

**Board of Mgrs. of Printing House Condominium v  
Hudson 805 LLC**

2023 NY Slip Op 33379(U)

September 25, 2023

Supreme Court, New York County

Docket Number: Index No. 151981/2020

Judge: Francis A. Kahn III

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. FRANCIS A. KAHN, III PART 32**  
*Justice*

-----X  
BOARD OF MANAGERS OF PRINTING HOUSE  
CONDOMINIUM,  
  
Plaintiff,

INDEX NO. 151981/2020  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. 001

- v -

HUDSON 805 LLC, BARNETT L. LIBERMAN, PHYLLIS  
LIBERMAN, MORTGAGE ELECTRONIC REGISTRATION  
SYSTEM, AXOS BANK, SIGNATURE BANK, N.A., GARY  
M. ROSENBERG, NEW YORK STATE DEPARTMENT OF  
TAXATION AND FINANCE, NEW YORK CITY  
DEPARTMENT OF FINANCE, INTERNAL REVENUE  
SERVICE, ENVIRONMENTAL CONTROL BOARD OF THE  
CITY OF NEW YORK, JOHN DOES 1-200

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 59, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 75, 76

were read on this motion to/for JUDGMENT - DEFAULT.

Upon the foregoing documents, the motion is determined as follows:

Plaintiff, Board of Managers of Printing House Condominium (“Board”), commenced this action to foreclose on a lien for common charges encumbering a condominium unit located at 421 Hudson Street, Units 805 and 806, New York, New York. Plaintiff moved for, *inter alia*, a default judgment, order of reference and appointment of a receiver. By stipulation dated October 3, 2021, Plaintiff and Defendant Gary M. Rosenberg (“Rosenberg”), stipulated to extend his time to oppose the motion (NYSCEF Doc No 45). Rosenberg filed a cross-motion to dismiss pursuant to CPLR §3215[c] or to extend his time to answer. By stipulation dated October 19, 2021, Plaintiff and Rosenberg stipulated that in return for accepting Rosenberg’s answer, Plaintiff would withdraw the branch of this motion for a default judgment against Rosenberg (NYSCEF Doc No 59).

The motion was marked fully submitted on October 26, 2021, and Justice Alexander M. Tisch, ostensibly the assigned justice at that time, apparently marked the entire motion withdrawn. Defendant Hudson filed a late cross-motion to dismiss Plaintiff’s complaint or to extend its time to answer. On or about February 2, 2022, this action was reassigned to Justice Mary V. Rosado. By order dated February 15, 2022, Justice Rosado recused herself (NYSCEF Doc No 73) as she was allegedly represented by Plaintiff’s counsel in another pending litigation (NYSCEF Doc No 72). On July 12, 2022, the within matter was, without any notice, reassigned to this Court. Plaintiff efiled a letter inquiring about its motion, but as Justice Tisch marked the motion as withdrawn, no action was taken. This Court first became aware of this matter while conducting a status conference in a related matter to foreclose a

mortgage on the same premises (*Axos Bank v Hudson 805, LLC, et al*, NY Cty Index No 850233/2022), wherein Board was named as a Defendant. Board answered in that matter and pled a joint counterclaim and crossclaim to foreclose its lien. However, absent from Board's answer is any claim that its lien has priority over that asserted by the mortgagee. A motion for summary judgment and an order of reference was filed by the Mortgagee which is returnable on October 5, 2023.

As to the within motion, "[a]n applicant for a default judgment against a defendant must submit proof of service of the summons and complaint, proof of the facts constituting the claim, and proof of the defaulting defendant's failure to answer or appear" (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 899 [2d Dept 2019]). Plaintiff has established *prima facie* its entitlement to a default judgment against Defendants by submitting proof of "authority to collect common charges from the owners of units and, in the event of nonpayment, to add late fees, interest, attorneys' fees and other costs of collection to the assessment" as well as the reliability of or how the amounts were calculated (*Board of Mgrs. of W. Amherst Off. Park Condominium v RMFSG, LLC*, 153 AD3d 1611 [4<sup>th</sup> Dept 2017]; *see also Board of Mgrs. of Natl. Plaza Condominium I v. Astoria Plaza, LLC*, 40 AD3d 564 [2d Dept 2007]). Accordingly, Plaintiff has demonstrated its entitlement to a default judgment against Hudson as well as the other Defendants.

Defendant Hudson's opposition and cross-motion were not served or filed until the day after Plaintiff's motion was marked submitted. Therefore, it is untimely and may not be considered by the Court (CPLR §2214[b]; §2215). Hudson's assertion that Plaintiff is not prejudiced by the late service of the cross-motion is inapposite as its filing after the motion was submitted precluded a response thereto (*see eg Flannery v Goldsmith*, 268 AD2d 267 [1<sup>st</sup> Dept 2000]).

Even were the court to consider Hudson's opposition it would be insufficient. "To defeat a facially adequate CPLR 3215 motion, a defendant must show either that there was no default, or that it has a reasonable excuse for its delay and a potentially meritorious defense" (*Deutsche Bank Natl. Trust Co. v Silverman*, 178 AD3d 898, 901 [2d Dept 2020], *citing US Bank N.A. v Dorestant*, 131 AD3d 467, 470 [2d Dept 2015]). Hudson's claim that it did not receive the mailing is simply a naked denial of receipt of service which is insufficient to rebut the presumption of regularity of the mails (*see Youngstown Tube Co. v Russo*, 120 AD3d 1409, 1410 [2d Dept 2014]; *see also Nazarian v Monaco Imports, Ltd.*, 255 AD2d 265 [1<sup>st</sup> Dept 1998]; *see also Ames Capital Corp. v Ford*, 294 AD2d 134 [1<sup>st</sup> Dept 2002]). The claim by Defendant Hudson's counsel that an unidentified employee of the Secretary of State confirmed that its mailing was returned is deficient hearsay. Without a reasonable excuse, the court need not determine whether the defendant has presented a meritorious defense to the action (*see Pina v Jobar U.S.A. LLC*, 104 AD3d 544, 545 [1<sup>st</sup> Dept 2013]). In any event, the objections regarding the amount due are not sufficient to defeat the motion as they may be raised during the referee's calculation despite the default (*see eg 1855 E. Tremont Corp. v Collado Holdings LLC*, 102 AD3d 567, 568 [1st Dept 2013]; *see also Wilmington Sav. Fund Socy., FSB v Moriarty-Gentile*, 190 AD3d 890, 892-893 [2d Dept 2021]).

The branch of the motion for the appointment of a receiver and to order Hudson to pay Plaintiff reasonable rent is denied without prejudice as no proof of the amount of reasonable rent for the premises was proffered. Without such proof, the Court would be forced to engage in speculation to set the rent and the amount for an undertaking to be posted by the receiver.

Accordingly, it is

ORDERED that the branch of the motion for a default judgment against the non-appearing Defendants and an order of reference is granted without opposition, but the other relief is denied; and it is further

ORDERED that Defendant Hudson's the cross-motion is denied in its entirety; and it is further

ORDERED that that **Mark McKew, Esq., 1725 York Ave, Ste 29A, New York, New York, 212-876-6783** is hereby appointed Referee in accordance with RPAPL § 1321 to compute the amount due to Plaintiff and examine whether the tax parcel can be sold in parcels; and it is further

ORDERED that in the discretion of the Referee a hearing may be held, and testimony taken; and it is further

ORDERED that by accepting this appointment the Referee certifies that he is in compliance with Part 36 of the Rules of the Chief Judge (22 NYCRR Part 36), including, but not limited to §36.2 (c) ("Disqualifications from appointment"), and §36.2 (d) ("Limitations on appointments based upon compensation"), and, if the Referee is disqualified from receiving an appointment pursuant to the provisions of that Rule, the Referee shall immediately notify the Appointing Judge; and it is further

ORDERED that, pursuant to CPLR 8003(a), and in the discretion of the court, a fee of \$350 shall be paid to the Referee for the computation of the amount due and upon the filing of his report and the Referee shall not request or accept additional compensation for the computation unless it has been fixed by the court in accordance with CPLR 8003(b); and it is further

ORDERED that the Referee is prohibited from accepting or retaining any funds for himself or paying funds to himself without compliance with Part 36 of the Rules of the Chief Administrative Judge; and it is further

ORDERED that if the Referee holds a hearing or is required to perform other significant services in issuing the report, the Referee may seek additional compensation at the Referee's usual and customary hourly rate; and it is further

ORDERED that plaintiff shall forward all necessary documents to the Referee and to defendants who have appeared in this case within 30 days of the date of this order and shall *promptly* respond to every inquiry made by the referee (promptly means within two business days); and it is further

ORDERED that if defendant(s) have objections, they must submit them to the referee within 14 days of the mailing of plaintiff's submissions; and include these objections to the Court if opposing the motion for a judgment of foreclosure and sale; and it is further

ORDERED the failure by defendants to submit objections to the referee shall be deemed a waiver of objections before the Court on an application for a judgment of foreclosure and sale; and it is further

ORDERED that plaintiff must bring a motion for a judgment of foreclosure and sale within 30 days of receipt of the referee's report; and it is further

ORDERED that if plaintiff fails to meet these deadlines, then the Court may *sua sponte* vacate this order and direct plaintiff to move again for an order of reference and the Court may *sua sponte* toll interest depending on whether the delays are due to plaintiff's failure to move this litigation forward; and it further

ORDERED that counsel for plaintiff shall serve a copy of this order with notice of entry upon the County Clerk (60 Centre Street, Room 141B) and the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the parties being removed pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address ([www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh))); and it is further

All parties are to appear for a virtual conference via Microsoft Teams on **January 25, 2024, at 11:20 a.m.** If a motion for judgment of foreclosure and sale has been filed Plaintiff may contact the Part Clerk Tamika Wright ([tswright@nycourt.gov](mailto:tswright@nycourt.gov)) in writing to request that the conference be cancelled. If a motion has not been made, then a conference is required to explore the reasons for the delay.

9/25/2023  
DATE

CHECK ONE:

CASE DISPOSED  
GRANTED

DENIED

APPLICATION:


SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER  
REFERENCE

  
FRANCIS A. KAHN, III, A.J.S.C.  
**HON. FRANCIS A. KAHN III**  
**J.S.C.**