

Please contact Richard Kruse at 614-774-4118 or rfk@gryphonusa.com for a Word version of this document.

IN THE COURT OF COMMON PLEAS
_____**COUNTY, OHIO**

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<p>Plaintiff,</p> <p>vs.</p> <p>Defendants.</p>		<p>Case No.</p> <p>Judge</p> <p>Parcel Number(s):</p> <p><u>MOTION TO APPOINT PRIVATE</u> <u>SELLING OFFICER</u></p>
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Now comes the Plaintiff, _____ ("Plaintiff"), by and through the undersigned counsel, and respectfully moves this Court for an Order appointing Richard F. Kruse as a Private Selling Officer, pursuant to Ohio Revised Code § 2329.151 and § 2329.152, for the purpose of conducting a public sale of the real property commonly known as _____. The reasons for Substitute Plaintiff's Motion are more fully set forth in the attached Memorandum in Support.

Respectfully submitted,

MEMORANDUM IN SUPPORT

I. STATUTORY AUTHORITY TO GRANT THE MOTION

This court has authority to appoint Richard F. Kruse ("PSO") to sell the Property pursuant to O.R.C. §§ 2329.151 and 2329.152 of the Revised Code.

Section 2329.151 of the Ohio Revised Code provides in relevant part:

Except as provided in sections 2329.152 to 2329.154 of the Revised Code, all public auctions of . . . lands levied upon by execution shall be conducted personally by one of the following:

(A) An officer of the court;

. . .

(C) For the public auction of lands, a private selling officer.

Section 2329.152 of the Ohio Revised Code provides in relevant part:

In every action demanding the judicial or execution sale of real estate, the county sheriff shall sell the real estate at a public auction, unless the judgment creditor files a motion with the court for an order authorizing a specified private selling officer to sell the real estate at a public auction. If the court authorizes a private selling officer to sell the real estate, the judgment creditor may seek to have the property sold by the private selling officer authorized by the court or by the county sheriff.

Section 2329.01 of the Ohio Revised Code defines "private selling officer" to mean a person who is (1) a resident of Ohio, (2) licensed as an auctioneer under Chapter 4707 of the Revised Code, and (3) licensed as either a real estate broker or a real estate salesperson under Chapter 4735 of the Revised Code.

Richard F. Kruse meets the definition of private selling officer. The PSO is (1) a resident of Ohio, (2) licensed as an auctioneer under Chapter 4707 of the Revised Code, and (3) licensed as a real estate broker or salesperson under Chapter 4735 of the Revised Code. Copies of the curriculum vitae and applicable licenses for Richard F. Kruse are attached hereto as an exhibit.

II. APPOINTING THE PSO IS IN THE INTEREST OF ALL PARTIES

Appointing the PSO to sell the Property is in the interest of all parties to this action. The PSO will conduct the sale in a timely manner and will be able to postpone the sale without the time or additional cost of a reappraisal and republication if there is a need for postponement, such as the need for time to evaluate a loss mitigation option or to complete an independent appraisal of the Property. The PSO may also market the property to third parties beyond the customary local newspaper publication. The PSO may conduct the auction online, which would open the sale to a wider audience and stimulate bidding. The additional steps taken by the PSO will increase the likelihood that the sale price will be maximized, for the benefit of all parties, and help to achieve the primary objective of a foreclosure sale. According to the Ohio Supreme Court, the primary objective of the sale of a property in foreclosure is to obtain the highest sale price.

Our ruling is consistent with the primary purpose and goal of a foreclosure sale: to protect the interests of the mortgagor-debtor, *Union Bank Co. v. Brumbaugh*, supra, at 208, 23 O.O. 3d at 222, 431 N.E. 2d at 1025, and at the same time ensure that secured creditors will receive payment for unpaid debts. An obvious corollary of this concept is the desire to obtain the maximum amount of money from the sale.

Ohio Savings Bank v. Ambrose (1990), 56 Ohio St. 3d 53, 56.

III. RESPONSIBILITIES OF THE PSO

Pursuant to O.R.C. § 2329.152, this Court may appoint a PSO to perform certain aspects of the foreclosure sale, including advertising and auction of the Property. Specifically, if appointed, the PSO shall (1) advertise the Property; (2) conduct an auction of the property; (3) engage the service of a properly licensed title agent or title company; (4) execute to the purchaser

(or purchaser's designee) a deed conveying the Property; and (5) record the deed conveying the Property to the purchaser.

The PSO shall advertise the Property in a newspaper of general circulation for a minimum of three (3) consecutive weeks pursuant to O.R.C. §§ 2329.26-2329.27. The PSO may place the Property with the area Multiple Listing Service (MLS) if the PSO is a member of the area MLS. The PSO may perform additional advertisement related to the sale of the Property, including, but not limited to, online advertisement, social media advertisement, and direct marketing to potential purchasers. In furtherance of advertising the Property for sale, the PSO may hold an open house or photograph the interior of the Property pursuant to ORC § 2329.272 if the Property is not occupied and was previously secured and within the control of the Plaintiff.

The PSO shall sell the Property in accordance with the applicable sections of O.R.C. §§ 2329.01 to 2329.61. The highest bidder will be required to provide the sale deposit, as required under O.R.C. §2329.211, typically within 2 hours of the end of the auction.

The PSO shall engage the services of a duly licensed title agent or title company to provide title, escrow, and closing services related to the sale of the Property, which title agent or company may also provide additional administrative services to the PSO.

The PSO shall execute a deed of conveyance to the purchaser (or purchaser's designee) of the Property and cause the deed to be recorded on behalf of the purchaser.

The PSO shall file with the court a report that includes (1) the costs incurred for appraisal, publication, marketing, and any other expenses; (2) the fees charged by the title agent or title company for title, escrow, closing services, and administrative services, if applicable; and (3) the fees charged by the PSO related to the sale of the Property. In the event the judgment creditor remits payment directly to the PSO related to the sale of the Property and none of the

PSO fees will be charged as court costs, the PSO is authorized to list \$0.00 on the report of sale regardless of any contractual payment received by the PSO from the judgment creditor. In the event the Property is purchased by a third party, a Buyer's Premium as established by the terms of sale will be added to the winning bid amount to establish the total contract price, and the Buyer's Premium will be listed on the report of sale. The costs and fees contained in the report are to be taxed as costs to the case, as applicable, as set forth in O.R.C. § 2329.152.

IV. CONCLUSION

Substitute Plaintiff respectfully requests this Court to appoint a Private Selling Officer in this matter to (1) advertise the Property; (2) conduct an auction of the property; (3) engage the service of a properly licensed title agent or title company; (4) execute to the purchaser (or purchaser's designee) a deed conveying the Property; and (5) record the deed conveying the Property to the purchaser.

For all the reasons set forth above, the Substitute Plaintiff requests that this Court enter an Order appointing Richard F. Kruse as Private Selling Officer related to the Property.

Respectfully submitted,

CERTIFICATE OF SERVICE

The undersigned hereby certify that a copy of the foregoing Motion to Appoint Private Selling Officer was sent upon the following parties by ordinary first class U.S. Mail, postage prepaid, or electronic mail (e-mail) on the date indicated below:

First Class U.S. Mail:

Electronic Mail (e-mail):

By

Date

**IN THE COURT OF COMMON PLEAS
DELAWARE COUNTY, OHIO**

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**Wilmington Savings Fund Society, FSB, not in
its individual capacity but solely in its capacity
as Owner Trustee for Cascade Funding
Mortgage Trust HB2**

Plaintiff,

vs.

**Sheila Rae Martin, AKA Sheila R. Martin,
AKA Sheila Martin, et al.**

Defendants.

Case No. 20 CV E 01 0020

Judge James P. Schuck

**Parcel Number(s): 620-430-01-006-
000**

**ORDER TO APPOINT PRIVATE
SELLING OFFICER**

This matter is before the Court on the Motion of Substitute Plaintiff, Wilmington Savings Fund Society, FSB, not in its individual capacity but solely in its capacity as Owner Trustee for Cascade Funding Mortgage Trust HB2 ("Substitute Plaintiff") to Appoint a Private Selling Officer pursuant to ORC § 2329.152. The Court finds Richard F. Kruse is a resident of Ohio, a licensed auctioneer pursuant to ORC § 4707.01, *et. seq.*, and a licensed real estate broker or real estate salesperson pursuant to ORC § 4735.01, *et. seq.* The Court finds the Motion to be well-taken and **GRANTS** Substitute Plaintiff's request.

Therefore, it is hereby **ORDERED, ADJUDGED** and **DECREED**:

1. Substitute Plaintiff is authorized to use Richard F. Kruse as the Private Selling Officer ("PSO") for the purpose of conducting the sale of the real property commonly known as 4116 Radnor Road, Radnor, OH 43066 ("Property").
2. The PSO shall advertise the Property in a newspaper of general circulation for a minimum of three (3) consecutive weeks pursuant to O.R.C. §§ 2329.26-2329.27 and

may place the Property with the area Multiple Listing Service (MLS) if the PSO is a member of the area MLS. The PSO may perform additional advertisement related to the sale of the Property, including, but not limited to, online advertisement, social media advertisement, and direct marketing to potential purchasers. The PSO may perform additional advertisement related to the sale of the Property, including, but not limited to, online advertisement, social media advertisement, listing with the local Multiple Listing Service (MLS), and direct marketing to potential purchasers.

3. The PSO may hold an open house or photograph the interior of the Property pursuant to ORC § 2329.272 if the Property is not occupied and was previously secured and within the control of the Substitute Plaintiff.
4. The PSO shall sell the Property in accordance with the applicable sections of O.R.C. §§ 2329.01 to 2329.61.
5. The PSO shall engage the services of a duly licensed title agent or title company to provide title, escrow, and closing services related to the sale of the Property, which may also provide additional administrative services to the PSO.
6. The PSO shall not be required to provide or obtain an Agency Disclosure Statement and Residential Property Disclosure Form related to the sale of the Property.
7. The PSO shall execute a deed of conveyance to the purchaser (or purchaser's designee) of the Property and cause the deed to be recorded on behalf of the purchaser.
8. In the event the Property is purchased by a third party, the third party purchaser shall pay to the PSO a Buyer's Premium as established by the terms of sale.
9. The PSO shall file with the court an itemized report that includes the costs incurred for appraisal, publication, marketing, and any other expenses; and the fees charged by the

PSO related to the sale of the Property. The costs and fees related to the sale of the Property are to be taxed as costs to the case as set forth in O.R.C. § 2329.152.

IT IS SO ORDERED.