

**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), BlackRock Financial Management Inc. (intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor), Maiden Lane II, LLC (intervenor), Maiden Lane III, LLC (intervenor), Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by The TCW Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC (intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America (intervenor), Invesco Advisers, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank Baden- Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital LLC (intervenor), ING Investment Management LLC (intervenor), New York Life Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge Life Insurance Company, and Western Reserve Life Assurance Co. of Ohio (intervenor), Federal Home Loan Bank of Atlanta (intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset Management Company (intervenor),

Petitioners,

-against-

COMMONWEALTH ADVISORS, INC.,
(Proposed Intervenor)

Respondent.

Index No.: 651786/2011

Assigned to Kapnick, J.

**VERIFIED PETITION
TO INTERVENE**

For its petition pursuant to CPLR §§ 401, 1012 and 1013 to intervene as a respondent in this Article 77 proceeding, proposed Intervenor-Respondent Commonwealth Advisors, Inc.

(“Commonwealth”) states and alleges as follows:

1. On June 29, 2011, the Bank of New York Mellon (“BNY” or the “Trustee”), as trustee for 530 residential mortgage-backed securities trusts (the “Covered Trusts”), either sold or serviced by Countrywide Home Loans, Inc., or its affiliates (“Countrywide”), filed a Petition seeking approval of a proposed settlement (the “Proposed Settlement”) with Countrywide and its parent, Bank of America Corporation (“BoA”), as well as judicial instructions.

2. The terms of the Proposed Settlement include, *inter alia*, the payment of \$8.5 billion by BoA into the trusts in exchange for a release of *all* claims against BoA and Countrywide related to the Covered Trusts, purportedly binding on all investors and other persons.

3. The Proposed Settlement includes a release of all claims against Countrywide and BoA related to the Covered Trusts, as well as claims against Trustee BNY for, *inter alia*, any breach of its fiduciary duty to the beneficiaries of the Covered Trusts. (Proposed Settlement Agreement, Ex. B, ¶¶ (k), (p).)

4. Commonwealth is a money management firm based in Baton Rouge, Louisiana.

5. Commonwealth purchased notes in the Covered Trusts either on its own behalf or on behalf of its clients for which it manages discretionary accounts, including but not limited to the following Covered Trusts: CWALT 2004-35T2, CWALT 2004-J2, CWALT 2005-17, CWALT 2005-J10, CWALT 2006-HY13, CWALT 2006-HY13, CWALT 2006-J5, CWALT 2006-J5, CWALT 2007-1T1, CWALT 2007-9T1, CWALT 2007-OA2, CWHL 2004-25, CWHL 2004-25, CWHL 2005-11, CWHL 2005-21, CWHL 2005-HYB6, CWHL 2005-J3, CWHL 2006-

J2, CWHL 2007-12, CWHL 2007-HYB2, CWL 2004-1, CWL 2004-1, CWL 2004-10, CWL 2004-12, CWL 2004-13, CWL 2004-2, CWL 2004-3, CWL 2004-3, CWL 2004-6, CWL 2004-6, CWL 2004-8, CWL 2004-9, CWL 2004-AB2, CWL 2004-BC4, CWL 2004-BC5, CWL 2004-ECC2, CWL 2005-10, CWL 2005-13, CWL 2005-7, CWL 2005-AB1, CWL 2006-11, CWL 2006-3, CWL 2006-BC5, CWL 2007-2 and CWL 2007-4.

6. Commonwealth is therefore a Certificateholder or Trust Beneficiary as defined in BNY's Petition. (*See* Trustee's Petition, ¶ 2.)

7. Commonwealth's investment in the Covered Trusts was in excess of \$150 million.

8. As a Certificateholder in the Covered Trusts, Commonwealth has suffered significant losses. Given the bar to any claims against Countrywide, BoA and BNY which would be imposed upon Commonwealth under the terms of the Proposed Settlement submitted for this Court's approval by the Trustee, Commonwealth has an interest in this Article 77 proceeding.

9. The Proposed Settlement was allegedly the product of a year-long negotiation between the Trustee, Countrywide and BoA, and twenty-two institutional investors (the "Institutional Investors"). The existence of these settlement negotiations ("Settlement Negotiations") was not disclosed to Commonwealth until the Trustee filed its Petition on June 29, 2011.

10. Commonwealth does not have sufficient information to evaluate the Proposed Settlement.

11. The negotiating parties are alleged to have exchanged documents and information "related to potential liabilities and defenses, and alleged damages" that have never been

disclosed to investors in the Covered Trusts. (*See Proposed Settlement Agreement at 2.*)

Commonwealth seeks to review all the documents and communications exchanged between the Trustee and the Institutional Investors and to otherwise pursue discovery from BoA, BNY and Countrywide related to Commonwealth's potential claims against Countrywide, BoA and BNY before these claims are barred.

12. The Proposed Settlement was purportedly reached after review of expert reports. (*See Trustee's Petition, ¶ 61.*) Commonwealth seeks, *inter alia*, to review all of the underlying documents and communications that were used to create the expert reports that were relied upon by the Trustee in connection with the Proposed Settlement.

13. The Proposed Settlement does not provide an opt-out mechanism. All investors in the Covered Trusts, including those like Commonwealth who were not included in the Settlement Negotiations with the Trustee, are purportedly bound by the Proposed Settlement's provisions, (*see Proposed Settlement Agreement, ¶ (e)*), although they were provided no opportunity to review relevant documents or engage in discovery.

14. Moreover, the participants in the Settlement Negotiations may not adequately represent the interests of Commonwealth, as set forth below.

15. First, Countrywide and BoA are adverse to all potential claimants with respect to the Proposed Settlement and cannot, therefore, represent Commonwealth's interest.

16. Second, the Trustee has expressly recognized "that some Certificateholders may disagree with the Trustee's judgment that the Settlement is reasonable" and that "different groups of Certificateholders may wish to pursue remedies for all alleged breaches in different ways, creating the potential for conflicts among Certificateholders." (*See Trustee's Petition, ¶¶ 13-14.*)

17. Third, the composition of the Institutional Investors' investments in the Covered Trusts varies from those of Commonwealth. Therefore the interests of the Institutional Investors in supporting the Proposed Settlement might not align with the interests of Commonwealth.

18. Fourth, the attorneys for the Institutional Investors seek to receive \$85 million under the Proposed Settlement, in addition to any ongoing monthly fees and expenses, which are also paid for by BoA. (See Proposed Settlement Agreement, Ex. F.) Therefore there is a strong economic incentive for counsel to the Institutional Investors to recommend this early settlement, even if the Proposed Settlement fails to provide an adequate recovery for Commonwealth.

19. Finally, under the terms of the Proposed Settlement, BNY is insulated from any claims arising out of any breach of fiduciary duty to the beneficiaries of the Covered Trusts. (See Proposed Settlement Agreement, Ex. B, ¶¶ (k), (p).) Therefore, Trustee BNY cannot be expected to adequately represent the interest of all beneficiaries, including Commonwealth.

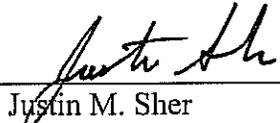
20. In order to protect the interests as described above, Commonwealth submits this Petition to Intervene so that it may participate in discovery to evaluate the Proposed Settlement and to otherwise exercise its rights as a party in this proceeding.

RELIEF REQUESTED

Proposed Intervenor-Respondent Commonwealth respectfully requests that the Court grant its Petition to Intervene in the Article 77 proceeding, directing that Commonwealth Advisors, Inc., be added as a respondent to the caption of this Case, directing that the Trustee's Petition and Notice of Petition be amended by adding Commonwealth Advisors, Inc., permitting discovery to proceed, and award such other further relief as may be just.

Dated: New York, New York
August 30, 2011

SHER LLP

By: 
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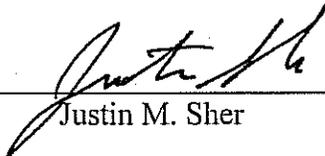
Attorneys for Commonwealth Advisors, Inc.

VERIFICATION

JUSTIN M. SHER, an attorney duly admitted to practice before the courts of the State of New York, verifies and affirms under penalty of perjury as follows:

1. I am a partner at Sher LLP, attorneys for proposed Intervenor-Respondent Commonwealth Advisors, Inc.
2. I have read the foregoing Petition and state that the contents thereof are true to my knowledge, except as to the matters alleged on information and belief, and as to those matters, I believe them to be true based on documents furnished to me by Commonwealth Advisors, Inc.
3. This verification is not being made by Commonwealth Advisors, Inc. because its officers are not in the county where my firm has its office.

Dated: New York, New York
August 30, 2011


Justin M. Sher