

The Bankruptcy Judge in, IN RE AGARD (Eastern District, New York Case no.: 810-77338, entered 2/10/11) recently held:

In LaSalle Bank, N.A. v. Bouloute the court concluded that MERS must have some evidence of authority to assign the mortgage in order for an assignment of a mortgage by MERS to be effective. **Evidence of MERS's authority to assign could be by way of a power of attorney or some other document executed by the original lender.** See Bouloute , 2010 WL 3359552, at*1;

Alderazi , 900 N.Y.S.2d at 823 (“To have a proper assignment of a mortgage by an authorized agent, a **power of attorney is necessary** to demonstrate how the agent is vested with the authority to assign the mortgage.”) (quoting HSBC Bank USA, NA v. Yeasmin, 866 N.Y.S.2d92 (N.Y. Sup. Ct. 2008)). Other than naming MERS as “nominee”, the Mortgage also provides that the Borrower transfers legal title to the subject property to MERS, as the Lender’s nominee, and acknowledges MERS’s rights to exercise certain of the Lender’s rights under state law. **This too, is insufficient to bestow any authority upon MERS to assign the mortgage.** In Bank of New York v. Alderazi, the court found “[t]he fact that the borrower acknowledged and consented to MERS acting as nominee of the lender has no bearing on what specific powers and authority the lender granted MERS.” Alderazi, 900 N.Y.S.2d at 824. Even if it did bestow some authority upon MERS, the court in Alderazi found that the mortgage did not convey the specific right to assign the mortgage **The Court agrees** with the reasoning and the analysis in Bouloute and Alderazi, and the other cases cited herein and finds that **the Mortgage, by naming MERS a “nominee,” and/or “mortgagee of record” did not bestow authority upon MERS to assign the Mortgage.** The Court agrees with the reasoning and the analysis in Bouloute and Alderazi, and the other cases cited herein and finds that the Mortgage, **by naming MERS a “nominee,” and/or “mortgagee of record” did not bestow authority upon MERS to assign the Mortgage.**