

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

PRESENT: MARCY S. FRIEDMAN

PART 60

*Justice*

In the matter of the application of

INDEX NO. 652382-2014

U.S. BANK NATIONAL ASSOCIATION,  
THE BANK OF NEW YORK MELLON, THE  
BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., WILMINGTON TRUST,  
NATIONAL ASSOCIATION, LAW  
DEBENTURE TRUST COMPANY OF NEW  
YORK, WELLS FARGO BANK, NATIONAL  
ASSOCIATION, HSBC BANK USA, N.A.,  
AND DEUTSCHE BANK NATIONAL  
TRUST COMPANY (as trustees under various  
Pooling and Servicing Agreements and  
indenture trustees under various Indentures),

MOTION SEQ. NO.:

Petitioners,

For an order, pursuant to CPLR § 7701,  
seeking judicial instruction.

The following papers, number 1 to \_\_\_\_\_ were read on Anthony L. Viola’s opposition to the settlement and notice of intention to appear.

Notice of Motion/Order to Show Cause – Affidavits – Exhibits...

No(s). \_\_\_\_\_

Answering Affidavits – Exhibits \_\_\_\_\_

No(s). \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

No(s). \_\_\_\_\_

CROSS-MOTION:       YES     NO

By letter dated October 25, 2014 entitled Opposition to the Settlement and Notice of Intention to Appear, Anthony L. Viola (Viola) interposed objections to the proposed settlement (Viola Opposition).<sup>1</sup> Viola objects to the proposed settlement and seeks an order from this court permitting him to appear in person or via telephone at the December 16, 2014 hearing in this proceeding.<sup>2</sup>

By Omnibus Response dated November 17, 2014, petitioners U.S. Bank National Association, The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A., Wilmington Trust, National Association, Law Debenture Trust Company of New York, Wells Fargo Bank, National Association, HSBC Bank U.S.A., N.A., and Deutsche Bank National Trust Company, solely in their respective capacities as trustees, indenture trustees, successor trustees, and/or separate trustees (collectively, the Trustees) of residential mortgage-securitization trusts (the Accepting Trusts), object to the Viola Opposition. The Trustees assert that Viola lacks standing to object to the settlement or appear in this matter because Viola is not a certificateholder in any of the Accepting Trusts, and that Viola fails to meet the requirements for intervention as of right under CPLR 1012(a)(2) and 1012(a)(3) or for permissive intervention under CPLR 1013.

<sup>1</sup> The Clerk is directed to e-file the Viola Opposition as part of the court file in this proceeding.

<sup>2</sup> Subsequent to the filing of his Opposition, Viola submitted a “Motion to Amend Opposition to the Proposed Settlement” to attach a USA Today article about JP Morgan Chase lawyer Alayne Fleischmann. The clerk is directed to e-file this Motion with the article.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASONS

In a federal criminal action before the Eastern Division of the United States District Court for the Northern District of Ohio, Viola was convicted of wire fraud in connection with his operation of a real estate brokerage firm, and was sentenced to a prison term of 12 ½ years. (Viola Opp. at 1). He was also ordered to pay restitution to JP Morgan (or a subsidiary).<sup>3</sup>

The court holds that Viola is not eligible to intervene or object in this matter because he does not claim to be a certificateholder, and does not otherwise make a showing that he is a potentially interested person in the Accepting Trusts or the subject matter of this proceeding. Viola argues that his conviction in the federal criminal action and the sentencing order requiring him to pay restitution were based on perjured testimony of a JP Morgan representative, and that JP Morgan has since made admissions in settlements that contradict the testimony it gave in the federal criminal action. Viola argues that he should not be required to pay restitution to JP Morgan as a result of its allegedly unlawful conduct (“payments to bond pools should be offset against any restitution order”), and that allowing this settlement to proceed without addressing his criminal conviction would undermine confidence in the integrity of the judicial process. (Viola Opp. at 1-2.) Viola’s claims regarding his criminal prosecution and sentence are appropriately addressed not in this state court civil proceeding, but in the federal court of competent jurisdiction. The court takes judicial notice that Viola made similar claims in the federal criminal action in support of motions to hold the restitution order in abeyance and to terminate restitution. These arguments were categorically rejected by the federal sentencing court by orders dated October 21, 2014.<sup>4</sup> This court plainly lacks jurisdiction to modify the orders of the federal court. Viola is not, however, without a remedy, and is currently pursuing an appeal before the Sixth Circuit. (Viola Opp. at 3.)

In light of this holding, Viola’s motion for leave to appear is denied as moot. Viola has no absolute right to be produced in this civil proceeding in which he is not a party and does not have the requisite interest to intervene. (See generally Nussbaum v Steinberg, 269 AD2d 192, 192 [1st Dept 2000], citing Pope v Pope, 198 AD2d 406, 407 [2d Dept 1993].)

This constitutes the decision and order of this court. The Clerk shall mail a copy to proposed objector.

Dated: 11-25-14

  
\_\_\_\_\_, J.S.C.  
**MARCYS S. FRIEDMAN, J.S.C.**

1. Check one: .....  CASE DISPOSED  NON-FINAL DISPOSITION  
2. Check as appropriate: .... Motion is:  GRANTED  DENIED  GRANTED IN PART  OTHER  
3. Check if appropriate: .....  SETTLE ORDER  SUBMIT ORDER

<sup>3</sup> United States v Viola, US Dist Ct, ND OH, July 11, 2013, Nugent, J. (Case: 1:08-cr-00506-DCN, Doc #: 428).

<sup>4</sup> Id., Doc #s 458 & 459.