

MEMORANDUM

SUPREME COURT : QUEENS COUNTY  
IA PART 15

NYCTL 1998-1 TRUST AND THE BANK OF x  
NEW YORK, AS COLLATERAL AGENT AND  
CUSTODIAN FOR THE NYCTL 1998-1 TRUST

INDEX NO.: 10475/00

BY: TAYLOR, J.

Plaintiff,

DATED: January 20, 2006

-against-

MARITZA AKVAREZ A/K/A MARITZA ALVAREZ,  
AS EXECUTRIX OF THE ESTATE OF  
ENRIQUE VENTURA, NEW YORK STATE  
DEPARTMENT OF TAXATION AND FINANCE;  
NEW YORK CITY TRANSIT ADJUDICATION  
BUREAU; THE PEOPLE OF THE STATE OF  
NEW YORK; THE CITY OF NEW YORK;  
VERA SHARON SKUHERSKY;

Defendants.

x

Defendant Vera Sharon Skuhersky moves to confirm the Referee's report of sale, for leave to appoint a Referee to ascertain and report the amount due to defendant/claimant Skuhersky and/or any other person and/or entity who or which has a valid lien on the said surplus monies, to ascertain the priority of the several liens thereon, if any, to the end that upon the issuance and confirmation of the report regarding the priority of claims to the surplus monies, an order may be issued directing the distribution of said surplus monies as may be just.

Plaintiff commenced this action to foreclose a mortgage on the premises known as 23<sup>rd</sup> Avenue, East Elmhurst, New York

(Block 1638, Lot 4). Plaintiff obtained a judgment of foreclosure and sale dated February 6, 2001, whereby a Referee was appointed to sell the mortgaged premises. On May 21, 2004, the premises were sold by the Referee subject to the judgment of foreclosure and sale, and on September 10, 2004, the Referee filed a report of sale, dated August 10, 2004. Pursuant to the report, the Referee paid the amounts directed in the judgment of foreclosure and sale to be paid out of the proceeds of the sale. There was a surplus of \$80,973.12, which was paid into court by the Referee pursuant to RPAPL 1354(4).

Defendant/claimant Skuhersky's motion to confirm the Referee's report and to appoint a Referee in this surplus money proceeding was made on October 17, 2005. In support thereof, defendant/claimant Skuhersky submitted, inter alia, a copy of her notice of claim to the surplus monies pursuant to a money judgment docketed on June 8, 1993, a voucher for the surplus monies, the clerk's certificate specifying that defendant/claimant Skuhersky filed a notice of claim to the surplus monies and no other notices of claim had been filed, and a certification of parties for surplus money proceedings made and certified by a title insurance company which indicates other possible unsatisfied judgment liens.

Defendant/claimant Skuhersky's motion, made more than four months after the filing of the Referee's report, is untimely. (See RPAPL 1355[2] and 1361[2].) However, the failure to move to

confirm a Referee's report of sale and to appoint a Referee in a surplus money proceeding within the time limits prescribed by RPAPL 1355(2) and 1361(2) is a mere irregularity which, in the absence of prejudice to any substantial right of a party, may be disregarded. (See Associated Financial Services, Inc. v Davis, 183 AD2d 686 [1992]; see also Fidelity Bond and Mortgage Co. v Lucas, 135 AD2d 778 [1987]; Dime Savings Bank of Brooklyn v Sherman, 64 Misc 2d 457 [1970].) As there has been no showing of prejudice here, the court exercises its discretion in disregarding the statutory time limitations (see CPLR 2001) and extends the time for defendant/claimant Skuhersky to bring her motion. (See CPRL 2004.)

Thus, the branch of the motion seeking to confirm the Referee's report of sale is granted without opposition.

With respect to the branch of the motion seeking leave to appoint a Referee, RPAPL 1361(2) provides that the 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 monies.

In this case, defendant/claimant Skuhersky concedes that other persons may have a right to a portion of the surplus monies. Therefore, a reference is in order and notice of the hearing shall be given to the owner or owners of the equity of redemption, any party who has appeared in the action, any person who has filed a

notice of claim, and any person who has a recorded lien against the property. (See RPAPL 1361[2], [3].)

Accordingly, the branch of the motion seeking to appoint a Referee to ascertain and report the amount due defendant/claimant Skuhersky and/or any other person who has a lien on the surplus monies and to ascertain the priority of the liens is granted without opposition.

Settle order.

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J.S.C.