

<b>Deutsche Bank Natl. Trust v Garcia</b>
2026 NY Slip Op 31403(U)
March 5, 2026
Supreme Court, Kings County
Docket Number: Index No. 2265/2007
Judge: Derefim B. Neckles
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At an IAS Term, Part FRP-2 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, 11201 on the 5th day of March, 2026.

P R E S E N T:

HON. DEREKIM B. NECKLES,  
Justice.

-----X  
DEUTSCHE BANK NATIONAL TRUST,

Plaintiff,

- against -

Index No. 2265/2007

PHILLIP GARCIA; ET AL,

Defendants.

-----X

The following e-filed papers read herein:

NYSCEF Doc Nos.

Notice of Motion/Affidavits (Affirmations) Annexed  
Opposition Affirmation to Motion  
Reply Affirmation to Opposition

150-172  
174  
175

Upon the foregoing papers in this proceeding, plaintiff moves (under mot. seq. 12) for an order (1) confirming the referee’s report; (2) granting a judgment of foreclosure and sale; and (3) directing the distribution of sale proceeds.

***Background***

Plaintiff previously moved for the same relief, and was denied by order dated June 25, 2024, where the court found that the referee’s report was not supported by admissible evidence, and interest was tolled for plaintiff’s delay in prosecuting this action. Plaintiff now moves to confirm the referee’s new report accounting for the interest tolled. Defendant opposes, asserting that plaintiff’s servicer affidavit is inadmissible and the referee’s report is not substantially supported by the record.

## *Discussion*

### **I. Servicer Affidavit**

In opposition to plaintiff's motion, defendant asserts that plaintiff fails to submit sufficient evidence to prove PHH Mortgage Corporation's authority to make representations on behalf of plaintiff, and plaintiff's servicer fails to lay a foundation for the admission of business records.

In support of its motion for a judgment of foreclosure and sale, plaintiff proffered the affidavit of Talya Lopez, the Vice President of PHH Mortgage Corporation ("PHH"). Lopez attests that she is authorized to make this affirmation as the servicer of the subject loan and refers to a power of attorney annexed to plaintiff's motion as "exhibit R". The power of attorney explicitly appoints PHH to enforce plaintiff's interests in a foreclosure proceeding, including the preparation of documents. Accordingly, plaintiff has established that PHH has the authority to act on behalf of plaintiff (*see HSBC Mortg. Corp. USA v. Lee*, 228 A.D.3d 742, 743; *Bank of N.Y. Mellon Trust Co., N.A. v. Ahmed*, 204 A.D.3d 972, 973).

"[T]o establish a foundation for the admission of a business record, the proponent of the record must satisfy the requirements identified in [CPLR 4518 (a)]. First, the proponent must establish that the record be made in the regular course of business—essentially, that it reflect a routine, regularly conducted business activity, and that it be needed and relied on in the performance of functions of the business. Second, the proponent must also demonstrate that it be the regular course of such business to make the record . . . essentially, that the record be made pursuant to established procedures for the

routine, habitual, systematic making of such a record. Third, the proponent must establish that the record be made at or about the time of the event being recorded- essentially, that recollection be fairly accurate and the habit or routine of making the entries assured” (*Bank of New York Mellon v Gordon*, 171 AD3d 197, 205 [2d Dept 2019]).

Here, in paragraph three of her affidavit, Lopez attests that PHH’s servicing records are made in the ordinary course of the business activity, regularly conducted by PHH, and are relied upon by PHH. Lopez further attests that it is the regular practice of PHH to make and update its servicing records, and the records were made at or near the time by persons with knowledge of the activity reflected in such records. Lopez’s affirmation satisfies the stated requirements and is thus sufficient to lay a foundation for the admission of PHH’s records as business records. Lopez’s affirmation is likewise sufficient to lay a foundation for records of prior servicers of the loan, as Lopez attests that those records had been incorporated into PHH’s records and were relied upon by PHH in the ordinary course of business (*see Deutsche Bank Natl. Trust Co. v Pirozzi*, 230 AD3d 736, 738 [2d Dept 2024]; *U.S. Bank N.A. v Kropp-Somoza*, 191 AD3d 918, 921 [2d Dept 2021]).

## II. Referee’s Report

CPLR 4403 provides that “[u]pon the motion of any party . . . the judge required to decide the issue may confirm or reject, in whole or in part . . . the report of a referee . . . may make new findings with or without taking additional testimony; and may order a new trial or hearing.” The Second Department has held that “[t]he 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” (*Citimortgage, Inc. v Kidd*, 148 AD3d 767, 768 [2d Dept 2017]).


Here, the referee’s report is substantially supported by the record before the court, including PHH Mortgage Corporation’s business records produced to the referee with the Lopez affidavit. Contrary to defendant’s assertion, the attached loan history covers the entire time period of the loan, including the default date, and Lopez sufficiently established a foundation for those records. Defendant fails to present any evidence in opposition to plaintiff’s motion, that the referee’s computations are inaccurate. Thus, the referee’s report is substantially supported by the record.

Accordingly, it is

**ORDERED** that plaintiff’s motion (mot. seq. 12) is granted in all respects. Long form order to follow.

This constitutes the decision and order of the court.

E N T E R,

  
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HON. DEREKIM B. NECKLES  
J. S. C.

KINGS COUNTY CLERK  
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