

**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.

§
§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 3-09-CV 0298-N

EXAMINER'S RESPONSE TO MARQUETTE PLAINTIFFS' MOTION

John J. Little, Examiner, submits his Response to the Motion filed by the Marquette Plaintiffs¹ to Clarify the Scope of the Court's Anti-suit Injunction or, alternatively, for Leave to Initiate Arbitration Proceedings against Pershing, LLC ("Pershing"). Doc. No. 1105.

Summary of the Examiner's Position

The gist of the motion filed by the Marquette Plaintiffs is that they seek leave to pursue in arbitration claims they have asserted against Pershing relating to the Plaintiffs' investments in SIB CDs. The Examiner has no objection to the pursuit of these claims by the Marquette Plaintiffs in arbitration, provided that the claims can be prosecuted – and defended – without imposing costs upon the Receivership Estate and the Investors as a whole.

The Examiner has conferred with counsel for the Receiver concerning the relief sought by the Marquette Plaintiffs. The Receiver agrees with the views expressed herein and will not be filing a separate response to the Motion.

¹ The individuals referred to collectively as the "Marquette Plaintiffs" are identified in Doc. No. 1105 at 1.

The Plaintiffs' Argument

The Marquette Plaintiffs allege that they filed two separate lawsuits in Louisiana state court against Pershing and various other defendants. Those lawsuits were the subject of some procedural wrangling – they were removed to federal court, remanded back to state court, and subsequently stayed. The Marquette Plaintiffs represent to the Court that they and Pershing have agreed to arbitrate the claims against Pershing,² provided that this Court gives that arbitration its blessing.

The Marquette Plaintiffs are adamant that the relief they seek will have no adverse impact on the Receivership Estate:

“Movants, through arbitration, seek to hold Pershing – and Pershing alone – directly liable for its misconduct relating to Movants’ purchase and retention of SIB CDs.”

Doc. No. 1105-1 at 9 of 18. They are equally adamant that their pursuit of arbitration against Pershing will not cause “any serious disruption to the Receiver’s administration of his duties.”

Id. at 14 of 18. The Marquette Plaintiffs specifically deny that they will require any particular discovery from the Receiver:

“Movants anticipate that nearly all of the relevant evidence for their claims against Pershing would come from Pershing itself; the Receiver would likely possess relatively little – if any – information that would bear upon the Movants’ claims against Pershing.”

Id. at 15 of 18.

Pershing's View

The Marquette Plaintiffs represent in their Certificate of Conference that Pershing believes this Court’s “antisuit injunction applies to arbitration claims but takes no position with

² The Marquette Plaintiffs also make it clear that their agreement relates only to the claims asserted against Pershing. Claims asserted against former Stanford Financial Advisors, against Certain Underwriters at Lloyds of London, and against others will remain stayed.

respect to the lifting of the stay.” Doc. No. 1105 at 3. What is not clear from the Motion is Pershing’s position concerning the extent, if any, to which proceeding with the arbitration would require the participation of the Receiver or his agents – whether through discovery or otherwise. Because Pershing is not a party to this action,³ the Examiner suspects that Pershing likely will not advise the Court of its views on this topic.

The Examiner’s View

Generally speaking, the Examiner supports the efforts being made by Investors, including the Marquette Plaintiffs, to recover their losses from those who may bear some responsibility for the Stanford scheme. As the Receiver’s most recent Interim Status Report makes clear, it is exceedingly unlikely that the Receiver will recover assets sufficient to compensate Investors for any significant portion of their losses.⁴ For many Investors, recovery from responsible third parties is the only available option.

The limited assets available to the Receiver require that those assets be protected for the benefit of all Investors. To that end, some safeguards are appropriate to ensure that the Investors as a group are paying for neither the prosecution of third party claims by individual Investors – like the Marquette Plaintiffs – nor the defense of those claims by third party defendants – like Pershing. As the Court recently observed with respect to the Insurance Coverage dispute that is pending before Judge Atlas in Houston, “it would not be a proper use of investor money to fund the Underwriters’ discovery, even if they seek only to authenticate the public record.” Doc. No. 1122 at 7.

³ Pershing is a party to *Janvey v. Alguire*, Civil Action No. 09-724-N.

⁴ The Receiver’s Interim Status Report identifies “potential assets” of just under \$900 million and “liabilities” in excess of \$7.5 billion. Of the latter amount, CD claims are \$7.2 billion. Doc. No. 1118 at 4.

That concept applies with equal force here. It would not be a proper use of investor money to fund discovery undertaken by the Marquette Plaintiffs, nor would it be a proper use of investor money to fund discovery undertaken by Pershing to defend itself. To that end, any Order entered by the Court permitting the Marquette Plaintiffs to proceed should make the following points crystal clear. First, the Marquette Plaintiffs are not permitted to prosecute claims against the Receiver, his agents, or the entities in receivership. Second, any effort by the Marquette Plaintiffs or Pershing to obtain discovery of the Receiver, his agents, or the entities in Receivership must be sought through this Court, in accordance with the Court's Amended Order Appointing Receiver, Doc. No. 157, and this Court's Order dated July 6, 2010. Doc. No. 1122. Finally, any party seeking discovery of the Receiver, his agents or the entities in Receivership should expect to be required to compensate the Receiver for all fees and costs incurred by the Receiver in providing that discovery.

Conclusion

The Examiner generally supports the idea that Investors, like the Marquette Plaintiffs, should be able to prosecute claims asserted against third parties who bear alleged responsibility for the Stanford scheme. Accordingly, the Examiner supports the entry of an order granting them leave to proceed requested by the Marquette Plaintiffs. The Examiner's support is not unconditional. Rather, both the Marquette Plaintiffs and Pershing should be cautioned that any effort they undertake to obtain discovery of the Receiver, his agents, or the entities in Receivership must be approved by this Court, and that any such approval will require that the party seeking the discovery bear the fees and expenses incurred by the Receiver in providing it.

Respectfully submitted,

/s/ John J. Little

John J. Little

Tex. Bar No. 12424230

LITTLE PEDERSEN FANKHAUSER, LLP

901 Main Street, Suite 4110

Dallas, Texas 75202

(214) 573-2300

(214) 573-2323 [FAX]

Of Counsel:

LITTLE PEDERSEN FANKHAUSER L.L.P.

Stephen G. Gleboff

Tex. Bar No. 08024500

Walter G. Pettey, III

Tex. Bar No. 15858400

Megan K. Dredla

Tex. Bar No. 24050530

901 Main Street, Suite 4110

Dallas, Texas 75202

Telephone: 214.573.2300

Fax: 214.573.2323

CERTIFICATE OF SERVICE

On July 8, 2010 I electronically submitted the foregoing document to 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 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/ John J. Little