SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART IAS MOTION 48EFM

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D2 MARK LLC,

Plaintiff,

- v -

OREI VI INVESTMENTS LLC,

Defendant.

INDEX NO. 652259/2020

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36
were read on this motion to/for INJUNCTION/RESTRAINING ORDER.

Upon the foregoing documents, it is

Plaintiff D2Mark LLC moves by Order to Show Cause (OSC) for (1) a preliminary injunction enjoining defendant OREI VI Investments, LLC, during the pendency of this action, from moving forward with the proposed sale of the plaintiff's membership interest in nonparty D2 Mark Sub LLC (Collateral), currently scheduled for June 24, 2020, and to (2) unseal portions of the Senbahar Affidavit and the Memorandum of Law that were temporarily filed in redacted form at the outset of this action.[1] Specifically, plaintiff asks for a stay of the auction until August 18 or 19, 2020 which would constitute a total of 90 days to make a market for the Collateral.

The issue before the court is what is a commercially reasonable sale of a landmarked hotel during the world-wide COVID-19 pandemic. Plaintiff asserts that 36

[1] The court addressed the sealing request in its interim decision of June 18, 2020, and thus, it will not be addressed here. (*See* NYSCEF 38.)

days' notice to the hotel buying market for a hotel plaintiff values in excess of $600 million, and logistics of that

sale, e.g., one day to close, are not commercially reasonable during a pandemic. (NYSCEF Doc No [NYSCEF] 5, Izak Senbahar, president of the LLC owner of plaintiff, aff., ¶ 8.) Plaintiff insists the sale is a "predatory attempt to capitalize on the COVID-19 pandemic." (NYSCEF Doc. No. [NYSCEF] 2, Complaint ¶1.) Defendant asserts that, based on its straightforward $35 million nonrecourse loan on which plaintiff admittedly defaulted, defendant is simply exercising its rights under the loan agreement while plaintiff has use of defendant's money and defendant risks deterioration in value of the Collateral from COVID-19 or its resurge, civil unrest, and disagreements between the Governor and the Mayor of New York City on how to proceed in re-opening the economy. (Tr. 18:20-19:7.)

This is an action involving the Mark Hotel located on Madison Avenue and East 77th Street on the Upper East Side of New York City. (NYSCEF 2, Complaint ¶1.) Plaintiff's wholly owned affiliates own, control and operate the Mark Hotel, the Mark Restaurant and the Mark Bar, certain cooperative units in the Mark Hotel, as well as certain retail units along Madison Avenue and the building known as 1000 Madison Avenue. (NYSCEF 2, Complaint ¶14; NYSCEF 6, Organizational Chart.)

In May 2017, the financing was split by the originator into senior notes for $230 million (Mortgage Loan) and a subordinate note for $35 million (Mezzanine Loan).[2]

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[2] The court references the following documents: (1) a Loan Agreement, dated as of May 19, 2017, among Mark Propco LLC, D2 Mark Sub LLC, Mark Holding, LLC and Mark COOP Sponsor LP, collectively as Borrower, Mark OPCO LP as Operating Lessee, Mark 2 Restaurant LLC as a Borrower Party and JPMorgan Chase Bank, National Association as Lender (Mortgage Loan) (NYSCEF 7); (2) the Mezzanine Loan among D2 Mark LLC as borrower and JPMorgan Chase Bank, National Association as Lender (NYSCEF 8); and (3) a Pledge and Security Agreement, of even date, made by D2

(NYSCEF 5, Senbahar aff., ¶ 8; NYSCEF 7, Mezzanine Loan Agreement.) The Mortgage Loan was securitized and is currently held by nonparty Wilmington Trust, National Association as part of a commercial mortgage-backed securitization. (NYSCEF 5, Senbahar aff., ¶¶ 7, 8.) The Mezzanine Loan is secured under the Pledge Agreement, pursuant to which plaintiff pledged 100% equity interest in D2 Mark Sub LLC, which is the indirect owner of the leasehold estates in the Mark Hotel. (*Id.*, ¶ 9; NYSCEF 27, Famularo aff.,¶ 3.) Defendant, a single purpose entity controlled by a California-based advisory firm Ohana Real Estate Investors (Ohana), currently holds the $35 million junior loan (OREI Loan) position in the Mark Hotel. (*Id.*, ¶¶ 9, 28.) Wells Fargo is the servicer for the Mortgage Loan and the Mezzanine Loan. (*Id.*, ¶ 7.) The intercreditor agreement governs the relationship between Wells Fargo and Mezzanine Lender; plaintiff is not a party to it. (NYSCEF 2, Complaint ¶ 31.) In connection with this financing, the property was appraised for $427 million. (NYSCEF 5, Senbahar Aff., ¶ 11.)

The Mark Hotel suffered significant financial hardship as a result of the COVID-19 pandemic when it was forced to temporarily close on March 27, 2020. (NYSCEF 18, Senbahar aff., ¶ 14.) The retail shops in the hotel have not paid over a $1 million in rent to plaintiff. (*Id.*) An interest payment was due to defendant on the Mezzanine Loan on May 1, 2020, which plaintiff paid late on May 8, 2020. (*Id.*, ¶ 20.) However, plaintiff failed to pay the senior loan in April or May, which caused a cross default of the Mezzanine Loan. (NYSCEF 27, Famularo aff., ¶ 21.) Since May 2020, defendant has advanced cure payments totaling $2.2 million on the senior loan to protect the Mezzanine Loan from being wiped out by acceleration. (*Id.*, ¶ 23.)

Mark LLC in favor of JPMorgan Chase Bank, National Association (Pledge Agreement) (NYSCEF 9.)

On March 20, 2020, New York State Governor Cuomo issued Executive Order (EO) 202.8 which states "There shall be no enforcement of either an eviction of any tenant residential or commercial, or a foreclosure of any residential or commercial property for a period of ninety days." This EO expires on June 20, 2020.

On May 7, 2020, Governor Cuomo issued EO 202.28 which bars eviction proceedings for 60 days beginning June 20, 2020. The parties agree that as a result of this EO, Wells Fargo is barred from initiating an action against plaintiff for default on the Mortgage Loan, until August 20, 2020. (Tr. 6:15-7:1.)

Plaintiff and Wells Fargo allegedly negotiated a forbearance agreement to allow plaintiff some relief from the temporary effects of COVID-19 on its business. (NYSCEF 18, Senbahar aff., ¶¶ 19, 22.) Plaintiff and Ohana also tried to negotiate a similar forbearance agreement. (NYSCEF 27, Farmularo aff., ¶ 5.) Plaintiff claims that in the forbearance negotiations, Ohana led it to believe that once Wells Fargo agreed to a forbearance, defendant would also grant a forbearance for the same time period. (NYSCEF 18, Senbahar aff., ¶ 22.) However, purportedly without any warning and in the midst of finalizing the negotiations, on May 18, 2020, defendant gave notice, pursuant to the New York UCC, of a sale of the plaintiff's only asset, its 100% membership interest in D2 Mark Sub, LLC, i.e., the Collateral., which in turn wholly owns a series of entities that own and operate the Mark Hotel. (*Id.*, ¶¶ 22-23.) The sale was noticed for June 24, 2020 -- 36 days from when notice was given. (*Id.*)

The notice provides the terms of the sale. The sale will be held either virtually or in a law firm office in New York City. (NYSCEF 12, UCC Public Sale Notice attached to Foreclosure Notice.) The winning bidder is to immediately provide a non-refundable deposit equal to 10% of the purchase price and, within 24 hours after the end of the auction, pay the

balance of the purchase price and close the purchase of the Collateral in accordance with all of the applicable requirements of the Intercreditor Agreement. (*Id.*.) The notice also provides that defendant can "credit bid" by bidding the amount of the debt (plus interest and penalties) owed by the borrower, but defendant renounced that right. (*Id.*; Tr. 25:1-4.)

Defendant engaged nonparty Brett Rosenberg of Jones Lang LaSalle (JLL), which has significant experience with hotel financing, loan sales and UCC foreclosures, to lead the sales process. (NYSCEF 23, Rosenberg aff., ¶¶ 1, 4-6.) She contacted 700 potential bidders. (*Id.*, at ¶ 7.) She created a virtual due diligence data room with over 100 documents concerning the Collateral. (*Id.*) To access the data room, consent to a non-disclosure agreement (NDA) is required and 115 entities have done so. (*Id.*) The NDA provides that an interested party must agree not to "provide Confidential Information to Debtor [plaintiff] or any of its representatives or affiliates." (NYSCEF 13, NDA, at 2.) It also prohibits, without defendant's prior written consent, any interested party from communicating with plaintiff and/or its affiliates about the Foreclosure. (*Id.* at 3.)

The sale was advertised in the national edition of the Wall Street Journal from May 22 to May 29, 2020 and a trade publication on May 29, 2020. (NYSCEF 23, Rosenberg aff., ¶ 7.) JLL subsequently modified the terms of sale to the extent that defendant cannot credit bid after accepting the highest and best bid unless the bidder and runner up fails to timely close; (2) if a qualified bidder asks for more than 24 hours to close, defendant will consider the request in good faith; and (3) plaintiff has access to the data room and may bid if it shows the financial ability to timely close, like other qualified bidders. (*Id.*, ¶ 9, n. 2.) Based on her experience, Rosenberg opines that "the level of engagement from potential bidders in the current sale process is the product of, and consistent with, a robust marketing process that goes well beyond what is required for a commercial reasonable sale." (*Id.* at ¶ 10.)

Rosenberg also opines that plaintiff's objections to the 24-hour closing period are tempered by the pre-certification process of demonstrating that the bidder satisfied the definition of "qualified transferee" in the Intercreditor Agreement and defendant's amendment to the notice allowing potential bidders to request an extension of time. (*Id.* at ¶13.)

Plaintiff initiated this action on June 6, 2020: (1) alleging violation of UCC §9-610(b) because 36 days' notice to the market is unreasonable as are other procedures; (2) seeking a declaratory judgment that the sale violates Governor Cuomo's EO 202.8 which states that there prohibiting evictions; (3) seeking injunctive relief enjoining the sale until September 8, 2020;[3] and (4) alleging a breach of the covenant of good faith and fair dealing because the Collateral's value far exceeds the $35 million Mezzanine Loan so initiating a foreclosure based on missing a single interest payment in the midst of a world-wide pandemic and New York City shutdown demonstrates bad faith. Plaintiff seeks to enjoin the sale for up to 60 additional days on the basis that the Collateral is worth far more than the $265 million in total debt (mortgage $230 million and $35 million mezzanine loan). (NYSCEF 4, Memorandum in Support p. 1, 2.) Indeed, plaintiff contends that it is worth significantly more today than the $427 million appraisal which will never be realized as a result of defendant's rushed commercially unreasonable "fire" sale. (NYSCEF 19, Plaintiff's Memo of Law, p. 2; NYSCEF 10, 2017 Appraisal Report.)

Justice Andrew Borrok signed the OSC on June 15, 2020, setting June 18, 2020 as the return date for argument. This court was assigned to the case when Justice Borrok recused himself on June 17. (NYSCEF 34.)

[3] Plaintiff has also asked for a stay until August 18 or 19, 2020, the day before Wells Fargo, the holder of the mortgage could begin it foreclosure process. (Tr. 33:13-34:8.)

At argument, the court invited defendant to submit an additional brief addressing two cases raised at argument by plaintiff and report to the court the number of entities that filed financial proof due June 10, 2020 establishing their ability to bid at the auction. (Tr 36:13-19.) Defendant admits that only two of the 115 entities, which signed the NDAs to have access to the data room, submitted documentation of financial ability to bid. (NYSCEF 39, June 18, 2020 Charles E. Trip Dorkey III letter.) The letter and transcript of the June 18, 2020 argument are incorporated herein.

Since the action was filed, other relevant events occurred. On June 8, 2020, 15 days before the auction, New York City entered Phase I of reopening when

> "Businesses that may start to reopen or expand operations include retail, construction, manufacturing and wholesale trade. Although you can reopen your worksite, the best way to reduce the spread of COVID-19 and protect employees is to continue working from home as much as possible." (https://www1.nyc.gov/site/coronavirus/index.page.)

Also, on June 8, 2020, defendant modified notice to the extent that plaintiff would be allowed to participate, leaving plaintiff 15 days to come up with funds. The hotel opened on June 15, 2020, eight days before the auction date, making it possible for bidders to visit the premises. (Tr. 16:2-3.) New York City enters phase II of reopening on June 22, 2020, two days before the auction, when

> "Businesses that may start or expand operations once NYC has clearance to enter into Phase Two include offices, in-store retail, outdoor dining, hair salons and barbershops, real estate, commercial building management, retail rental, repair and cleaning, and vehicle sales, leases, and rentals." (https://www1.nyc.gov/site/coronavirus/businesses/businesses-and-nonprofits.page.)

A preliminary injunction is a "drastic remedy." (*Edgeworth Food Corp. v Stephenson*, 53 AD2d 588, 588 [1st Dept 1976].) Before a court may issue a preliminary injunction, the movant must establish (1) a likelihood of success on the merits of the action, (2) the danger of irreparable harm in the absence of a preliminary injunction, and (3) a balance of equities

in favor of the moving party. (*W. T. Grant Co. v Srogi*, 52 NY2d 496, 517 [1981] [citations omitted].)

The first prong of the preliminary injunction test is whether plaintiff has established a likelihood of success on the merits. (*Doe v Axelrod,* 73 NY2d 748, 751 [1988].) Where "[d]enial of injunctive relief would render the final judgment ineffectual, ... the degree of proof required to establish the element of success on the merits should be accordingly reduced" and the equities lie in favor of preserving the status quo. (*Grammercy Co. v Beneson*, 223 AD2d 497, 498 [1st Dept 1996] [internal quotation marks omitted].) With respect to the first factor, "[t]o establish a likelihood of success on the merits, a prima facie showing of a reasonable probability of success is sufficient." (*Barbes Rest. Inc. v ASRR Suzer 218*, LLC, 140 AD3d 430, 431 [1st Dept 2016] [internal quotation marks and citations omitted].) Entitlement to a preliminary injunction "depends upon probabilities, any or all of which may be disproven when the action is tried on the merits." (*J. A. Preston Corp.*, 68 NY2d 397, 406 [1986].)

For the purposes of a preliminary injunction, plaintiff has sufficiently demonstrated that the proposed foreclosure sale may not be commercially reasonable. Under Article 9 of the UCC, "[e]very aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable" (UCC § 9-610[b]), and, therefore, any sale must follow commercially reasonable procedures. (*Federal Ins. Corp. v Herald Square Fabrics Corp.,* 81 AD2d 168, 184 [2d Dept 1981].) "Whether a sale was commercially reasonable is, like other questions about 'reasonableness', a fact-intensive inquiry; no magic set of procedures will immunize a sale from scrutiny." (*Matter of Excello Press, Inc.*, 890 F2d 896, 905 [7th Cir 1989] [applying New York law].) The court is guided

by accepted business practices. (*Bankers Trust Co v Dowler & Co.*, 47 NY2d 128, 134 [1979].)

Plaintiff submits the affidavit of Alan Tantleff, Senior Managing Director of FTI Consulting, Inc. who holds B.S. in Hotel Management from the School of Hotel Administration at Cornell University and a Master of Science in Real Estate Investment and Development from New York University (NYSCEF 14, Tantleff aff., ¶ 3). Tantleff is also a NY licensed real estate broker. (*Id.*, ¶¶ 4-5). Based on his 30 years of experience "as a hospitality industry and structured finance professional," Tantleff attests that the:

> "process by which OREI has marketed the Collateral, or instructed JLL to market the Collateral, and plans to conduct the June UCC Sale is not commercially reasonable for the following reasons:
>
> a. The Borrower is precluded from bidding;[4]
> b. By limiting contact with the Borrower, the Plaintiff has made the due diligence process more difficult;
> c. The 36 days between when the notice was given and the proposed sale date is far too short of a time to allow for a robust auction, and the proposed requirements to bid on and close the sale are too stringent;
> d. The June UCC Sale has not been crafted in a way to accommodate New York City "stay at home" orders and other state and local mandates in response to COVID-19; and
> e. OREI's affirmations about the right to submit its credit bid either before or after the closing of third-party bidding will serve to chill bidding."

(*Id.*, ¶ 29, 9; *id.*, ex. 1.).

Tantleff further attests that normally UCC foreclosure on complex commercial assets like the Mark Hotel would be on 60 to 90 days' notice, and that without an opportunity to inspect the property it is unreasonable to think that the property would sell at close to an optimum price. (*Id.*, ¶¶ 48, 49-57). When the current loans were originated in 2017, the

[4] On June 8, 2020, defendant removed this restriction. (Tr.16:24-17:5.)

Mark Hotel was appraised at $427 million, and with development opportunities, the value is over $500 million according to Tantleff. (Tantleff aff., ¶¶12-17.)

Tantleff's opinion supports plaintiff's contention that the foreclosure is commercially unreasonable because its terms were "rigged" so that, as a practical matter, only defendant can obtain the Collateral. (NYSCEF14, Tantleff aff., ¶9.) For example, the potentially winning bidder must submit a 10% nonrefundable deposit at the sale and the remaining 90% within 24 hours. (NYSCEF 12, the Foreclosure Notice). Another example of such "rigging" is that plaintiff was, until June 8, 2020, precluded from participating in the auction, which is per se unreasonable. (Tantleff aff., ¶¶ 30-40; *see also Atlas MF Mezzanine Borrower, LLC v Macquarie Tex. Loan Holder LLC*, 174 Ad3d 150, 164-165 [1st Dept 2019]; *Siemens Credit Corp. v Marvik Colour, Inc.,* 859 F Supp 686, 692 [SD NY 1994].)

Moreover, the court finds defendant's reliance on 115 signed NDA's to illustrate the worthiness of defendant's procedures is undermined by the fact that only two bidders have submitted financials. (NYSCEF 42, Dorkey letter.)

Plaintiff has established likelihood of success on its claim that defendants' notice of 36 days may be unreasonable during a global pandemic as the Mark Hotel was closed until June 15, 2020 making inspection impossible for 27 of the 36 days of notice, which deprives interested bidders of the chance to do due diligence. *Bankers Trust Co v JV Dowler & Co*, 47 NY2d 128, (1979), a case relied upon by defendant, demonstrates plaintiff's point that this sale is not commercially reasonable. When there was "precipitous downslide in the municipal bond market" the bank liquidated defendant's collateral by selling them on a recognized market where such bonds are customarily sold. (*Id.* at 132-133, 135.) There is no recognized market here; defendant must make the market which is why the procedures defendant implements are crucial to create a commercially reasonable sale. Moreover,

defendant cannot both object to plaintiff's reliance on the 2017 Cushman & Wakefield evaluation to establish the value of the Collateral as dated or obsolete and at the same time expedite the sale precluding anyone from preparing a current evaluation report. Finally, regardless of how the Governor's EOs are interpreted in the future, they are persuasive authority that support plaintiff's contention that what is reasonable during normal business times, may not be reasonable during a pandemic. Therefore, plaintiff satisfies the first prong and the court need not evaluate plaintiff's other causes of action for likelihood of success.

The second prong of the preliminary injunction test is whether there will be irreparable injury if the provisional relief is denied. The parties agreed to limit plaintiff's remedies to injunctive relief; money damages are not available to plaintiff here. (NYSCEF 8, Mezzanine Loan Agreement at § 10.12.) Such a provision is enough to establish irreparable harm. (*See Omni Berkshire Corp v. Wells Fargo Bank, N.A.*, 2003 WL 1900822, at *4 [SD NY 2003] [construing an identical provision and holding that plaintiff demonstrated irreparable harm]; *III Fin. Ltd. v. Aegis Consumer Funding Grp., Inc.*, 1999 WL 461808, at *5 [SD NY 1999] [noting that the parties agreed that plaintiff would be entitled to equitable relief.])

The third and final prong of the test for a preliminary injunction requires the balancing of the equities. This requires a showing that "the harm to plaintiff from denial of the injunction as against the harm to defendant from granting it" must "tip in plaintiff's favor" for an injunction to issue. (*Edgeworth Food Corp. v Stephenson*, 53 AD2d 588, 588 [1st Dept 1976].) Notably, the Mark Hotel is a unique property, and if defendant is successful in selling the Collateral, plaintiff will be deprived not only of its sole asset but also its ownership and control rights in the plaintiff's wholly owned subsidiaries that own, operate and manage the Mark Hotel. Plaintiff's loss of control over hotel operations will also eliminate its ability to

control public perception of the Mark Hotel name and trademark rights in the Mark Hotel. (*See* Senbahar Aff. ¶ 29.) Such losses are irreparable harm. (*See U.S. Ice Cream Corp. v. Carvel Corp.*, 136 A.D.2d 626, 628 [2d Dep't 1988] (interference with an ongoing business, "particularly one involving a unique product and an exclusive licensing and distribution arrangement, risks irreparable injury and is enjoinable"). Indeed, defendant is currently searching for new management. (NYSCEF 27, Famularo aff., ¶29.)

Defendant's injury, on the other hand, is conjecture. The court cannot accept defendant's invitation to predict the future: whether COVID-19 will resurge; whether protests will continue to be peaceful; whether the mayor and governor will together address transportation problems in New York City. The balance of equities clearly tips in plaintiff's favor.

The court agrees that the current structure of defendant's sale is not commercially reasonable, even with defendant's June 8 modifications. The sale will be stayed for 30 days from June 24 during which time defendant will re-notice the sale, giving the market at least 30 additional days of notice and develop a plan for a commercially reasonable sale to be reflected in the new notice. Thirty days balances plaintiff's reasonable request for more time and defendant's objection to delay. The court agrees with plaintiff that expanding the time to market the Collateral and make a market for this unique hotel property is an elegant solution. (Tr 34:6.) It is also consistent with the spirit of the Governor's EOs and the timing of Phase 2 and possibly Phase 3 re-opening in New York City.

Defendant is directed to re-notice the sale. The market must be informed of the changes to which defendant has agreed which may affect interest in bidding at the auction.

Given the limitations on transportation and the population's fear of modes of transportation,[5] defendants must clearly state that bidders may participate virtually; the current notice is equivocal. (See UCC 9-613(a)(5).) Defendant's notice must, at a minimum, comport with current CDC, state and local regulations. Defendant shall provide plaintiff with a copy of the notice at least 24 hours before it is distributed or issued.

CPLR 6312(b) requires an undertaking which the court sets at $100,000.

The court has considered the parties' remaining arguments and finds them unavailing, without merit, or otherwise not requiring an alternate result.

Due deliberation having been had, and it appearing to this court that a cause of action exists in favor of the plaintiff and against the defendant, and that the plaintiff is entitled to a preliminary injunction on the ground that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual, as set forth in this decision, it is

ORDERED that the undertaking is fixed in the sum of $100,000.00 conditioned that the plaintiff, if it is finally determined that it was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of this injunction; and it is further

ORDERED that defendant, its agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendant, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or

[5] See CDC warning against taking subways and trains. https://www.cdc.gov/coronavirus/2019-ncov/travelers/travel-in-the-us.html.

control of defendant or otherwise, any of the following acts: (1) holding the UCC sale on June 24, 2020; (2) holding the sale before July 23, 2020; (3) holding the sale without re-noticing the sale consistent with this decision; (4) holding the sale without first giving plaintiff 24 hours to review the new notice; and (5) holding the sale without first re-notifying the market again as it did in May 2020 e.g., contacting 700 potential bidders and publishing the notice in the Wall Street Journal and a trade publication; and it is further

ORDERED that counsel are directed to appear for a preliminary conference on August 11, 2020, at 2:30 PM via Skype for business.

Motion Seq. No. 01 :

6/23/2020
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:		CASE DISPOSED			x	NON-FINAL DISPOSITION	
	x	GRANTED	☐	DENIED	☐	GRANTED IN PART	☐ OTHER
APPLICATION:	☐	SETTLE ORDER			☐	SUBMIT ORDER	
CHECK IF APPROPRIATE:	☐	INCLUDES TRANSFER/REASSIGN			☐	FIDUCIARY APPOINTMENT	☐ REFERENCE