

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BANKERS TRUST COMPANY OF
CALIFORNIA, N.A., as Trustee,

95 cv 1887

Plaintiff,

MEMORANDUM
AND
ORDER

- against -

JOSE FIGUEROA, EXPEDITO FERNANDEZ,
a/k/a ESPEDITO FERNANDEZ, THE CITY
OF NEW YORK - PARKING VIOLATIONS
BUREAU, THE CITY OF NEW YORK -
ENVIRONMENTAL CONTROL BOARD,
THE CITY OF NEW YORK - TRANSIT
ADJUDICATION BUREAU, THE CITY OF
NEW YORK - DEPARTMENT OF FINANCE,
THE CITY OF NEW YORK - STATE FARM
MUTUAL AUTOMOBILE INSURANCE CO.
and 4F CORP.,

Defendants.

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BROWN RAYSMAN MILLSTEIN FELDER & STEINER
(Barry G. Felder, Melanie Finkel, of counsel)
120 West 45th Street
New York, NY 10036
for plaintiff

KITAY & GOLD
(Barry S. Gold, of counsel)
81 Main Street
White Plains, NY 10601
for the receiver

clm

PAUL A. CROTTY
Corporation Counsel, City of New York
(Heidi H. Chain, of counsel)
Department of Finance
345 Adams Street
Brooklyn, NY 11201
for defendant New York City

ROBERT R. SERPE, ESQ.
149 Main Street
P.O. Box 165
Huntington, NY 11743
for defendant State Farm

JOSE FIGUEROA
42-09 108th Street
Corona, NY 11368

JOSE FIGUEROA
43-11 104th Street
Corona, NY 11368

JOSE FIGUEROA
106-22 Corona Avenue
Corona, NY 11368

EXPEDITO FERNANDEZ
42-09 108th Street
Corona, NY 11368

EXPEDITO FERNANDEZ
43-11 104th Street
Corona, NY 11368

EXPEDITO FERNANDEZ
106-22 Corona Avenue
Corona, NY 11368

NEW YORK CITY ENVIRONMENTAL CONTROL BOARD
59-17 Junction Blvd.
Elmhurst, NY 11373

THE CITY OF NEW YORK
Parking Violations Bureau
770 Braodway
New York, NY 10003

THE CITY OF NEW YORK
Transit Adjudication Bureau
505 Fulton Street
Brooklyn, NY 11201

THE CITY OF NEW YORK
100 Church Street
New York, NY 10007

4F CORP.
43-11 104th Street
Corona, NY 11368

NICKERSON, District Judge:

Plaintiff Bankers Trust Company of California
(Bankers Trust), as trustee, brought this foreclosure
action seeking to enforce its rights pursuant to a
mortgage on certain real property located in Queens
County. The court has jurisdiction under 28 U.S.C. §
1332(a)(1).

The complaint says that on March 19, 1991 Jose
Figueroa and Expedito Fernandez (the individual

defendants) executed a mortgage agreement of spreader, consolidation and modification of mortgage (the mortgage agreement) with Commercial Mortgage Corporation of America on premises located at 43-11 104th Street, Corona, Queens County, New York (the premises). By the mortgage agreement the individual defendants promised to pay to Commercial Mortgage Corporation of America the principal sum of \$700,000.00 in installments of principal and interest.

Commercial Mortgage Corporation of America assigned the mortgage to Bankers Trust on May 1, 1995. By the mortgage agreement the individual defendants assigned the rents and profits of the premises to Bankers Trust. The mortgage agreement provided for the appointment of a receiver in the event of a default. The individual defendants defaulted on their mortgage payments as of March 1, 1995, and this action followed.

The court appointed Michael Schwartz as receiver in foreclosure on June 23, 1995, and ordered that he file a surety bond in the amount of \$20,000.00 with the

Clerk of Court. Default judgment was entered against all defendants on March 15, 1996, in the amount of \$777,453.58 plus per diem interest of \$250.16 for each day after January 31, 1996 through the date of the order, legal interest from the date of the order, and attorneys' fees incurred by Bankers Trust and its assignee, Excelsior Partners.

The premises were sold at a foreclosure sale on November 5, 1996. The receiver now moves for an order (1) confirming and ratifying the receiver's Account and Report, (2) discharging Michael Schwartz as receiver of the premises known as 43-11 104th Street, Corona, Queens County, New York, and (3) canceling the surety bond the receiver filed with the Clerk of Court. No answering papers were filed.

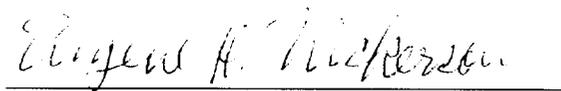
The receiver's Account and Report shows a total income of \$119,804.90 and total disbursements of \$119,736.01. The balance remaining of \$68.89 was transferred to the plaintiff. The court has inspected the receiver's Final Fiscal Compilation for 1995

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.

So ordered.

Dated: Brooklyn, New York
June 2, 1998



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