

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 _____, 2022

P R E S E N T: Hon. Melissa Anne Crane, 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 (SACO 2005-
GP1)**

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 [proposed] Partial Severance Order and Partial Final Judgment (the “Order”) concerns SACO 2005-GP1 (the “Undisputed Trust”), which is one of the Settlement Trusts subject to the Settlement Agreement; and

WHEREAS, the Undisputed Trust is governed by an indenture (the “Subject Indenture”);
and

WHEREAS, U.S. Bank National Association is the payment administrator for the Undisputed Trust (the “Subject Payment Administrator”) and Wilmington Trust, National Association is the trustee for the Undisputed Trust (the “Subject Trustee”) (the Subject Payment Administrator and Subject Trustee together, the “Subject Petitioners”); and

WHEREAS, Assured Guaranty Corp. (“Assured”) is the insurer of certain classes of notes issued by the Subject Trust, and the Subject Indenture provides Assured with certain rights to reimbursement for prior insurance payments it made with respect to the insured notes (*see* Subject Indenture § 3.03); and

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

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 law; and

WHEREAS, the Notice Program directed that interested persons respond to the Petition on or before January 29, 2018; and

WHEREAS, on July 26, 2018, Assured filed a notice of motion for leave to appear and participate in connection with the Petition as to only the Undisputed Trust (NYSCEF No. 463); and

WHEREAS, the Court did not grant Assured’s motion but, on the parties’ consent, allowed Assured to file a brief as amicus curiae with respect to the Undisputed Trust (NYSCEF No. 542); and

WHEREAS, in addition to Assured, Nover Ventures, LLC (“Nover”) asserted interests in the Undisputed Trust through its interests in another trust structure such as a CDO, re-REMIC, or NIM trust, but not in certificates issued by the Undisputed Trust; and

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

WHEREAS, in the Standing Decision, the Court afforded Nover an opportunity to substitute into the proceeding the trustee of the CDO, re-REMIC, or NIM trust structure through which it asserted interests in the Undisputed Trust; and

WHEREAS, on September 14, 2018, the Court so-Ordered a Stipulation and Order Regarding Trustee Substitutions, under which Nover substituted into this case The Bank of New York Mellon Trust Company, N.A., solely in its capacity as the trustee of Duke Funding IX CDO (the “CDO Trustee”) through which Nover asserted an interest in the Undisputed Trust (NYSCEF No. 514) (the “Trustee Substitution Stipulation”); and

WHEREAS, after giving effect to the Standing Decision and the Trustee Substitution Stipulation, the CDO Trustee is the only party with standing to appear with respect to the Undisputed Trust, notwithstanding Assured’s appearance as amicus curiae; and

WHEREAS, on February 13, 2020, the Court issued a Decision and Order on the Petition (the “Decision and Order”) (NYSCEF No. 843); and

WHEREAS, the Merits Ruling was affirmed by the First Department, Appellate Division on August 19, 2021 in an appeal involving various interested parties, and certain parties to the appeal are seeking further review of the First Department’s ruling; and

WHEREAS, the Decision and Order held that the Write-Up First Method should be applied where the definition of certificate principal balance for a transaction “provides for addition ... of ‘any’ Subsequent Recoveries as of ‘any distribution date’” (*id.* at 13); and

WHEREAS, the note principal balance for the Undisputed Trust is calculated “as of any Payment Date” and is required to be increased by “any Subsequent Recoveries” (Subject Indenture, Appendix A at 20-21); and

WHEREAS, in light of the manner in which the note principal balance is calculated for the Undisputed Trust and the controlling ruling in the Decision and Order concerning the same, this Order uses the Write-Up First Method for the administration and distribution of the Allocable Share for the Undisputed Trust (the “Subject Allocable Share”); and

WHEREAS, Petitioner also sought judicial guidance on the Undisputed Trust concerning (i) whether the Subject Allocable Share should be treated as interest or principal, and (ii) which methodology should be used for applying the Settlement Principal Write-Up; and

WHEREAS, this Order treats the Subject Allocable Share as principal consistent with the Court's "hold[ing] that the Allocable Shares should be treated as principal" (Decision and Order at 40); and

WHEREAS, the Court held that the Settlement Agreement Write-Up instruction appearing in Section 3.06(b) of the Settlement Agreement is a "'gap filler' which applies only where the Governing Agreement is silent as to the write-up mechanics" (*id.* at 28), and, consistent with this holding, this Order uses the Settlement Agreement Write-Up Instruction for the administration and distribution of the Subject Allocable Share because the Subject Indenture is silent as to the write-up mechanics; and

WHEREAS, in the Decision and Order, the Court also (x) observed that Assured "contends that no distribution of the Settlement Payment should be made to notes subordinate to the Class M-1 insured notes, and that there should not be any write-up of such subordinate classes of notes under any circumstances as a result of the Settlement Payment," and (y) held that Assured (i) "makes a prima facie showing that . . . the Settlement Payment will . . . be distributed to Class A-1 and Class M-1 notes before any distribution is made to subordinated classes," and (ii) that Assured's "showing [with respect to the Undisputed Trust] is not challenged by any respondent" and its "position as to distribution should be accepted by the Trustee" (*id.* at 43-44); and

WHEREAS, this Order will result in the distribution of the Subject Allocable Share in a manner consistent with Assured's position; and

WHEREAS, Assured and the CDO Trustee agree and consent to this Order; 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

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

NOW, THEREFORE, on the motion of Cleary Gottlieb Steen & Hamilton LLP, counsel for Assured, and McKool Smith, P.C., counsel for the CDO Trustee, it is hereby

ORDERED, ADJUDGED and DECREED that, on or before the Transfer Target Date, the Subject Trustee is to (i) cause escrowed assets to be liquidated to cash with a value equal to the Subject Allocable Share plus any investment earnings thereon, and (ii) cause the Subject Allocable Share 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 a Subject Allocable Share 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 Share not received at the time escrowed assets are liquidated to cash pursuant to the immediately preceding paragraph (“Trailing Interest”) shall (x) be transferred from the Subject Trustee to the Subject Payment Administrator promptly following the Subject Trustee’s receipt of such Trailing Interest, and (y) be distributed on the Payment Date for the month the Trailing Interest is transferred so long as such transfer takes place on or before the fifteenth day of the month or, if the Trailing Interest is transferred after the fifteenth day of the month, be distributed on the Payment Date for the immediately following month. Any Trailing Interest shall be deemed to be a Subject Allocable Share for the Undisputed Trust, and any Trailing Interest shall be administered and distributed as a Subject Allocable Share subject to the terms of the Settlement Agreement and this Order; and it is further

ORDERED, ADJUDGED and DECREED that the Subject Payment Administrator shall distribute the Subject Allocable Share for the Undisputed Trust on the AS Payment Date; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Share for the Undisputed Trust, the Subject Payment Administrator (i) shall first increase the applicable certificate principal balances in the amount of the Settlement Payment Write-Up (the “Written-Up Certificate Principal Balances”); *provided, however*, that the Subject Payment Administrator shall not apply any portion of the Settlement Payment Write-Up to any classes of notes subordinate to the Class M-1 notes, consistent with the Decision and Order; and (ii) after applying the Settlement Payment Write-Up, shall distribute the Subject Allocable Share 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 in this Order; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Share for the Undisputed Trust, the Subject Payment Administrator shall apply the Settlement Payment Write-Up in the reverse order of previously allocated losses in the manner provided for in the Settlement Agreement Write-Up Instruction, in a manner consistent with the other terms in this Order; and it is further

ORDERED, ADJUDGED and DECREED that in administering and distributing the Subject Allocable Share for the Undisputed Trust, the Subject Payment Administrator shall treat the Subject Allocable Share as Available Principal Payment Amount under the Subject Indenture, in a manner consistent with the other terms in this Order; and it is further

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

ORDERED, ADJUDGED and DECREED that this Order is not applicable to, and 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 where there is a dispute among the parties regarding how the Settlement Payment should be administered and 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 Share; and it is further

ORDERED, ADJUDGED and DECREED that certificateholders, noteholders, and any other parties (including Assured) claiming rights or interests in the Undisputed Trust are barred

from asserting claims against the Subject Petitioners with respect to any conduct taken to implement and comply with the terms of this Order and with respect to the Subject Petitioners' administration and distribution of the Subject Allocable Share, 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 Petitioners 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.

Dated: New York, New York

_____, 2022

Hon. Melissa Anne Crane, J.S.C.

Judgment signed and entered this _____ day of _____ 2022.

Clerk of New York County