

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

In the matter of the application of

Index No. 657387/2017

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),

Hon. Melissa A. Crane, Part 60

Petitioners,

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

**AFFIRMATION OF DAVID I. SCHIEFELBEIN IN RESPONSE TO WELLS FARGO  
BANK, N.A.’S OPPOSITION TO THE 37-TRUST PROPOSED JUDGMENT**

I, **DAVID I. SCHIEFELBEIN**, an attorney duly admitted to practice before the Courts of  
the State of New York, affirms under the penalty of perjury as follows:

1. I am a Principal of McKool Smith, P.C., counsel for Nover Ventures, LLC, an  
Interested Party in this proceeding. I submit this Affirmation in response to petitioner Wells Fargo  
Bank, N.A.’s (“Wells Fargo”) self-styled Partial Opposition To The Institutional Investors’ Order  
to Show Cause Seeking Entry Of Final Judgment And Order For 37 Trusts (the “Proposed Order”).  
I have personal knowledge of the facts set forth herein.

2. The Proposed Order agreed to and submitted by the parties was the product of  
significant back and forth. The negotiations spanned several months and ultimately resolved each  
of the Petition Issues raised by the Trustees in their 2017 Petition. Because Wells Fargo’s

Opposition is premised on issues not raised in the Petition, its objection should be disregarded and the Order to Show Cause entered.

3. Counsel for Wells Fargo states in his “supplemental” affirmation that, absent further direction from the Court, Wells Fargo intends to “apply[] its historical interpretations of provisions concerning ‘payment priority’ and ‘Cross-Over Dates.’” [Dkt. 993 ¶5.] In effect, Wells Fargo plans to violate the very rulings it filed this Proceeding to obtain. It will “not make distributions to [subordinate] certificates once their principal balance is written down to zero” even if the settlement payment (or other Subsequent Recoveries) restores the certificates’ principal balances. *Id.* That practice would be directly contrary to this Court’s and the First Department’s decisions in this case, which held that “zero balance certificates are eligible for write-ups **and distributions.**” *In re Wells Fargo Bank, N.A.*, 198 A.D.3d 156, 163 (1<sup>st</sup> Dep’t 2021) (emphasis added).

4. Wells Fargo’s eleventh hour attempt to derail the culmination of this Proceeding should be rejected. For five years, the parties heavily litigated the issues Wells Fargo presented in its Petition. The issues Wells Fargo raises now are clearly related to those issues. It sought and obtained the rulings it requested from the Court without ever raising these concerns. If Wells Fargo believed the priority language or the Cross-Over Date could affect the judgment in this proceeding, it should have specifically raised them before Justice Friedman ruled or, at minimum, to the First Department. It did not and should not be permitted to do so now. Indeed, Wells Fargo is proposing to file a **third** Article 77 proceeding to address a single settlement reached **nine years ago**. Its handwringing needs to stop. The First Department affirmed Justice Friedman’s ruling that subordinate certificates are eligible for write-ups and distributions. Wells Fargo needs to implement that ruling.

5. Nover recognizes that, absent permission by the Court, reply papers cannot be submitted on an Order to Show Cause. See Administrative Order of the Chief Administrative Judge of the Courts, AO/270/2020. Nover planned to address Wells Fargo's objection during the September 21 hearing. However, given Wells Fargo's suggestion that Nover's silence was an endorsement of its Opposition, or otherwise a waiver of a right to oppose it, Nover felt compelled to submit this short response. For the avoidance of doubt, Nover objects to Wells Fargo's proposed revisions to the Order, its proposed seriatim Article 77 proceedings, and its refusal to follow the Merits Decisions and make distributions to subordinate certificates that were previously written down to zero.

Dated: September 20, 2022  
New York, New York

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