

<b>JP Morgan Chase Bank N.A. v Panova</b>
2014 NY Slip Op 33679(U)
September 2, 2014
Supreme Court, New York County
Docket Number: 810317/11
Judge: Alice Schlesinger
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

EA  
9/5/14  
E

**PRESENT: ALICE SCHLESINGER**  
*Justice*

**PART IA PART 16**

Index Number : 810317/2011  
JP MORGAN CHASE BANK N.A.  
vs.  
PANOVA, TATIANA  
SEQUENCE NUMBER : 003  
CONFIRM/REJECT REFEREE REPORT

INDEX NO. \_\_\_\_\_  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to/for \_\_\_\_\_

Notice of Motion/Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_ | No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is *denied* and the *cross-motion* is granted in accordance with the accompanying memorandum decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

**FILED**

SEP 05 2014

COUNTY CLERK'S OFFICE  
NEW YORK  
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SEP 05 2014  
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NYS SUPREME COURT - CIVIL

Dated: SEP 02 2014

*Alice Schlesinger*  
**ALICE SCHLESINGER** J.S.C.

1. CHECK ONE: .....  CASE DISPOSED  NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER  
 DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
JP MORGAN CHASE BANK, NATIONAL ASSOCIATION,

Plaintiff,

Index No.810317/11  
Mot Seq 003

-against-

TATIANA PANOVA; WASHINGTON MUTUAL BANK;  
BOARD OF MANAGERS OF THE MORTGAGE LOFTS  
CONDOMINIUM, et al.,

**FILED**

Defendants.

SEP 05 2014

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**SCHLESINGER, J.:**

COUNTY CLERK'S OFFICE  
NEW YORK

Defendant Tatiana Panova, the Borrower in this mortgage foreclosure action, has moved to reject the Report of Special Referee Sue Ann Hoahng filed on March 19, 2013 (Exh 2 to Motion). In that Report, the Referee rejected defendant's claim of lack of personal jurisdiction and found that service was valid. Plaintiff Lender JP Morgan Chase has cross-moved to confirm the Report and for various related relief.

First, the Court grants the cross-motion to the extent that it seeks an extension of time to oppose defendant's motion and to cross-move for confirmation. Public policy supports determinations on the merits, and defendant is not prejudiced by the late submission of the papers. Therefore, the Court will address the substance of the competing motions to reject and confirm the Referee's Report.

Contrary to the defendant's claim, the Referee acted within the scope of authority granted by the Court in its June 1, 2012 order of reference (Exh 1). As indicated there, defendant had raised an issue of fact requiring a traverse hearing by submitting an affidavit that directly disputed the process server's claim in his affidavit of service that he had effectuated service by delivery to a person of suitable age and discretion at the

premises; namely, a “co-occupant” by the name of Jacob Besin. The Court did not limit the Referee’s task to determining the accuracy of the affidavit of service. Rather, the Referee was given broad authority to determine whether service was sufficient to acquire personal jurisdiction over the defendant.

At the traverse hearing, the Referee heard testimony from the process server and accepted into evidence various exhibits. Included among those exhibits was the process server’s log book. The entries in the log book corresponded directly to the entries in the affidavit of service regarding the date, time and address where substitute service was completed, and in addition, the name of the person served (Jacob Besin) and his description corresponded. The point at issue, whether Besin was a “co-occupant” as indicated on the affidavit of service, was not a point included in the log book.

At the hearing, the process server testified that Besin was, in fact, the doorman and not a co-occupant. He indicated that a secretary at his office had completed the affidavit of service based on information he had provided and that he had overlooked that the affidavit incorrectly described Besin as a co-occupant when he signed the affidavit. The process server further testified in detail that he had approached the doorman with the papers and requested access to defendant’s unit, but the doorman denied such access after calling the apartment and speaking with someone there. Therefore, the process server left the papers with the doorman. He also photographed the premises, and the photo was accepted into evidence.

The Referee found the process server’s testimony credible. What is more, the testimony was in large part confirmed, rather than disputed, by defendant Panova. While Ms. Panova was clear that no one named Besin ever co-occupied her apartment, she

confirmed that the building had a doorman, whose name she did not know. Further, she confirmed that the doorman gave the papers to her son, who gave them to her. While she claims that she did not receive the mailing, her testimony did not exclude the possibility that her son received the mailing and simply did not give it to her because he had already given her the papers from the doorman.

Thus, the evidence presented provided ample support for the findings of fact by the Referee and the ultimate conclusion that service had been properly effectuated so as to acquire personal jurisdiction over the defendant. The Court rejects defendant's claim that the Referee was not impartial, as demonstrated by the "friendship-like relationship" that the Referee developed with the process server. The record provides no evidence of bias; courtesy does not constitute bias. The Report is entitled to confirmation by this Court.

In the cross-motion, plaintiff also seeks an extension of time to move for summary judgment. As the issue of personal jurisdiction was raised in a pre-answer motion to dismiss, summary judgment would be premature at this point. However, the Court will set deadlines for an Answer, the filing of a Note of Issue, and the filing of a motion for summary judgment so this case can proceed without further delay. The Court has made exhaustive attempts to settle the matter, to no avail, but counsel are nevertheless urged to continue discussions along the lines of a short sale or other resolution.

Accordingly, it is hereby

ORDERED that defendant's motion to reject the Referee's Report is denied; and it is further

ORDERED that plaintiff's cross-motion is granted, its opposition to the motion and its cross-motion are accepted, and the Report of Special Referee Sue Ann Hoahng filed on March 19, 2013 is hereby confirmed; and it is further

ORDERED that defendant shall serve and file an Answer to the Complaint within twenty (20) days of plaintiff's service of a copy of this decision with notice of entry, and plaintiff's time to file a Note of Issue is extended through October 31, 2014. Any dispositive motion such as a motion for summary judgment shall be filed within sixty (60) days of the filing of the Note of Issue. Status conference in Room 222 on November 19, 2014 at 9:30 a.m. to confirm that the matter is proceeding as directed by the Court.

Dated: September 2, 2014

SEP 02 2014

**FILED**

SEP 05 2014

COUNTY CLERK'S OFFICE  
NEW YORK

*Alice Schlesinger*  
J.S.C.  
**ALICE SCHLESINGER**