



Anti Foreclosure Network

No, we do not know what case this is so please do not send us flaming emails about how we should include the name of the case to our emails. THIS IS ALL THE INFORMATION WE HAVE AT THIS TIME until someone tracks this case down for us.

NEW JERSEY JUDGE DISMISSES FORECLOSURE CASE FOR PLAINTIFF'S FAILURE TO COMPLY WITH DISCOVERY

by Jeff Barnes, Esq.

July 29, 2013

Yet another New Jersey Chancery Court Judge has dismissed a foreclosure case due to the Plaintiff's failure to comply with the homeowner's discovery. Jeff Barnes, Esq. represents the homeowner together with local New Jersey counsel Kenneth A. Marano, Esq. in what was the Hudson County case.

The Plaintiff was US Bank National Association as the claimed "trustee" of a Bank of America securitization. Mr. Barnes prepared the Contesting Answer and Separate Defenses and the discovery, which were filed and served by Mr. Marano. The Court entered an Order commanding that answers to discovery were to be served within 30 days of the discovery being served. The Plaintiff requested additional time to respond to the discovery to April 8, 2013, yet never served any responses to the discovery.

Even though the Plaintiff was afforded yet another month, no responses were made. Thus, on May 7, 2013, Mr. Marano filed a Motion to Dismiss, which was granted by the Court on June 7, 2013, dismissing the case without prejudice at this point as it was the first request for dismissal, and as New Jersey law and procedure provide that the offending party has 60 days to cure the discovery delinquency in that case.

The Order of Dismissal provides that a Motion to Dismiss With Prejudice is a "two-step process", with the first such motion being filed pursuant to R. 4:23-5(a)(1) for a dismissal without prejudice. The Order then states that if the delinquent party fails to provide the discovery, the aggrieved party may move for a dismissal with prejudice pursuant to R. 4:23-5(a)(2). The New Jersey rules also provide that if the defect is not cured within the allotted time that the case has to be re-filed as a new case. However, in connection with prior dismissals which we have obtained in New Jersey in other cases, the presiding Judge has cautioned the "bank" that re-filing will not cure the problem, as the discovery will be propounded in any "new" case and will likewise have to be responded to in any "new" case.

In all of the New Jersey cases which we have had dismissed since 2008, none of the offending parties have ever complied with the New Jersey Court's Orders as to the discovery.

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