

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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SECURITIES AND EXCHANGE	:	
COMMISSION,	:	
	:	Civil Action No.
Plaintiff,	:	1:05-cv-00453 (AK)
	:	
v.	:	
	:	
PETER N. BRANT,	:	
	:	
Defendant.	:	
_____	:	

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MOTION TO APPOINT PLAN ADMINISTRATOR AND APPROVE DISTRIBUTION PLAN

Plaintiff Securities and Exchange Commission (the “Commission” or “SEC”) moves the Court to: 1) appoint a Plan Administrator; and 2) approve the Commission’s proposed plan to distribute funds paid by defendant Peter Brant (“Defendant”) and any future funds to be paid by Defendant to harmed investors (the “Distribution Plan”).

PROCEDURAL BACKGROUND

On March 3, 2005, the Commission filed a Complaint, alleging, *inter alia*, that Defendant Peter N. Brant (“Brant”), between December 1998 and May 2000, in violation of a previous Commission order barring him from the securities industry, acted as an investment adviser to six customers of Deutsche Banc Alex Brown, Inc. Brant misappropriated client funds for his personal use, made unsuitable and unauthorized investment decisions, traded in speculative stocks and churned accounts. As a result of his fraud, Brant obtained at least \$173,402.80 and caused his clients’ accounts to drop dramatically in value.

On March 4, 2005, the Court entered a Final Judgment against Brant. Brant was ordered liable for disgorgement of \$173,402.80 together with prejudgment interest in the amount of

\$69,461.08, for a total of \$242,863.88. Brant was further ordered to pay a civil penalty in the amount of \$3 million pursuant to Section 20(d) of the Securities Act of 1933 [15 U.S.C. § 77t(d)], Section 21(d) of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)], and Section 209(e) of the Investment Advisers Act of 1940 [15 U.S.C. § 80b-9(e)] within ten business days after entry of the Final Judgment. Brant failed to make any payments.

In 2011, Commission staff reviewed Brant's financial status and found that Brant was then the CEO and majority stockholder of a small company doing business as Diversified Advantage Partners, Inc. ("DAG"). Commission staff uncovered bank records which showed DAG paid Brant over \$63,000 for "loans" Brant purportedly made to DAG. Brant deposited these funds in his personal bank account at JPMorgan Chase Bank and then transferred those sums into an E*Trade Securities brokerage account in his name. In June 2012, the SEC applied for post-judgment writs of garnishment on E*Trade Securities LLC ("E*Trade") and JPMorgan Chase Bank, N.A. ("JPMorgan"), and E*Trade and JPMorgan were directed to withhold and retain any property in its possession, custody, or control in which Brant had an interest. The garnished funds were then released and the cash value of the garnished funds was placed in Brant's attorney's trust account. Between June 2012 and November 2012, Brant made various offers of compromise to the Commission, which the Commission rejected. In November 2012, the Commission accepted Brant's compromise offer to pay \$300,000 toward disgorgement by relinquishing his claim to all of the escrowed funds (in the amount of \$91,981.43) and paying the remaining \$208,018.57 in five equal annual installments in full satisfaction of the judgment (the "Distribution Fund").

On December 20, 2012, the Court ordered funds in the amount of \$91,981.43 held in Brant's attorney's trust account to be paid to the SEC's Office of Financial Management. To date, approximately \$175,189 has been paid to the Commission.

On July 22, 2014, the SEC filed a motion seeking the appointment of a Tax Administrator for the Distribution Fund and to authorize payment of future tax obligations and tax administrator fees and expenses (Dkt. No. 40). The Court granted this motion on July 28, 2014 (Dkt. No. 41).

The Final Judgment against Defendant states that the Commission may propose a plan to distribute the funds collected from Defendant. The Commission now moves the Court to approve a distribution plan so that the funds already paid by Defendant and any future funds to be paid by Defendant can be distributed to injured investors harmed by the Defendant's conduct.

THE COURT SHOULD APPOINT A PLAN ADMINISTRATOR

The Court should appoint Michael S. Lim, a Commission employee in the Office of Distributions, as Plan Administrator to administer and implement the proposed Distribution Plan, as described below. As a Commission employee, the Plan Administrator shall receive no compensation, other than his regular salary as a Commission employee, for his services in administering the Distribution Fund. As the harmed investors are elderly, few in number and known, the appointment of a Commission employee will expedite the distribution process and avoid the costs and expenses that would ordinarily be incurred by appointing a third party administrator thus maximizing investor return.

THE COURT SHOULD APPROVE A DISTRIBUTION PLAN

The Commission seeks approval of its proposed Distribution Plan to distribute the funds already collected from Defendant and any future funds to be paid by Defendant. The Distribution Plan provides for a distribution to certain individuals (the "Eligible Recipients") who were harmed by the Defendant because Defendant had misappropriated client funds for personal use, made unsuitable and unauthorized investment decisions, and traded in speculative stocks and churned accounts. The Distribution Plan contemplates that a total of approximately \$300,000 will be distributed to Eligible Recipients on a *pro rata* basis for the harm created by Defendant's conduct. To date, approximately \$175,189 has been paid to the Commission under a compromise payment plan with the Commission. The remaining \$124,811 is to be paid in equal annual installments in December over the next three years. Commission staff plans to quickly distribute the approximately \$175,189 already collected from Defendant, less any tax obligations and fees and

expenses of the Tax Administrator, on a *pro rata* basis to Eligible Recipients, subject to the Court's approval of the Distribution Plan. Commission staff also plans to distribute any future funds received, less any tax obligations and fees and expenses of the Tax Administrator, on a *pro rata* basis to Eligible Recipients as those future funds are received on an annual basis under the compromise payment plan.

THE PROPOSED DISTRIBUTION PLAN

The Commission proposes the following methodology (*see* Exhibit A) to determine the allocation of the Distribution Fund and any future payments received into the Distribution Fund pursuant to the Defendant's payment plan:

- (Step 1) Determine each Eligible Recipient's loss ("Eligible Recipient's Loss") and calculate total losses suffered by all harmed Eligible Recipients by adding up each Eligible Recipient's loss ("Total Losses");
- (Step 2) Divide each Eligible Recipient's Loss by the Total Losses. This fractional result represents the Eligible Recipient's proportion of losses to the pool of total losses ("Eligible Recipient's Proportional Loss"); and
- (Step 3) Multiply each Eligible Recipient's Proportional Loss times the Distribution Fund less any reserve for tax obligations and fees and expenses of the Tax Administrator ("Net Distribution Fund"). The resulting figure represents the amount of the Net Distribution Fund to be distributed to that Eligible Recipient ("Eligible Recipient's *Pro Rata* Share").

The Plan provisions are:

- a. There will be a distribution of the Distribution Fund and any future funds received into the Distribution Fund *pro rata* among all of the Eligible Recipients based upon the investor's *pro rata* investments with Defendant as set forth in Exhibit A.
- b. Following approval of the Distribution Plan by the Court, the Plan Administrator will send a notice ("Notice") to each Eligible Recipient by First Class U.S. Mail. The Notice will provide each Eligible Recipient with a redacted copy of Exhibit A,

setting forth that investor's amount of his or her share of the proposed distribution.

The Plan Administrator will send the Notice within seven (7) days of the date of the order approving the Distribution Plan.

- c. Eligible Recipients will have twenty (20) days from the date of the order approving the Distribution Plan to submit any objections to the proposed distribution. Eligible Recipients must submit their objections, along with any supporting documentation, to the Plan Administrator via return receipt requested mail.
- d. The Plan Administrator will have forty-five (45) days from the date of the order approving the Distribution Plan to resolve any objections by Eligible Recipients and thereafter to file with the Court a summary of timely filed objections and a response by the Plan Administrator identifying any unresolved objections.
- e. A hearing date, if necessary, to resolve any unresolved objections will be set by the Court thereafter and the Plan Administrator will give notice to Eligible Recipients of said date.
- f. After the Court has ruled on any objections, or if there are no objections, the Court will issue an order for disbursement.
- g. Pursuant to the disbursement order, the Plan Administrator will provide the SEC's Office of Financial Management with an unredacted version of Exhibit A containing the names, addresses and amounts to be disbursed to Eligible Recipients. The SEC's Office of Financial Management shall promptly thereafter cause checks to be issued to the Eligible Recipients in the amounts of their *pro rata* distribution. Each check issued to the Eligible Recipients will state on the face of the check that it is valid for one year. After one year from the date on the distribution check, the SEC's Office of Financial Management will notify the

Plan Administrator of the amount of all uncashed checks. The amount of all uncashed checks shall be placed in the Distribution Fund as a residual.

- h. Forty-five days after the remittance of the checks, the Plan Administrator shall obtain information from the SEC's Office of Financial Management concerning checks that have not been negotiated. The Plan Administrator shall then undertake good faith efforts for thirty (30) days to locate and contact the intended recipients of the uncashed checks to ensure that the intended recipients have a reasonable opportunity to participate in the distribution.
- i. The Plan Administrator will submit a final report to the Court prior to termination of the Distribution Fund. The report shall include, among other things, a final accounting on a Consolidated Fund Accounting Report ("CFAR") of all monies received, earned, spent, and distributed in connection with the administration of the Distribution Plan, and a request for approval of any unpaid taxes, fees and expenses. The SEC's Office of Financial Management shall provide the Plan Administrator and the Tax Administrator with any account information relating to the funds held in the Distribution Fund that may be required for the final report, including providing copies of any account statements that the Plan Administrator or Tax Administrator may request.
- j. The Distribution Fund shall be eligible for termination after all of the following have occurred: (1) the final accounting has been submitted and approved by the Court; (2) all taxes and fees and expenses have been paid; and (3) all remaining funds or any residual have been paid to the SEC for transfer to the U.S. Treasury. When the Court has approved the final accounting, the staff shall seek an order from the Court to terminate the Distribution Fund and to discharge the Plan Administrator.

ARGUMENT

Generally, courts have broad discretion to approve plans to distribute funds collected in SEC enforcement actions. *SEC v. Wang*, 944 F.2d 80, 84 (2d Cir. 1991). In evaluating a proposed distribution plan, a court should “decide whether, in the aggregate, the plan is equitable and reasonable.” *Id.* “Unless the consent decree specifically provides otherwise, once the District Court satisfies itself that the distribution of proceeds in a proposed Securities and Exchange Commission disgorgement plan is fair and reasonable, its review is at an end.” *Id.* at 85.

As the amount of money lost by Eligible Recipients is significantly more than the amount of funds that were collected for disbursement, the payments to investors will be calculated on a *pro rata* basis as described in the proposed Distribution Plan. The Commission believes that the proposed Distribution Plan for the Distribution Fund should be approved as fair and reasonable.

CONCLUSION

For the reasons stated above, the Commission hereby moves the Court to:

- (1) appoint Commission employee Michael S. Lim as Plan Administrator; and
- (2) approve the Commission’s plan to distribute funds collected and any future funds to be collected from Defendant Peter Brant to harmed investors.

Attachment:

Exhibit A

Respectfully submitted,

/s/ Michael S. Lim
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