

BNY Asks New York Court To Clear Up RMBS Interest Dispute

By Adam Rhodes

Law360 (January 25, 2019, 6:51 PM EST) -- The Bank of New York Mellon urged a New York state court Thursday to clarify whether it properly calculates excess interest on certain certificates that entitle their holders to part of the mortgage loans held within residential mortgage-backed securitization trusts amid a related federal court fight.

The dispute centers on whether the bank should calculate interest using the current or the original mortgage loan interest rates. While the bank claims it should use a so-called "pass-through rate," which the complaint states changes as interest rates in the underlying loans are changed, Silian Ventures LLC argued in a mid-December New York federal court lawsuit that the bank should have been using the mortgage loans' original interest rates.

According to the complaint, BNY Mellon is a trustee of 278 RMBS trusts and has been using the current mortgage loan interest rate for more than 10 years.

"Calculating the pass-through rate using a static rather than a dynamic rate would affect monthly distributions to both [interest-only] and non-IO certificates," the bank told the court in its petition. "The trustee has no economic stake or interest in how money is distributed to the various classes of certificateholders, but wishes to resolve the dispute raised by the objecting certificateholders."

In its suit against the bank, Silian claimed that since February 2018, underpayments on the IO certificates have shorted it by millions of dollars.

In Thursday's petition, however, BNY Mellon told the court that its interpretation of the pooling and service agreements that govern the RMBS trusts is supported by how other trusts are governed.

"In certain other trusts that are materially the same as the covered trusts and issued under the same registration shelves, the master servicer, rather than the trustee, is required to calculate the excess interest amounts," the bank said. "In calculating the excess interest amounts for these so-called 'uncertificated' IO trusts, the master servicer has employed the same dynamic method as the trustee."

As such, BNY Mellon asked the court to rule that the so-called dynamic calculation method was the proper method under the PSA.

A representative for the bank could not comment on the record on Friday.

BNY Mellon is represented by Matthew D. Ingber and Christopher J. Houpt of Mayer Brown LLP.

The case is In the Matter of the Application of The Bank of New York Mellon, in its Capacity as Trustee for 278 Residential Mortgage-Backed Securitization Trusts, case number 150738/2019, in the Supreme Court of the State of New York, County of New York.

--Editing by Adam LoBelia.