

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 Daniel Mumbower’s opposition to the proposed settlement.

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 Proposed Settlement, Daniel Mumbower (Mumbower) interposed objections to the proposed settlement (Mumbower Opposition).¹ Mumbower objects to the settlement and seeks, among other relief, reversal or modification of a restitution order entered against him and access to certain lender files.

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 Mumbower Opposition. The Trustees assert that Mumbower lacks standing to object to the settlement or appear in this matter because Mumbower is not a certificateholder in any of the Accepting Trusts, and that Mumbower 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.

The court takes notice that Mumbower pleaded guilty to federal criminal charges of bank fraud and receipt of bribes by a bank employee in an action brought before the United States

¹ The Clerk is directed to e-file the Mumbower Opp. as part of the court file in this proceeding.

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

District Court for the Eastern District of Pennsylvania.² Mumbower was sentenced to 41 months in prison and ordered to pay restitution to JP Morgan Chase (or its subsidiary).³

The court holds that Mumbower is not eligible to intervene, object or appear 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. Mumbower argues that he should not be required to pay restitution to JP Morgan as a result of its allegedly unlawful conduct. (Mumbower Opp. at 1-2.) Mumbower further appears to contend that he is entitled to discovery in order to obtain certain lender files at issue in his criminal case that he asserts may be at issue in the “bond pools” in this proceeding. (*Id.* at 1.) The court takes judicial notice that Mumbower made similar arguments in the federal criminal action and such arguments were rejected by order dated October 7, 2014.⁴ This court plainly lacks jurisdiction to modify the orders of the federal court.

In light of this holding, Mumbower’s request for discovery is denied as moot. Moreover, this state court proceeding is not the proper forum to award such discovery.

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.
MARCY S. FRIEDMAN, J.S.C.

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|--|--|---|--|--------------------------------|
| 1. Check one: | <input type="checkbox"/> CASE DISPOSED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION | | |
| 2. Check as appropriate: Motion is: | <input type="checkbox"/> GRANTED | <input type="checkbox"/> DENIED | <input type="checkbox"/> GRANTED IN PART | <input type="checkbox"/> OTHER |
| 3. Check if appropriate: | <input type="checkbox"/> SETTLE ORDER | <input type="checkbox"/> SUBMIT ORDER | | |

² United States v Mumbower, US Dist Ct, ED PA, March 14, 2014, Jones II, J. (Case: 2:13-cr-00524-CDJ, Doc #: 19).

³ *Id.*

⁴ United States v Mumbower, Doc #: 25.