

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-HE2)

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-HE2 (the “Undisputed Trust” or “BSABS 2007-HE2”), 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 Tilden Park Investment Master Fund LP, Tilden Park

Management I LLC, and Tilden Park Capital Management LP, each on behalf of itself and its advisory clients (“Tilden Park Parties”), 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, the Tilden Park Parties, and other investors, thereby dismissing HBK as respondent with respect to any Settlement Trust in which it does not hold certificates (NYSCEF 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 (NYSCEF No. 514) (the “Trustee Substitution Stipulation”);¹

WHEREAS, after giving effect to the Standing Decision and the Trustee Substitution Stipulation, the Institutional Investors, the Tilden Park Parties, 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, the Tilden Park Parties, and U.S. Bank as NIM Trustee agree and consent to the 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, 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

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 “AS Distribution Date” means the Distribution Date for the Undisputed Trust occurring in the Transfer Month; and

WHEREAS, Class II-A Certificates, Class II-M Certificates, Class II-CE Certificates, Class II-P Certificates, and Class II-R Certificates constitute the Group II Certificates for BSABS 2007-HE2 (“BSABS 2007-HE2 Group II”); and

WHEREAS, Class II-1A-2 Certificates, Class II-1A-3 Certificates, Class II-1A-4 Certificates, Class II-2A Certificates, Class II-3A Certificates, Class II-CE Certificates, and Class II-P Certificates are the only classes of certificates in BSABS 2007-HE2 Group II that currently have an aggregate certificate principal balance greater than zero dollars (\$0.00) (the “Group II Non-Zero Balance Classes”); and

WHEREAS, only a portion of the Settlement Payment Write-Up for BSABS 2007-HE2 Group II (the “Group II Settlement Payment Write-Up”) can be applied to the Group II Non-Zero Balance Classes because the outstanding losses for the Group II Non-Zero Balance Classes are less than the Settlement Payment Write-Up, and the only remaining Group II Certificates to which the Group II Settlement Payment Write-Up could be applied are the Class II-M Certificates, all of which currently have principal balances of zero dollars (\$0.00); and

WHEREAS, this Order requires the Subject Petitioner to (i) apply the Retired Class Provision to prevent the Settlement Payment Write-Up from being applied to classes of certificates with aggregate certificate principal balances of zero dollars (\$0.00) as reported on the monthly distribution report for the Undisputed Trust for the Distribution Date immediately prior to the AS Distribution Date (“Zero Balance Classes”) and (ii) apply the Retired Class Provision to prevent the distribution of the Subject Allocable Shares to any Zero Balance Classes; and

WHEREAS, as a result of (i) and (ii) in the immediately preceding whereas clause, a portion of the Group II Settlement Payment Write-Up will not be applied to increase the principal balances of any Group II Certificates (the “Unapplied Portion of the Group II Settlement Payment Write-up”), and, instead, (a) the overcollateralization in BSABS 2007-HE2 Group II will be increased by an amount equal to the Unapplied Portion of the Group II Settlement Payment Write-Up (the “Group II OC Increase”) and (b) the Uncertificated Principal Balance associated with the Class II-CE Certificates shall increase in a manner corresponding with the Group II OC Increase; and

NOW, THEREFORE, on the motion of Warner Partners, P.C. and Gibbs & Bruns LLP, attorneys for the Institutional Investors, Schindler Cohen & Hochman LLP and Kramer Levin Naftalis & Frankel LLP, attorneys for the Tilden Park Parties, 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 increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up or a portion thereof (the “Written-Up Certificate Principal Balances”), and, after applying the Settlement Payment Write-Up, (ii) shall then distribute the Subject Allocable Shares to certificateholders based on the Written-Up Certificate Principal Balances, in each of the cases of (i) and (ii) above in a manner consistent with the other terms of this Order and the Group II OC Increase; 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 not use the subsequent recovery write-up instructions in the Subject PSA, and instead shall increase the certificate principal balances of the applicable classes of certificates in the amount of the Settlement Payment Write-Up or a portion thereof in accordance with the Settlement Agreement

Write-Up Instruction in Section 3.06(b) of the Settlement Agreement, in a manner consistent with the other terms of this Order and the Group II OC Increase; 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 apply the Retired Class Provision to prevent the Settlement Payment Write-Up from being applied to any Zero Balance Classes in a manner consistent with the Group II OC Increase, and (ii) shall apply the Retired Class Provision to prevent the distribution of the Subject Allocable Shares to any Zero Balance Classes; and it is further²

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

² The Class A Redirection Provision of the Undisputed Trust is currently inoperative because there are Class A Certificates with principal balances greater than zero dollars (\$0.00) within both the Group I Certificates and Group II Certificates of the Undisputed Trust.

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, 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