

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

STEVEN F. MUNTIN,

Defendant.

Case No. 5:21-CV-12607

Honorable Judith E. Levy

**ORDER GRANTING PLAINTIFF’S OMNIBUS MOTION [16] AND
APPOINTING A DISTRIBUTION AGENT, APPOINTING A TAX
ADMINISTRATOR, APPROVING THE DISTRIBUTION PLAN, AND
AUTHORIZING PAYMENT OF TAXES, FEES, AND EXPENSES**

Before the Court is Plaintiff United States Securities and Exchange Commission’s unopposed omnibus motion to appoint a distribution agent, appoint a tax administrator, approve the distribution plan, and authorize payment of taxes, fees, and expenses. (ECF No. 16.) Plaintiff’s motion is **GRANTED**.

1. Allison J.P. Moon, Trial Counsel for the SEC, is appointed as Distribution Agent of the Distribution Fund that is under this Court’s jurisdiction in this case;
2. Heffler, Radetich & Saitta LLP is appointed as Tax Administrator of the Distribution Fund;

3. The proposed Distribution Plan that is appended to this Order is approved;
and
4. The Distribution Agent is authorized to approve and direct the payment of the Distribution Fund's tax obligations, and the Tax Administrator's fees and expenses, without further order from the Court.

IT IS SO ORDERED.

Dated: June 1, 2023
Ann Arbor, Michigan

s/Judith E. Levy
JUDITH E. LEVY
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 1, 2023.

s/William Barkholz
WILLIAM BARKHOLZ
Case Manager

DISTRIBUTION PLAN

I. OVERVIEW

1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange Commission (the “SEC” or “Commission”) in accordance with practices and procedures customary in Distribution Fund administrations. This Plan provides for the distribution to a single harmed investor from a fund comprised of disgorgement and prejudgment interest collected (the “Distribution Fund”).

2. As described more specifically below, the Plan seeks to compensate the investor that was harmed by the conduct of Steven F. Muntin (“Defendant”) who, as alleged in the Complaint, misappropriated of over \$305,750 from his elderly investment advisor client and overcharged the same client at least \$9,000 in fees. The sole harmed investor in Defendant’s scheme will be compensated for a portion of the losses suffered as a result of the Defendant’s wrongful conduct. Based on information the SEC obtained during its investigation, and through review and analysis of applicable records, the SEC has reasonably concluded that it has all records necessary to calculate the investor’s harm. As a result, the Distribution Fund is not being distributed according to a claims-made process.

3. In the view of the Commission staff, this methodology constitutes a fair and reasonable allocation of the Distribution Fund.

4. The Commission has custody of the Distribution Fund and will retain control of the assets of the Distribution Fund. The Court retains jurisdiction over its implementation pursuant to the Final Judgment.¹

II. BACKGROUND

5. On November 5, 2021, the SEC filed a Complaint under seal in the United States District Court for the Eastern District of Michigan seeking injunctive relief, disgorgement, prejudgment interest, and civil penalties against Defendant. In its Complaint, the SEC alleges that between January 2016 and February 2020, Defendant misappropriated over \$305,750 from one of his elderly investment advisory clients (“Client A”) and overcharged Client A at least \$9,000 in assets under management (“AUM”) fees. Defendant told Client A that he would invest the client’s money in securities. From March 2016 to February 2020, Client A wrote checks totaling over \$305,750 to Defendant’s company, Executive Asset Management, for investment in securities. However, Defendant did not invest any of Client A’s money, and instead he spent all of it for his own benefit, including for payments towards his real estate

¹ (See ECF No. 12, PageID.65.)

taxes, health insurance, boat loan, car loan, and credit card bills. The SEC charged Defendant with violating Section 17(a) of the Securities Act of 1933 (“Securities Act”), Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Exchange Act Rule 10-b5 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (“Advisers Act”), and sought a permanent injunction, disgorgement, prejudgment interest, and civil penalties.

6. Defendant agreed to settle the SEC’s claims without admitting or denying the SEC’s allegations, and he consented to a Final Judgment. On May 5, 2022, the Court entered a Final Judgment enjoining Defendant from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act Rule 10-b5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, and ordering him to pay disgorgement of \$314,799 representing the Defendant’s net profits, together with prejudgment interest of \$46,121, and a civil penalty of \$258,557.

7. To date, the SEC has collected a total of \$75,008.36 pursuant to the Final Judgment, which is being held in an SEC-designated account at the United States Department of the Treasury. Any accrued interest will be added to the Distribution Fund for the benefit of the harmed investor. For purposes of the Plan, additional collections from the Defendant will first be applied to ordered disgorgement until satisfied, and applied to the amounts ordered in the following order: disgorgement, prejudgment interest, civil penalties, and post-judgment interest.

8. In its omnibus motion, filed contemporaneously with this Plan, the SEC seeks the (a) appointment of Heffler, Radetich & Saitta LLP (“HRS”), a certified public accounting firm with an office in Philadelphia, PA as tax administrator (“Tax Administrator”) of the Distribution Fund; (b) appointment of Allison J.P. Moon, Trial Counsel for the Commission, as distribution agent (“Distribution Agent”) of the Distribution Fund; and (c) authorization for the Distribution Agent to approve and arrange for the payment of taxes, fees, and expenses from the Distribution Fund without further Order of the Court.

III. DEFINITIONS

As used in this Plan, the following definitions will apply:

9. **“Administrative Costs”** shall mean any administrative costs and expenses, including without limitation tax obligations, the fees and expenses of the Tax Administrator, and investment and banking costs.

10. **“Distribution Payment”** means a payment from the Distribution Fund to the Payee in accordance with the terms of this Plan.

11. “**Net Available Distribution Fund**” means the Distribution Fund, plus any interest or earnings, less Administrative Costs.

12. “**Payee**” means, in this case, the sole investor identified by the Commission staff as harmed by the Defendant’s fraudulent conduct who will receive a Distribution Payment.

13. “**Plan Notice**” means a written notice from the Distribution Agent to the Payee regarding the Court’s approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the Commission’s website and instructions for requesting a copy of the Plan; the Commission’s preliminary Recognized Loss calculation; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Distribution Agent as a resource for additional information or to contact with questions regarding the distribution.

14. “**Recognized Loss**” means the amount of loss calculated for the Payee (*see* paragraph 24).

IV. TAX COMPLIANCE

15. The Tax Administrator shall handle the tax obligations of the Distribution Fund. The Tax Administrator will be compensated for reasonable fees and expenses from the Distribution Fund.

16. The Distribution Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Distribution Fund.

V. DISTRIBUTION AGENT

17. Allison J.P. Moon will be the Distribution Agent for the Distribution Fund. As a Commission employee, the Distribution Agent shall receive no compensation other than her regular salary as a Commission employee for her services in administering the Distribution Fund.

18. The Distribution Agent will be responsible for administering the Distribution Fund in accordance with the Plan. This will include, among other things, taking reasonable steps to establish and maintain necessary contact with the Payee; cooperating with the Tax Administrator appointed by the Court to satisfy any tax liabilities and to ensure compliance with income tax reporting requirements, including but not limited to Foreign Account Tax Compliance Act (FATCA); disbursing the Distribution Fund in accordance with this Plan, as ordered by the Court; and prepare a final accounting.

19. To carry out the purposes of this Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Plan. If the Distribution Agent deems a change to be material, Court approval is required prior to implementation by amending the Plan.

20. The Distribution Agent may extend any procedural deadline contained in the Plan for good cause.

VI. PLAN PROCEDURES

Specification of the Payee

21. Using information obtained during its investigation, the Commission staff has identified the sole harmed investor who suffered a loss as a result of Defendant's securities laws violations alleged in the Complaint, and as generally described in paragraph 5 above.

Procedures for Locating and Notifying the Payee

22. Within 45 days of the Court's approval of the Plan, the Distribution Agent will send a Plan Notice to the Payee's last known email address and/or mailing address.

Dispute Process

23. Disputes will be limited to the calculation of the Recognized Loss. Within 30 days of the initial mailing of the Plan Notice, the Distribution Agent must receive a written communication detailing any dispute along with any supporting

documentation. The Distribution Agent will investigate the dispute, and such investigation will include a review of the written dispute, as well as any supporting documentation. Within 30 days of receipt of a written dispute, the Distribution Agent will notify the Payee of her resolution in writing, which will be final.

Calculation of Distribution Payment

24. The Payee did not recover any part of her investment. Therefore, her Recognized Loss is equal to the total amount that she paid to the Defendant. Since the Net Available Distribution Fund is less than the Payee's Recognized Loss, the Payee's Distribution Payment will equal the Net Available Distribution Fund. Should additional funds be collected, the Distribution Agent may seek subsequent distribution(s) of the Net Available Distribution Fund to the Payee. In no event with the Payee's total Distribution Payments exceed her Recognized Loss.

Establishment of a Reserve

25. To determine the Net Available Distribution Fund, the Distribution Agent, in conjunction with the Tax Administrator, will established a reserve to pay Administrative Costs (the "Reserve"). After the Distribution Payment is made and Administrative Costs paid, any remaining amounts in the Reserve will become part of the residual described in paragraph 35 below.

Preparation of the Payment File

26. Within 90 days after Court approval of this Plan, the Distribution Agent will prepare a payment file that will include the Payee's name, address, calculated Recognized Loss, and the amount of the Distribution Payment (the "Payee List"). The Payee List will be used to direct disbursement from the U.S. Treasury.

Distribution of the Distribution Fund

27. After preparation of the Payee List, the Distribution Agent will petition the Court for authority to disburse funds from the Net Available Distribution Fund for distribution to the Payee in accordance with the Payee List. The U.S. Treasury will mail the check or electronically transfer funds to the Payee as instructed by the Distribution Agent in accordance with the Court's Order.

28. Checks will bear a stale date of one year from the date of issuance. Any check that is not negotiated by the stale date will be voided, and the U.S. Treasury will be instructed to stop payment on the check. The Payee's claim will be extinguished if the investor fails to negotiate the check by the stale date, and the funds will remain in the Distribution Fund.

29. The Distribution Payment will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of the Payee and that the Payee should consult a tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that check(s) will be void and cannot be reissued after one year from the date the original check was issued; and (d) contact information for the Distribution Agent for questions regarding the Distribution Payment. The Distribution Agent will submit the letter or other mailings characterizing a Distribution Payment to the Tax Administrator for review and approval.

30. The Distribution Payment, either on its face or in the accompanying mailing, will clearly indicate that the money is being distributed from the Distribution Fund to compensate the investor for harm as a result of securities law violations.

Post-Distribution Handling of Returned or Uncashed Checks and Reissues

31. The Distribution Agent will reissue the check(s) or electronic payments to the Payee upon the receipt of a valid, written request from the Payee if submitted prior to the initial stale date. If the Payee is unable to endorse a Distribution Payment check as written, and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Distribution Agent will request, and must receive, documentation to support the requested change. The Distribution Agent will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Distribution Agent, such change request is properly documented, the Distribution Agent will issue an appropriately redrawn Distribution Payment to the requesting party. Any reissued checks will bear a stale date of one year from the date of reissuance.

32. The Distribution Agent is responsible for researching and reconciling errors and reissuing payments when possible. The Distribution Agent is also responsible for accounting for all payments. The amount of any uncashed or undelivered payment will continue to be held in the Distribution Fund.

33. The Distribution Agent will make and document her best efforts to contact the Payee to follow up on the status of any uncashed distribution check. The Distribution Agent may reissue a distribution check, subject to the time limits detailed herein.

Receipt of Additional Funds

34. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Court's termination of the

Distribution Fund, such funds will be added to the Distribution Fund and distributed, if feasible, in accordance with the Plan.

Disposition of Undistributed Funds

35. A residual within the Distribution Fund will be established for any amounts remaining after the disbursement to the Payee from the Distribution Fund and the payment of all Administrative Costs (the “Residual”). The Residual may include funds from, among other things, undistributed funds, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, and tax refunds for overpayment of taxes or for waiver of IRS penalties.

36. All funds remaining in the Residual that are infeasible to distribute to the investor will be held pending a final accounting.

Administrative Costs

37. All Administrative Costs will be paid from the Distribution Fund in accordance with the Plan, pursuant to a Court Order.

Filing of Reports and Accountings

38. Upon completion of the distribution to the Payee and payment of all Administrative Costs, the Distribution Agent will prepare a final accounting in a standardized format. The final accounting report will include a recommendation as to the disposition of the Residual, consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7).² The Commission may recommend transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.³

² Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the NDAA’s enactment. NDAA, Section 6501(b).

³ Section 21F(g)(3) of the Exchange Act, 15 U.S.C. §78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Fair Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

Termination of the Distribution Fund

39. At the discretion of the Court, the Distribution Fund will be eligible for termination, and the Distribution Agent will be eligible for discharge after all Administrative Costs have been paid and the Distribution Agent has prepared a final accounting of the Distribution Fund in a standard accounting format.

40. Once the final accounting is prepared, the Commission will petition the Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual consistent with *Liu v. SEC*, 140 S. Ct. 1936 (2020) and Section 21(d)(7) of the Exchange Act, 15 U.S.C. § 78u(d)(7), and terminating the Distribution Fund.

41. Once the Distribution Fund is terminated, no additional payments will be made whatsoever.