

Financial Services Litigation Update

Chief Administrative Judge of the New York Courts Issues AO 262/21 in Response to Recently Enacted Extension of the COVID-19 Emergency Eviction and Foreclosure Prevention Act

By **Kenneth J. Flickinger**

On September 9, 2021, New York Chief Administrative Judge of the Courts, Honorable Lawrence K. Marks, issued a new administrative order, AO 262/21, in response to the recently enacted extension of the COVID-19 Emergency Eviction and Foreclosure Prevention Act (“CEEFFPA”).

The new Administrative Order does not add much to the recent extension of the CEEFFPA, which was signed into law on September 2, 2021. As we reported in a client alert on September 7, 2021, pursuant to CEEFFPA, a mortgagor’s filing (or service) of a hardship declaration creates a rebuttable presumption that a financial hardship related to COVID-19 exists, and results in a stay of foreclosure proceedings through January 15, 2022. A foreclosing party may challenge the validity of the claimed hardship, and obtain a hearing with the court to determine the validity of the claimed hardship.

AO 262/21 clears up any ambiguity that may have existed regarding whether a hardship declaration filed before September 2, 2021, pursuant to the initial version of the law, would receive the benefit of the extended hardship stay through January 15, 2022, or whether each mortgagor claiming a hardship would need to file a new hardship declaration after September 2, 2021 in order to obtain the extended stay. AO 262/21 makes clear that a previously filed hardship declaration results in a stay of foreclosure proceedings through January 15, 2022, unless it is successfully challenged and found to be invalid after a hearing.

The other notable aspect of AO 262/21 is that it explicitly “supersedes Administrative Orders 157/20, 232/20, 341/20, and 159/21.” AO 157/20, issued on July 23, 2020, before the CEEFFPA was enacted, created a requirement that the Supreme Court conduct a conference in any pending foreclosure actions before proceeding with the next stage in the litigation. The purpose of the conference was to allow the courts to inquire into the effects, if any, the COVID-19 pandemic may have had upon the parties, and review any special relief the parties may have been entitled to in light of the pandemic. With AO 157/20 superseded by AO 262/21, foreclosure actions should be able to proceed in the ordinary course, without a conference pursuant to AO 157/20, in any case in which a hardship declaration has not been filed. Whether the courts interpret AO 262/21 that way remains to be seen. AO 157/20 was arguably revoked by AO 159/21, issued on May 24, 2021, which explicitly superseded the provisions of any other Administrative Order inconsistent with it. Nevertheless, the Supreme Courts continued to require conferences pursuant to AO 157/20, before proceeding further in foreclosure actions. AO 262/21 goes further in specifically stating that it supersedes AO 157/20. We will monitor the Supreme Court’s reaction to AO 262/21, and report on any significant developments.