

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Index No.: _____

-----X
IN THE MATTER OF THE APPLICATION OF
BURNS, RUSSO, TAMIGI & REARDON, LLP
PURSUANT TO 22 NYCRR PART 1200, RULE 1.15(f)
FOR THE RELEASE OF ESCROW FUNDS.
-----X

NOTICE OF MOTION

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affirmation of Anthony W. Russo, Esq., dated August 30, 2012, together with the exhibits annexed thereto, the undersigned will move this Court at an Ex Parte Part thereof, to be held at the Courthouse located at 100 Supreme Court Drive, Mineola, New York, on the 21st day of September, 2012, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order directing payment from the attorney's Trust Account of money payable to missing clients and/or unidentifiable parties and/or accounts and directing payment of fees, costs and disbursements pursuant to the proceeding herein to the moving attorneys with the balance payable to the Lawyer's Fund for Client Protection.

To: Lawyer's Fund for Client Protection

119 Washington Avenue

Albany, New York 12210

PAID
SEP 05 2012
NASSAU COUNTY
COUNTY CLERK'S OFFICE

RECEIVED BY
SUPERIOR COURT
NASSAU COUNTY
2012 SEP -5 AM 10:20

PLEASE TAKE FURTHER NOTICE that responsive papers, if any, are due at least seven days prior to the return date.

Dated: Garden City, New York
August 30, 2012

Yours, etc.,

BURNS, RUSSO, TAMIGI & REARDON, LLP

By: 

ANTHONY W. RUSSO
390 Old Country Road
Garden City, NY 11530
(516) 746-7371

TO: Lawyer's Fund for Client Protection
119 Washington Avenue
Albany, New York 12210

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

Index No.: 14301/2011

-----X
IN THE MATTER OF THE APPLICATION OF
BURNS, RUSSO, TAMIGI & REARDON, LLP
PURSUANT TO 22 NYCRR PART 1200, RULE 1.15(f)
FOR THE RELEASE OF ESCROW FUNDS.
-----X

AFFIRMATION
IN SUPPORT

ANTHONY W. RUSSO, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following pursuant to the penalties of perjury:

1. I am a partner with the firm of Burns, Russo, Tamigi & Reardon LLP, the Plaintiffs-Applicant herein, and as such am fully familiar with the facts and circumstances as compiled from the firm's files and records.

2. This is an application pursuant to § 22 NYCRR Part 1200, Rule 1.15(f) for the release of sums of money payable to clients and/or unidentifiable parties and/or accounts for whom or which the attorney is unable to locate and for an Order directing payment of a portion of these sums to the law firm/applicant herein for any fees, costs or disbursements to satisfy the costs of this action, with the balance to be payable to the Lawyer's Fund for Client Protection.

3. Pursuant to 22 NYCRR Part 1200, Rule 1.15(f), whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyer's Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

4. The law firm of Burns, Russo, Tamigi & Reardon, LLP was retained by various banking institutions in connection with multiple real estate closing transactions for various parties over the past nine years. As a result of engaging in these transactions, the firm has a total of \$67,212.68 in clients' funds remaining in its Mortgage Closing Trust Account. A schedule of each individual check and the associated amount(s) being held in the firm's Mortgage Closing account is annexed hereto for reference as **Exhibit "A"**.

5. The firm has made efforts to locate the individuals and the accounts to whom the monies rightfully belong in order to return their monies. However, to date, these attempts have not met with success and many of the payees and accounts are unknown to the movant and are impossible or impractical to discern. Also, many of the banks who assigned this firm the closings are no longer in business.

6. Over the past nine years, the law firm of Burns, Russo, Tamigi & Reardon, LLP has engaged in hundreds of real estate closing transactions on behalf of a multitude of lenders. In the usual course of these real estate closing transactions, the firm issues checks at the direction of the lender to pay off various accounts of the borrower, including but not limited to credit cards, debts, insurance premiums, judgments, change of beneficiaries and the like. These checks, once issued, are given to the borrowers so that the borrowers could mail the checks directly to whomever they owed the monies in question with the appropriate account information and addresses.

7. The firm has recently discovered outstanding checks for the transactions detailed in the schedule attached as **Exhibit "A"**. It has come to the attention of the law firm of Burns, Russo, Tamigi & Reardon, LLP that in many of the matters in the attached schedule, either the borrowers did not mail in the checks or these checks were never cashed once the borrowers

mailed them in. At this juncture in time, your affirmant's office is unable to reissue these checks because either the firm is unable to locate the payees, the firm does not have the account numbers for which the checks were to be applied, or the payee is a company which is no longer in business.

8. Most of the payees on the schedule attached hereto at **Exhibit "A"** are creditors or credit card companies which borrowers were required to pay off in connection with their loans. For the most part, the checks detailed on the attached schedule were delivered to the borrowers directly on refinance transactions where the borrowers did not have their own legal counsel. Your affirmant's firm was usually given only the name of the credit card company to whom the check was to be made payable, and no address or account number.

9. Your affirmant's firm has encountered additional difficulties with regard to this matter in the sheer volume of checks issued from the firm's Mortgage Closing Trust Account on a monthly basis, and the fact that the payees are not clients of the firm. Unlike an IOLA account, where your affirmant's firm will normally disburse those funds to clients as soon as possible and follow up with clients to ensure that those funds are received, when a check is issued from the firm's Mortgage Closing Trust Account to a creditor or credit card company on behalf of a borrower and delivered to the borrower to be remitted by the borrower to the creditor or credit card company, your affirmant's firm has no direct communication with the creditor or credit card company to confirm that the check was received from the borrower, and your affirmant's firm has no way to determine whether or not the check was ever cashed by the creditor or credit card company. Further, in the event that a creditor or credit card company does not receive payment, your affirmant's firm has no way to contact the creditor or credit card company.

10. To complicate matters further, your affirmant's firm is limited in the actions it can take with regard to these funds since the issue of whether those funds belong to the payee (i.e., the creditor or credit card company), the borrower, or, in the event of a failure or inability to deliver those funds, to the lender which authorized and directed such payment. In light of these complications, these non-delivered funds should be turned over to the Lawyer's Fund for Client Protection.

11. The law firm of Burns, Russo, Tamigi & Reardon, LLP has incurred expenses totaling \$210.00 in connection with the purchase of an index number for this proceeding.

12. Based upon the foregoing, it is respectfully submitted that this Court issue an Order pursuant to 22 NYCRR Part 1200, Rule 1.15(f) directing the payment of \$210.00 payable to the law firm of Burns, Russo, Tamigi & Reardon, LLP to satisfy the fees, costs, and disbursements in connection with this application, and releasing the sums payable to the various clients, to wit, the balance of \$67,002.68, payable to the Lawyer's Fund for Client Protection.

13. No prior application for similar relief has been made in regard to this matter.

WHEREFORE, the applicant, BURNS, RUSSO, TAMIGI & REARDON, LLP, respectfully requests an Order pursuant to § 22 NYCRR Part 1200, Rule 1.15(f) directing the release of sums of money payable to clients/payees for whom BURNS, RUSSO, TAMIGI & REARDON, LLP has been unable to locate and for an Order directing payment to BURNS, RUSSO, TAMIGI & REARDON, LLP, herein for any fees, costs or disbursements to satisfy the costs of the action, with the balance of these sums to be payable to the Lawyer's Fund for Client Protection, and for such other and further relief as this Court deems just and proper.

Dated: Garden City, New York
August 30, 2012


ANTHONY W. RUSSO

**SUPREME COURT - STATE OF NEW YORK
TRIAL/TAS TERM, PART 43 NASSAU COUNTY**

PRESENT:

Honorable James P. McCormack
Acting Justice of the Supreme Court

_____x
**IN THE MATTER OF THE APPLICATION OF
BURNS, RUSSO, TAMIGI & REARDON, LLP
PURSUANT TO 22 NYCRR PART 1200, RULE
1.15(f) FOR THE RELEASE OF ESCROW
FUNDS,**
_____x

Index No. 11243-2012

Motion Seq. No.: 001
Motion Submitted: 11/19/12
Amended Decision

The following papers read on this motion:

Notice of Motion/Supporting Exhibits.....X

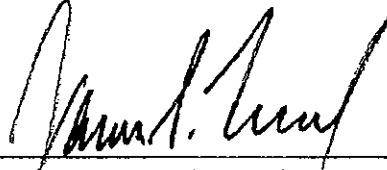
Motion, ex parte, by counsel for an order pursuant to 22NYCRR Part 1200, Rule 1.15(f) for the release of \$67,212.68 which were payable to clients, unidentifiable parties or accounts for whom counsel is unable to locate to the Lawyer's Fund for Client Protection, less the amount of \$210.00 to the firm of Burns, Russo, Tamigi & Reardon LLP to satisfy costs and disbursements in connection with this application, is hereby GRANTED.

Upon the averments contained counsel's affirmation and the lack of opposition to this application by the Lawyer's Fund for Client Protection, the Court authorizes the

release of such funds as set forth in the application.

This constitutes the Decision and Order of the Court.

Dated: December 21, 2012
Mineola, N.Y.



Hon. James P. McCormack, A. J. S. C.