

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

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-

WALNUT PLACE LLC, *et al.*,

Intervenor-Respondents.

Index No. 651786/2011

Assigned to: Kapnick, J.

APPLICATION FOR AN ORDER TO SHOW CAUSE

Pursuant to N.Y.C.P.L.R. 2214(d), and upon the accompanying Memorandum of Law and supporting Declaration of Thomas Teige Carroll and the exhibits thereto, the Attorney General of the State of New York, Eric T. Schneiderman (“NYAG”), hereby respectfully requests issuance of an order to show cause why the Court should not grant NYAG’s motion to intervene, as follows:

1. NYAG moved to intervene in this matter on August 4, 2011. Petitioner the Bank of New York Mellon (“BNYM”) and the Institutional Investors opposed NYAG’s motion. Walnut Place removed the matter on August 26, 2011. Accordingly, this Court held on October 31, 2011 that NYAG’s pending motion to intervene was moot.
2. In federal court, this matter was assigned to Judge William H. Pauley III, who granted the NYAG’s motion to intervene on November 18, 2011. *See In the Matter of the Application of The Bank of New York Mellon v. Walnut Place LLC*, 1:11-cv-05988-

WHP (S.D.N.Y. Nov. 18, 2011). On February 27, 2012, the U.S. Court of Appeals for the Second Circuit remanded the case to this court.

3. Shortly thereafter, NYAG commenced negotiations with BNYM and the Institutional Investors to secure their consent to its intervention. The parties have been unable to reach an agreement.

4. The parties in the case have now commenced briefing on questions fundamental to the Article 77 proceeding and critical to this office's interest in ensuring the integrity of New York's securities markets and the welfare of its investors. Those questions include the standard the Court should use in assessing BNYM's conduct in engaging in the settlement, and the scope of discovery necessary to permit the Court to reach fully-informed conclusions about that conduct. NYAG seeks to intervene in order to participate fully in the resolution of these questions and to address the other substantive matters at issue in the case.

5. On April 10, 2012, NYAG requested by letter to the Court that it grant NYAG's August 4, 2011 motion to intervene, on the basis of an amended pleading in intervention that removed from this proceeding the affirmative claims for relief under the Martin Act, Executive Law and common law in NYAG's initial pleading in intervention. The same day, the Court by telephone suggested that NYAG seek the relief requested by order to show cause, returnable on the date of the other motions presently being briefed.

WHEREFORE, Petitioner respectfully requests that this Application be granted in the form attached at Exhibit A, together with such other relief as the Court deems proper.

Dated: April 13, 2012
New York, New York

ERIC T. SCHNEIDERMAN
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By: 

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