UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

MAY 15, 2014

AMINISTRATIVE PROCEEDING
File No. 3-15764

In the Matter of GARY L. MCDUFF	RESPONDENT'S OPPOSITION TO DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

COMES NOW Respondent appearing herein to show good cause in support of this Opposition to the Division of Enforcement's April 15, Motion for Summary Disposition.

Respondent has obtained consent to file a motion for an order for new trial in the Federal District Court for The Eastern District of Texas criminal case 4:09 cr 90 based on newly discovered evidence not available at trial. That evidence is exculpatory, reliably corroborated and demonstrates actual innocence of the unlawful conduct alleged. That case was predicated entirely on the same alleged conduct made by the Division of Enforcement in civil action 3:08-cv-526-L in 2008. Since the merits are identical, the facts must be identical in relation to the actual conduct of the Respondent. If newly discovered evidence demonstrates actual innocence in the criminal case it likewise demonstrates it in the civil case. Therefore, the order for a new trial based on a showing of actual innocence in the criminal case will create a collateral matter and open the door for attack of the underlying civil matter if necessary. The weight of the newly discovered evidence is substantial enough that it has produced un-rebuttable authenticated proof that Respondent could not have committed the alleged violations both in fact and in law. Unassailable proof that the Respondent did not violate any securities laws, codes, regulations, *et al,* makes void any claim made by the Division of Enforcement. If

Respondent violated no federal securities laws, the Division of Enforcement was never vested with authority to move a court for relief on facts never litigated at all, much less to a clear and convincing or preponderance standard.

The sole remedy available to the Division of Enforcement to be vested with authority to move the court for a remedy to their claim no 3:08-cv-526-L against Respondent without being required by the rules of court to produce facts to support their claim so that they can be tested in adverse proceedings is clear. Such relief can be granted by the court, even if no facts are proven by any witness proffering any evidence in support of the claim only if Respondent failed to appear and present a defense. The court could then by operation of law provide relief to the Division of Enforcement in the form of a Default Judgment, if the court had subject-matter jurisdiction over the live controversy. If this was what had happened, the Division of Enforcement could have obtained a valid uncontested judgment. The Record however, reflects a different result, and there is no record of any opposition, objection, or appeal of that result by the Division of Enforcement.

The Record is clear, unopposed and by operation of law controlling. Respondent now presents this common sense legal approach supported by self-evident maxims in lieu of case law due to the impediments of incarceration. In the process of being transported from one holding facility to another on April 30, 2014, all my legal material was taken from me. I was not allowed to retain even one copy of this court's orders, address, or any other paper. Therefore, I must rely upon this court applying the governing statutes and case law from which the principles of law supporting Respondent's legal footing is well-grounded in precedent.

Respondent's good cause showing of why this court should not grant the Division of Enforcement's Motion for Summary Disposition is because its claim is defective in fact, and more significantly, in law. Division of Enforcement (DOE) attorney Ms. Magee is believed by Respondent to be unaware that her filings in 2012 and 2013 in civil action 3:08-cv-526-L were contrary to the stipulations of fact and conclusions of law already adjudged in settlement proceedings between Respondent and the DOE that resolved the controversy between the parties before she, either overlooked, or chose to ignore, the lawful process that had already concluded to finality and judgment against the DOE before she became involved in the case as attorney of record.

If she was (is) unaware that the settlement that preceded her was lawful, binding, and past the time for appeal, then her filings are harmless error in that they were made moot by the settlement which divested the district court of any further jurisdiction and terminated any further claim against Respondent by the DOE.

If she was (is) aware that the settlement that preceded her was lawful, binding and past time for appeal, then her filings are in bad faith, erroneous, and constitute unbecoming impermissible conduct for an attorney for the government. Her duty to inform the court that her predecessor had been served with a lawful process which required a response (because it contained settlement tender, and chose not to reject or contest the offer), was a continuing duty owed to the court. It was plain error for her to allow the court to believe it continued to have subject matter jurisdiction over a live controversy when in fact her predecessor had lawfully acquiesced to the settlement ending the controversy and the court's subject matter jurisdiction. Regardless of the reasons why, the fact remains that she filed to re-open a case without informing the court of the underlying settlement that pre-dated her filings. Had the court been properly informed of the prior settlement proceedings her duty to the court would have been complete. Her duty under the full faith and credit preclusion doctrine of foreign judgments from any foreign court or tribunal within any state rendered by a judicial or ministerial proceeding which was fundamentally fair and provided due process, was to petition the federal district court to evaluate that judgment. In such cases, the law required the court being moved to first take judicial notice of any foreign judgment, which purports to have resolved the controversy. The court is to investigate the matter *sui sponte* and on the record state its findings of facts and conclusions of law in determining if the foreign judgment was, or was not, rendered in accordance with the parties agreed or un-objected to; choice of; court; jurisdiction; and governing law. Since silence is a species of agreement and agreement is governed by contract law, any terms therein must be enforced liberally and not subject to any judicial interpretation when the terms are clear and unambiguous.

If the court finds the foreign judgment proceedings to be fundamentally fair, and gave reasonable notice and opportunity to be heard, the court is to afford that judgment full deference and find that it had properly resolved the controversy between the same parties appearing before the court on the same matter and inform the parties that upon self- examination the court lacked jurisdiction over a settled matter, and decline to hear the case.

By Ms. Magee's failure to petition the court to make findings of facts and conclusions of law regarding whether the legal process used to obtain the foreign judgment was, or was not, compliant with the prescribed rules of fundamental fairness, the court and Respondent was denied a fundamental cornerstone of jurisprudence. It was plain error for the DOE prior to and after representation by Ms. Magee to remain silent, and never once object to the settlement terms, substance, or form, causing the Respondent to rely on that settlement, if the DOE never intended to honor that un-objected unopposed settlement. The Respondent was therefore justified in having a good faith reliance that

the controversy had been resolved, and that end-of-the-controversy had divested the federal court of any further jurisdiction making any further public proceedings in the federal court moot by operation of the mandatory full faith and credit preclusion law requiring absolute deference to the foreign judgment.

It was insufficient for Ms. Magee to simply tell the court that she had determined that foreign judgment process was non-compliant and should be disregarded. That is the function of the court being asked to exercise jurisdiction. It is not within her purview to make judicial determinations. Her observations are neither fact nor law. In such situations, her duty to her client the DOE, the court, and the Respondent, was to ask the court to decide if the foreign judgment was, or was not, binding on the DOE. This she did not do. The result was injury to the court's judicial process by suppressing a materially substantive issue of law the court had a duty to decide, and the Respondent had a right to have decided so he would know if his good faith reliance in the finality of the settlement was, or was not, on solid footing.

It is settled law that a person may not be punished for exercising any constitutionally guaranteed right. The right to enter into contracts and agreements is such a right. And no law that infringes upon that right may be passed or enforced. Bolvers Contract Law publications affirm that terms of an agreement reached by agreement of the parties demonstrated by signature, verbal consent, tacit acquiescence, course of dealing, or course of conduct, all constitute a contract. Hornbook law makes it clear that an agent can commit its non-signatory principal to an agreement. See Restatement (Second) of Agency 7 (1958).

The Supreme Court has continuously held that silence is a species of agreement conduct. In any settlement offer presented in good faith together with un-rejected tender consideration, the offeror has a right to rely upon that un-rejected tender as being accepted by the offeree for the purpose stated in the offer. The act of retaining the tender without rejection of it within the time specified for objection or refusal, has the legal effect, by operation of law, of "acceptance". Acceptance is fully demonstrated by the act of retention of the tendered settlement. Acceptance is a form of conduct constituting agreement without objection, and Hornbook law defines that as a "contract" that is binding when one party performs in accordance therewith leaving the other party subject to compelled performance in a court of law in the event that party fails to counter-perform pursuant to the terms of the agreement.

Respondent has demonstrated to this Honorable Court that he acted in good faith by presenting the DOE with a settlement offer containing private payment consideration tendered with the offer for inspection and acceptance or rejection. The offer included

specific terms and stipulations the DOE would show their agreement with if they retained the consideration that accompanied the settlement offer the primary terms of that agreement which became binding on the DOE as a result of their retention of the form and substance of the tendered payment, was the *res judicata stare decisis* dismissal of civil action 3:08-cv-526-L with prejudice. The DOE retained the payment, but went into dishonor by not dismissing the civil action in the U.S. District Court for the Northern District of Texas, or informing the court that they had accepted Respondent's settlement and the controversy had been resolved. After giving the DOE full and fair notice of its default of the terms agreed, and an opportunity to cure the default, the DOE did not cure the default. Respondent petitioned the Maricopa County Ministerial court to issue a default judgment and notice of right to appeal that judgment. The judgment issued and the DOE sought no appeal or extension of time to file an appeal. That judgment became final and non-appealable. The unopposed record of the settlement process, which culminated in a default judgment against the DOE for not dismissing the civil case is the record Respondent has presented to this court for judicial notice. Respondent was consistently led to believe by the actions of the DOE that a settlement contract existed. No record in opposition to it was ever presented.

Over and over the Supreme Court has upheld its findings, over 100 years ago, that the United States Government descends to the level of a foreign corporation or person in relation to its presence in any of the several states. That fact combined with the Supreme Court's long-held finding that the U.S. Government and its agencies can and do enter into contracts on an equal footing as any corporation or person, means that Respondent has every right and remedy at law in Texas as does the Securities and Exchange Commission DOE doing business in Texas.

Just as the DOE has the right to present Respondent with a complaint and demand relief through an adjudication process with, or without Respondent's consent, it is equally so that Respondent has the right to offer settlement by way of any neutral adjudication process of that complaint. The fundamental rules of offer and acceptance are ancient and established beyond question. Any dispute or controversy brought by a party in any venue or forum under any law, may be settled in any alternate venue, forum, or other law presented by the settling party to the claimant if there is no objection made by the claimant. The doctrine of choice of court and choice of jurisdiction and choice of law become controlling, and a federal court is to accept that agreement, even enforce it.

Respondent moves this Court to find that the DOE may have obtained a default judgment against Respondent in civil action 3:08-cv-526-L, but that the prior default judgment in civil action PR-2011-2016-AJ had the legal effect of Rooker-Feldman reclusion making any judgment rendered in 3:08-cv-526-L moot or void. A valid maxim

for this court to rely on to reach that finding is the deference standard federal courts are to give to foreign judgments. A foreign judgment is *prima facie* evidence that the federal court had no jurisdiction to re-litigate an already litigated and settled matter. When a court lacks jurisdiction nothing which the parties do, will grant it, and any proceeding or judgment rendered by a court which knowingly or unknowingly lacks jurisdiction over the matter is void and lacks compulsory power, says the Supreme Court.

A Summary Disposition, as in Summary Judgment; the provision in the law which allows it is the requirement that no material fact remains unresolved, the party against whom judgment is sought is unable to produce any defense or authenticated evidence supporting a defense, thereby operation of law entitles the seeking party to a summary finding in their favor. Such summary findings cannot survive valid authenticated evidence from any court or tribunal, or newly discovered evidence, showing a defense of a material fact. Not only did Respondent produce an authenticated record from the Maricopa County Arizona ministerial court that Respondent had obtained an unopposed Judgment against the DOE for not complying with the terms of the unopposed settlement, Respondent also produced newly discovered evidence not known to Respondent until late 2013 and early 2014 in the form of eye-witness affidavits confirming that Respondent did not, and could not, have made the false representations alleged in the civil or criminal case allegations which are identical. These serve as a direct collateral attack on civil case 3:08-cv-526-L and criminal case 4:09-cr-90 under the doctrines of Equitable and Judicial Estoppel.

Eyewitness testimony that Respondent is innocent of the allegations is tantamount to DNA evidence proving innocence. That evidence would have provided Respondent with an absolute defense had it been known to Respondent prior to the civil or criminal cases being brought. It is noteworthy that Respondent has been held accountable for the acts of Mr. Reese and Mr. Lancaster making false representations which Respondent allegedly knew about. No evidence was presented by the DOE other than one affidavit by the Lancorp-Megafund receiver containing statements that were clearly erroneous and disproved by the controlling Private Placement Memorandum, which disclosed and allowed the very things the receiver in error claimed to not be allowed. Experts in securities law who contributed to the creation of the Lancorp Fund Memorandum were asked in November 2013 to review the Memorandum and state whether it allowed Mr. Lancaster as Trustee to do the following:

a) Receive compensation from three different sources;
    (1) As Trustee;
    (2) As the sole owner of Founder's shares;

(3) As profits derived from any entity outside the Lancorp Fund which he may own or work for that contracted with the Lancorp Fund to provide any service needed by the Lancorp Fund.

b) To appoint by power-of-attorney, any party nominated by him as Trustee of the Lancorp Fund, to use the assets of the Fund through a broker-dealer or a fund to indirectly through them buy specified securities at a specified discount or any obligation of any qualified bank, provided it was worth more than the amount paid for it on the open market on the day of delivery.

c) To make a material change to the Memorandum by removing the insurance element before the fund went effective and replacing it with a bank obligation assuring that any security being purchased would be worth more than the amount paid for it.

d) If Mr. Lancaster's amendment of the Memorandum with signed consent of every investor, before removing their money from escrow and investing it, in accordance with the April 5, 2004 amendment, eliminated any possible claim or allegation that he made false representations regarding insurance policy protection of investor funds.

e) That any entity which contracted with the Lancorp Fund was free to distribute its portion of any profits however it deemed appropriate, since those profits were not profits due to the Lancorp Fund under any express or implied contract.

The experts, having superior knowledge of the Lancorp Fund provisions and governing law than did the receiver, have confirmed that the Memorandum allowed these activities and properly disclosed them to the investors. That means there was no misrepresentations by Mr. Reese, Mr. Lancaster, or Respondent regarding insurance from March 17, 2003 through February 8, 2005, because it was removed before the Fund ever went effective, and every investor was given the option to cash out if they did not approve of the insurance being amended out to the Memorandum, or remaining invested without the insurance. Every investor signed the Memorandum amendment showing their choice. Those who opted out were sent all their money. Only the money of those investors who opted to remain invested without the insurance policy protection, was used to launch the fund into active investing. The evidence presented against Respondent at trial was only inference of knowledge that others were doing prohibited acts. No proof of that knowledge was presented. Only irrelevant statements made to the jury about representations made to investors before the insurance element was amended out of the

Memorandum were used to present misconstrued facts, which have been discovered post-trial to be incorrect by no less than 20 other federal courts. That self-authenticating evidence, together with the eye-witness affidavits of persons present when all aspects of insurance and investment activities took place, which Respondent had no involvement in, according to those witnesses, is the reason the criminal conviction has been tolled and the filing of a motion for new trial based on newly discovered evidence has been accepted by the trial court.

That newly discovered evidence is sufficient in reliability to file a similar motion for a new trial in civil action 3:08-cv-526-L if necessary. That need would only arise if there are findings of fact and conclusions of law made by the federal district court of the Northern District of Texas that the default judgments obtained by Respondent through lawful proceedings in the Maricopa County Arizona ministerial court did not divest that federal court of subject-matter jurisdiction. That has not transpired and until it does, Respondent has a good faith right to rely on the remedy provided by that judgment of settlement which pre-dated and made moot any subsequent judgment of the federal court. It is settled law that a judgment stands until satisfied or set aside by issuing court, or reviewing court, provided that reviewing court is vested with jurisdiction to review the judgment. Federal law and policy specifies that judgments rendered by any state court or tribunal within any of the several states if reviewable on appeal by the issuing court or the U.S. Supreme Court only and not by a federal district court or appellate court of a jurisdiction that is foreign to the rendering court, tribunal or mediated administrative proceeding of a foreign state.

There is no record in case no. 3:08-cv-526-L showing that the Federal District Court made any finding of facts or conclusions of law regarding the preclusion or non-preclusion effect of the Maricopa County Judgment. Therefore, it is clearly an unresolved outstanding material matter which at a minimum has collateral estoppel and judicial estoppel effect on the subsequent judgment obtained by the DOE in the Federal District Court, because it failed to inform that court that the DOE had been found to be in default by the Maricopa County administrative court. Such a conflict must be resolved by a court having jurisdiction to decide the status and legal affect the two opposing judgments have on each other. Does the first judgment obtained by Respondent against the DOE prevail over the later judgment obtained by the DOE against the Respondent? That is presently an unanswered question and ripe for determination by a court having jurisdiction to decide that question. Therefore, this court must abstain from granting any relief sought by the DOE until such time as the taint of their latter judgment is removed by a finding of an appropriate court that the DOE judgment is entitled to the benefit of relief afforded by the operation of law, or that Respondent's prior judgment is entitled

instead to the operation of law because he, and not the DOE, is the aggrieved party entitled to a remedy.

The fact that the DOE obtained judgment is severely tainted, if not made void, by Respondent's previously obtained judgment (he has a right to believe is superior and controlling) is enough good cause shown for this court to find grounds to deny the DOE's Motion For Summary Disposition. Not only does the prior judgment deserve the recognition of settling the DOE claim no. 3:08-cv-526-L, the newly discovered evidence provides uncontroverted proof that Respondent did not commit the offenses alleged in the complaint. That fact raises an even more fundamental question of whether the DOE ever had any probable cause to file the complaint against Respondent.

If a determination is ever made by a court of competent jurisdiction that the Maricopa County judgment did not provide the requisite elements of fundamental fairness and is set-aside, then, and only then, may the DOE re-assert its claim only after it returns the payment tendered by Respondent. The DOE's retention of Respondent's settlement tender will continue to constitute their acceptance of the settlement terms. That alone entitles Respondent to discharge of any further obligation in the matter and forecloses any right for the DOE to seek any additional penalties of any type.

Any finding of a court authorized by law to set-aside the Maricopa County judgment would also open the door for Respondent to be provided with due-process rights anew to present his newly discovered evidence in defense of the allegations which must be proved by the DOE at trial or through an untainted default judgment proceeding. Such due-process would be mandatory and constitutionally required by both the State and U.S. Constitution, because every beneficiary of a judgment has a right to rely on that judgment for as long as the judgment stands. That judgment has never been struck down and still stands in law regardless if the DOE agrees with it now or not. They were given multiple opportunities to object and chose not to object. The law requires them to accept the legal consequences of their choice to allow the settlement and judgment to become final and binding in the jurisdiction and under the law offered to them by the Respondent.

DOE attorney Janie Frank seems to be a delightful and competent person who deserves respect. Respondent is certain that she believes what she had been told by her predecessors. She is at a disadvantage by not being present when any of these Proceedings took place and has had to rely on the hearsay provided to her by others, some of which also relied on hearsay. Double hearsay usually results in inaccuracies. One such inaccuracy was offensive and unjustly prejudicial to Respondent. In pleadings to this court it was represented that Respondent had answered the Complaint no. 3:08-cv-526-L and "fled" to Mexico. That is the stuff of books and movies. The immigration

records are very clear. The accurate fact is that Respondent accepted a compliance job in Mexico City and moved there on June 7, 2006 under a proper and lawful residency permit. It was not until two years later that the SEC-DOE filed the complaint in 2008. Even though Respondent provided the SEC with address and contact details in Mexico, the SEC never once mailed anything or called Respondent. Respondent is the one who initiated contact, and in good faith, sought a means to resolve the DOE's claim. The DOE went silent, never responded, and the case was closed *sua sponte* by the court.

This court was further told that Respondent's criminal conviction in March 2013 was the result of proving the allegations made against him. The newly discovered evidence supporting a new trial shows that Respondent did not commit the alleged acts, and that the acts he did commit were lawful and not in violation of any SEC law, code, or regulation. The evidence demonstrates that the SEC and the government AUSA both relied on the presumptive conclusions of a receiver named Michael Quilling, who simply made a mistake in fact and law. At long last that mistake has been exposed by newly discovered persons, who presented irrefutable newly discovered evidence showing actual innocence of the allegations made against Respondent. This Court is at a disadvantage by not hearing witness testimony or reviewing transcripts of their testimony. No witness said Respondent lied to them or made any representation he knew to be false. That was an inference made by the prosecutor only. No witness even made that suggestion. The newly discovered evidence reveals that everything Respondent told the few (less than 6) investors he spoke to, was absolutely true when said. No witness said Respondent knew or even overheard what representations Mr. Reese or Mr. Lancaster made to them. Every witness, and every investor, confirmed in writing that persons other than Respondent introduced them to the Lancorp Fund.

The case was presented as a conspiracy alleging that Mr. Lancaster, Mr. Reese, and Respondent conspired to defraud investors. Mr. Reese died before trial and therefore could not tell the court what, if anything, Respondent knew about his representations to investors or how he contacted investors to direct them to the Lancorp Fund. Mr. Lancaster testified, but did not say that Respondent knew what representations he made to investors, or that Respondent was aware of any violations of securities laws resulting from his creation of a second Fund and four investment agreement contracts that did not comply with Reg D standards. In a prior sworn deposition, Mr. Lancaster made it clear he did not tell Respondent what he was doing because he (Lancaster) was in control of everything, and free to do whatever he chose with no obligation to tell Respondent anything. He admitted making mistakes without saying Respondent knew of those mistakes. Mr. Lancaster identified nothing done by Respondent that was wrong. He used circumstance and association as a basis of "logical inference" of guilt.

The current reality is that the case would have never made it to trial if Respondent had known of the newly discovered evidence before trial. In like manner, the SEC civil case would have been dismissed or drastically amended to lesser allegation against Reese, Lancaster, and the probable elimination of Respondent as an accomplice to any wrongdoing.

For the DOE to assert that it has proven Respondent's guilt in the violations alleged in the civil action or the parallel criminal action is inaccurate at this time. No finding of guilt has become final. In fact, it is presently under review by the criminal court because of the newly discovered evidence, which this court has been given judicial notice of.

Respondent prays that this court will recognize that the probability of Respondent's innocence, supported by the newly discovered evidence, and the fact that Respondent obtained a judgment, which pre-dated and nullified or tainted the subsequent judgment obtained by the DOE is good cause not to grant the DOE's Motion For Summary Disposition.

Respondent would ask this court to consider this to be a Motion for Order Precluding Summary Disposition as requested by the DOE by finding that the operation of law does not yet, if at all, entitle them to the relief or remedial action sought in light of the newly discovered evidence now ready to be presented at the hearing Ordered by the Commission Secretary to determine if the allegations "are true", and the arresting judgment obtained by Respondent which pre-dated and tainted or rendered void the subsequent judgment obtained by the DOE.

Respondent has met his burden of showing that the DOE does not have an undisputed valid judgment against Respondent. It is unfortunate that Respondent did not know of, or have access to, the newly discovered evidence at the outset of civil action 3:-cv-526-L and criminal case 4:09-cr-90. It would have given the attorney for the DOE and the AUSA for the government the irrefutable facts they needed to have, to see that Respondent did not, and could not, have done what the Receiver, Michael Quilling, incorrectly concluded Respondent had done.

Truth deserves to be heard and form must give way to substance when the probability of actual innocence exists and is shown by reliable sources. Twenty federal courts and eyewitnesses clearly meet that standard. In the interest of justice and fairness, Respondent petitions this court to withhold any remedial action of any nature and allow Respondent to due-process provision of presenting the newly discovered evidence from uncontested reliable sources demonstrating Respondent's actual innocence. Please allow

the light of day to shine on the truth, which cannot be changed by theory, but without this court's assistance, it can be buried by layer upon layer of that could take months, if not years, to peel away, just to return to the point this matter stands now. Doesn't American Jurisprudence hold that innocence, when discovered, becomes ripe for review expeditiously at any stage of the proceedings? When innocence is shown, this court has the power to review the alleged conduct in light of the evidence of innocence properly presented by reliable sources to determine if the allegations are true. Respondent asks this court to exercise that power in the public interest who, are entitled to the protection by this court from private sector abuse or government agency errors resulting in unjust harm.

Respectfully requested

GARY L. MCDUFF, Respondent

Attachments: (5)

1. Sammy Cattan case (highlighted)
2. Larry Frank Affidavit (with insurance)
3. March 12, 2004 Lancorp Letter to Investors
4. April 5, 2004 Lancorp Amendment
5. Victim Impact Statements

ATTACHMENTS

2008 WL 361549
Only the Westlaw citation is currently available.
United States District Court,
S.D. Texas,
Victoria Division.

The O.N. EQUITY SALES COMPANY, Plaintiff,
v.
Sammy B. **CATTAN**, Defendant.

Civil Action No. V–07–70. | Feb. 8, 2008.

Attorneys and Law Firms

Marion H. Little, Jr., Michael R. Reed, Zieger Tigges and Little LLP, Columbus, OH, R. Allen Ashcraft, Jr., Squire Sanders et al., Houston, TX, for Plaintiff.

Joel A. Goodman, Goodman & Nekvasil PA, Clearwater, FL, for Defendant.

Opinion

MEMORANDUM OPINION & ORDER

JOHN D. RAINEY, District Judge.

***1** Pending before the Court are Defendant **Sammy Cattan's** ("**Cattan**") Motion to Compel Arbitration (Dkt. No. 10), **Cattan's** Motion for Protective Order (Dkt. No. 11) and Plaintiff The O.N. Equity Sales Company's ("ONESCO") Motion Under Civil Rule 56(f) for an Order Precluding Summary Disposition of Defendant's Motion to Compel Arbitration Pending Discovery to be Taken on the Issue of Arbitrability (Dkt. No. 17). Having reviewed the motions, the responses thereto, the entire record and the applicable law, the Court is of the opinion that the Motion to Compel Arbitration should be granted and the remaining motions be denied.

Background

This action arises out of ONESCO's efforts to enjoin an arbitration filed with the National Association of Securities Dealers ("NASD") relating to **Cattan's** investment in the Lancorp Financial Fund Business Trust ("Lancorp Fund"). ONESCO has also filed at least 20 nearly-identical federal district court complaints around the country seeking to enjoin other investor's arbitrations related to their respective investments in the Lancorp Fund.

ONESCO is a full service securities broker-dealer registered in all fifty states and a member of the NASD. Through its registered representatives, ONESCO offers a variety of investment products, including brokerage services, mutual funds and variable insurance products. From March 23, 2004 until January 3, 2005, non-party Gary Lancaster worked as an independent contractor and registered representative of ONESCO. Prior to his employment with ONESCO, Lancaster organized and served as Trustee of the Lancorp Fund.

On March 17, 2003, Lancaster solicited investors for the Lancorp Fund by distributing a private placement memorandum ("Private Placement Memorandum"). In order to purchase shares in the Lancorp Fund, potential investors were required to review the Private Placement Memorandum and execute a subscription agreement ("Subscription Agreement"). On March 3, 2004, **Cattan** executed the Subscription Agreement. According to the terms of the Private Placement Memorandum and Subscription Agreement, the amount investors paid into the fund was to be initially deposited in an escrow account and held until the closing date. By signing the Subscription Agreement, investors agreed they could "not cancel, terminate or revoke [the Subscription Agreement]." Under the terms of the Private Placement Memorandum, however, the Lancorp Fund offering was subject to "withdrawal, cancellation, or modification" without further notice.

At this time, **Cattan** had not established any form of contractual or customer relationship with ONESCO. Indeed, it is undisputed that his interactions were exclusively with Lancaster and the Lancorp Fund. However, in April 2004, after Lancaster became a registered representative of ONESCO, he notified **Cattan** that a material condition of his investment had changed; to wit, that the Lancorp Fund had replaced the insurance component of its proposed investment. Based on the change, **Cattan** had two choices: he could either (1) confirm his agreement to invest in the Lancorp Fund and acknowledge the change in the insurance component or (2) request withdrawal of his investment.

*2 In an April 2004 reconfirmation letter, **Cattan** chose not to withdraw his investment, acknowledged the change regarding the insurance component and reconfirmed his desire to purchase shares in the Lancorp Fund. In a letter dated June 14, 2004, Lancaster advised **Cattan** that the Lancorp Fund "officially became effective as of May 14, 2004." After May 14, 2004, Lancaster invested a significant portion of the Lancorp Fund assets in Megafund, which was later discovered to be a Ponzi-scheme. Consequently, many of the Lancorp Fund's investors, including **Cattan**, sustained substantial losses.

In March 2007, non-party Allen Samuels initiated an arbitration proceeding before the NASD against ONESCO concerning his investment in the Lancorp Fund. On April 23, 2007, Samuels filed an Amended Statement of Claim, adding additional claimants, including **Cattan**, to the NASD action. Seeking to hold ONESCO responsible for their losses, the NASD claimants alleged that they invested in the Lancorp Fund based on misrepresentations and omissions Lancaster made while he was a registered representative of ONESCO and that ONESCO negligently failed to supervise Lancaster during this time.

ONESCO then filed its initial complaint in this Court for declaratory and injunctive relief against **Cattan**. Specifically, ONESCO requests a declaration from the Court that it has no obligation to arbitrate the NASD actions and claims as they relate to the Lancorp Fund and seeks to enjoin **Cattan** from proceeding with the arbitration before the NASD. ONESCO further wishes to proceed with discovery on the issue of whether arbitration is appropriate and **Cattan** has moved for a protective order shielding him from such discovery efforts. **Cattan** has also moved to compel ONESCO's arbitration before the NASD.

Discussion

"[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *AT & T Tech., Inc. v. Commc'ns Workers of Am .*, 475 U.S. 634, 648 (1986) (citations omitted). "The question of whether the parties have submitted a particular dispute to arbitration, i.e., the 'question of arbitrability,' is 'an issue for judicial determination [u]nless the parties clearly and unmistakably provide otherwise.' " *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83, 123 S.Ct. 588, 154 L.Ed.2d 491 (2002) (citations omitted). When determining whether the parties entered into a valid arbitration agreement, the court "decides only whether there was an agreement to arbitrate, and if so, whether the agreement is valid." *Great W. Mortgage Corp. v. Peacock*, 110 F.3d 222, 228 (3d Cir.1996) (citing 9 U.S.C. § 2). The "court is not to consider the merits of the claims giving rise to the controversy, but is only to determine ... whether there is a valid agreement to arbitrate." *Id.* If the court finds there is an agreement to arbitrate, the disposition of the merits is left to the arbitrator. *Id.*

The Fifth Circuit has provided a two-step inquiry for courts to employ when determining whether to compel arbitration. Under this framework, the court must determine (1) whether a valid arbitration agreement exists and (2) whether the scope of the parties' dispute falls within that agreement. *JP Morgan Chase & Co. v. Conegie*, 492 F.3d 596, 598 (5th Cir.2007) (citing *Will–Drill Res., Inc. v. Samson Res. Co.*, 352 F.3d 211, 214 (5th Cir.2003)); 9 U.S.C. § 4. Upon the determination that the parties entered into an arbitration agreement covering the dispute at issue, the Court "shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." 9 U.S.C. § 4.

*3 The parties do not dispute the fact that no written contract exists between **Cattan** and ONESCO. Thus, the Court cannot identify or analyze a contractual arbitration clause binding ONESCO to arbitrate **Cattan**'s claims. However, ONESCO's NASD membership binds it to the organization's rules and regulations, including the NASD Code as it relates to arbitration. *See World Group Secs., Inc. v. Sanders*, 2006 WL 1278738, at *4 (D.Utah. May 8, 2006) (quoting *MONY Secs. Corp. v. Bornstein*, 390 F.3d 1340, 1342 (11th Cir.2004)) ("even if 'there is no direct written agreement to arbitrate ..., the [NASD] Code serves as a sufficient agreement to arbitrate, binding its members to arbitrate a variety of claims with third-party claimants' "). The NASD Arbitration Code requires "the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association" that is "between or among members or associated persons and public customers." NASD Rule 101001. Furthermore, the NASD Code dictates:

> Any dispute, claim, or controversy eligible for submission under the Rule

4237013, at *5–6 (M.D.Fla. Nov.30, 2007); *The O.N. Equity Sales Co. v. Rahner*, 2007 WL 4258642, at *5–6 (D.Colo. Nov.30, 2007); *The O.N. Equity Sales Co. v. Wallace*, 2007 WL 4106476, at *4 (S.D.Cal. Nov.15, 2007); *The O.N. Equity Sales Co. v. Prins*, 519 F.Supp.2d 1006, 1011–12 (D.Minn.2007); *The O.N. Equity Sales Co. v. Gibson*, 514 F.Supp.2d 857, 864–65 (S.D.W.Va.2007); *The O.N. Equity Sales Co. v. Robinson*, 2007 WL 2840477, at *2 (E.D.Va. Sep.27, 2007); *The O.N. Equity Sales Co. v. Venrick*, 508 F.Supp.2d 872, 875–76 (W.D.Wash.2007); *The O.N. Equity Sales Co. v. Pals*, 509 F.Supp.2d 761, 769–70 (N.D.Iowa 2007); *The O.N. Equity Sales Co. v. Steinke*, 504 F.Supp.2d 913, 916 (C.D.Cal.2007). Therefore, arbitration is appropriate in accordance with Rule 10301.

***5** ONESCO argues that this Court's opinion should differ from others courts' concerning this matter because it should not employ a presumption that **Cattan** was a customer of ONESCO or of Lancaster while Lancaster was associated with ONESCO. ONESCO bases its argument on the Fifth Circuit's statement that "the federal policy favoring arbitration does not apply ... when a court is determining whether an agreement to arbitrate exists." *California Fina Group, Inc. v. Herrin*, 379 F.3d 311, 316 n. 6 (5th Cir.2004). However, this Court need not employ any such presumption or policy in this case because, as discussed above, it is clear that **Cattan** was a customer of, and received investment services from, Lancaster at the time he was associated with ONESCO. Therefore, because the Court has no doubts **Cattan** is entitled to arbitrate his claims pursuant to NASD Rule 10301, ONESCO's argument is unavailing. Morever, like the courts who have already dealt with issues mirroring those presented here, this Court concludes that further discovery in not needed to determine this controversy. *See, e.g., Rahner*, 2007 WL 4258642, at *5–6 (the discovery ONESCO desires would not have any impact on the relevant legal determination); *Emmeretz*, 2007 WL 4462655, at *4 (further discovery is not necessary to decide the issue of arbitrability and would only encourage expense and delay).

Based on the Court's determination that **Cattan**'s NASD claims are arbitrable, ONESCO cannot establish a substantial likelihood of success on the merits regarding the issue of arbitration, and the Court accordingly denies ONESCO's request for a preliminary injunction against arbitrating the parties' dispute *See Lake Charles Diesel, Inc. v. General Motors Corp.*, 328 F.3d 192, 195–96 (5th Cir.2003) (a court's granting of a preliminary injunction requires that "the applicant ... show (1) a substantial likelihood that he will prevail on the merits, (2) a substantial threat that he will suffer irreparable injury if the injunction is not granted, (3) his threatened injury outweighs the threatened harm to the party whom he seeks to enjoin, and (4) granting the preliminary injunction will not disserve the public interest").

Finally, the Court notes that it will not sever **Cattan**'s claims based on activities that took place during Lancaster's association with ONESCO from those that occurred before their business together or after their separation. As one court has observed, "Defendants' claims stem from a series of transactions with [ ] Lancaster involving a single investment opportunity. It is up to the arbitrator to decide the case on its merits and to determine which, if any, of the events give rise to liability on the part of ONESCO." *The O.N. Equity Sales Co. v. Prins*, 519 F.Supp.2d 1006, 1012 (D.Minn.2007) (citing *AT & T Tech., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 634, 649–50 (1986)). Like the *Prins* Court, this Court finds that the issues raised by ONESCO's request for severance implicate questions of liability, not arbitrability, and thus, severance is not justified.

Conclusion

***6** Based on the foregoing, the Court hereby rules as follows:

1. Defendant's Motion to Compel Arbitration (Dkt. No. 10) is **GRANTED;**

2. Plaintiff's Motion Under Civil Rule 56(f) for an Order Precluding Summary Disposition of Defendant's Motion to Compel Arbitration Pending Discovery to be Taken on the Issue of Arbitrability (Dkt. No. 17), including any requests for further discovery or severance, is **DENIED;** and

3. Defendants' Motion for Protective Order (Dkt. No. 11) is **DENIED** as moot.

4. Because the Court has addressed all of the parties' motions and ordered the parties to arbitration, this case shall be **DISMISSED.**

It is so ORDERED.

> 10100 Series between a *customer and a member and/or associated person arising in connection with the business of such member or in connection with the activities of such associated persons* shall be arbitrated under this Code, as provided by any duly executed and enforceable written agreement or upon the demand of the customer.

NASD Rule 10301(a) (emphasis added).

Courts considering this issue have applied a two-part test to determine whether the circumstances underlying the demand for arbitration triggers NASD's Rule 10301 arbitration requirement. *See The O.N. Equity Sales Co. v. Steinke,* 504 F.Supp.2d 913, 916 (C.D.Cal.2007) (citations omitted). "First, the claim must involve a dispute between either an NASD-member and a customer or an associated person and a customer. Second, the dispute must arise in connection with the activities of the member or in connection with the business activities of the associated person." *Id.; see also Wheat, First Sec., Inc. v. Green,* 993 F.2d 814, 820 (11th Cir.1993); *Vestax Secs. Corp. v. McWood,* 280 F.3d 1078, 1080 (6th Cir.2002).

The NASD Code fails to define "customer" or "associated person ." *See California Fina Group, Inc. v. Herrin,* 379 F.3d 311, 314 (5th Cir.2004). However, courts have determined that a customer entitled to demand arbitration under Rule 10301 is anyone who is not a broker or dealer. *See id.* (observing that the term " 'customer' as used in Rule 10301(a) is plainly broad enough to include persons who purchased securities from a registered representative of an NASD-member firm, a.k.a. an 'associated person,' and who are not themselves brokers or dealers"); *see also Multi–Financial Sec. Corp. v. King,* 386 F.3d 1364, 1368 (11th Cir.2004). Under the facts presented here, **Cattan** was clearly a customer of Lancaster. If Lancaster was an associated person regarding ONESCO at the time **Cattan** received investment services from Lancaster, NASD Rule 10301 would allow **Cattan** to compel arbitration against ONESCO. *See Herrin,* 379 F.3d at 318 ("the second requirement of Rule 10301(a) has been fully met [when] there is a connection between the 'customer's' dispute and the 'associated person's' activities"); *King,* 386 F.3d at 1368–70 ("When an investor deals with a member's agent or representative, the investor deals with the member.").

***4** In an attempt to avoid the application of Rule 10301, ONESCO asserts that the Court should narrowly construe **Cattan's** claims as relating solely to Lancaster's conduct that occurred before Lancaster was associated with ONESCO. Specifically, ONESCO maintains Lancaster was not an associated person with, and that **Cattan** was thus not a customer of, ONESCO during the relevant time-period comprising the basis for **Cattan's** claims. [1] However, the Subscription Agreement and Private Placement Memorandum merely held **Cattan's** investment in escrow and Lancaster had complete discretion to modify or terminate the offering at any time before the Lancorp Fund's closing date. Moreover, after Lancaster became associated with ONESCO, the terms of the Lancorp private placement offering were materially altered and Lancaster gave **Cattan** the opportunity to withdraw or confirm his investment. Thereafter, **Cattan** confirmed his investment and the sale of the Lancorp Fund offering was finalized. ONESCO's argument clearly misses the mark: at least some, if not all, of the relevant conduct giving rise to **Cattan's** claims occurred after Lancaster became associated with ONESCO as a registered representative.

ONESCO, furthermore, completely ignores **Cattan's** claims that ONESCO negligently supervised Lancaster during his tenure as its registered representative. **Cattan** maintains ONESCO's negligent supervision of Lancaster directly caused **Cattan's** financial damages. Such allegations alone are sufficient to place **Cattan's** claims within the purview of Rule 10301. *See King,* 386 F.3d at 1370 (collecting cases). The Court has little trouble concurring with the numerous other courts which, under nearly identical circumstances, have concluded that claimants who had invested in the Lancorp Fund during the same time period as **Cattan** were "customers" of Lancaster while he was employed as an "associated person" with ONESCO and the ensuing disputes arose "in connection with" its business. *See The O.N. Equity Sales Co. v. Hoegler,* Case No. 07–2703 at 7–8 (D.N.J. Jan. 28, 2008); *The O.N. Equity Sales Co. v. Nemes,* 2008 WL 239258, at *4 (N.D.Cal. Jan.28, 2008); *The O.N. Equity Sales Co. v. Maria Cui,* 2008 WL 170584, at *3 (N.D.Cal. Jan.17, 2008); *The O.N. Equity Sales Co. v. Theirs,* 2008 WL 110603, at *4 (D.Ariz. Jan.10, 2008); *The O.N. Equity Sales Co. v. Emmeretz,* 2007 WL 4462655, at *6–8 (E.D.Pa. Dec.19, 2007); *The O.N. Equity Sales Co. v. Samuels,* 2007 WL

Footnotes

1 ONESCO relies upon *Hornor, Townsend & Kent, Inc. v. Hamilton*, 2004 WL 2284503 (N.D.Ga.Sept.30, 2004), *Gruntal & Co., Inc. v. Steinberg*, 854 F.Supp. 324 (D.N.J.1994), and *Wheat, First Secs., Inc. v. Green*, 993 F.2d 814 (11th Cir.1993), for its arguments. However, at least one other court has considered the application of these cases, and with sound reasoning, distinguished them from facts nearly identical to those at hand. *See The O.N. Equity Sales Co. v. Venrick*, 508 F.Supp.2d 872 (W.D.Wash.2007). As the *Venrick* court observed: "These cases [ ] involved allegations of wrongdoing that all arose before a NASD [ ] member became affiliated with [an] allegedly fraudulent individual or institution. In that context, the quotations from those cases cited by ONESCO carry force ... [However, t]his is not a case where the activity at issue pre-dated the involvement of the NASD[ ] member." Like *Venrick*, and for reasons discussed in greater detail above, this Court finds sufficient evidence that **Cattan** was a customer of, and received investment services from, Lancaster *after* he became associated with ONESCO. Thus, the cases relied upon by ONESCO are not on point and thus fail to persuade this Court in ONESCO's favor.

End of Document

AFFIDAVIT OF LARRY W. FRANK:

I Larry W. Frank, declare as follows:

I am over the age of 18 years of age and qualified to make this AFFIDAVIT and am a resident of the State of Texas and make this AFFIDAVIT based on my own personal knowledge. I have no direct or indirect interest in the outcome of the case at bar for which I offer my observations, analysis and testimony.

My experience in relationship to Cilak International was the Corporate Secretary and worked in the office in Dallas, Texas. Mr. James Rumpf was the founder and chief officer of Cilak. I worked there from 2003 until 2005 when the office closed. I also served on the Board of Advisors from 2002 until the closing.

Mr. Rumpf paid $50,000.00 for Insurance Coverage to Sardaukar Holdings, IBC of which Mr. Bradley Stark was the Trader on all accounts for funds deposited by Cilak, International and or CIG, Ltd. This coverage was to cover Key Man and Joint Venture agreements and was written and issued by ACE Insurance Company of North America. Mr. Stark represented that on the phone and by an eleven page fax dated October 5, 2004 sent at 1:21:18 PM to Mr. James Rumpf from Mr. Bradley Stark. Mr. Stark also sent a verification of Coverage from Nationwide Financial dated January 19, 2005 to assure Mr. Rumpf that Sardaukar Holdings, IBC and Mr. Stark had coverage to protect claims from Cilak and other clients he traded for.

I have attached the copies of both of the above named policies and a one page e-mail from Mr. Stark to Mr. Rumpf to Cilak@safe-mail.net on 8/2/2004. I personally saw the above documents in the office of Cilak in 2004 and 2005. I have put my LWF on the bottom of each copy to acknowledge these are in fact copies of the original documents I saw personally in the Cilak office.

Mr. Rumpf and I absolutely believed the above policies where real and in effect to the benefit of Cilak and CIG, Ltd and those who had funds in Cilak or CIG, Ltd to be traded. There was only one person that interacted with Mr. Stark

concerning business and that was Mr. Jim Rumpf. If Mr. Rumpf was out of the Country then I would relay messages from Mr. Stark. Mr. Rumpf is the only person who signed agreements with Mr. Bradley Stark. That would be for Cilak or CIG, Ltd for which Mr. Rumpf was the person in authority to bind any business of Cilak or CIG, Ltd.

The only other persons who knew Mr. Stark was the trader was Mr. Rumpf and his attorney Mr. Aaron Keiter from Houston and myself and a few members of the Board of Advisors for Cilak (Christ is Lord and King) and CIG, Ltd (Christ is God).

Megafund directed by Mr. Stan Leiter did deposit funds with Mr. Rumpt for the purpose of being traded by Mr. Rumpf's trader (Mr. Bradley Stark). Mr. Leiter had no knowledge of Mr. Stark being the trader and therefore could of not have informed Landcorp (Gary Lancaster) or Mr. Gary McDuff that Mr. Stark was the trader of all the funds sent from CIG, Ltd to SARDAUKAR HOLDINGS, IBC.

I took a copy of the Insurance to Mr. Leiter's office so he could assure Mr. Lancaster and Mr. Gary McDuff that the funds were not at risk and where in fact insured. Mr. Lancaster or Mr. McDuff to my knowledge never had an interest in Megafund or had any authority to bind agreements or conduct Megafund business. Mr. Leiter only referred to Mr. Lancaster as Landcorp and was in fact an investor/depositor to Megafund to place those funds in trade through Mr. Rumpf and CIG, Ltd.

Mr. Bradley Stark was a convicted felon in New York and that information did not show up on a back ground check conducted by Mr. Rumpf before doing any business with Mr. Stark. Mr. Rumpf called all the references presented to him from Mr. Stark including a Vice-President of J.P. Morgan Chase in New York. All of those references check out to Mr. Rumpf's satisfaction.

The U.S. Department of Justice later brought to light that Mr. Bradley Stark had fabricated trading account statements for CIG, Ltd. Stark had also fabricated the Insurance Policy from both ACE & Nationwide Financial along with a letter from Mr. Lawrence Schoenback Mr. Stark's attorney.

Mr. Bradley Stark the trader turned out to be the perpetrator in this entire matter concerning Cilak, CIG, Ltd, (Jim Rumpf), Megafund, (Mr. Stan Leiter), Landcorp, (Mr. Gary Lancaster) and Mr. Gary McDuff. It is my belief that all the above stated men with the exception of Mr. Stark believed the Insurance was in fact real and covered the funds placed with Mr. Stark through CIG, Ltd and Cilak by Mr. Rumpf.

All factual testimony or statements made in this AFFIDAVIT are true and correct to the best of my knowledge and belief. All opinions stated herein are based upon a reasonable degree of probability or high likelihood of probability, pursuant to my experience as Corporate Secretary of Cilak at the time these matters occurred. I have no direct or indirect interest in the outcome of the case for which I am offering my observations, opinions and testimony.

FUTHER AFFIANT SAYETH NAUGHT.

Larry W. Frank

SWORN TO AND SUBSCRIBED before me the undersigned notary public, this 24 day of January 2014.

Notary Public

My commission expires:

Oct. 26, 2017

DONNA E. LEWIS
Notary Public, State of Texas
My Commission Expires
October 26, 2017

*Cilak Insurance attachments 15 Pages:

Ins. Policy

Mr. Rumpf,

Good morning. I received your documents on Saturday and have approved the subscription agreement. Our next step is to have you wire out to Bank of America the $50,000 for the account insurance as discussed on Friday. Please wire the funds as soon as possible as I have a 10:00 am meeting this morning with ACE INA insurance company and would like to set you up at the same time as my other clients. I will also begin the to establish your sub-account at Chase Investment Services and get your account number, wiring instruction, signature card, etc. out to you as quickly as possible. Thank you for your prompt attention.

Best regards,

Brad

P.S. I am very fascinated by your company and would like to have a part of our (Sardaukar's) proceeds donated to your cause. I am also in touch with several other firms that may wish to do the same! Keep up the good work and God Bless! Also, thank you for putting my mother into your prayer chain. -Brad

LWJ 1/24/14

Nationwide Financial*

01/19/05

NATIONWIDE DEPOSIT TRUST INSURANCE COMPANY

Nationwide Financial Services (Bermuda), Ltd.
Victoria Hall
11 Victoria Street
Hamilton HM11
Bermuda

VERIFICATION OF COVERAGE AS OF THE DATE OF THIS FACSIMILE
(SEE BELOW UNDER "CAUTIONARY NOTE")

INSURED

SARDAUKAR HOLDINGS (BVI) IBC
14 WALL STREET
20TH FLOOR
NEW YORK, NY 10005 2123
USA

Policy Number: 40311945BM76
Effective Date: 11-02-04
Expiration Date: 11-01-11
Jurisdiction Reg: BVI/BERMUDA/USA

To whom it may concern:

This letter is to verify that we have issued the policyholder coverage under the above policy number for the dates indicated in the effective and expiration date fields for the company/firm listed. This should serve as proof that the below mentioned accounts meets or exceeds the financial responsibility requirement for your jurisdiction.

Corporation: SARDAUKAR HOLDINGS (BVI) IBC
Form: INTERNATIONAL BUSINESS COMPANY
Date: 5 JUNE 2000
Jurisdicton: BRITISH VIRGIN ISLANDS
Corp ID: 390688
Licenses: B/D BMA, 3, 7, 66, NASD, SIPC, NFA, CFTC, SEC, NYSE, CBOT, CME, COMEX
Accounts: JPMC BANK 469502737765 021000021 (PRIMARY)

COVERAGES	LIMITS	DEDUCTIBLES
PRINCIPAL DEPOSIT GUARANTEE	$ N/A	$ 0
SECONDARY REDOPISIT	$ N/A	$ 30,000 DED
EXCESSIVE SHARE	$ 600,000,000	$ 750,000 PRM
JV AGREEMENTS/SPECIAL PROJE	$ 25,000,000	$ 50,000 DED
EMERGENCY/CATASTROPHE	$1,000,000,000	$ NON-DED/WAIVER
KEY MAN	$ 25,000,000	$ 0
90 DAY ROLLOVER	$ N/A	$ 0

X Additional Insured

627 400001 - 499999 MAN FINANCIAL
57986 0011 MAN GLOBAL LONDON
00152783 REFCO LTD
CIT 049611 CISC NY

Additional Information:

CAUTIONARY NOTE: THE CURRENT COVERAGES, LIMITS, AND DEDUCTIBLES MAY DIFFER FROM THE COVERAGES, LIMITS, AND DEDUCTIBLES IN EFFECT AT OTHER TIMES DURING THE POLICY PERIOD. THIS VERIFICATION OF COVERAGE REFLECTS THE COVERAGES, LIMITS, AND DEDUCTIBLES AS OF THE DATE OF THIS FACSIMILE, WHICH IS INDICATED AT THE VERY TOP OF THIS DOCUMENT.

U-23 (11-01)

1/24/14

1/24/14 SJ

Products & Services

ACE USA
Two Liberty Place
1601 Chestnut Street
Philadelphia, PA 19103
215 640-1000 *tel*
215 640-2489 *fax*
info@ace-ina.com

Excess Liability

ACE USA Excess Casualty specializes in underwriting Standard and Specialty Lead Umbrella Excess Liability products for commercial businesses of all sizes.

Working through the Retail Distribution network, it is our goal to create enduring relationships with our clients – brokers and insureds – by providing the highest levels of underwriting expertise, customization and service backed by our commitment to the Excess Casualty marketplace and our considerable financial strength.

Classes of Business

ACE USA Excess Casualty's underwriting and claims handling expertise allows us to contemplate a broad array of industry classifications. Through the guidance of our industry specialists, our underwriters are able to entertain and manage both our standard and specialty portfolios.

- Standard Classes
  All classes of business except:
  - Aviation Products
  - Asbestos Products
  - Medical Malpractice (except incidental)
  - Nursing Homes/HPL
  - Pharmaceuticals
- Specialty Classes
  - Energy, including:
    - Mining
    - Oil & Petroleum
    - Utilities
    - Petrochemical Mfg./Distribution
  - Investment, including:
    - Commercial Brokerage
    - OCIP's & CCIP's
    - Joint Ventures/Special Projects
    - Global Property
    - Professional Liability

Key Competitive Advantages

- Superior customer service and ease of doing business
- Unmatched, professional claims handling
- Superior underwriting talent – average tenure of staff of 17 years
- Local presence and decision making capability
- Ability to partner with other ACE Profit Centers
- Financial strength and member of the ACE Group of Companies Global Network

LWF 1/24/14

Limit Available

- Up to $25 million Occurrence/Aggregate

Minimum Premium

- $50,000 (different minimums may apply to specialty classes)

Minimum Attachment Points

- $1M/$2M/$2M General Liability
- $1M CSL Auto Liability
- $1M Employers Liability

Coverage Forms

- Occurrence & Claims Made Forms and Follow Form Excess Liability
- Coverage provided through ACE American Insurance Company (admitted) and Illinois Union Insurance Company, through licensed Surplus Lines brokers (non-admitted)

Submission Requirements

- Cover letter and application
- Summarized account information (current and discontinued)
- Loss information (5 years minimum; 10 years preferred)
- Details of expiring program
- Desired limits and target pricing

ACE USA is a U.S.-based operating division of the ACE Group of Companies, headed by ACE Limited (NYSE:ACE). ACE USA is a leading provider of property, casualty, and accident and health insurance, financial products, and risk management services through certain U.S. operating subsidiaries. The ACE Group of Companies provides insurance and reinsurance for a diverse group of clients around the world.

1/24/14

Sardaukar Holdings, IBC

A Universal Development & Financial Services Company

FACSIMILE TRANSMISSION
(COVER SHEET)

Date: 10/5/04 1:21:18 PM

To: James Rumpf 972.818.6343

From: Bradley Stark 951.780.7439

Re: Insurance policy for Chase account

Jim,

This is a copy for your records.

My attorney has been a little swamped today but he will have the JV Agreement and amendment out today or this evening. Barclay's has the Master Repurchase Agreement form us and Goldman Sachs and will have the risk pricing model out shortly (I hope). Until then, as I get things in I will forward on to you.

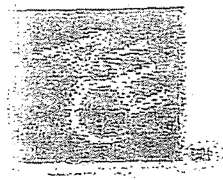
Best regards,

Brad

Total pages including cover: 11

JWF 1/24/14

FWMC: 394 [illegible]
Date: September 1, [illegible]
Series: Global Property
Part 342: Investment Operations
Originating Office: Trust Division



ALTA U.S. POLICY - [illegible]

UNITED STATES OF AMERICA
POLICY OF GLOBAL PROPERTY INSURANCE
Issued by
ACE INSURANCE COMPANY OF NORTH AMERICA

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, ACE INSURANCE COMPANY OF NORTH AMERICA, a Delaware corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the account or interest described in Schedule A being vested other than as stated therein;

2. Any defect in or lien or encumbrance on the account;

3. Unmarketability of the account securities;

4. Lack of a right of access to and from the account.

5. In instances where the insured incurs a margin call to the account by reason of failure of the [illegible] of account title holders, as opposed to the date of the filing of the lis pendens notice or the Declaration of Taking, to disclose the parties having an interest in the account as disclosed by the public records.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the account, as insured, but only to the extent provided in the Conditions and Stipulations. (Whereas clause optional)

ACE INSURANCE COMPANY OF NORTH AMERICA
BY:
[signature]
Mrs. Laura Ulrich
Depository Trust Services

WITNESSED BY:
[signature]
Ms. [illegible] White

LWJ 1/24/14

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to Federal Reserve laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the active trading, use, or principal monies in the account; (ii) the profits, shares or securities of any trading now or hereafter executed on the account; (iii) a separation in ownership or a change in the ownership of the account or any other accounts of which the company is or was a part; or (iv) Securities and Exchange Commission enforcement, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the account has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the account has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the time the insured claimant became an insured under the policy;

(c) resulting in no loss or damage to the insured claimant; or

(d) attaching or created subsequent to Date of Policy.

4. This policy does not insure against the invalidity or insufficiency of any legal proceeding instituted by the United States of America, except to the extent set forth in insuring provision 5.

LWF 1/24/14

SCHEDULE A

[File No. GP-27CHASE-04]
Policy No. 200401804951 01
Amount of Insurance $25,000,000.00
[Premium $ 50,000.00]

Date of Policy September 3, 2004 (at 10:30a.m.)

1. Name of Insured: SARDAUKAR HOLDINGS, IBC

2. The interest in the account which is covered by this policy is: CIT-049905 / SARDAUKAR HOLDINGS, IBC

3. Title to the account is vested in: CILAK INTERNATIONAL, INC.

4. The property/account referred to in this policy is described as follows: CHASE INVESTMENT SERVICES CORP. brokerage account in the name of CILAK INTERNATIONAL, INC. with a direct link to SARDAUKAR HOLDINGS, IBC brokerage account (CIT-04961) for the exclusive purpose of margining/leveraging in conjunction with securities trading.

(If Paragraph 4 is omitted, a Schedule C, captioned the same as Paragraph 4, must be used).

LWF 1/24/14

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the account.

(d) "account": the account described or referred to in Schedule [A][C], and any indentures affixed thereto which by law constitute real property. The term "account" does not include any property beyond the definition described or referred to in Schedule [A][C], nor any right, title, interest or easement in any/all linked accounts, but nothing herein shall modify or limit the extent to which a right of access to and from the account is insured by this policy.

(e) "margin": margin, leverage, loan, or other loan against a security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property and accounts to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include Securities and Exchange Commission liens filed in the records of the clerk of the United States district court for the district in which the account is located.

(g) "unmarketability of the account": an alleged or apparent matter affecting the trading of the account, not excluded or excepted from coverage, which would entitle a purchaser of the securities or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable security.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an interest in the account, or holds an indebtedness secured by a purchase money security given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the account or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an interest in the account, or (ii) an indebtedness secured by a purchase money security given to the insured.

LwF 1/24/14

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an Insured hereunder of any claim of title or interest which is adverse to the title to the account or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the account or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the Insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the Insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the Insured in the defense of those causes of action which allege matters not insured by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the account or interest, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(e) Notwithstanding Conditions and Stipulations Section 4(a)-(d), the Attorney General of the United States shall have the sole right to authorize or to undertake the defense of any matter which would constitute a claim under the policy, and the Company may not represent the Insured without authorization. If the

1/24/14

Attorney General elects to defend at the Government's expense, the Company shall, upon request, cooperate and render all reasonable assistance in the prosecution or defense of the proceeding and in prosecuting any related appeals. If the Attorney General shall fail to authorize and permit the Company to defend, all liability of the Company with respect to that claim shall terminate; provided, however, that if the Attorney General shall give the Company timely notice of all proceedings and an opportunity to suggest defenses and actions as it shall recommend should be taken, and the Attorney General shall present the defenses and take the actions of which the Company shall advise the Attorney General in writing, the liability of the Company shall continue and, in any event, the Company shall cooperate and render all reasonable assistance in the prosecution or defense of the claim and any related appeals.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the account, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Unless prohibited by law or governmental regulation, failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

LLF 1/24/14

(b) To Pay or Otherwise Settle With Parties Other than the Insurer or With the Insured Claimant.

(i) Subject to the prior written approval of the Attorney General, to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation. Failure of the Attorney General to give the approval called for in (b)(i) shall not prejudice the rights of the insured unless the Company is prejudiced thereby, and then only to the extent of the prejudice.

7. DETERMINATION AND EXTENT OF LIABILITY.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) The company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT.

If the account described in schedule [A][C] consists of two or more linked accounts which are not used as a single account, and a loss is established affecting one or more of the accounts but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate account in the whole, exclusive of any inclusions made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each account by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the account, or cures the claim of unmarketability of account securities, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

1/29/19

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, including payments made for costs, attorneys' fees and expenses, shall not reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall not be reduced by any amount the Company may pay under any policy insuring a an account to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which in hereafter executed by an insured and which is a charge or lien on the account or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy or an accurate facsimile for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

LMF 1/24/14

(b) The Company's Rights Against Non-Insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guarantees, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

(c) No Subrogation to the Rights of the United States.

Notwithstanding the provisions of Conditions and Stipulations Section 13(a) and (b), whenever the Company shall have settled and paid a claim under this policy, the Company shall not be subrogated to the rights of the United States. The Attorney General may elect to pursue any additional remedies which may exist, and the Company may be consulted. If the Company agrees in writing to reimburse the United States for all costs, attorney's fees and expenses, to the extent that funds are recovered they shall be applied first to reimbursing the Company for the amount paid to satisfy the claim, and then to the United States.

14. ARBITRATION ONLY BY AGREEMENT.

Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters shall be arbitrated only when agreed to by both the Company and the Insured.

The law of the United States or, if there be no applicable federal law, the law of the state of the account shall apply to an arbitration under the Securities and Exchange Commission Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

LWF 1/24/14

17. NOTICES WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at:

ACE INA
Two Liberty Place
1601 Chestnut Street
Philadelphia, PA 19103

1/24/14

LANCORP FINANCIAL FUND
BUSINESS TRUST

March 12, 2004

Dear Investor

After many more delays than I had ever thought possible, I decided to give you an update on the status of the Fund First I want to sincerely thank you for your patience I understand how difficult it is wait all these many months with your valuable funds not producing the kind of returns that you are entitled to

I have been spending the extra time arranging an agreement from the financial institution that will hold all of the funds, such that it will eliminate the need for purchasing insurance This agreement will save you the 3% annual insurance fee In a very short period of time, the elimination of that fee will more than make up for the extra time that your funds have been drawing money market interest

I will understand completely if your patience is at an end and you would like to have your funds returned to you If that is the case, simply notify me in writing and I will return your funds immediately

The single highest priority that I have is to make certain that all investor funds are secure To that end, I will not move forward until I have all of the necessary documents in place. I have tried without success up to this point to predict when everything will be completed Rest assured that I am doing everything in my control to expedite the completion of the documents that are needed to move forward When that event occurs, I will send a formal announcement of the Fund becoming effective

Again, thank you for your patience and continued interest in the Lancorp Financial Fund

Sincerely,

Gary L. Lancaster
Trustee

1382 Leigh Ct., West Linn, Oregon 97068
(503) 675-5017 • (503) 675-5013 fax • e-mail: lancorpfinancialfund@comcast.net

LANCORP FINANCIAL FUND
BUSINESS TRUST

April 5, 2004

Dear Investor,

Pursuant to the requirements of the Lancorp Financial Fund Business Trust Confidential Private Placement Memorandum supplied to you at the time of your subscription, this is your formal notice that the Fund has reached the final stages of underwriting participation agreements and will go "effective" in the coming days.

For the Fund to enter into such agreements it is required that a specific amount of money (not less than $5 Million USD) be confirmed. Therefore, we request that you reaffirm your intent to remain invested in the fund from the "effective" date until the first permitted withdrawal date thereafter. The next withdrawal date shall be June 30, 2004, see ARTICLE V 5.1. page 12., of the memorandum.

Recent statutory amendments in the insurance industry, has caused many months of delay for us in going effective. Many of you have expressed the desire to proceed if the insurance element could be replaced with an obligation of the custodian (Qualified Bank) that provided the same level of protection. To that end, we have successfully negotiated and obtained a validated written obligation from the "Qualified Bank" acting as custodian that any securities which may be purchased must have a liquidation value greater than the amount paid as required by "Permitted Investments" described in the memorandum; or, that such securities liquidation value be insured by AIG Insurance (or equivalently rated insurer) at all times. This written obligation provides the element of protection initially contemplated from an outside insurer that would insure the value of investor shares. This obligation does not require the payment of an insurance premium by you at any time. This obligation is direct to the Lancorp Fund and is not direct to you. This means that you are not the direct beneficiary, but you are the ultimate beneficiary as mandated by the memorandum.

Please sign in the appropriate space below indicating your desire to proceed as a subscriber in the Fund through the next calendar quarter under the terms of protection described above, or your desire to withdraw your subscription. We must hear from you in this regard as soon as possible so we will have an accurate accounting of the total sum we will have in the Fund as we officially begin transacting for profit.

Very truly yours,

Gary L. Lancaster
Trustee

X _____
I reconfirm my Subscription participation and I acknowledge the above memorandum modifications.

X _____
I request the withdrawal of my subscription

Printed Name Randy Dirks

Date _____ 2004

Address: [redacted]

1562 Leigh Ct, West Linn, Oregon 97068
(503) 675-5017 • (503) [redacted] lancorpfinancialfund@comcast.net

DEFENDANT'S EXHIBIT

VICTIM IMPACT STATEMENT AFFIDAVIT

Name: LEUOY DEWEY

Re: UNITED STATES v. GARY MCDUFF 4:09-cr-00090-2

For the attention of: the Honorable Judge Cameron Elliot and the Honorable Judge Richard A. Schell

I was introduced to the investment opportunity by Jerry Hobbs, whom I have known for 55 years. (He)/She is a person that I trust and has proven to me to be honest and truthful. I am confident that (he)/she did not know the Fund was not actually insured as represented in its printed offering materials. (Gary McDuff did not introduce me to the Megafund, the Lancorp Fund or give me any printed materials about the Megafund, or the Lancorp Fund.)

I have been informed by sworn affidavits of the persons who were close to Mr. Leitner and Mr. Lancaster during the time my money was invested, that neither men actually knew the identity of the trader who was doing the alleged trading. According to their personal knowledge, a man in California by the name of Bradley Stark convinced a man named James Rumpf that he operated a safe investment program, trading highly rated bank products that were protected by special insurance policies issued by Nationwide and ACE insurance companies against capital loss.

A man who worked under James Rumpf has confirmed that he witnessed Mr. Rumpf paying a $50,000 insurance premium fee to Bradley Stark to purchase specific coverage of the joint venture Mr. Rumpf had with Mr. Stark to protect any money Mr. Rumpf allowed Mr. Stark to conduct trading activities with.

A close friend of Larry Frank, by the name of Gregg Harris learned of this from Mr. Frank, who was working in Mr. Rumpf's office, and asked him to arrange a meeting between Mr. Rumpf and a businessman friend of Mr. Harris by the name of Stan Leitner, who would likely be interested in such a safe investment.

According to Mr. Frank and Mr. Harris, several meetings between Mr. Rumpf and Mr. Leitner took place and culminated in Mr. Rumpf's attorney, Aaron Keiter preparing a joint venture investment agreement between Mr. Rumpf and Mr. Leitner. However, only Mr. Rumpf and a few members of Mr. Rumpf's Board of Advisors knew Mr. Stark's identity. Their contract presumably prohibited Mr. Rumpf from disclosing the identity of the trader, "Bradley Stark", to Mr. Leitner, Mr. Harris, or anyone else.

With both Mr. Frank and Mr. Harris being the only men with first-hand, eye-witness knowledge of what was said, represented, disclosed, or not disclosed, and ultimately agreed upon, by Mr. Rumpf and Mr. Leitner, their account of the facts eliminates speculation of what was, or was not known by Mr. Leitner at that time.

Both Mr. Frank and Mr. Harris say they were the closest persons to Mr. Rumpf and Mr. Leitner during these negotiations and business activities. They state with absolute certainty that Mr. Rumpf and Mr. Leitner believed there was valid insurance protection insuring against the loss of any money Mr. Leitner invested with Mr. Rumpf.

Once satisfied by Mr. Rumpf's representations that he had evidenced insurance protection, Mr. Leitner formed the Megafund and accepted investors like me into the Megafund. I received the earnings I was told to expect and was pleased with the investment until it was announced that the SEC had closed the Megafund down.

I am aware that Mr. Rumpf has died and that Mr. Stark and Mr. Leitner are now in prison. I am also aware that the largest investor in the Megafund was the investment fund by the name of LANCORP FINANCIAL FUND, which was owned by Mr. Gary Lancaster, and that he and GARY MCDUFF have been, and are now being prosecuted for placing Lancorp Fund money into the Megafund, and losing it the same way my money was lost.

As a victim of the investment fraud which has been proven to have been perpetrated by Bradley Stark fabricating false insurance documents and trading statements, I am satisfied that the guilty person has been properly punished and justice has been done, although that does not replace the money I lost. I do not feel that people who received what they believed to be legitimate profits from the Megafund should be put in prison. That would not serve justice or benefit me at all.

I have been asked to provide this court with this victim impact statement to express my feelings regarding the current prosecution of GARY LYNN MCDUFF regarding these matters.

In light of the facts presented by Mr. Frank, Mr. Harris, and even Mr. Leitner, it seems to be undisputed that Mr. Leitner was convinced that there was insurance protection for all who invested in the Megafund. And, that Mr. Leitner did not even know who Bradley Stark was, or what he was actually doing with investor's money. If Mr. Leitner did not know these things, it was not possible for Mr. Lancaster or Mr. McDuff to know either.

In my view, Mr. Lancaster and Mr. McDuff must have been persuaded the Megafund was a safe investment for the same reasons I was persuaded. According to Mr. Frank, Mr. Harris, Mr. Leitner and others, Mr. Lancaster and Mr. McDuff were no more aware of Mr. Stark's fraudulent activities than I was. According to all the people who were close enough to have first-hand knowledge, it was Bradley Stark who caused everyone to be duped. Based on that fact, I

VICTIM IMPACT STATEMENT AFFIDAVIT

Name: LAWRENCE W. FRANK

Re: UNITED STATES v. GARY MCDUFF 4:09-cr-00090-2

For the attention of: the Honorable Judge Cameron Elliot and the Honorable Judge Richard A. Schell

I was introduced to the investment opportunity by JAMES A. RUMPF, whom I have known for 7 years. He/She is a person that I trust and has proven to me to be honest and truthful. I am confident that he/she did not know the Fund was not actually insured as represented in its printed offering materials. (Gary McDuff did not introduce me to the Megafund, the Lancorp Fund or give me any printed materials about the Megafund, or the Lancorp Fund.)

I have been informed by sworn affidavits of the persons who were close to Mr. Leitner and Mr. Lancaster during the time my money was invested, that neither men actually knew the identity of the trader who was doing the alleged trading. According to their personal knowledge, a man in California by the name of Bradley Stark convinced a man named James Rumpf that he operated a safe investment program, trading highly rated bank products that were protected by special insurance policies issued by Nationwide and ACE insurance companies against capital loss.

A man who worked under James Rumpf has confirmed that he witnessed Mr. Rumpf paying a $50,000 insurance premium fee to Bradley Stark to purchase specific coverage of the joint venture Mr. Rumpf had with Mr. Stark to protect any money Mr. Rumpf allowed Mr. Stark to conduct trading activities with.

A close friend of Larry Frank, by the name of Gregg Harris learned of this from Mr. Frank, who was working in Mr. Rumpf's office, and asked him to arrange a meeting between Mr. Rumpf and a businessman friend of Mr. Harris by the name of Stan Leitner, who would likely be interested in such a safe investment.

According to Mr. Frank and Mr. Harris, several meetings between Mr. Rumpf and Mr. Leitner took place and culminated in Mr. Rumpf's attorney, Aaron Keiter preparing a joint venture investment agreement between Mr. Rumpf and Mr. Leitner. However, only Mr. Rumpf and a few members of Mr. Rumpf's Board of Advisors knew Mr. Stark's identity. Their contract presumably prohibited Mr. Rumpf from disclosing the identity of the trader, "Bradley Stark", to Mr. Leitner, Mr. Harris, or anyone else.

1 of 2

DO NOT FEEL IT IS APPROPRIATE TO HOLD GARY LYNN MCDUFF CIVILY OR CRIMINALLY LIABLE.

It is my understanding that there already is a civil court order to repay the amount the SEC claims the company he worked for received from the Megafund profit distributions. To assign civil penalties and criminal punishment to GARY LYNN MCDUFF seems abusive and inappropriate.

Facts show that it was Rev. John McDuff who asked his son, Gary McDuff, to see if Mr. Lancaster would investigate the Megafund to determine if it was a good, safe place to invest Rev. and Mrs. John McDuff's retirement funds, that were at that time, being managed by Mr. Lancaster. And, after Lancaster's satisfactory investigation, they gave Lancaster permission to move their money into the Megafund. It was then that all the monies of the Lancorp Fund, placed in the Megafund, were lost due to the elaborate deception of Bradley Stark.. They suffered loss, just as I did. I feel that justifies not punishing Gary McDuff. It makes no logical sense to me to presume that Rev. McDuff's son would knowingly harm his parents by allowing them to invest their retirement money in a Ponzi scheme. The McDuff family is known to help, not harm people. Rev. McDuff would not knowingly introduce his son to anyone, or anything criminal. He would not be a part of something he knew would cause financial harm to others. I am certain that Rev. McDuff was as ignorant of the truth behind the Megafund as I was. I think there is proof that Gary McDuff did not know the actual truth any more than I did.

All the first-hand evidence points to Bradley Stark as the person who defrauded me and caused me to suffer financial harm. It was not Gary McDuff. Court records show that at least 70 people believed the same lie that I believed, and invested their money because of it. Those people were not doing anything criminal. Gary McDuff was simply one among many who were deceived by Stark's lies.

As a victim now, aware of these facts, I respectfully request that you release GARY LYNN MCDUFF from any civil or criminal penalties or liabilities in relation to the Megafund or Lancorp Fund losses caused by Bradley Stark. I feel he should be released and the civil and criminal cases against him be dismissed. If they are not dismissed, he should not be sentenced to any further incarceration time. He should be given time served, or probation.

I make this request because I believe the evidence shows he is innocent of being part of any scheme he knew would cause people like me to lose money. It was Bradley Stark who defrauded me and caused my loss. Gary McDuff, along with many others like myself, simply acted in good faith.

Respectfully requested,

Affiant

Lawrence W. Frank

Name

Victim address:

[redacted]

NOTARY CERTIFICATION OF VICTIM IMPACT STATEMENT FOREGOING AFFIDAVIT

Subscribed and sworn, or affirmed, on this the 8 day of April, 2014 by Lawrence Frank who appeared before the undersigned notary.

Seal:

DONNA E. LEWIS
Notary Public, State of Texas
My Commission Expires
October 26, 2017

Donna E Lewis

Notary Public