

12/12/2011
Clerk of the District Court
District of Columbia Bankruptcy
Court of the District of Columbia

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Securities and Exchange Commission,)
100 F Street, NE)
Washington, DC 20549)

Applicant,)

v.)

Securities Investor Protection Corporation,)
805 Fifteenth Street, NW)
Suite 800)
Washington, DC 20005)

Respondent.)

Misc. No. _____

Oral Hearing Requested
Under LCvR 7(f)

Case: 1:11-mc-00678
Assigned To : Wilkins, Robert L.
Assign. Date : 12/12/2011
Description: Miscellaneous

**SECURITIES AND EXCHANGE COMMISSION’S EX PARTE MOTION FOR
AN ORDER TO SHOW CAUSE WHY THE SECURITIES INVESTOR
PROTECTION CORPORATION SHOULD NOT BE ORDERED TO FILE AN
APPLICATION WITH RESPECT TO STANFORD GROUP COMPANY**

Applicant Securities and Exchange Commission (“SEC” or “Commission”) moves *ex parte* for an order directing the Securities Investor Protection Corporation (“SIPC”) to show cause why it should not be ordered to file an application for a protective decree with the federal district court for the Northern District of Texas (“Texas Court”) pursuant to Section 5(a)(3) of the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. § 78aaa, *et seq.* (“SIPA”), with respect to Stanford Group Company (“SGC”) and to otherwise discharge its obligations under SIPA (“Order Requiring SIPC Application”).

The Commission, contemporaneously with the filing of this motion, has filed an application for an Order Requiring SIPC Application under Section 11(b) of SIPA, 15 U.S.C. § 78ggg(b). See Application of the Securities and Exchange Commission

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(“Commission Application”). Because Section 11(b) expressly authorizes the Commission to “apply to the district court” for such an order, this proceeding is summary in nature and the regular rules of civil procedure do not apply. As further explained in the Commission Memorandum of Points and Authorities in Support of Application (“Commission Memorandum in Support of Application”), “‘applications’ are distinct from ‘actions;’” whereas “actions” refer to regular civil or criminal proceedings that commence with formal complaints, “[a]n ‘application’” “does not necessarily include or trigger ‘all the formal proceedings in a court of justice’ as does the filing of an ‘action.’” *SEC v. McCarthy*, 322 F.3d 650, 656-57 (9th Cir. 2003) (quoting Black’s Law Dictionary at 28 (7th ed. 1999)); Commission Memorandum in Support of Application at 31; *see also New Hampshire Fire Ins. Co. v. Scanlon*, 362 U.S. 404, 406 (1960) (“Summary trials . . . may be conducted without formal pleadings, on short notice, without summons and complaints, generally on affidavits, and sometimes even *ex parte*.”).

Accordingly, the Commission has not filed a formal complaint under Rule 3 of the Federal Rules of Civil Procedure (“FRCP”), nor has it sought summons under FRCP Rule 4. Rather, through this motion, the Commission seeks an order to show cause that will provide SIPC with an opportunity to respond to the Commission Application. This Court’s issuance of a show cause order would be consistent with Congress’s intent that this proceeding should go forward expeditiously, as reflected by SIPA’s authorization of the Commission’s use of an application under Section 11(b).

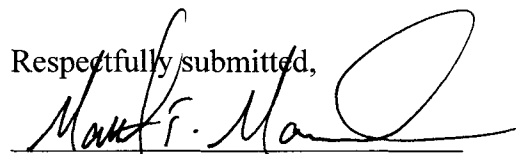
A show cause order also would be consistent with SIPA’s central goal of obtaining speedy resolution of claims of customers of defunct broker-dealers for the return of property. Through its Commission Application, the Commission seeks to have

SIPC take necessary steps to commence a liquidation proceeding in the Texas Court that promptly will resolve in accordance with SIPA's requirements the claims of SGC customers for protection. Thousands of SGC customers had investments in securities issued by SGC's off-shore affiliate, Stanford International Bank, Ltd., that purportedly were worth billions of dollars when SGC and other companies owned or controlled by Robert Allen Stanford collapsed in early 2009. The Commission's requested relief here will require SIPC to file for a protective decree with respect to SGC in the Texas Court, thereby triggering the statutory process through which SGC customers' claims can be addressed. Issuance of a show cause order here will facilitate the ultimate objective of promptly addressing SGC customer harm.

This motion is based on the accompanying memorandum of points and authorities, this motion, the Commission Application, the Commission Memorandum in Support of Application, the declaration of Matthew T. Martens, and whatever evidence and argument is presented to the court on this motion.

Dated: Washington, D.C.
December 12, 2011

Respectfully submitted,



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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

DEC 12 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

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Misc. No. 11-678

**SECURITIES AND EXCHANGE COMMISSION’S MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE MOTION FOR AN
ORDER TO SHOW CAUSE WHY THE SECURITIES INVESTOR
PROTECTION CORPORATION SHOULD NOT BE ORDERED TO FILE AN
APPLICATION WITH RESPECT TO STANFORD GROUP COMPANY**

Applicant Securities and Exchange Commission (“SEC” or “Commission”) respectfully submits this memorandum of points and authorities in support of its *ex parte* motion for an order to show cause why the Securities Investor Protection Corporation (“SIPC”) should not be ordered to file an application for a protective decree with the federal district court for the Northern District of Texas pursuant to Section 5(a)(3) of the Securities Investor Protection Act of 1970, as amended, 15 U.S.C. § 78aaa, *et seq.* (“SIPA”), with respect to Stanford Group Company (“SGC”) and to otherwise discharge its obligations under SIPA (“Order Requiring SIPC Application”).

I. Introduction and Background

The Commission, contemporaneously with the filing of this motion for an order to show cause, has filed an application for an Order Requiring SIPC Application under Section 11(b) of SIPA, 15 U.S.C. § 78ggg(b). *See* Application of the Securities and Exchange Commission (“Commission Application”). Through this Application, the Commission seeks to enforce its supervisory authority over SIPC by obtaining an order requiring SIPC to file an application to start a liquidation proceeding in the federal district court of the Northern District of Texas (“Texas Court”) for defunct broker-dealer and SIPC member SGC. A primary purpose of this liquidation proceeding would be promptly to resolve in accordance with SIPA’s requirements the claims of SGC customers for protection. Thousands of SGC customers had investments in securities issued by SGC’s off-shore affiliate, Stanford International Bank, Ltd. (“SIBL”), that purportedly were worth billions of dollars when the group of companies owned or controlled by Robert Allen Stanford collapsed in early 2009. At that time, the Commission sued Stanford and his companies, including SGC, for running a fraudulent, multi-billion-dollar investment scheme centered on the sale of the SIBL securities.

Under Section 5(a)(3) of SIPA, SIPC may file an application for a protective decree with an appropriate court if it “determines that . . . [a SIPC] member has failed or is in danger of failing to meet its obligations to customers” and certain other requirements are met. Sections 5(a)(3), (b)(1), 15 U.S.C. §§ 78eee(a)(3), (b)(1). After SIPC’s application has been granted and a trustee has been appointed, the liquidation proceeding begins, during which the member’s apparent customers are provided notice and an opportunity to submit claims to a SIPC-designated trustee, and, if necessary, to appeal the

trustee's decisions to the federal courts. If funds available at the firm are insufficient to satisfy customers' net equity claims, a fund maintained by SIPC is used to supplement the distribution subject to statutory limits. *See* SIPA Sections 8(b), 9(a), 15 U.S.C. §§ 78fff-2(b), fff-3(a).

SIPC gives the Commission "plenary" supervisory authority over SIPC, including authority to apply for an order requiring SIPC to discharge its statutory obligations regarding customer protection. *SIPC v. Barbour*, 321 U.S. 412, 417 (1975); SIPA Section 11(b), 15 U.S.C. § 78ggg(b).¹ In June 2011 the Commission determined, based on the totality of the facts and circumstances, that SGC has failed to meet its obligations to customers and that there are SGC customers in need of the protections provided by SIPA. Although the Commission informed SIPC of this determination and requested that SIPC take necessary steps to commence a liquidation proceeding, SIPC has refused to do so. The Commission has informed SIPC that if it continued to refuse the Commission's request, the Commission would apply to this Court for relief under SIPA Section 11(b).

With its Commission Application, the Commission has filed a proposed Order Requiring SIPC Application; Memorandum of Points and Authorities in Support of Application ("Commission Memorandum in Support of Application"); and Declaration of Matthew T. Martens ("Martens Declaration"). Through this motion the Commission seeks an order directing SIPC to show cause why the Order Requiring SIPC Application should not be granted.

¹ The Commission is the only party able to seek such relief. SIPA does not provide investors with a private right of action against SIPC. *See Barbour*, 321 U.S. at 424-25.

II. Argument

This Court should issue an order directing SIPC to show cause why this Court should not issue an Order Requiring SIPC Application. Section 11(b) of SIPA provides:

In the event of the refusal of SIPC to commit its funds or otherwise to act for the protection of customers of any member of SIPC, the Commission may apply to the district court of the United States in which the principal office of SIPC is located for an order requiring SIPC to discharge its obligations under this chapter and for such other relief as the court may deem appropriate to carry out the purposes of this chapter.

15 U.S.C. § 78ggg(b). SIPC has refused “to commit its funds or otherwise to act for the protection of customers” under this provision by refusing the Commission’s request to institute a liquidation proceeding for SGC.

Because SIPA empowers the Commission to supervise SIPC, the Commission may, in its discretion, determine that there is a customer who needs protection under SIPA, thereby rectifying SIPC inaction or superseding a contrary judgment by SIPC on this issue. The only issues presented by the Commission Application to this Court are (1) whether the Commission in fact has determined that SGC, a SIPC member, has failed or is in danger of failing to meet its obligations to customers; (2) whether one or more of the other statutory conditions required for a protective decree are met; and (3) whether SIPA Section 11(b) authorizes the Court to order SIPC to file an application for a protective decree in the Texas Court. Because all of these questions are easily answered in the affirmative, the Court should issue the requested Order Requiring SIPC Application. The Commission’s preliminary determination that SGC has failed or is in danger of failing to meet its obligations to customers is not subject to judicial review by this Court.

Additional points and authorities in support of these arguments are set forth at length in the Commission Memorandum in Support of Application and Martens Declaration, and are incorporated here by reference.

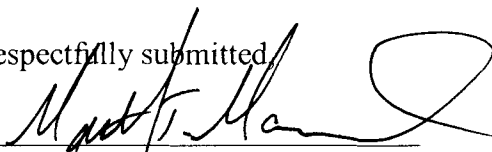
As discussed in the present *ex parte* motion and Commission Memorandum in Support of Application, because Section 11(b) expressly authorizes the Commission to “apply to the district court” for such an order, this proceeding is summary in nature and the regular rules of civil procedure do not apply. *See* Commission Memorandum in Support of Application at 31. Accordingly, the Commission has not filed a formal complaint under Rule 3 of the Federal Rules of Civil Procedure (“FRCP”), nor has it sought summons under FRCP Rule 4. Rather, through this motion, the Commission seeks an order to show cause that will provide SIPC with an opportunity to respond to the Commission Application.

III. Conclusion

For the foregoing reasons and the reasons stated in the present *ex parte* motion, the Commission Application, the Commission Memorandum in Support of Application, and the Martens Declaration, the Commission is entitled to an order directing SIPC to show cause why it should not be ordered to file an application for a protective decree with the Texas Court under Section 5(a)(3), 15 U.S.C. § 78eee(a)(3), and otherwise to take necessary steps to commence a SIPA liquidation proceeding for SGC.

Dated: Washington, D.C.
December 12, 2011

Respectfully submitted,



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