*State of New York*
*Supreme Court, Appellate Division*
*Third Judicial Department*

Decided and Entered: October 29, 2026 CV-25-0922

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WILMINGTON SAVINGS FUND SOCIETY, FSB, as Trustee,
Respondent,
v
HELENA LAURINO, Also Known as HELENA T. LAURINO,
Appellant,
et al.,
Defendants.

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MEMORANDUM AND ORDER

Calendar Date: September 17, 2026

Before: Clark, J.P., Ceresia, McShan, Powers and Ryba, JJ.

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*Jonathan S. Koren, PC*, Brooklyn (*Jonathan S. Koren* of counsel), for appellant.

*Fein, Such & Crane, LLP*, Rochester (*Michael S. Hanusek* of counsel), for respondent.

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McShan, J.

Appeal from an order of the Supreme Court (Julian Schreibman, J.), entered May 1, 2025 in Ulster County, which, among other things, granted plaintiff's motion to confirm the referee's report and for a judgment of foreclosure and sale.

In 2011, defendant Helena Laurino (hereinafter defendant) executed a note, secured by a mortgage on real property located in Ulster County, from the original lender JP Morgan Chase Bank (hereinafter Chase Bank). In 2019, Chase Bank commenced this

action to foreclose the mortgage based on defendant's alleged defaults in repayment. Defendant answered, asserting no affirmative defenses. In November 2019, Chase Bank moved for summary judgment alleging that defendant was in default and that the appointment of a referee to calculate the amount due on the note and mortgage was warranted. In support of the motion, Chase Bank submitted documentary evidence alleging compliance with the RPAPL notice requirements and evidence of defendant's default through business records kept and maintained by Chase Bank. Defendant did not file any opposition to Chase Bank's summary judgment motion and Supreme Court (Cahill, J.) granted Chase Bank summary judgment in 2019 (hereinafter the 2019 order). Supreme Court ordered the appointment of a referee to calculate the amount due and report on whether the mortgaged property could be sold in parcels. In 2020, Chase Bank assigned the mortgage to plaintiff.

In 2022, the referee calculated the amount due on the note and mortgage as of November 2022 and determined that the property could not be sold in parcels. In 2023, plaintiff moved to, among other things, confirm the referee's report and for a judgment of foreclosure and sale. In April 2024, defendant changed counsel and subsequently filed a cross-motion to vacate the 2019 order and opposed plaintiff's motion to confirm the referee's report. Supreme Court (Schreibman, J.) found that defendant failed to demonstrate why vacatur was warranted and granted plaintiff's motion, confirming the referee's report and ordering a judgment of foreclosure and sale. Defendant appeals.[1]

Defendant first contends that Supreme Court erred in denying her cross-motion to vacate the 2019 order as she demonstrated a reasonable excuse for default and several meritorious defenses. To successfully vacate a default judgment, a party is "required to demonstrate both a reasonable excuse for the default and a meritorious claim" (*Deutsche Bank Natl. Trust Co. v Tardi-Osterhoudt*, 237 AD3d 1439, 1440 [3d Dept 2025]). As noted by defendant, "Supreme Court retains inherent authority to vacate its own judgment or order in the interest of justice, even where the statutory one-year period under CPLR 5015 (a) (1) has expired" (*Zeledon v Zeledon*, 250 AD3d 1520, 1523 [3d Dept 2026] [internal quotation marks and citations omitted]). "Whether to vacate a prior order or judgment is addressed to the court's sound discretion, subject to reversal only where there has been a clear abuse of that discretion" (*Reverse Mtge. Solutions, Inc. v Lawrence*, 200 AD3d 1146, 1148 [3d Dept 2021] [internal quotation marks and citations omitted]).

[1] We granted defendant's motion to stay the foreclosure sale pending determination of this appeal (2026 NY Slip Op 60380[U] [3d Dept 2026]).

In asserting a reasonable excuse for her default, defendant asserts law office failure attributable to her first counsel. "In evaluating what constitutes a reasonable excuse, a court may, in the absence of willfulness, deliberate default or a showing of prejudice, accept law office failure as an excuse where such claim is supported by a detailed and credible explanation" (*Nationstar Mtge. LLC v Sheeley*, 226 AD3d 1185, 1186 [3d Dept 2024] [citations omitted]; *see* CPLR 2005). In other words, "a conclusory, undetailed, and uncorroborated claim of law office failure does not amount to a reasonable excuse" (*Bank of N.Y. Mellon Trust Co., N.A. v Talukder*, 176 AD3d 772, 774 [2d Dept 2019] [internal quotation marks and citations omitted]; *accord Wilmington Sav. Fund Socy., FSB v Rodriguez*, 197 AD3d 784, 786 [2d Dept 2021]). "Law office failure should not be excused where a default results not from an isolated, inadvertent mistake, but from repeated neglect" (*Federal Natl. Mtge. Assn. v Banks*, 198 AD3d 1222, 1224 [3d Dept 2021] [internal quotation marks, brackets and citations omitted]).

Here, defendant's motion to vacate the 2019 order is only supported by her own self-serving affidavit asserting that her prior counsel, and the numerous other individuals she retained to represent or assist her in this action and in a related bankruptcy action, failed to notify her of the existence of the summary judgment motion and order. Such "conclusory and unsubstantiated allegations . . . [are] insufficient to amount to a reasonable excuse for [her] default[ ]" (*CitiMortgage, Inc. v Ramlal*, 238 AD3d 976, 978 [2d Dept 2025]; *see Selene Fin., L.P. v Ng*, 218 AD3d 619, 620 [2d Dept 2023]; *Wilmington Sav. Fund Socy., FSB v Rodriguez*, 197 AD3d at 786; *White v Daimler Chrysler Corp.*, 44 AD3d 651, 651-652 [2d Dept 2007]; *see also Wells Fargo Bank, N.A. v Cervini*, 84 AD3d 789, 790 [2d Dept 2011]). Defendant offers no support for her belief that the various individuals who she hired to assist with her foreclosure, beyond her first retained counsel, had no knowledge of the 2019 order over the nearly five years that elapsed from entry until the cross-motion to vacate was filed by her current counsel. Thus, we find no abuse of discretion in Supreme Court's determination that her unsupported account "strain[ed] credulity." Further, we do not find that the failure to oppose the summary judgment motion rose beyond mere neglect and amounted to law office failure (*see Bank of N.Y. Mellon Trust Co., N.A. v Talukder*, 176 AD3d at 774; *Bank of N.Y. Mellon v Colucci*, 138 AD3d 1047, 1048 [2d Dept 2016]). Lastly, and perhaps most significant, defendant's motion to vacate concerns a nearly five-year-old order, and was made after a referee had already calculated the amount due and the matter is nearly at its conclusion; such facts substantiate the prejudice that would result to plaintiff in allowing vacatur at this stage of the litigation (*see Gootnick v Gootnick*, 241 AD3d 1292, 1293 [2d Dept 2025]; *compare Ditech Fin., LLC v Connolly*, 230 AD3d 647,

649 [2d Dept 2024]; *Zoom Tan, Inc. v Monforte*, 227 AD3d 1237, 1238 [3d Dept 2024]; *Luderowski v Sexton*, 152 AD3d 918, 920 [3d Dept 2017]).

All told, we find no abuse of discretion in Supreme Court's rejection of defendant's excuse for the delay and, "[g]iven this failure of proof, it is unnecessary to address whether defendant has established a meritorious defense" (*U.S. Bank N.A. v Thibault*, 248 AD3d 1350, 1352 [3d Dept 2026] [internal quotation marks, brackets and citation omitted]). Further, contrary to defendant's contention, her failure to successfully vacate her default precludes her RPAPL article 13 contentions (*see HSBC Bank USA, N.A. v Coxall*, 239 AD3d 714, 716-17 [2d Dept 2025]; *U.S. Bank N.A. v Goldberger*, 211 AD3d 1077, 1078 [2d Dept 2022]; *US Bank N.A. v Oliver*, 180 AD3d 843, 844 [2d Dept 2020]; *Bank of Am., N.A. v Agarwal*, 150 AD3d 651, 652 [2d Dept 2017]; *HSBC Bank USA, N.A. v Clayton*, 146 AD3d 942, 944 [2d Dept 2017], *lv denied* 29 NY3d 1073 [2017]; *PHH Mtge. Corp. v Celestin*, 130 AD3d 703, 704 [2d Dept 2015]; *see also U.S. Bank N.A. v Thibault*, 248 AD3d at 1351-1352).

Turning to defendant's argument that Supreme Court erred in confirming the referee's report, we find no merit to her contentions. "The report of a referee should be confirmed if the findings therein are supported by the record" (*Nationstar Mtge. LLC v O'Brien*, 231 AD3d 1392, 1393 [3d Dept 2024] [internal quotation marks, brackets and citations omitted]; *see Wilmington Sav. Fund Socy., FSB v Helal*, 211 AD3d 991, 993 [2d Dept 2022]). "[T]he referee's findings and recommendations are advisory only; they have no binding effect and the court remains the ultimate arbiter of the dispute as CPLR 4403 expressly authorizes a court not only to reject the report but to make its own findings, to take or retake testimony or to order a new trial or hearing" (*Carrington Mtge. Servs., LLC v Fiore*, 206 AD3d 1306, 1308 [3d Dept 2022] [internal quotation marks, brackets and citations omitted]).

Defendant's argument that the referee relied upon improper evidence to establish her default was properly rejected by Supreme Court, as that issue was resolved as part of the 2019 order granting Chase Bank summary judgment and striking defendant's answer, which defendant has unsuccessfully sought to vacate (*see Bank of N.Y. Mellon Trust Co. v Loodus*, 160 AD3d 797, 798 [2d Dept 2018]; *HSBC Bank USA, N.A. v Simmons*, 125 AD3d 930, 932 [2d Dept 2015]; *see generally Schantz v O'Sullivan*, 302 AD2d 793, 795 [3d Dept 2003]). We also reject defendant's contention that the referee relied upon an inadmissible affidavit authored by Dennis Micek – a supervisor for Carrington Mortgage Services, LLC, Chase Bank's loan servicer – suggesting that he failed to demonstrate that

he had adequate authority as attorney-in-fact.[2] The limited power of attorney is explicit in granting broad authority to Carrington, as the mortgage servicer, to "execute and acknowledge in writing or by facsimile stamp all documents customarily and reasonably necessary and appropriate" to engage in the duties required for that obligation. Further, Micek explicitly states in his affidavit that he is authorized to provide the information contained therein, which was based on his personal knowledge of the relevant records. Those representations sufficiently established the authority to act as attorney-in-fact and nothing in defendant's submissions contradicts Micek's statements (*see Nationstar Mtge. LLC v Vassi*, ___ AD3d ___, ___, 258 NYS3d 28, 35-36 [1st Dept 2026]; *compare U.S. Bank N.A. v Tesoriero*, 204 AD3d 1066, 1068 [2d Dept 2022]). Defendant also incorrectly states that the referee failed to identify the evidence supporting her determination that the property should be sold in one parcel. In this regard, the schedule of documentary evidence appended to the report specifically identifies the contents of the tax search – specifically, that the property consists of a single-family dwelling under a single tax account number – as the basis for that determination (*compare Wells Fargo Bank, N.A. v Laronga*, 219 AD3d 1559, 1561 [2d Dept 2023]). Having dispensed with the legal arguments raised by defendant and noting her failure to submit any "admissible [evidence] to contest the referee's computations, defendant[ ] failed to reveal error by Supreme Court in confirming the referee's report and awarding a judgment of foreclosure and sale" (*Carrington Mtge. Servs., LLC v Fiore*, 206 AD3d at 1309; *see Wilmington Sav. Fund Socy. FSB v Oppitz*, 198 AD3d 1198, 1200 [3d Dept 2021]).

Defendant's remaining arguments, to the extent not explicitly addressed, have been considered and found either without merit or have been otherwise rendered academic by our determinations herein.

Clark, J.P., Ceresia, Powers and Ryba, JJ., concur.

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[2] Defendant argues that Supreme Court improperly amended the caption to substitute plaintiff as the party in interest (*see* CPLR 1018). We disagree, as the motion was supported by a copy of the note endorsed in blank (*see JPMorgan Chase Bank, N.A. v Caliguri*, 36 NY3d 953, 954 [2020], *cert denied* ___ US ___, 1425 Ct 110 [2021]), as well as the assignment of the mortgage that occurred after commencement of the action (*see Aurora Loans Servs., LLC v Mandel*, 148 AD3d 965, 967 [2d Dept 2017]; *Aurora Loan Servs., LLC v Lopa*, 130 AD3d 952, 952-953 [2d Dept 2015]). As these documents were included in support of the Micek affidavit relied upon by the referee, defendant's argument that the affidavit had no probative value is unavailing.

ORDERED that the order is affirmed, without costs.

ENTER:



Robert D. Mayberger
Clerk of the Court