

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

SECURITIES AND EXCHANGE COMMISSION,)
)
Plaintiff,)
)
vs.) Case No. 15-CV-00191-S-LDA
)
PATRICK CHURCHVILLE,)
CLEARPATH WEALTH MANAGEMENT, LLC,)
)
Defendants,)
)
and)
)
CLEARPATH MULTI-STRATEGY FUND I, L.P.,)
CLEARPATH MULTI-STRATEGY FUND II, L.P.,)
CLEARPATH MULTI-STRATEGY FUND III, L.P.,)
HCR VALUE FUND, L.P.,)
)
Relief Defendants.)
)

**RECEIVER’S RECOMMENDATION AND MOTION TO ALLOW RECOMMENDED
CLASS 3 CLAIMS**

Now comes Stephen F. Del Sesto, Esq. solely in his capacity as the Court-appointed Receiver for Defendants Patrick Churchville and ClearPath Wealth Management, LLC and Relief Defendants ClearPath Multi-Strategy Fund I, L.P., ClearPath Multi-Strategy Fund II, L.P., and ClearPath Multi-Strategy Fund III, L.P. (collectively “Receivership Entities”), and respectfully submits this Recommendation and Motion to Allow Recommended Class 3 Claims (the “Motion”). In support of the Motion, the Receiver respectfully submits as follows:

On September 23, 2016, the Court entered an Order [Document #87] granting the “Receiver’s Motion to Establish a Claims Bar Date, Approve the Manner and Form of Notice of Claims Bar Date and Approve the Process for Submitting Claims” [Document #66]. The Order established the claim procedures for this case. Among other things, the Court authorized and directed the Receiver to send Proof of Claim forms to all persons or entities believed to be an

investor or other creditor with a potential claim against any of the Receivership Entities. It also directed the Receiver to review those claims, verify them, and submit them to this Court for approval so that distributions could be made to verified and allowed claimants.

Since that time, the Receiver has sent approximately 432 claim forms to separate investors and other creditors known to the Receiver¹ and received 132 claims² against the Receivership Estate. The Receiver and Sansiveri, Kimball & Co., LLP, the Court-approved Financial Advisor (the “Financial Advisor”) [see Document #32] have reviewed and analyzed each of the claims filed with the Receivership Estate³ in an effort to confirm/verify the proper and allowable amount for each claim. In order to confirm/verify the proper and allowable amount for each of the Class 3 Claims, the Receiver and the Financial Advisor reviewed (1) proof of claims filed by investors with the Receivership Estate; (2) victim impact statements filed in connection with Defendant Patrick Churchville’s criminal sentencing; (3) the 2014 so-called “Distribution Plan” prepared by Harvey Mason (Capstone Corporate Finance, LLC); (4) analysis done by Financial Advisor in 2015 and 2016 using: (a) audit work papers for 2009, 2010 and 2011; and (b) the Archway General Ledger Detail for 2012, 2013 and 2014; (5) JER Receivables LLC (“JER”)/Receivable Partners “loans” (RP) Analysis spreadsheet prepared by Trevor Donelan on July 19, 2018; (6) the Receiver’s investor list spreadsheet; and (7) recoveries from the Rhode Island Superior Court “Ball Litigation” from pleadings (detail came from the Archway General Ledger Detail) (the “Information”). Based on the review of the Information, the Receiver instructed the Financial Advisor to adjust and verify the 121 Class 3 Claims, originally totaling approximately \$39,046,157⁴, in the amounts as set out in **Exhibits A-C**⁵ (Exhibit A: “Summary of Analysis of all Class 3 Claims”; Exhibit B: “Detailed Analysis Worksheet Per Each Class 3 Claim”⁶; and

¹ Due to the number of Receivership Entities and the multiple related relationships of those Receivership Entities to some creditors, in certain instances creditors received multiple Proof of Claim forms and/or Proof of Claim forms were sent to multiple addresses associated with certain claimants.

² All but eleven (11) claims were filed by Investor “Class 3” Claimants.

³ Not all investors identified in the Receivership Entities’ books and records filed proof of claims with the Receivership Estate and/or filed victim impact statements in connection with Mr. Churchville’s criminal sentencing. The Receiver and Financial Advisor calculated the proper and allowable claim amount for those investors that did not file claims and/or victim impact statements but appeared to have valid claims exclusively from the Receivership Entities internal records.

⁴ This amount represents the gross, unverified amounts of the claims as filed by asserted investor claimants.

⁵ In accordance with paragraph 36 of the July 6, 2018 Order Approving Distribution Procedures and Certain Other Relief [Document #118], these Exhibits are filed under seal.

⁶ Each Class 3 Claimant will receive only the portion of Exhibit B applicable to the analysis of their Class 3 Claim.

Exhibit C: “Proposed Rising Tide Calculations Based Upon the Receiver’s Recommendation for Value of Class 3 Claims”) and now asks the Court to allow those claims in the adjusted amounts against the Receivership Estate.

It is important to note for the Court and the Class 3 Claimants that certain assumptions were made by the Receiver in arriving at the adjusted claim amounts. The assumptions made by the Receiver were as follows:

1. That the Feingold O’Keeffe Series (“FOK”), Oppenheimer Public Markets Series (“OPCO”), Solesbees, Hastings Equity Fund II (“Hastings”) were all legitimate, real investments; and therefore, all investment gains/losses resulting from those were legitimate net gains/losses that an investor should have received/accounted for. However, Defendant Churchville fraudulently borrowed against these Investments and thus tainted and made them part of the fraud, therefore, these are considered as part of the Class 3 Claim;
2. That any amount distributed to an investor which exceeded the original investment plus the net gains is a windfall to the investor and will be “clawed” back;
3. With the exception of the few investors that got paid back from the JER Omicron & XI series⁷, the JER investment series were legitimate investments in an (originally) unrelated Ponzi scheme organized by Jonathan Rosenberg. Because the JER investments were legitimate and the losses from those investments were not due to Defendant Churchville’s fraud, the investment losses are treated as legitimate investment losses;
4. Management fees paid in connection with the legitimate investments (i.e. FOK, OPCO, Solesbees, Hastings, PL and JER) are not considered as part of the investor’s claim;
5. Management fees paid for the Defendant Churchville fraud investments (i.e. RP) are considered part of the investor’s claim and credited back;
6. JER investment numbers are NET numbers (i.e. contributions NET of distributions) (the GROSS of these investments will be required if any funds are recovered from Maryland);
7. The RP investment numbers provided to the Receiver by Plaintiff were NET numbers (i.e. contributions NET of distributions). The Financial Advisor re-calculated these investment numbers to represent the GROSS contribution amounts using the Archway General Ledger Detail;
8. For purposes of the Rising Tide calculations, because all were based upon fraud, all RP investments were combined and considered as one “fund”;
9. For management fees for FOK, OPCO, Solesbees and Hastings, these amounts were obtained from the auditors work papers for 2009 through 2011;
10. For management fees for 2012 through 2014 for FOK, OPCO, Solesbees and Hastings, these amounts are NETTED with investor profit (so they are NET, not GROSS like in 2009 – 2011);

⁷ It is unclear as to why certain Omicron and Xi investors received funds when the totality of the investment yielded no gains.

11. For Solesbees, per the 2014 so-called “Distribution Plan” prepared by Harvey Mason, the opening balance at the beginning of 2010 was used as a proxy for 2010 contributions. The Receiver does not have any data that detailed contributions and distributions prior to 2010;
12. RP distributions are considered fraud and to the extent paid to JER investors (a non-Defendant Churchville fraud investment with 100% loss) they will be “clawed” back against other fraud losses for these Class 3 Claimants; and
13. PL, DDI and UPA are legitimate investments. Any losses/gains are legitimate and thus not recoverable as part of a Class 3 Claim.

To provide clarification and an explanation of the data contained on each Detailed Analysis Worksheet Per Each Class 3 Claim (Exhibit B) the Receiver provides the following which is applicable to analysis and recommendation for each Class 3 Claim. Each Class 3 Claim Detailed Analysis Worksheet contains the following information:

1. Box 1 - Detailed contributions, withdrawals, management fees, additional gains or losses and the NET loss or gain realized by the investor for FOK for the years 2008 through 2014. This data was prepared by the Financial Advisor and confirmed against the Archway General Ledger Detail and Audit Work Papers;
2. Box 2 - Detailed contributions, withdrawals, management fees, additional gains or losses and the NET loss or gain realized by the investor for OPCO for the years 2008 through 2014. This data was prepared by the Financial Advisor and confirmed against the Archway General Ledger Detail and Audit Work Papers;
3. Box 3 - Detailed contributions, withdrawals, management fees, additional gains or losses and the NET loss or gain realized by the investor for Solesbees for the years 2008 through 2014. This data was prepared by the Financial Advisor and confirmed against the Archway General Ledger Detail and Audit Work Papers;
4. Box 4 - Detailed contributions, withdrawals, management fees, additional gains or losses and the NET loss or gain realized by the investor for Hastings for the years 2008 through 2014. This data was prepared by the Financial Advisor and confirmed against the Archway General Ledger Detail and Audit Work Papers;
5. Following this information, the Receiver provides the NET “loss” or NET “win” for the Class 3 Claimant **without** consideration of JER or RP losses/gains. Below that NET loss/gain calculation is the JER and RP Analysis;
6. JER - Detailed contributions and withdrawals for each JER series (excluding Omicron and XI) and the NET loss or gain realized by the investor for the years 2008 through 2014. This data was prepared by the SEC and confirmed by the Financial Advisor;

7. RP - NET contributions and withdrawals for each RP series and the NET loss or gain realized by the investor for the years 2008 through 2014. This data was prepared by the SEC and confirmed by the Financial Advisor;
8. Summary for the above;⁸
9. Box 5 - Detailed contributions and withdrawals and the NET loss or gain realized by the investor for PL for the years 2008 through 2014. This data was prepared by the Financial Advisor and confirmed against the Archway General Ledger Detail and Audit Work Papers;
10. Box 6 – Detailed contributions and withdrawals and the NET loss or gain realized by the investor for UPA Funds for the years 2008 through 2014. This data was prepared by the Financial Advisor and confirmed against the Archway General Ledger Detail and Audit Work Papers;
11. Box 7 - Detailed contributions and withdrawals and the NET loss or gain realized by the investor for Drug Discovery Funds for the years 2008 through 2014. This data was prepared by the Financial Advisor and confirmed against the Archway General Ledger Detail and Audit Work Papers; and
12. Summary of the Class 3 Claimant Proof of Claim form filed with the Receiver, if submitted.

It is also important to note that due to the “Rising Tide” calculation/formula, not all allowed Class 3 Claimants will be eligible for a distribution. For the Initial Distribution, only those allowed Class 3 Claimants who have a calculated NET recovery (i.e. the total contribution of all qualified investments NET of all qualified distributions from those investments) of less than 37.6906% will be eligible for a distribution as part of the Initial Distribution. The Initial Distribution amount shall be that sum necessary to increase a Class 3 Claimant’s recovery to 37.6906% of their total contributions to qualified investments. Thus, a Class 3 Claimant that has already received, from gains or other payments from Defendants, amounts equal to or in excess of 37.6906% of their total investment contributions will not be eligible for a distribution at this time but may in the future.

⁸ All calculation details below this Summary line represent legitimate, real investments not involved or impacted by any fraud of Defendant Churchville. Thus, the loss/gains realized for these funds are not the result of fraud and are not included as part of any claim analysis.

Lastly, under separate cover, the Receiver shall be seeking approval to designate certain claimants as “insiders” (as such term will be defined). If the Court approves this designation and a Class 3 Claimant is designated as an “insider”, even though the “insider” may be eligible to be included as part of the Initial Distribution (i.e. their prior recovery was less than 37.6906%), the “insider” will be excluded from the Initial Distribution and the amount of their distribution will be reserved pending final determination by the Court.

CONCLUSION

Consistent with this Court’s Order of September 23, 2016 [Document #87] and the July 6, 2018 Order Approving Distribution Procedures and Certain Other Relief [Document #118], this Court should allow the Class 3 Claims listed on **Exhibits A-C** in the adjusted amounts as set forth in **Exhibits A-C** if no response or objection is filed by Plaintiff, investors, Defendant Churchville or any other interested parties within thirty (30) days after the filing of this Motion.

WHEREFORE, the Receiver prays that, upon final consideration of this Motion, the Court enter an order allowing the 121 Class 3 Claims and the adjusted amounts for those Class 3 Claims as set out in **Exhibits A-C** and for such other and further relief, general or special, at law or in equity, to which the Receiver may show himself justly entitled.

Respectfully submitted,

/s/ Stephen F. Del Sesto

Stephen F. Del Sesto, Esq. (Bar #6336)

Receiver for Patrick Churchville, ClearPath

Wealth Management, LLC, ClearPath

Multi-Strategy Fund I, L.P., ClearPath

Multi-Strategy Fund II, L.P., and ClearPath Multi-Strategy Fund III, L.P. and not individually

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CERTIFICATE OF SERVICE

I, Stephen F. Del Sesto, hereby certify that I filed the within document on the 11th day of October, 2018, and that notice will be sent electronically to all counsel who are registered participants identified on the Mailing Information for Case No. 15-cv-00191-S-LDA.

/s/ Stephen F. Del Sesto