News About Settlement Conferences held in Suffolk and Nassau

In August 2008, the New York State Legislature enacted a law that requires the court to "hold a mandatory conference within sixty days" after the plaintiff (bank) files the initial papers commencing a foreclosure action. The stated purpose for these conferences is to hold "settlement discussions pertaining to the relative rights and obligations of the parties under the mortgage loan documents...to help the [borrower] avoid losing his or her home[.]" CPLR Rule 3408(a). Each party is required to send a representative to each settlement conference "fully authorized to dispose of the case." CPLR Rule 3408(b). "Both the plaintiff [bank] and defendant [homeowner] shall negotiate in good faith to reach a mutually agreeable resolution, including a loan modification, if possible." CPLR Rule 3408(f).

Since 2009 there have been close to 200,000 foreclosure cases filed in New York State. *See* 2013 Report of the Chief Administrator of the Courts (available at https://www.nycourts.gov/publications/pdfs/2013ForeclosureReport.pdf) An incomplete assessment has calculated that almost 100,000 settlement conferences were held in 2013 alone. *Id.* Although we don't have statistics showing how many of these settlement conferences took place in Nassau and Suffolk Counties, their positions at the top for foreclosure filings since 2008 support an inference that they are at the top in number of settlement conferences held each year as well.

Each of the 62 New York counties established their own procedures for settlement conferences. Nassau and Suffolk both use court referees, not judges, to conduct these proceedings. Borrowers and their advocates attend these conferences intent on seeking alternatives to foreclosure, primarily through loan modifications that would lower the monthly mortgage payment to make it more affordable for the homeowner whose default was based on a hardship such as loss of employment, death in the family or disability. However, only 1,378 out of 91,522 conferences held between October 2012 and October 2013 resulted in settlements discontinuing foreclosure actions. *See* 2013 Report of the Chief Administrator of the Courts. There are many reasons for this woefully deficient number of settlements coming out of the settlement conference process. From homeowners' perspective, advocates around New York State share similar stories: banks do not send representatives authorized to negotiate settlements and don't provide information necessary for meaningful settlement discussions. And court referees simply lack the authority to issue meaningful penalties for this abuse of the settlement conference law.

In direct response to a survey and report conducted and prepared by legal service advocates in New York City, the New York State Office of Court Administration is requiring courts in Brooklyn, Queens, Nassau and Suffolk to have a judge oversee the settlement conferences starting sometime in June. It is hoped that OCA will require referees, who will continue to conduct the conferences, to prepare a report of what transpires at each conference. In this way, when homeowners and their advocates present their concerns about the bank's failure to negotiate in good faith to the judge overseeing the conference, they can do so swiftly and with the expectation that the judge will issue an appropriate penalty where failure to negotiate in good faith is established. Perhaps the most significant and available penalty would be the tolling of interest that will prohibit banks from adding on to the borrowers' debt. With the ready availability of a judge and the risk of penalty for non-compliance with the law in front of them, banks may well be more willing to negotiate in good faith to achieve a settlement that would allow homeowners to remain in their homes while making payments to satisfy their mortgage loan.

Michael Wigutow,
Senior Staff Attorney
Foreclosure Project, Nassau Suffolk Law Services