

# Foreclosure Decision Sounds Warning

By Craig D. Robins

Suffolk County Supreme Court Judge Jeffrey Arlen Spinner, sitting in Riverhead, just issued a highly controversial decision in a mortgage foreclosure case in which he totally cancelled the mortgage because of the mortgagee's egregious and shocking conduct in the case. (*IndyMac Bank v. Yano-Horoski*, decided November 19, 2009).

This has become one of the most newsworthy cases involving foreclosure litigation in years, as news outlets from around the country picked up on it. It was discussed on CNN; there were two Newsday articles about it; and News 12 and network news all covered it.



Hon. Jeffrey Arlen  
Spinner

Although this case began as a typical mortgage foreclosure case involving foreclosure of an IndyMac mortgage against an East Patchogue family, Judge Spinner determined that the lender engaged in "unconscionable, vexatious and opprobrious" conduct in attempting to foreclose the property. The judge concluded that the appropriate penalty was to cancel the mortgage in its entirety, essentially punishing the mortgagee and bestowing a windfall on the homeowner.

In a stinging and especially eloquent decision, Judge Spinner highlighted the relatively-new law in New York which mandates pre-foreclosure settlement conferences between lenders and borrowers of sub-prime loans, and the problems caused by IndyMac's wantonly-indifferent attitude towards participating in those conferences.

Judge Spinner determined that IndyMac refused to negotiate, and instead, treated the homeowner in a "harsh, repugnant, shocking and repulsive" manner by spurning what he thought could have been a "win-win" situation.

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tures. Whereas years ago, mortgagees sometimes got away with murder, now judges won't tolerate any improprieties.

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