

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

D25392
O/kmg

_____AD3d_____

Submitted - November 20, 2009

STEVEN W. FISHER, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
JOHN M. LEVENTHAL, JJ.

2008-11664
2008-11666

DECISION & ORDER

WMC Mortgage Corp., plaintiff, v Rudolph Dick,
et al., defendants, Marc Oringer, appellant; Rosemary
Chukwura, et al., nonparty-respondents.

(Index No. 10078/00)

Firestone & Harris, Brooklyn, N.Y. (Alan J. Firestone of counsel), for appellant.

In an action to foreclose a mortgage, the defendant Marc Oringer appeals, as limited by his brief, (1) from so much of an order of the Supreme Court, Kings County (Ruchelsman, J.), dated November 24, 2008, as denied his motion to vacate a referee's report dated July 14, 2008, and to direct a hearing as to the distribution of surplus money, and (2) from so much of an order of the same court dated December 4, 2008, as granted those branches of the nonparties' motion which were to confirm the referee's report and to distribute portions of the surplus money to the referee and to Rosemary Chukwura.

ORDERED that the orders are reversed insofar as appealed from, on the law, with one bill of costs to the appellant payable by Rosemary Chukwura, the appellant's motion is granted, and those branches of the nonparties' motion which were to confirm the referee's report and to distribute portions of the surplus money to the referee and to Rosemary Chukwura are denied.

A person who has appeared in a foreclosure action or who has filed a claim for surplus money is entitled to notice of the appointment of a referee to determine the distribution of the surplus (*see* RPAPL 1361[2], [3]). Here, the appellant had appeared in the foreclosure action and had filed

December 15, 2009

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a claim for a portion of the surplus, and thus was entitled to notice of the appointment of a referee and of the referee's report. Inasmuch as the appellant was not given the notice to which he was entitled, his motion to vacate the report and to direct a hearing should have been granted, and those branches of the claimants' motion which were to confirm the referee's report and to distribute portions of the surplus money to the referee and to Rosemary Chukwura should have been denied (*see Lakeridge Dev. Corp. v Skyline Devs.*, 201 AD2d 959).

FISHER, J.P., ANGIOLILLO, DICKERSON and LEVENTHAL, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court