

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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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,

-against-

[VARIOUS PROPOSED INTERVENORS],

Respondents,

for an order pursuant to CPLR § 7701 seeking judicial
instructions and approval of a proposed settlement.
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Index No. 651786/2011

Assigned to: Kapnick, J.

**BRIEF IN SUPPORT
OF OBJECTION TO
SETTLEMENT**

Respondent intervenors, the Knights of Columbus (the “Knights”) submit this Objection to Settlement, pursuant to CPLR 401, 1012 and 1013, to protect the Knights’ approximately \$100 million in losses in trusts included in the proposed settlement. While the Court is being presented with an objection filed by the Steering Committee, which will not be repeated here, the Knights have unique objections to the Settlement because the Bank of New York Mellon (“BNYM”) breached its duties to the Knights.

The Knights filed against BNYM a non-adversarial action for an accounting (the “Accounting Action”) concerning specific and detailed servicing violations committed by the Master Servicer, n/k/a Bank of America, N.A. The Accounting Action at a minimum put BNYM on notice of specific potential servicing violations and that the Knights were interested in assessing the losses related to those violations.

BNYM could have informed the Knights that it was attempting to settle the

servicing issues and invited the Knights' input. BNYM did not do that, however.¹ Instead, BNYM's counsel misled the Knights about BNYM's intentions concerning the Accounting Action, claiming that BNYM did not know what it was going to do respecting the Accounting Action² when, in fact, BNYM was working to settle the Accounting Action out from under the Knights and without the Knights' participation.³ Indeed, on June 24, 2011, counsel for BNYM told counsel for the Knights, consistent with a prior statement,⁴ that "we still do not know what we are going to do in this case."⁵

Two business days later, BNYM executed the Settlement and on the following day, June 29, counsel for BNYM signed and filed the petition initiating this proceeding for approval of the Settlement. The petition characterized the Knights' then non-adversarial Accounting Action as one of the "conflicting demands" that was "creating the potential for conflicts among Certificateholders and placing the Trustee squarely in the middle of those conflicts." Thus, after excluding the Knights from the settlement negotiations, BNYM thrust the Knights into the result.

Part of that "result" included a lengthy and expensive trial, which contained a mechanism to reimburse the settlement proponents' legal fees either through an indemnity or a contingency fee, but contained no mechanism to reimburse the Knights' (and other objectors') fees and expenses. That trial has revealed that BNYM completely

¹ Ex 4160 (Stipulated testimony of Talcott J. Franklin) ¶¶ 4-9.

² Ex 4160 (Stipulated testimony of Talcott J. Franklin) ¶¶ 4-9.

³ See "Settlement Amount Opinion" from BNYM's expert, RRMS Advisors, which is dated June 7, 2011.

⁴ Ex 4160 (Stipulated testimony of Talcott J. Franklin) ¶ 7.

⁵ *Id.* ¶ 8.

failed to value the multiple servicing violations described in the Accounting Action, despite having detailed notice of the same. Trial Tran. (Kravitt) 1345:12-1347:20; 1349:9-25; 1566:8-23; 1990:5-9 (BNYM made no investigation of the loan files or the alleged Event of Default); 1830:19-1831:14 (BNYM did not value the servicing violations); 1831:15-1832:21 (BNYM did not value the document exception claims). Trial Tran. (Bailey) 2297:6-22; 2354:11-2355:6 (BNYM did not determine whether there was an Event of Default); 2408:13-22 (BNYM did not review loan files and did not ask for loan files). Trial Tran. (Lundberg) 4613:4-8, 22-25 (BNYM did not investigate any Event of Default).

In all, BNYM excluded the Knights from the settlement negotiations, misled the Knights about BNYM's intentions, used the Knights' non-adversarial action as a foil to justify the Article 77 petition, thrust the Knights into a lengthy and expensive proceeding without any mechanism for reimbursement for the Knights' attorneys' fees and expenses, and, without the Knights' knowledge or consent, settled out from under the Knights the non-adversarial Accounting Action without even attempting to assess the value of the claims at issue.

In no universe could BNYM's actions toward the Knights be considered "reasonable". *Dabney v. Chase Nat'l Bank*, 196 F.2d 668, 671 (2d Cir. 1952) ("indeed, a trust for the benefit of a numerous and changing body of bondholders appears to us to be preeminently an occasion for a scruple even greater than ordinary; for such beneficiaries often have too small a stake to follow the fate of their investment and protect their rights."). The Knights object to the settlement.

Dated: October 29, 2013

Respectfully Submitted,

/s Peter N. Tsapatsaris
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