Renwick, J.P., Gische, Kapnick, Gesmer, Moulton, JJ.

10059 & Index 260269/14
M-7020 NYCTL 1998-2 Trust, et al.,
Plaintiffs-Respondents,

-against-

Alanis Realty LLC, et al.,
Defendant-Appellant,

City of New York Environmental
Control Board, et al.
Defendants.

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598 Eagle Avenue LLC,
Proposed Intervenor-Respondent-Appellant.

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Joseph A. Altman P.C., Bronx (Joseph A. Altman of counsel), for appellant.

Desiderio, Kaufman & Metz PC, New York (Jeffrey R. Metz of counsel), for 598 Eagle Avenue, respondent-appellant.

The Law Office of Thomas P. Malone, PLLC, New York (Christopher Kohn of counsel), for NYCTL 1998-2 Trust and The Bank of New York Mellon, respondents.

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Order, Supreme Court, Bronx County (Ben R. Barbato, J.), entered on or about October 4, 2018, to the extent it denied defendant Alanis Realty LLC's motion to vacate the judgment of foreclosure and sale entered upon its default, unanimously affirmed, and appeal therefrom to the extent it denied the proposed intervenor's cross motion to intervene as moot, dismissed, without costs, as academic.

Defendant failed to demonstrate a reasonable excuse for its

default and a meritorious defense to this foreclosure action (*see* CPLR 5015[a][1]; *Facsimile Communications Indus., Inc. v NYU Hosp. Ctr.*, 28 AD3d 391 [1st Dept 2006]). Contrary to defendant's contention, CPLR 317, which does not require the showing of a reasonable excuse for default, does not apply to this action (Administrative Code of City of NY § 11-340).

Defendant, the owner of the foreclosed property, claims that it did not receive notice of the summons and complaint served on the Secretary of State pursuant to Limited Liability Company Law § 303. This is not a reasonable excuse, given defendant's failure to keep a current address on file with the Secretary of State for at least five years (*see NYCTL 2015-A Trust v Diffo Props. Corp.*, 171 AD3d 538 [1st Dept 2019]).

Defendant's proposed answer and its principal's affidavit contain only conclusory assertions, which do not establish a meritorious defense (see *East N.Y. Sav. Bank v Sun Beam Enters.*, 234 AD2d 131, 132 [1st Dept 1996]). Defendant's claimed willingness to pay the tax lien well after the property was sold at auction is not a defense (*NYCTL 2015-A Trust*, 171 AD3d at 539). Nor did defendant provide any support for its contention that the sales price was unconscionable.

The proposed intervenor, as the subsequent purchaser of the property, should have been permitted to intervene in Supreme

Court. However, now that we are affirming, this issue is academic.

We have considered the parties' remaining arguments for affirmative relief and find them unavailing.

M-7020 ***NYCTL 1998-2 Trust v Alanis Realty LLC***

Motion to strike brief and dismiss cross appeal granted to the extent of dismissing the cross appeal as academic.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 10, 2019

CLERK

Renwick, J.P., Gische, Kapnick, Gesmer, Moulton, JJ.

10060 In re Nashally M.,
Petitioner,

-against-

Jamaray C.,
Respondent-Appellant.

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Leslie S. Lowenstein, Woodmere, for appellant.

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Order, Family Court, Bronx County (Peter J. Passidomo, J.), entered on or about May 31, 2016, which, upon a finding, after a hearing, that respondent committed acts constituting a family offense, issued a one-year order of protection in favor of petitioner, unanimously affirmed, without costs.

The expiration of the order of protection does not moot the appeal since enduring consequences may flow from the adjudication that respondent has committed a family offense (*see Matter of Veronica P. v Radcliff A.*, 24 NY3d 668, 671-672 [2015]; *Matter of Juana R. v Chelsea R.*, 154 AD3d 613 [1st Dept 2017]). Although the Family Court failed to specify the particular family offense under Family Court Act § 812(a) that respondent committed, remittal is not necessary because the record is sufficient for this Court to conduct an independent review of the evidence (*see e.g. Matter of Kimberly O. v Jahed M.*, 152 AD3d 441, 442 [1st Dept 2017], *lv denied* 30 NY3d 902 [2017]; *Matter of Christina KK.*

v Kathleen LL., 119 AD3d 1000, 1001 [3d Dept 2014]; *Matter of Stewart v Lassiter*, 103 AD3d 734 [2d Dept 2013]).

A preponderance of the evidence presented at the fact-finding hearing established that respondent engaged in acts that would constitute the offenses of attempted assault in the third degree (Penal Law § 110.00/120.00[1]), reckless endangerment in the second degree (Penal Law § 120.20), and criminal obstruction of breathing or blood circulation (Penal Law § 121.11). Respondent admitted on the record that he grabbed petitioner's neck and threatened to end her life, and petitioner confirmed that respondent choked her (*see e.g. Matter of King v King*, 150 AD3d 1116, 1117 [2d Dept 2017]).

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: OCTOBER 10, 2019

CLERK