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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD, ET AL. Defendants	§	Case No.: 3-09CV0298-N

OPPOSITION TO AMENDED JOINT MOTION OF THE SEC, RECEIVER, EXAMINER, AND OFFICIAL STANFORD INVESTORS COMMITTEE TO APPROVE SETTLEMENT AGREEMENT AND CROSS-BORDER PROTOCOL

Curtis, Mallet-Prevost, Colt & Mosle LLP ("Curtis"), *pro se*, files this opposition to the Amended Joint Motion of the SEC, Receiver, Examiner, and Official Stanford Investors Committee to Approve Settlement Agreement and Cross-Border Protocol (the "Amended Joint Motion") [D.E. 1793]. Pursuant to the Settlement Agreement and Cross-Border Protocol (the "Settlement Agreement"), the motion inappropriately seeks to elevate one class of alleged victims of the Stanford Ponzi scheme above another class of victims, and to distribute funds to this single preferred class to the exclusion of all others. Respectfully, the Court should deny this motion and require that all victims are treated victims fairly and equally.

BACKGROUND

Pursuant to a written engagement agreement [D.E. 1769 (Ex. A to the Aff. of M. Graif)], and at Stanford Financial Group Company's ("Stanford Financial") request and with its knowledge, Curtis provided legal services to Stanford Financial and incurred expenses in connection with performing those services. (Aff. of M. Graif at ¶ 3.) In brief, Stanford Financial

was sued by Stanford University in the U.S. District Court for the Northern District of California on claims of trademark infringement. See The Board of Trustees of the Leland Stanford Junior Univ. v. Stanford Fin. Group Co., No. C-08-04950 CRC (N.D. Cal.). Stanford University contended that the use by Stanford Financial of the name "Stanford" created a likelihood of confusion and should be enjoined. [D.E. 1769, (Aff. of M. Graif at ¶ 5.)] Curtis was retained by Stanford Financial's in-house counsel, and represented Stanford Financial in that litigation. (Id. at ¶ 6.) Curtis also performed ancillary legal services for Stanford Financial involving intellectual property issues. (Id. at ¶ 7.) At no time did Curtis have any involvement with the financial or investment aspects of Stanford Financial's business. Curtis was not called upon, had no reason to, and in fact never scrutinized Stanford Financial's investment products or its financial condition. (Id. at ¶ 9.)

Stanford Financial has not paid Curtis the legal fees and expenses incurred in connection with that representation. Curtis is currently owed more than $1,442,115.60 in legal fees and expenses (plus interest).

On January 22, 2010, Curtis timely filed a claim with the Receiver on the Receiver's website. (Claim number: 94c39fa525ae4fab91e25fd717682b25.) On August 28, 2012, Curtis timely filed two proofs of claim in support of its claims. Its claims were assigned claim numbers: STANFORD-1012207-9; STANFORD-1012208-7; STANFORD-1012209-5; STANFORD-1012210-9; STANFORD-1012211-7; and STANFORD-1012212-5.

Curtis has previously appeared before this Court to oppose the Receiver's Motion for Approval of Interim Distribution Plan (the "Interim Distribution Motion"), which similarly seeks to provide preferential treatment to a single class of victims to the exclusion of others. The Interim Distribution Motion was filed on January 11, 2013, [D.E. 1766], and in that motion the

Receiver proposed to make a distribution to only certain alleged victims ("Investor CD Claimants") who are supposedly more numerous than other victims and whose claims are therefore somehow deemed more deserving than those of other victims. (Interim Distribution Mot. at 1.) The Interim Distribution Motion also asserted, without basis or any factual support, that the payment should go exclusively to the Investor CD Claimants because "the interim distribution should direct resources where they are needed most[.]" (Id. at 25.) Under that proposed interim distribution plan, these preferred recipients will receive a distribution, while all other victims – including service providers such as Curtis – will receive nothing. On February 1, 2013, Curtis timely filed an Objection to the Receiver's motion [D.E. 1769]. The Court has ordered a hearing on the Interim Distribution Motion for April 11, 2013 [D.E. 1801].

On March 12, 2013, the Receiver and other movants filed the current Amended Joint Motion [D.E. 1793]. Like the Receiver's Interim Distribution Motion, pursuant to the Settlement Agreement, a distribution will be made to only certain alleged "Creditor-victims," defined as "claimants seeking reimbursement for losses associated with their deposits with [Stanford International Bank]" (Settlement Agmt. at 2.[1]) Again, while these preferred recipients will receive a distribution, all other victims – including services providers such as Curtis – will received nothing. The Amended Joint Motion provides no justification for the preferential treatment of the Creditor-victims to the detriment of all others, fails to address Curtis and the class of services provider creditors, and cites to no law to support the proposed actions.

ARGUMENT

A court has discretion to approve a settlement in a receivership if the settlement is fair. Gordon v. Dadante, 336 F. App'x 540, 545 (6th Cir. 2009); SEC v. Kaleta, 2012 U.S.

[1] Citations in this format refer to the Settlement Agreement and Cross-Border Protocol, attached to the Amended Joint Motion in the Appendix.

Dist. LEXIS 14880, 33 (S.D. Tex. Feb. 7, 2012). We submit that because the Settlement Agreement provides for distributions solely to the Creditor-victims, to the exclusion of all others without any rationale or justification for this approach, the Settlement Agreement is not fair and the Court should deny the Amended Joint Motion.

As previously recognized by the Receiver, "[o]ne of the Receiver's key duties is to maximize distributions to defrauded investor *and other claimants*." See *Receiver's Response to Examiner's Report and Recommendation No. 1*, at 2 [D.E. 441] (emphasis added) (citing *Amended Order Appointing Receiver* at ¶ 5(g), (j) (Doc. 157) (ordering the Receiver to "[p]reserve the Receivership Estate and minimize expenses in furtherance of maximum and timely disbursement thereof to claimants"). Indeed, multiple courts recognize a receiver's duty to both investors and other claimants, without distinguishing between the two or prioritizing one over the other. *See Jones v. Wells Fargo Bank, N.A.*, 666 F.3d 955, 966-67 (5th Cir. 2012) (citing *Scholes* and explaining the receiver's duty to act on behalf of defrauded investors and other innocent victims); *Eberhard v. Marcu*, 530 F.3d 122, 132 (2d Cir. 2008) ("[B]ecause receivership should not be used as an alternative to bankruptcy, we have disapproved of district courts using receivership as a means to process claim forms and set priorities among various classes of creditors."); *Scholes v. Lehmann*, 56 F.3d 750, 755 (7th Cir. 1995 (explaining that receiver's "only object is to maximize the value of the [estate assets] for the benefit of their investors and any creditors"). Despite this case law and the Receiver's own recognition in other instances of its duty to investors and other claimants alike, the Amended Joint Motion provides for a distribution that excludes entirely all claimants other than certain investors. There is simply no basis for this. The Receiver is required to act for all victims and there is no justification (and the Amended Joint Motion offers none) for preferring one class of victims over another.

Moreover, if the Receiver and other movants are going to exclude an entire group of victims and elevate one group of victims over other victims, the movants have an obligation to place this issue squarely before this Court so that the Court can properly weigh whether this approach is appropriate and consistent with the Court's orders. The movants have not done so in this case which is another reason why this Court should deny the Amended Joint Motion. Unlike the Receiver's Interim Distribution Motion in which the Receiver at least mentions that its proposed interim plan provides for distributions to investors only and not to good faith creditors like Curtis (Interim Distribution Mot. at 14), in the Amended Joint Motion the movants neglect altogether to mention this class of creditors to whom the Receiver owes a duty and whom the Amended Joint Motion seeks to exclude from any distribution. Moreover, the movants' language in the Settlement Agreement continues this misconception, implying that it is, in fact, providing relief to a broad class of victims when, in fact, it is not. The Settlement Agreement provides that distributions will go to "Creditor-victims," implying that creditor victims, like Curtis, may share in potential distributions. But the Settlement Agreement then narrowly defines "Creditor-victims" as "claimants seeking reimbursement for losses associated with their deposits with [Stanford International Bank]" (Settlement Agmt. at 2.) Despite the creditor label, this narrow definition clearly excludes true creditors like Curtis. The movants' Joint Amended Motion perpetuates this misconception, stating that the "assets will be distributed to the Creditor-victims of the Stanford Ponzi scheme, and not to other parties such as the Antiguan government or the Internal Revenue service," (Amd. Joint Mot. at 8), and fails to explain plainly to this Court that by approving the Settlement Agreement creditors like Curtis will be entirely excluded from receiving distributions.

The movants' note that "[t]ens of thousands of customers were induced to purchase certificates of deposit and/or to deposit Stanford International Bank, Ltd." (Amd. Joint Mot. at 2.) In contrast, Curtis provided legal services pursuant to a written retainer agreement in which Stanford agreed to pay Curtis' fees and expenses. Unlike the "creditor-investors," however, who were induced by the "suspiciously consistent" purported yields "ranging from ranging from a high of 388% of the US yield in 2002 to a low of 140% of the US yield in 2006," (Interim Distribution Mot. at 2), rates that were nearly double what other U.S. banks offered (*Second Amended Complaint*, at ¶ 51 [D.E. 490-2]), Curtis was engaged pursuant to a written contract and was alerted to no such red flags of a fraudulent scheme. The Creditor-investor victims were seeking unrealistically high returns by investing in SIB's CDs. Yet, they closed their eyes to red flags that put them on inquiry notice that the investment was too good to be true. Nonetheless, the Amended Joint Motion seeks to provide them, and only them, with distributions, while an ordinary creditor, like Curtis – who knew of no such red flags – is to receive nothing.

Curtis is not in a class of wrongdoers undeserving of a recovery. It is uncontested that Curtis is a victim of the Ponzi scheme orchestrated by R. Allen Stanford, SIB, and other parties. Nor is there any evidence that Curtis was aware of or on notice of the wrongdoers' misconduct. Unlike the Creditor-victims, who took a gamble on an investment that promised unrealistically high returns, Curtis was a service provider who entered into a written contract to provide legal services in exchange for payment of fees and expenses. Curtis provided the services, but Stanford Financial did not pay the legal fees or expenses. A plan to exclude creditors like Curtis from recovery is not fair. The movants' Amended Joint Motion fails to present a fair picture of the options before the Court and the implications of approving the

Settlement Agreement for good faith creditors such as Curtis. As such, this Court should deny the Amended Joint Motion and reject this Settlement Agreement.

CONCLUSION

For the foregoing reasons, Curtis respectfully requests that this Court deny the Amended Joint Motion.

Dated: March 28, 2013
New York, New York

CURTIS, MALLET-PREVOST, COLT & MOSLE LLP
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CERTIFICATE OF SERVICE

On March 28, 2013, I electronically submitted the foregoing document titled Opposition to Receiver's Amended Joint Motion of the SEC, Receiver, Examiner, and Official Stanford Investors Committee to Approve Settlement Agreement and Cross-Border Protocol with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal rule of Civil Procedure 5(b)(2).

s/ *Myles K. Bartley*
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