

COPY

SHORT FORM ORDER

INDEX NO. 8731-2005

**SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXVII SUFFOLK COUNTY**

PRESENT:

Honorable Ralph F. Costello

AURORA LOAN SERVICES, INC.,

Plaintiff

-against-

GARY A. FITZGERALD; JANINE STACHOWICZ; "JOHN DOE #1-5" AND "JANE DOE #1-5" said names being fictitious, it being the intention of Plaintiff to designate any and all occupants, tenants, persons or corporations, if any, having or claiming an interest in or lien upon the premises being foreclosed herein,

Defendants

_____x

PLAINTIFF'S ATTORNEY
FEIN SUCH & CRANE LLP
747 Chestnut Ridge Road - Ste 200
Chestnut Ridge, NY 10977-6216

DEFENDANT'S ATTORNEY

ORDERED that the plaintiff's motion for an order of reference in this foreclosure action is denied without prejudice to renew upon proper papers; it is further

ORDERED that the plaintiff is directed to serve a copy of this order upon all parties who have appeared in this action.

Plaintiff seeks an order of reference in this foreclosure action and submits an affidavit of merit by the "Assistant Vice President of Aurora Loan Services, Inc., servicing agent for Mortgage Electronic Registration Systems, Inc. . . . the plaintiff in the above captioned foreclosure action" in support of its application. In addition, the caption on this particular affidavit reads "Mortgage Electronic Registration Systems, Inc" as plaintiff, contrary to the summons and complaint (and the caption in this application) which lists Aurora Loan Services, Inc. as the plaintiff. Thus, it appears that while Aurora Loan Services, Inc. is the named party, it disputes that designation, and purports to be the servicing agent instead. This position of Aurora Loan Services is in direct contradiction to the information provided to the Court in the form of a copy of the assignment included in the submission, which states that Mortgage Electronic

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Registration Systems, Inc. (hereinafter referred to as "MERS") has assigned its interest in the note and mortgage to Aurora Loan Services, Inc. Further troubling is that the mortgage document itself lists First National Bank of Arizona as the lender and MERS merely as the "nominee for lender" and as the mortgagee of record "for purposes of recording this mortgage." As MERS has no actual ownership interest in the note and mortgage as demonstrated by the mortgage document itself, it is unclear exactly what it held and thereafter assigned to Aurora Loan Services, Inc. Equally unclear is the present owner of the mortgage as there is no assignment by First National Bank of Arizona to any entity. Accordingly, until the actual owner and plaintiff is ascertained, and a proper affidavit of merit by the party is submitted containing, inter alia, information demonstrating compliance with paragraph 22(b) of the mortgage, the application is denied.

Dated: October 24, 2005

RALPH F. COSTELLO

J.S.C.

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