

**HSBC Bank USA, N.A. v Aurelien**

2025 NY Slip Op 33707(U)

September 26, 2025

Supreme Court, Kings County

Docket Number: Index No. 503425/2014

Judge: Menachem M. Mirocznik

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KINGS COUNTY CLERK  
FILED  
2025 OCT -3 A 10: 25

At IAS Part FRP5\_ of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse located at 360 Adams Street, Brooklyn, NY 11201, on the 26TH of September 2025

**PRESENT:** HON. MENACHEM M. MIROCZNIK  
JUSTICE OF THE SUPREME COURT

HSBC Bank USA, National Association, as Trustee for ACE Securities Corp. Home Equity Loan Trust, Series 2006-HE 1 Asset Backed Pass-Through Certificates,  
  
Plaintiff,  
  
-against-  
  
Alexandra Aurelien; City Register of the City of New York, Kings County; Margaratten & Company, Inc.; New York City Department of Housing Preservation & Development; New York City Environmental Control Board; New York City Transit Adjudication Bureau; Fransica Guiobaud; Natasha Aurelien,  
  
Defendants.

Index No. 503425/2014

Cal # 18/19  
**Decision and Order  
(Motion Seq. 7 and 8)**

Papers	Numbered
Notice of Motion	NYSCEF Doc. 203-228
Notice of Cross-Motion	NYSCEF Doc. 229-233
Opposition to Cross-Motion and Reply	NYSCEF Doc 235-237

Upon the foregoing papers, the motion and cross-motion are determined in accordance with this Decision and Order as follows:

**Procedural History**

This action was commenced on April 21, 2014. Defendant defaulted in appearing or answering.

By order August 25, 2015, the Court denied Plaintiff's an ex parte motion for default judgment on order reference with leave renew on notice.

Plaintiff then moved again on notice and defendant cross-moved to vacate the default and by order dated November 2, 2016, both motions were denied with the exception that the branch of plaintiff's motion to amend the caption was granted.

Plaintiff then moved again for a default judgment and order of reference and defendant opposed and cross-moved to reargue the order dated November 2, 2016 which denied defendant's cross-motion to vacate the default. By order dated May 30, 2018 the Court denied defendant's cross-motion to reargue and by order dated September 26, 2018 the Court granted plaintiff's motion for a default judgment and order of reference.

By order dated September 5, 2019, the Court denied plaintiff's first motion to confirm the referee's report and for judgment of foreclosure and sale finding that the referee's report was deficient and it being unclear which documents were considered by the referee.

By order dated March 21, 2023, the Court denied defendant's motion seeking renewal of the order dated November 2, 2016 which denied defendant's cross-motion to vacate the default.

On December 10, 2024 Plaintiff now moves again to confirm a new referee's report and for judgment of foreclosure and sale. Defendant cross-moves to toll interest from September 5, 2019 To December 10, 2024 for delays in moving for a judgment and foreclosure and sale since the Court denied the first motion for judgment of foreclosure and sale. Defendant also opposes the motion to confirm the referee's report as not being substantially supported by the record and is based upon inadmissible evidence.

Plaintiff opposes the cross-motion contending various delays were caused by the following: (i) stays arising from the COVID-19 pandemic until March 1, 2021; (ii) "upon information and belief that on September 24, 2021, Plaintiff placed a hold on proceeding due to a FEMA disaster declaration related to Hurricane Ida that was lifted on or about December 7, 2021; (iii) on July 14, 2022, a Consent to Change Attorney was filed reflecting the transfer of the file to current counsel (iv) On December 1, 2022, defendant filed a motion to renew which was denied by decision and order filed on May 10, 2023 and (v) on June 20, 2024, Plaintiff's servicer underwent a merger with another servicer which required a new affidavit and on September 16, 2024, a proposed Referee's Oath and Report was mailed to the referee and was received back on or around October 21, 2024. The instant motion was filed on December 10, 2024.

### Discussion

"The report of a referee should be confirmed whenever the findings are substantially supported by the record, and the referee has clearly defined the issues and resolved matters of credibility ... The referee's findings and recommendations are advisory only and have no binding effect on the court, which remains the ultimate arbiter of the dispute." *CitiMortgage, Inc. v Kidd*, 148 AD3d 767 (2d Dept 2017) (citations omitted)

Here, the referee's report is based upon the affidavit of plaintiff's alleged server. However, while it appears that the affidavit is supported by certain business records and payment histories, said records are not referenced as an exhibit in the affidavit or attested to as being the records reviewed by plaintiff's affiant. While the referee's report appears to reference the payment histories, the same have not been authenticated by plaintiff's affiant and therefore constitute inadmissible hearsay. Therefore, the referee's report is not substantially supported by the record and plaintiff's

motion to confirm same and for judgment of foreclosure is denied. See *CitiMortgage, Inc. v Kidd*, 148 AD3d 767 (2d Dept 2017)

Given this is the plaintiff's second motion to confirm the referees report and judgment of foreclosure and sale that is denied due to deficient papers that matter should be remitted to the referee to conduct a hearing, and any future motion should include the transcript and evidence submitted thereat.

Lastly, defendant's motion for the equitable tolling of interest due to plaintiff's unexplained delays in prosecuting this action is granted in part.

"A foreclosure action is equitable in nature and triggers the equitable powers of the court. . In an action of an equitable nature, the recovery of interest is within the court's discretion. The exercise of that discretion will be governed by the particular facts in each case, including any wrongful conduct by either party,' such as where the plaintiffs conduct has prejudiced the defendant. .. Further, a tolling and cancellation of interest may also be warranted where there is an unexplained delay in prosecution of a mortgage foreclosure action" *GMAC Mtge., LLC v Yun*, 206 AD3d 798, 798-99 [2d Dept 2022][internal citations omitted]; See also *People's United Bank v Patio Gardens III, LLC*, 189 AD3d 1622, 1623 [2d Dept 2020]["tolling and cancellation of interest may also be warranted where there is an unexplained delay in prosecution of a mortgage foreclosure action"]

Here, plaintiff limited to no explanation for substantial delays in moving to confirm the referees report and for judgment foreclosure and sale since the denial of the first motion on September 5, 2019. While plaintiff offers some explanations such as the imposition of stays due to the COVID-19 pandemic and counsel's unsubstantiated assertions of a purported FEMA hold. Plaintiff does not otherwise explain significant gaps in its timeline and are otherwise unjustified. For example, no explanation is provided for the delay after the alleged FEMA hold was lifted on December 7, 2021 until new counsel was substituted on July 14, 2022 a period of approximately seven months. No explanation is provided for the delay from July 14, 2022 until defendant filed a motion to renew on December 1, 2022 a period of approximately four and a half months. Nor is an explanation provided for the delay from the denial of defendant's motion to renew on May 10, 2023 until the merger of the servicers on June 20, 2024 a period of thirteen months.

While plaintiff does not substantiate many periods of the delay including the alleged FEMA hold or explain why a defendant's motion to renew and substitution of counsel prevented plaintiff from timely moving this case forward, the Court exercises its equitable discretion to toll interest for 24 months for plaintiff's unexplained delays in prosecuting this action.

Accordingly, it is hereby

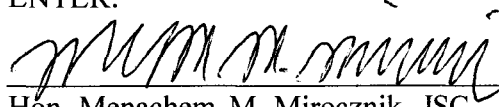
ORDERED, that plaintiff's motion to confirm the referee's report and for judgment of foreclosure and sale is DENIED; and it is further

ORDERED, that defendant's cross-motion is GRANTED solely to the extent that interest is tolled for a period of 24 months; and it is further

ORDERED, that the matter is remitted to the referee to conduct a hearing and issue a new report consistent herewith and any future motion to confirm the referees report must include a copy of the transcript and the evidence admitted thereat.

This constitutes the decision and order of the Court.

ENTER:

  
Hon. Menachem M. Mirocznik, JSC

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