

At Commercial Division Part 39
Supreme Court of the State of New
York, held in and for the County of
New York, at the Courthouse located at
60 Centre Street, New York, New
York, on the ___ day of January, 2013

P R E S E N T:

HONORABLE BARBARA R. KAPNICK, J.S.C.

In the matter of the application of

THE BANK OF NEW YORK MELLON (as Trustee under various
Pooling and Servicing Agreements and Indenture Trustee under
various Indentures), *et al.*

Petitioners,

for an order, pursuant to C.P.L.R. § 7701, seeking judicial
instructions and approval of a proposed settlement.

Index No. 651786/2011

Assigned to: Kapnick, J.
(Part 39)

**ORDER TO SHOW
CAUSE WHY THE
COURT SHOULD NOT
COMPEL DISCOVERY
OF EVIDENCE THAT
THE TRUSTEE HAS
PLACED AT ISSUE AND
THAT IS SUBJECT TO
THE FIDUCIARY
EXCEPTION**

UPON the annexed Affirmation of Clare Pennington, dated January 13, 2013, with
exhibits attached thereto, the accompanying Memorandum of Law in Support of Order to Show
Cause Why the Court Should Not Compel Discovery of Evidence That the Trustee Has Placed at
Issue And That Is Subject to the Fiduciary Exception, dated January 14, 2013, and all pleadings
and proceedings previously had herein,

SUFFICIENT CAUSE THEREFOR BEING ALLEGED, IT IS HEREBY

ORDERED that petitioner The Bank of New York Mellon (“BNYM”) show cause
before this Court at Commercial Division Part 39, to be held at 60 Centre Street, New York, New
York, on the 7th day of February, 2013 at 10:00 a.m., or as soon as counsel may be heard, why
an order should not be entered pursuant to CPLR § 3124 as follows:

- 1) compelling BNYM to produce communications with counsel at the meeting as referenced in the accompanying memorandum; and
- 2) compelling BNYM to produce communications with and documents generated by counsel concerning BNYM's evaluation of the settlement amount, including its decision to retain RRMS Advisors and to forego a review of loan files; and
- 3) compelling communications with and documents generated by counsel concerning its own self-dealing, as detailed in the corresponding memorandum; and
- 4) compelling BNYM to produce one or more witnesses to testify on the above topics; and
- 5) awarding such other and further relief as the Court may deem just and proper.

SUFFICIENT REASON APPEARING THEREFOR, let service of a copy of this Order, together with the papers upon which it was granted, upon counsel for BNYM, by electronic filing service, and a courtesy copy of the signed order by electronic mail on or before the 14th day of January, 2013, be deemed good and sufficient service. In accordance with the briefing schedule previously ordered by this Court, any answering papers shall be filed and served upon all counsel of record on or before January 28, 2013, and reply papers shall be filed and served upon all counsel of record on or before February 1, 2013.

Oral argument is requested on this motion.

Counsel submitting this Order to Show Cause has affirmed that a good faith effort has been made to resolve the issues raised in this Order to Show Cause with counsel for BNYM.

ENTER,

J.S.C.