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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil Action No. 3:09-CV-298-N
	§	
STANFORD INTERNATIONAL BANK, LTD., *et al.*,	§	
	§	
Defendant.	§	

ORDER

This Order addresses various motions[1] that request one or all of several types of relief: (1) leave to intervene in this action; (2) an order unfreezing investor accounts; and (3) leave to proceed with suits against Stanford entities and former Stanford employees in other forums. For the reasons discussed below, the Court denies all these motions.

[1]In particular: David Quintos and Diana Dimitiova's motion for leave to proceed in another forum or in the alternative to intervene [23]; Robert S. Conte's motion for leave to proceed in another jurisdiction and unfreeze account [199]; Hannah Kay Peck's motion to intervene, unfreeze assets, and for leave to proceed with lawsuit in another jurisdiction [293]; Wilma Diner's motion for relief from injunction [376]; Susan Blount's motion to proceed in another forum [414]; Jane Ann Sasser's motion to compel arbitration [574]; and Linda and Mark Oge's motion to compel arbitration [778].

I. MOTIONS TO INTERVENE

The Court denies movants' requests to intervene in this action. The Court's reasons are explained its earlier order denying similar motions to intervene. *See* Order of Apr. 20, 2009 [321].

II. MOTIONS TO UNFREEZE ASSETS

The Court denies as moot movants' requests to release their accounts. The Court has already issued orders requiring the Receiver to release the accounts of both the Stanford investors and financial advisors. *See* Order of June 29, 2009 [533]; *see also* Order of Jan. 15, 2010 [214], *Janvey v. Alguire*, Civil Action No. 3:09-CV-724 (N.D. Tex. filed Apr. 20, 2009).

III. MOTIONS TO PROCEED IN ANOTHER FORUM

The Court's receivership order enjoins all persons from "[t]he commencement or continuation . . . of any judicial, administrative, or other proceeding against the Receiver, any of the defendants, the Receivership Estate, or any agent, officer, or employee related to the Receivership Estate, arising from the subject matter of this civil action." Order Appointing Receiver [157] at 7. Some movants express uncertainty as to whether this order bars litigation against former Stanford employees. To the extent the order is unclear, the Court now clarifies that it enjoins litigation against any former Stanford employee "arising from the subject matter of this civil action."

A. The Court Has Authority to Stay Litigation and Arbitration Against Stanford Entities and Former Employees

"'The federal courts have inherent equitable authority to issue a variety of 'ancillary relief' measures in actions brought by the S.E.C. to enforce the federal securities laws.'" *S.E.C. v. Safety Fin. Svc., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (quoting *S.E.C. v. Wencke* (*Wencke I*), 622 F.2d 1363, 1369 (9th Cir. 1980)). To that end, a receivership court "has power to issue orders barring actions which would interfere with its administration of [the receivership] estate." *Wencke I*, 622 F.2d at 1370; *accord Schauss v. Metals Depository Corp.*, 757 F.2d 649, 654 (5th Cir. 1985) ("[S]everal courts have recognized the importance of preserving a receivership court's ability to issue orders preventing interference with its administration of the receivership property."). The power to enjoin litigation that might prejudice the receivership "rests as much on [the Court's] control over the property placed in receivership as on its jurisdiction over the parties to the securities fraud action." *Wencke I*, 622 F.2d at 1369.

Several movants argue that this Court lacks authority to stay litigation or arbitration against former Stanford employees that are not themselves defendants in this case. This is incorrect. Though former Stanford employees who allegedly sold fraudulent CDs are not named defendants in this case, many of them are named defendants in a satellite case that was once a part of this action.[2] In that case, the Receiver alleges that former employees' earnings from the sale of fraudulent CDs are receivership assets. If the Receiver prevails in

[2] *Janvey v. Alguire*, Civil Action No. 3:09-CV-724 (N.D. Tex. filed Apr. 20, 2009).

that case, the former employees' commissions will go into the pool of funds available for distribution to investors. It follows, then, that movants' potential recovery from those former employees may come from potential receivership assets. Accordingly, the Court's inherent power to fashion ancillary relief to enforce the securities laws extends to the power to enjoin, for the time being, litigation against former Stanford employees in addition to receivership entities.

B. The Litigation Stay Remains Appropriate at this Time

The Court declines to lift the litigation stay at this time.[3] In determining whether to lift a litigation stay in a receivership action, many federal courts apply a test first articulated by the Ninth Circuit Court of Appeals.[4] The test directs courts to consider three factors:

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[3]The discussion that follows considers requests to lift the litigation stay with regard to claims against former Stanford employees. Some movants ask the Court to proceed in another forum against Stanford-owned entities or the Receiver. Such claims would even more directly interfere with the Court's administration of the receivership estate than suits against former employees. Accordingly, the Court also declines to lift the stay with respect to suits against Stanford-owned entities and the Receiver.

[4]The parties point to no cases from the Fifth Circuit addressing when a district court must lift a litigation stay in an equitable receivership. However, courts in other circuits have applied the Ninth Circuit's *Wencke* test. *See, e.g.*, *United States v. Acorn Tech. Fund*, 429 F.3d 438, 443 (3d Cir. 2005); *F.T.C. v. NHS Sys., Inc.*, 2009 WL 3072475, at *12 (E.D. Pa. 2009); *S.E.C. v. Madison Real Estate Group, LLC*, 647 F. Supp. 2d 1271, 1275 (D. Utah 2009); *United States v. Petters*, 2008 WL 5234527, at *3 (D. Minn. 2008); *S.E.C. v. Byers*, 592 F. Supp. 2d 532, 536 (S.D.N.Y. 2008); *F.T.C. v. 3R Bancorp*, 2005 WL 497784, at *2 (N.D. Ill. 2005); *United States v. ESIC Capital, Inc.*, 685 F. Supp. 483, 485 (D. Md. 1988). The Fifth Circuit has not adopted the *Wencke* test, but it favorably cited *Wencke I* to explain "the importance of preserving a receivership court's ability to issue orders preventing interference with its administration of the receivership property." *Schauss*, 757 F.2d at 654. The *Schauss* Court noted that "orders enjoining broad classes of individuals from taking any action regarding receivership property . . . can serve as an important tool permitting a district court to prevent dissipation of property or assets subject to multiple claims in various

> (1) whether refusing to lift the stay genuinely preserves the status quo or whether the moving party will suffer substantial injury if not permitted to proceed;
> (2) the time in the course of the receivership at which the motion for relief from the stay is made; and
> (3) the merit of the moving party's underlying claim.

S.E.C. v. Wencke (*Wencke II*), 742 F.2d 1230, 1231 (9th Cir. 1984) (citing *Wencke I*, 622 F.2d at 1374). The issue in the *Wencke* test is "one of timing, that is, when during the course of a receivership a stay should be lifted and claims allowed to proceed, not whether the stay should be lifted at all."[5] *Wencke II*, 742 F.2d at 1231 (emphasis omitted).

1. Balance of Interests. **—** The first *Wencke* factor concerns the balance of the Receiver's interests and the interests of the moving party. *S.E.C. v. Universal Fin.*, 760 F.2d 1034, 1038 (9th Cir. 1985). When considering the Receiver's interest in preserving the status quo, the Court considers "not only the protection of the receivership *res*, but also protection of defrauded investors and considerations of judicial economy." *Id.* (citing *Wencke I*, 622 F.2d at 1372-73).

Allowing suits to proceed against financial advisors would endanger the receivership status quo. Though former Stanford employees who allegedly sold fraudulent CDs are not

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locales" and prevent "'piecemeal resolution of issues that call for a uniform result.'" *Id.* (quoting *W. Gulf Mar. Assoc. v. ILA Deep Sea Local 24*, 751 F.2d 721, 729 (5th Cir. 1985)).

[5]The Court agrees with Movants Quintos and Dimitiova that the Receiver cannot assert certain personal claims that individual creditors may have against third party defendants. *See In re: Seven Seas Petroleum, Inc.*, 522 F.3d 575, 584-85 (5th Cir. 2008) (recognizing the separate claims by plaintiff creditors and the bankrupt estate against a third party arising out of the same series of events). Accordingly, the question the Court considers today is not *if* but *when* investors may pursue their claims against their former Stanford financial advisors.

named defendants in the S.E.C. case, recovery against them may come from assets traceable to the receivership estate. First, many of the financial advisors against whom movants seek to proceed are defendants in the *Alguire* case, in which the Receiver seeks disgorgement of commissions and fees earned in connection with the sale of Stanford CDs. Individual suits against these former financial advisors could deplete funds that may eventually be adjudged receivership assets. Second, judgments against former employees might be payable by Stanford insurance policies, including directors and officers' insurance policies. The Court has not yet ruled on whether those insurance proceeds are estate assets,[6] and the Court has not authorized payment of any claims other than those for defense costs. Third, former financial advisers will likely argue that Stanford entities are at least partially responsible for their liabilities to investors. Finally, because actions against former Stanford employees potentially implicate receivership property, the Receiver has a duty under this Court's order to monitor and possibly intervene in those actions. This would mean more receivership assets spent on litigation and less available for distribution to creditors and investors.

The Court does not take lightly movants' interest in proceeding with their claims against their former financial advisors. Movants worry that a continued stay might allow former employees to render themselves judgment-proof by spending or concealing funds. However, the Court must balance movants' desires to be first to sue or initiate arbitration against their financial advisors with the interests of all investors, who likewise want to

[6]*See* Order of Oct. 9, 2009 [831] at 1 ("[I]t is unnecessary to determine at this time whether [insurance] proceeds are part of the estate or not.")

recoup as much of their losses as possible. In order to ensure orderly and equitable distribution of receivership assets, the Court continues its stay of litigation in the interest of preserving as many assets as possible for the receivership estate.

2. Time in the Course of the Receivership. — "'[V]ery early in a receivership even the most meritorious claims might fail to justify lifting a stay given the possible disruption of the receiver's duties.'" *Byers*, 592 F. Supp. 2d at 537 (citing *Acorn Tech. Fund, L.P.*, 429 F.3d at 443-44). What constitutes "early" in a receivership is "inherently case-specific." *Acorn Tech.*, 429 F.3d at 450. Accordingly, courts have declined to lift litigation stays anywhere from a few months to many years into a receivership. *See, e.g.*, *Byers*, 592 F. Supp. 2d at 537 (upholding stay two months into the receivership); *ESIC Capital*, 685 F. Supp. at 485("[T]his motion comes at a fairly youthful age of the receivership--two years since its inception."); *3R Bancorp*, 2005 WL 497784, at *3 (upholding a stay when after "little more than three months" given the "labyrinthine entanglements" of the receivership estate); *Universal Fin.*, 760 F.2d at 1039 (upholding stay four years into the receivership); *Wencke I* (upholding stay four years into the receivership). *But see, e.g.*, *Wencke II*, 742 F.2d at 1232 (holding that district court abused its discretion by not lifting a stay in place for "over seven years"). In this case, the timing factor does not weigh in favor of lifting the stay at this time. The alleged Stanford Ponzi scheme was intricate and complex, involving many entities and billions of dollars. This receivership began approximately one year ago, and will in all likelihood continue for years to come. Further, the Receiver's satellite litigation against the financial advisors in *Alguire* is in its relatively early stages. Defendants are still filing

motions to dismiss, and the Receiver now seeks to supplement his complaint. *See* Mot. for Leave to File Supp. Compl. [340].

3. Merit of Movants' Claims. — The merit of movants' claims against former Stanford employees remains to be seen. Movants seek to bring claims against their former financial advisors involving alleged wrongdoing that is not yet developed in the Stanford-litigation record. As this case and the *Alguire* case progress, the Court expects that more evidence will come to light regarding what, if anything, former financial advisors knew about the Stanford entities' alleged fraudulent activities. The Court will be in a better position to weigh this prong of the *Wencke* test when the record in *Alguire* is more developed.

In sum, the balance of the *Wencke* factors weighs against lifting the litigation stay at this time. The first factor, the balance of interests, weighs against lifting the stay because individual suits could endanger the receivership status quo, diminishing the total pool of funds available for distribution to creditors. The second factor, timing, also weighs against lifting the stay because this receivership is still relatively young. The third factor, the merits of movants' claims, is neutral at this point because it is still unclear what Stanford's employees knew of his alleged fraud. Movants may reassert their motions for leave to proceed against former Stanford employees after the Court rules on the *Alguire* motions to dismiss, at which time the Court will have a better sense of whether successful claims against the financial advisors would likely be satisfied out of receivership assets.

CONCLUSION

For reasons discussed in the Court's earlier orders, the Court denies movants' requests to intervene in this case. Because the Court already ordered release of investor accounts, the Court denies as moot movants' requests to unfreeze their accounts. Because litigation or arbitration against Stanford entities or former Stanford employees would interfere with the Court's ability to administer the receivership estate, the Court denies requests for leave to proceed in other forums.

Signed March 8, 2010.

David C. Godbey
United States District Judge