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

RALPH S. JANVEY,	§	
	§	
Receiver,	§	
	§	
v.	§	**No. 3:09-CV-00724-N**
	§	
JAMES A. ALGUIRE, et al.,	§	
	§	
Defendants.	§	

DEFENDANT ROBERTO ULLOA'S BRIEF IN SUPPORT OF MOTION TO DISMISS RECEIVER'S SECOND AMENDED COMPLAINT AND COMPEL ARBITRATION

Defendant Roberto Ulloa ("Ulloa") files this Brief in Support of Motion to Dismiss Receiver's Second Amended Complaint Against Former Stanford Employees (the "Receiver's Complaint") and Compel Arbitration, and would respectfully show the following:

I. SUMMARY OF ARGUMENT

1. The claims asserted by Ralph S. Janvey (the "Receiver") against Ulloa are subject to compulsory arbitration and should therefore be dismissed or stayed. Specifically, as part of his employment with Stanford Financial Group ("SFG"), Ulloa was required to execute a standard Form U-4 Uniform Application for Securities Industry Registration or Transfer ("Form U-4") that was submitted to the Financial Industry Regulatory Authority ("FINRA"). *See* Declaration of Roberto Ulloa, ¶ 4. The Form U-4 expressly requires that any dispute, claim, or business controversy that arises between Ulloa's and his employer, SFG, be arbitrated in accordance with the FINRA rules of arbitration. *Id.* The Receiver's claims of fraudulent transfer and unjust enrichment related to Ulloa compensation as financial advisor of SFG plainly fall within Form U-4's broad arbitration provision and FINRA rules of arbitration. Accordingly,

Ulloa requests that the Receiver's claims be dismissed or stayed and that the parties be compelled to arbitration.

II. BACKGROUND

2. The SEC has alleged that the defendants in the underlying securities fraud action, *SEC v. Stanford International Bank, et al.,* Civil Action No. 3:09-CV-0298-N, (collectively, "Defendants"), fraudulently marketed certificates of deposit to investors in the United States and abroad, resulting in billions of dollars in losses to those investors. *See* Receiver's Complaint at ¶J 18-27. Neither the Receiver nor the SEC, however, has alleged any wrongdoing by Ulloa or any other financial advisor charged by the Receiver ("Former Stanford Employees"). *See generally,* Receiver's Complaint.

3. In fact, rather than claiming that the Relief Defendants participated in a fraud, the SEC pointedly asserts that Ulloa and the other financial advisors were, like outside Stanford investors, lied to by Allen Stanford and the Defendants. *See* SEC's First Amended Complaint at 11154-60 (entitled "Stanford, Davis and Pendergest-Holt Lied to Financial Advisors."). Consistent with the SEC's position that the alleged fraud was committed by a select few, the Receiver has made allegations concerning the alleged misconduct of the charged Defendants, not the Former Stanford Employees, including claims that they made false statements and material omissions in the offer and sale of CDs sold by the Stanford entities. *Id.* The Receiver's Complaint, however, does not offer any facts showing, or even alleging, that the Former Stanford Employees knew or had reason to know that the information they received from the Defendants was false. *See generally*, Receiver's Complaint. Moreover, the Receiver's Complaint expressly recognizes that Ulloa and other Former Stanford Employees received money from the underlying Defendants in the form of commissions and compensation for services they rendered as paid employees of the Stanford entities. *Id.* at ¶¶ 28-30. The Receiver now seeks to disgorge from

Ulloa and the other Former Stanford Employees all earned compensation paid to them by their former employer, SFG.

3. As a requirement of his employment, Ulloa executed a FINRA Form U-4. *See* Declaration of Roberto Ulloa, ¶ 4. A Form U-4 was submitted by SFG to FINRA in order for Ulloa to obtain a securities license. *Id.* The Form U-4 expressly requires that any business disputes between him and SFG be arbitrated. *Id.* Accordingly, the Receiver's claims are improperly before this Court and must be compelled to arbitration.

III. ARGUMENT AND AUTHORITIES

A. The Federal Arbitration Act Requires Arbitration of this Dispute.

4. The Federal Arbitration Act ("FAA"), 9 U.S.C. § 2, provides:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Under the FAA, a court must decide "whether the parties agreed to arbitrate the dispute in question. This determination involves two considerations: (1) whether there is a valid agreement to arbitrate between the parties; and (2) whether the dispute in question falls within the scope of that arbitration agreement." *Tittle v. Enron Corp.*, 463 F.3d 410, 418 (5th Cir. 2006) (quoting *Webb v. Investacorp, .Inc.*, 89 F.3d 252, 258 (5th Cir. 1996)). Under the FAA, arbitration clauses are generally valid, irrevocable, and enforceable. 9 U.S.C.A. § 2 (West 2009).

5. If there is a binding agreement to arbitrate, a court must then decide whether the dispute is within the scope of that agreement. *Id.* at 418. Moreover, "the Federal Arbitration Act (FAA) expresses a strong national policy favoring arbitration of disputes, and all doubts

concerning the arbitrability of claims should be resolved in favor of arbitration." *Wash. Mut. Fin. Group, LLC v. Bailey,* 364 F.3d 260, 263 (5th Cir. 2004) (quotations omitted); *E.E.O.C. v. Waffle House, Inc., 534* U.S. *279, 294,* 122 *S. Ct. 754,* 151 L. Ed. 2d 755 (2002). Indeed, the FAA leaves no room for the exercise of discretion; a court must "compel arbitration of pendent arbitrable claims when one of the parties files a motion to compel, even where the result would be the possibly inefficient maintenance of separate proceedings in different forums." *Austin Municipal Sec. v. NASD,* 757 F.2d 676, 696-97 (5th Cir. 1985) (citing *Dean Witter Reynolds, Inc. v. Byrd,* 470 U.S. 213, 217 (1985)).

B. Federal Courts Routinely Compel Arbitration Pursuant to a Form U-4 Arbitration Provision.

6. Form U-4, the Uniform Application for Securities Industry Registration or Transfer, contains an arbitration clause that the registrant agrees to arbitrate any dispute, claim or controversy that may arise between himself and his firm, a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the FINRA. Specifically, the Form U-4 provides:

> I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of [FINRA] ... as may be amended from time to time and that any arbitration award rendered against me may be entered as a judgment in any court of competent jurisdiction.

See Declaration of Roberto Ulloa, 4.[1]

7. The FINRA arbitration rules provide that "...a dispute must be arbitrated under the Code if the dispute arises out of the business activities of a member or an associated person and is between or among: Members; Members and Associated Persons; or Associated Persons."

[1] Ulloa does not have a copy of the Form U-4 because he was not allowed to retain any documents from his office when he was instructed to vacate the premises on February 17, 2009. Declaration of Roberto Ulloa, ¶ 5.

FINRA Rule 13200, "Required Arbitration." SFG is a Member of FINRA and Ulloa, as a registered financial advisors, is an Associated Person. Here, the Receiver's claims of fraudulent transfer and unjust enrichment related to Ulloa's compensation as a financial advisor for SFG are indisputably covered by the broad arbitration provision contained in the Form U-4 and the applicable FINRA arbitration rules.

8. Furthermore, courts have routinely enforced the arbitration provision contained in Form U-4s. *See, e.g., Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 111 S. Ct. 1647, 114 L. Ed. 2d 26 (1991); *Perry v. Thomas*, 482 U.S. 483, 107 S. Ct. 2520, 96 L. Ed. 2d 426 (1987); *Mouton v. Metro Life Ins. Co.*, 147 F.3d 453, 456 (5th Cir. 1998); *Williams v. Cigna Fin. Advisors, Inc.*, 56 F.3d 656, 658-59 (5th Cir. 1995); *see also First Union Sec., Inc.*, 315 F.3d 619, 627 (6th Cir, 2003) (holding that receiver was bound by arbitration agreement). Consequently, because the Receiver's claims fall within the scope of a valid and enforceable arbitration agreement, the Court should dismiss those claims and compel the parties to arbitration.

IV. REQUEST FOR RELIEF

9. Ulloa has conclusively established that all of the Receiver's claims in this action are subject to binding arbitration, which expressly covers all of the Receiver's claims. In light of this evidence and the controlling case law set forth herein, Ulloa respectfully prays that the Court issue an order requiring the Receiver to pursue his claims in accordance with the Form U-4 arbitration agreement and applicable FINRA arbitration rules and dismiss and stay this action in its entirety.

Respectfully submitted,

BRACEWELL & GIULIANI LLP

By: /s/Jeff Ansley
Jeffrey J. Ansley
Texas Bar No. 00790235

1445 Ross Avenue, Suite 3800
Dallas, Texas 75202
Telephone: 214.758.1614
Facsimile: 214.758.1010
jeff.ansley@bgllp.com

Attorney for Defendant Roberto Ulloa

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on the 15th day of January, 2010, in accordance with Federal Rule of Civil Procedure 5(b)(2)(E) and 5(b)(3) via the notice of electronic filing that is automatically generated by ECF, or in some other authorized manner for those counsel or parties, if any, who are not authorized to receive electronic Notices of Electronic Filing.

/s/ Jeff Ansley
Jeffrey J. Ansley