

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-029961

05/27/2011

COMMISSIONER COLLEEN L. FRENCH

CLERK OF THE COURT
L. Nixon
Deputy

U S BANK NATIONAL ASSOCIATION

LAURA NELSON HALE

v.

PALM VALLEY DEVELOPMENT L L C, et al. DAVID E SHEIN

SONIA MOHAN PHANSE

MINUTE ENTRY

The Court conducted an evidentiary hearing in this matter on the issue of “fair market value,” pursuant to A.R.S. §33-814 on April 15, 2011 and April 26, 2011. The Court has considered all of the pleadings, the testimonies and other evidence presented, and the written closing memoranda submitted by counsel.

A.R.S. §33-814 provides that the amount of a deficiency judgment shall be calculated by subtracting the greater of either the sale price of the trust property, or the fair market value of the trust property, from the total amount owed the beneficiary. The Plaintiff paid \$1,985,550 for the trust property at the trustee’s sale; there were no other bidders. The Plaintiff’s bid was based upon a market value appraisal of the trust property completed three months before the trustee’s sale. Approximately three months after the trustee’s sale, Plaintiff sold the trust property at a substantial loss. The Defendants attempted to impeach the Plaintiff’s appraiser’s testimony regarding the value of the trust property by alleging that the appraiser’s methodology was flawed. Defendants also presented their own appraiser’s somewhat conclusory testimony that the trust property instead had a fair market value of \$4,000,000. Defendant’s proposed fair market value was not only more than twice what Plaintiff, the only bidder at the trustee’s sale, paid for the trust property, but was also coincidentally almost exactly equal to amount owed on the loan at the time of the trustee’s sale. The Court finds Defendants’ appraiser’s testimony unpersuasive, and Defendants’ attempts to impeach the Plaintiff’s appraiser’s opinion

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ineffective. The Court finds that Defendants have not presented sufficient, credible evidence demonstrating that the fair market value of the trust property is greater than the purchase price paid by Plaintiff at the trustee's sale, or \$1,985,550. Therefore,

IT IS ORDERED that the deficiency judgment amount in this matter be calculated by subtracting \$1,985,550 (the amount paid by Plaintiff for the trust property at the trustee's sale) from the total amount owed the beneficiary as of the date of sale.

IT IS FURTHER ORDERED that Plaintiff submit a proposed form of judgment to this Court for signature.