

Dan Ruben
Executive Director
Equal Justice America
Building II, Suite 204
13540 East Boundary Road
Midlothian, VA 23112

August 24, 2015

Dear Mr. Ruben:

I would like to thank EJA and you for supporting my summer work at the New York Legal Assistance Group (NYLAG), where I was an intern with the Foreclosure Prevention Project. Over the course of ten weeks, I assisted homeowners in New York City and in Long Island's Nassau and Suffolk counties at every stage of foreclosure. Most of my time was spent with homeowners explaining the legal process and court producers and drafting documents for them to submit as pro se defendants. I worked on foreclosures ranging from conventional loan defaults to municipal tax liens or condominium matters. The staff attorneys at NYLAG were an incredibly dedicated team, each of whom took time to explain complex issues of real estate litigation to me and who provided an appropriate level of supervision.

Working in such diverse geographic areas, I counseled a variety of clients. Most homeowners in foreclosure want to keep their home, so that was our goal. One woman in the Bronx had been attending court supervised settlement conferences with her bank for over 18 months. She complied with each of the bank's requests, no matter how redundant, but still had not been approved for the mortgage modification that she needed in order to afford her house. All the while, her arrears were increasing and the bank would not accept payments. During one of the conferences that I attended, the bank finally approved a modification agreement, which included a retroactive tolling of the accrued interest. While this seemed like a victory, it then became clear that the bank expected to treat the tolled interest as forgiven debt, which is taxable income. For our low income homeowner, paying taxes on this "income" this was insult to injury. Our attorney pointed out that tolled interest cannot be forgiven debt because, by definition, the tolling means it never should of accrued and therefore cannot be taxed. The court referee found this to be a compelling point and asked both parties to research it further before the next meeting. While this client's case was unusually long, the obstacles that she faced and refusal to cooperate by the bank were typical of what I saw during my summer.

One family I assisted in Nassau County has a particularly complex set of issues. Not only were they being sued for foreclosure, they had lost thousands of dollars to a fraudulent housing counselor who promised he could resolve their mortgage issues. By the time this family came to our clinic, their case was nearing its end and they were at risk of losing their home in the next few months. The scammer had promised to provide legal representation as well, but had failed to answer their initial summons and complaint or to attend settlement conferences. To rectify the situation, I wrote a motion requesting that the family's settlement conferences be reinstated and a motion to submit a late answer to the complaint. Finally, I wrote an affidavit in opposition to the motion for foreclosure and sale that the bank had brought. My goal with these clients was to make sure that they were given their fair day in court, despite their scam experience. The Nassau courts are notoriously backlogged, so I was not able to see the results of these documents during the rest of my summer, but there was a sense of relief that I noticed

with these clients that they had found an organization that they trusted and which would assist them, free of charge.

While most of our work was defending homeowners against banks, sometimes I found myself contesting the courts themselves. In the Bronx, especially, there were issues with pro se defendants being denied court services over technicalities. I drafted a series of three or four documents for one woman, only to have her return the next week to tell me the courts wouldn't accept them for filing. I accompanied this client to the court house's motion part and asked why her forms were rejected. They told us that she had not opted out of the e-filing system and so they could not accept hard copies. I pointed out that the top sheet on her stack of papers was the opt-out form. How could they tell her that she cannot file her opt-out paperwork because she hadn't yet opted out?! The issue was not immediately resolved, but thankfully one of the supervising clerks understood the flawed and circular logic and offered to personally and manually file her motions despite the fact that the system would not accept them. While this particular client's issue was resolved, there are many pro se defendants without advocates who are still being deterred and whose paperwork is still being rejected.

I found my time at NYLAG to be incredibly fulfilling. Each day I worked to keep New Yorkers in their homes. While some would, ultimately, have to move to more affordable housing, there are many homeowners who have fallen behind on payments and are in foreclosure but who could still afford their property if given the opportunity to reinstate. The NYLAG staff attorneys ensure that these homeowners are given that opportunity, and that those who do need to relocate can do so gracefully. I am grateful to have spent my summer with the Foreclosure Prevention Project and to have contributed to their important work. Thank you, again, for helping to make this opportunity possible through the EJA fellowship program.

Sincerely,

A handwritten signature in black ink, appearing to read 'RTW Berkman', with a stylized, cursive script.

Winston Berkman
JD/MPA, expected 2017
New York University School of Law
NYU Wagner School of Public Service