



PLAINTIFF BANK DID NOT DEMONSTRATE COMPLIANCE WITH THE NOTICE REQUIREMENTS OF RPAPL 1304 AND DID NOT PRESENT NON-HEARSAY EVIDENCE OF STANDING IN THIS FORECLOSURE ACTION, CRITERIA EXPLAINED IN SOME DETAIL (SECOND DEPT).

The Second Department, in an extensive decision explaining the relevant issues and analysis in some depth, determined plaintiff bank did not demonstrate compliance with the notice requirements of Real Property Actions and Proceedings Law (RPAPL) 1304 did not demonstrate standing to bring the foreclosure action:

... [T]he plaintiff failed to submit an affidavit of mailing or proof of mailing by the United States Postal Service evidencing that it properly mailed notice to the defendant pursuant to RPAPL 1304. Instead, the plaintiff relied on an affidavit of Rashad Blanchard, who was employed as a loan analyst by the parent company of the plaintiff's loan servicer, and copies of the purported notices. The plaintiff submitted only one letter that purported to constitute the statutorily required 90-day notice of default Although the letter contained the statement "sent via certified mail," with a 20-digit number below it, no receipt or corresponding document issued by the United States Postal Service was submitted proving that the letter was actually sent by certified mail more than 90 days prior to commencement of the action. The plaintiff also failed to submit any documentary evidence that notice was sent by first-class mail. Further, Blanchard did not aver that the notice was sent in the manner required pursuant to RPAPL 1304, i.e., by certified mail and first-class mail. Moreover, since he did not aver that he personally mailed the notice, or that he was familiar with the mailing practices and procedures of American Home Mortgage Servicing, Inc., the entity that purportedly sent the notices, he did not establish proof of a standard office practice and procedure designed to ensure that items are properly addressed and mailed * * *

[Vice President] Reyes's affidavit failed to establish a sufficient foundation for the admission of a business record pursuant to CPLR 4518(a) because, although he recited that the records upon which he relied were "regularly maintained by [the plaintiff] in the ordinary course of its business," he "did not indicate that they were made by their author (or authors, whoever they might be) pursuant to an established procedure for the routine, habitual, systematic making of records that would qualify them as trustworthy accounts," or that they "were the records regularly relied on in the business" Reyes also failed to indicate "that the record [was] made at or about the time of the event being recorded—essentially, that recollection [was] fairly accurate and the habit or routine of making the entries assured"

... [T]o the extent that Reyes's purported knowledge of the date the plaintiff received the original note was based upon his review of unidentified business records maintained by the plaintiff, "[his] affidavit constituted inadmissible hearsay and lacked probative value" [Deutsche Bank Natl. Trust Co. v Dennis, 2020 NY Slip Op 02039, Second Dept 3-25-20](#)