

No. 17-9398

IN THE
Supreme Court of the United States

MARTIN E. ROCK

PETITIONER,

V.

EXECUTIVE OFFICE PARK OF DURHAM ASSOCIATION, INC.

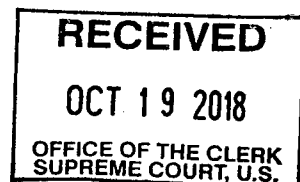
RESPONDENT,

ON PETITION FOR A WRIT OF CERTIORARI TO
THE NORTH CAROLINA SUPREME COURT

PETITION FOR REHEARING

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In the Supreme Court of the United States

No. 17-9398

MARTIN E. ROCK, *PRO SE*, PETITIONER

v.

EXECUTIVE OFFICE PARK OF DURHAM ASSOCIATION,
INC.

**ON WRIT OF CERTIORARI
TO THE NORTH CAROLINA
SUPREME COURT**

PETITION FOR REHEARING

Pursuant to Rule 44 of this Court, the Petitioner, hereby respectfully and timely petitions for rehearing and reconsideration of this case before the Court.

Any petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ shall be filed within 25 days after the date of the order of denial and shall comply with all the form and filing requirements of paragraph 1 of this Rule, including the payment of the filing fee if required, but its grounds shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. [Rule 44.2]

As required under Rule 44.2, the grounds of this Petition for Rehearing are limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented. In compliance with this requirement, Petitioner filed an Amended

Petition with the Court prior to 01 October 2018, the Court apparently did not consider the Amended Petition, and Rock's Amended Petition is hereby incorporated by reference as a possible basis for rehearing. Whether or not the Fair Debt Collection Practices Act ("FDCPA") applies to blatant abuse in the foreclosure context is certainly both substantial and controlling.

1. This case involves a challenge to a March 2017 Order Allowing Sale in a non-judicial foreclosure proceeding conducted by the Respondent ("EOP"), without any proper authorization. Power of sale for such a non-judicial sale is not conferred on EOP by the Declaration, the Declaration actually requires a judicial "by action" proceeding, the difference between a judicial and a non-judicial foreclosure proceeding may be outcome determinative in this case, and EOP may not claim alleged power of sale authority under the North Carolina Condominium Act ("NCCA"), N.C.G.S. Ch. 47C. Even if the NCCA were applicable to a non-condominium, commercial unit owners association, the statute itself states on its face that it may not invalidate the Declaration.

2. Petitioner filed a Motion for Leave to Amend the Petition for Writ of Certiorari and an Amended Petition prior to 01 October 2018. Postal delivery receipts show U.S. Mail delivered these filings to the Court prior to entry of an order to dismiss the original Petition, yet it appears the Order of Dismissal was entered without consideration of the Amended Petition.

3. The Amended Petition was filed based on important and germane recent developments, and so is this Petition for Rehearing.

The Amended Petition was based on recent developments in the case of *Obduskey v. McCarthy & Holthus LLP, et al.*, (No. 17-1307, U.S. Supreme Court), which case was recently granted a Writ of Certiorari for consideration of the issue of whether the Fair Debt Collection Practices Act ("FDCPA") applies in the foreclosure context. The *Obduskey* case bears directly on this case as the FDCPA may serve to prevent the exact type of abuse Petitioner challenges here, particularly where the attorneys are collections attorneys, where there is no deed of trust, where no power of sale authority was conferred on EOP by the Declaration, and where the Declaration instead refers to a statutory provision requiring a judicial "by action" foreclosure proceeding.

4. The reasoning for the "substantial" and "controlling" nature of the applicability of the FDCPA to abuses in the foreclosure context is clearly stated in the Amended Petition:

This case is about blatant abuse of authority and process by the Respondents. After two prior dismissals, Respondents claim power of sale authority is conferred on the Association ("EOP") by the North Carolina Condominium Act ("NCCA"), *N.C.G.S. Chapter 47C*, where the NCCA is derived from the Uniform Condominium Act (1980) ("UCA") drafted by the National Conference Of Commissioners On Uniform State Laws. However, EOP has no power of sale authority and EOP may not use Ch. 47C statutory power of sale foreclosure proceedings under the NCCA against Rock for several reasons including:

First, EOP is a commercial unit owners association, and is not classified or described as a residential condominium in the Declaration. Second, EOP is an incorporated, nonprofit and tax-exempt, unit owners association created on 09 November 1982, and the NCCA is generally inapplicable prior to 01 October 1986. Moreover, NCCA foreclosure provisions are explicitly inapplicable where they would invalidate the Declaration. Third, the EOP Declaration states the Properties are units subject to the North Carolina Unit Ownership Act, Chapter 47A of the North Carolina General Statutes (N.C.G.S.), and any foreclosure by EOP must be brought under Article 8 of Chapter 44 of the N.C.G.S., which requires foreclosure "by action", as provided in the Declaration and Ch. 47A.

5. **Ordinarily, it is exceedingly rare for this Court to grant rehearing -- except in cases where there is an open vacancy on the bench.**

But when this Court has conducted plenary review and then affirmed by vote of an equally divided court because of a vacancy rather than a disqualification, the Court has not infrequently granted rehearing before a full Bench.

"[R]ehearing petitions have been granted in the past where the prior decision was by an equally divided Court and it appeared likely that upon reargument a majority one way or the other might be mustered." Stephen M. Shapiro et al., *Supreme Court Practice* § 15.6(a), at 838 (10th ed. 2013). "The small number of cases in which a full Bench can rehear a case decided by an equal division probably amounts to the largest class of cases in which a petition for rehearing after decision on the merits has any chance of success." *Id.* at 839.

For example, the government petitioned for rehearing in *United States v. One 1936 Model Ford V-8 De Luxe Coach*, 305 U.S. 666 (1938),

after this Court divided equally in a case when there was a vacancy due to Justice Cardozo's death, but before the vacancy was filled. This Court granted the petition, *ibid.*, then heard the case after Justice Frankfurter was confirmed. 307 U.S. 219 (1939).

This Court similarly granted petitions for rehearing before a full Bench in a series of cases decided 4-4 after Justice McReynolds' retirement caused a vacancy in 1941;¹ after a leave of absence by Justice Jackson caused a temporary vacancy in 1945;² and after Justice Jackson's death caused a vacancy in 1954. ³ See also, *e.g.*, *Pollock v. Farmers' Loans & Trust Co.*, 158 U.S. 617 (1895) (similar for absence due to illness); *id.* at 601-606 (reproducing petition for rehearing discussing earlier cases); *id.* at 606-607 (granting rehearing).

- 6. In this case, an order of dismissal of the Petition for Writ of Certiorari was entered while there was an open vacancy on the Court and Contemporaneously, the Court granted a Writ of Certiorari on the substantial and controlling issue of whether the FDCPA is applicable in the foreclosure context.**

Contemporaneously, the Court granted a Writ of Certiorari in *Obduskey v. McCarthy & Holthus LLP, et al.*, (No. 17-1307), with documents filed as late as 17 September 2018, for consideration of the issue of whether the Fair Debt Collection Practices Act ("FDCPA") applies in the foreclosure context – a question also presented and potentially dispositive of the entire matter as shown in Rock's Amended Petition for Writ of Certiorari. Hence, there is a strong need for definitive resolution by this Court at this stage, and this case should be reconsidered in light of a forthcoming decision in *Obduskey*.

* * * * *

For the foregoing reasons, the petition for rehearing should be granted.

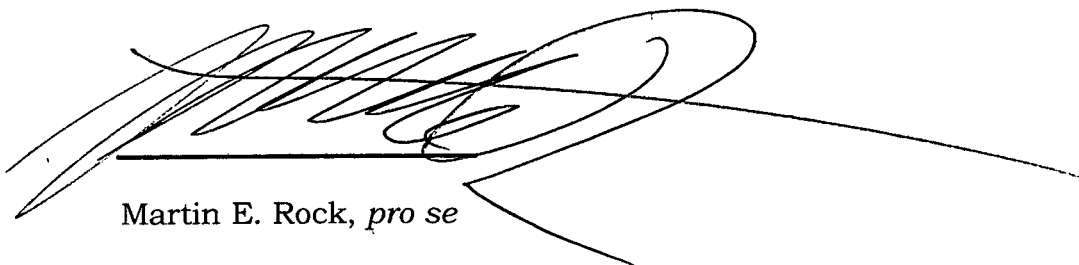
Respectfully submitted,

10 October 2018,

Martin E. Rock
Petitioner *pro se*

CERTIFICATE OF PETITIONER

I hereby certify this petition for rehearing
is presented in good faith and not solely for
delay.

A handwritten signature in black ink, appearing to read "Martin E. Rock", is written over a horizontal line. The signature is stylized with multiple loops and a long horizontal stroke extending to the right.

Martin E. Rock, *pro se*