

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CROSSLAND SAVINGS BANK, FSB,

92 cv 1041

Plaintiff,

MEMORANDUM  
AND  
ORDER

- against -

COLLEGE COMMONS ASSOCIATES, NOSTRAND  
AVENUE ASSOCIATES, MICHAEL EVANS,  
FRED KOMSON, PAUL GREENBLATT, THE  
CITY OF NEW YORK, THE PEOPLE OF THE  
STATE OF NEW YORK,

Defendants.

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CADWALADER WICKERSHAM & TAFT  
(Terence F. Gilheany, Susan DeCicco, of counsel)  
100 Maiden Lane  
New York, NY 10038  
for plaintiff

FEDERAL DEPOSIT INSURANCE CORPORATION  
(Theresa R. Joyner, of counsel)  
452 Fifth Avenue  
New York, NY 10018  
for plaintiff

NIXON HARGRAVE DEVANS & DOYLE  
(Stewart P. Taub, of counsel)  
437 Madison Avenue  
New York, NY 10022  
for plaintiff

JOHN T. MAHER, ESQ.

60 East 42nd Street  
Suite 638  
New York, NY 10165  
for the receiver

MORITT HOCK & HAMROFF  
(Neil J. Moritt, of counsel)  
400 Garden City Plaza, Suite 202  
Garden City, NY 11530  
for defendant Michael Evans

WALLER & KAPLOWITZ  
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140 Fell Court, Suite 303  
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for defendant Paul Greenblatt

PAUL A. CROTTY  
Corporation Counsel, City of New York  
(Maria Augusto, of counsel)  
345 Adams Street  
Brooklyn, NY 11201  
for defendant New York City

ATTORNEY GENERAL, STATE OF NEW YORK  
(Alan Gitter, of counsel)  
120 Broadway, Room 26-170  
New York, NY 10271  
for defendant People of the State of New York

LAZER APTHEKER FELDMAN ROSELLA & YEDID  
(Steven Aptheker, of counsel)  
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for defendants

ALAN GROSS, ESQ.  
50 Broadway  
New York, NY 10004  
for West Realty Associates

NICKERSON, District Judge:

Plaintiff Crossland Federal Savings Bank, by the Federal Deposit Insurance Corporation as Conservator, brought this action seeking to foreclose on three mortgages and to obtain deficiency judgments pursuant to notes on which approximately \$3,600,000 in principal was owed. Plaintiff now moves for an order approving the receiver's account.

The mortgages were executed by two general partnerships, defendants Nostrand Avenue Associates (Nostrand) and College Commons Associates (College Commons), and guaranteed by defendants Michael Evans, Fred Komson and Paul Greenblatt. Plaintiff also sued the Regency Group (Regency) and Michael Kunstenaar, asserting that they were obligated to repay the loans at issue because they were partners of the mortgagors, Nostrand and College Commons, at the time the loans were extended.

This action was originally commenced in New York State Supreme Court, Kings County, by Crossland Savings

(Crossland) on or about July 1, 1991. The FDIC was subsequently appointed as receiver for Crossland, and the case was then removed to this court. The State Supreme Court appointed Steven D. Cohn as receiver, and his appointment continued after the action was removed.

Plaintiff moved for summary judgment against all defendants, and Regency and Kunstenaar cross-moved for summary judgment dismissing plaintiff's claims against them. Evans moved for summary judgment on a cross-claim, based upon an indemnification agreement, against Komson and Greenblatt.

On December 28, 1995 Magistrate Judge Steven M. Gold issued a Report and Recommendation recommending that (1) plaintiff's motion for summary judgment against College Commons, Nostrand, Komson, Greenblatt, and Evans should be granted, (2) Regency and Kunstenaar's motion for summary judgment should be granted, and (3) Evans' motion for summary judgment against Komson and Greenblatt should be granted. No

party filed objections. On August 8, 1996 this Court adopted the Report and Recommendation.

On November 14, 1997 Magistrate Judge Gold ordered plaintiff's counsel to submit a status report on the case and give any reasons why the case should not be closed. Plaintiff submitted a status report on December 15, 1997 saying that the case should not be closed as the parties were contemplating settlement. Plaintiff submitted an updated status report on March 2, 1998, in which it indicated that the receiver had submitted his final accounting and that the parties would submit stipulations of settlement and voluntary dismissal once the final accounting was approved.

Plaintiff now moves for an order (1) approving the receiver's account, (2) fixing the amount of the receiver's commission and approving payment of the commission already advanced to him, (3) approving payment of all attorneys' fees paid by the receiver during his receivership, (4) approving payment of all property management fees paid by the receiver during

his receivership through June 30, 1997, (5) discharging the receiver and his surety on his undertaking as of June 30, 1997, (6) canceling the undertaking on the ground that the action has been settled by stipulation, (7) directing the receiver to pay any surplus remaining in the receivership account, together with any security deposits, to the plaintiff or such other party as the court may direct after payment of any outstanding fees or expenses, and (8) to change the caption of the case to substitute Republic National Bank of New York as plaintiff because of its merger with Crossland Federal Savings Bank. No party filed any opposition to the motion.

The receiver's Account and Report concerns property located at 2244-2250 Nostrand Avenue, Brooklyn. The Report shows a total income of \$2,408,119.78 and total disbursements of \$1,118,434.74. From the profit of \$1,289,685.04 the Report deducts \$117,895.04 as the receiver's commission, which has already been advanced, \$1,105,019.58 to Republic Bank,

as substitute for the plaintiff, \$170.00 for a Con Edison security deposit, and \$3,600.00 for building improvements, leaving a balance of \$63,000.00 for distribution as the court may direct. The court has inspected the receiver's Final Fiscal Compilation for 1995 through 1997 and is satisfied that the receiver properly discharged his duty.

The motion is granted. The court confirms and ratifies the receiver's Account and Report, and discharges Michael Schwartz as receiver of the premises. The Clerk of Court is directed to cancel the surety bond the receiver filed in connection with his qualification as receiver.

As for the remaining balance of \$63,000.00, counsel for receiver is directed to submit to the court a proposal for the distribution of the balance within two weeks from the date of this order. Any opposition shall be filed no later than two weeks after that.

Dated: Brooklyn, New York  
August 7, 1998

*Eugene H. Nickerson*  
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Eugene H. Nickerson, U.S.D.J.