ORIGINAL

To commence the statutory time for appeals as of right (CPLR 5513 [a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

FREEDOM MORTGAGE CORPORATION,
Plaintiff,

-against-

HERSCHEL ENGEL, BOARD OF MANAGERS OF THE FOREST WAY CONDOMINIUM, Citibank, N.A., and "JOHN DOE #1" through "JOHN DOE #10", the last ten names being fictitious and unknown to the Plaintiff, the persons or parties intended being the persons or parties, if any, having or claiming an interest in or lien upon the mortgaged premises described in the complaint,,
Defendants.

DECISION AND ORDER

INDEX NO.: 01139/2015
Motion Date: 9/8/15
Sequence Nos. 1 & 2

SCIORTINO, J.

The following papers numbered 1 to 32 were read on the motion of defendant Herschel Engel (Seq. #1) for an order dismissing the complaint against him; and the cross-motion of plaintiff (Seq. #2) for an order granting summary judgment, striking the answer of defendant Engel and appointing a referee:

PAPERS	NUMBERED
Notice of Motion (Seq. #1)/Affirmation (Rosengarten)/Exhibits A-D	1 - 6
Notice of Cross-Motion (Seq. #2)/Affirmation (Nayar)/Exhibit A & Lost Note Affidavit (Simmons)/Exhibits B-H/Affidavit (Simmons)/Exhibits J-O	7 - 23
Supplemental Affirmation regarding Settlement Conference	24
Plaintiff's Memorandum of Law	25
Defendant's Opposing Affirmation (Rosengarten)/Affirmation in Reply (Engel)/Affirmation in Opposition to Summary Judgment Rosengarten)/Exhibit A	26 - 29
Plaintiff's Reply Affirmation (Nayar)/Exhibits A-B	30 - 32

Summary of the Motions

This is an action to foreclose a mortgage encumbering real property located in Monroe, Orange County, New York (the subject property).

On May 26, 2005, defendant Engel executed a Note to Fairmont Funding, Ltd. (Fairmont) in the sum of $225,000. On the same date, Engel executed a Mortgage to Mortgage Electronic Registration System (MERS), acting as nominee for Fairmont, securing the Note.

At some point after Engel's execution of the original Note, the Note was lost and its whereabouts were unable to be determined. (Lost Note Affidavit, Exhibit A to Seq. #2)

Thereafter, on July 22, 2005, Engel executed an Extension and Modification Agreement (EMA), including provisions (Paragraph IIA) which combined into one set of rights and obligations all prior notes; and which modified the original mortgage balance to $224,806 (Paragraph I). The Mortgage and EMA are appended to the Sequence #2 moving papers as Exhibit B. A Note also dated July 22, 2005, was executed by Engel, the Note stating that it "amends and restates in their entirety, and is given in substitution for the Notes described in exhibit A of the [EMA]". The July 22, 2005 Note was endorsed in blank by Fairmont. (Exhibit A to Seq. #2)

MERS assigned the Mortgage to Fairmont by assignment dated September 11, 2009. On the same date, the Mortgage was assigned by Fairmont to plaintiff. (Exhibits C and D to Seq. #2)

Plaintiff, by its representative, Simmons, avers that Engel breached his obligations under the EMA by failing to pay the installment due on March 1, 2008 and each payment thereafter. (Exhibit H to Seq. #2)

On or about July 16, 2008, plaintiff commenced a foreclosure action against Engel under Index Number [redacted] (Exhibit C to Seq. #1 moving papers) Four years later, in May 2012,

Engel filed an Order to Show Cause to vacate the Judgment of Foreclosure previously entered in that action and to dismiss the action. He alleged that he had not been properly served, as he did not reside in the subject property. (Exhibit M to Seq. #2) The Supreme Court (Slobod, J.), by Decision and Order dated August 7, 2012, directed that it must determine whether there had been proper service (Exhibit L to Seq. #2) and set the matter down for a traverse hearing.

On January 30, 2013, the parties, by Stipulation, agreed to vacate the September 13, 2012 Judgment of Foreclosure and Sale, to withdraw the pending Order to Show Cause to dismiss, and to discontinue the foreclosure action without prejudice. (Exhibit L to Seq. #2)

On May 16, 2013, plaintiff sent a Notice of Default to Engel at the address of the subject property, by regular and certified mail. The Notice indicated the amount in default, the amount required to cure, and the date by which payment must be tendered. The Notice further indicated that a failure to cure would result in acceleration. (Exhibit K to Seq. #2)

On August 7, 2013, plaintiff's attorneys sent Engel further Notices of Default, in accordance with the Fair Debt Collection Practices Act, by first-class mail, at the address of the subject property, and also at his addresses in Rockland County, New York and Scranton, Pennsylvania. (Exhibit N to Seq. #2)

On October 8, 2014, plaintiff sent a 90-day pre-foreclosure Notice to Engel at the subject property address, by regular and certified mail. The Notice included the requisite list of foreclosure counseling agencies required by Real Property Actions and Proceedings Law §1304. (Exhibit K to Seq. #2)

On February 19, 2015, plaintiff filed a Summons, Verified Complaint and Notice of Pendency in the within action. (Exhibits E and F to Seq. #2) Engel was served with the pleadings

by service upon his daughter, at his Rockland County address, on February 27, 2015. The requisite mailing was performed on May 3, 2015. All other defendants were duly served, including John Doe defendants residing in the subject property, as appears from the Affidavits of Service appended to Motion Seq. #2 as Exhibit G.

On or about March 19, 2015, Engel served an unsigned and unverified Answer. (Exhibit H to Seq. #2) His Answer consisted of general denials, denials based upon lack of information, and fifteen affirmative defenses.

Defendant's Motion to Dismiss

By Notice of Motion filed on or about July 31, 2015, Engel seeks an order dismissing the Complaint. In support of his motion, his attorney affirms that Engel's Answer includes an Affirmative Defense of expiration of the six-year Statute of Limitations. (Rosengarten Affirmation at ¶3) It is Engel's position that the commencement of the July 16, 2008 action under Index Number 7515/2008 (Exhibit C to Seq. #1) accelerated the payment of the mortgage, and thus commenced the running of the statute, which expired on July 15, 2014. (Rosengarten Affirmation at ¶7) Since the instant action was not filed until February 2, 2015, Engel asserts that it is time-barred. (Rosengarten Affirmation at ¶10)

Plaintiff's Summary Judgment Motion

By Notice of Cross-Motion filed on or about August 4, 2015, plaintiff seeks summary judgment against Engel and the appointment of a referee. In support, plaintiff appends two affidavits of Shannon Simmons, Assistant Secretary of its Loan Servicer. Simmons avers that she has personal knowledge of advances made under the Note and Mortgage, the original loan amount, payment records, credits allowed (if any), delinquency status of and current loan balance. (Exhibit

I to Seq. #2 at ¶3) She avers that the original note was lost and its whereabouts could not be determined; however, the Note and Mortgage were modified by the EMA dated July 22, 2015. (Exhibit I to Seq. #2 at ¶¶ 13-14) She further avers that the [EMA] Note was delivered to plaintiff by Fairmont. (Exhibit I to Seq. #2 at ¶15)

Simmons' Affidavit further avers that Engel defaulted on the loan from and after March 1, 2008, and that Notice of Default were sent to him on May 16, 2013. A 90-day pre-foreclosure Notice was sent on October 8, 2014. The outstanding balance on the loan as of February 12, 2015 was $218,053.56. (Exhibit I to Seq. #2 at ¶¶ 18-21)

By the affirmation of its attorney, plaintiff states that it has been in possession of the EMA Note and Mortgage since prior to the commencement of the action and remains in possession of those documents. (Nayar Affirmation)

Plaintiff asserts that, having produced the mortgage documents and an affidavit evidencing a default, it has demonsirated its entitlement to summary judgment. The undisputed documentary evidence shows Engel's default, and no triable issues of fact exist.

The admissions and general denials contained in Engel's answer do not establish triable issues of fact. (Plaintiff's Memorandum of Law at pp. 4-5) Nor, plaintiff asserts, do the affirmative defenses raised by Engel create such issues.

For those reasons, plaintiff asserts that summary judgment should be granted, together with the other relief sought.

In opposition to Engel's motion, plaintiff asserts that the six-year statute of limitations is inapplicable to the instant loan, as acceleration took place only upon the filing of the 2015 summons and Complaint. (Memorandum at page 16) Engel's argument that the loan was accelerated in July

2008 is unavailing, for either of two reasons: first, the stipulated discontinuance of the 2008 action in 2012 acted as a revocation of the earlier acceleration. Secondly, as Engel himself contended at the time, he was never properly served with the Summons and Complaint in the original action; hence, plaintiff could not have properly accelerated the loan at that time. (Memorandum at page 14) Since Engel suffered no prejudice as a result of the discontinuation of the 2008 action, and did not change his position (by resuming payments in the intervening time), the discontinuance was an affirmative revocation. (Memorandum at page 15)

Moreover, plaintiff's actions in 2013 and 2014 in sending new Notices of Default indicating the intention to accelerate if Engel failed to cure the default underscored the parties' understanding that acceleration had yet to occur, and Engel still had an opportunity to cure. (Memorandum at pp. 15-16)

Engel's Reply/Opposition to Summary Judgment

In further support of his motion to dismiss, Engel concedes that, in 2008, plaintiff had both the authority to accelerate the mortgage and did so. (Rosengarten Affirmation at ¶6) He contests plaintiff's argument that Engel was never properly served, by asserting that the Court never determined that question, inasmuch as the parties stipulated to discontinue the action prior to a traverse hearing. (Rosengarten Affirmation at ¶7) The parties' Stipulation stated that the discontinuance was an attempt to "amicably resolve the dispute and the issues raised [in Engel's Order to Show Cause] without further delay, expense or uncertainty." (Rosengarten Affirmation at ¶11) To now assert that Engel was improperly served would be to permit plaintiff to adopt a position contrary to that which it took in the prior proceeding, because its interest have now changed. (Rosengarten Affirmation at ¶12) Therefore, plaintiff cannot assert that they discontinued the action

because Engel was not properly served, and cannot, by extension, assert that the loan was not accelerated at that time.

Engel further argues that the Stipulation did not effectively revoke the acceleration. Rather, that such a revocation could have been made in a simple letter. The Stipulation was not an "affirmative act of plaintiff evidencing revocation" and defendant was never put on notice that the acceleration was revoked. (Rosengarten Affirmation at ¶¶ 18, 23-27)

In opposition to the summary judgment motion, Engel asserts that the lost note affidavit of Simmons was ineffective, as it failed to detail the circumstances of the loss. (Affirmation in Opposition at ¶¶ 10-12) Moreover, he points to contradictions in the Simmons Affidavits, including a provision that asserts that the Original Note with all endorsements and allonges was sent to plaintiff's attorneys prior to commencement, and remains in its agents possession. (Affirmation in Opposition at ¶15) Engel asserts that this contradicts the Lost Note Affidavit, and implies that Simmons signed a "boilerplate affidavit without reference to the facts." (Affirmation in Opposition at ¶18)

He argues that plaintiff has failed to establish that the note was assigned to plaintiff prior to the commencement of the action. Plaintiff ,thus, lacks standing. (Affirmation in Opposition at ¶¶ 22, 31-34) Plaintiff's failure to have specified the date of physical delivery of the Note is fatal to its claim that it had standing to foreclose the loan. (Affirmation in Opposition at ¶¶ 37-43, 48)

Moreover, plaintiff has failed to allege in its Complaint that the requisite Notice of Default was mailed to Engel. (Affirmation in Opposition at ¶58) Notwithstanding the Simmons Affidavit, Engel asserts that it is evident that she did not review the records, and did not know to what address the notice had been mailed. (Affirmation in Opposition at ¶67)

Finally, Engel alleges that the Notice does not satisfy the requirements of the mortgage, in that it "misleads" the borrower into thinking he must bring a lawsuit, as opposed to asserting defenses in the foreclosure action. (Affirmation in Opposition at ¶¶ 72-76) For all of those reasons, Engel asserts that summary judgment is inappropriate and dismissal is warranted.

Plaintiff's Reply

Plaintiff reiterates its argument that its standing is established by its possession of the EMA Note and Mortgage prior to the commencement of the action. The status of the Original Note is not relevant as the EMA Note is the subject of the foreclosure.

Further, plaintiff denies that the Notice of Default was in any way deficient. Plaintiff must only prove that the Notice was sent, not that it was received.

Plaintiff restates its argument that the 2008 acceleration was revoked and that the within action is timely.

No other defendant has appeared in the action, or filed any papers in opposition.

The Court has fully considered the submissions before it.

Discussion

1. Summary Judgment Standards:

In moving for summary judgment on an action to foreclose a mortgage, a plaintiff establishes its case through the production of the mortgage, the unpaid note and evidence of default. *Wells Fargo Bank, N.A. v. Webster*, 61 AD3d 856 (2nd Dep't 2009), *U.S. Bank Trust Nat. Ass'n Tr. v. Butti*, 16 AD3d 408 (2nd Dep't 2005); *Red Tulip LLC v. Neiva*, 44 AD3d 204 (1st Dep't 2007) Where the issue of standing is raised by a defendant, as here, the plaintiff must prove its standing to be entitled to relief. *MLCFC 2007-9 Mixed Astoria, LLC v. 36-02 35th Ave. Development, LLC*, 116 AD3d 745

(2nd Dep't 2014) In a mortgage foreclosure action, plaintiff has standing where it is the holder or assignee of both the subject mortgage and the underlying note. *Id.; Aurora Loan Services, LLC v. Taylor*, 114 AD3d 627 (2nd Dep't 2014)

In moving for summary judgment on an action to foreclose a mortgage, a plaintiff establishes its case through the production of the mortgage, the unpaid note and evidence of default. *Wells Fargo Bank, N.A. v. Webster*, 61 AD3d 856 (2nd Dep't 2009), *U.S. Bank Trust Nat. Ass'n Tr. v. Butti*, 16 AD3d 408 (2nd Dep't 2005); *Red Tulip LLC v. Neiva*, 44 AD3d 204 (1st Dep't 2007) In the instant matter, plaintiff has duly established its *prima facie* right to judgment, by submission of the mortgage and note papers, and by the uncontroverted sworn affidavits of its representative, attesting to plaintiff's possession of the relevant loan documents, the default and the requisite notices. *Wells Fargo, supra*, 61 AD3d 856

The Court agrees with Engel that the Simmons Affidavits raise some confusion about which Note plaintiff possessed at the time of the commencement of the 2015 action. However, and more significantly, plaintiff correctly asserts that the status of the lost note is irrelevant to the within action. Engel has not, and apparently cannot, dispute that plaintiff possesses the EMA Note and Mortgage. Plaintiff's attorney's affirmation states, upon personal knowledge, that his office is in possession of that Note and was in possession of it prior to the commencement of the action. The Note was endorsed in blank by Fairmont, and thus, plaintiff's physical possession of the Note meets the requirement for standing. The EMA, assigned by Fairmont to plaintiff, formally transferred the Mortgage, but as Engel concedes, such an Assignment is not necessary, as the Mortgage passes as an incident to the Note. *Bank of New York v. Silverberg*, 86 AD3d 274 (2nd Dep't 2011)

Upon the submission of affidavits by an individual with personal knowledge of the facts,

which creates a *prima facie* showing, the burden shifts to defendant to present evidence in admissible form to establish the arguable existence of a triable issue of fact. *Hellyer v. Law Capitol, Inc.*, 124 AD2d 782 (2nd Dep't 1986) Such a burden is not met by bare allegations, which do not create a genuine issue of fact. *Shaw v. Time-Life Records*, 38 NY 2d 201 (1975); *Capelin Assoc. v. Globe Mfg. Corp.*, 26 NY 2d 255. The general denials asserted by Engel's Answer thus fail to create triable issues of fact sufficient to defeat summary judgment. Any claim for monies due and owing to defendants will be determined by the referee appointed by this Court.

2. Affirmative Defenses

However, Engel has also asserted fifteen affirmative defenses which must be examined. Many of the affirmative defenses asserted in the Answer[1] are unsubstantiated conclusory assertions. Such statements are insufficient to defeat summary judgment, and must accordingly be dismissed. *See, e.g., Home Sav. Bank v. Schorr Bros. Development Corp.*, 213 AD2d 512 (2nd Dep't 1995); *170 W. Village Assocs. V. G&E Realty*, 56 AD3d 372 (1st Dep't 2008) (affirmative defenses insufficient which plead only conclusions of law without supporting facts) In particular, conclusory and unsubstantiated complaints of fraud and collusion are insufficient. *LBV Properties v. Greenport Development Corp.*, 188 AD2d 588 (2nd Dep't 1992)

On that basis, the following affirmative defenses are hereby stricken: third (failure to assign the mortgage to plaintiff); sixth (gap in assignments); seventh (fraud); ninth and tenth (mortgage was not assigned by one with authority to do so).

The first affirmative defense asserts that plaintiff did not properly serve Engel with the

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[1]The Court has noted plaintiff's assertion that the Answer was unsigned and unverified. However, there is no evidence that plaintiff rejected the Answer on those grounds, and the Court will not do so at this time.

pleadings. The defense is dismissed in the face of the documentary evidence of proper service, uncontroverted by Engel.[2] The submission of affidavits of service creates a presumption of proper service, which may not be rebutted by a mere denial of receipt of the pleadings. *Carrenard v. Mass*, 11 AD3d 501 (2nd Dep't 2004) The affidavits of service demonstrate service upon him and the requisite mailings which followed. As such, the affidavits of service are *prima facie* evidence of proper service, and require defendant to come forward with a sworn denial, asserting detailed facts to rebut such a showing. *Household Finance Realty Corp. of New York v. Brown*, 13 AD3d 340 (2nd Dep't 2004) No such submission was made. The first affirmative defense is therefore stricken.

Several affirmative defenses challenge plaintiff's standing to bring suit. Where the issue of standing is raised by a defendant, as here, the plaintiff must prove its standing to be entitled to relief. *MLCFC 2007-9 Mixed Astoria, LLC v. 36-02 35th Ave. Development, LLC*, 116 AD3d 745 (2nd Dep't 2014) In a mortgage foreclosure action, plaintiff has standing where it is both the holder of the subject mortgage and the underlying note. *Id.* As stated hereinabove, in the face of the documentary evidence of that plaintiff, as assignee of Fairmont, had physical possession of the EMA Note and Mortgage prior to the commencement of this action, and continues to so hold those documents, the following affirmative defenses are stricken: second; third (mortgage was not assigned to plaintiff); and eighth (assignment not recorded).

Where a cause of action is based upon documentary evidence, the authenticity of which is not disputed, a denial does not raise an issue of fact. *Gould v. McBride*, 36 AD2d 706 (1st Dep't 1971), *aff'd*, 29 NY 2d 768 (1971) The fourth affirmative defense, failure to serve notice pursuant

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[2]The Court notes that even if such a defense had existed, it was waived by reason of Engel's failure to move for judgment within 60 days after service of the answer. Civil Practice Law and Rules §3211(e)

to Real Property Actions & Proceedings Law §1304 is dismissed, both in the face of the documentary evidence that such service was made and in light of the provisions of that statute, which apply to "home loans." Inasmuch as Engel's Affidavit avers that he is not and was not a resident of the subject property, the statute is inapplicable. Because no notice was required under section 1304, no filing was required under section 1306. The fifth affirmative defense is likewise dismissed.

The documentary evidence further establishes that plaintiff's counsel sent notices to Engel which, on their face, evidenced compliance with the provisions of the Fair Debt Collection Practices Act, 15 U.S.C. §1692. Moreover, Exhibit I to Seq. #2 evidences the mailing of default and 90-day pre-foreclosure notices in 2013 and 2014. Engel's argument that there is no proof of his receipt of the notices (e.g., a signed return receipt) is unavailing, as the statute requires mailing and not receipt. The eleventh and twelfth affirmative defenses are thus stricken.

The thirteenth affirmative defense asserts a failure to set forth a cause of action. The defense is dismissed in the face of the affidavits which fully assert the criteria for a cause of action for foreclosure, i.e., possession of the loan documents, default and the balance due. While it is plaintiff's burden to demonstrate that a defense is without merit, *Butler v. Catinella*, 58 AD3d 145 (2nd Dep't 2008), the defense is subject to dismissal unless raised in a motion by the party asserting the same. *Id.* In light of the documentary and testimonial evidence, which has not been rebutted by defendant, the defense is dismissed.

The fourteenth affirmative defense alleges a failure to comply with section 2012-b of the Civil Practice Law & Rules. Inasmuch as the Court has been unable to locate such a provision and in the absence of any factual allegation to support a defense, the fourteenth affirmative defense is likewise dismissed.

Finally, the fifteenth defense alleges that the matter is barred by the applicable statute of limitations. The Court finds unpersuasive Engel's position that acceleration took place in 2008, and the matter was thus time-barred after 2014. While it is clear that the loan was originally accelerated in 2008, with the commencement of the first foreclosure proceeding, it is equally clear that the language of the January 2013 Stipulation evidenced an affirmative act on the part of the plaintiff to vacate the prior acceleration.

A lender may revoke its election to accelerate a mortgage, provided that the borrower has not changed its position in reliance thereon. *Federal Nat'l Mortgage Ass'n v. Mebane*, 208 AD2d 892 (2nd Dep't 1994) While the dismissal of the foreclosure action by a court does not constitute such an affirmative act, *EMC Mortgage Corp. v. Patella*, 279 AD2d 604 (2nd Dep't 2001), in this matter, plaintiff's 2013 stipulation to withdraw without such a finding, and within the six-year statutory period, constitutes that affirmative act.

The mortgagee's discretionary revocation of the acceleration will only be restrained if a mortgagor can show substantial prejudice resulting therefrom. *Golden v. Ramapo Improvement Corp.*, 78 AD2d 648 (2nd Dep't 1980) In the instant matter, Engel has made no showing of any prejudice to himself which resulted from the revocation. Indeed, the only result of that revocation and the concomitant nearly three-year delay in proceedings was to provide him with many additional months of ownership and rental income.

Having found that the 2013 Stipulation acted as a voluntary revocation of the acceleration, the loan was not accelerated until the 2015 commencement of the within action, and, as such, is timely. The Court need not determine whether Engel was properly served in the 2008 action, as it was voluntarily withdrawn by both parties. The fifteenth and last affirmative defense is thus

stricken.

All affirmative defenses having been dismissed, the answer of defendant Engel is stricken, and summary judgment is granted to plaintiff. All appearing defendants, including Engel shall each be served with a copy of the Notice of Sale and copies of any notices or proceedings to obtain surplus moneys.

Plaintiff's motion to discontinue the action against the "John Doe" defendants and to replace "John Doe #1" with defendant Yitzchok Deutsch and "John Doe #2" with defendant Rifka Deutsch is granted. The caption shall hereafter read as follows:

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FREEDOM MORTGAGE CORPORATION,
Plaintiff,

-against-

HERSCHEL ENGEL, BOARD OF MANAGERS OF THE FOREST WAY CONDOMINIUM, CITIBANK, N.A., YITZCHOK DEUTSCH, RIFKA DEUTSCH,
Defendants.

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Plaintiff's application for appointment of a referee is granted. This matter is hereby referred to Bruce D. Townsend. Esq., with an office at [redacted] phone [redacted] as Referee to ascertain and compute the amount due the plaintiff in this action for the principal and interest on the bond and mortgage sued upon and set forth in the complaint and for payments made by the plaintiff for taxes, assessments, water charges, insurance premiums and any other expenses that the plaintiff has paid or may pay in connection with the protection of its security hereunder against the mortgaged premises, and fees for other services and charges affecting the premises herein described, during the pendency of this action and until the closing of title with

purchaser at foreclosure sale, and that any sums so paid by the plaintiff shall be added to the sum otherwise due to the plaintiff, pursuant to the plaintiff's claim herein, and shall be deemed secured by said bond and mortgage as therein provided and adjudged to be a valid lien on the premises herein described, with interest thereon from the date of each such payment, and to examine and report whether the mortgaged premises should be sold in one or more parcels; and it is further

ORDERED that, if required, the Referee take testimony pursuant to RPAPL §1321; 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 such an appointment pursuant to the provisions of that Rule, the Referee shall notify the Appointing Judge forthwith; and it is further

ORDERED, that by accepting this appointment, the Referee certifies that she is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to, section 36.2(c) ("Disqualification from appointment") and section 36.2(d) ("Limitations on appointments based upon compensation"); and it is further

ORDERED that the Referee's fee shall be (1) $250 on report and (2) $500 on sale; and it is further

ORDERED that plaintiff shall apply for a judgment of foreclosure and sale within 90 days of the service of a copy of this Order with Notice of its Entry, and if such application is not made, the action will be deemed abandoned, and marked off the calendar without further notice, and it is further

ORDERED, that defendant Engel be provided a copy of this Court's Decision and Order and

the Referee's Notice of Sale in Foreclosure.

The foregoing constitutes the decision and order of the court.

Dated: November 12, 2015
Goshen, New York

ENTER:

HON. SANDRA B. SCIORTINO, J.S.C.

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