

**WORKING COPIES FOR JUDICIAL REVIEW**

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 15 day of January, 2013

**P R E S E N T:**

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

**MOTION SEQUENCE # 03/**

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.

*Berry alleges*  
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 16<sup>th</sup> 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~~ *with the Clerk in IA Part 39, and at 4pm* served upon all counsel of record on or before January 28, 2013, and reply papers shall be filed *with the Clerk in IA Part 39* 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,

  
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J.S.C.

**BARBARA R. KAPNICK**  
J.S.C.

  
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**ORAL ARGUMENT  
DIRECTED**

J.S.C.

**BARBARA R. KAPNICK**  
J.S.C.