

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2008

ABOVE PAR LOSS PREVENTION, INC.,
Appellant,

v.

**GIORGIANA COLUCCI ALBANO, FRANK ALBANO, and NATIONAL
EQUITY RECOVERY SERVICES, INC.,**
Appellees.

No. 4D07-3675

[June 18, 2008]

WARNER, J.

Affirmed. The appellant complains of an order authorizing disbursement of surplus funds to National Equity Recovery Services (“NERS”), a surplus trustee for the receipt of foreclosure proceeds pursuant to section 45.033(3), Florida Statutes. Appellant claimed that it was entitled to the proceeds, as it had an assignment from the owners of the foreclosed property and was also a qualified surplus trustee. However, NERS also had an assignment from the owners and a letter from the owners to appellant rescinding the agreement with appellant, as the owner claimed that appellant was not properly qualified. The court order found that appellant was not properly qualified. There is no transcript of the hearing involved.¹ Without it, we cannot determine whether evidence was presented on issues which require resolution of questions of fact or that any of the issues raised in this appeal were preserved at the hearing. *See Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150 (Fla. 1979).

POLEN and TAYLOR, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Robert Lance Andrews, Judge; L.T. Case No. 06-12346

¹ The progress docket contained in the record on appeal shows an evidentiary hearing scheduled on the motions.

09.

Robert L. Shearin, Fort Lauderdale, for appellant.

No brief filed on behalf of appellees.

Not final until disposition of timely filed motion for rehearing.