

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JAY DANIEL SEINFELD, SARA BETH
POSTMA, TRADITIONS CAPITAL
MANAGEMENT LLC, and
HOSPICE PATIENT AID PROGRAM INC.

Defendants.

Civil Action No. 1:19-cv-910 (LY)

**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S MOTION AND
MEMORANDUM IN SUPPORT OF AN ORDER APPROVING SECOND
DISBURSEMENT OF THE FAIR FUND TO ELIGIBLE INVESTORS**

MOTION

Plaintiff Securities and Exchange Commission (the “Commission” or “SEC”) respectfully moves the Court to enter an Order directing the Commission to disburse funds currently held on deposit in an SEC-designated account with the U.S. Treasury Bureau of the Fiscal Service to seven (7) beneficiaries of six (6) Eligible Investors for a total amount of \$231,068.88 to be disbursed.

MEMORANDUM OF LAW

I. Background

On September 16, 2019, the Commission filed a complaint against Jay Daniel Seinfeld (“Seinfeld”), Sara Beth Postma (“Postma”), Traditions Capital Management LLC (“TCM”), and Hospice Patient Aid Program Inc. (“HPAP”) (collectively, “Defendants”) in which the

Commission alleged that Seinfeld, who was based in New York, hired Texas-based social worker Postma, and founded the Hospice Patient Aid Program to gain access to hospices and terminally ill patients throughout Texas. According to the complaint, between 2010 and 2012, Seinfeld and Postma induced over a dozen such patients to provide their personal information and sign transaction documents as purchasers of corporate bonds that would pay out upon their deaths while simultaneously relinquishing most of the bonds' anticipated proceeds. Using documents supplied by Seinfeld, Postma allegedly led the patients to believe that the Hospice Patient Aid Program would use bond proceeds to assist hospice patients in need of financial assistance; instead, when patient-purchasers died, Seinfeld allegedly redeemed the bonds and split a large majority of the profits - hundreds of thousands of dollars in the aggregate - with other wealthy investors. The Commission's complaint charged Defendants with violating the anti-fraud provisions of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

The Defendants agreed to the settlement without admitting or denying the charges. On September 17, 2019, this Court entered a final judgment against Defendants, ordering Seinfeld to pay a total of \$669,037.68 in disgorgement plus prejudgment interest and a civil penalty, and ordering Postma to pay a total of \$143,749.84 in disgorgement plus prejudgment interest and a civil penalty. The Commission collected \$800,395.81 which is being held in an interest-bearing account at the U.S. Treasury's Bureau of the Fiscal Service (the "Fund") under the case name designation "SEC v. Seinfeld, et al." The Net Available Fair Fund to be distributed to Eligible Investors consists of the balance of the Fair Fund less a reserve of \$25,000 for taxes, tax reporting work, and administrative fees and expenses.

On June 25, 2021, the Court issued an Order establishing the Fair Fund; appointing Miller Kaplan Arase LLP as Tax Administrator; appointing Sondra Panahi, a Commission employee as

Distribution Agent of the Fair Fund; approving the Commission's Proposed Plan of Distribution of the Fair Fund ("Distribution Plan" or the "Plan"); and authorizing the Commission to pay tax obligations, fees and expenses of the Tax Administrator and the fees and expenses for a third-party company to assist the Distribution Agent from the Fair Fund (Dkt. No. 6).

II. First Disbursement of Fair Fund

It is the understanding of the Distribution Agent and the Commission staff that at the time of the Defendants' conduct, all of the Eligible Investors in this matter were terminally ill patients, and all of the Eligible Investors are now deceased. The original investors each provided equal valuable consideration for their investment and upon their death, as Defendants either effected bond redemptions or exercised an annuity survivor's option and retained most, if not all, of the proceeds. Thus, following the Court's approval of the Plan, the Distribution Agent and the Commission staff (with the assistance of a third party) identified potential beneficiaries of the Eligible Investors and mailed a Notice and a copy of the Plan to the potential beneficiaries (as per Paragraphs F.29 and F.30 of the Plan).

The Distribution Agent and the Commission staff previously identified ten (10) beneficiaries of seven (7) Eligible Investors, who suffered a total net harm amount of \$269,580.36. On October 6, 2021, the Court issued an Order approving an initial disbursement of the Fair Fund and authorized the Commission to disburse funds accordingly (Dkt. No. 8) ("First Disbursement Order"). The Distribution Agent and the Commission staff effected the distribution payments in accordance with the First Disbursement Order.

III. Request to Make Second Disbursement of Fair Fund

Since the Court issued the First Disbursement Order, the Distribution Agent has identified seven (7) beneficiaries of six (6) Eligible Investors who were not included in the First Disbursement Order. The six Eligible Investors were equally harmed and collectively suffered a

total net harm amount of \$231,068.88. Therefore, pursuant to the Plan, the Distribution Agent and the Commission staff propose to distribute a *pro rata* share of the Net Available Fair Fund to each Eligible Investor, and propose to make distribution payments to the seven (7) beneficiaries of the six (6) Eligible Investors. The amount of each Eligible Investor's payment is \$38,511.48 and the payments are to be disbursed via the Treasury's Bureau of Fiscal Service. The Distribution Agent further proposes that when an Eligible Investor has more than one beneficiary known and responsive to the Distribution Agent, and if the beneficiaries do not otherwise agree, the sum of an Eligible Investor's payment is to be divided equally among such Eligible Investor's beneficiaries. Pursuant to the Plan and in accordance with these proposals, the Distribution Agent has prepared and submitted a redacted Distribution Payment Chart (filed contemporaneously herewith as Exhibit A).

To date, the Distribution Agent has identified beneficiaries of thirteen (13) of the twenty (20) Eligible Investors. The Distribution Agent continues to make efforts to identify the beneficiaries of the remaining seven (7) Eligible Investors, and will seek to disburse the funds as they are identified.

CONCLUSION

For the reasons stated above, the Commission respectfully requests that this Court grant the Commission's Motion, issue the attached Proposed Order, and grant such other relief as the Court deems just and proper.

Dated: May 3, 2022

Respectfully submitted,

By: /s/ _____
Sondra Panahi
Trial Counsel
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Securities and Exchange Commission

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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2022, a copy of the forgoing Plaintiff Securities and Exchange Commission's Motion and Memorandum in Support of an Order Approving Disbursement of the Fair Fund to Eligible Investors was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicate on the electronic filing receipt. Parties may access this filing through the Court's system

/s/ Sondra Panahi
Sondra Panahi