

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

NICHOLAS SAVVA

Defendant.

Civil No. 16-cv-05432-AMD

Hon. Ann M. Donnelly

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S NOTICE OF MOTION,
MOTION, AND MEMORANDUM OF LAW IN SUPPORT OF AN ORDER
APPROVING THE FINAL ACCOUNTING, TERMINATING THE FAIR FUND,
DISCHARGING THE PLAN ADMINISTRATOR, AND AUTHORIZING THE
TRANSFER OF RESIDUAL FUNDS TO THE U.S. TREASURY**

NOTICE

PLEASE TAKE NOTICE, that based upon the accompanying Motion, and Proposed Order, and all other papers and proceedings herein, Plaintiff United States Securities and Exchange Commission ("Commission") will move this Court, at a date and time to be determined by the Court, before the Honorable Ann M. Donnelly, at the United States Courthouse for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, for an Order approving the Final Accounting, terminating the Fair Fund, discharging the Plan Administrator, and authorizing the transfer of residual funds to the U.S. Treasury.

MOTION

Plaintiff Commission, pursuant to the Distribution Plan approved by this Court on July 18, 2017, respectfully submits this Motion and seeks entry of an Order approving the final

accounting, terminating the Fair Fund, discharging the Plan Administrator, and authorizing the transfer of residual funds to the U.S. Treasury. The Commission has submitted a Proposed Order to the Court contemporaneously with the filing of this Motion.

MEMORANDUM OF LAW

Background

On September 29, 2016, the Commission filed a complaint against Nicholas Savva (“Defendant”). The complaint alleged that, from May 2015 through February 2016, Defendant, a former registered representative who was statutorily disqualified by FINRA from association with its member firms, made false and misleading statements while soliciting approximately \$1.4 million from 12 investors in Defendant's hedge fund, Five Star. While soliciting investments, Defendant lied to his investors about: (i) the management of Five Star; (ii) Defendant's true industry experience; and (iii) Five Star's historic investment performance. While operating Five Star, Defendant misappropriated \$38,719.98 from Five Star for purely personal expenses, including, among other things, lodging during an international vacation, home improvement expenditures, and cash withdrawals. During the period when Defendant was acting as a corrupt investment adviser and stealing money from Five Star, Defendant also collected \$19,600 in fees for managing Five Star's investments.

On October 5, 2016, the Court entered a Final Judgment against Defendant and ordered him to pay a total of \$218,708.78 in disgorgement, prejudgment interest, and penalties for violating §17(a) of the Securities Act of 1933, §10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and §§ 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder.

The Commission was ordered to hold all funds, together with interest and income earned thereon (collectively, the “Fund”), pending further order of the Court. Defendant paid a total of \$218,708.78 into the Fund for distribution to harmed investors.

On June 13, 2017, the Court appointed Miller Kaplan Arase LLP as the Tax Administrator to fulfill the tax obligations of the Fund.

On July 18, 2017 the Commission filed a motion to establish a Fair Fund, appoint a plan administrator, and approve a plan of distribution, together with the plan of distribution (“Distribution Plan”).

Also on July 18, 2017, the Court entered an order that established a Fair Fund for the \$218,708.78 in disgorgement, prejudgment interest, and penalty paid by the Defendant, appointed Michael S. Lim as the Plan Administrator to oversee the administration and distribution of the Fair Fund to harmed investors, and approved the Distribution Plan.

The Distribution Plan provides that the distribution of the Fair Fund shall be made to twelve (12) Eligible Recipients on a *pro rata* basis who were harmed by the Defendant’s misconduct and suffered a net loss. On or about September 18, 2017, the Commission disbursed a total of \$211,308.78 to the twelve (12) Eligible Recipients.

The Distribution Plan provided that the Fair Fund shall be eligible for termination and the Plan Administrator discharged after the final accounting has been submitted and approved by the Court. Commission staff now seeks an Order from the Court approving the final accounting, terminating the Fair Fund, discharging the Plan Administrator, and authorizing the transfer of residual funds to the U.S. Treasury.

Final Accounting

Distribution of all Fair Fund monies to Eligible Recipients has been completed. The CFAR has been prepared by the Tax Administrator. The Plan Administrator and Commission staff have reviewed the CFAR and now submit it to the Court for approval. The CFAR includes a final accounting of all monies received, earned, spent and distributed in connection with the administration of the Distribution Plan.

Twelve (12) Eligible Recipients received a total of \$211,308.78. The Plan Administrator has also paid all other reasonable expenses of the distribution. The fund balance as of October 16, 2018 is \$2,824.29. Plaintiff Commission requests approval for the transfer \$2,824.29 in residual funds left in the Fair Fund to the U.S. Treasury.

Conclusion

For the reasons stated above, the Commission respectfully requests that this Court enter the Proposed Order and grant such other relief as it deems just and proper.

Dated: October 16, 2018

Respectfully Submitted,

/s/ Michael S. Lim

Michael S. Lim

Attorney for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2018, I caused the foregoing document to be electronically filed with the clerk of the court for the U.S. District Court, Eastern District of New York, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Michael S. Lim
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