SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT

Federal Natl. Mtge. Assn. v. Markowitz

2025 NY Slip Op 06993 · No. 2023-03004 · Decided December 17, 2025

SUMMARY

The New York Appellate Division, Second Department affirmed an order and judgment of foreclosure and sale. The court held that the referee's computations were substantially supported by the record and that the affidavit established a foundation for business records, including records created by prior loan servicers and incorporated into the current servicer's records.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Colleen D. Duffy, J.P.; Robert J. Miller, J.; Linda Christopher, J.; Lourdes M. Ventura, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
DECIDED	December 17, 2025
DOCKET	2023-03004
DISPOSITION	affirmed
PROCEDURAL POSTURE	In a mortgage-foreclosure action, the defendant appealed from an order and judgment of foreclosure and sale that confirmed a referee's report and directed sale of the property.
STANDARD OF REVIEW	A referee's report should be confirmed when the findings are substantially supported by the record and the referee clearly defined the issues and resolved matters of credibility. The referee's findings and recommendations are advisory only, and the court remains the ultimate arbiter.
PRECEDENTIAL VALUE	published
PARTIES	Isaac Markowitz v. Federal National Mortgage Association

TOPICS

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PRACTICE AREAS

mortgage foreclosure real estate litigation evidence appellate practice

QUESTIONS PRESENTED

1. Whether the Supreme Court properly confirmed the referee's report and entered a judgment of foreclosure and sale when the referee's computations were supported by the record.
2. Whether the affidavit established a foundation for admitting business records created by prior loan servicers and incorporated into the current servicer's records.

HOLDINGS

1. The Supreme Court properly confirmed the referee's report because the referee's computations were substantially supported by the record.
2. The affidavit adequately established the admissibility of business records created by prior loan servicers because it showed that those records were incorporated into Shellpoint's records and routinely relied upon by Shellpoint in its business.

KEY QUOTATIONS

> *"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"* ([*1])

> *"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"* ([*1])

> *"made the requisite showing that the prior servicer[s'] records were incorporated into [Shellpoint's] own records and routinely relied upon by [Shellpoint] in its business"* ([*1])

FACTUAL BACKGROUND

The action concerned a mortgage encumbering real property in Brooklyn, and the defendant allegedly defaulted on his mortgage payments. The mortgage was assigned to Federal National Mortgage Association and later to US Bank Trust National Association, acting as owner trustee for VRMTG Asset Trust. A NewRez/Shellpoint document-verification specialist submitted an affidavit with the note, mortgage, assignments, loan histories, payoff amounts, expenses, and other business records used to calculate the amounts due.

PROCEDURAL HISTORY

Citimortgage, Inc. commenced the foreclosure action in November 2011. After assignments of the mortgage, US Bank Trust National Association, as assignee of the plaintiff, moved in September 2022 to confirm the referee's report and obtain a judgment of foreclosure and sale. The Supreme Court, Kings County, granted the motion, confirmed the report, and directed sale of the property; the Appellate Division affirmed insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- HSBC Bank USA, N.A. v. Blair-Walker, 202 AD3d 1065, 1068
- U.S. Bank N.A. v. Young, 214 AD3d 841, 842-843
- 33-37 Farrington, LLC v. Global Universal Group, Ltd., 165 AD3d 1018, 1019-1020
- Nationstar Mtge., LLC v. Hassanzadeh, 228 AD3d 948, 950-951
- Excel Capital Group Corp. v. 225 Ross St. Realty, Inc., 165 AD3d 1233, 1236-1237
- Wilmington Trust, N.A. v. Reed, 210 AD3d 731, 732
- U.S. Bank N.A. v. Kropp-Somoza, 191 AD3d 918, 921

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