UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	2:09-CV-04547-LDW-ETB
v.	:	
CHARLES C. SLOWEY, JR., ET AL.,	:	
Defendants.	:	

PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S MOTION TO APPOINT DISTRIBUTION AGENT AND APPROVE PROPOSED DISTRIBUTION PLAN

MOTION

Plaintiff United States Securities and Exchange Commission ("SEC" or "Commission") respectfully moves the Court to enter an Order: (1) appointing Commission employee, Nichola L. Timmons, as Distribution Agent; and (2) approving the Commission's proposed distribution plan (the "Distribution Plan") to distribute the $23,593.03 in the Court Registry Investment System ("CRIS") account under the name "SEC vs Edward Puttick" to certain harmed investors.

MEMORANDUM OF LAW

I. BACKGROUND

The Commission filed a complaint in 2009[1] against Edward D. Puttick, Sr. and six other defendants[2] alleging that they violated the antifraud provisions of the securities laws in connection with the sale of nearly $12 million in securities of four unregistered, interrelated real

[1] The Commission filed an Amended Complaint on October 16, 2012 to add Endeavor Real Estate Fund I, LLC ("Fund I") and Endeavor Real Estate Fund II, LLC ("Fund II") as relief defendants.
[2] The other defendants named were Charles C. Slowey, Jr. ("Slowey"), Endeavor Partners, LLC ("Endeavor Partners"), Endeavor Capital Management Group, LLC ("Endeavor Capital" and, together with the Endeavor Partners, the "Management Companies"), Gregory L. Oldham, and Glenn R. Harris.

estate investment funds (the "Endeavor Funds") to nearly 90 investors, many of whom were unsophisticated retirees and senior citizens.[3] Puttick settled with the Commission and on April 12, 2012, the Court entered a final judgment against Puttick, ordering disgorgement of $93,000, and prejudgment interest of $44,272, for a total of $137,272.[4] Based on Puttick's sworn representations in his Statement of Financial Condition dated August 23, 2011, the Court did not order a civil penalty, and waived all but $30,000 of the disgorgement and prejudgment interest. Puttick was ordered to make two installments according to the following schedule: (1) $15,000 within fourteen days after entry of the final judgment; (2) $15,000 within one year of entry of the final judgment.[5] As ordered, Puttick paid $15,000 on May 3, 2012 and $15,016[6] on May 16, 2013. The $30,016 paid by Puttick was deposited into the CRIS account under the name "SEC vs Edward Puttick" (the "Distribution Fund"). The $30,016 paid by Puttick was deposited into the CRIS account under the name "SEC vs Edward Puttick" (the "Distribution Fund").

On July 12, 2012, the Court appointed Damasco & Associates LLP[7] as the Tax Administrator ("Tax Administrator") to execute all the tax reporting and filing requirements for the Distribution Fund (Dkt. No. 38). Since the time of the Tax Administrator's appointment, taxes and fees have been deducted from the Distribution Fund annually, leaving a total of approximately $23,593.03 as of March 28, 2017.

The final judgment against Puttick states that the Commission may propose a plan to distribute the funds collected. The Commission now moves the Court to approve the proposed

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[3] SEC v Charles C. Slowey, Jr. et. al., 09-civ-4547 (October 22, 2009).
[4] Final Judgments were entered against the other six defendants, however, none of the other defendants has paid the amounts ordered and no funds have been obtained through collection.
[5] Final Judgment, Dkt. No. 33.
[6] The Court ordered Puttick to pay $16 in post judgment interest.
[7] As of October 1, 2016, Damasco & Associates LLP became a part of Miller Kaplan Arase LLP. The firm's engagement with the SEC and its ability to carry out its duties as the appointed Tax Administrator for this case has not changed.

distribution plan so that the Distribution Fund can be distributed to 65 injured investors harmed by the Defendants' misconduct.

II. ARGUMENT

A. The Applicable Standard

Nearly every plan to distribute funds obtained in a Commission enforcement action requires choices to be made regarding the allocation of funds between and among potential claimants within the parameters of the amounts recovered. In recognition of the difficulty of this task, Courts historically have given the Commission significant discretion to design and set the parameters of a distribution plan. *See SEC v. Wang*, 944 F.2d 80, 83-84 (2d Cir. 1991); *SEC v. Levine,* 881 F.2d 1165, 1182 (2d Cir. 1989). Courts have historically deferred to the Commission's decision regarding whether and how to distribute disgorgement and prejudgment interest *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997).

The Court's review of a proposed distribution plan focuses on whether the plan is fair and reasonable. *See Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir. 2006) citing *Wang*, 944 F.2d at 85 "[u]nless the consent decree specifically provides otherwise[,] once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end."

For the reasons articulated below, the Commission submits that the Distribution Plan for the Distribution Fund constitutes a fair and reasonable allocation of the small amount of funds available for distribution and should be approved.

B. The Commission's Distribution Plan Provides a Fair and Reasonable Allocation of the Distribution Fund

The Commission's principal goal in fashioning a distribution plan for the Distribution Fund was to identify a methodology that would allocate the available funds fairly and reasonably, in a manner proportional to the injury that investors in Fund I and Fund II of the Endeavor Funds suffered as a result of Puttick and the other defendants' actions as detailed in the amended complaint. Here, the total losses suffered by the investors identified by Commission staff during its investigation exceed $8,000,000 and the amount of money recovered is only $30,016 (approximately 0.38%). The amount of money lost by the harmed investors is significantly more than the amount of funds that are available for distribution. Normally, in this situation, the Commission would send the funds to the U.S. Treasury as not feasible to distribute. However, the Commission staff desires to do a small, but meaningful payment as cost-effectively as possible to the harmed investors. Commission staff has determined that: (1) 65 harmed investors who made investments in Fund I and/or Fund II of the Endeavor Funds should be compensated; (2) a *pro rata* distribution to this group would range from $53.40 to $1,173.76; (4) their losses comprise approximately 97.1% of all investor losses from investments in the four Endeavor Funds; and (5) these 65 investors were not officers or directors of the Management Companies (or any of their affiliates, distributes, spouses, parents, children, siblings, or controlled entities) and were not directly involved in any of the conduct detailed in the amended complaint. The Commission's Distribution Plan calculates payments to these 65 harmed investors on a *pro rata* basis, and thereby allocates the available funds fairly and reasonably, in a manner proportional to the economic harm they sustained.

C. The Court Should Appoint a Distribution Agent

The Commission proposes Nichola L. Timmons, Assistant Director of the Commission's Office of Distributions, as Distribution Agent to administer and implement the Distribution Plan, as described below. As a Commission employee, the Distribution Agent shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Distribution Fund. As the harmed investors are limited 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 the return to investors.

D. The Court Should Approve the Distribution Plan

The Commission seeks approval of its Distribution Plan (attached hereto as Exhibit A) to distribute the funds already collected from the defendant. The Distribution Plan provides for a distribution to certain individuals (the "Eligible Recipients") who were harmed by the Defendants' misrepresentation to investors and misappropriation of investor proceeds. The Distribution Plan contemplates that a total of approximately $23,593.03, less a $1,760.40 reserve for taxes and fees and expenses of the Tax Administrator will be distributed to Eligible Recipients on a *pro rata* basis for the harm caused by the Defendants' misconduct. The Distribution Agent plans to quickly distribute the full amount, less the reserve, on a *pro rata* basis to Eligible Recipients, subject to the Court's approval of the Distribution Plan.

III. CONCLUSION

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

A. Appoint Commission employee, Nichola L. Timmons, as Distribution Agent; and

B. Approve the Commission's Distribution Plan.

Attachments:

EXHIBIT A—Proposed Distribution Plan
EXHIBIT B—Eligible Recipients *Pro Rata* Share Calculation Chart - Redacted
EXHIBIT C—Eligible Recipient Notice of Distribution

Respectfully submitted,

/s/ Keshia W. Ellis
Keshia W. Ellis

SECURITIES AND EXCHANGE COMMISSION
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Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2017, a copy of the Plaintiff Securities and Exchange Commission's Motion to Appoint Distribution Agent and Approve Proposed Distribution Plan along with the Proposed Order were filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

___/s/ Keshia W. Ellis_____
Keshia W. Ellis

EXHIBIT A

PROPOSED DISTRIBUTION PLAN

A. Eligibility

1. "Eligible Recipients" will be the investors who incurred net losses from investments in Fund I and/or Fund II: (a) who were not officers or directors of the Management Companies (or any of their affiliates, distributes, spouses, parents, children, siblings, or controlled entities); (b) did not share an address with any officers or directors of the Management Companies, and (c) were harmed by the conduct detailed in the amended complaint.

B. Methodology for Calculating Distribution Amount

2. Determine each Eligible Recipient's loss minus any payments received related to investments in Fund I and Fund II ("Eligible Recipient's Net Loss") and calculate the total losses of all Eligible Recipients by calculating the sum of all Eligible Recipients' Net Losses ("Total Net Losses");

3. Divide each Eligible Recipient's Net Loss by the Total Net Losses. This fractional result represents the Eligible Recipient's proportion of losses to the Total Net Losses ("Eligible Recipient's Proportional Net Loss"); and

4. Multiply each Eligible Recipient's Proportional Net Loss by the Distribution Fund, less any reserve for tax obligations and fees and expenses of the Tax Administrator and court registry fees ("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") (*see* Exhibit B).

C. Distribution Procedure

5. The Net Distribution Fund will be distributed *pro rata* among the Eligible Recipients based upon the calculations in paragraphs 2 through 4 with the payment amounts as set forth in Exhibit B.

6. Following approval of the Distribution Plan by the Court, the Distribution Agent will send a notice ("Notice") (attached hereto as Exhibit C) to each Eligible Recipient via United Parcel Service. The Notice will provide each Eligible Recipient with a copy of the Distribution Plan, including Exhibit B, which sets forth that Eligible Recipient's *Pro Rata* Share and requests confirmation of contact information sufficient to issue the distribution payment. The Distribution Agent will send the Notice within 14 days of the date of the order approving the Distribution Plan.

7. Eligible Recipients will have 14 days from the date of the order approving the Distribution Plan to clarify any incorrect information. In the case of a deceased investor, the estate's information must be provided in order for a distribution payment to be made.

8. After receipt of the information from the Eligible Recipients, the Distribution Agent is authorized to provide the Court's Financial Department with an unredacted version of Exhibit B containing the names, addresses and amounts to be disbursed to the Eligible Recipients. The Court's Financial Department shall promptly thereafter cause checks to be issued to the Eligible Recipients in the amounts of the Eligible Recipients' *Pro Rata* Share. Each check issued to the Eligible Recipients will state on the face of the check that it is valid for one year. After 60 days from the date on the distribution check, the Court will notify the Distribution Agent of the amount of all uncashed checks. Any returned checks will be voided. Any amount remaining in the Distribution Fund as a result of uncashed checks, less any expenses to complete the distribution, shall be transmitted to the U.S. Treasury.

9. The Distribution Agent will submit a final report to the Court summarizing the distribution payments, all taxes and tax administration fees and expenses paid, and the amount of funds to be transmitted to the U.S. Treasury. The Commission staff shall seek an order from the Court to terminate the Distribution Fund, discharge the Distribution Agent, and remit any remaining funds to the U.S. Treasury.

EXHIBIT B

ELIGIBLE RECIPIENTS *PRO RATA* SHARE CALCULATION CHART

Eligible Recipient	Net Loss	Proportional Net Loss	Pro Rata Share
Eligible Recipient #1	$417,659	5.38%	$1,173.76
Eligible Recipient #2	$402,860	5.19%	$1,132.17
Eligible Recipient #3	$315,663	4.06%	$887.12
Eligible Recipient #4	$307,460	3.96%	$864.07
Eligible Recipient #5	$300,000	3.86%	$843.10
Eligible Recipient #6	$299,860	3.86%	$842.71
Eligible Recipient #7	$236,656	3.05%	$665.08
Eligible Recipient #8	$225,000	2.90%	$632.33
Eligible Recipient #9	$200,000	2.57%	$562.07
Eligible Recipient #10	$200,000	2.57%	$562.07
Eligible Recipient #11	$200,000	2.57%	$562.07
Eligible Recipient #12	$200,000	2.57%	$562.07
Eligible Recipient #13	$180,000	2.32%	$505.86
Eligible Recipient #14	$156,691	2.02%	$440.35
Eligible Recipient #15	$155,711	2.00%	$437.60
Eligible Recipient #16	$153,250	1.97%	$430.68
Eligible Recipient #17	$150,000	1.93%	$421.55
Eligible Recipient #18	$150,000	1.93%	$421.55
Eligible Recipient #19	$150,000	1.93%	$421.55
Eligible Recipient #20	$133,000	1.71%	$373.77
Eligible Recipient #21	$130,000	1.67%	$365.34
Eligible Recipient #22	$115,000	1.48%	$323.19
Eligible Recipient #23	$109,975	1.42%	$309.07
Eligible Recipient #24	$105,000	1.35%	$295.09
Eligible Recipient #25	$101,338	1.30%	$284.79
Eligible Recipient #26	$100,459	1.29%	$282.32
Eligible Recipient #27	$100,166	1.29%	$281.50
Eligible Recipient #28	$100,000	1.29%	$281.03
Eligible Recipient #29	$100,000	1.29%	$281.03
Eligible Recipient #30	$100,000	1.29%	$281.03
Eligible Recipient #31	$100,000	1.29%	$281.03
Eligible Recipient #32	$100,000	1.29%	$281.03
Eligible Recipient #33	$100,000	1.29%	$281.03
Eligible Recipient #34	$100,000	1.29%	$281.03
Eligible Recipient #35	$100,000	1.29%	$281.03
Eligible Recipient #36	$100,000	1.29%	$281.03
Eligible Recipient #37	$92,500	1.19%	$259.96

Eligible Recipient #38	$82,623	1.06%	$232.20
Eligible Recipient #39	$79,922	1.03%	$224.61
Eligible Recipient #40	$76,500	0.98%	$214.99
Eligible Recipient #41	$70,012	0.90%	$196.76
Eligible Recipient #42	$70,000	0.90%	$196.72
Eligible Recipient #43	$70,000	0.90%	$196.72
Eligible Recipient #44	$68,781	0.89%	$193.30
Eligible Recipient #45	$65,628	0.84%	$184.44
Eligible Recipient #46	$61,337	0.79%	$172.38
Eligible Recipient #47	$60,000	0.77%	$168.62
Eligible Recipient #48	$58,000	0.75%	$163.00
Eligible Recipient #49	$52,875	0.68%	$148.60
Eligible Recipient #50	$50,000	0.64%	$140.52
Eligible Recipient #51	$50,000	0.64%	$140.52
Eligible Recipient #52	$50,000	0.64%	$140.52
Eligible Recipient #53	$50,000	0.64%	$140.52
Eligible Recipient #54	$50,000	0.64%	$140.52
Eligible Recipient #55	$50,000	0.64%	$140.52
Eligible Recipient #56	$50,000	0.64%	$140.52
Eligible Recipient #57	$49,942	0.64%	$140.35
Eligible Recipient #58	$44,411	0.57%	$124.81
Eligible Recipient #59	$43,700	0.56%	$122.81
Eligible Recipient #60	$40,000	0.51%	$112.41
Eligible Recipient #61	$37,000	0.48%	$103.98
Eligible Recipient #62	$36,710	0.47%	$103.17
Eligible Recipient #63	$24,000	0.31%	$67.45
Eligible Recipient #64	$20,000	0.26%	$56.21
Eligible Recipient #65	$19,000	0.24%	$53.40
TOTALS:	$7,768,687	100%	$21,832.63
Net Distribution Fund:	$21,832.63		

EXHIBIT C

ELIGIBLE RECIPIENT NOTICE

VIA UPS

[Eligible Recipent Name]
[Eligible Recipient Address]

Re: *SEC v. Charles Slowey, Jr., et al.* (2:09-CV-4547-LDW)

Dear [Eligible Recipient Name],

We are writing to inform you that there will be a distribution of funds in the above-captioned matter to those investors in the securities of Endeavor Real Estate Fund I ("Fund I") and Endeavor Real Estate Fund II ("Fund II") who were not officers or directors of Fund I and Fund II (or any of their affiliates, distributes, spouses, parents, children, siblings, or controlled entities), did not share an address with any officers or directors of the Management Companies, and were harmed by the conduct detailed in the amended complaint ("Eligible Recipients").

Background

In October 2009, the Commission filed a complaint in the United States District Court for the Eastern District of New York against Edward D. Puttick and six other defendants alleging, *inter alia*, that the defendants violated the antifraud provisions of the securities laws in connection with the sale of nearly $12 million in securities the Endeavor Funds to nearly 90 investors, many of whom were unsophisticated retirees and senior citizens.

On April 12, 2012, the Court entered a final judgment against Puttick ordering disgorgement of $93,000, and pre-judgment interest of $44,272, for a total of $137,272. Based on Puttick's sworn representations in his Statement of Financial Condition, the Court did not order a civil penalty, and waived all but $30,000 of the disgorgement and prejudgment interest. The final judgment authorized the Court to hold the $30,016 paid by Puttick (collectively, the "Distribution Fund") and that the Commission could propose a plan to distribute the Distribution Fund, subject to the Court's approval.

The District Court for the Eastern District of New York has approved a distribution plan ("Distribution Plan") for the Distribution Fund and the staff of the Commission has reviewed the defendants' records to identify the Eligible Recipients. The Commission staff has determined that you are an Eligible Recipient who suffered a net loss of funds during the covered time period and will receive a distribution payment.

Plan of Distribution

On ______, the Court entered an Order to Appoint Distribution Agent and Approve Proposed Distribution Plan in this matter. A copy of the Distribution Plan with Eligible Recipients *Pro Rata* Share Calculation Chart ("Chart") is attached for your review. In the Chart, to protect private information, the names of the Eligible Recipients, have not been made public. To assist in your review of the Distribution Plan and the Chart, please note that you are Eligible Recipient #___. Also please note that the staff of the Commission has calculated your *pro rata* share of the Net Distribution Fund to be $ _________.

Should you have any questions or concerns, please feel free to contact me at (202) 551-4406.

Regards,

Keshia W. Ellis, Esq.
Securities and Exchange Commission
Office of Distributions
Division of Enforcement
100 F. Street, N.E.
Washington, DC 20549-5876

Enclosure:
Distribution Plan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, **v.** **CHARLES C. SLOWEY, JR., ET AL.,** Defendants.	:	2:09-CV-04547-LDW-ETB

[PROPOSED] ORDER TO APPOINT DISTRIBUTION AGENT AND APPROVE PROPOSED DISTRIBUTION PLAN

This matter is before the Court on Plaintiff's Motion to Appoint Distribution Agent and Approve Distribution Plan (the "Motion"). Having considered the Motion and the record and being otherwise fully advised in the premises, for good cause shown the Motion is **GRANTED.**

The Court HEREBY ORDERS AND ADJUDGES as follows:

1. Nichola L. Timmons, a Commission employee, is appointed as Distribution Agent of the Distribution Fund.
2. The Distribution Fund will be distributed in accordance with the approved Distribution Plan approved by this Court; and
3. The Distribution Agent shall perform such functions as are necessary to implement and administer the approved Distribution Plan.
4. Monies in the Distribution Fund, minus tax obligations, fees and expenses of the Tax Administrator, and court fees, shall be distributed to Eligible Recipients as defined in the Distribution Plan.

Dated: ________________ ______________________________
United States District Judge