

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.

**MEMORANDUM OF ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL OF
THE STATE OF NEW YORK, IN SUPPORT OF AN ORDER TO SHOW CAUSE
ON HIS MOTION TO INTERVENE**

The Attorney General submits this memorandum in support of an order to show cause on his motion to intervene filed on August 4, 2011 in this matter.

By this application for an order to show cause the New York State Attorney General (“NYAG”) asks the Court to grant its August 4, 2011 motion to intervene, which this Court disposed of as moot following this matter’s removal to federal court. Because the action has been remanded to state court, NYAG now renews its application to become a party.

NYAG renews its request for intervention on a narrower basis than in its original motion. NYAG’s amended proposed pleading in intervention deletes the affirmative counter-claims that were included in the previous pleading in intervention and relies solely on the NYAG’s objection to the proposed settlement. (Carroll Dec., Ex. G.)

For the reasons set out in the memorandum supporting NYAG’s initial motion to intervene, this Court should permit NYAG’s intervention as a party in this proceeding. As the federal district court held in granting NYAG’s motion to intervene, the NYAG has “undisputed” *parens patriae* standing to “secur[e] an honest marketplace” and “to protect citizens from breaches of fiduciary duty and to rectify those breaches.” In addition, as the federal court further found, NYAG’s participation “will protect the interests of absent investors.” (See Carroll Dec., Ex. F, at 3) (citations omitted).

Finally, this Article 77 proceeding, as framed by BNYM, could potentially impair claims that NYAG may otherwise assert against the trustee, since BNYM seeks (among other things) judicial findings of fact and conclusions of law affirming that it engaged in no misconduct and acted reasonably. (See Carroll Dec., Ex. A, at 6-7; *Id.* Ex. D, at 7-8.)

CONCLUSION

For all the foregoing reasons, the Attorney General respectfully requests that the Court grant his motion to intervene.

Dated: April 13, 2012
New York, New York

ERIC T. SCHNEIDERMAN
Attorney General of the State of New York

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