

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	Case No. 09-CV-2207
)	
REBECCA GUTIERREZ, et al.,)	
)	
Defendants.)	

OPINION

This case is before the court for ruling on the Petition for Turnover of Surplus Funds and Other Relief (#53) filed by Defendants Wanda Bapp, Susan Colleen Lee and Morris Runner. The Petition (#53) is GRANTED.

BACKGROUND

The Government filed its Complaint (#1) in this foreclosure case on August 26, 2009. On September 17, 2010, this court entered an Order (#40) and entered default judgment in favor of the Government and against Defendants. This court's Order (#40) stated that the amount due from Defendants was \$21,931.49 as of 9/14/2010, exclusive of foreclosure costs. Judgment (#41) was entered in favor of the Government and against all Defendants on September 17, 2010. A United States Marshal's Report of Sale (#49) was filed on March 7, 2011. The Report of Sale stated that the total amount due as of the date of the sale, 1/27/2011, was \$21,952.61. The Report of Sale also stated that the costs of the sale totaled \$5,030.25, for a total amount of indebtedness of \$26,982.96. In addition, the Report of Sale stated that the amount bid at the sale was \$30,500.00 so that the amount of the surplus, minus

interest accrued from the date of the sale to the date of distribution, was \$3,517.14. A hearing was held on March 29, 2011, and this court entered a Decree Confirming United States Marshal's Report of Sale (#51). The Decree stated that the Report of Sale was approved and the sale was confirmed. The Decree also stated that "[a]ll surplus funds remaining after distribution of the mortgage sales proceeds shall be distributed by the United States Marshals Service to the Clerk of this Court to be deposited into the Court Registry Fund to be held therein without interest until further order of court."

PETITION FOR TURNOVER

As noted, on October 3, 2011, Defendants Bapp, Lee and Runner filed a Petition for Turnover of Surplus Funds and Other Relief (#53). Defendants stated that there is pending in the circuit court of Coles County, Illinois, a partition proceeding with regard to the real estate which was the subject of this foreclosure proceeding. Defendants stated that the partition proceeding was suspended and held in abeyance at the request of the Government after the Government's foreclosure action was filed in this court. Defendants stated that the surplus funds reflected in the United States Marshal's Report of Sale should be distributed and turned over to the Circuit Clerk of Coles County, Illinois, for distribution pursuant to any orders entered by the Circuit Court of Coles County in Cause No. 09-CH-32. Defendants asked this court to "enter an order directing the turnover of the surplus funds in this foreclosure proceeding, and that such funds be paid over to the Circuit Clerk of Coles County, Illinois, to be held pursuant to further order of the Circuit Court of Coles County, Illinois in Cause No. 09-CH-32." Defendants also asked this court to award "additional relief

as may be just and proper in the circumstances.”

The Government has not filed a response to Defendants’ Petition and no other Defendant has filed any opposition to the Petition.

IT IS THEREFORE ORDERED THAT:

(1) Defendants’ Petition for Turnover of Surplus Funds and Other Relief (#53) is GRANTED.

(2) The clerk of this court is directed to turn over the surplus funds held in the Court Registry Fund to the Circuit Court of Coles County, Illinois. The surplus funds are to be held by the Circuit Court of Coles County until an order setting out the proper distribution of the funds is entered by the Circuit Court of Coles County, Illinois, in Cause No. 09-CH-32.

(3) This court concludes that no further relief is necessary in this case.

ENTERED this 25th day of October, 2011

s/ Michael P. McCuskey
MICHAEL P. McCUSKEY
CHIEF U.S. DISTRICT JUDGE