IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

RALPH S. JANVEY, IN HIS CAPACITY AS COURT-APPOINTED RECEIVER FOR THE STANFORD INTERNATIONAL BANK, LTD., ET AL.	§	
Plaintiff,	§	
	§	Case No. 03:09-CV-1946-N
v.	§	
CHRISTOPHER AITKEN AND STEPHEN THACKER,	§	
Defendants.	§	

RECEIVER'S FIRST AMENDED COMPLAINT AGAINST CHRISTOPHER AITKEN AND STEPHEN THACKER

SUMMARY

1. The Court has ordered Receiver Ralph S. Janvey ("Receiver") to take control of all assets of the Receivership Estate in order to make an equitable distribution to claimants injured by a massive fraud orchestrated by Allen Stanford, James Davis, and others.

2. The Receiver's investigation to date reveals that revenue from the sale of fraudulent certificates of deposit ("CD Proceeds") generated substantially all of the income for the Stanford Defendants and the many related Stanford entities.

3. The Receiver has identified substantial sums of CD Proceeds paid by or at the direction of the Stanford Defendants to Christopher Aitken ("Aitken") and Stephen Thacker ("Thacker"). These payments were made in November 2008 in connection with an alleged purchase of "personal goodwill" belonging to Aitken and Thacker. Aitken received $8,662,500

and Thacker received $2,587,500. Through this lawsuit, the Receiver seeks the return of these funds to the Receivership Estate in order to make an equitable distribution to claimants.

4. The CD Proceeds paid to Aitken and Thacker came not from revenue generated by legitimate business activities, but from monies contributed by defrauded investors. Aitken and Thacker received assets traceable to the Stanford Defendants' fraudulent scheme, and Aitken and Thacker cannot establish a legitimate right to retain these assets. Accordingly, they necessarily hold the assets in trust for the Receivership Estate for the benefit of defrauded investors.

5. The payments to Aitken and Thacker were made with actual intent to hinder, delay, or defraud creditors, and neither Aitken nor Thacker can carry their burden to establish that (1) they conferred reasonably equivalent value in exchange for the payments and (2) they acted in good faith. The payments constitute fraudulent transfers, and must be returned to the Receivership Estate.

6. The Receiver seeks an order that: (a) the $8,662,500 payment to Aitken was a fraudulent transfer under applicable law; (b) the $2,587,500 payment to Thacker was a fraudulent transfer under applicable law; (c) the payments to Aitken and Thacker are property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; (d) Aitken is liable to the Receivership Estate in the amount of $8,662,500; (e) Thacker is liable to the Receivership Estate in the amount of $2,587,500; and (f) the Receiver is entitled to an award of reasonable attorneys' fees, costs, and interest.

JURISDICTION & VENUE

7. This Court has jurisdiction over this action, and venue is proper, under Section 22(a) of the Securities Act (15 U.S.C. § 77v(a)), Section 27 of the Exchange Act (15 U.S.C. § 78aa), and under Chapter 49 of Title 28, Judiciary and Judicial Procedure (28 U.S.C. § 754).

8. Further, as the Court that appointed the Receiver, this Court has jurisdiction over any claim brought by the Receiver to execute his Receivership duties.

9. Further, within 10 days of his appointment, the Receiver filed the original Complaint and Order Appointing the Receiver in 26 United States district courts pursuant to 28 U.S.C. § 754, giving this Court *in rem* and *in personam* jurisdiction in each district where the Complaint and Order have been filed, including the District of Maryland, the Middle District of Florida, and the Southern District of New York.

10. This Court has personal jurisdiction over Aitken and Thacker pursuant to Fed. R. Civ. P. 4(k)(1)(C) and 15 U.S.C. §§ 754 and 1692.

THE PARTIES

11. Plaintiff Ralph S. Janvey has been appointed by this Court as the Receiver for the assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities) of Stanford International Bank, Ltd., Stanford Group Company, Stanford Capital Management, LLC, Robert Allen Stanford, James M. Davis, Laura Pendergest-Holt, Stanford Financial Group, the Stanford Financial Group Bldg., Inc., and all entities the foregoing persons and entities own or control, including, but not limited to Stanford Financial Group Global Management, LLC and Stanford Financial Group Company (the "Receivership Assets").

Plaintiff Janvey is asserting the claims outlined herein in his capacity as Court-appointed Receiver.

12. Defendant Christopher Aitken is a U.S. citizen and resident of Ponte Vedra, Florida.

13. Defendant Stephen Thacker is a U.S. citizen and resident of Baltimore, Maryland.

14. Aitken and Thacker were served pursuant to the Federal Rules of Civil Procedure with the Original Complaint in this matter and have appeared through counsel. They will be served with this Amended Complaint through their attorneys of record in accordance with the Federal Rules of Civil Procedure.

STATEMENT OF FACTS

15. On February 16, 2009, the Securities and Exchange Commission commenced a lawsuit in this Court against R. Allen Stanford, two associates, James M. Davis and Laura Pendergest-Holt, and three of Mr. Stanford's companies, Stanford International Bank, Ltd. ("SIB" or "the Bank"), Stanford Group Company, and Stanford Capital Management, LLC (collectively "Stanford Defendants"). On the same date, the Court signed an Order appointing a Receiver, Ralph S. Janvey, over all property, assets, and records of the Stanford Defendants, and all entities they own or control.

I. Stanford Defendants Operated a Ponzi Scheme

16. As alleged by the SEC, the Stanford Defendants marketed fraudulent SIB CDs to investors exclusively through SGC Financial Advisors pursuant to a Regulation D private placement. First Amended Complaint (Doc. 48), ¶ 23.[1] The CDs were sold by Stanford International Bank, Ltd. *Id.*

[1] Unless otherwise stated, citations to Court records herein are from the case styled *SEC v. Stanford Int'l Bank, Ltd., et al.,* Civil Action No. 3-09-CV-0298-N.

17. In marketing, selling, and issuing CDs to investors, the Stanford Defendants repeatedly touted the CDs' safety and security and SIB's consistent, double-digit returns on its investment portfolio. *Id.* ¶ 31.

18. In its brochure, SIB told investors, under the heading "Depositor Security," that its investment philosophy is "anchored in time-proven conservative criteria, promoting stability in [the Bank's] certificate of deposit." SIB also emphasized that its "prudent approach and methodology translate into deposit security for our customers." *Id.* ¶ 32. Further, SIB stressed the importance of investing in "marketable" securities, saying that "maintaining the highest degree of liquidity" was a "protective factor for our depositors." *Id.* ¶ 45.

19. In its 2006 and 2007 Annual Reports, SIB told investors that the Bank's assets were invested in a "well-balanced global portfolio of marketable financial instruments, namely U.S. and international securities and fiduciary placements." *Id.* ¶ 44. More specifically, SIB represented that its 2007 portfolio allocation was 58.6% equity, 18.6% fixed income, 7.2% precious metals and 15.6% alternative investments. *Id.*

20. Consistent with its Annual Reports and brochures, SIB trained SGC Financial Advisors, in February 2008, that "liquidity/marketability of SIB's invested assets" was the "most important factor to provide security to SIB clients." *Id.* ¶ 46. In training materials, the Stanford Defendants also claimed that SIB had earned consistently high returns on its investment of deposits (ranging from 11.5% in 2005 to 16.5% in 1993). *Id.* ¶ 24.

21. Contrary to the Stanford Defendants' representations regarding the liquidity of its portfolio, SIB did not invest in a "well-diversified portfolio of highly marketable securities." Instead, significant portions of the Bank's portfolio were misappropriated by the Stanford Defendants and were either placed in speculative investments (many of them illiquid, such as

private equity deals), diverted to other Stanford Entities "on behalf of shareholder" — *i.e.*, for the benefit of Allen Stanford, or used to finance Allen Stanford's lavish lifestyle (*e.g.*, jet planes, a yacht, other pleasure craft, luxury cars, homes, travel, company credit cards, etc.). In fact, at year-end 2008, the largest segments of the Bank's portfolio were: (i) at least $1.6 billion in undocumented "loans" to Allen Stanford; (ii) private equity; and (iii) grossly over-valued real estate. *Id.* ¶¶ 24, 48.

22. In an effort to conceal their fraud and ensure that investors continued to purchase the CD, the Stanford Defendants fabricated the performance of SIB's investment portfolio. *Id.* ¶ 5.

23. SIB's financial statements, including its investment income, were fictional. *Id.* ¶ 37. In calculating SIB's investment income, Stanford Defendants Allen Stanford and James Davis provided to SIB's internal accountants a pre-determined return on investment for the Bank's portfolio. *Id.* Using this pre-determined number, SIB's accountants reverse-engineered the Bank's financial statements to reflect investment income that SIB did not actually earn. *Id.*

24. For a time, the Stanford Defendants were able to keep the fraud going by using funds from current sales of SIB CDs to make interest and redemption payments on pre-existing CDs. *See id.* ¶ 1. However, in late 2008 and early 2009, CD redemptions increased to the point that new CD sales were inadequate to cover redemptions and normal operating expenses. As the depletion of liquid assets accelerated, this fraudulent scheme collapsed.

25. Most of the above facts discovered from Stanford records have since been confirmed by Stanford's Chief Financial Officer, James Davis, who has pleaded guilty to his role in running the Stanford Ponzi scheme.

II. The Stanford Defendants Transferred CD Proceeds from the Ponzi Scheme to Aitken and Thacker

26. On or about November 14, 2008, Aitken and Thacker joined an informal division of Stanford Capital Management, LLC ("SCM") doing business as Stanford Institutional Consulting ("SIC"). Aitken and Thacker each entered employment agreements with SIC (the "Employment Agreements").

27. In the Employment Agreements, Aitken and Thacker were each described as "Executive Managing Director and Senior Investment Consultants" who reported to SCM's Board of Directors. The Employment Agreements specified a 7 year "Primary Term" of employment for Aitken and Thacker. The Employment Agreements provided that Aitken and Thacker would receive 50% of the gross annual revenue generated by "the Aitken/Thacker Group." The Employment Agreements also provided that Aitken and Thacker would receive employee benefits commensurate with other SCM executives and reimbursement of all business-related expenses. The Employment Agreements also provided that Aitken and Thacker would be indemnified by SCM for any lawsuits asserted against Aitken and Thacker by their former employer, Smith Barney.

28. Concurrently with the execution of the Employment Agreements, Aitken and Thacker entered into a Personal Goodwill Purchase Agreement ("Goodwill Agreement") with Stanford Financial Group Company ("SFGC"), pursuant to which A&T sold to SFGC their "personal goodwill," which the Goodwill Agreement defined as their "unique abilities, knowledge, relationships, and other characteristics."

29. On February 1, 2009, Aitken and Thacker both entered an "Amended and Restated Personal Goodwill Purchase Agreement" with SCM and SFGC, which purported to

replace SFGC with SCM as the buyer of the Personal Goodwill and stated that SFGC had previously paid the purchase price for the goodwill "on behalf of and at the direction of" SCM.

30. The initial "purchase price" for the Personal Goodwill was $11.25 million, which Aitken and Thacker received in cash immediately upon signing the Goodwill Agreement. Aitken and Thacker could obtain an additional payment of up to $11.25 million depending on their level of success in generating revenues for SIC. The extent to which the additional payment would be due and payable to Aitken and Thacker was governed by an earn-out provision, which provided that Aitken and Thacker would be paid $11.25 million at the conclusion of the first quarter in which annualized revenues for Aitken and Thacker's group met or exceeded $7.5 million. Aitken and Thacker could earn pro rata portions of the $11.25 million payment on a quarterly basis for any quarter in which their group generated annualized revenues between $3.75 million and $7.5 million. The additional payment was never earned or paid.

31. The $11.25 million payment that was made was transferred to Aitken and Thacker by wire from a Bank of Houston account in the name of SFGC on November 17, 2008. Aitken received 77% of this payment, or $8,662,500; Thacker received 23%, or $2,587,500.

32. The receiving bank for the wire transfer to Aitken was Bank of America, 631 A1A North, Ponte Vedra Beach, Florida.

33. The receiving bank for the wire transfer to Thacker was Citibank NA, 111 Wall Street, New York, New York.

34. These payments, which were made by or at the direction of the Stanford Defendants, came from the proceeds of the Ponzi scheme described above—*i.e.*, from funds supplied by investors who bought the fraudulent CDs.

35. Although SFGC paid Aitken and Thacker $11.25 million, Aitken and Thacker were never employed by SFGC, nor did they ever provide SFGC with any services or benefits of any kind.

36. According to an e-mail from Stanford Defendant James Davis, the $11.25 million payment to A&T was characterized as a purchase of goodwill as "a method of buying to achieve capital gains treatment" for the payment.

III. The SEC Lawsuit and the Closing of SIC

37. When Aitken and Thacker joined SIC, they sent a mailing to their clients touting the benefits of "the Stanford global organization," which they claimed had "the financial resources, investment and research acumen, and dedicated management team to be a leader in developing new services and supporting new technologies which [would] positively impact all of [their] clients."

38. In January 2009, Aitken told one of his fellow Stanford employees that he and Thacker had "felt a special bond with the Stanford family from the start" and that he "look[ed] forward to working closely with [the employee] to expand the Stanford empire."

39. However, in the days leading up to the SEC lawsuit against the Stanford Defendants, adverse publicity against Stanford began to mount in the press, and Aitken and Thacker began to receive numerous questions from SIC clients based on the adverse publicity. This led Aitken to observe, "I can only say while trying to move our practice to Stanford this type of press will cause anyone to pause and reevaluate Stanford."

40. Aitken led an effort within SIC to refute the press reports, commenting in an e-mail to fellow Stanford employees that, "We need a press release asap. I'm getting to[o] many calls and emails to keep up."

41. Aitken met with Allen Stanford himself on February 14, 2009, and by his own

account, Aitken came away from the meeting confident that the adverse publicity was unwarranted: "Allen and I had a very good conversation Saturday. I must say I feel better but we do need to get our message out. Clients and advisors are freaked out."

42. Aitken directed that an e-mail be sent to SIC's clients, rebutting the charges of fraud that had been made against Stanford in the press. The e-mail was actually sent, under Aitken's signature block, on February 17, 2009:

> Dear Stanford Institutional Consulting Client,
>
> Over the last 18 months, there have been unprecedented challenges which have confronted the global financial industry and have led to heightened scrutiny by regulatory bodies, the public and the media. Although Stanford Financial Group has not been the beneficiary of any government bailout money, we are not immune from this crisis; however any comparisons to recently defaulted institutions and scandals are not relevant to our organization and are a disservice to our employees and clients worldwide.
>
> One analyst's opinion regarding Stanford International Bank (SIB) has been picked up by numerous blogs and reputable news outlets and printed "as fact." . . .
>
> Has anyone bothered to check out the Analyst – one Alex Dalmady – who is he, what is his track record? It is easy to point fingers and made broad statements – what expertise does this guy have? I would hope the more reputable outlets did this homework, but they seem to have picked his words up verbatim and did no "fact checking" on the source of all of this at all. . . .
>
> . . .
>
> The Stanford International Bank . . . has a prudent investment approach that it has followed for over 20 years and has over 30,000 clients in over 90 countries. . . . SIB remains a strong institution, and even without the benefit of billions in US taxpayer's dollars it has taken a number of decisive steps to reinforce our financial strength to keep our capital base intact to protect our depositors.
>
> . . .
>
> Christopher C Aitken CIMA
> Executive Managing Director
> Senior Investment Consultant
> Stanford Institutional Consulting
>
> . . .

43. The same day the e-mail was sent—only 91 days after Aitken and Thacker received $11.25 million from SFGC—the SEC filed its lawsuit against the Stanford Defendants, and the Court appointed Ralph S. Janvey as Receiver. The *Wall Street Journal* posted an on-line article that day reporting on the SEC's lawsuit. Following the posting of the article, one SIC client responded to Aitken's e-mail with the following question: "Are you saying that the story in the Wall Street Journal is untrue?"

44. In the evening of February 17, Thacker sent a second e-mail to SIC's list of clients. The primary purpose of the e-mail was apparently to assure SIC's clients that their assets were safe, as they were custodied away from Stanford. Thacker also communicated that he did not have any information about the investigations into Stanford and that he was "sickened by what has been going on around the world recently and apparently for years."

45. SIC's clients responded quickly to news of the SEC's lawsuit. By February 18, 2009, at least 23 SIC clients had sent notices to SIC terminating their relationships with SIC. By February 27, 2009, at least 40 SIC clients had sent notices to SIC terminating their relationships with SIC.

46. In an e-mail to an industry colleague, Aitken revealed that the very day the SEC filed its lawsuit, he was already pondering his own future apart from SIC: "This is not a good situation. We take comfort in the fact none of our clients have any exposure to the Stanford International Bank. Should we go independent or merge with another firm?"

47. On February 24, 2009, SIC's offices were closed. The employment of all SIC employees, including Aitken and Thacker, was terminated on March 6, 2009.

48. On or about April 23, 2009, Aitken became a FINRA-registered investment advisor at Merrill Lynch in Florida. According to an article published by FundFire on or about

April 15, 2009, a recruiter who had helped place Aitken at Merrill Lynch said that Aitken was "ecstatic" to be at Merrill Lynch. The recruiter also said that Aitken "very quickly will recapture the bulk of his business." The same article stated that Thacker had plans to start an independent registered investment advisor to be called Chesapeake Wealth Management.

49. Aitken and Thacker were employed by SIC for only three months, and there is no indication that they provided any meaningful services in that brief period that would establish a legitimate right for them to retain $11.25 million.

REQUESTED RELIEF

50. This Court appointed Ralph S. Janvey as Receiver for the "assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities), of the Defendants and all entities they own or control," including those of SCM and SFGC. Order Appointing Receiver (Doc. 10) at ¶¶ 1-2; Amended Order Appointing Receiver (Doc. 157) at ¶¶ 1-2. The Receiver seeks the relief described herein in this capacity.

51. Paragraph 4 of the Order Appointing Receiver, signed by the Court on February 16, 2009, authorizes the Receiver "to immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate." Order Appointing Receiver (Doc. 10) at ¶ 4; Amended Order Appointing Receiver (Doc. 157) at ¶ 4. Paragraph 5(c) of the Order specifically authorizes the Receiver to "[i]nstitute such actions or proceedings [in this Court] to impose a constructive trust, obtain possession, and/or recover judgment with respect to persons or entities who received assets or records traceable to the Receivership Estate." Order Appointing Receiver (Doc. 10) at ¶ 5(c); Amended Order Appointing Receiver (Doc. 157) at ¶ 5(c).

52. One of the Receiver's key duties is to maximize distributions to defrauded investors and other claimants. *See* Amended Order Appointing Receiver (Doc. 157) at ¶ 5(g), (j) (ordering the Receiver to "[p]reserve the Receivership Estate and minimize expenses in furtherance of maximum and timely disbursement thereof to claimants"); *Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995) (receiver's "only object is to maximize the value of the [estate assets] for the benefit of their investors and any creditors"); *SEC v. TLC Invs. & Trade Co.*, 147 F. Supp. 2d 1031, 1042 (C.D. Cal. 2001); *SEC v. Kings Real Estate Inv. Trust*, 222 F.R.D. 660, 669 (D. Kan. 2004). But before the Receiver can attempt to make victims whole, he must locate and take exclusive control and possession of assets of the Estate or assets traceable to the Estate. Doc. 157 ¶ 5(b).

I. The Receiver is Entitled to Disgorgement of Assets Fraudulently Transferred to Aitken and Thacker

53. The Receiver is entitled to disgorgement of the CD Proceeds paid to Aitken and Thacker because such payments constitute fraudulent transfers under applicable law. The Stanford Defendants and/or SFGC transferred the CD Proceeds to Aitken and Thacker with actual intent to hinder, delay, or defraud creditors; as a result, the Receiver is entitled to the disgorgement of those CD Proceeds from Aitken and Thacker. Additionally, the Stanford Defendants and/or SFGC transferred the CD Proceeds to Aitken and Thacker at a time when the Stanford Defendants and SFGC were insolvent, and the Stanford Defendants and SFGC did not receive reasonably equivalent value in exchange for the transfers.

54. The Receiver may avoid transfers made with the actual intent to hinder, delay, or defraud creditors. "[T]ransfers made from a Ponzi scheme are presumptively made with intent to defraud, because a Ponzi scheme is, as a matter of law, insolvent from inception." *Quilling v. Schonsky*, No. 07-10093, 2007 WL 2710703, at *2 (5th Cir. Sept. 18, 2007); *see also Warfield v.*

Byron, 436 F.3d 551, 558 (5th Cir. 2006) (". . . [the debtor] was a Ponzi scheme, which is, as a matter of law, insolvent from its inception. . . . The Receiver's proof that [the debtor] operated as a Ponzi scheme established the fraudulent intent behind transfers made by [the debtor].").

55. The Stanford Defendants were running a Ponzi scheme, which included SCM, SFGC, and other entities owned and operated by the Stanford Defendants. Further, the Stanford Defendants and/or SFGC paid Aitken and Thacker with CD Proceeds taken from unwitting CD investors. The Receiver is, therefore, entitled to disgorgement of the fraudulently transferred CD Proceeds that Aitken and Thacker received.

56. In order to carry out the duties delegated to him by this Court, the Receiver seeks complete and exclusive control, possession, and custody of the CD Proceeds received by Aitken and Thacker. The Receiver therefore seeks an order that: (a) the $8,662,500 payment to Aitken was a fraudulent transfer under applicable law; (b) the $2,587,500 payment to Thacker was a fraudulent transfer under applicable law; (c) the payments to Aitken and Thacker are property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate; (d) Aitken is liable to the Receivership Estate in the amount of $8,662,500; (e) Thacker is liable to the Receivership Estate in the amount of $2,587,500; and (f) the Receiver is entitled to an award of reasonable attorneys' fees, costs, and interest.

PRAYER

57. The Receiver respectfully requests the following:

(a) An Order providing that the $8,662,500 payment to Aitken was a fraudulent transfer under applicable law;

(b) An Order providing that the $2,587,500 payment to Thacker was a fraudulent transfer under applicable law;

(c) An Order providing that the funds transferred to Aitken and Thacker are property of the Receivership Estate held pursuant to a constructive trust for the benefit of the Receivership Estate;

(d) An Order providing that Aitken is liable to the Receivership Estate in the amount of $8,662,500;

(e) An order providing that Thacker is liable to the Receivership Estate in the amount of $2,587,500;

(f) An order providing that the Receiver is entitled to recover from Aitken and Thacker the Receiver's costs and reasonable attorneys' fees incurred in pursuing these claims, in addition to interest on any award from the date of the transfers to Aitken and Thacker through satisfaction of judgment; and

(g) Such other and further relief as the Court deems proper under the circumstances.

Dated: March 30, 2010

Respectfully submitted,

BAKER BOTTS L.L.P.

By: /s/ Kevin M. Sadler

Kevin M. Sadler
Texas Bar No. 17512450
kevin.sadler@bakerbotts.com
Robert I. Howell
Texas Bar No. 10107300
robert.howell@bakerbotts.com
Scott D. Powers
Texas Bar No. 24027746
scott.powers@bakerbotts.com
David T. Arlington
Texas Bar No. 00790238
david.arlington@bakerbotts.com
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4039
(512) 322-2500
(512) 322-2501 (Facsimile)

Timothy S. Durst
Texas Bar No. 00786924
tim.durst@bakerbotts.com
2001 Ross Avenue
Dallas, Texas 75201
(214) 953-6500
(214) 953-6503 (Facsimile)

ATTORNEYS FOR RECEIVER RALPH S. JANVEY

CERTIFICATE OF SERVICE

On March 30, 2010, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. I hereby certify that I will serve Aitken and Thacker through their counsel of record, electronically, or by other means authorized by the Court or the Federal Rules of Civil Procedure.

/s/ Kevin M. Sadler
Kevin M. Sadler