

SHORT FORM ORDER

SCAN

SUPREME COURT - STATE OF NEW YORK

PRESENT: HON. THOMAS A. ADAMS,  
Supreme Court Justice

-----X  
THE BANK OF NEW YORK MELLON F/K/A THE  
BANK OF NEW YORK AS TRUSTEE FOR THE  
CERTIFICATE HOLDERS CWABS, INC. ASSET-  
BACKED CERTIFICATES, SERIES 2006-01,

FORECLOSURE PART  
NASSAU COUNTY

INDEX NO.:  
MOTION DATE: 9/15/11  
MOTION SEQ. NO.: 1

Plaintiff,

- against -

, et al.,

Defendants.

-----X  
The following paper read on these motions:

Order to Show Cause, Affidavit, Affirmation and Exhibits.....	1
Affirmation in Opposition, with Exhibits.....	2
Affirmation in Reply.....	3

Defendant, (movant), motion by Order to Show Cause, for an Order dismissing this action due to plaintiff's: failure to re-submit an application or an order of reference within ninety (90) days to this Courts Order entered on February 28, 2011, and thereby being deemed abandoned; failure to comply with RPAPL § 1304; lack of standing and failure to move for an d obtain a default judgment within one (1) years of defendant's default, is granted to the extent as set forth herein.

Here it is undisputed that this Court issued an Order on February 22, 2011, entered February 28, 2011, denying the plaintiff's application for an Order of Reference without prejudice to its re-submission upon proper proof of compliance with RPAPL § 1304, within ninety (90)days. It is also undisputed that the plaintiff did not re-submit within the specified temporal parameters, and in fact to date still has not re-submitted.

The plaintiff's current counsel argues that a reasonable excuse exists for the failure to comply because the plaintiff decided to switch attorneys after the Order of Reference

was denied. However, as evidenced by the Consent to Change Attorney form notarized on August 8, 2011, that did not occur until more than five (5) months after entry of the Order and more than Two (2) months after the time to re-submit expired.

Accordingly, as the plaintiff was represented it was incumbent on the plaintiff's prior counsel to comply with the Orders of this Court until such time that it was replaced by the current counsel in August 2011. As such the ninety (90) day extension afforded the plaintiff was more than sufficient to re-submit an Order of Reference with proper proof which was absent from the original application. If a movant, in preparation of a motion, cannot assemble sufficient proof in support of the relief requested, the motion should simply not be submitted. (see, generally, Ritt v Lenox Hill Hospital, 182 AD2d 560, 562 [1st Dept.])

Based on the foregoing, the action is dismissed, as abandoned, due to the plaintiff's failure to re-submit an Order of Reference in accordance with the Order of this Court entered on February 28, 2011.

The remainder of the movant's arguments are denied as moot. As the dismissal of this action is not on the merits, it is without prejudice to the initiation of a new action under an alternate Index Number.

This concludes all proceedings under Index Number 007327/10.

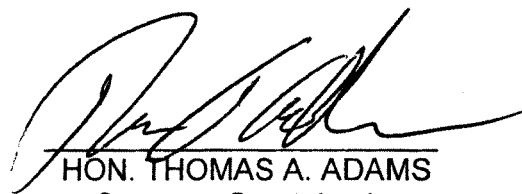
Therefore it is hereby,

**ORDERED**, that the defendant's motion to dismiss, is granted to the extent that this action is dismissed.

This constitutes the decision and order of the Court.

ENTER:

Dated: NOV 03 2011



HON. THOMAS A. ADAMS  
Supreme Court Justice

XXX

**ENTERED**  
NOV 14 2011  
NASSAU COUNTY  
COUNTY CLERK'S OFFICE