

**Federal Natl. Mtge. v Greenfeld**

2025 NY Slip Op 34274(U)

November 3, 2025

Supreme Court, Kings County

Docket Number: Index No. 503048/15

Judge: Cenceria P. Edwards

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This opinion is uncorrected and not selected for official publication.

At an IAS Term, Part FRP1, of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 3rd day of November, 2025.

**P R E S E N T:**

HON. CENCERIA P EDWARDS, Justice.

-----X  
FEDERAL NATIONAL MORTGAGE,

Plaintiff,

-against-

JEHOSHEA GREENFELD et al,

Defendant,

-----X

Index No.: 503048/15  
MS 6+8  
Calendar Date:  
5/31/22  
Calendar No.(s): 5

The following e-filed papers read herein:

NYSEF Nos.:

Notice of Motion/Order to Show Cause/  
Petition/Cross Motion and Affidavits (Affirmations)

Annexed \_\_\_\_\_

150-180 272-289

Opposing Affidavits (Affirmations) \_\_\_\_\_

183-201<sup>1</sup> 292-316

Affidavits/ Affirmations in Reply \_\_\_\_\_

290 317

Upon the foregoing papers in this action to foreclose a mortgage encumbering the residential property located at 47A Lynch Street, Unit 1 AKA 47 ½ Lynch Street, Unit 1 in Brooklyn (Block 2231, Lot 1201), Defendant Jehoshua Greenfeld moves (MS 8) for vacatur of his default pursuant to CPLR 5015 and the Court’s inherent authority and, thereafter, dismissal of this action for failure to comply with RPAPL 1304. Plaintiff opposes and separately notes that the determination of its motion for judgment of foreclosure and sale (MS 6) is no longer stayed.<sup>2</sup>

***Background Facts and Procedural History***

<sup>1</sup> Defendant filed opposition as part of its cross-motion. The cross motion was already decided by order dated December 2, 2019.

<sup>2</sup> By order dated May 13, 2024, the Honorable Lawrence Knipel granted Plaintiff’s motion to vacate the stay.

Plaintiff commenced the instant foreclosure action on March 17, 2015. All defendants defaulted in answering. Conferences were scheduled in the Foreclosure Settlement Conference Part on August 10, 2015 and October 7, 2015 with the matter being released following Defendant's non-appearance on the latter date.

On December 14, 2015, Plaintiff filed an ex parte motion for an order of reference. By order dated May 23, 2016, the Honorable Noach Dear denied the motion without prejudice to Plaintiff seeking the same relief on notice, noting that "[t]hough Defendant failed to file an answer in this action, Defendant has appeared in court for conferences."

Plaintiff filed a motion for an order of reference on July 13, 2016. Defendant then appeared through counsel and cross-moved for dismissal pursuant to CPLR 3211[a][3] and [a][8] and/or for failure to comply with conditions precedent to the commencement of the action. In the alternative, he sought an extension of time to answer the complaint. Therein, he asserted that he was not properly served with the summons and complaint, that Plaintiff lacked standing, and that Plaintiff failed to send the notices required by the mortgage and RPAPL 1304. After Plaintiff opposed and Defendant replied, Judge Dear granted the cross-motion by order dated February 15, 2017 to the extent that the matter was set down for a traverse hearing to be held before a Special Referee. The remainder of the motions were held in abeyance pending the hearing.

A traverse hearing was held before Special Referee Derefim B Neckles on a hear and determine basis. As memorialized by an order dated May 23, 2017, she found both process servers to be credible and concluded that "the defendant Jehoshea Greenfield A/K/A Joshua Greenfield was properly served with process."

On July 31, 2017, Defendant moved for an order rejecting Referee Neckles' finding. After the motion was fully papered, it was marked off. Consequently, Defendant moved to restore it to the calendar, relief to which the parties subsequently stipulated. As Defendant's counsel argued that the referee had exceeded the scope of her authority by issuing a determination rather than a report, Judge Dear requested that Referee Neckles issue a clarification of whether the hearing was done on a hear and determine basis. After she

(apparently) did so,<sup>3</sup> Judge Dear resolved all of the pending motions by order dated September 4, 2018 – finding that he could not disturb Referee Neckles’ determination and that Defendant provided no other reasonable excuse for his default. Accordingly, Plaintiff’s motion for an order of reference was granted, Defendant’s motion to dismiss or for a late answer was denied, and the motions to reject the referee’s report and to restore the marked off motion deemed moot. Defendant appealed.

On May 24, 2019, Plaintiff filed a motion to extend its time to file a motion for judgment of foreclosure and sale as it had not done so within sixty days of the issuance of the referee’s report. About a month later, Plaintiff filed its motion for judgment of foreclosure and sale. Defendant opposed and cross-moved for a stay pending the resolution of his appeal from the prior orders. By order dated December 2, 2019, Judge Dear granted Plaintiff’s motion for an extension of time to seek judgment of foreclosure and sale and granted the cross-motion for a stay contingent on Defendant posting a bond in the amount of \$75,526.56. Plaintiff’s motion for judgment of foreclosure and sale while not directly addressed was apparently held in abeyance in light of the stay.

On March 30, 2022, the Appellate Division, Second Department affirmed the orders granting an order of reference and denying Defendant’s cross-motion to dismiss or to vacate his default. The panel found that the traverse hearing was held on a hear and determine basis and that Plaintiff “met its burden of proving by a preponderance of the evidence that the defendant was validly served.” As such, it declined to disturb Referee Neckles’ determination and the resulting orders.

Defendant filed the instant motion on April 13, 2022, seeking to vacate his default pursuant to CPLR 5015 or the Court’s inherent authority and thereafter to dismiss the action for failure to comply with RPAPL 1304. Therein, he reiterates that he was not personally served and asserts has actively defended since learning of it. Noting that the Second Department had recently clarified the “single envelope” rule,<sup>4</sup> Defendant argues that Plaintiff did not comply with

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<sup>3</sup> Judge Dear’s subsequent order states that Referee Neckles issued a report dated May 11, 2018 stating that the hearing was done on a hear and determine basis and provided the Court with a copy of the referral order whereon counsel for both parties consented to her doing so.

<sup>4</sup> Defendant points to *Bank of America v Kessler*, 202 AD3d 10 (2d Dept 2021) and *Citmortgage v Dente*, 200 AD3d 1025 (2d Dept 2021).

RPAPL 1304 as the notice it allegedly sent contained additional language. Thus, he posits, he has a potentially meritorious defense to the action and, after vacatur of his default, the case must be dismissed.

In opposition, Plaintiff notes that it has already been determined that Defendant was properly served with the summons and complaint. The denial of his prior motion to dismiss or vacate his default was affirmed on appeal. Defendant was required to raise all of his grounds for vacatur the first time and, thus, has waived to raise additional arguments at this juncture. Presuming that Defendant remains in default, Plaintiff notes that he cannot raise non-compliance with RPAPL 1304.

Defendant replies that he did not learn of this case in time to defend and, thus, even though service has been found to be proper, his default should be vacated. He reiterates that he has been actively defending since he learned of the action and that Plaintiff failed to comply with RPAPL 1304.

### *Analysis*

In his initial motion, Defendant sought dismissal of this action on jurisdictional grounds. However, he also requested as alternative relief that his default be vacated. In a lengthy section of those moving papers (¶¶24-33), Defendant attempted to show a reasonable excuse for his default and potentially meritorious defenses. Though there he was citing CPLR 3012[d], the same two things are required for vacatur pursuant to CPLR 5015[a][1] which he currently is seeking. To the extent that he was unsuccessful at that juncture and the Appellate Division affirmed the denial of the requested relief, this Court need not revisit the issue.

While it is true that “[i]n addition to the grounds set forth in section 5015(a), a court may vacate its own judgment for sufficient reason and in the interests of substantial justice, ... [t]his discretion is reserved for ‘unique or unusual’ circumstances that warrant such action” (*Cox v Marshall*, 161 AD3d 1140, 1141 [2d Dept 2018][internal citations omitted]). The power to do so “is not plenary, and should be resorted to only to relieve a party from judgments taken through fraud, mistake, inadvertence, surprise, or excusable neglect” (*Edwards v Morris*, 228 AD3d 731, 732 [2d Dept 2024][internal citations omitted]). No such conditions are present here.

Further, Defendant's RPAPL 1304 arguments are unavailing (and would remain so even were his default vacated). On February 14, 2023, *Kessler* was reversed by the Court of Appeals (39 NY3d 317). It is undisputed that the alleged notices included all of the required language. The additional information included – the so-called “mini-Miranda”, etc – consists of “accurate statements that further the underlying statutory purpose of providing information to borrowers that is or may become relevant to avoiding foreclosure” and, thus, do not violate the “separate envelope” requirement (see, *id* at 326; see also, *Deutsche Bank Nat'l Trust v Pirozzi*, 230 AD3d 736, 740 [2d Dept 2024]).

Plaintiff's motion for judgment of foreclosure and sale is also denied. As noted by Defendant, the referee's calculations are not supported by admissible evidence. “Schedule A” reflects that he considered the note, mortgage, and “Plaintiff's Verification of Complaint” – none of which suffice to determine the amount due. Likewise, the documents attached to his report do not include a payment history and support for the alleged escrow advances. Even were the Court to surmise that the referee considered the Modlin Affidavit, the affiant also does not proffer any business records to support the amount alleged therein to be due.

### *Conclusion*

Accordingly, it is

**ORDERED** that Defendant's motion to vacate and dismiss (MS 8) is denied in its entirety; and it is further

**ORDERED** that Plaintiff's motion for judgment of foreclosure and sale (MS 6) is denied with leave to renew upon an updated referee's report supported by admissible evidence.

This constitutes the decision and order of the Court.

ENTER:



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**Hon. Cenceria P Edwards, J.S.C., CPA**