

At Commercial Part 6 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 25th day of August 2026.

P R E S E N T :**Hon. Genine D. Edwards, Justice**-----X
POPULAR BANK,

Plaintiff,

- against -

WESTERN CLARKSON ESTATES 305, LLC;
YESHAYA WASSERMAN; Z&A SERVICES INC.
D/B/A UPPER CLASS FLOORING; NEW YORK
STATE DEPARTMENT OF TAXATION AND
FINANCE; NEW YORK CITY DEPARTMENT OF
FINANCE; SUSAN "DOE" S/H/A JOHN DOE 1,
NILSA "DOE" S/H/A JOHN DOE 2,
LARRY "DOE" S/H/A JOHN DOE 3,
CURTIS "DOE" S/H/A JOHN DOE 4,
JOAN "DOE" S/H/A JOHN DOE 5, AND
CANDICE "DOE" S/H/A JOHN DOE 6,

Defendants.
-----XAMENDED
DECISION AND ORDER

Index No. 514109/2024

Mot. Seq. No. 3

The following e-file papers read herein:
Notice of Motion, Affirmation, and Exhibits

NYSCEF Doc Nos.:
75-86

In this commercial foreclosure action, Popular Bank ("plaintiff") moves for an order confirming the Referee's Report and for a Judgment of Foreclosure and Sale. The motion is unopposed.

Background

On June 27, 2019, defendant Western Clarkson Estates 305, LLC (“Borrower”) executed and delivered to plaintiff a consolidated, amended and restated mortgage note in the original principal amount of \$6,050,000.00. To secure payment of the note, Borrower executed an agreement encumbering properties known as 305, 309, and 311 Clarkson Avenue, Brooklyn, New York (the “property”). Defendant Yeshaya Wasserman executed a guaranty. Borrower failed to make the monthly payment due on December 1, 2023, and each payment thereafter.

Plaintiff commenced this action on May 21, 2024. Borrower and Wasserman answered on June 27, 2024. By Order of Reference entered November 25, 2024, the Court granted plaintiff summary judgment against the answering defendants and a default judgment against the nonanswering defendants, and appointed Bart Russo, Esq., as Referee to ascertain and compute the amount due and to determine whether the property could be sold in parcels.

On February 24, 2025, plaintiff served the Referee and counsel for Borrower and Wasserman with its proposed computation and supporting affidavit. Borrower and Wasserman submitted opposition to plaintiff’s proposed computation, together with their own computation of the amount due.

The Referee executed the report on December 2, 2025. The report includes unpaid principal of \$5,760,929.09, regular interest of \$250,311.86, default interest of \$1,232,167.24, and negative escrow of \$11,123.37, and a total amount due of \$7,254,859.26. The report further states a per diem interest of \$3,840.62 after the computation date and finds that the three tax lots should be offered for sale together as one parcel.

Plaintiff filed the instant motion. In support of its motion, plaintiff submitted the affidavit of Michelle S. Scotti, plaintiff’s senior workout officer and vice president, and the documentary

evidence including the note, the consolidated mortgage, the payment history ledger, and default notices. Plaintiff seeks confirmation of the report, a Judgment of Foreclosure and Sale, and \$3,367.70 in costs and disbursements. No opposition was submitted.

Discussion

CPLR § 4403 authorizes the Court to confirm or reject, in whole or in part, the report of a referee to report. “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.” *U.S. Bank, N.A. v. Gendelman*, 214 A.D.3d 928, 187 N.Y.S.3d 59 (2d Dept. 2023); *PS Funding, Inc. v. 1641 Park Place, LLC*, 239 A.D.3d 681, 237 N.Y.S.3d 82 (2d Dept. 2025). “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.” *PS Funding, Inc.*, 239 A.D.3d 681; *Flagstar Bank, FSB v. Davis*, 215 A.D.3d 920, 189 N.Y.S.3d 205 (2d Dept. 2023). CPLR 4518(a) requires showing that a record was made in the regular course of business, that it was the business’ regular practice to make it, and that it was created at or near the time of the event. “[B]usiness records received from another entity may be admitted into evidence if the recipient can establish personal knowledge of the maker’s business practices and procedures, or establish that the records provided by the maker were incorporated into the recipient’s own records and routinely relied upon by the recipient in its own business.” *U.S. Bank N.A. v. Maher*, 219 A.D.3d 1372, 196 N.Y.S.3d 127 (2d Dept. 2023); *PS Funding, Inc.*, 239 A.D.3d 681.

Although the present motion is unopposed, plaintiff must demonstrate that the report is substantially supported by the record. The Referee received the affidavit of Michelle S. Scotti, plaintiff’s senior workout officer and vice president, and the documentary evidence, including the note, the consolidated mortgage, the payment history ledger, and default notices. Scotti

attested that she is personally familiar with plaintiff's recordkeeping practices and procedures, that she has access to the business records, administration and collection activities, that plaintiff owns and services the loan. Scotti further attested that these records were made at or near the time of the actions or events they reflect by, or from information transmitted from, a person with knowledge of the subject transaction in the regular practice and ordinary course of business, that she has personal knowledge of the manner in which the records were created and kept, and that she has reviewed and relied upon the records in executing her affidavit. Her affidavit therefore supplies the foundation required by CPLR 4518(a) for the records considered by the Referee.

However, the Referee's findings are not substantially supported by those records. After the Referee's handwritten revisions, Schedule A lists \$5,760,929.09 in principal, \$250,311.86 in regular interest, \$1,232,167.24 in default interest, and \$11,123.37 in negative escrow. These four figures total \$7,254,531.56, not the \$7,254,859.26 as stated in the report. Neither the report nor the present motion identifies an additional \$327.70 item or otherwise reconciles the discrepancy.

Further, the report does not disclose how the regular interest and default interest figures were derived. The note states an ordinary rate of 4.00% and provides that after an event of default, interest accrues at 24%. The note further requires interest to be calculated on the basis of a 360-day year for the actual number of days elapsed. Schedule A lists regular interest and default interest for the same period, from November 1, 2023 through November 26, 2024, without identifying the principal balance or balances used, the precise day count, or the formula used to calculate either interest figure. The Court has been unable to replicate either interest figure using the rates, periods, and principal balance disclosed in the report.

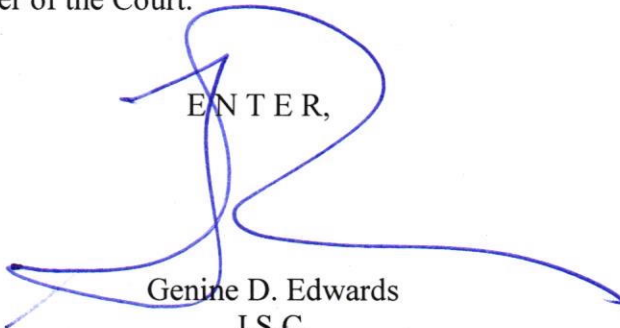
Therefore, the Referee's report is rejected. Since plaintiff is not presently entitled to a Judgment of Foreclosure and Sale, the part of its motion seeking \$3,367.70 in costs and disbursements is premature and is denied without prejudice.

Accordingly, it is

ORDERED that the referee shall submit a new report, and it is further

ORDERED that plaintiff's counsel is directed to electronically serve a copy of this Decision and Order with notice of entry upon all appearing parties and the Referee, and to electronically file an affidavit of service thereof with the Kings County Clerk.

This constitutes the Decision and Order of the Court.



ENTER,

Genine D. Edwards
J.S.C.