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NY Judge: Buyers Must Pay Deferred Principal in RMBS Transactions



In a win for RMBS investors, Manhattan Supreme Court Justice Andrew Borrok of the Commercial Division found that petitioners must recalculate the amount paid by trust servicers in instances involving the “clean up call” provisions.



October 04, 2023 at 05:17 PM



Commercial Litigation



Emily Saul

Deferred balances should be included as part of the call price during consensual termination of residential-backed mortgage securities (RMBS), a New York judge has ruled.

In a win for RMBS investors, Manhattan Supreme Court Justice Andrew Borrok of the Commercial Division found that petitioners must recalculate the amount paid by trust servicers in instances involving the “clean up call” provisions.

The ruling stems from a petition filed in July 2022 by the U.S. Bank National Association, and the U.S. Bank Trust Company, National Association as a trustee or indenture trustee. The filing sought judicial instruction as to the contracts governing multiple residential mortgage-backed securities transactions.

The case involved the allocation of tens of millions held by RMBS trusts. Servicer NRZ Sponsor HoldCo held the right to terminate the trusts and buy the underlying loans, but claimed they did not need to pay the cost of the deferred principal.

Borrok’s decision is the third of its kind in the RMBS investor space. In a landmark August 2022 decision, a California judge found that the calculation of the call price must include the amounts deferred. Borrok in September 2022 issued a similar ruling, which he referenced in his Oct. 2 decision.

“The Court held that the Termination Price included the Deferred Principal Balance and that HEMP did not serve to exclude otherwise not forgiven principal which was only deferred from the amount due to the certificate holders as part of the

Termination Price,” the judge ruled. “The Certificate holders are entitled to judgment on the pleadings in this case.”

Petitioners were represented by a team from Jones Day, which did not immediately respond to a request for comment.

Investors included entities such as HBK Master Fund—represented by Uri Itkin, Richard D’Amato, Michael Chen and Andrew McWhorter of Akin Gump Strauss Hauer & Feld—Deer Park Road Management Company, and 400 Capital Credit Opportunities Master Fund.

Akin declined to comment on the decision.

“The decision vindicates Deer Park’s right to be paid full price when a Clean-Up Call Holder terminates an RMBS deal and is an important precedent to protect the rights of RMBS investors across hundreds of other deals,” said Sam Lieberman of Sadis & Goldberg.

“Both the California and the New York courts’ ruling will have implications for deal calls going forward and, likely, for deals previously terminated,” said Courtney Statfeld of McKool Smith, who represented 400 Capital Credit Opportunities alongside Robert Scheef. “This is particularly true in legacy RMBS bond transactions where forbearance amounts were not included. Investors should review past clean-up calls to ensure they were paid the price the contract required.”

Lawyers for NRZ Sponsor HoldCo did not immediately respond to a request for comment.

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