IN THE CIRCUIT COURT OF THE 17th
JUDICIAL CIRCUIT, IN AND FOR
BROWARD COUNTY, FLORIDA

P & S ASSOCIATES, GENERAL PARTNERSHIP and S & P ASSOCIATES, GENERAL PARTNERSHIP,

Plaintiff,

v.

ROBERTA P. ALVES, ET AL.,

Defendants.

CASE NO. 12-028324 (07)
COMPLEX LITIGATION UNIT

CORRECTED[1] FINDINGS OF FACT, CONCLUSIONS OF LAW, AND FINAL ORDER OF DISTRIBUTION

THIS MATTER came before the Court at a non-jury trial conducted on Nov 19, 2013 at 9:30 a.m. (the "Trial"). The Court has considered sworn witness testimony, proffers filed with this Court, admitted evidence, the facts and circumstances of this proceeding, and argument of counsel. The following findings of fact and conclusions of law are now entered in reaching this Final Judgment in favor of P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P) (together, the "Partnerships").

BRIEF BACKGROUND

1. The Partnerships, were formed pursuant to written partnership agreements dated December 11, 1992 and amended in 1994.

2. In practice, the Partnerships invested exclusively in Bernard L. Madoff Investment Securities, LLC ("BLMIS").

3. In late 2008 it was discovered that BLMIS was a ponzi scheme orchestrated by, among others, Bernard Madoff. Thereafter, a liquidation proceeding was commenced in the

[1] This *Corrected Findings of Fact, Conclusions of Law, and Final Order of Distribution* ("Final Order") is corrected to fix certain scrivener type errors, including, among other things, a missing page of the original Final Order. This Corrected Final Order is for the purpose of clarification only. The original Final Order remains in full force and effect.

Southern District of New York to liquidate BLMIS pursuant to the Securities Investment Act ("SIPA") (the "BLMIS Liquidation").

4. The Partnerships asserted claims in the BLMIS Liquidation proceeding for, among other things, their losses in BLMIS. Ultimately, the Partnerships settled their claims in the BLMIS Liquidation proceeding based, in part, on the 'net-investment' method of accounting for the Partnerships' losses.

5. On account of such claims, approximately $4,519,086.93 for S&P (including $175,000.00 as part of the SIPC claim) and approximately $921,183.72 for P&S were directed to be made available to the respective Partnerships (with all of the other monetary assets of the Partnerships, the "Assets").

6. However, because certain partners of the Partnerships withdrew some or all of their investment (including fraudulent earnings thereon) prior to the discovery of the BLMIS Ponzi scheme and other partners entire investment was held by BLMIS during its collapse, the partners of the Partnerships did not bear Partnership losses equally and maintained different positions as to how the Partnerships' Assets ought to be distributed.

7. In July of 2012, the Partnerships commenced the instant action principally seeking judicial oversight and direction as to the appropriate method of distributing the Partnerships' remaining assets (the "Interpleader Action").

8. On January 17, 2013, this Court appointed Philip Von Kahle as Conservator of the Partnerships in a parallel proceeding[2] by entering the *Order Appointing Conservator* (the "Conservator Order"). The Conservator Order provides in relevant part, among other things, that the Conservator's powers include:

[2] *Matthew Carone, et. al. v. Michael D. Sullivan*, Case No. 12-24051 (07) (the "Conservator Suit").

Winding down of the affairs of the Partnerships and distribution of assets of the Partnerships, **including following up on the Interpleader Action filed with the Court in determining how the partnership funds are to be distributed, making all necessary and appropriate applications to the Court in order to effect such wind-down and distributions.**

(Conservator Order at ¶5(a)) (emphasis added).

9. On October 7, 2013, this Court entered a final order on partial summary judgment (the "SJ Order") granting, in part, the Conservator's May 1, 2013 Motion for Summary Judgment to: (i) Approve Determination of Claims; (ii) Approve Plan of Distribution; and (iii) Establish Objection Procedure (the "SJ Motion") and the Conservator's September 30, 2013 Reply in Favor of the SJ Motion (the "SJ Reply").

10. Among other things, the SJ Motion, among other things: (i) sought authority to distribute the Assets to partners based on the Net Investment Method; (ii) provided detailed schedule of partners' capital accounts and proposed scheme of the interim distribution (the "Distribution Spreadsheets"); and (iii) recommended holding back distributions to certain parties, to allow the Conservator to continue his investigation into their accounts and relationship with the Partnerships and Sullivan (the "Holdbacks"). The SJ Reply contained exhibits with an amended version of the Distribution Spreadsheets (the "Final Distribution Spreadsheets").

11. For the reasons articulated in the SJ Motion and upon consideration of the arguments before this Court, I concluded that the Net Investment Method[3] is the appropriate method to utilize in the distribution of the Partnerships' Assets.

12. All remaining issues were reserved for determination at Trial.

[3] Essentially, Net Investment recognizes all actual cash investments and then subtracts all distributions from the account to arrive at a "net" figure. Such an approach ignores the false profits inherent in ponzi schemes.

FINDINGS OF FACT

13. The above background is hereby incorporated herein as findings of fact.

14. Through the extensive efforts of the court-appointed Conservator, Philip von Kahle, and his counsel, reasonable and actual notice was given to substantially all parties-in-interest[4] of the time, date, and location of the non-jury Trial.

15. This Court has proper subject matter jurisdiction and personal jurisdiction over this matter. Venue in this Court is appropriate.

16. In advance of Trial, the Conservator and certain parties-in-interest resolved a number of pending matters by joint stipulation, including:

a. The Stipulation between the Conservator and Scott Holloway (including the Scott W. Holloway Revocable Trust);

b. The Stipulation between the Conservator and Burt and Susan Moss;

c. The Stipulation between the Conservator and Sam and Edith Rosen;

d. The Stipulation between the Conservator and Rev. Msgr. Vincent T. Kelly (including the Vincent T. Kelly Irrevocable Trust); and

e. The Stipulation between the Conservator and Michael D. Sullivan, managing general partner of SPJ Investmetns, LTD (together, the "Pre-trial Stipulations").

17. This Court finds the Pre-Trial Stipulations reasonable and appropriate.

18. Additionally, in advance of Trial on November 18, 2013, the Conservator filed his *Conservator's Proffer for Trial Scheduled for November 19, 2013* (the "Conservator's Proffer").

[4] To the extent a particular party did not receive actual notice of the Trial, and such party had particular interests that were not represented by any other party who did receive notice at Trial, and as a result, such party's interests were not represented at Trial, this Final Judgment shall not act upon such party except by consent or other applicable law.

19. There were no objections to the Conservator's Proffer at Trial and such was admitted as the Conservator's testimony. Any of Jacob's objections were satisfied by the Jacob Stipulation.

20. At the commencement of Trial, the Conservator and Jacob announced that they have entered into a stipulation (the "Jacob Stipulation"). The Jacob Stipulation between the Conservator and Jacob, as managing member of Guardian Angel Trust, LLC ("Guardian Angel") and SPJ Investment, Ltd. ("SPJ"), was read into the record by counsel for the Conservator at Trial.[5]

21. The Jacob Stipulation is incorporated into this Final Judgment.

22. Jacob was present in the courtroom while the Jacob Stipulation was read into the record.

23. Jacob acknowledged that he heard and understood the terms of the Jacob Stipulation and consented to same.

24. The Conservator was present in the courtroom while the Jacob Stipulation was read into the record.

25. The Conservator acknowledged that he heard and understood the terms of the Jacob Stipulation and consented to same.

26. At the Trial, the Court heard testimony of, Barry Mukamal, CPA/PFS/ABV/CFE/CFF ("Mr. Mukamal") who this Court qualified an expert in the field of accounting.

27. Based on, among other things, Mr. Mukamal's demeanor and knowledge displayed, the Court found Mr. Mukamal to be credible.

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[5] After the Trial, the oral record of the Jacob Stipulation was transcribed and the transcription excerpt has been filed with the Clerk of the Court.

28. Among other things, Mr. Mukamal testified that the Conservator's review and analysis of the Partnerships' books and records and the spreadsheets containing such analysis were accurate and reliable.

29. Based on, among other things, the expert testimony of Mr. Mukamal, a review of the Final Distribution Spreadsheets, and the other facts and circumstances of this case, this Court finds that the Final Distribution Spreadsheets are accurate and reliable.

30. This Court also notes that the Final Distribution Spreadsheets reflect the recalculated capital account balances for more than 280 individual investors. Many of these investors have paid close attention to all matters related to the Partnerships and the BLMIS Liquidation proceeding, particularly with respect to their potential distribution.

31. Notwithstanding the adequacy of notice, i.e., the Final Distribution Spreadsheets being filed in the public record on September 30, 2013, served by electronic mail or by U.S. Mail to all parties-in-interest who requested service by such method, and posting the Final Distribution Spreadsheets on the internet at www.floridaconservator.com since October 1, 2013, there have been no written objections to the Conservator's calculation[5] of a partner's capital account or proposed interim distribution contained in the Final Distribution Spreadsheet. This Court finds that the lack of written objections to the Final Distribution Spreadsheet lends further credibility to its accuracy and reliability.

32. This Court further finds that prior to December 2008, Michael D. Sullivan ("Sullivan") and Greg Powell served as the managing general partners of the Partnerships. Mr. Powell passed away in August 2003 and Sullivan continued as the sole managing general partner of the Partnerships. The Partnerships' Agreements provide that the managing partner of each of

[5] Guardian Angel only objected to the extent that the Final Distribution Spreadsheet did not give effect to reported (but fictitious) profits of partners whose accounts were rolled-into Guardian Angel in 2002.

the Partnerships is allocated 20% of the Partnerships' profits. The Partnerships' Agreements further provide that for each fiscal year the managing general partner would receive a distribution of 20% of the cash flow.

33. While acting as managing general partner, Sullivan received approximately 20% of the reported (but fictitious) "profits" paid to the Partnerships by BLMIS (the "False Profits"). From these False Profits, certain individuals received monies either as "referral fees", commissions or otherwise. Such referral fees and commissions were commonly paid from the Michael D. Sullivan & Associates bank account.

34. Additionally, certain partner's accounts included a suffix to reflect the broker or referring agent for that particular account. For example, an account without a broker would be labeled SP L58, but if Mr. Smith were the broker, the account number would contain a suffix identifying the broker; i.e., SP L58S.

35. Attached to the SJ Reply, the Final Distribution Spreadsheets contain the account numbers for all of the partners in the Partnerships including, among other things, their account numbers with suffixes where applicable, their total cash contributions, total cash withdrawals, and whether on a net basis, such partner was a 'net winner' or 'net loser' as those terms are defined in the SJ Motion.

36. Certain account numbers contain the suffix 'W'; which, based on unrebutted testimony, refers to Richard and Rebekah Wills (the "Wills Defendants").

37. Additionally, Mr. Mukamal testified that certain spreadsheets developed by the Conservator regarding the net investment of Guardian Angel, including the net investments of the members of Guardian Angel were accurate and reliable (the "Guardian Angel Analysis").

38. Based on such testimony, a review of such records, and the other facts and circumstances of this case, this Court finds that the Conservator's Guardian Angel Analysis is accurate and reliable.

39. The Court also heard testimony of Steve Jacob, CPA ("Jacob"). This Court finds the Jacob testimony credible as it relates to his method for calculating Guardian Angel's investment in S&P, but ~~notes that Jacob's analysis~~ contains several arithmetic and other miscalculations.[6]

40. Additionally, the Court received into evidence the following documents:

a. Pl-1-A: Guardian Angel's 2002 Tax Return;

b. Pl-2-A: Guardian Angel 2006 Tax Return;

c. Pl-3-A: Affidavit of Expert Barry Mukamal, CPA, including the Guardian Angel Analysis which was attached as exhibits thereto; and

d. Jacob's Exhibit 1: Jacob's Calculation of Guardian Angel's Actual Dollars S&P Tax Return.

41. To the extent any of the following conclusions of law should be considered findings of fact, they are hereby incorporated by this reference.

Conclusions of Law

42. To the extent any of the above findings of fact should be conclusions of law, they are hereby incorporated by this reference.

Partner's Net Investment Claim Amount and Distributions

43. The Court determines the Final Distribution Spreadsheets are an accurate calculation of each partner's capital account as calculated under the Court-approved Net Investment Method.

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[6] For example, under Jacob's analysis Guardian Angel's 2002 contributions were $2,233,042; Guardian Angel Schedule K-1's reflected contributions of $2,226,755. Under Jacob's analysis Guardian Angel's 2006 distributions were $185,000; Guardian Angel Schedule K-1's reflected contributions of he distributions in 2006 were $185,615.

44. The Conservator is authorized to distribute the Partnerships' funds under the Court-approved Net Investment Method as reflected in the Final Distribution Spreadsheets.

Guardian Angel and SPJ's Net Investment Claim Amount

45. The Court determines that the Conservator's calculation of Guardian Angel's Net Investment claim amount as reflected in the Final Distribution Spreadsheets is accurate, reliable, and comports with the Court-approved Net Investment Method.

46. The Court determines that the Conservator's calculation of SPJ's Net Investment claim amount as reflected in the Final Distribution Spreadsheets is accurate, reliable, and comports with the Court-approved Net Investment Method.

Conservator's Holdback of Distributions

47. The Court determines that the Conservator has the authority to holdback distributions from parties who the Partnerships have claims against.

48. Specifically, the Conservator has the authority to holdback $37,020.00 from the Wills Defendants.

Conservator's Distribution to Members of Guardian Angel and Partners of SPJ

49. The Court determines that the Jacob Stipulation is reasonable and was entered into voluntarily by the Conservator and Jacob.

50. Pursuant to the Jacob Stipulation, the Conservator is authorized to distribute funds directly to the members of Guardian Angel.

51. Pursuant to the Jacob Stipulation, the Conservator is authorized to distribute funds directly to the partners of SPJ.

52. Pursuant to the Jacob Stipulation, Jacob agrees to forego a fee or other compensation for performing services necessary to effectuate the Stipulation.

WHEREFORE, IT IS ORDERED:

Partner's Net Investment Claim Amount and Distributions

53. The Conservator has the authority to distribute the Partnerships' Assets under the Court-approved Net Investment Method as reflected in the Final Distribution Spreadsheets.

Guardian Angel and SPJ's Net Investment Claim Amount

54. The Court determines that Guardian Angel's capital account with S&P is $3,897,207.97 as reflected in the Final Distribution Spreadsheets.

55. The Court determines that the Conservator's calculation of SPJ Investment, Ltd's ("SPJ") Net Investment claim amount as reflected in the Final Distribution Spreadsheets is accurate, reliable, and comports with the Court-approved Net Investment Method.

Conservator's Holdback of Distributions

56. The Conservator has the authority to exercise his discretion to holdback distributions from parties who the Partnerships have claims against.

57. The Conservator has the authority to holdback $37,020.00 from the Wills Defendants.

Conservator's Distribution to Members of Guardian Angel and Partners of SPJ

58. The Conservator has the authority to distribute funds directly to the members of Guardian Angel.

59. The Conservator has the authority to distribute funds directly to the partners of SPJ.

60. Jacob shall forego a fee or other compensation for performing services necessary to effectuate the Jacob Stipulation.

Count III (Injunction) is Moot

61. Count III of the Complaint for injunction is deemed dismissed as **moot** as a result of the appointment of the Conservator.

62. Each party shall be responsible for their own fees and costs related to Count III.

Limitation on Final Judgment's Applicability to Unserved Parties

63. This Final Judgment shall not prejudice the rights of any party who has not been served with a summons and copy of the Complaint in the above-styled lawsuit. Such party's ability to challenge their Net Investment claim amount for their account is specifically preserved.

Reservation of Jurisdiction

64. This Court retains jurisdiction to determine the amount of reasonable attorney's fees and costs for any of the parties.

JEFFREY E. STREITFELD

Done and ordered in Chambers this _____, 2013.

JAN 09 2014

A TRUE COPY

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Honorable Jeffrey E. Streitfeld
Circuit Court Judge

Copies furnished to:
Thomas M. Messana, Esq. who is directed to serve same upon all interested parties.