

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

In the matter of the application of

WELLS FARGO BANK, NATIONAL
ASSOCIATION, et al.,

Petitioners,

For Judicial Instructions under CPLR Article 77
on the Administration and Distribution of a
Settlement Payment.

Index No. 657387/2017

IAS Part 60

Justice Marcy Friedman

**AFFIRMATION OF DAVID I. SCHIEFELBEIN
IN SUPPORT OF PETITIONERS' ORDER TO SHOW CAUSE**

I, David I. Schiefelbein, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirm under penalty of perjury, pursuant to CPLR 2106, as follows:

1. I am an attorney with the firm McKool Smith, P.C., counsel for Nover Ventures, LLC ("Nover"), and in that capacity am familiar with the facts and circumstances of this proceeding.

2. On February 5, 2018, the Institutional Investors submitted their proposed Agreed Scheduling Order. Attached hereto as Exhibit A is a true and correct copy of the [Proposed] Agreed Scheduling Order filed with the Court in this matter on February 5, 2018 as NYSCEF Doc. No. 187.

3. After hearing argument on February 13, 2018, the Court entered the final Scheduling Order in substantially the same form. Attached hereto as Exhibit B is a true and correct copy of the Scheduling Order filed with the Court in this matter on February 13, 2018 as NYSCEF Doc. No. 194.

4. The holdings affirmations that Nover received pursuant to the Scheduling Order did not address whether the interests held were subject to repurchase agreements.

5. On March 12, 2018, Tilden Park, the Institutional Investors, AIG, DW Partners, and the Olifant Funds (collectively, the “Challenging Holders”) filed with the Court a motion seeking to exclude from this proceeding those respondents who do not hold “certificates issued by the Settlement Trust.” Attached hereto as Exhibit C is a true and correct copy of the Challenging Holders’ Consolidated Memorandum of Law In Support of Joint Motion to Limit Standing to Certificateholders in the Settlement Trusts (the “Standing Motion”) filed with the Court in this matter on March 12, 2018 as NYSCEF Doc. No. 251.

6. In the Standing Motion, the Challenging Holders clarified, for the first time, that their interpretation of “indirect” and “derivative” holdings included entities that sold their notes, but retained the right to repurchase those holdings. (Exh. C at 15.)

7. After reviewing this argument, and the language of the holdings affidavits exchanged on February 21, 2018, it became evident that some certificates listed as “directly owned” in the February 21 affidavits, were in fact “indirectly owned” under the Challenging Holders’ theory and therefore would not convey the right to participate in this proceeding.

8. On March 27, 2018, Nover requested that the participants in this proceeding agree to “submit a further affirmation indicating that they are or are not the record owner of the CUSIP as reflected on the account of the custodian as of the date of their prior affirmation.” Attached hereto as Exhibit D is a true and correct copy of Gayle R. Klein’s email to the Article 77 Participants dated March 27, 2018.

9. Pursuant to leave of Court entered on April 3, 2018, on April 9, 2018, Nover and the Institutional Investors jointly submitted to the Court a letter advising of their positions

regarding the exchange of supplemental affidavits that would clarify whether their direct holdings are subject to repurchase agreements. Attached hereto as Exhibit E is a true and correct copy of the joint submission to the Court addressing Nover's request for a supplemental affirmation regarding repurchase agreements filed with the Court in this matter on April 9, 2018 as NYSCEF Doc. No. 300.

10. Thereafter, on April 12, 2018, Nover submitted its opposition to the Challenging Holders' Standing Motion. Attached hereto as Exhibit F is a true and correct copy of Nover's Memorandum in Opposition to Consolidated Memorandum of Law in Support of Joint Motion to Limit Standing to Certificateholders in the Settlement Trusts, filed with the Court in this matter on April 12, 2018 as NYSCEF Doc. No. 349.

11. On May 10, 2018, the Court heard oral argument on the issue of Nover's request for a supplemental affirmation addressing repurchase agreements. Attached hereto as Exhibit G is a true and correct copy of the Transcript of the Telephonic Hearing on May 10, 2018, filed with the Court in this matter on May 23, 2018 as NYSCEF Doc. No. 402.

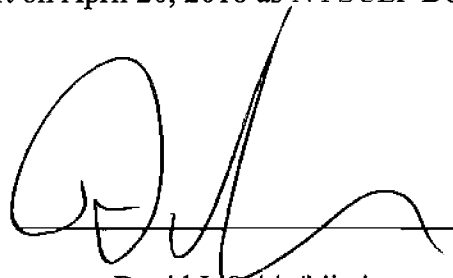
12. On May 22, 2018, the Court issued an Order denying Nover's request for a supplemental affirmation regarding repurchase agreements. Attached hereto as Exhibit H is a true and correct copy of the Court's May 22 Order (NYSCEF Doc. No. 401) (the "May 22 Order").

13. No Notice of Entry has, as of yet, been filed for the May 22 Order.

14. On April 20, 2018, this Court entered an Order to Show Cause in *In the matter of the application of U.S. Bank National Association, et al. for Judicial Instructions under CPLR Article 77 on the Administration and Distribution of a Settlement Payment*, Index No. 651625/2018 (the Lehman Article 77 proceeding) wherein it defined repurchase agreements as

indirect holdings. Attached hereto as Exhibit I is a true and correct copy of that Order to Show Cause, Index No. 651625/2018, filed with the Court on April 20, 2018 as NYSCEF Doc. No. 37.

Dated: June 29, 2018
New York, New York

A handwritten signature in black ink, appearing to read 'D. Schiefelbein', written over a horizontal line.

David I. Schiefelbein