

Surplus Moneys Proceedings 015

extend the Closing Date, it shall not be extended for more than thirty (30) calendar days (hereinafter referred to as the "Extended Date") and such extension shall be granted only on the following terms and conditions: (a) Purchaser shall pay to the plaintiff in cash, bank or certified check, interest at the rate of nine (9%) percent per annum on the total Purchase Price during the period of such extension (in no event shall the rate of interest charged hereunder be in excess of the maximum rate provided by applicable law); (b) Purchaser shall pay all costs and expenses incurred by the plaintiff in connection with the granting of said extension; (c) Purchaser shall assume all responsibility for the common charges, taxes, insurance and other costs of payments of any kind required to be paid by the Referee herein, and the risk of loss or damage from any cause whatsoever during the period of such extension; (d) TIME SHALL BE OF THE ESSENCE with respect to the Extended Date as to the Purchaser only.

SEVENTH: In case the Purchaser shall fail to comply with any of the above conditions of sale, the Premises so struck down will be again put up for sale under the direction of the Referee under these same terms hereunder, without application to the Court, unless plaintiff's attorney shall elect to make such application; and upon default, the Purchaser will be held liable for any deficiency there may be between the Purchase Price on the sale and the Purchase Price on the resale and also for any costs or expenses occurring on such re-sale, including but not limited to plaintiffs' reasonable attorney's fees, disbursements and advertising costs.

EIGHTH: In the event the Purchaser fails for any reason to comply in any way with these Terms of Sale, then the Purchaser shall have no further rights to any monies (including without limitation the Initial Payment and any payment made in connection with an extension) deposited with the Referee (the "Partial Payment"), and the Referee is directed to tender the Partial Payment to plaintiffs within ten (10) days of the date of Purchaser's default, which sum shall reduce the amount which defendant Mortgagor owes to the Plaintiffs, including but not limited to any and all additional expenses arising out of Purchaser's failure to comply with these Terms of Sale.

NINTH: All taxes, assessments, water rates and other encumbrances which, as of the time of the public auction, are due and payable, will be paid by the Referee or will be allowed to the Purchaser, provided the Purchaser shall previous to the delivery of the deed, produce to the Referee proof of payment of such liens, and shall not otherwise be apportioned. In the event that the plaintiff advanced moneys for taxes, assessments, statutory liens, water charges, sewer rents or hazard insurance covering a period which is later in time than the time of the public auction, purchaser agrees to adjust with plaintiff on a pro rata basis through the date of closing all such advances.

TENTH: The Purchaser of said premises, or any portion thereof, will, at the time and place of sale, sign a memorandum of his purchase, and an agreement to comply with the terms and conditions of sale herein contained.

ELEVENTH: Notwithstanding any provision contained herein to the contrary, in the event the plaintiff is unable to deliver clear and marketable title for whatever reason whatsoever, except for the default of the Purchaser, the Purchaser's sole remedy shall be a return of the Initial

Surplus Moneys Proceedings 016

Payment or Partial Payment. In that event, the Purchaser shall have no further rights against the Referee or the plaintiff.

TWELFTH: The Purchaser will execute any and all documents required by the Referee in connection with the transfer, including, without limitation, Real Property Transfer Tax forms, New York State Transfer Gains Tax forms, New York State Equalization forms and indemnity agreements.

THIRTEENTH: That all expenses of closing, including, but not limited to all deed stamps, transfer taxes and recording fees, if any, shall be paid by the Purchaser.

FOURTEENTH: The Premises are sold "AS IS" as of the date of the later to occur of the Closing Date or the Extended Date.

FIFTEENTH: The Premises will be sold subject to:

- (a) The state of facts an accurate survey will show;
- (b) All covenants, restrictions, easements, declarations, rights of way, agreements and reservations, if any, of record and to any and all violations thereof;
- (c) Any and all building and zoning regulations, restrictions, ordinances and amendments thereof of the municipality, the State, the Federal Government, or any agency, bureau, commission, or department in which said premises are situated, and to any violations or notices of violations (including but not limited to building violations, ECB violations, and emergency repair violations) of the same, and subject to reapportionment of lot lines, and vault charges, if any;
- (d) Any and all orders or requirements issued by any governmental body having jurisdiction against or affecting said premises and violations of the same;
- (e) Rights of tenants or persons in possession, if any;
- (f) Prior mortgages and judgments, if any, now liens of record;
- (g) The right of redemption of the United States of America, if any;
- (h) Rights of any defendants pursuant to CPLR Section 317, CPLR Section 2003, and CPLR Section 5015, if any, and
- (I) The physical condition of any buildings or structures on the premises as of the date of the later to occur of the closing date or the extension of the closing date;
- (j) Any and all hazardous materials in the premises including, but not limited to, flammable explosives, radioactive materials, hazardous wastes, asbestos, and toxic substances.

Surplus Moneys Proceedings 017

SIXTEENTH: The Referee and/or the plaintiff have not made and do not make any representations as to the physical condition, rents, leases, expenses, operation or any other matter or thing affecting or relating to the Premises, except as herein specifically set forth, and the Purchaser (or) hereby expressly acknowledges that no representations have been made. The Referee and the plaintiffs make no representation or warranties with respect to the marketability or insurability of the title to the Premises being sold and in the event that the Referee is unable to convey title subject as set forth herein and/or in the Judgment of Foreclosure and Sale, or the Referee's Deed is found to be defective subsequent to the delivery of the deed, Purchaser remedy shall be limited to the return of those sums actually paid on account of the Purchase Price, and neither the Referee nor the plaintiffs' nor plaintiffs' attorneys herein shall be liable to the Purchaser for any consequential or other damages whatsoever, or for any monies advanced for any purpose whatsoever by Purchaser.

SEVENTEENTH: The Referee and/or the plaintiff shall not be liable or bound by any verbal or written statements, representations, promises, statements or guaranties, real estate broker's "set-ups" or information pertaining to the premises furnished by any real estate broker, agent, employee or any other person except as specifically set forth herein. The Referee, and/or the plaintiff IS NOT LIABLE FOR ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, PROMISES OR STATEMENTS OF ANY KIND RELATING IN ANY MANNER TO THE PREMISES. All understandings and agreements heretofore had between the parties are merged in these Terms of Sale, which fully and completely express their agreement. These Terms of Sale cannot be changed or terminated orally and cannot be waived orally. These Terms of Sale shall be binding on the Purchaser(s) and any heirs, successors and assigns thereof.

EIGHTEENTH: Any errors or omissions in computing apportionments and/or allocation of closing costs at closing shall be corrected. This provision shall survive the CLOSING and delivery of the Referee's Deed.

Dated: , 2020

Richard A. Klass, Esq.

MEMORANDUM OF SALE

DATE OF AUCTION: , 2020
PREMISES: , Brooklyn, New York
CAPTION: John Doe v. John Doe, et. al.
INDEX NO.:

MEMORANDUM OF SALE. The undersigned has on _____, 2020,
purchased the premises described in the annexed notice of sale, for the sum of

DOLLARS (\$ _____), and hereby promises and
agrees to comply with the terms and conditions of the sale of said premises as
above mentioned and set forth in the Terms of Sale and the Judgment of
Foreclosure and Sale in this action.

Dated: , 2020

Purchaser:

Address:

Telephone:

Purchaser

Received from _____, Purchaser, the sum
of _____ Dollars, (\$ _____),
being ten percent on the amount bid by the Purchaser for the property sold by me
under judgment in the above entitled action.

Dated: , 2020

Richard A. Klass, Esq.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

NYCTL 2013-A TRUST AND THE BANK OF NEW
YORK MELLON, AS COLLATERAL AGENT AND
CUSTODIAN,

Plaintiffs,

v.

THOMAS A. LAPLANA, JR. A/K/A THOMAS A.
LAPLANA;
NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD
and RICKY "DOE", SAID LAST NAME BEING
UNKNOWN TO PLAINTIFFS,

Defendants.

REFEREE'S REPORT
OF SALE

Index No. 4935-2014

FILED
KINGS COUNTY CLERK
2015 NOV -9 PM 1:29

TO THE CLERK OF THE SUPREME COURT:

I, [REDACTED] Esq., the Referee appointed by the Judgment entered in this action on July 7, 2015, to make the sale of the premises therein described, do respectfully report as follows:

1. I caused due notice of the sale of the said premises to be held by me at public auction on September 24, 2015 at 2:30 o'clock in the afternoon in Room 224 of Kings County Supreme Court, 360 Adams St., Brooklyn, New York 11201 as will fully appear by the affidavit of publication hereto annexed.

2. At the time and place of sale, I attended in person, and offered the said premises for sale to the highest bidder, and sold the same to 301 Woodcleft Avenue, LLC, for the sum of \$785,000.00 that being the highest sum bid therefore and received a deposit in the sum of \$90,000.00.

Surplus Moneys Proceedings 020

3. I have received and retained my fee in the sum of \$500.00 and I have paid to the Plaintiff such amount from the sale proceeds.

4. I have paid the sum of \$3,140.00 for the Real Estate Transfer Tax

5. I have paid the sum of \$20,606.25 for the New York City Transfer Tax.

6. I have paid the sum of \$23,380.94 to NYCTL 2014-A Trust Tower for the 2014 Tax Lien.

7. I have paid to the New York City Department of Finance the sum of \$7,127.86 for outstanding taxes.

8. *INTENTIONALLY OMITTED*

9. I have paid to the NYC Water Board the sum of \$2,098.32 for outstanding water charges.

10. I have paid to the attorneys for the plaintiff the sum \$1,295.00 for disbursements, awarded to the plaintiff by such Judgment, and for which a receipt is hereto annexed.

11. I have paid to the attorneys for the plaintiff the sum of \$1,368.32 for publication.

12. I have paid to the attorneys for the plaintiff the sum \$2,000.00 for attorney's fees and the sum of \$8,642.53 which represents part of the sum due on the tax lien upon which this action was brought, and directed to be paid by the said Judgment, for which a receipt is hereto annexed.

13. I have deposited Surplus Monies in the sum of \$714,840.78 with the Kings County Clerk for which a receipt is attached hereto.

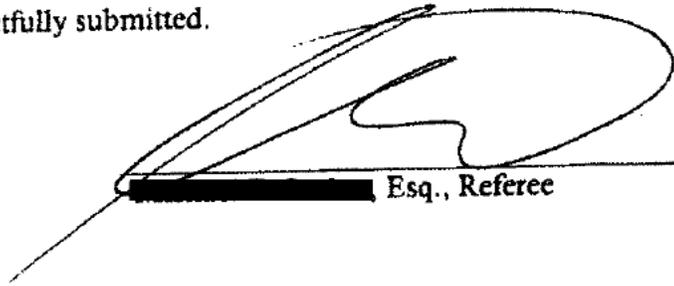
14. I have made, executed and delivered to such purchaser a good and sufficient deed of conveyance for the said premises so sold.

Surplus Moneys Proceedings 021

15. Annexed hereto and made a part of this report, is a statement showing the several items aforesaid and the mode of computation of the Surplus Monies.

All of which is respectfully submitted.

DATED: November 9, 2015

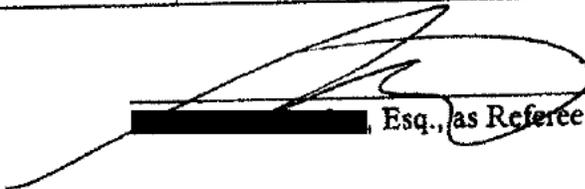


_____ Esq., Referee

STATEMENT OF SALE

Amount of Sales Price		\$785,000.00
Subsequent taxes to be deducted from sale		
Real Estate Transfer Tax		(\$3,140.00)
New York City Transfer Tax		(\$20,606.25)
2014 Tax Lien due Tower		(\$23,380.94)
Outstanding real estate taxes		(\$7,127.86)
Outstanding water charges		(\$2,098.32)
Distributable sale proceeds		\$728,646.63
Amount due Plaintiffs per judgment 2013-A Trust		\$7,947.60
Interest due through judgment entry		\$346.31
Subtotal due Plaintiffs		\$8,293.91
Interest bearing fees:		
Attorney's fees		\$2,000.00
Plaintiff's costs and allowances		\$1,295.00
Subtotal		\$11,588.91
Interest due from 07/08/15 to 11/06/15		\$348.62
Referee's fee		\$500.00
Publication		\$1,368.32
Total amount due plaintiff		\$13,805.85
Balance available as referenced above		\$728,646.63
Less amount due plaintiff		\$13,805.85-
Surplus Monies		\$714,840.78

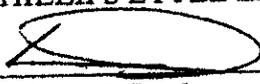
DATED: November 9, 2015


[REDACTED], Esq., as Referee

Surplus Moneys Proceedings 023

Received from the above Referee, appointed by the judgment herein the sum of \$1,295.00 in full for disbursements, awarded plaintiff by said Judgment, the sum of \$1,368.32 for publication, the sum of \$2,000.00 for attorney's fees and the sum of \$8,642.53 paid to plaintiff on the tax lien upon which this action was brought.

PHILLIPS LYTLE LLP

By: 

Anthony J. Iacchetta

Attorneys for Plaintiffs

*NYCTL 2013-A Trust and the Bank of New York
Mellon, as Collateral Agent and Custodian*

28 East Main Street

Suite 1400

Rochester, New York 14614

Telephone No. (585) 758-2110

aiacchetta@phillipslytle.com

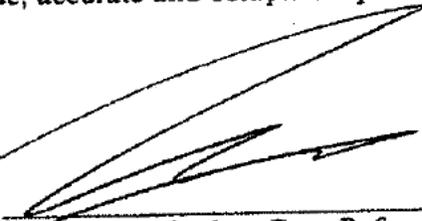
Surplus Moneys Proceedings 024

STATE OF NEW YORK)
COUNTY OF KINGS) SS:

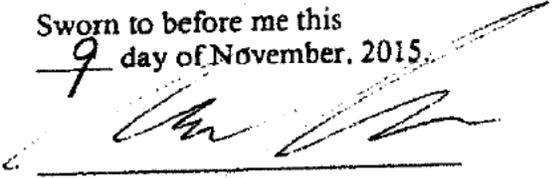
██████████ Esq., being duly sworn, deposes and says:

I am the Referee duly appointed herein to make the sale in the above entitled action and the officer who made such sale.

The above report of sale signed by me is in all respects true and correct, and said report and statement annexed thereto contains a true, accurate and complete report of the disposition of the proceeds of such sale.


██████████ Esq., Referee

Sworn to before me this
9 day of November, 2015.



Notary Public

██████████
Notary Public, State of New York
No. 02SH608887
Qualified in Kings County
Commission Expires November 18, 2017

Form No. 62-101

KING'S COUNTY CLERK'S OFFICE
BROOKLYN, NEW YORK

SUPREME COURT

COUNTY OF KINGS

4558

NYCTL 2013-A Trust, The Bank of New York Mellon & Co. vs.
Thomas A Lapiana Jr. A/K/A
Thomas A Lapiana, et al

Index No. 4935/2014

OR

File Date 11/09/2015

Date 11/09/2015

Received of

[Redacted]

esp. (Referre)

the Sum of Seventy hundred, fourteen thousand, eight hundred, forty dollars
and seventy-eight cents.

- as Deposit:
- in satisfaction of judgment
- pursuant to Section 20 of the Lien Law Section _____
- pursuant to Order Filed _____
- pursuant to Section _____ of the Civil Practice Law & Rules
- pursuant to Section 1354 of the Real Property Actions & Proceedings Law



[Signature]
Clerk, Kings County

\$ 714,340.78

Surplus Moneys Proceedings 026

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

----- X
NYCTL 2013-A TRUST, and the BANK OF NEW YORK
MELLON, as Collateral Agent and Custodian,

INDEX NO. 4935/2014

Plaintiff,

- against -

NOTICE OF CLAIM
TO SURPLUS MONIES

THOMAS A. LAPIANA, JR. A/K/A THOMAS A. LAPIANA, NEW
YORK CITY ENVIROMENTAL CONTROL BOARD and RICKY
"DOE" SAID LAST NAME BEING UNKNOWN TO THE
PLANTIFFS,

Defendants.

----- X

PLEASE TAKE NOTICE that the New York City Department of Finance (hereinafter "Finance") by their attorney, **Bernard J. Tordesillas**, Of Counsel to the Special Assistant Corporation Counsel, claims title to **\$4,514.91** of the surplus monies herein concerning the New York City Environmental Control Board (hereinafter "ECB") judgments arising out of the sale of premises subject to a judgment of foreclosure, to wit: 1215 GRAVESEND NECK ROAD, BROOKLYN, NEW YORK 11229 (Block: 7373 Lot:44).

PLEASE TAKE FURTHER NOTICE that said claim is based upon the ten (10) judgments of the outstanding ECB violations docketed in the County Clerk for the County of **KINGS** on the dates from November 30, 2015 through March 31, 2016 (for ten (10) ECB violations issued on June 30, 2015 through November 23, 2015), pursuant to Chapter 45-A, Section 1049-a (d)(1)(a) and (g) of the New York City Charter, in favor of the City of New York and against **THOMAS A. LAPIANA, JR. A/K/A THOMAS A. LAPIANA**, the owner of the right of redemption and the foreclosed property.

Annexed please find the ECB Statement, based upon the docketed judgments duly recorded in the **KINGS COUNTY** Clerk's Office.

The total amount of the outstanding ECB judgments as of August 21, 2019 is **\$4,514.91** plus statutory

Surplus Moneys Proceedings 027

interest legally chargeable and collectible through the date of payment.

Dated: New York, New York
August 21, 2019

Special Assistant Corporation Counsel
for the City of New York

BY: 

Bernard J. Tordeillas
Attorney for Defendant
NYC Department of Finance
Office of Legal Affairs
375 Pearl Street, 30th Floor,
New York, New York 10038
PH: (212) 748-7230



Surplus Moneys Proceedings 028

THOMAS A LAPIANA JR
1215 GRAVESEND NECK ROAD
BROOKLYN, NY 11229

Total Balance Amount: \$3,425.00
Total Interest Accrued: \$1,089.91
Total Amount Due: \$4,514.91

Summons #	Issued Date	Docket Date	Premise Address	Infraction Code	Infraction Description	Issuing Agency	Original Disposition	Balance Amount	Interest Accrued	Amount Due
041489538N	06/30/2015	11/30/2015	1215 GRAVESEND NECK ROAD	AS8D	STORAGE OF RECEPTACLES - 3RD OFFENSE	DSNY	In Default	\$300.00	\$100.45	\$400.45
042145555M	07/28/2015	12/31/2015	1215 GRAVESEND NECK ROAD	AS8D	STORAGE OF RECEPTACLES - 3RD OFFENSE	DSNY	In Default	\$300.00	\$98.16	\$398.16
041946356N	08/17/2015	12/31/2015	1215 GRAVESEND NECK ROAD	AS8D	STORAGE OF RECEPTACLES - 3RD OFFENSE	DSNY	In Default	\$300.00	\$98.16	\$398.16
044441209Z	08/25/2015	12/31/2015	1215 GRAVESEND NECK ROAD	AS8D	STORAGE OF RECEPTACLES - 3RD OFFENSE	DSNY	In Default	\$300.00	\$98.16	\$398.16
041838942H	08/28/2015	1/31/2016	1215 GRAVESEND NECK ROAD	AS8D	STORAGE OF RECEPTACLES - 3RD OFFENSE	DSNY	In Default	\$300.00	\$95.87	\$395.87
011443509M	09/18/2015	2/29/2016	1215 GRAVESEND NECK ROAD	BF03	PERMITS	FDNY	In Default	\$1,000.00	\$312.41	\$1,312.41
041946782X	10/13/2015	2/29/2016	1215 GRAVESEND NECK ROAD	ASP7	IMPROPER RECEPTACLES 1ST OFFENSE	DSNY	In Default	\$300.00	\$93.72	\$393.72
041688653K	10/21/2015	2/29/2016	1215 GRAVESEND NECK ROAD	ASP7	IMPROPER RECEPTACLES 1ST OFFENSE	DSNY	In Default	\$300.00	\$93.72	\$393.72
041946851K	10/21/2015	2/29/2016	1215 GRAVESEND NECK ROAD	AR1E	IMPROPER/MISUSED CURBSIDE RECYCLING CONTAINER(I	DSNY	In Default	\$25.00	\$7.81	\$32.81
041497706N	11/23/2015	3/31/2016	1215 GRAVESEND NECK ROAD	AS8D	STORAGE OF RECEPTACLES - 3RD OFFENSE	DSNY	In Default	\$300.00	\$91.43	\$391.43

THIS CERTIFICATE IS VALID ONLY IF A CONFORMED COPY OF THE APPLICATION IS ATTACHED

COURT Supreme Court

COUNTY Kings

DATE 05/13/2019

CASE INDEX # 4935/14

PRINT 05/13/2019

CASE TITLE NYCTL 2013- A TRUST AND THE BANK OF NEW YORK MELLON ETC.

VS

THOMAS A. LAPIANA, JR. A/K/A THOMAS A. LAPIANA ET AL.



ACCOUNT # 15014420

This Certifies that the Commissioner of Finance holds, subject to the order of the Court, in the above entitled matter:

Seven Hundred Forty-Four Thousand Six Hundred Thirteen And 58 /100 Dollars

Including interest earned from the last date credited and to be added thereto and subject to the deduction of the Finance Commissioner's fee under Sec. 8010 CPLR; represented by:

<i>Original Deposit:</i>	\$714,840.78
<i>.5% Investment Fee:</i>	\$(3,574.20)
<i>Interest Earned:</i>	\$33,347.00
<i>Cash on Deposit:</i>	\$744,613.58

To the credit of: Pursuant to Court Order



FOR THE COMMISSIONER OF FINANCE

Surplus Moneys Proceedings 030

SUPREME COURT: STATE OF NEW YORK
COUNTY OF BRONX

-----X
U.S. Bank Trust, N.A. as Trustee for LSF9
Master Participation Trust,

Index No. 35143/2015E

Plaintiff,

-against-

NOTICE OF MOTION

Michael J. O’Sullivan Jr.; NYS Department of
Taxation and Finance; Omar Samuels; City of New York
Department of Finance; Parking Violations Bureau;
City Collector & Bronx Redemption Center; City of
New York Environmental Control Board; William Wade;
Hansel Manley, “Jane Doe #1” Refused Name; “Jane Doe#2”
Refused Name; Reporia Wade; Raven Wade; Rachel Wade;
Poria Wade; Joanna Reid,

Defendants.

-----X

PLEASE TAKE NOTICE that, upon the annexed affirmation of Richard A. Klass, Esq., affirmed October 21, 2020, and upon all pleadings and proceedings filed heretofore, Richard A. Klass, Esq. attorney for Defendant/Claimant Omar Samuels in this action, will move this Court at the Motion Support Office – Room 217 thereof, at the Courthouse located at 851 Grand Concourse, Bronx, New York 10451, on **November 17, 2020**, at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order, pursuant to RPAPL 1361, confirming the report of sale and appointing a referee to compute the surplus moneys due and determination the distribution of the surplus moneys, and granting such other and further relief as this Court deems just and proper.

Please take notice that pursuant to CPLR 2214, answering affidavits, if any, are required to be served upon the undersigned at least two (2) days before the return date of this motion.

Dated: Brooklyn, New York
October 21, 2020

/s/

RICHARD A. KLASS, ESQ.
Attorney for Defendant Omar Samuels
16 Court Street, 28th Floor
Brooklyn, New York 11241
718-643-6063
RichKlass@courtstreetlaw.com

Surplus Moneys Proceedings 031

SUPREME COURT: STATE OF NEW YORK
COUNTY OF BRONX

-----X
U.S. Bank Trust, N.A. as Trustee for LSF9
Master Participation Trust,

Index No. 35143/2015E

Plaintiff,

-against-

AFFIRMATION IN SUPPORT

Michael J. O’Sullivan Jr.; NYS Department of
Taxation and Finance; Omar Samuels; City of New York
Department of Finance; Parking Violations Bureau;
City Collector & Bronx Redemption Center; City of
New York Environmental Control Board; William Wade;
Hansel Manley, “Jane Doe #1” Refused Name; “Jane Doe#2”
Refused Name; Reporia Wade; Raven Wade; Rachel Wade;
Poria Wade; Joanna Reid,

Defendants.

-----X

RICHARD A. KLASS, ESQ., an attorney duly admitted to practice in the Courts of the
State of New York, hereby affirms under penalty of perjury as follows:

1. That I am the attorney for Omar Samuels, one of the defendants in the above-entitled action, and am familiar with all the proceedings heretofore had herein.
2. That this action was brought to foreclose a mortgage upon certain premises situated at 4114 & 4118 Boyd Avenue, Bronx, New York (“Property”). The judgment of foreclosure and sale was granted on April 23, 2018 in this action appointing Joyce D. Randazzo, Esq., referee to sell the Property. A copy of the Judgment of Foreclosure and Sale is annexed hereto as “**Exhibit A**”.
3. The Property was sold pursuant to the judgment by the referee. The report of sale of the referee, dated January 27, 2020 was duly filed in the office of the clerk of the County of Bronx on February 19, 2020, by which report it appears that, after paying the amounts directed in and by the judgment to be paid out of the proceeds of the sale, there remained a surplus in the sum of \$433,336.57. A copy of the report of sale is annexed hereto as “**Exhibit B**”. The surplus moneys are on deposit with the NYC Department of Finance, as reflected in the certificate of deposit dated March 26, 2020. A copy of the certificate is annexed hereto as “**Exhibit C**”.
4. That your affirmant obtained the necessary certifications from the Bronx County Clerk’s office: the Certification of the Clerk of the County of Bronx showing no exceptions to

No. 10524

Surplus Moneys Proceedings 033
KINGS COUNTY CLERK'S OFFICE
BROOKLYN, N.Y.

Supreme Court
COUNTY OF KINGS

NY CTL 2013-A TRUST AND THE
BANK OF NEW YORK MELLON, ETC.

against
THOMAS A. LAPIANA, JR. A/K/A
THOMAS A. LAPIANA; NYCECB;
AND RICKY "DOE" SAID LAST
NAME BEING UNKNOWN TO PLAINTIFFS

Vol. _____ Page _____
File No. 4935 Year 2014

CITY AND STATE OF NEW YORK }
COUNTY OF KINGS } ss:

I, NANCY T. SUNSHINE, Clerk of the County of Kings, do hereby certify that I have
carefully examined the records of my office from the 9th
day of November 2015, to date, for an Exception to
The Referee's Report of Sale filed on that date.
and fail to find the same on file therein.

Witness, my hand and Official Seal, this

day of

~~JUNE 2019~~
20

Nancy T. Sunshine

County Clerk of Kings County

No. 10524

Surplus Moneys Proceedings 034
KINGS COUNTY CLERK'S OFFICE
BROOKLYN, N.Y.

Supreme Court
COUNTY OF KINGS

NY CTL 2013-A TRUST AND THE
BANK OF NEW YORK MELLON, ETC.

against
THOMAS A. LAPIANA, JR. A/K/A
THOMAS A. LAPIANA; NYCECB;
AND RICKY "DOE" SAID LAST
NAME BEING UNKNOWN TO PLAINTIFFS

Vol. _____ Page _____
File No. 4935 Year 2014

CITY AND STATE OF NEW YORK }
COUNTY OF KINGS } ss:

I, NANCY T. SUNSHINE, Clerk of the County of Kings, do hereby certify that I have
carefully examined the records of my office from the 9th
day of November 2015, to date, for an Exception to
The Referee's Report of Sale filed on that date.
and fail to find the same on file therein.

Witness, my hand and Official Seal, this _____ day of _____ 20

Nancy T. Sunshine

County Clerk of Kings County

SUPREME COURT—COUNTY OF KINGS

NYCTL 2013-A TRUST AND THE
BANK OF NEW YORK MELLON, ETC.

Plaintiff,

against

THOMAS A. LAPIANA, JR. AKA
THOMAS A. LAPIANA; NYCEB;
AND RICKY "DE", BOB LAST
NAME BEING UNKNOWN TO PLAINTIFFS

Defendant.

CITY AND STATE OF NEW YORK, }
COUNTY OF KINGS, } ss.:

Vol. _____ Page _____
File No. 4935 Year 2014

I, NANCY T. SUNSHINE, Clerk of the County of Kings, do hereby certify that I have examined the files of my office and find that the following named parties have appeared in this action:

The Plaintiff by Anthony J. Tacchetta (Phillips Lytle LLP) Attorney
The defendant _____ Attorney
by _____ Attorney

That on the 9th day of November, 2015, the Referee _____ filed his

report of sale, showing a surplus of \$ 714,840.78
That on the _____ day of _____, 20____, the defendant _____
filed a notice of claim to said surplus.
That on the _____ day of _____, 20____, the defendant _____
filed a notice of claim to said surplus.
That on the _____ day of _____, 20____, the defendant _____
filed a notice of claim to said surplus.
That on the _____ day of _____, 20____, the defendant _____
filed a notice of claim to said surplus.
That on the _____ day of _____, 20____, the defendant _____
filed a notice of claim to said surplus.
That on the _____ day of _____, 20____, the defendant _____
filed a notice of claim to said surplus.

That no other notices of claim have been filed to said surplus.
Witness, my hand and official seal this _____ day of _____, JAN 22 2019, 20____

Nancy T. Sunshine
County Clerk of Kings County.

Surplus Moneys Proceedings 036

FRP2

At an IAS Term Part of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12 day of June, 2019.

PRESENT: HON. MARK PARTNOW,
Justice

-----X
SUPREME COURT: STATE OF NEW YORK
COUNTY OF KINGS

MS#3

-----X
NYCTL 2013-A TRUST AND THE BANK OF NEW YORK
MELLON, AS COLLATERAL AGENT AND CUSTODIAN,

INDEX NO.: 4935/2014

Plaintiff,

- against -

SURPLUS MONEY ORDER

THOMAS A. LAPIANA, JR. A/K/A THOMAS A. LAPIANA,
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD
AND RICKY "DOE," SAID LAST NAME BEING UNKNOWN
TO PLAINTIFFS,

Foreclosure of:
1215 Gravesend Neck Road
Block 7373 Lot 44

Defendants.

-----X

UPON reading and filing the Notice of Motion of Richard A. Klass, Esq., attorney for Defendant/Claimant Thomas A. LaPiana, Jr., dated March 13, 2019, and the exhibits annexed hereto, including the report of sale of [REDACTED] Esq., as the referee appointed to sell in the proceeding herein, filed in the office of the Clerk of the County of Kings on December 31, 2015, the Certification of the Clerk of the County of Kings showing no exceptions to the Referee's Report of Sale and no claims to the surplus money, the report of the Clerk of the County of Kings, showing the amount of \$714,840.78, with accrued interest, currently on deposit with this Court; it is

** and upon the representation of Richard A. Klass in court that there is no asset finder involved in this action and*
ORDERED, that this motion be and the same is hereby granted to the extent herein

provided; and it is further

2019 AUG - 1 AM 7:13
NEW YORK COUNTY CLERK
FILED

Surplus Moneys Proceedings 037

ORDERED, that said report and the sale therein mentioned be absolute and binding forever and it stand as in all things ratified and confirmed, and it is referred to Gregory LaSpina (718) 767-3333 as Referee to compute in this SURPLUS MONEY proceeding, who is to notify, in writing, all claimants, all appearing parties, the Corporation Counsel of the City of New York, the New York State Attorney General and the United States Attorney for the Eastern District of New York and any other appropriate district and any other person who has a lien on the surplus monies to appear and attend a hearing on the distribution of said surplus money and to conduct said hearing AND REQUIRE ALL PERSONS APPEARING AT THE HEARING AND MAKING A CLAIM TO SURPLUS FUNDS TO PRESENT SATISFACTORY IDENTIFICATION and to then ascertain and report the amount due to said petitioner or TO ANY OTHER PERSON OR ENTITY who has a lien on the subject property and to ascertain the priorities of the several liens, if any, and to report with all convenient speed; and it is further ** and NYC Environmental Control Board at its new office address.*

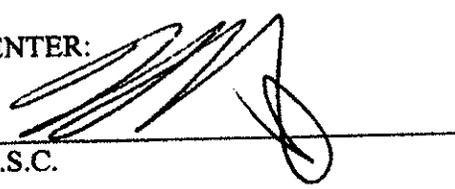
ORDERED, that no payment is to be made to the referee to compute in this surplus money proceeding from the surplus monies pursuant to the consent of the parties; but rather it is hereby

ORDERED, that all fees charges and assessments against surplus monies be made in compliance with statutory requisites to be confirmed by order of this Court; and it is further

ORDERED, that the Referee appointed herein in this surplus money proceeding is subject to the requirements of Rule 36.2(c) of the Rules of the Chief Judge and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that rule, the Referee shall notify the appointing judge forthwith.

ENTER:

J.S.C.



HON. MARK I PARTNOW
SUPREME COURT JUSTICE

2019 AUG -1 AM 7:13

CLERK OF THE SUPREME COURT

JSC

Surplus Moneys Proceedings 038

SUPREME COURT: STATE OF NEW YORK
COUNTY OF BRONX

-----X
JOHN DOE,

Index No.

Plaintiff,

-against-

AFFIRMATION IN SUPPORT

JOHN DOE and JANE DOE

Defendants.

-----X

RICHARD A. KLASS, ESQ., an attorney duly admitted to practice in the Courts of the State of New York, hereby affirms under penalty of perjury as follows:

1. That I am the attorney for Jane Doe, one of the defendants in the above-entitled action, and am familiar with all the proceedings heretofore had herein.

[BACKGROUND OF DEPOSIT]

3. Since Defendant/Claimant Jane Doe is the owner of the equity of redemption, there are no unsatisfied liens upon the subject real property or other claims to the surplus moneys, it is respectfully submitted that there is no need for the appointment of a surplus moneys referee. Accordingly, it is hereby requested that this Court dispense with such appointment and direct payment to Defendant/Claimant Jane Doe of all surplus moneys on deposit in this action.

WHEREFORE, it is respectfully requested that this Court enter an Order, pursuant to RPAPL 1361, confirming the report of sale, dispensing with the appointment of a referee, and directing the distribution of the surplus moneys to Defendant Jane Doe, and granting such other and further relief as this Court deems just and proper.

Affirmed: Brooklyn, New York
, 2020

/s/
RICHARD A. KLASS, ESQ.
Attorney for Defendant
16 Court Street, 28th Floor
Brooklyn, New York 11241
718-643-6063
RichKlass@courtstreetlaw.com

Surplus Moneys Proceedings 040

SUPREME COURT: STATE OF NEW YORK
COUNTY OF KINGS

-----X
NYCTL 2013-A TRUST AND THE BANK OF
NEW YORK MELLON, AS COLLATERAL AGENT
AND CUSTODIAN,

INDEX NO.: 4935/2014

Plaintiff,

- against -

NOTICE OF SURPLUS MONEYS
REFEREE'S HEARING

THOMAS A. LAPIANA, JR. A/K/A THOMAS A.
LAPIANA, NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD AND RICKY "DOE," SAID LAST
NAME BEING UNKNOWN TO PLAINTIFFS,

Defendants.

-----X

PLEASE TAKE NOTICE that I, Gregory LaSpina, Esq., the Surplus Moneys Referee appointed pursuant to the annexed Order of Justice Mark I. Partnow, dated June 12, 2019, to ascertain and report the amount due to the claimant to the surplus moneys, and/or to any other party or person who claims a lien on the surplus moneys generated upon the foreclosure sale held in this action pertaining to a certain parcel of real property known as and by the street address of 1215 Gravesend Neck Road, Brooklyn, New York, and to ascertain the priority of the several liens thereon, do hereby notify you to attend a hearing on the disposition of the surplus moneys to be held before me on October 7, 2019, at 2:00 p.m., at the office of Gregory LaSpina, Esq., 19-02 Whitestone Expressway, Suite 302, Whitestone, New York 11357.

Dated: Brooklyn, New York
August 28, 2019

Gregory LaSpina, Esq.
Surplus Moneys Referee
19-02 Whitestone Expressway, Suite 302
Whitestone, New York 11357
718-767-3333

To: Richard A. Klass, Esq.
Attorney for Claimant Thomas A. LaPiana, Jr.
16 Court Street, 28th Floor
Brooklyn NY 11241

Phillips Lytle LLP
Attorneys for Plaintiff
1400 First Federal Plaza
Rochester NY 14614

Surplus Moneys Proceedings 041

XXXXX, Esq.
Referee
26 Court Street
Brooklyn, New York 11242

New York City Environmental Control Board
66 John Street, 10th Floor
New York NY 10038

New York City Office of Administrative Trials and Hearings/ECB
66 John Street, 10th Floor
New York NY 10038

New York City Environmental Control Board
9 Bond Street, 7th Floor
Brooklyn NY 11201

Ricky "Doe"
1215 Gravesend Neck Road
Brooklyn NY 11229

Corporation Counsel for the City of New York
100 Church Street
New York NY 10007

Bernard J. Tordesillas, of counsel to the
Special Assistance Corporation Counsel
NYC Department of Finance, Office of Legal Affairs
375 Pearl Street, 30th Floor
New York NY 10038

New York State Attorney General
Attn: Michael Sullivan, Associate Attorney – Charities Bureau
28 Liberty Street
New York NY 10005

United States Attorney for the Eastern District of New York
271 Cadman Plaza East
Brooklyn, NY 11201

Surplus Moneys Proceedings 042

SUPREME COURT: STATE OF NEW YORK
COUNTY OF KINGS

-----X
NYCTL 2013-A TRUST AND THE BANK OF
NEW YORK MELLON, AS COLLATERAL AGENT
AND CUSTODIAN,

INDEX NO.: 4935/2014

Plaintiff,
- against -

REFEREE'S REPORT
RE SURPLUS MONEYS

THOMAS A. LAPIANA, JR. A/K/A THOMAS A.
LAPIANA, NEW YORK CITY ENVIRONMENTAL
CONTROL BOARD AND RICKY "DOE," SAID LAST
NAME BEING UNKNOWN TO PLAINTIFFS,

Defendants.

-----X

TO THE SUPREME COURT, KINGS COUNTY:

I, Gregory LaSpina, Esq., having been duly sworn as Referee in the above entitled Surplus Moneys Proceeding, by virtue of an Order of this Court, dated June 12, 2009, whereby this action was referred to me to ascertain and report the amount due to Defendant/Claimant Thomas A. Lapiana, Jr. and/or to any other party or person who claims a lien on the surplus moneys generated from the foreclosure sale held in this action pertaining to a certain parcel of real property known as and by the street address of 1215 Gravesend Neck Road, Brooklyn, New York, and to ascertain the priority of the several liens thereon, respectfully report as follows:

1. The Referee's Report of Sale of , Esq., dated November 9, 2015, shows that there are surplus moneys in the sum of \$714,840.78 from the foreclosure sale in this action. The surplus moneys were deposited with the Clerk of this Court by the Referee on November 9, 2015.
2. Copies of the Clerk's Certificate of Appearances and Notices of Claim and the Clerk's Certificate of No Exceptions to the Referee's Report of Sale were attached to the motion papers.
3. The New York State Attorney General, by Michael Sullivan, Associate Attorney filed his Affidavit in Partial Opposition dated April 25, 2019.

Surplus Moneys Proceedings 043

4. The attorney for the defendant/movant, Richard A. Klass, Esq., filed his Affirmation in Further Support dated May 17, 2019 with the NYC Department of Finance certificate of deposit.

5. The NYC Department of Finance filed its Notice of Claim to Surplus Monies dated August 21, 2019, detailing its claim for ECB violations in the sum of \$4,514.91 as of August 21, 2019, plus statutory interest.

6. The Notice of Surplus Moneys Referee's Hearing dated August 28, 2019, was served upon parties and counsel.

7. No further Notices of Claim were received by the undersigned and no other party appeared at the hearing held on October 7, 2019 other than the defendant, Thomas A. Lapiana, Jr. and his counsel.

8. That Defendant/Claimant Thomas A. Lapiana, Jr. is the former owner of the Property and, thus, the owner of the equity of redemption. A certified copy of the prior Deed dated April 28, 2005 was received into evidence.

7. Pursuant to RPAPL 1361, the payment of surplus moneys from this foreclosure proceeding is to be made in accordance with the priority of liens as determined by the referee; any remaining surplus moneys are to be paid to the owner of the equity of redemption.

8. Accordingly, based upon the documentary evidence presented to me, I find as, a conclusion of law, that the surplus moneys held herein should be distributed in the following order of priority:

(a) The Clerk of Kings County or the New York City Commissioner of Finance to deduct any fees or charges, as may be applicable, to the receipt and maintenance of the subject surplus moneys;

(b) Gregory LaSpina, Esq., as Surplus Moneys Referee, in an amount to be fixed by this Court for such commission;

(c) New York City Department of Finance, in the sum of \$4,514.91 plus statutory interest from August 21, 2019;

Surplus Moneys Proceedings 044

(d) Defendant/Claimant Thomas A. Lapiana Jr., as Claimant, the balance of the surplus moneys on deposit.

9. I respectfully submit that I am an attorney in private practice, have spent at least ___ hours of my time in this matter, and that a fair and reasonable fee for my services rendered as Surplus Moneys Referee herein would be \$ _____, computed at the rate of \$ ___ per hour. I request that this Court fix said amount as my commission for the services rendered herein.

Dated: Queens, New York
October __, 2019

Gregory LaSpina, Esq.

Surplus Moneys Proceedings 045

SUPREME COURT: STATE OF NEW YORK
COUNTY OF KINGS

-----X
NYCTL 2013-A TRUST AND THE BANK OF NEW YORK
MELLON, AS COLLATERAL AGENT AND CUSTODIAN,

Index No.: 4935/2014

Plaintiff,

- against -

NOTICE OF MOTION

THOMAS A. LAPIANA, JR. A/K/A THOMAS A. LAPIANA,
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD
AND RICKY "DOE," SAID LAST NAME BEING UNKNOWN
TO PLAINTIFFS,

Defendants.

-----X

PLEASE TAKE NOTICE that the undersigned, as attorney for Claimant/Defendant Thomas A. Lapiana, Jr. in this action, will move this Court at an IAS Term Part thereof, at the Courthouse located at 360 Adams Street, Brooklyn, New York 11201, on November 12, 2019 at 9:30 a.m., or as soon thereafter as counsel may be heard, for an Order:

a) pursuant to RPAPL 1362(1), confirming the Surplus Moneys Referee's Report, dated October 22, 2019;

b) pursuant to CPLR 2606, directing the Commissioner of Finance of the City of New York, or any other persons or agencies having possession of the subject surplus funds, after first deducting their fees and commissions allowed by law, to pay out and distribute the deposited surplus moneys in this action in accordance with the Referee's Report of Surplus Moneys Proceeding, as follows and in the following order of priority:

(i) The New York City Commissioner of Finance to deduct any fees or charges, as may be applicable, to the receipt and maintenance of the subject surplus moneys;

(ii) Gregory LaSpina, Esq., as Surplus Moneys Referee, the amount of \$2,800.00, for his fee as Surplus Moneys Referee;

(iii) Defendant/Claimant New York City Department of Finance, the sum of \$4,514.91 plus statutory interest from August 21, 2019;

Surplus Moneys Proceedings 046

(iv) Defendant/Claimant Thomas A. Lapiana Jr., the balance of the surplus moneys on deposit; and

(c) granting such other and further relief as this Court deems just and proper.

Dated: Brooklyn, New York
October 29, 2019

RICHARD A. KLASS, ESQ.
Attorney for Defendant/Claimant
Thomas A. LaPiana, Jr.
16 Court Street, 28th Floor
Brooklyn, New York 11241
718-643-6063
RichKlass@courtstreetlaw.com

Surplus Moneys Proceedings 047

SUPREME COURT: STATE OF NEW YORK
COUNTY OF KINGS

-----X
NYCTL 2013-A TRUST AND THE BANK OF NEW YORK
MELLON, AS COLLATERAL AGENT AND CUSTODIAN,

Index No.: 4935/2014

Plaintiff,

- against -

AFFIRMATION

THOMAS A. LAPIANA, JR. A/K/A THOMAS A. LAPIANA,
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD
AND RICKY "DOE," SAID LAST NAME BEING UNKNOWN
TO PLAINTIFFS,

Defendants.

-----X
Richard A. Klass, Esq., an attorney duly admitted to practice in the courts of the State of
New York, affirms the following to be true under the penalties of perjury:

1. That your affirmant is the attorney for Claimant/Defendant Thomas A. Lapiana Jr., and as such, is fully familiar with the facts and circumstances of this case.
2. This Affirmation is made in support of Defendant's request for an Order directing the Commissioner of Finance of the City of New York to pay surplus moneys deposited with the Clerk of Kings County in this action pursuant to the Surplus Moneys Referee's Report.
3. The Surplus Moneys Referee, Gregory LaSpina, Jr., appointed by this Court by Order dated June 12, 2019, conducted the hearing on the surplus moneys on October 7, 2019. The transcript of the hearing held before the Surplus Moneys Referee with all exhibits thereto, including the Order and notice of hearing served upon all parties are annexed hereto as Exhibit A.
4. The Surplus Moneys Referee, Gregory LaSpina, Jr., rendered his Report dated May 22, 2018. The Referee's Report of Surplus Moneys and Oath are annexed hereto as Exhibit B. The Referee's Affirmation of Legal Services is annexed hereto as Exhibit C.

WHEREFORE, it is respectfully requested that this Court enter an Order as follows:

- a) pursuant to RPAPL 1362(1), confirming the Surplus Moneys Referee's Report, dated October 22, 2019;
- b) pursuant to CPLR 2606, directing the the Commissioner of Finance of the City of New York, or any other persons or agencies having possession of the subject surplus funds, after first deducting their fees and commissions allowed by law, to pay out and distribute the

Surplus Moneys Proceedings 048

deposited surplus moneys in this action in accordance with the Referee's Report of Surplus Moneys Proceeding, as follows and in the following order of priority:

- (i) The New York City Commissioner of Finance to deduct any fees or charges, as may be applicable, to the receipt and maintenance of the subject surplus moneys;
- (ii) Gregory LaSpina, Esq., as Surplus Moneys Referee, the amount of \$2,800.00, for his fee as Surplus Moneys Referee;
- (iii) Defendant/Claimant New York City Department of Finance, the sum of \$4,514.91 plus statutory interest from August 21, 2019;
- (iv) Defendant/Claimant Thomas A. Lapiana Jr., the balance of the surplus moneys on deposit; and
- (c) granting such other and further relief as this Court deems just and proper.

Affirmed: Brooklyn, New York
October 29, 2019

Richard A. Klass, Esq.

Surplus Moneys Proceedings 049

At a FRP2 of the Supreme Court of the State of New York, held in and for the County of Kings, located at 360 Adams Street, Brooklyn, New York this 23 day of January, ~~2020~~ 2020

P R E S E N T: HON. MARK I. PARTNOW
Justice, Supreme Court

-----X
NYCTL 2013-A TRUST AND THE BANK OF NEW YORK
MELLON, AS COLLATERAL AGENT AND CUSTODIAN,

Index No.: 4935/2014

Plaintiff,

- against -

DISTRIBUTION OF
SURPLUS MONEYS ORDER

THOMAS A. LAPIANA, JR. A/K/A THOMAS A. LAPIANA,
NEW YORK CITY ENVIRONMENTAL CONTROL BOARD
AND RICKY "DOE," SAID LAST NAME BEING UNKNOWN
TO PLAINTIFFS,

Defendants.

-----X

7800 JAN 27 AM 9:32
KINGS COUNTY
FILED
928 R K
[Handwritten signature]

UPON READING AND FILING the Notice of Motion to confirm the Surplus Moneys Referee's Report and direct the distribution of the surplus moneys on deposit of Defendant/Claimant Thomas A. Lapiana Jr., dated October 29, 2019, the annexed Affirmation of Richard A. Klass, Esq., affirmed October 29, 2019, and the exhibits annexed thereto, and upon due service thereof, and upon this matter coming to be heard before this Court, and upon Richard A. Klass, Esq., attorney for Defendant/Claimant, appearing in support thereof, and no other party or person appearing in opposition thereto,

NOW, on motion of Richard A. Klass, Esq., attorney for Defendant/Claimant, it is

ORDERED that the report of the Surplus Moneys Referee, Gregory LaSpina, Jr., dated October 22, 2019, be and the same hereby is ratified and confirmed in all respects; and it is further

ORDERED that, upon being served with a certified copy of this Order with Notice of Entry, the Commissioner of Finance of the City of New York, or any other persons or agencies having possession of the subject surplus funds, after first deducting their fees and commissions allowed by law, shall pay out and distribute the said moneys deposited by the Referee to the credit of this action as follows:

1. To Gregory LaSpina, as Surplus Moneys Referee, whose address is 19-02 Whitestone Expressway, Suite 302, Whitestone, New York 11357, the amount of \$2,800.00, for his fee for his services rendered as Surplus Moneys Referee.

Surplus Moneys Proceedings 050

2. To Defendant/Claimant New York City Department of Finance, whose address is 66 John Street, New York, New York 10038, the sum of \$4,514.91 plus statutory interest from August 21, 2019.

3. To Defendant/Claimant Thomas A. Lapiana Jr. c/o his counsel, Richard A. Klass, Esq., 16 Court Street, 28th Floor, Brooklyn, New York 11241, the remaining balance of said surplus moneys and any accrued interest thereon.

ORDERED that a copy of this Order with Notice of Entry shall be served within thirty (30) days upon all claimants, all appearing parties, the Corporation Counsel of the City of New York, the New York State Attorney General, and the United States Attorney for the Eastern District of New York, and any other appropriate district and any other person who has a lien on the surplus moneys; and it is further

ORDERED that the Referee appointed herein is subject to the requirements of Rule 36.2(c) of the Chief Judge and if the Referee is disqualified from receiving an appointment pursuant to the provisions of that rule, the Referee shall notify the appointing judge forthwith.

ENTER



J.S.C.

HON. MARK I PARTNOW
SUPREME COURT JUSTICE

2020 JAN 27 AM 9:32
KINGS COUNTY CLERK
FILED



Department of Finance

Search

SheriffCash BailCourt-RelatedForms

Court & Trust Funds

Monies paid to the courts for legal matters, are held in an interest bearing Finance Department Common Trust Account. Deposits and withdrawals of court funds are made through court orders. If funds are not claimed after three (3) years, they are sent to the NYS Comptroller's Office as abandoned property.

Please be advised that walk-in services for the Cash Bail and Court & Trust window at the Manhattan Business center located at 66 John Street have been suspended until further notice. In person assistance is available by appointment only.

Cash Bail services available by appointment:

- Abandonment letter received
- Form/document drop-off
- Refund check pickup

Court & Trust services available by appointment:

- Forms/Document Drop-off
- Withdrawal Check Pickup

If you have questions or need assistance, please contact the Court Assets unit at (212) 908-7619 or online at:

Cash Bail: www.nyc.gov/contactcashbail

Court & Trust: www.nyc.gov/contactcourtassets

Continue

Depositing Funds with the Department of Finance

Funds can be deposited with the Department of Finance only by order of the court. You may deposit funds with the Department of Finance by submitting a certified copy of the court order directing the payment along with the check made payable to the Commissioner of Finance. Documents can be filed by mail or in person at the address listed below.

Mail to:

Department of Finance Surplus Moneys Proceedings 052
Court Assets Unit
66 John Street, 12th Floor
New York, NY 10038

Please be sure to include your contact information so The Department of Finance can mail you a receipt for the deposit.

In-person:

Manhattan Business Center
66 John Street, 2nd Floor - Window 5
New York, NY 10038
Hours: Monday thru Friday - 9:00am to 4:30pm

Withdrawing Court and Trust Funds

All withdrawals of monies deposited into court, which are forwarded to the New York City Department of Finance, can only be made by submitting a certified copy of a court order specifically directing such payment (ref. CPLR 2606, 2607; see also 8010).

Submit an Application for a Certificate of Deposit

1. Prepare an Application for a Certificate of Deposit. Please read the instructions on page 4 of the application carefully before completing. Do not leave any blank spaces. If a statement is not applicable, put 'n/a'.
2. Mail your completed application to the address indicated on the form or you can bring the application to the Manhattan Business Center.
3. The Court Assets Unit will return the Certificate of Deposit to you within five business days.

Obtain a Certified Court Order

1. Submit a petition to the court for a withdrawal court order. The Certificate of Deposit must be attached to your petition to the court. All court orders must direct the Department of Finance or the Commissioner of Finance to **pay the specified person(s) the specified amount(s) plus interest less lawful fees**. Checks will be printed and mailed as per court order, therefore please include any special mailing instructions in the court order.

Lawful Fees: New York State Law (CPLR 8010) provides: *"The treasurer of a county or the commissioner of finance of the city of New York is entitled for the services specified to the following fees: 1. **two per cent** upon a sum of money paid out of court by him; 2. **one-half of one per cent** upon a sum of money invested by him"*

2. Once order has been signed by the judge, it must be **certified** by the County Clerk's Office.
3. All payees, including attorneys, must complete a W-9 form, providing the social security number or tax identification number. Failure to provide this information may result in IRS penalties or backup

withholding.

Surplus Moneys Proceedings 053

4. The certified copy of the court order, along with the original and properly executed W-9(s) and any other documents requested by the Court Assets Unit, should be submitted by mail to the Department of Finance at the address below. Upon receipt of all documentation, the order will be processed within ten business days and check(s) mailed to the person(s) named in the court order.

New York City Department of Finance
Treasury/Court Assets Unit
66 John Street, 12th Floor
New York, NY 10038

These instructions are of a general nature and are applicable to most common transactions. In more complicated situations, we suggest you call the Court Assets Unit at (212) 908-7619, Fax to (646) 500-7072 or visit the Court Assets Unit for assistance. We may find it necessary to request additional documentation.

Abandoned Court Funds

Forms

Application for Certificate of Deposit

বাঙালি | 中文 | français | kreyòl ayisyen | 한국어 | русский | español

W-9 form - Federal tax form provides information necessary so Finance can report the payment to the Internal Revenue Service. The IRS will send the payee Form 1099 showing taxable income. For more information, visit the Internal Revenue Service (IRS) website.

Signature Verification Form - This form is used in Court and Trust cases when it is necessary to obtain the notarized signatures of all persons (individuals, attorneys, corporations) to whom payment is being made. This form is required for all payees whose notarized signature does not appear on the Application for Certificate of Deposit.

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Additional Forms

Forms

Surplus Moneys Proceedings 054



NYC DEPARTMENT OF FINANCE • TREASURY DIVISION

APPLICATION FOR CERTIFICATE OF DEPOSIT

Mail to: NYC Department of Finance, Treasury/Court Assets Unit, 66 John Street, 12th Floor, New York, NY 10038

Instructions: Please complete, notarize and mail this application to the address above. See General Instructions on page 4. For further information, call 212-908-7619 or visit us at nyc.gov/contactcourtasets.

OFFICE USE ONLY - DO NOT WRITE IN THIS BOX

Certificate Date: ___/___/___ Certificate Number: _____ Account Number: _____ Amount: \$ _____

SECTION A. COURT AND CASE INFORMATION

1. Name of Court _____ 2. County of Court _____
3. Index no.: _____ Year: _____
4. Name of Case: _____ VS. _____
5. Nature of Case: _____
6. The funds were deposited by:
 - a. The Court under receipt number _____
 - b. A party to the case
7. Date of Deposit: _____ / _____ / _____
MONTH DAY YEAR

SECTION B. CLAIMANT INFORMATION

1. Claimant's Full Name: _____
2. Claimant's Country of Citizenship: _____
3. Claimant's address: _____
NUMBER AND STREET CITY STATE ZIP CODE
4. Names and addresses of payees other than claimant are (list all that apply):
 - a. _____
NAME ADDRESS CITY STATE ZIP CODE
 - b. _____
NAME ADDRESS CITY STATE ZIP CODE
 - c. _____
NAME ADDRESS CITY STATE ZIP CODE

Corporations only

5. Claimant was incorporated in the State of _____, County of _____
- Was corporation dissolved? YES NO If "YES" give date: _____/_____/_____
- If "NO", is corporation actively engaged in business? YES NO

SECTION C. FUND INFORMATION

1. Name of the attorney in the action or proceeding in which the deposit was made:

_____ FIRST NAME _____ LAST NAME

2. How did claimant or attorney learn about the funds? _____

3. What is your relationship to the claim? Tenant Landlord Attorney Relative Creditor
(choose one)
 Other: _____

4. If funds were deposited for benefit of infant, date of birth of infant: _____ / _____ / _____
MONTH DAY YEAR

5. I intend to withdraw: Entire fund Portion of fund

6. Dates and amounts of prior withdrawals, if applicable:

a. _____ / _____ / _____ AMOUNT
DATE
b. _____ / _____ / _____ AMOUNT
DATE
c. _____ / _____ / _____ AMOUNT
DATE
d. _____ / _____ / _____ AMOUNT
DATE

INDIVIDUAL CLAIMANT AND ATTORNEY CERTIFICATION

ALL SIGNATURES MUST BE ACKNOWLEDGED BEFORE PRESENTATION

SIGNATURE OF CLAIMANT	SIGNATURE OF CLAIMANT	SIGNATURE OF ATTORNEY OR ASSIGNEE REPRESENTING CLAIMANT(S)
RESIDENCE ADDRESS	RESIDENCE ADDRESS	OFFICE ADDRESS
CITY, STATE, ZIP CODE	CITY, STATE, ZIP CODE	CITY, STATE, ZIP CODE

STATE OF _____ }
COUNTY OF _____ } ss.

On this _____ day of _____, 20_____, before me, the undersigned personally appeared _____, and _____

and _____, personally known to me, or proved to me on the basis of satisfactory evidence to be the individual(s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature (s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

SIGNATURE OF INDIVIDUAL TAKING ACKNOWLEDGEMENT

CLAIMANT IDENTIFIED BY: _____

OFFICE OF INDIVIDUAL TAKING ACKNOWLEDGEMENT

ATTORNEY OR ASSIGNEE IDENTIFIED BY: _____

CORPORATE CERTIFICATION

ALL SIGNATURES MUST BE ACKNOWLEDGED BEFORE PRESENTATION

SIGNATURE OF CLAIMANT	SIGNATURE OF CLAIMANT	SIGNATURE OF CLAIMANT
TITLE	TITLE	TITLE
RESIDENCE ADDRESS	RESIDENCE ADDRESS	RESIDENCE ADDRESS
CITY, STATE, ZIP CODE	CITY, STATE, ZIP CODE	CITY, STATE, ZIP CODE

STATE OF _____
 COUNTY OF _____ } ss.

On this _____ day of _____, 20_____, before me, the undersigned personally
 appeared _____, and _____

and _____, personally known to me, or proved to me on the basis of satisfactory evidence to be the individual(s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature (s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

 SIGNATURE OF INDIVIDUAL TAKING ACKNOWLEDGEMENT

 OFFICE OF INDIVIDUAL TAKING ACKNOWLEDGEMENT

NOTE: Corporate seal must be affixed

FOR OFFICIAL USE ONLY. DO NOT WRITE BELOW THIS LINE.

Approved by: _____

Date: _____/_____/_____

GENERAL INSTRUCTIONS

1. Everyone who should receive a payment must sign as "claimant" in the appropriate Certification section. Make copies of page 2 or 3, if necessary.
2. A notary who is not one of the claimants must certify the claimants' signatures. If the notary is from outside New York State, attach the notary's Certificate of Authenticity to the application.
3. If the fund is in the name of a deceased person, attach Letters of Administration, Letter of Testamentary, and Transfer Tax Waivers to the application.
4. If you are an attorney-in-fact or assignee, attach a copy of your power of attorney or assignment to the application.
5. Mail original copy of this Application for Certificate of Deposit with any required attachments to NYC Department of Finance, Treasury/Court Assets Unit, 66 John Street, 12th Floor, New York, NY 10038.
6. After we approve your application, we will mail you the Certificate of Deposit and a copy of the processed application.
7. Both the copy of application and the Certificate of Deposit must be attached to the motion filed in Court.
8. The court order should direct the Department of Finance or the Commissioner of Finance to pay to the specified person(s) the specified amount(s) plus accrued interest, if any, less lawful fees.

Attorneys who want the check mailed to them should have that instruction included in the court order. (Rule 2607, C.P.L.R.)

9. One copy of the order, certified by the clerk of the court, must be delivered to Treasury Division/Court Assets at 66 John Street, 2nd Floor, WITH a copy of the petition, affidavit and/or stipulation. Hours are from 9am to 4:30pm, Monday - Friday.

Surplus Moneys Proceedings 058



**COURT
AND
TRUST**

NYC DEPARTMENT OF FINANCE • TREASURY DIVISION

SIGNATURE VERIFICATION FORM

Mail to: NYC Department of Finance, Treasury/Court Assets, 66 John Street, 12th Floor, New York, NY 10038

Instructions: If you have not already signed and notarized the Certificate of Deposit Application relating to your case, as a payee named in the court order, you are required to complete, sign and have this form notarized. Payment cannot be made until the payee's signature is verified. A disinterested notary must notarize all signatures. A certificate of authenticity is required for notaries outside the State of New York. Submit the completed form to the address above. For further information call 212-908-7619.

SIGNATURE CERTIFICATION (TO BE COMPLETED BY PAYEE)

Payee Name: _____
PRINT FIRST NAME PRINT LAST NAME

SIGNATURE OF PAYEE Date: ____/____/____

Name of Firm: _____
(If a corporation, individual owner or partnership): PRINT FIRM NAME PRINT NAME OF CORPORATE OFFICER

Payee Address: _____
NUMBER AND STREET Apt. #: _____

City: _____ State: _____ Zip Code: _____

NOTARY

Sworn to before me:

on this _____ day of _____, 20____, before me, the undersigned personally appeared _____ and _____ and _____ personally known to me, or proved to me on the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary
Affix
Stamp
Here

Notary Signature

TO BE COMPLETED BY FINANCE

CASE: _____ A/C NO: _____

This office has received an order from: Court: _____ County: _____

bearing name(s) of the claimant(s), payees or attorney where the order to pay for attorney: _____

CUSTOMER REPRESENTATIVE'S INITIALS DATE _____ SUPERVISOR'S INITIALS DATE

Surplus Moneys Proceedings 059



NYC DEPARTMENT OF FINANCE • TREASURY DIVISION

ADMINISTRATIVE FEE DEDUCTION ACKNOWLEDGMENT

Mail to: NYC Department of Finance, Treasury/Court Assets Unit, 66 John Street, 12th Floor, New York, NY 10038

Instructions: Please complete, notarize and mail this form to the address above.
For further information, call 212-908-7619 or visit us at nyc.gov/contactcourtassets

1. Name of Court: _____ 2. County of Court _____

3. Index no.: _____ Year: _____

4. Name of Case: _____ VS. _____

I, _____, am a claimant or a claimant's attorney in the above-
referenced case. I understand that pursuant to section 8010 of the CPLR, Finance is entitled to retain two per cent (2%) of the amount awarded to me or my client (including accrued interest, if any). By signing below and submitting this document to the Department of Finance, Treasury/Court Assets Unit, I acknowledge and consent to a deduction of two percent (2%) from the amount stated in the court order.

Print Claimant's Name: _____

Signature of Claimant: _____

OR

Print Claimant's Attorney's Name: _____
(If applicable)

Signature of Attorney: _____
(If applicable)

Sworn to before me this _____ day of _____, 20_____

Notary Public _____

STAMP OR SEAL

Surplus Moneys Proceedings 060

Form **W-9**
(Rev. October 2018)
Department of the Treasury
Internal Revenue Service

**Request for Taxpayer
Identification Number and Certification**

**Give Form to the
requester. Do not
send to the IRS.**

► Go to www.irs.gov/FormW9 for instructions and the latest information.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only **one** of the following seven boxes.

Individual/sole proprietor or single-member LLC C Corporation S Corporation Partnership Trust/estate

Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ► _____

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is **not** disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

Other (see instructions) ► _____

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):

Exempt payee code (if any) _____

Exemption from FATCA reporting code (if any) _____

(Applies to accounts maintained outside the U.S.)

5 Address (number, street, and apt. or suite no.) See instructions. Requester's name and address (optional)

6 City, state, and ZIP code

7 List account number(s) here (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

			-			-				
--	--	--	---	--	--	---	--	--	--	--

or

Employer identification number

			-							
--	--	--	---	--	--	--	--	--	--	--

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here Signature of U.S. person ► Date ►

General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

By signing the filled-out form, you:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income, and
4. Certify that FATCA code(s) entered on this form (if any) indicating that you are exempt from the FATCA reporting, is correct. See *What is FATCA reporting*, later, for further information.

Note: If you are a U.S. person and a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Definition of a U.S. person. For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien;
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States;
- An estate (other than a foreign estate); or
- A domestic trust (as defined in Regulations section 301.7701-7).

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax under section 1446 on any foreign partners' share of effectively connected taxable income from such business. Further, in certain cases where a Form W-9 has not been received, the rules under section 1446 require a partnership to presume that a partner is a foreign person, and pay the section 1446 withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid section 1446 withholding on your share of partnership income.

In the cases below, the following person must give Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States.

- In the case of a disregarded entity with a U.S. owner, the U.S. owner of the disregarded entity and not the entity;
- In the case of a grantor trust with a U.S. grantor or other U.S. owner, generally, the U.S. grantor or other U.S. owner of the grantor trust and not the trust; and
- In the case of a U.S. trust (other than a grantor trust), the U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person or the U.S. branch of a foreign bank that has elected to be treated as a U.S. person, do not use Form W-9. Instead, use the appropriate Form W-8 or Form 8233 (see Pub. 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the payee has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items.

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity, give the requester the appropriate completed Form W-8 or Form 8233.

Backup Withholding

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 24% of such payments. This is called "backup withholding." Payments that may be subject to backup withholding include interest, tax-exempt interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, payments made in settlement of payment card and third party network transactions, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the instructions for Part II for details),
3. The IRS tells the requester that you furnished an incorrect TIN,
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See *Exempt payee code*, later, and the separate Instructions for the Requester of Form W-9 for more information.

Also see *Special rules for partnerships*, earlier.

What is FATCA Reporting?

The Foreign Account Tax Compliance Act (FATCA) requires a participating foreign financial institution to report all United States account holders that are specified United States persons. Certain payees are exempt from FATCA reporting. See *Exemption from FATCA reporting code*, later, and the Instructions for the Requester of Form W-9 for more information.

Updating Your Information

You must provide updated information to any person to whom you claimed to be an exempt payee if you are no longer an exempt payee and anticipate receiving reportable payments in the future from this person. For example, you may need to provide updated information if you are a C corporation that elects to be an S corporation, or if you no longer are tax exempt. In addition, you must furnish a new Form W-9 if the name or TIN changes for the account; for example, if the grantor of a grantor trust dies.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Line 1

You must enter one of the following on this line; **do not** leave this line blank. The name should match the name on your tax return.

If this Form W-9 is for a joint account (other than an account maintained by a foreign financial institution (FFI)), list first, and then circle, the name of the person or entity whose number you entered in Part I of Form W-9. If you are providing Form W-9 to an FFI to document a joint account, each holder of the account that is a U.S. person must provide a Form W-9.

a. **Individual.** Generally, enter the name shown on your tax return. If you have changed your last name without informing the Social Security Administration (SSA) of the name change, enter your first name, the last name as shown on your social security card, and your new last name.

Note: ITIN applicant: Enter your individual name as it was entered on your Form W-7 application, line 1a. This should also be the same as the name you entered on the Form 1040/1040A/1040EZ you filed with your application.

b. **Sole proprietor or single-member LLC.** Enter your individual name as shown on your 1040/1040A/1040EZ on line 1. You may enter your business, trade, or "doing business as" (DBA) name on line 2.

c. **Partnership, LLC that is not a single-member LLC, C corporation, or S corporation.** Enter the entity's name as shown on the entity's tax return on line 1 and any business, trade, or DBA name on line 2.

d. **Other entities.** Enter your name as shown on required U.S. federal tax documents on line 1. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on line 2.

e. **Disregarded entity.** For U.S. federal tax purposes, an entity that is disregarded as an entity separate from its owner is treated as a "disregarded entity." See Regulations section 301.7701-2(c)(2)(iii). Enter the owner's name on line 1. The name of the entity entered on line 1 should never be a disregarded entity. The name on line 1 should be the name shown on the income tax return on which the income should be reported. For example, if a foreign LLC that is treated as a disregarded entity for U.S. federal tax purposes has a single owner that is a U.S. person, the U.S. owner's name is required to be provided on line 1. If the direct owner of the entity is also a disregarded entity, enter the first owner that is not disregarded for federal tax purposes. Enter the disregarded entity's name on line 2, "Business name/disregarded entity name." If the owner of the disregarded entity is a foreign person, the owner must complete an appropriate Form W-8 instead of a Form W-9. This is the case even if the foreign person has a U.S. TIN.

Line 2

If you have a business name, trade name, DBA name, or disregarded entity name, you may enter it on line 2.

Line 3

Check the appropriate box on line 3 for the U.S. federal tax classification of the person whose name is entered on line 1. Check only one box on line 3.

IF the entity/person on line 1 is a(n) . . .	THEN check the box for . . .
• Corporation	Corporation
• Individual • Sole proprietorship, or • Single-member limited liability company (LLC) owned by an individual and disregarded for U.S. federal tax purposes.	Individual/sole proprietor or single-member LLC
• LLC treated as a partnership for U.S. federal tax purposes, • LLC that has filed Form 8832 or 2553 to be taxed as a corporation, or • LLC that is disregarded as an entity separate from its owner but the owner is another LLC that is not disregarded for U.S. federal tax purposes.	Limited liability company and enter the appropriate tax classification. (P= Partnership; C= C corporation; or S= S corporation)
• Partnership	Partnership
• Trust/estate	Trust/estate

Line 4, Exemptions

If you are exempt from backup withholding and/or FATCA reporting, enter in the appropriate space on line 4 any code(s) that may apply to you.

Exempt payee code.

- Generally, individuals (including sole proprietors) are not exempt from backup withholding.
- Except as provided below, corporations are exempt from backup withholding for certain payments, including interest and dividends.
- Corporations are not exempt from backup withholding for payments made in settlement of payment card or third party network transactions.
- Corporations are not exempt from backup withholding with respect to attorneys' fees or gross proceeds paid to attorneys, and corporations that provide medical or health care services are not exempt with respect to payments reportable on Form 1099-MISC.

The following codes identify payees that are exempt from backup withholding. Enter the appropriate code in the space in line 4.

- 1—An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2)
- 2—The United States or any of its agencies or instrumentalities
- 3—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities
- 4—A foreign government or any of its political subdivisions, agencies, or instrumentalities
- 5—A corporation
- 6—A dealer in securities or commodities required to register in the United States, the District of Columbia, or a U.S. commonwealth or possession
- 7—A futures commission merchant registered with the Commodity Futures Trading Commission
- 8—A real estate investment trust
- 9—An entity registered at all times during the tax year under the Investment Company Act of 1940
- 10—A common trust fund operated by a bank under section 584(a)
- 11—A financial institution
- 12—A middleman known in the investment community as a nominee or custodian
- 13—A trust exempt from tax under section 664 or described in section 4947

The following chart shows types of payments that may be exempt from backup withholding. The chart applies to the exempt payees listed above, 1 through 13.

IF the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt payees except for 7
Broker transactions	Exempt payees 1 through 4 and 6 through 11 and all C corporations. S corporations must not enter an exempt payee code because they are exempt only for sales of noncovered securities acquired prior to 2012.
Barter exchange transactions and patronage dividends	Exempt payees 1 through 4
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt payees 1 through 5 ²
Payments made in settlement of payment card or third party network transactions	Exempt payees 1 through 4

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees, gross proceeds paid to an attorney reportable under section 6045(f), and payments for services paid by a federal executive agency.

Exemption from FATCA reporting code. The following codes identify payees that are exempt from reporting under FATCA. These codes apply to persons submitting this form for accounts maintained outside of the United States by certain foreign financial institutions. Therefore, if you are only submitting this form for an account you hold in the United States, you may leave this field blank. Consult with the person requesting this form if you are uncertain if the financial institution is subject to these requirements. A requester may indicate that a code is not required by providing you with a Form W-9 with "Not Applicable" (or any similar indication) written or printed on the line for a FATCA exemption code.

A—An organization exempt from tax under section 501(a) or any individual retirement plan as defined in section 7701(a)(37)

B—The United States or any of its agencies or instrumentalities

C—A state, the District of Columbia, a U.S. commonwealth or possession, or any of their political subdivisions or instrumentalities

D—A corporation the stock of which is regularly traded on one or more established securities markets, as described in Regulations section 1.1472-1(c)(1)(i)

E—A corporation that is a member of the same expanded affiliated group as a corporation described in Regulations section 1.1472-1(c)(1)(i)

F—A dealer in securities, commodities, or derivative financial instruments (including notional principal contracts, futures, forwards, and options) that is registered as such under the laws of the United States or any state

G—A real estate investment trust

H—A regulated investment company as defined in section 851 or an entity registered at all times during the tax year under the Investment Company Act of 1940

I—A common trust fund as defined in section 584(a)

J—A bank as defined in section 581

K—A broker

L—A trust exempt from tax under section 664 or described in section 4947(a)(1)

M—A tax exempt trust under a section 403(b) plan or section 457(g) plan

Note: You may wish to consult with the financial institution requesting this form to determine whether the FATCA code and/or exempt payee code should be completed.

Line 5

Enter your address (number, street, and apartment or suite number). This is where the requester of this Form W-9 will mail your information returns. If this address differs from the one the requester already has on file, write NEW at the top. If a new address is provided, there is still a chance the old address will be used until the payor changes your address in their records.

Line 6

Enter your city, state, and ZIP code.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN.

If you are a single-member LLC that is disregarded as an entity separate from its owner, enter the owner's SSN (or EIN, if the owner has one). Do not enter the disregarded entity's EIN. If the LLC is classified as a corporation or partnership, enter the entity's EIN.

Note: See *What Name and Number To Give the Requester*, later, for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local SSA office or get this form online at www.SSA.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/Businesses and clicking on Employer Identification Number (EIN) under Starting a Business. Go to www.irs.gov/Forms to view, download, or print Form W-7 and/or Form SS-4. Or, you can go to www.irs.gov/OrderForms to place an order and have Form W-7 and/or SS-4 mailed to you within 10 business days.

If you are asked to complete Form W-9 but do not have a TIN, apply for a TIN and write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Entering "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded U.S. entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if item 1, 4, or 5 below indicates otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). In the case of a disregarded entity, the person identified on line 1 must sign. Exempt payees, see *Exempt payee code*, earlier.

Signature requirements. Complete the certification as indicated in items 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.

You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.

You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions.

You must sign the certification. You may cross out item 2 of the certification.

4. Other payments.

You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments made in settlement of payment card and third party network transactions, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), ABLE accounts (under section 529A), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions.

You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account) other than an account maintained by an FFI	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Two or more U.S. persons (joint account maintained by an FFI)	Each holder of the account
4. Custodial account of a minor (Uniform Gift to Minors Act)	The minor ²
5. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
6. Sole proprietorship or disregarded entity owned by an individual	The owner ³
7. Grantor trust filing under Optional Form 1099 Filing Method 1 (see Regulations section 1.671-4(b)(2)(i)(A))	The grantor*

For this type of account:	Give name and EIN of:
8. Disregarded entity not owned by an individual	The owner
9. A valid trust, estate, or pension trust	Legal entity ⁴
10. Corporation or LLC electing corporate status on Form 8832 or Form 2553	The corporation
11. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
12. Partnership or multi-member LLC	The partnership
13. A broker or registered nominee	The broker or nominee

For this type of account:	Give name and EIN of:
14. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity
15. Grantor trust filing under the Form 1041 Filing Method or the Optional Form 1099 Filing Method 2 (see Regulations section 1.671-4(b)(2)(i)(B))	The trust

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or DBA name on the "Business name/disregarded entity" name line. You may use either your SSN or EIN (if you have one), but the IRS encourages you to use your SSN.

⁴ List first and circle the name of the trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules for partnerships*, earlier.

*Note: The grantor also must provide a Form W-9 to trustee of trust.

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Secure Your Tax Records From Identity Theft

Identity theft occurs when someone uses your personal information such as your name, SSN, or other identifying information, without your permission, to commit fraud or other crimes. An identity thief may use your SSN to get a job or may file a tax return using your SSN to receive a refund.

To reduce your risk:

- Protect your SSN,
- Ensure your employer is protecting your SSN, and
- Be careful when choosing a tax preparer.

If your tax records are affected by identity theft and you receive a notice from the IRS, respond right away to the name and phone number printed on the IRS notice or letter.

If your tax records are not currently affected by identity theft but you think you are at risk due to a lost or stolen purse or wallet, questionable credit card activity or credit report, contact the IRS Identity Theft Hotline at 1-800-908-4490 or submit Form 14039.

For more information, see Pub. 5027, Identity Theft Information for Taxpayers.

Victims of identity theft who are experiencing economic harm or a systemic problem, or are seeking help in resolving tax problems that have not been resolved through normal channels, may be eligible for Taxpayer Advocate Service (TAS) assistance. You can reach TAS by calling the TAS toll-free case intake line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

Protect yourself from suspicious emails or phishing schemes.

Phishing is the creation and use of email and websites designed to mimic legitimate business emails and websites. The most common act is sending an email to a user falsely claiming to be an established legitimate enterprise in an attempt to scam the user into surrendering private information that will be used for identity theft.

The IRS does not initiate contacts with taxpayers via emails. Also, the IRS does not request personal detailed information through email or ask taxpayers for the PIN numbers, passwords, or similar secret access information for their credit card, bank, or other financial accounts.

If you receive an unsolicited email claiming to be from the IRS, forward this message to phishing@irs.gov. You may also report misuse of the IRS name, logo, or other IRS property to the Treasury Inspector General for Tax Administration (TIGTA) at 1-800-366-4484. You can forward suspicious emails to the Federal Trade Commission at spam@uce.gov or report them at www.ftc.gov/complaint. You can contact the FTC at www.ftc.gov/idtheft or 877-IDTHEFT (877-438-4338). If you have been the victim of identity theft, see www.IdentityTheft.gov and Pub. 5027.

Visit www.irs.gov/IdentityTheft to learn more about identity theft and how to reduce your risk.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons (including federal agencies) who are required to file information returns with the IRS to report interest, dividends, or certain other income paid to you; mortgage interest you paid; the acquisition or abandonment of secured property; the cancellation of debt; or contributions you made to an IRA, Archer MSA, or HSA. The person collecting this form uses the information on the form to file information returns with the IRS, reporting the above information. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation and to cities, states, the District of Columbia, and U.S. commonwealths and possessions for use in administering their laws. The information also may be disclosed to other countries under a treaty, to federal and state agencies to enforce civil and criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. You must provide your TIN whether or not you are required to file a tax return. Under section 3406, payers must generally withhold a percentage of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to the payer. Certain penalties may also apply for providing false or fraudulent information.

THOMAS P. DINAPOLI
STATE COMPTROLLER



DIVISION OF LEGAL SERVICES
PO Box 10337
Albany, NY 12201-5337

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 5, 2020

Title of Action or Proceeding:

[REDACTED]

Supreme Court, Kings County
Rec'd from: New York City Dept. of Finance
Deposited: April, 2005
Unclaimed Funds
Ref. No.: [REDACTED]

[REDACTED]

Dear Mr. [REDACTED]:

We have received as abandoned property an amount in excess of [REDACTED] in connection with the above-captioned matter. This deposit was reported to be for the credit of the above referenced action or proceeding.

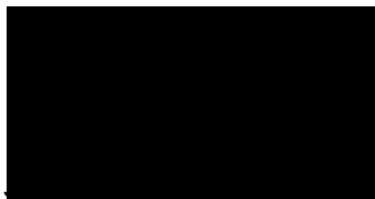
Payment will be made to the entitled person(s) upon receipt of a court certified copy of an Order of the court into which the funds represented by the above-captioned item were paid. This Order must be obtained pursuant to Section 1406(2) of the Abandoned Property Law, as amended by Chapter 453 of the Laws of 2014, and Rules 2606 and 2607 of the Civil Practice Law and Rules, after service of notice upon the State Comptroller and upon due notice to all parties to the original action or proceeding which resulted in the monies being paid into court. This matter should be brought in the same name as the original action or proceeding.

In connection with your application to the Court for such Order, you will need a Certificate of Deposit showing the amount held by this Office, which certificate must be attached to your application to the court for an Order directing payment. The certificate may be obtained from this Office upon payment of a fee of \$1.00 by check payable to "Office of the State Comptroller". Your check should be mailed to "Office of the State Comptroller, Division of Legal Services, P.O. Box 10337, Albany, New York 12201-5337". **It is strongly recommended that you consider retaining counsel in connection with this claim. You will have to bring a motion in Supreme**

Court in order to continue. The substantive and procedural requirements of motion practice in Supreme Court are extremely challenging for those without legal training.

When you commence the withdrawal action, two copies of your notice of motion must be served on this Office with supporting papers sufficient to document the entitlement of the claimant. One set of copies will be forwarded to the Attorney General, who will represent the Comptroller on the return date.

Very truly yours,

A large black rectangular redaction box covering the signature of the Senior Attorney.

Senior Attorney

**New York State Comptroller's Office – Office of Unclaimed Funds
Claim Form Instructions**

NYS Personal Privacy Protection Law Notification: The NYS Comptroller's Office of Unclaimed Funds (OUF) is requesting you to provide your Tax Payer Identification Number and/or Date of Birth on this form in order to verify your identity and that you're entitled to claim the funds. OUF is authorized to collect this information under Section 1406 of the NYS Abandoned Property Law. Disclosing this information is voluntary and we will process your claim without it. However, in certain cases OUF is required to report the transaction to the Internal Revenue Service and/or other taxing authorities. If your claim is subject to such a requirement, and you don't provide the requested information at this time, we'll require that you provide such information prior to payment. The information provided will be maintained in the Unclaimed Funds Processing System which is under the direction of the Assistant Director of Services of OUF, 110 State Street, Albany, NY 12236

SECTION 1

Enter your current contact information in the spaces provided. This information will be used to mail your check or to request additional information from you.

If your mailing address has an apartment or suite number, please be sure to include it on the Address 2 line.

SECTION 2

Use this section to provide information about yourself as the owner or provide the name and address or addresses of the person or company on whose behalf you are making claim. If you are claiming for a deceased person, indicate your relationship to that person and attach a copy of their death certificate and documentation supporting your authority to claim funds in their name. If you are claiming for a company, provide documentation supporting your authority to claim on behalf of the company.

If you have already completed a search of our database online and have the OUF code (shown in the Item Details section), enter that code in the fields provided.

SECTION 3

Be sure to read and understand the Claimant Certification information presented before moving forward. If you are not entitled to claim on behalf of the person or company named in Section 2 (Owner Information), you should not submit this claim form.

If you choose to proceed, be sure to sign your claim form in the presence of a licensed Notary Public and then mail your paperwork to the address provided. Make copies of all the paperwork submitted to keep for your own records.

Please visit the Office of Unclaimed Funds website at www.osc.state.ny.us for more information about what documentation is required.

For any additional questions you may have, call our Communication Center at 800-221-9311, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m. We can also be reached by email at nysouf@osc.ny.gov.

Return this form by mail:

Office of Unclaimed Funds
110 State Street
Albany, NY 12236

Contact us: nysouf@osc.ny.gov or 800-221-9311.

Visit our webpage at <http://www.osc.state.ny.us/ouf/index.htm>.

We invite you to like us on Facebook at facebook.com/nyscomptroller 
and follow us on Twitter at [@NYSComptroller](https://twitter.com/NYSComptroller) 

Requirements and Procedures for "Abandoned Property Location Services"

While licensing or registration is not required, the State Comptroller's Office of Unclaimed Funds requires Abandoned Property Location Service Providers to:

1. Have direct contact with the account owner, or the account owner's duly appointed representative, such as one of the following:
 - o The Executor/Administrator of the estate;
 - o The account owner's heirs;
 - o An attorney acting on the behalf of the account owner;
2. Have a written agreement permitting the service provider to act on the client's behalf (see sample Letter of Authorization and Fee Agreement). The agreement must be signed by the rightful owner (or authorized estate representative), and witnessed and acknowledged by a notary public. The agreement must also disclose the following statement in a clear and conspicuous manner, and in at least twelve-point boldface type:

"Abandoned funds held by the State can be obtained directly from the Office of the State Comptroller by the owner (or authorized estate representative) of such funds without paying a fee. These funds are held indefinitely by the Office of the State Comptroller at 800-221-9311 or www.osc.state.ny.us".

The agreement must disclose nature of the unclaimed property and indicate the percentage value of the fee to be charged.

Note – the maximum fee allowable is **15%** of the funds recovered. If the fee is not clearly indicated at 15% or less or if it is stipulated as a set dollar value that exceeds 15% of the value of the recovered funds, the agreement is not valid and will be rejected.

3. **Mail to the Office of Unclaimed Funds, 110 State Street, Albany, NY 12236:**
 - o An original signed agreement. (The claimant should sign two originals — one for the Office of Unclaimed Funds and one for the service provider.)
 - o A claim form or letter indicating the account owner's complete name, address, at least one account number (OUF code) as it appears in the item details of the unclaimed funds list and the claimant's full name and current address.

Upon receipt, the Office of Unclaimed Funds will send an acknowledgment letter with a claim reference number to the service provider. We'll verify that the agreement complies with the requirements and then research the claim and initiate the claim process.

We'll send a letter to the service provider describing the funds we hold and what additional documentation, if necessary, must be provided to complete the claim. After appropriate documentation is provided and the claim is fully processed and approved, we'll issue a refund check made payable to the claimant. The check will be mailed in accordance with the provisions of the Abandoned Property Location Service Providers' agreement.

It is the responsibility of the service provider to collect the fee from their clients. The Office of Unclaimed Funds does not charge a processing fee to service providers or claimants and is not involved in the fee collection process.

Surplus Moneys Proceedings 071

More information on legal requirements for Abandoned Property Location Service Providers is available from: **McKinney's Consolidated Laws of the State of New York, Book 2½**; Thomson West, 610 Opperman Drive, P.O. Box 64526, St. Paul, MN 55164-0526, (651) 687-7000, www.west.thomson.com

Note: Section 13-2.3 of the Estates, Powers & Trusts Law ("EPTL") requires that "every power of attorney relating to an interest in a decedent's estate and every conveyance or assignment of an interest in an estate or similar instrument which contains an express or implied authorization or delegation of power to act there under" must be in writing and acknowledged, and recorded in the office of the Surrogate's Court having jurisdiction over the New York estate. Abandoned Property Location Service Provider Agreements are documents subject to this requirement (see, *In re Betlem*, 300 A.D.2d 1026 (4th Dept. 2002)). Therefore, in order to ensure compliance with this requirement, where a service provider is representing an executor or administrator appointed by a New York State Surrogate's Court, effective January 1, 2008, OUF will require service providers to submit a court certified copy of their Abandoned Property Location Service Provider Agreement, which has been duly filed with the appropriate Surrogate's Court, for all claims filed with this Office on or after such date.

ABANDONED PROPERTY LOCATION SERVICES
Letter of Authorization and Fee Agreement

1 ABANDONED PROPERTY LOCATION SERVICE PROVIDER INFORMATION:

SERVICE PROVIDER NAME DAY TIME TELEPHONE NUMBER

STREET ADDRESS CITY STATE ZIP

2 ACCOUNT OWNER INFORMATION: Provide information about the person or company listed as having unclaimed funds.

ACCOUNT OWNER NAME OUF CODE (If Known)

ACCOUNT OWNER STREET ADDRESS CITY STATE ZIP

Is the Account Owner deceased? No Yes If Yes, Date of Death: _____ / _____ / _____

3 CLAIMANT INFORMATION:

CLAIMANT NAME DAY TIME TELEPHONE NUMBER

CLAIMANT CURRENT STREET ADDRESS CITY STATE ZIP

CLAIMANT'S RELATIONSHIP TO ACCOUNT OWNER:

Self Surviving Spouse Child Guardian Executor/Administrator Other _____

4 DISCLOSURE:

"Abandoned Funds held by the State can be obtained directly from the Office of the State Comptroller by the owner (or authorized estate representative) of such funds without paying a fee. These funds are held indefinitely by the Office of the State Comptroller. For more information, contact the Office of the State Comptroller at 800-221-9311 or www.osc.state.ny.us."

The nature of the funds held by the New York State Comptroller's Office of Unclaimed Funds for the above named Account Owner may involve funds such as bank accounts, stocks, dividends, mutual funds, insurance policies, utility refunds, and uncashed checks.

The fee charged by the above named service provider will be _____% of the funds recovered (must not exceed 15%).

5 CLAIMANT CERTIFICATION:

I hereby authorize the above named service provider, to act as agent in claiming funds held in the custody of the New York State Office of the State Comptroller (OSC) located at 110 State Street, Albany, NY 12236. This appointment is limited solely for the purpose of claiming unclaimed funds held by OSC and does not constitute the creation of a principal/agent relationship for any other purpose.

I authorize OSC to communicate with the above named service provider and release to the service provider confidential information concerning this claim. I understand that I will be required to sign all appropriate documents pertaining to this claim. I further understand that I will be named as the payee for all funds recovered to which I am entitled but checks will be mailed to the above named service provider.

Claimant Signature

Service Provider Authorized Signatory

On this _____ day of _____, in the year 20____, before me _____
(Claimant Name)

personally appeared and is personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledge to me that they executed the same in their capacity, and that by their signature, on the instrument, the individual, or the person upon which the individual acted, executed the instrument.

Notary Signature: _____

Notary Stamp:

Island. In April 2000, the real property was sold at public auction in order to satisfy a judgment entered in a tax lien foreclosure of the property. The sale resulted in a surplus of \$42,986. The money was initially deposited with the Richmond County Clerk and later with the New York State Comptroller. Both Stell and the defendant City of New York Department of Housing Preservation and Development (hereinafter HPD) interposed claims to the surplus money.

HPD held a first mortgage on the property, granted in 1988 and securing a 15-year loan in the sum of \$56,250. Stell defaulted on the mortgage in April 1997, and the mortgage matured by its own terms in 2003. HPD claimed that, as of August 31, 2017, Stell owed it \$148,096.30, and it sought to use the surplus funds to partially satisfy Stell's debt. Stell's claim was predicated upon his status as the holder of the equitable right of redemption. He maintained that HPD's claims were time-barred.

In an amended order dated August 3, 2017, the Supreme Court, Richmond County (Philip G. Minardo, J.), confirmed a referee's report of the public auction sale and appointed Thomas J. Hall (hereinafter the referee) as referee to ascertain and report the amount due to HPD or any other person who had a lien on the surplus monies and to ascertain the priority of the liens thereon.

The Referee's Report

The referee issued a report dated January 2, 2018, which identified Stell and HPD as being the only claimants to the surplus funds. The referee made findings of fact, none of which were disputed by Stell or HPD. Stell was the owner of the equity of redemption of the real property. HPD asserted its claim to the surplus by virtue of a purchase money mortgage dated March 1, 1988, between Stell as mortgagor and HPD as mortgagee, in the original principal sum of \$56,250, which was secured by the premises and recorded on April 8, 1988. The mortgage had been in default since April 1, 1997, and HPD asserted that the sum of \$148,096.30 was due and owing on the mortgage as of August 31, 2017.

The referee's report set forth the parties' positions. HPD contended that it had a valid mortgage lien on the premises, which was second in priority to the foreclosed-upon tax lien, and that the amount due to it exceeded the surplus, such that the surplus should be distributed entirely to it. Stell argued that HPD's claim was time-barred by the six-year statute of limitations, since the mortgage, by its terms, matured in 2003 and no payments were made at any time after the maturity date. HPD countered that the only relevant issue was whether its claim was valid at the time of the foreclosure sale of the tax lien, which took place in 2000, within the six-year statute of limitations.

Surplus Moneys Proceedings 075

The referee noted that while there was no evidence that the March 1, 1988, mortgage at issue was ever accelerated, by its terms, it was to be paid in full on the 15th anniversary of the date of the mortgage, or March 1, 2003. The referee agreed with HPD that the statute of limitations had not yet run at the time of the foreclosure auction or at the time when the deed was delivered, both of which occurred in 2000. The referee, therefore, concluded that HPD's lien attached to the surplus. However, the referee also reported that the statute of limitations had continued to run after HPD's lien attached to the surplus and had expired before HPD sought to enforce the lien in a surplus money proceeding. The referee thus concluded that HPD's claim to the surplus was time-barred, and that Stell, as the only other claimant of the surplus funds, was entitled to those funds as the owner of the equity of redemption.

Order on Appeal

By notice of motion dated August 14, 2018, Stell moved to confirm the referee's report and direct the distribution of surplus funds to him. HPD opposed the motion, arguing that the statute of limitations was not a bar against a lien on surplus funds if the mortgage lien had been extinguished in the foreclosure sale and was valid at the time of that sale. HPD asserted that liens of subordinate lienors are extinguished upon a foreclosure sale and attach to any surplus, such that the statute of limitations related to a foreclosed lien is no longer relevant. HPD asserted that it was a defendant in the foreclosure action, and its lien was extinguished upon the foreclosure of the tax lien, and, therefore, it did not have to take further action to enforce its lien on the surplus.

In an order dated October 25, 2018, the Supreme Court (Alan C. Marin, J.) denied Stell's motion, inter alia, to confirm the referee's report. The court held that HPD's claim to the surplus was not barred by the statute of limitations, and directed the New York State Comptroller to distribute the surplus funds to HPD based on its priority mortgage lien, which attached to the surplus at the time of the foreclosure sale and was superior to Stell's interest in the surplus. Stell appeals.

Analysis

The referee, in concluding that HPD's claim to the surplus funds was time-barred, relied upon two cases: *Allerwan Co. v Hermann* (262 NY 625) and *Greenpoint Sav. Bank v Kijik* (297 AD2d 359).

In *Allerwan*, the Court of Appeals reversed this Court's determinations that a second mortgagee's claim to surplus money under its mortgage was valid and superior to the claim of the

heirs of the owner of redemption, and that “the filing by the [second mortgagee] of its claim to the surplus moneys constituted a commencement of the proceeding and preserved the lien of its mortgage thereon” (*Allerwan Co. v Hermann*, 237 App Div 900, 900, *revd* 262 NY 625). The Court of Appeals reversed this Court “upon the ground that the filing of the notice of claim to the surplus money by [the second mortgagee] was not the commencement of an action or special proceeding on the bond or mortgage in question and that, therefore, the claim of the [second mortgagee] was barred” by the then-applicable 20-year statute of limitations to foreclose a mortgage (*Allerwan Co. v Hermann*, 262 NY at 626).

In *Greenpoint*, this Court, in reliance upon *Allerwan*, held that the claim of a second mortgagee, who had been named as a defendant in the first mortgagee’s action to foreclose the mortgage, to surplus money was time-barred, because it moved to obtain the surplus funds more than six years after the mortgagor defaulted on the second mortgage.

On this appeal, Stell argues that the referee properly relied upon these two cases, and that the order denying his motion, *inter alia*, to confirm the referee’s report, which found that HPD’s claim to the surplus was made more than six years after Stell defaulted on the HPD mortgage and was therefore time-barred, should be reversed.

HPD counters that its lien was terminated upon foreclosure and attached to the surplus upon the foreclosure sale, and that since it was a defendant to the foreclosure action which resulted in the surplus, it was not required to commence a separate action within the six-year statute of limitations. HPD relies upon *Bennardo v Del Monte Caterers, Inc.* (27 AD3d 503, 505), in which this Court held that a second mortgagee’s claim to surplus funds was not barred by the six-year statute of limitations, where the second mortgagee’s predecessor in interest had participated in the action to foreclose the first mortgage by answering the complaint and asserting counterclaims, such that all parties were on notice of his claim as second mortgagee. Noting that once the second mortgagee’s lien on the property was extinguished due to the foreclosure and sale, it filed its notice of claim to the surplus funds, this Court found that *Allerwan Co. v Hermann* (262 NY 625) and *Greenpoint Sav. Bank v Kijik* (297 AD2d 359) were not inconsistent with the determination. While the second mortgagee in *Bennardo* commenced a separate foreclosure action, which was withdrawn after the sale incident to the foreclosure of the first mortgage, in the present case, HPD contends that it would make no sense to hold that it had to have commenced an action to foreclose a mortgage which had been extinguished upon the foreclosure of the tax lien.

“Surplus money . . . stands in the place of the land for all purposes of distribution among persons having vested interests or liens upon the land” (*Shankman v Horoshko*, 291 AD2d 441, 442, quoting *Roosevelt Sav. Bank v Goldberg*, 118 Misc 2d 220, 221 [Sup Ct, Nassau County]; see *Chase Manhattan Mtge. Corp. v Hall*, 18 AD3d 413, 414; *Freemont Inv. & Loan v Kinlaw*, 15 AD3d 345). “Furthermore, “[o]nly those judgments and liens which existed upon the property at the time of the . . . sale constitute liens against the surplus moneys” (*Mortgage Elec. Registration Sys., Inc. v Levin*, 63 AD3d 890, 891, quoting *Pindus v Newmat Leasing Corp.*, 71 AD2d 948, 949). The liens existing on the land at the time of the foreclosure are considered to have been transferred to the surplus funds (see *Nutt v Cuming*, 155 NY 309, 312; *Sadow v Poskin Realty Corp.*, 63 Misc 2d 499, 503 [Sup Ct, Queens County]). If at the time of the sale no valid lien exists, then there is nothing to be transferred to the surplus funds (see *Nutt v Cuming*, 155 NY at 312).

“[S]urplus money proceedings . . . are not collateral to the foreclosure, but are in the action itself. And the rights of lienors subsequent to the mortgage under foreclosure are before the court and must be protected as much as those of the owner of the property. (*Livingston v Mildrum*, 19 N.Y. 440, 442; Thomas Mort. [3d ed.] § 1101.) A foreclosure is not terminated until the surplus is distributed in the action. (*Mutual Life Ins. Co. v Bowen*, 47 Barb. 618.)” (*Davison v MacDonald*, 124 Misc 726, 728 [Sup Ct, Kings County], *affd* 216 App Div 759).

Surplus money from a foreclosure sale is not a general asset of the owner of the equity of redemption, but stands in the place of the property for the purpose of distribution among those having vested interests in or liens on the property (see *First Fed. Sav. & Loan Assn. of Rochester v Brown*, 78 AD2d 119, 123; *Roosevelt Sav. Bank v Goldberg*, 118 Misc 2d 220, 221 [Sup Ct, Nassau County]). The rights of the parties are fixed at the time of the foreclosure sale, and the rights of a second lienholder are transferred to any surplus (see *Elsworth v Woolsey*, 154 NY 748, *affg* 19 App Div 385; *Fliess v Buckley*, 90 NY 286; *Sadow v Poskin Realty Corp.*, 63 Misc 2d at 502-503).

In this case, HPD was a defendant in the tax lien foreclosure action, and this surplus money proceeding occurred in the context of that tax lien foreclosure action, with the same caption and index number. All of the parties to the foreclosure action were on notice of HPD’s appearance in the foreclosure action. As a party to the foreclosure action, HPD was not required to file a notice of claim to the surplus money in order to preserve its right to satisfaction of its lien from the surplus (see *Federal Home Loan Mtge. Corp. v Grant*, 224 AD2d 656 [holding that as a party to foreclosure action, a secondary mortgagee was not required to file a notice of claim to surplus moneys in order

to preserve its right to satisfaction of its lien from surplus proceeds of foreclosure sale, citing RPAPL 1361(2)).

We disagree with Stell's contention, implicitly accepted by the referee, that for HPD to preserve its rights, notwithstanding its participation in the tax lien foreclosure action, it had to commence a separate action to foreclose its mortgage. Such an approach would necessitate duplication of proceedings, with attendant expense to the parties and burden to the judiciary. The Court of Appeals long ago held that a duplicative action is neither necessary nor appropriate. In *Fliess v Buckley* (90 NY 286), the Court stated that, upon the foreclosure of the first mortgage, the lien of the second mortgage followed the surplus into the hands of the county's financial officer, and the remedy of the second mortgagee is to enforce his or her claim in the court by whose direction the foreclosure had taken place; the second mortgagee, said the Court, "requires no other action" (*id.* at 291). Similarly, we held in *Reliance Fed. Sav. & Loan Assn. of N.Y. v Venet Homes* (57 AD2d 830) that the holders of mechanic's liens, who had been made party defendants in a mortgage foreclosure action, were not required to commence their own foreclosure actions or serve cross complaints in the mortgage foreclosure action in order to participate in a surplus money proceeding (*see Dime Sav. Bank of N.Y. v Boklan*, 1989 WL 35946, 1989 US Dist LEXIS 3794 [ED NY, No. CV 86-2664]).

Allerwan Co. v Hermann (262 NY 625) does not undercut or call into question any of these articulated legal principles. It stands only for the proposition that the filing of a claim to surplus money is not the equivalent of the commencement of a foreclosure action. There is no indication either in the Court of Appeals' decision in *Allerwan* or in our own which preceded it (*Allerwan Co. v Hermann*, 237 App Div 900) that the holder of the junior mortgage had appeared in the action to foreclose the first mortgage. Similarly, in *Greenpoint Sav. Bank v Kijik* (297 AD2d 359), while the first mortgagee named the second mortgagee as a defendant in the action to foreclose the first mortgage, the second mortgagee did not appear or answer. Thus, *Allerwan* and *Greenpoint* hold only that a junior mortgagee's entitlement to surplus monies generated by a sale incident to foreclosure of a priority lien is not preserved by the filing of a claim to the surplus money where the holder of the junior lien did not participate in the proceeding to foreclose the priority lien (*see Bennardo v Del Monte Caterers, Inc.*, 27 AD3d 503).

In this regard, we find persuasive the reasoning of Judge Raymond Dearie in *Dime Sav. Bank of N.Y. v Boklan* (1989 WL 35946, 1989 US Dist LEXIS 3794). In that case, Dime Savings Bank, as the holder of the first mortgage, moved to foreclose upon it and named Bankers

Trust Company (hereinafter Bankers Trust), the second mortgagee, as a defendant in that action. Bankers Trust appeared in the action, waiving notice of all papers, except notice of surplus money proceedings. A judgment creditor with a claim to the surplus funds contended that Bankers Trust was obligated to commence its own foreclosure proceeding within six years of the declaration of default on its mortgage, and that its failure to do so barred it from seeking the surplus. The District Court held as follows, in relevant part:

“As a junior mortgagee, Bankers Trust was a necessary party-defendant in the foreclosure of Dime Savings’ senior mortgage. *See* N.Y.R.P.A.P.L. § 1311 (McKinney 1979). *See generally* G. Osborne, *Handbook on the Law of Mortgages* § 321, at 671 (1970) (junior mortgagees, as parties who have interests subject to a senior mortgage, are necessary defendants in foreclosure of senior mortgage). Under New York law, the lien of a junior mortgagee who is made a party to a foreclosure action brought by a senior mortgagee, although cut-off and extinguished as to the land, continues as a lien upon the surplus funds arising from the foreclosure. *See* 15 Carmody-Wait 2d Cyclopaedia of New York Practice, *Foreclosure of Mortgages on Real Estate* § 92:431, at 383 (1967) (‘notwithstanding the foreclosure of a prior mortgage, the junior mortgage continues to be a lien, and as such, follows the surplus money’).

“As Bankers Trust correctly notes, since it was joined in Dime Savings’ earlier foreclosure action, its remedy with respect to its mortgage was to look to the surplus monies. Thus, Bankers Trust was not required to commence a separate action. *See* *Fliess v. Buckley*, 90 N.Y. 286 (1882) (upholding dismissal of second mortgagee’s independent action on ground that its mortgage followed the surplus monies generated from foreclosure of senior mortgage). *Cf. Reliance Federal Savings & Loan Ass’n v. Venet Homes, Inc.*, 57 A.D.2d 830, 394 N.Y.S.2d 61 (2d Dep’t 1977) (time limits of Lien Law and C.P.L.R. inapplicable to mechanics liens asserted in surplus money proceedings where liens were valid at time of commencement of foreclosure action).

...

“Requiring Bankers Trust to commence a separate action would not make sense and would not advance any of the interests that statutes of limitation serve to protect. Statutes of limitation are intended primarily to provide fairness to a defendant; that is, a defendant ‘should “be secure in his reasonable expectation that the slate has been wiped clean of ancient obligations, and he ought not to be called on to resist a claim where the “evidence has been lost, memories have

faded, and witnesses have disappeared.”””” *Duffy v. Horton Memorial Hospital*, 66 N.Y.2d 473, 476, 497 N.Y.S.2d 890, 892-93, 488 N.E.2d 820, 822 (1985) (quoting *Flanagan v. Mount Eden Gen. Hosp.*, 24 N.Y.2d 427, 429, 301 N.Y.S.2d 23, 25, 248 N.E.2d 871, 872 (1969) (quoting ‘Developments in the Law: Statutes of Limitations,’ 63 *Harv. L. Rev.* 1177, 1185 (1950))). Here there can be no doubt that the participation of Bankers Trust in the foreclosure action put everyone with an interest in a potential surplus on notice that Bankers Trust, too, had a potential interest in the surplus. Thus, the commencement of a separate action would have served no additional purpose.” (*Dime Sav. Bank of N.Y. v Boklan*, 1989 WL 35946, *3-4, 1989 US Dist LEXIS 3794, *7-11).

Here, too, HPD’s appearance in the tax lien foreclosure action put Stell and anyone else interested in a potential surplus on notice of HPD’s claims. To require HPD to commence a separate foreclosure action, when an action to foreclose the tax lien was already pending, would serve no useful purpose.

Conclusion

Accordingly, we disagree with the referee’s conclusion that HPD’s claim to the surplus was barred by the statute of limitations. We thus agree with the Supreme Court’s determination denying Stell’s motion to confirm the referee’s report and direct the distribution of surplus funds to him, and directing the New York State Comptroller to distribute the surplus funds to HPD. Therefore, the order should be affirmed insofar as appealed from.

MASTRO, LEVENTHAL and MALTESE, JJ., concur.

ORDERED that the order is affirmed insofar as appealed from, with costs.

ENTER:


Aprilanne Agostino
Clerk of the Court

NYCTL 1998-2 Trust v Avila
2015 NY Slip Op 06320 [130 AD3d 993]
July 29, 2015
Appellate Division, Second Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
As corrected through Wednesday, September 2, 2015

[*1]

NYCTL 1998-2 Trust et al., Plaintiffs, v Zoila Lucinda Avila et al., Defendants, and Edmund R. Wolk et al., Respondents. Charis Sachtouris, Nonparty Appellant.
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Lawrence Spivak, Jamaica, N.Y., for nonparty appellant.

Law Offices of Michael B. Wolk, P.C., New York, N.Y., for respondent Edmund F. Wolk, sued herein as Edmund R. Wolk.

Zachary W. Carter, Corporation Counsel, New York, N.Y. (Francis F. Caputo and Jonathan A. Popolow of counsel), for respondents New York City Department of Housing Preservation & Development and New York City Department of Housing Preservation & Development Office of Rent and Housing Maintenance.

In an action to foreclose on a tax lien, nonparty Charis Sachtouris appeals, (1) from an order of the Supreme Court, Kings County (Steinhardt, J.), dated January 4, 2012, which denied her motion, inter alia, to vacate an order of the same court dated May 26, 2011, confirming a referee's report and directing distribution of the surplus funds from the foreclosure sale, and (2), as limited by her brief, from so much of an order of the same court dated June 21, 2012, as, upon renewal, adhered to the original determination.

Ordered that the appeal from the order dated January 4, 2012, is dismissed, as that order was superseded by the order dated June 21, 2012; and it is further,

Ordered that the order dated June 21, 2012, is reversed insofar as appealed from, on the law, and the matter is remitted to the Supreme Court, Kings County, for further proceedings in accordance herewith; and it is further,

Ordered that one bill of costs is awarded to the appellant.

Seven years after the foreclosure of a tax lien and the sale of the property serving as collateral, the Supreme Court, in an order dated May 26, 2011, confirmed the referee's report and directed that the surplus funds from the sale be distributed in a certain manner. The nonparty appellant, Charis Sachtouris, subsequently moved, inter alia, to vacate the order on the ground that, when directing the distribution of the surplus funds, the court had failed to account for a lien she held on the subject property. The court denied the motion and the appellant moved for leave to renew. Upon renewal, the court adhered to its original determination denying the appellant's motion, inter alia, to vacate the order dated May 26, 2011, based on its determination that even if the appellant had [*2] a valid lien on the subject property, that lien was necessarily extinguished by the tax foreclosure sale.

The surplus funds of a foreclosure sale stand in the place of the land for all purposes of distribution among persons having vested interests or liens upon the land (*see Nutt v Cuming*, 155 NY 309, 313 [1898]; [NYCTL 1999-1 Trust v NY Pride Holdings, Inc.](#), 68 AD3d 952 [2009]; [Chase Manhattan Mtge. Corp. v Hall](#), 18 AD3d 413, 414 [2005]; *Shankman v Horoshko*, 291 AD2d 441, 442 [2002]). Thus, contrary to the Supreme Court's determination that the appellant's purported lien was necessarily extinguished by the tax foreclosure sale, "a lien which is valid and existing at the time of the foreclosure sale (that is, the auction sale, not the foreclosure closing) is deemed transferred from the land to the surplus monies" (3-35 Bruce J. Bergman, *Bergman on New York Mortgage Foreclosures* § 35.01 [3] [a]).

RPAPL 1361 (2) provides that the court shall ascertain the amount due to any claimants and the priority of any liens for purposes of the distribution of surplus funds. Because the sole basis of the Supreme Court's denial of the appellant's motion and refusal to consider whether she was entitled to any of the surplus funds was its erroneous conclusion that any lien existing on the property at the time of the sale would not have transferred to the surplus funds, we reverse insofar as appealed from, and remit the matter to the Supreme Court, Kings County, for a new determination of the appellant's motion.

In light of our determination, we do not reach the parties' remaining contentions. Skelos, J.P., Hall, Austin and Sgroi, JJ., concur.

American Holdings Inv. Corp. v Josey
2010 NY Slip Op 02495 [71 AD3d 927]
March 23, 2010
Appellate Division, Second Department
Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.
As corrected through Wednesday, April 28, 2010

American Holdings Investment Corp., Plaintiff, v Yvonne Josey, Respondent. Vincent Longobardi, Nonparty Appellant. (Action No. 1.) Yvonne Josey, Respondent, v Dino James, Defendant. Vincent Longobardi, Nonparty Appellant. (Action No. 2.)

—[*1] Stern & Stern, Brooklyn, N.Y. (Pamela Smith of counsel), for nonparty appellant.

In an action to foreclose a mortgage and for related relief (action No. 1), and a related action sounding in fraud and to impose a constructive trust (action No. 2), the nonparty Vincent Longobardi, as assignee of the interest in surplus money due to Yvonne Josey in action No.1, appeals from an order of the Supreme Court, Kings County (Saitta, J.), dated September 24, 2008, which granted the motion of Yvonne Josey to consolidate the actions and denied his motion in action No. 1 to confirm a referee's report dated August 31, 2007, which, following a hearing, inter alia, recommended that all surplus money be distributed to him.

Ordered that the order is reversed, on the law, with costs, the motion of Yvonne Josey to consolidate the actions is denied, the motion of Vincent Longobardi to confirm the referee's report is granted, and the matter is remitted to the Supreme Court, Kings County, for distribution of the surplus money to Vincent Longobardi.

Yvonne Josey is the defendant mortgagor in action No. 1, a foreclosure action. Eventually, the mortgaged property was sold at a foreclosure sale, and the referee reported that there were surplus funds of \$207,287.22. Those surplus funds were ultimately deposited with the City of New York.

Following the public sale of the foreclosed property, Josey executed a power of attorney dated January 20, 2004, giving her son, Dino James, the authority "to take and [*sic*] any steps, sign any documents and collect any money with reference to the foreclosure action . . . including, but not limited to any surplus money proceedings in said action." On March 30, 2004, James, as attorney in fact for Josey, executed an "Assignment of Claim for Surplus Monies" in favor of the appellant, Vincent Longobardi. In return for the assignment, Longobardi paid James the sum of \$99,740. James allegedly never turned that sum over to Josey.

After Longobardi moved to confirm the referee's report of sale and for an order of [*2]distribution directing that the \$207,287.22 in surplus funds be distributed to him by virtue of the assignment, Josey moved, inter alia, for the appointment of a referee to determine how much money was due her and that the surplus funds be distributed to her on the ground that James fraudulently induced her to execute the power of attorney by misrepresenting that he was getting a loan to pay off the outstanding mortgage. Ultimately, the Supreme Court appointed Blaise F. Parascandola as the referee to determine the disposition and rights to the surplus funds.

Following a hearing pursuant to RPAPL 1361, the referee issued a report dated August 31, 2007, wherein he determined that contrary to Josey's contention, no reservation was made in the power of attorney indicating that the power was only for the purpose of obtaining refinancing. The referee added that Josey's fraud claim would only be allowable against James and that "[n]o such claim was being made by Josey against [appellant]." He also noted that while Josey appeared to satisfy the criteria for the imposition of a constructive trust, she "has not interposed a cause of action, has not entertained a counterclaim or a third party action or commenced a separate action for fraud against Dino James." The referee further determined that the appellant was a bona fide purchaser for value and concluded that the appellant had the "prior lien for the surplus . . . to the exclusion of [Josey]." The referee also concluded that "[t]his court appears to have no jurisdiction in this surplus money proceeding to adjudicate the claim of Defendant Yvonne Josey to the surplus monies against Dino James" as James was not named as a defendant in action No. 1. The referee stated that the recommendation was without prejudice to Josey pursuing her claim to the surplus money in a separate action. By notice of motion dated September 12, 2007, Longobardi moved to confirm the referee's report, and have the surplus funds released to him.

On September 24, 2007, Josey commenced action No. 2 against Dino James only, and simultaneously moved to consolidate that action with action No. 1, the foreclosure action. Josey's motion was referred to the justice presiding over action No. 1. In the order appealed from, the Supreme Court granted Josey's motion and denied Longobardi's motion. The Supreme Court found that Josey would be severely prejudiced if her allegations of a constructive trust were not considered in assigning the interests in the surplus money, whereas Longobardi had not shown prejudice. The Supreme Court rejected the referee's finding that the appellant was a bona fide purchaser for value. Longobardi appeals, arguing that the referee's findings are substantially supported by the record and that the Supreme Court improvidently exercised its discretion in granting the consolidation motion. We agree and reverse.

RPAPL 1361 (2) provides that the Supreme Court, by reference or otherwise, shall ascertain the amount due to any claimants and the priority of any liens for purposes of the distribution of surplus money. Furthermore, a "referee may inquire into and determine all questions of law and fact, usury, fraud or the like, and every question tending to show the equities of the claimant, to the end that it may be decided in such proceedings finally and on the merits to whom such surplus money belong" (*Wilcox v Drought*, 36 Misc 351, 352-353 [1901], *affd* 71 App Div 402 [1902]; *see Shankman v Horoshko*, 291 AD2d 441, 442 [2002]; *Citibank v Schroeder*, 266 AD2d 332, 333 [1999]; *Corporate Inv. Co. v Mount Vernon Metal Prods. Co., Inc.*, 206 App Div 273, 276 [1923]).

In this instance, the issue of Longobardi's status as a bona fide purchaser was raised before the referee, who concluded, in the face of Josey's opposition, that he was. James's authority to assign Josey's interest was encompassed in the plain language contained in the power of attorney giving James the power to take "any" steps, sign "any" documents and collect "any" money "with reference to the . . . surplus money proceedings." This is consistent with the principle that "a person with a vested interest or lien upon the land may assign or convey that interest, and that such an assignment or conveyance will be recognized in a surplus money proceeding" ([Chase Manhattan Mtge. Corp. v Hall](#), 18 AD3d 413, 414 [2005]; *see Shankman v Horoshko*, 291 AD2d at 441). Even if the power of attorney had contained language relating to refinancing, James's authority to act in that regard would have been circumscribed because the mortgagor's right of redemption was extinguished once the property was sold at the foreclosure sale, "even though no deed had been delivered to the purchaser" ([Chase Manhattan Mtge. Corp. v Harper](#), 54 AD3d 987, 988 [2008]).

Since the power of attorney, on its face, granted James the authority to assign Josey's [*3] interest in the surplus funds, and since there is no allegation that the appellant had actual or constructive notice of Josey's adverse claim, it cannot be said that the appellant had "knowledge of facts that would lead a reasonably prudent purchaser to make inquiry" (*Bachurski v Polish & Slavic Fed. Credit Union*, 33 AD3d 739, 741 [2006]). Accordingly, the record supports the referee's finding that Longobardi is a bona fide purchaser.

Contrary to the Supreme Court's finding, the consideration paid by Longobardi for the assignment does not shock the conscience of the court as to be deemed inadequate (*see Polish Natl. Alliance of Brooklyn v White Eagle Hall Co.*, 98 AD2d 400, 408 [1983]; *Federal Deposit Ins. Corp. v Forte*, 144 AD2d 627, 631 [1988]). Furthermore, while the Supreme Court pointed to the fact that Longobardi took the assignment from James after the sale as an indication of fraud, it ignored Josey's action in also executing the apparently unlimited general power of attorney after the foreclosure sale took place. Finally, we note Josey's failure to name Longobardi as a defendant in action No. 2, her action to impress a constructive trust on the surplus funds, notwithstanding her awareness of him by way of her participation in the proceeding before the referee. Thus, the referee's determination that Longobardi was a bona fide purchaser is correct.

Since there are no common issues of fact or law here, consolidation would not further the stated goal of CPLR 602 (a) of "avoiding unnecessary costs or delay" (*see Skelly v Sachem Cent. School Dist.*, 309 AD2d 917, 918 [2003]; *Stephens v Allstate Ins. Co.*, 185 AD2d 338 [1992]).

Based on this record, Longobardi's motion to confirm the referee's report should have been granted (*see Shankman v Horoshko*, 291 AD2d at 442; *Chase Manhattan Mtge. Corp. v Hall*, 18 AD3d at 415; *Fidelity N.Y. v Madden*, 228 AD2d 473 [1996]) and Josey's motion to consolidate should have been denied (*see Skelly v Sachem Cent. School Dist.*, 309 AD2d at 918; *Stephens v Allstate Ins. Co.*, 185 AD2d at 339). Accordingly, the matter is remitted to the Supreme Court, Kings County, to distribute the surplus money to Longobardi. Dillon, J.P., Florio, Hall and Sgroi, JJ., concur.

NYCTL 1998-1 Trust v Gabbay
2007 NY Slip Op 27242 [16 Misc 3d 732]
June 5, 2007
Renwick, J.
Supreme Court, Bronx County
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[*1]

NYCTL 1998-1 Trust et al., Plaintiffs, v Abraham Gabbay et al., Defendants.
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[*2] Supreme Court, Bronx County, June 5, 2007

APPEARANCES OF COUNSEL

Jay S. Markowitz, P.C., for Shlomo Gavey, defendant. *Yvy A. Reilly, P.L.L.C.*, for David Kadosh and another.

OPINION OF THE COURT

Dianne T. Renwick, J.

This is a surplus money proceeding, pursuant to RPAPL 1362, commenced at the conclusion of a tax lien foreclosure action. Currently before this court are a motion and cross motion to respectively confirm and reject the report of the referee appointed to ascertain and report the amount due to the persons who have alleged interests in the surplus monies realized upon the sale of the foreclosed property.

Factual and Procedural Background

On November 19, 2003, the referee sold the property subject to the tax lien, and a surplus of \$49,811 above the amount due under the judgment of foreclosure remained. On May 10, 2004, the referee filed the report of sale, dated April 12, 2004. In her report, the referee stated that, subsequent to the sale, she executed and delivered to the purchaser of the

Surplus Moneys Proceedings 088

foreclosure sale the usual referee's deed to the property. By an order dated April 12, 2006, Justice Bertram Katz confirmed the report of sale and appointed a referee in the surplus money proceeding to ascertain and report the amount due to the persons claiming rights to surplus monies and the priorities of such claimants.

Two claims have been filed against the surplus monies. David Kadosh and Richard Cohen have made claims as executors of the estate of Haya Gabbay. Haya Gabbay married the owner of the foreclosed property, Abraham Gabbay, after he had acquired ownership of the subject property, but they divorced in 1999. The divorce decree ordered and adjudged that Abraham [*3]Gabbay "shall transfer all rights, title and interest, and execute deed, stock, power and all necessary recordings and instruments so that plaintiff [Haya Gabbay] succeed to the ownership of the property" that was subsequently foreclosed in this action. The order and judgment was entered in Supreme Court, Queens County. When Abraham Gabbay refused to comply with the order and judgment, the Supreme Court, Queens County, issued an amended order and judgment, dated March 14, 1999, directing the sheriff to transfer title to the subject property to Haya Gabbay. Also, as part of the divorce decree, Haya Gabbay received a money judgment representing arrears of alimony and child support in the amount of \$95,926. The judgment was docketed in Supreme Court, Queens County. For some unexplained reason, the transfer of the subject property never took place before the demise of Haya Gabbay in 2004.

On October 12, 2006, Shlomo Gavey, who was initially named as a defendant in this foreclosure action, filed a notice of claim against the surplus monies. His claim stems from a money judgment rendered in favor of Shlomo Gavey and against Abraham Gabbay for over a million dollars in Kings County Supreme Court. On May 20, 1993, he docketed the money judgment in Queens County Supreme Court.

The Referee's Findings and Conclusions

The referee appointed to ascertain and report the amounts due to the aforementioned claimants in this surplus monies proceeding determined that Shlomo Gavey's claim over the surplus monies had priority over any other claim, and that he should be awarded the entire amount of the surplus. First, the referee found that Shlomo Gavey had filed a late notice of claim, but that such late filing did not vitiate his interest in the surplus monies; because of his status as a party to the foreclosure, Shlomo Gavey had no duty to file a notice of claim in the first place. Second, the referee found that the divorce decree, which required Abraham

Surplus Moneys Proceedings 089

Gabbay to transfer the subject property to Haya Gabbay, provided her with an equitable interest in the property. Nevertheless, the referee found that Haya Gabbay was not the owner of the equity of redemption because legal title (deed) was never transferred to her name before her demise. Thirdly, the referee found that neither the money judgment held by Haya Gabbay (for arrears in alimony and child support), nor the money judgment held by Shlomo Gavey, constituted a valid lien on the subject property since neither judgment had been docketed in the county where the property was located, Bronx County. Under the circumstances, the referee reasoned, the claimants were competing judgment creditors whose order of priority must be determined by the respective dates that the judgments had been docketed. Shlomo Gavey's judgment was docketed earlier and thus has priority over the surplus monies, the referee concluded.

Discussion

Before discussing the individual claims and the referee's findings relative to those claims, the court must first review the bedrock principles of law applicable to surplus money proceedings. Such an analysis necessarily begins with the basic premise that the surplus realized at a foreclosure sale is not a general asset of the mortgagor whose property was divested by the foreclosure (the owner of the equity of redemption). Instead, the surplus stands in the place of the land for purpose of distribution among persons who have vested interests or liens on the property. (*Chase Manhattan Mtge. Corp. v Hall*, 18 AD3d 413 [2d Dept 2005]; *Shankman v Horoshko*, 291 AD2d 441 [2d Dept 2002].) Thus, surplus monies take the place of [*4]the equity of redemption and for purpose of distribution are regarded as land. (*Dunning v Ocean Natl. Bank of City of N.Y.*, 61 NY 497 [1875]; *Ellis v Salomon*, 57 App Div 118 [2d Dept 1901].)

Accordingly, only a party who has a vested interest or estate in the land which is the subject of the foreclosure and which is extinguished as to the property by the foreclosure is entitled to share in the surplus. (*Witter v Taggart*, 78 NY2d 234 [1991]; *Victoria Woods Homeowners Assn. v Gonyo*, 192 AD2d 1107 [4th Dept 1993].) Of course, the owner of the equity of redemption (that is, the owner whose title on the property was extinguished by the foreclosure) may assert a claim to surplus monies. However, the claim of the foreclosure holder of the equity of redemption is junior to those other valid interests terminated by the foreclosure. (*Chase Manhattan Mtge. Corp. v Hall*, 18 AD3d 413 [2d Dept 2005].)

Surplus Monies Proceedings 090

Conversely, anything less than an interest which the court construes as vested will not be sufficient to support a pursuit of surplus monies. (*Shankman v Horoshko*, 291 AD2d 441 [2d Dept 2002].) For instance, a contract claim which does not ripen into a lien on the property cannot provide a basis to seek surplus. (*Sadow v Poskin Realty Corp.*, 63 Misc 2d 499 [Sup Ct, Queens County 1970].) Thus, a claim based upon a promissory note, which is not reduced to a judgment, is a mere contract claim, not the vested interest required as a prerequisite to seek surplus monies. (*Sadow v Poskin Realty Corp.*, 63 Misc 2d 499 [Sup Ct, Queens County 1970].) Ultimately, liens and other vested interests terminated by the foreclosure sale attach to the surplus in the order of priority they enjoyed prior to the foreclosure. (*See e.g.*, CPLR 5018 [a]; 5203 [a]; Real Property Law §§ 290-291; *see also*, 3 Bergman, New York Mortgage Foreclosures § 3504.)

Applying these principles to the claims made against the surplus monies, this court determines that the claim by Shlomo Gavey, based upon the money judgment rendered against the property owner, is disallowed; and the referee's finding, that this is a valid claim with priority over any other claim, is rejected as a matter of law. Preliminarily, it should be noted that the referee correctly determined that Shlomo Gavey did not relinquish his claim to the surplus monies because he failed to file a timely notice of claim. Courts have consistently held that a party to a foreclosure action is not required to file a notice of claim to the surplus monies in order to preserve its right to satisfaction of its lien from the surplus proceeds of the foreclosure sale. (*See e.g.*, [Franklin Credit Mgt. Corp. v Pearlman](#), 16 AD3d 617 [2d Dept 2005]; *Federal Home Loan Mtge. Corp. v Grant*, 224 AD2d 656 [2d Dept 1996].)

Nevertheless, the referee erred in holding that Shlomo Gavey had a valid claim against the surplus monies. A claim based upon a judgment docketed in a county other than where the foreclosed premises are situated cannot constitute a basis to assert a right to the surplus monies unless a transcript of the judgment had been filed in the correct county. (*Sadow v Poskin Realty Corp.*, 63 Misc 2d 499 [Sup Ct, Queens County 1970].) Despite the fact that the referee found that the judgment, which is the basis of Shlomo Gavey's claim, was docketed solely in a county (Queens) other than the one where the property is situated (Bronx) and that there was no proof that a transcript was docketed in Bronx county, the referee held that Shlomo Gavey had a preference to the surplus monies over a similarly situated judgment creditor, Haya Gabbay, who also docketed her money judgment (for arrears of alimony and child support) in Queens county.

Surplus Moneys Proceedings 091

What the referee appears to have overlooked is that the surplus realized in a foreclosure sale is not a general asset of the mortgagor whose title to the property was divested at the foreclosure. As noted above, a claimant's right to any portion of the surplus monies must be [*5] supported by either an interest in the land foreclosed or some lien upon it. Since a judgment creditor of the borrower who failed to docket his judgment in the county where the subject property is located has no lien on the property, he cannot claim any portion of the funds. Thus, contrary to the referee's legal findings, since Shlomo Gavey has no lien on the property, he cannot claim any portion of the funds. (*See e.g., Powell v Harrison*, 88 App Div 228 [1903]; *Sadow v Poskin Realty Corp.*, 63 Misc 2d 499 [1970].)

The question that remains is whether the referee's finding that, although Haya Gabbay had equitable title to the subject property based upon the divorce decree's order and judgment, she had no valid claim against the surplus monies because she failed to procure legal title to the subject property. The referee's denial of the claim based upon the divorce decree is rejected. Preliminarily, this court concurs with the referee's finding that the divorce decree provided Haya Gabbay with an equitable title in the subject property. However, this court finds that the divorce decree, turned into an order and judgment, establishes a vested interest in the foreclosed property, so as to allow the owner of such interest to have a valid claim against the surplus monies.

While this court has found no direct authority for the proposition that the divorce decree, turned into an order and judgment, establishes equitable title in the foreclosed property so as to allow the estate of Haya Gabbay to claim against the surplus monies, equitable principles compel such determination. Indeed, where the interest of the owner of the equity of redemption is sold by a sheriff's execution sale, the purchaser succeeds to the property and can claim against the surplus as the former owner of the equity of redemption would have, rather than as a judgment creditor. (*See e.g., Insulation Plus v Higgins*, 214 AD2d 1001 [4th Dept 1995]; *Grid Realty Corp. v Winokur*, 58 AD2d 824 [2d Dept 1977].) Moreover, the law is now firmly settled and established that, upon and from the time of the execution of a contract for the sale of land, the vendor becomes a trustee of the land for the benefit of the purchaser, retaining a lien for the purchase price, and the vendee becomes the equitable owner of the land. (*Williams v Haddock*, 145 NY 144, 150 [1895]; *Elterman v Hyman*, 192 NY 113 [1908].) The court sees no valid reasoning for refusing to offer the same protection to a party who succeeds to the property via a divorce decree.

Surplus Moneys Proceedings 092

Further, what the referee overlooked is that equitable interests in the estate of the land are also entitled to share in the surplus. For example, in another surplus money proceeding, the Court ruled that the equitable lien created by an unrecorded agreement to give a mortgage was superior to the lien of a subsequent docketed judgment. (*Savings & Loan Assn. of Kingston v Berberich*, 24 AD2d 187 [3d Dept 1965].) Similarly, in another case, where a vendor conveyed the property, the court found that the vendee's equitable lien for the balance of the consideration automatically attached to the property and had priority over a subsequently docketed judgment. (*Ledsal Realty Corp. v Demkin*, 141 NYS2d 686 [Sup Ct, Suffolk County 1955].) Thus, the court finds that the estate of Haya Gabbay's equitable interest in the subject property constitutes a vested interest in the foreclosed property that allows it to claim against the surplus monies.

Conclusion

For the foregoing reasons, it is hereby ordered that the claim of Shlomo Gavey is disallowed and the referee's finding that he has a valid claim against the surplus monies is rejected; it is further ordered that the claim of David Kadosh and Richard Cohen, as coexecutors of the estate of Haya Gabbay, for an [*6] equitable lien in the surplus monies is found valid and the referee's finding that this is not a valid claim against the surplus monies is rejected; and it is further ordered that the request by David Kadosh and Richard Cohen, for an order directing that the New York City Department of Finance distribute the surplus proceeds thereof, in the entire amount of \$49,811.88, plus any accrued interest, to them, as coexecutors of the estate of Haya Gabbay, is granted to the extent that David Kadosh and Richard Cohen, as coexecutors of the estate of Haya Gabbay, shall be entitled to the subject surplus, after the award of the referee's fee.