

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D12273  
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Submitted - February 27, 2006

HOWARD MILLER, J.P.  
ROBERT A. SPOLZINO  
ROBERT A. LIFSON  
MARK C. DILLON, JJ.

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2004-05887

DECISION & ORDER

Al Reich, respondent-appellant, v Realty  
Quest Brokerage Corp., et al., defendants;  
Jonathan Einhorn, nonparty-appellant-respondent.

(Index No. 30485/93)

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Henry Kohn, Brooklyn, N.Y., for nonparty-appellant-respondent.

Avery J. Gross, Staten Island, N.Y., for respondent-appellant.

In an action to foreclose upon a mortgage, Jonathan Einhorn appeals from so much of an order of the Supreme Court, Kings County (Partnow, J.), dated July 18, 2003, as granted only that branch of his motion which was for a refund of his down payment, and the plaintiff cross-appeals from so much of the same order as determined that Jonathan Einhorn was not in default of the contract of sale and granted that branch of Jonathan Einhorn's motion which was for a refund of Jonathan Einhorn's down payment.

ORDERED that the appeal is dismissed, without costs or disbursements; and it is further,

ORDERED that the order is affirmed insofar as cross-appealed from, without costs or disbursements.

The appeal by the nonparty, Jonathan Einhorn, the successful bidder at a foreclosure sale of the subject premises, must be dismissed on the ground that Einhorn is not aggrieved by the order appealed from (*see Matter of Meadowdale Assoc. v Planning Bd. of Town of Colonie*, 70 NY2d 669).

December 5, 2006

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Further, the Supreme Court correctly determined that Einhorn was entitled to a refund of his down payment.

MILLER, J.P., SPOLZINO, LIFSON and DILLON, JJ., concur.

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2004-05887

DECISION & ORDER ON MOTION

Al Reich, respondent-appellant, v Realty  
Quest Brokerage Corp., et al., defendants;  
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(Index No. 30485/93)

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Appeal by the nonparty, Jonathan Einhorn, and cross appeal by the plaintiff from an order of the Supreme Court, Kings County, dated July 18, 2003. On the court's own motion, the parties and the nonparty-appellant-respondent or their attorneys were directed to show cause before this court why an order should or should not be made and entered dismissing the appeal, on the ground, among others, that the nonparty-appellant-respondent is not aggrieved by the order. By decision and order on motion of this court dated March 24, 2005, the branch of the motion which was to dismiss the appeal on the ground that the nonparty-appellant-respondent is not aggrieved by the order was held in abeyance and referred to the panel of Justices hearing the appeal upon the argument or submission thereof.

Upon the order to show cause and the papers filed in response thereto, and upon the submission of the appeal,

ORDERED that the motion is denied as academic in light of our determination of the appeal and cross appeal.

MILLER, J.P., SPOLZINO, LIFSON and DILLON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court