

At IAS Part 60 of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse located at 60 Centre Street, New York, New York on the ___ day of _____, 2020

P R E S E N T: Hon. Marcy S. Friedman, Justice.

In the matter of the application of
WELLS FARGO BANK, NATIONAL ASSOCIATION,
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,
HSBC BANK USA, N.A., and DEUTSCHE BANK
NATIONAL TRUST COMPANY (as Trustees, Indenture
Trustees, Securities Administrators, Paying Agents, and/or
Calculation Agents of Certain Residential Mortgage-
Backed Securitization Trusts),

Petitioners,

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

Index No. 657387/2017

**[PROPOSED] PARTIAL
SEVERANCE ORDER AND
PARTIAL FINAL
JUDGMENT**

(BSABS 2007-FS1)

WHEREAS, the Petitioners identified in the above case caption commenced this proceeding under CPLR Article 77 by filing a petition (the “Petition”) seeking judicial instructions concerning the administration and distribution of a settlement payment (the “Settlement Payment”) for 270 residential mortgage-backed securities trusts identified in Exhibit A to the Petition (the “Settlement Trusts”) under a settlement agreement dated as of November 15, 2013 and modified as of July 29, 2014 (the “Settlement Agreement”); and

WHEREAS, this Partial Severance Order and Partial Final Judgment (the “Order”) concerns BSABS 2007-FS1 (the “Undisputed Trust”), which is one of the Settlement Trusts subject to the Settlement Agreement; and

WHEREAS, the Undisputed Trust is governed by a Pooling and Servicing Agreement (the “Subject PSA”), pursuant to which U.S. Bank National Association is the payment administrator and trustee (in all such capacities collectively, the “Subject Petitioner”); and

WHEREAS, all capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Petition or the Subject PSA, as applicable;

WHEREAS, pursuant to the Settlement Agreement, the Settlement Payment is to be apportioned among the Settlement Trusts, including the individual loan groups therein and classes of principal only certificates therein, based on “Allocable Shares” calculated in an expert report filed with the Court at NYSCEF Nos. 178 and 179; and

WHEREAS, by Order to Show Cause dated December 19, 2017 and Interim Order dated December 20, 2017 (collectively, the “December Orders”), the Court authorized and directed the Petitioners to place the Allocable Shares for the Settlement Trusts in escrow; and

WHEREAS, the Court has been advised that the escrow provisions of the December Orders have been complied with and that the Allocable Shares for the Settlement Trusts, plus any investment earnings thereon, are currently invested as directed in the December Orders; and

WHEREAS, under the December Orders, the Court directed the Petitioners to provide notice of this proceeding pursuant to the notice program described in the December Orders (the “Notice Program”), and the Court found that the Notice Program was the best notice practicable, was reasonably calculated to put interested persons on notice of the proceeding, and constituted due and sufficient notice of the proceeding in satisfaction of federal and state due process requirements and other applicable laws; and

WHEREAS, the Notice Program directed that interested persons respond to the Petition on or before January 29, 2018, and only AEGON USA Investment Management, LLC,

BlackRock Financial Management, Inc., Cascade Investment, LLC, the Federal Home Loan Bank of Atlanta, the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), Goldman Sachs Asset Management L.P., Voya Investment Management LLC, Invesco Advisers, Inc., Kore Advisors, L.P., Metropolitan Life Insurance Company, Pacific Investment Management Company LLC, Teachers Insurance and Annuity Association of America, the TCW Group, Inc., Thrivent Financial for Lutherans, and Western Asset Management Company (each for themselves and, to the extent applicable, as investment managers of funds and accounts, and collectively, the “Institutional Investors”); and HBK Master Fund L.P. (“HBK”) asserted an interest in the Undisputed Trust; and

WHEREAS, HBK asserted ownership interests in the Undisputed Trust through its interests in a NIM trust, but not in certificates issued by the Undisputed Trust;

WHEREAS, on August 7, 2018, the Court granted a motion for summary judgment filed by the Institutional Investors and other investors, thereby dismissing HBK as respondent with respect to any Settlement Trust in which it does not hold certificates (Dkt. No. 471) (the “Standing Decision”);

WHEREAS, in the Standing Decision, the Court afforded HBK an opportunity to substitute into the proceeding the trustee of the NIM trust structure through which it asserted an interest in the Undisputed Trust;

WHEREAS, on September 14, 2018, the Court so-Ordered a Stipulation and Order Regarding Trustee Substitutions, under which HBK substituted into this case U.S. Bank National Association, solely in its capacity as Trustee of the NIM trust (“U.S. Bank as NIM Trustee”)

through which HBK asserted an interest in the Undisputed Trust (Dkt. No. 514) (the “Trustee Substitution Stipulation”);¹

WHEREAS, after giving effect to the Standing Decision and the Trustee Substitution Stipulation, the Institutional Investors and U.S. Bank as NIM Trustee are the only parties with standing to appear with respect to the Undisputed Trust;

WHEREAS the Institutional Investors and U.S. Bank as NIM Trustee agree and consent to this Order, which resolves the issues for which judicial instruction was sought concerning the administration and distribution of the Allocable Shares for the Undisputed Trust (the “Subject Allocable Shares”); and

WHEREAS, as used herein, the term “Judgment Entry Date” means the first date on which counsel of record to the parties hereto receive a copy of this Order signed by the Court by email or NYSCEF service, without regard to when the Court actually signs or the Clerk actually enters this Order; and

WHEREAS, the term “Overcollateralization Amount Calculation” is used herein to refer to the terms in the Subject PSA prescribing that the “overcollateralization amount” is equal to the excess of the aggregate balances of the mortgage loans held by the Undisputed Trust over the aggregate certificate principal balances of certain designated classes of certificates, as more fully defined and described in the Subject PSA; and

¹ This substitution was effectuated pursuant to and in accordance with a direction and indemnity agreement by and among HBK and U.S. Bank as NIM Trustee. At the direction of HBK, U.S. Bank as NIM Trustee agrees and consents to this Order as indicated herein. As set forth in the applicable agreements, U.S. Bank’s capacity in its role as NIM Trustee is separate and distinct from U.S. Bank’s capacity in its role as Trustee and/or Payment Administrator for the Settlement Trusts, and these separate roles were created at the closing of the applicable transactions. In this proceeding, U.S. Bank has separate counsel for its NIM Trustee roles and Trustee/Payment Administrator roles.

WHEREAS, as used herein, the term “Transfer Month” means the calendar month of the Judgment Entry Date, if the Judgment Entry Date is on or before the eighth calendar date of that month, and otherwise the month immediately following the month of the Judgment Entry Date; and

WHEREAS, as used herein, the term “Transfer Target Date” means the fifteenth day of the Transfer Month; and

WHEREAS, as used herein, the term “AS Distribution Date” means the Distribution Date for the Undisputed Trust occurring in the Transfer Month, and

NOW, THEREFORE, on the motion of Warner Partners, P.C. and Gibbs & Bruns LLP, attorneys for the Institutional Investors, and Perkins Coie LLP, attorneys for U.S. Bank as NIM Trustee, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Petitioner is to (i) cause escrowed assets to be liquidated to cash with a value equal to the Subject Allocable Shares plus any investment earnings thereon, and (ii) cause the Subject Allocable Shares and investment earnings thereon to be deposited in the Distribution Account of the Undisputed Trust. From the time of the aforementioned deposit, the amounts so deposited shall be deemed the Subject Allocable Shares for the Undisputed Trust for all purposes under the Settlement Agreement and this Order; and it is further

ORDERED, ADJUDGED and DECREED that sums representing investment earnings accrued on the Subject Allocable Shares not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall be distributed (x) on the Distribution Date for the month the Trailing Interest is received by the Subject Petitioner so long as the Trailing Interest is received on or before the fifteenth day of the month

or (y) if the Trailing Interest is received after the fifteenth day of the month, on the Distribution Date for the immediately following month. Any Trailing Interest shall be deemed to be Subject Allocable Shares for the Undisputed Trust, and any Trailing Interest shall be administered and distributed as Subject Allocable Shares subject to the terms of the Settlement Agreement and this Order; and it is further

ORDERED, ADJUDGED and DECREED that the Subject Petitioner shall distribute the Subject Allocable Shares to certificateholders of the Undisputed Trust on the AS Distribution Date; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for the Undisputed Trust, the Subject Petitioner (i) shall first distribute the Subject Allocable Shares to certificateholders based on certificate principal balances that have not been adjusted by the Settlement Payment Write-Up, and, after such distribution, (ii) shall then increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up in a manner consistent with this Order; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for the Undisputed Trust, the Subject Petitioner shall account for both the distribution of the Subject Allocable Shares and accompanying Settlement Payment Write-Up when performing the Overcollateralization Amount Calculation; and it is further

ORDERED, ADJUDGED and DECREED that to effectuate the immediately preceding paragraph, the Subject Petitioner shall calculate the aggregate certificate principal balances used for the Overcollateralization Amount Calculation by (i) first increasing such certificate principal balances by the amount of the Settlement Payment Write-Up and (ii) then reducing such certificate principal balances by an amount equal to the applicable Subject Allocable Shares, and

this paragraph and the immediately preceding paragraph shall have no application to the calculation of certificate principal balances for any purposes other than performing the Overcollateralization Amount Calculation, and, further, for the avoidance of doubt, with respect to the Distribution Date on which the Subject Allocable Shares are distributed, the instructions in this paragraph and the immediately preceding paragraph are intended to and shall prevent the Undisputed Trust from being overcollateralized as a result of the receipt, administration, and/or distribution of the Subject Allocable Shares (but shall not impact whether the Undisputed Trust is overcollateralized on such Distribution Date as result of anything unrelated to the receipt, administration, and/or distribution of the Subject Allocable Shares); and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for the Undisputed Trust, the Subject Petitioner shall increase the certificate principal balance of the applicable classes of certificates in the amount of the Settlement Payment Write-Up in accordance with the subsequent recovery write-up instructions in Section 5.04(b) of the Subject PSA; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Shares for the Undisputed Trust, the Subject Petitioner shall (i) apply the Retired Class Provision to prevent the distribution of the Subject Allocable Shares to any applicable class of certificates with aggregate certificate principal balances of zero dollars (\$0.00) immediately prior to the AS Distribution Date (“Zero Balance Classes”); (ii) apply the Retired Class Provision to permit the Settlement Payment Write-Up to be applied only to classes of certificates with aggregate certificate principal balances greater than zero dollars (\$0.00) immediately prior to the AS Distribution Date (the “Outstanding Classes”); *provided, however,* that if the Settlement Payment Write-Up exceeds the aggregate unpaid realized losses of all

Outstanding Classes of the Undisputed Trust or of an individual loan group of the Undisputed Trust, such excess amount of the Settlement Payment Write-Up shall be applied to Zero Balance Classes in such Undisputed Trust or loan group thereof in a manner consistent with this Order; and (iii) if the aggregate certificate principal balance of the Class A Certificates in a loan group in the Undisputed Trust is zero dollars (\$0.00) immediately prior to the AS Distribution Date (the “Zero Balance Loan Group”), apply the Class A Redirection Provision in the Subject PSA to cause the Subject Allocable Shares assigned to the Zero Balance Loan Group to be distributed to Class A Certificates that are both from a different loan group and have an aggregate certificate principal balance greater than zero dollars (\$0.00) (the “Outstanding Class A Certificates”), and cause the accompanying Settlement Payment Write-Up to be applied to the certificates in the same loan group as the Outstanding Class A Certificates in a manner consistent with this Order; and it is further

ORDERED, ADJUDGED and DECREED that any aspects of the administration and distribution of the Subject Allocable Shares not expressly addressed in this Order shall be performed as provided for in the Subject PSA and the Settlement Agreement; and it is further

ORDERED, ADJUDGED and DECREED that this Order is not applicable to, shall be without prejudice to, and shall have no precedential effect on (i) any argument of any party concerning the appropriate administration and distribution of the Settlement Payment for the Settlement Trusts for which there is a dispute among the parties regarding how the Settlement Payment should be administered or distributed; (ii) the Settlement Trusts for which no investors have appeared in this proceeding or any trust, indenture, or other securitization other than the Undisputed Trust, or (iii) any applications to certificate balances (*e.g.*, write-ups) or distributions of payments or funds other than the Subject Allocable Shares; and it is further

ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties claiming rights or interests in the Undisputed Trust are barred from asserting claims against the Subject Petitioner with respect to any conduct taken to implement and comply with the terms of this Order and with respect to the Subject Petitioner's administration and distribution of the Subject Allocable Shares, so long as such conduct is performed in accordance with the terms of this Order; and it is further

ORDERED, ADJUDGED and DECREED that upon the occurrence of the Judgment Entry Date, the Subject Petitioner shall promptly post a copy of this Order, bearing the Court's signature, on <http://rmbstrusteesettlement.com>, the website established by Petitioners; and it is further

ORDERED that the Clerk of New York County be, and he hereby is, directed to enter this Order forthwith and without delay, to the extent practicable during the COVID-19 public health emergency.

Dated: New York, New York

_____, 2020

ENTER:

Hon. Marcy S. Friedman. J.S.C.

Judgment signed and entered this _____ day of _____ 2020.

Clerk of New York County