

STERN LAVINTHAL & FRANKENBERG LLC
105 Eisenhower Parkway - Suite 302
Roseland, NJ 07068
(973) 797-1100
Attorneys for Abacus Federal Savings Bank

**IN RE APPLICATION BY ABACUS
FEDERAL SAVINGS BANK TO
ISSUE CORRECTIVE NOTICES OF
INTENTION TO FORECLOSE IN
PENDING UNCONTESTED
FORECLOSURE ACTIONS**

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION

Docket No: F-29907-12

CIVIL ACTION:

**ORDER TO SHOW CAUSE TO
PROCEED SUMMARILY
PURSUANT TO RULE 4:67-2**

THIS MATTER being brought before the court by the law firm Stern, Lavinthal & Frankenberg, LLC, attorneys for plaintiff, Abacus Federal Savings Bank seeking relief by way of summary action to permit the service of corrective Notices of Intention to Foreclose (hereinafter "NOI"), based upon the New Jersey Supreme Court decision in U.S. Bank v. Guillaume, 209 N.J. 449 (2012), and as implemented in Chief Justice Stuart Rabner's April 4, 2012 Order, and based upon the facts as set forth in the Verified Complaint filed herewith; and the Court having determined that this matter may be commenced by Order to Show Cause as a summary proceeding pursuant to R. 4:67-2 and for good cause shown;

IT IS on this _____ day of _____, 2012

ORDERED that the parties listed in Exhibit A, to the Verified Complaint appear and show Cause on the _____ day of _____, 2012, before the Honorable Paul Innes ,P. J. Ch, Superior Court, at the Mercer County Courthouse, 175 South Broad Street, Trenton, NJ 08650-0068 at ____ o'clock to object to this Court allowing Abacus Federal Savings Bank to issue corrective Notices of Intention to Foreclose pursuant to this Order to Show Cause, and why an Order should not be entered as follows:

- A. Declaring that Plaintiff's Form of Notice of Intention to Foreclose is compliant with the requirements of the Fair Foreclosure Act;
- B. Authorizing Abacus Federal Savings Bank to send new Notices of Intention to Foreclose, which notice will give the borrower/obligor at least thirty days from the date the letter is mailed to cure the default on the mortgage without having to pay legal fees or costs;
- C. Granting such other relief as the Court deems equitable and just.

IT IS FURTHER ORDERED that:

- 1. Plaintiff shall serve a copy of this Order to Show Cause and Verified Complaint upon all individuals obligated on the Note secured by a Mortgage on residential property that is the borrower's, or their immediate family's, principal residence. Service shall be effectuated by certified mail return receipt requested and regular mail to the property address and the last known address (if different) in plaintiff's records.

2. A copy of this Order to Show Cause and Verified Complaint shall be posted on the Judiciary website at [http://www. Judiciary. state. nj. us](http://www.Judiciary.state.nj.us).
3. A true copy of this Order to Show Cause, Verified Complaint, Brief in support of the relief sought and Certification of Edward Cheung shall be served upon the parties in interest listed in Exhibit A to the Verified Complaint, by regular mail and simultaneously by certified mail, return receipt requested (or by registered mail, return receipt requested with respect to any party in interest who resides outside the United States).
4. Along with the Order to Show Cause documents as noted in the previous paragraph, Plaintiff is authorized to serve the corrective Notice of Intention to Foreclose allowing the defendant borrower/obligor at least thirty days to cure the default on the subject mortgage without having to pay attorney's fees or costs incurred in the pending action. The Notice of Intention to Foreclose which will be served will be in a form as set forth in Exhibit B to the Verified Complaint.
5. Also along with the Order to Show Cause documents noted in paragraph 3 above, Plaintiff shall serve an Explanatory Letter in the form set forth in Exhibit C to the Verified Complaint
6. For any borrower in an active Bankruptcy case where the provisions of the automatic stay are still in place, Plaintiff may serve a copy of this Order to Show Cause and Verified Complaint but may choose to delay serving a corrective Notice of Intention to Foreclose until such time that the stay is vacated, if it believes that doing so will violate the automatic stay.
7. If the Court grants final relief on the return date of this Order to Show Cause and

plaintiff has not already sent a corrective Notice of Intention to Foreclose, Plaintiff shall serve the corrective Notice of Intention to Foreclose once the provisions of the automatic stay in the bankruptcy case are no longer in place. In the alternative, Plaintiff may apply to the United States Bankruptcy Court for relief from the provisions of the automatic stay to effectuate service of the corrective Notice of Intention to Foreclose pursuant to this Order.

8. In the event that plaintiff does not serve a corrective Notice of Intention to Foreclose with this Order to Show Cause, Plaintiff may not proceed with a foreclosure action until such Notice of Intention is served as authorized by this Court Order.
9. If plaintiff believes that service of this Order will be a violation of the provisions of the automatic stay, once the stay is vacated, Plaintiff may file a Motion with the Chancery Judge in the vicinage where the property is located requesting permission to send a new NOI. Plaintiff shall not be required to file a new Order to Show Cause for cases currently in bankruptcy.
10. Plaintiff shall publish the legal notice of this action as Set forth in Exhibit A to the Certification of Laura Scurko, Esq. on at least two days prior to _____ in the following newspapers:
 - a. Star Ledger
 - b. Bergen Record
 - c. The Press of Atlantic City
 - d. The Gloucester County Times
11. The Court will only entertain objections to the process outlined in the Supreme Court's April 4, 2012 Order. Any party in interest who wishes to object to the process shall file the objection under the docket number for this Order to Show Cause, **in writing**, to the following address:

Clerk of the Superior Court
Foreclosure Processing Services
Attn: Objection to Notice of Intention to Foreclose
25 Market Street
P.O. Box 971
Trenton, New Jersey 08625-0971.

A copy of the objection to the Order to Show Cause must also be sent to:

Honorable Paul Innes, Judge,
Chancery Division, General Equity Part
Mercer County Superior Court
Civil Courthouse
P.O. Box 8068
175 S. Broad Street
Trenton, NJ 08650-0068

A copy of the objection to the Order to Show cause must be served upon the attorney for the Plaintiff at:

Laura Scurko, Esq.
STERN, LAVINTHAL & FRANKENBERG, LLC
105 Eisenhower Parkway - Suite 302
Roseland, NJ 07068
(973) 797-1100
Attorneys for Plaintiff

12. Objections to this Order to Show Cause must state with specificity the basis for the objection and must be filed no later than _____ 2012.
13. If a timely objection is not filed, the matter may proceed to judgment in accordance with the Rules of Court.
14. Any objection in regard to a specific corrected NOI in a specific foreclosure case must be **filed in writing under the docket number of the individual foreclosure action, NOT**

this Order to Show Cause. Any objection must state the basis for the objection with specificity and be filed and served as set forth in Paragraph 11 above. Objections to a specific NOI will be referred to the Chancery Judge in the vicinage in which the property lies for resolution.

15. Parties in interest are hereby advised that a telephone call to the Plaintiff, to the Plaintiff's attorney; to the Superior Court Clerk's Office, or to the Court, will not protect your rights; you must file and serve your written objection as outlined in this Order.
16. If you cannot afford an attorney you may call the Legal Services office in the county in which you live. If you do not have an attorney or are not eligible for free legal assistance through the Legal Services office (or such office does not provide services for this particular type of proceeding), you may obtain a referral to an attorney by calling one of the Lawyer Referral Services.
17. If no party in interest timely files and serves an objection to this Order to Show Cause as provided for above, the application may be decided by the Court on the date this matter is scheduled to be heard, provided that the Plaintiff has filed a proof of service and a proposed form of judgment as required by this Order to Show Cause.
18. If written objection to this Order to Show Cause is filed, the Plaintiff's written reply shall be filed and served by _____ 2012. A copy of the reply, if any, shall be served upon the Clerk of Superior Court, with a courtesy copy sent directly to the Honorable Paul Innes P.J.Ch. Plaintiff is only required to serve its response upon the party or parties who have a filed written objection to this Order to Show Cause.

19. Plaintiff shall submit to the Court an original and two copies of a proposed form of judgment addressing the relief sought on the date this matter is scheduled to be heard no later than _____ days before the date this matter is scheduled to be heard.
20. The Plaintiff shall file proof of service of the Verified Complaint, this Order to Show Cause and all supporting documents with the Clerk of Superior Court no later than nine (9) days before the return date of this Order.
21. The Court will entertain argument but not testimony, on the return date of the Order to Show Cause, unless the Court advised to the contrary no later than _____ days before the return date.

Hon. Paul Innes, P.J.Ch.

STERN LAVINTHAL & FRANKENBERG LLC
105 Eisenhower Parkway - Suite 302
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Attorneys for Plaintiff

**IN RE APPLICATION OF ABACUS
FEDERAL SAVINGS BANK TO ISSUE
CORRECTIVE NOTICES OF INTENTION
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ACTIONS**

SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION

CIVIL ACTION

Docket No: F-29907-12

**CERTIFICATION OF
PLAINTIFF**

CERTIFICATION OF EDWARD CHEUNG of full age, hereby certifies as follows:

1. I am an Assistant Vice President for Abacus Federal Savings Bank the Plaintiff in the above captioned matter. I have been in the default servicing industry for 11 months, and in this position since January 1, 2012. I am the person responsible for the administration of Abacus Federal Savings Bank's mortgage portfolio serviced loans, collections and foreclosures. As such I have the authority to make this Certification on behalf of Abacus Federal Savings Bank. I am the officer in the best position to provide this Certification and explain Abacus Federal Savings Bank's policies and procedures as they are related to default servicing and in the issuance of Notices of Intention to Foreclose. I am fully familiar with the facts as set forth in this Certification. I make the statements herein based upon personal knowledge. I am authorized to make these statements in support of Plaintiff's Verified Complaint and Order to Show Cause.
2. Among the duties performed by Abacus Federal Savings as servicer of a loan is the collection and application of monthly mortgage payments from borrowers, the payment of

escrows, the negotiation of loss mitigation resolutions and default servicing. In order to meet its obligations in servicing loans, Abacus Federal Savings maintains business records which reflect the status of each loan.

3. For all of the loans serviced by Abacus Federal Savings, it is the policy of Abacus Federal Savings to diligently work with the borrowers in an effort to resolve the default. Abacus Federal Savings is a conservative lender, which utilizes foreclosure only as a last resort.

4. Once it is determined that efforts to address the default have not been successful, a Notice of Intention to Foreclose ("NOI") is sent to the obligors in accordance with the Fair Foreclosure Act. The information included in the NOI is retrieved from the business records of Abacus Federal Savings Bank. The NOI in use by Abacus Federal Savings has been revised to comply with the Court's ruling in the case of U.S. Bank v. Guillaume, 209 N.J. 449 (2012), and to enable counsel to sign a Certification of Diligent Inquiry in accordance with the changes to the Rules of Court.

5. All of the NOIs for the matters listed on Exhibits A to the Verified Complaint, were sent by both Certified and regular mail, to the address which is secured by the mortgage in question, as well as to the last known address of the obligor. In each of the cases listed, the obligor defendants were served with the summons and complaint.

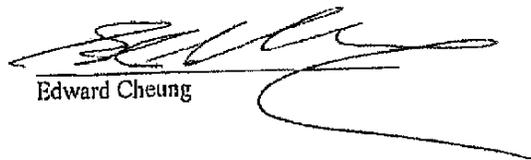
6. There are only three matters for which Abacus Federal Savings Bank is seeking an order permitting the rebreach of the loan. Two of the matters listed on Exhibit A are loans in which the same obligors have executed the loan documents. For those two matters, the NOIs may not have clearly identified the loan in issue. In the third action, the reinstatement date on the NOI is less than 30 days. In none of these actions was the complaint filed prior to the expiration of 30 days from the date the NOI was mailed.

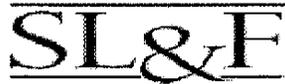
7. Exhibit B to the Verified Complaint is a copy of the NOI proposed to be utilized by Abacus Federal Savings Bank, should the Court permit the rebreaching of these accounts. Should the court permit the sending of a new NOI, attorney fees and costs from the pending foreclosure action will not be included in the NOI.

8. Exhibit C to the Verified Complaint is a copy of the proposed Explanatory Letter, which will be provided to all of the defendants who will be served with corrective NOIs in accordance with the terms of the Order to Show Cause.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: 11/7/2012


Edward Cheung



STERN, LAVINTHAL & FRANKENBERG, LLC

COUNSELLORS AT LAW

105 EISENHOWER PARKWAY, ROSELAND, NEW JERSEY 07068

973-797-1100 – FAX 973-228-2679

December 14, 2012

Via Jefis

Hon. Paul Innes, Judge, Chancery Division, General Equity Part
Mercer County Superior Court
Civil Courthouse
P.O. Box 8068
175 S. Broad Street
Trenton, NJ 08650-0068

**RE: IN RE APPLICATION OF ABACUS FEDERAL SAVINGS BANK TO ISSUE CORRECTIVE
NOTICES OF INTENTION TO FORECLOSE IN PENDING UNCONTESTED FORECLOSURE
ACTIONS**

Docket Number: F-29907-12

Your Honor:

Stern, Laventhal & Frankenberg, LLC represents Abacus Federal Savings Bank (hereinafter "Abacus") in the filing of a Verified Complaint and Order to Show Cause which seek an Order of the Court permitting Abacus to serve corrected Notices of Intent on some of its pending uncontested pre final judgment actions. The pleadings filed herein, are filed pursuant to the decision of the Court in U.S. Bank v. Guillaume, 209 N.J. 449 (2012) and the procedure established by the April 4, 2012 Order of Justice Stuart Rabner. The list of files for which Plaintiff is seeking relief is attached hereto as Exhibit A. There are three files on that list.

That procedure authorizes the Court to entertain summary actions by Order to Show Cause as to why lenders or servicers who have served deficient NOI's should not be allowed to issue corrected NOI's to the obligor defendants in pre final judgment actions. The Order of April 4, 2012 also requires that a corrected NOI be accompanied by correspondence advising the obligor defendant of the following information: the reasons why the corrected NOI is necessary; the procedure in place for the filing of an objection to the corrected NOI by the defendant/obligor; the name of a contact who can respond to questions of the Defendant/obligor; a statement that the receipt of the corrected NOI permits the obligor defendant at least 30 days in which he/she may either cure the default or object to the issuance of the corrected NOI. A form of letter which will explain the procedure in accordance with the April 4, 2012 notice of the Court is attached as Exhibit C to the Verified Complaint.

Abacus is a Federal Savings Bank which originates and services its own residential mortgages in the states of New York and New Jersey. It is Abacus' policy to aggressively address default by contacting borrowers in an effort to resolve the default. Prior to the referral of an action to foreclosure counsel, contact is attempted with the borrower. Should that contact not result in a resolution of the default, a Notice of Intention to Foreclose (hereinafter "NOI") would be sent to all obligors in accordance with the Fair Foreclosure Act. See Certification of Edward Cheung, paragraphs 3 and 4). The within action pertains to three pending pre final judgment actions, in which may be deficiencies on the NOI which prevent the execution of a Certification of Diligent Inquiry in accordance with Rule 4:64-2.

In the case of US Bank v Guillaume, 209 N.J. 449 (2012), the Court ruled that strict compliance with the terms of the Fair Foreclosure Act is required. The Court also established that dismissal was not the sole remedy for the remediation of a deficient NOI. While the deficiencies in the NOIs in the three pending actions do not involve the naming of the lender and/or servicer as in Guillaume, the deficiencies could be interpreted as preventing the execution of a Certification of Diligent Inquiry.

It is respectfully submitted that in each of the three cases, the NOI was sufficient to accomplish the purpose of that notice under the Fair Foreclosure Act, mainly, the notice was sufficient to “make the debtors “aware of the situation”. See Guillaume, at 479. Each of the Notices properly identified the lender and a contact for the lender. There is no need to identify a servicer for any of these matters, as Abacus services its own loans. Rather, there are other technical deficiencies with the Notices . On two of the three NOIs the letter improperly describes the loan. On one of the NOIs the reinstatement time is inconsistently noted in the NOI. In none of these actions was a complaint filed prior to the expiration of 30 days from the date the NOI was sent. (See Certification of Edward Cheung, paragraph 6). In each of these cases, and NOI was sent to the obligor defendant at the property address as well as to the last known address of the defendant obligor via certified and regular mail. See the Certification of Edward Cheung, paragraph 5) It is respectfully urged that in each case, the summons and complaint was served. Thus, for each case, there has been an additional opportunity beyond the issuance of the NOI in order for the obligor defendant to address the default. To date, none of these loans has been reinstated.

Plaintiff proposes to send new NOIs in the form attached to the Verified Complaint as Exhibit B. It is respectfully submitted that the proposed NOI complies with the Fair Foreclosure Act and the April 4, 2012 order of the Court. It is further respectfully urged that the NOI is not prejudicial to the obligor defendants in that the reinstatement figure incorporated in the letter will not incorporate any attorney fees and costs which have been incurred in the pending foreclosure action. Additionally, the proposed Explanatory Letter clearly delineates the procedure for the procedure for the filing of an objection to the process.

It is respectfully urged that this Court grant the relief sought and that it order that if the Defendant Obligors fail to cure the default or object in a timely manner to the service of the NOI, that the case should proceed to Final Judgment as an uncontested matter.

Respectfully submitted,
STERN, LAVINTHAL, & FRANKENBERG, LLC


Laura Scurko, Esq.

LS/tar

Cc: Client

Hon. Paul Innes via NJLS

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SUPERIOR COURT OF NEW JERSEY

CHANCERY DIVISION

CIVIL ACTION

Docket No: F-29907-12

CERTIFICATION OF COUNSEL

I, Laura Scurko, Esq. of full age, hereby certify as follows:

1. I am an attorney of the State of New Jersey, and an associate in the firm of Stern, Lavinthal & Frankenberg, LLC. I am the attorney with the primary responsibility for the filing of the Verified Complaint and Order to Show Cause in this matter. I make the statements herein based upon personal knowledge. I am authorized to make these statements in support of Plaintiff's Verified Complaint and Order to Show Cause.

2. The Certification of Edward Cheung and the executed Verification attached to the Verified Complaint by Edward Cheung contain a scan of the original signature of Edward Chenug. The signature is genuine. The original signature can be provided should the Court require its production.

3. Should the Court execute the Order to Show Cause in this matter, our office will undertake the publication of a legal notice as required by the Order to Show Cause. A true copy of the proposed form of that Notice is attached hereto as Exhibit A.

4. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated:

12-14-12



Laura Scurko, Esq.

EXHIBIT A

LEGAL NOTICE

Docket No.: F-29907-12
Superior Court of New Jersey
Chancery Division

STATE OF NEW JERSEY TO:

Any defendant in an uncontested residential mortgage foreclosure action in which Abacus Federal Savings Bank is both the Plaintiff and servicer

YOU ARE HEREBY ORDERED TO SHOW CAUSE why the relief requested by Abacus Federal Savings Bank in the Verified Complaint and Order to Show Cause in a civil action pending in the Superior Court of New Jersey, Chancery Division, bearing Docket F-29907-12 should not be granted by the Court. Copies of all pleadings in regard to this matter may be obtained from the Court's web page at <http://www.judiciary.state.nj.us>.

This action has been instituted for the purpose of whether or not the Court should allow Abacus Federal Savings Bank to re-send Notices of Intention to Foreclose pursuant to the process established by the Supreme Court of New Jersey on April 4 2012. Any objection to this action must be **in writing** and filed with the Clerk of the Superior Court, Hughes Justice Complex – CN 971, Trenton, New Jersey 08625. A copy of any objection must also be sent to Honorable Paul Innes, _____ and to Laura Scurko, Esq, Stern, Lavinthal and Frankenberg, LLC, 105 Eisenhower Parkway, Suite 302, Roseland, NJ 07068. Any objection must be filed no later than _____. If timely objection is filed, the Court may conduct oral argument on _____. If no timely objection is filed, the Court may rule on the application on the papers on the return date.

If you are unable to obtain an attorney, you may communicate with the New Jersey Bar Association by calling **732-249-5000**. You may also contact the Lawyer Referral Service of the county of venue by calling **973-267-5882**. If you cannot afford an attorney, you may communicate with the Legal Services office of the county of venue by calling **973-383-7400**.

Jennifer M. Perez

JENNIFER M. PEREZ, CLERK
SUPERIOR COURT OF NEW JERSEY

This is an attempt to collect a debt and any information obtained will be used for that purpose.

"The Fair Housing Act prohibits "any preference, limitation or discrimination because of race, color, religion, sex, handicap, familial status or national origin, or intention to make such preference, limitation or discrimination" in connection with any aspect of a residential real estate transaction. Stern, Lavinthal & Frankenberg, LLC encourages and supports the equal housing practices of the Fair Housing Act in the conduct of business."