

PRESENT:

HON. PAUL J. BAISLEY, JR., J.S.C.

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US BANK NATIONAL ASSOCIATION, AS  
TRUSTEE OF CITIGROUP MORTGAGE LOAN  
TRUST INC., ASSET BACKED PASS THROUGH  
CERTIFICATES, SERIES 2006-HE2 UNDER THE  
POOLING AND SERVICING AGREEMENT  
DATED AS OF AUGUST 1, 2006, WITHOUT  
RECOURSE,

INDEX NO.: 8467/2008  
MOTION DATE: 9/18/2008  
MOTION NO.: 001 MD

**PLAINTIFF'S ATTORNEY:**  
FEIN, SUCH & CRANE, LLP  
28 East Main St., Suite 1800  
Rochester, New York 14614

Plaintiff,

-against-

RONNIE FISHBEIN, "JOHN DOE" and "JANE DOE"  
said names being fictitious, it being the intention of  
Plaintiff to designate any and all occupants of premises  
being foreclosed herein,

Defendant.  
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Upon the following papers numbered 1 to 10 read on this motion order of reference : Notice of Motion/ Order to Show Cause and supporting papers 1-10 ; ~~Notice of Cross Motion and supporting papers~~ ; ~~Answering Affidavits and supporting papers~~ ; ~~Replying Affidavits and supporting papers~~ ; ~~Other~~ ; (and after hearing counsel in support and opposed to the motion) it is,

**ORDERED** that in this mortgage foreclosure action, the *ex-parte* motion (motion sequence no. 001) of plaintiff for an order appointing a referee to ascertain the amount due plaintiff and to determine whether the mortgaged premises can be sold in parcels and for related relief is denied. The plaintiff's application is defective in that, *inter alia*, there is no affidavit by the plaintiff of the facts constituting the claim as required by CPLR §3215(f). The purported affidavit of Tamara Price, "Vice President of CITI RESIDENTIAL LENDING MORTGAGE, a servicing agent who has power of attorney for the plaintiff," does not contain a jurat, and there is no language of oath or affirmation. The absence of a jurat renders the "affidavit" inadmissible as there is no evidence that an oath or affirmation was taken (*Pagano v Kingsbury*, 182 AD2d 268 [2d Dept 1992]; *see also, People v Lieberman*, 57 Misc 2d 1070 [Sup. Ct 1968]). Moreover, the purported power of attorney pursuant to which the affidavit was assertedly prepared is not annexed to the motion papers, and the submissions do not otherwise establish the authority of an officer of plaintiff's servicer to execute the affidavit on behalf of plaintiff.

In light of the foregoing, the motion for an order of reference is denied, without prejudice to renewal on proper papers that address the deficiencies identified herein and that otherwise comport with RPAPL §1312 and CPLR §3215(f).

Proposed order of reference marked "not signed."

Dated: March 3, 2009

PAUL J. BAISLEY, JR.

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J.S.C.