

## Royal Park Loses 2nd Cert. Try In BNY Mellon MBS Suit

By **Reenat Sinay**

*Law360 (February 19, 2019, 3:34 PM EST)* -- Royal Park Investments SA/NV's bid for class certification in its suit against The Bank of New York Mellon Corp. over failed mortgage-backed securities was denied for the second time by a New York federal judge who found that the investors' claims did not satisfy class action commonality requirements.

U.S. District Judge Gregory H. Woods on Friday rejected the investors' attempt to certify their class because questions of law or fact common to all class members did not dominate individualized circumstances and failed to fulfill the central tenet of commonality under the Federal Rules of Civil Procedure's class action requirements, also known as Rule 23.

"Here, many of the legal and factual issues which must be established for class members to prove their claims cannot be resolved through class-wide proof," Judge Woods said. "Because those individualized questions involve relatively complex legal and factual inquiries — requiring considerable resources in comparison to those questions which are capable of class-wide resolution — Royal Park has not established that questions of law or fact common to class members predominate over individualized questions."

RPI accuses BNY Mellon, which oversaw trusts holding mortgage-backed securities during the financial crisis, of not going to bat for investors who held certificates or notes that entitled them to a slice of the revenue that flowed from the bundled mortgages. The case is one of several suits that accuse MBS trustees of failing to exercise their rights to require the companies that sold dud mortgages to the trusts to buy them back.

Judge Woods previously denied RPI's first motion for class certification in August 2017, ruling that the proposed class was too broad. The investors filed the current renewed motion for certification in October 2017.

On Friday, Judge Woods noted confusion on both sides over the scope of RPI's proposed class definition and found that RPI's "common questions" of whether BNY Mellon knew about breaches and violated its duties, as presented in its renewed motion, were "little more than a restatement of the basic elements of Royal Park's claims."

"At best, there may be a common answer as to each trust regarding each of these questions, but the court doubts that there is proof that Royal Park can offer that is capable of generating common answers to these questions across the entire proposed class," Judge Woods said.

He also held that analyzing the predominance of common versus individual questions of law under Rule 23 is more than just a numbers game, and that the relative complexity of the questions comes into play. Judge Woods pointed out that the five trusts RPI invested in contained nearly 20,000 loans originated by at least 27 different entities, and that there was no proof that the liability claims of potential class members who held certificates in one trust would be relevant to the claims of other potential class members in one of the other trusts.

“Any potential efficiencies to be gained from class-wide adjudication of common liability issues such as the meaning of certain contractual terms are vastly offset by the waste involved in forcing members of the potential class to litigate factual issues of breach and discovery for thousands of loans that are wholly unrelated to their claims,” the judge said.

Judge Woods further found that establishing standing for each potential class member would be largely based on “significant individual legal and factual analysis,” which also undermines the predominance of issues RPI has identified as classwide, according to the opinion.

Counsel for both parties did not immediately respond to requests for comment Tuesday.

The investors are represented by Christopher M. Wood of Robbins Geller Rudman & Dowd LLP.

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

The case is Royal Park Investments SA/NV v. The Bank of New York Mellon, case number 1:14-cv-06502, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Jack Newsham and Adam Rhodes. Editing by Alyssa Miller.