Securities and Exchange Commission v. Nadel et al Doc. 1118

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. Case No. 8:09-cv-87-T-26TBM

ARTHUR NADEL;
SCOOP CAPITAL, LLC;
SCOOP MANAGEMENT, INC.

Defendants,

SCOOP REAL ESTATE, L.P.;
VALHALLA INVESTMENT PARTNERS, L.P.;
VALHALLA MANAGEMENT, INC.;
VICTORY IRA FUND, LTD;
VICTORY FUND, LTD;
VIKING IRA FUND, LLC;
VIKING FUND, LLC; AND
VIKING MANAGEMENT, LLC

Relief Defendants.
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RECEIVER'S MOTION FOR ORDER OVERRULING OBJECTIONS TO DETERMINATIONS OF CLAIM NUMBERS 462, 463, 464, 465, 466, AND 467 AND AWARDING SANCTIONS IN THE FORM OF ATTORNEY FEES AND COSTS

Burton W. Wiand, as Receiver[1] (the "**Receiver**"), moves for an Order (1) overruling the objections submitted (the "**Objections**") by Claimant Vernon M. Lee ("**Claimant**") to

[1] Mr. Wiand was appointed Receiver for a number of entities including Valhalla Investment Partners, L.P.; Viking Fund, LLC; Viking Fund IRA, LLC; Victory Fund, Ltd.; Victory IRA Fund, Ltd.; and Scoop Real Estate, L.P. (collectively, the "**Hedge Funds**") and also for Traders Investment Club ("**Traders**") (the Hedge Funds, Traders, and the rest of the

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the Receiver's claim determinations for Claim Numbers 462, 463, 464, 465, 466, and 467 (the "**Claims**") and (2) awarding the Receiver sanctions in the form of attorney fees incurred to prepare this motion. The Objections are based entirely on a discrete issue: whether the Hedge Funds and Traders were operated as a Ponzi scheme during the time Claimant received transfers of funds from those entities. This exact same issue previously was fully litigated by Claimant and the Receiver and decided in favor of the Receiver in *Wiand, as Receiver v. Vernon M. Lee, et al.*, Case No. 8:10-cv-210-T-17MAP (M.D. Fla.) (the "***Lee Clawback Action***"), and its re-litigation here is indisputably precluded under principles of issue preclusion. Nevertheless, Claimant has refused either to (1) withdraw the Objections or (2) agree not to contest the Receiver's efforts to have the Objections overruled while still preserving Claimant's right to appeal. Sanctions in the form of an award of attorney fees and costs against Claimant are warranted because Claimant has a history of obstinate conduct and now insists on pursuing Objections that are indisputably frivolous. That Claimant is now proceeding *pro se* does not merit any leniency in the Court's determination of these matters because he was represented by counsel both in the *Lee Clawback Action* and in this claim proceeding until his counsel withdrew after the Receiver's counsel explained that the Objections were now frivolous and that the Receiver would seek sanctions unless Claimant agreed not to pursue them any further.

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entities placed in receivership in this case are collectively referred to as the "**Receivership Entities**").

BACKGROUND

Claimant's Investment In The Scheme And The Clawback Action

Between 1999 and 2004, Claimant invested a total of $1,873,262.10 in the scheme and, between 2000 and 2008, Claimant received "distributions" of purported principal or investment profits relating to those "investments" totaling $2,942,264.75. As a result, Claimant had "false profits" of $1,069,002.60 (*i.e.*, the amount he received from the scheme in excess of the amount he invested).[2]

On January 19, 2010, the Receiver filed numerous "clawback" lawsuits against Claimant and other similarly situated investors in the Ponzi scheme underlying this case who received false profits. In relevant part, those cases sought recovery of false profits as fraudulent transfers for the benefit of hundreds of Nadel's defrauded victims who suffered collective losses of at least $162 million. The vast majority of the clawback defendants promptly settled with the Receiver and thus allowed him to avoid costly litigation.

Some investors, however, refused to settle and chose to litigate to judgment. One of those investors was Claimant. As a result, for nearly three years, the Receiver and Claimant extensively litigated the Receiver's claims, which included the Receiver's production of hundreds of thousands of pages of documents; the depositions of Claimant, Claimant's expert, the Receiver, and the Receiver's expert; and the filing of three motions for summary

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[2] As reflected in the amount of the Judgment entered in favor of the Receiver in the *Lee Clawback Action* (the "**Judgment**"), this amount was reduced by $133,371.09 after the Receiver discovered and subsequently recovered a transfer from Claimant to one of his children of money Claimant had received from the scheme. A copy of the Judgment is attached as **Exhibit A** to the Declaration of Gianluca Morello in Support of the Receiver's Motion for Order Overruling Objection to Determination of Claim Numbers 462, 463, 464, 465, 466, and 467 and Awarding Sanctions in the Form of Attorney's Fees and Costs (the "**Morello Decl.**") being filed with this motion.

judgment. Throughout the proceedings, and in what would serve as the main point of Claimant's opposition to the Receiver's Motion for Summary Judgment, Claimant maintained that "the issue of whether the Receivership entities' operations were a Ponzi scheme prior to 2006 is a question of fact to be determined by a jury." *Lee Clawback Action*, Doc. 158.

The Magistrate Judge presiding over the *Lee Clawback Action* issued a Report and Recommendation (the "**R&R**") on December 13, 2012, recommending that the Receiver's Motion for Summary Judgment be granted and concluding that Nadel operated the Hedge Funds and Traders as a Ponzi scheme at all relevant times, including when Claimant received each and every transfer of money. *Lee Clawback Action*, Doc. 163 (a copy of which is attached as **Exhibit B** to the Morello Declaration). On January 23, 2013, the R&R was adopted by the District Court in its entirety (the "**District Court Order**"), and Claimant's objections to the R&R were overruled. *Lee Clawback Action*, Doc. 169 (a copy of which is attached as **Exhibit C** to the Morello Declaration). Claimant did not appeal the Court's findings that Nadel operated a Ponzi scheme at all relevant times.[3]

Claimant's Claim And Objections

Despite having been sued for the return of nearly $1 million in "false profits," Claimant submitted Proof of Claim Forms claiming losses relating to several "accounts" he

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[3] Claimant has pursued an appeal solely about whether the finding that the money transferred to Claimant from the Hedge Funds during the course of the scheme constituted "property" of Nadel under Florida's Uniform Fraudulent Transfer Act ("**FUFTA**"). *See* Fla. Stats. § 726.102(2) (permitting recovery of transfers by debtor); Initial Brief of Appellant/Cross-Appellee Lee, *Wiand, as Receiver v. Vernon M. Lee, et al.*, No. 13-10448-A (11th Cir. March 28, 2013) (a copy of which is attached as **Exhibit D** to the Morello Declaration) (identifying Issue Presented as whether transfers from Nadel are "property of Nadel under the Florida Uniform Fraudulent Transfer Act").

held with the Hedge Funds and Traders as part of the court-ordered claims process instituted by the Receiver. *See* Morello Decl., **Composite Exhibit E**. On December 7, 2011, the Receiver filed an Unopposed Motion to (1) Approve Determination and Priority of Claims, (2) Pool Receivership Assets and Liabilities, (3) Approve Plan of Distribution, and (4) Establish Objection Procedure (the "**Claims Motion**") (Doc. 675). In the Claims Motion, the Receiver recommended denial of Claimant's Claims because the underlying "accounts" had overall "false profits." (Doc. 675, Ex. G.) The Claims Motion also outlined a Proposed Objection Procedure (the "**Objection Procedure**") to be used when a claimant did not agree with the Receiver's recommended determination of a particular claim. The Objection Procedure provided that, in case the Receiver is unable to settle or compromise a claim or objection, the Receiver may submit all appropriate supporting documents and/or statements to the Court. After review, the Court may then make a final determination based on those submissions or set the matter for hearing before issuing a decision.

The Court entered an Order granting the Claims Motion on March 2, 2012, which, in relevant part, approved the Receiver's denial of the Claims and adopted the Objection Procedure. (Doc. 775.) On March 28, 2012, the Receiver received Claimant's Objections disputing the Receiver's determination of the Claims. *See* Morello Decl., **Composite Exhibit F**. The sole issue raised in the Objections was that the Receiver had failed to prove the existence of a Ponzi scheme during the time that Claimant was invested with or received transfers from the Hedge Funds and Traders. *Id.*

Following resolution of the *Lee Clawback Action* and the determination in that case that Nadel operated the Hedge Funds and Traders as a Ponzi scheme, the Receiver's counsel

provided to Claimant the Receiver's Response to Objection Relating to Determination of Claim Numbers 462, 463, 464, 465, 466, and 467 (the "**Objection Response**") to Claimant. *See* Morello Decl., **Exhibit G**. The Objection Response referenced the findings made in the District Court Order and noted that Claimant "had a full and fair opportunity to present all evidence, including an expert, relating to whether or not Nadel operated a Ponzi scheme." In light of the District Court Order, the Objection Response explained that the Receiver considered the Objections meritless, or moot, and declined to change his determination of the Claims. *Id.*

After providing the Objection Response to Claimant, the Receiver's counsel had discussions with Claimant's counsel and asked Claimant to withdraw the Objections in light of the District Court Order. This request was subsequently memorialized through correspondence sent by the Receiver's counsel to Claimant's counsel. *See* Morello Decl., **Exhibit H**. The letter explained that the merits of the arguments underlying the Objections had been fully litigated in the *Lee Clawback Action*, that the subsequent findings and rulings were binding in these proceedings to resolve the Objections, and that Claimant was precluded from pursuing the Objections under the principles of collateral estoppel and *res judicata*. The Receiver indicated he would seek sanctions against Claimant in the event Claimant planned to continue pursuing the Objections. Claimant's counsel ultimately responded that Claimant would not agree to either (i) withdraw the Objections or (ii) take any other steps that would have allowed the Receiver to obtain an order overruling the Objections while still preserving Claimant's right to appeal the determination of his Claims. Morello Decl.,

Exhibit I. Claimant's counsel also explained at that time that he intended to withdraw his representation of Claimant solely with respect to the Objections. *id.*

ARGUMENT

I. CLAIMANT IS PRECLUDED FROM RE-LITIGATING AN ISSUE DECIDED IN THE *LEE CLAWBACK ACTION* UNDER PRINCIPLES OF ISSUE PRECLUSION

Issue preclusion, also known as collateral estoppel, applies to bar re-litigation of an issue previously decided against a party who had a full and fair opportunity to litigate that issue in an earlier case. *Coursen v. JP Morgan Chase & Co.*, 2013 WL 5437341, *10 (M.D. Fla.) (Lazzara, J.) (internal quotations omitted); *Refined Sugars Inc. v. Southern Commodity Corp.*, 709 F. Supp. 1117, 1120 (11th Cir. 1988) ("*Res judiciata* and collateral estoppel protect litigants from the burden of relitigating an issue of fact or law previously adjudicated."). "Collateral estoppel ... has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979).

To preclude re-litigation of an issue under principles of issue preclusion, (1) the issue must be identical to the one litigated in the earlier case; (2) the issue must have been actually litigated in the earlier case; (3) the determination of the issue in the earlier case must have been a critical and necessary part of the judgment in that case; and (4) the party against whom the earlier decision is asserted must have had a full and fair opportunity to litigate the issue in the earlier case. *Goodin v. Fidelity Nat. Title Ins. Co.*, 2012 WL 4711592 (11th Cir. 2012); *Wingard v. Emerald Venture Fla. LLC*, 438 F.3d 1288, 1293 (11th Cir. 2006) (same).

Here, each of these prerequisites was easily satisfied, and issue preclusion applies to bar Claimant from re-litigating the District Court's earlier conclusion that the Hedge Funds and Traders were operated as a Ponzi scheme at the time of each transfer to Claimant. *Brown*, 611 F.3d at 1332; *Zeidwig v. Ward*, 546 So. 2d 209, 212 (Fla. 1989).

A. The Sole Issue Underlying Claimant's Objection Is Identical To An Issue That Was Actually Litigated In The *Lee Clawback Action* And Which Was A Critical And Necessary Part Of The Judgment Obtained By The Receiver

The only issue underlying the Objections is whether the Hedge Funds and Traders were operated as a Ponzi scheme at the time of each transfer to Claimant. This issue (1) was identical to one litigated in the earlier *Lee Clawback Action*; (2) was actually litigated in that case; and (3) its determination was a critical and necessary part of the Judgment obtained by the Receiver in that case. Specifically, in that case the Receiver prevailed on summary judgment on his FUFTA claim under Fla. Stats. § 726.105(1)(a) ("**Section 726.105(1)(a)**") and obtained a judgment on that basis in the amount of Claimant's false profits. *See* District Court Order (Morello Decl. Ex. C). The Receiver prevailed under Section 726.105(1)(a) because he established that each and every transfer from the Hedge Funds and Traders to Claimant was made with the "actual intent to hinder, delay, or defraud any creditor" of Nadel. R&R at 40 (Morello Decl. Ex. B); *see* Fla. Stats. § 726.105(1)(a). The Receiver established the requisite intent by establishing that Nadel operated the Hedge Funds and Traders as a Ponzi scheme at the time of each and every transfer to Claimant; under Florida law, transfers made as part of a Ponzi scheme are made with "actual intent ... to defraud" for purposes of Section 726.105(1)(a). R&R at 30; *see In re McCarn's Allstate Fin., Inc.*, 326 B.R. 843, 851 (Bankr. M.D. Fla. 2005). Unquestionably, it was the same issue, it was

actually litigated, and it was a critical and necessary part of the Judgment obtained by the Receiver on his FUFTA claim under Section 726.105(1)(a).

In fact, Claimant admits in his Objections that the pertinent issue was identical in both this proceeding and in the *Lee Clawback Action*:

> "As you are well aware, you initiated a supplemental proceeding against Mr. Lee which is currently before the Honorable Judge Kovachevich and Magistrate Judge Pizzo. In that case **you are faced with the same issue of proving the existence of a Ponzi scheme at all relevant times and including all Receivership Entities. In that case, and many others similarly situated, you have attempted to prove the existence of a Ponzi scheme to the same extent but have so far been unsuccessful**."

Morello Decl., Comp. Ex. F at 2. (emphasis added).[4]

Claimant vigorously opposed the Receiver's efforts to prove his claims and the existence of a Ponzi scheme in the *Lee Clawback Action*. *See Lee Clawback Action*, Docs. 63, 64, 92, 122, 125, 129, 158, 166, 167. In fact, Claimant's Amended Response in Opposition to the Receiver's Motion for Partial Summary Judgment is entirely devoted to opposing "the Receiver's primary argument...that...Nadel operated a Ponzi scheme." *Lee Clawback Action*, Doc. 125 at 1 (a copy of which is attached as **Exhibit J** to the Morello Declaration). This opposition was filed on September 14, 2012 - nearly three years after the Receiver filed the case and after extensive discovery. Further, briefing on the motions for summary judgment was extensive, including multiple motions for both partial summary judgment and summary judgment by both sides, and responses and objections thereto. *See Lee Clawback Action*, Docs. 49, 62, 64, 72, 77, 80, 97, 122, 126, 129, 156, 158.

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[4] Claimant's assertion that the Receiver had not yet proven the existence of a Ponzi scheme was based on the fact that when the Objections had been submitted, the Receiver's summary judgment motions in the *Lee Clawback Action* were still pending.

Ultimately, the Magistrate Judge issued the R&R in favor of the Receiver, and Claimant again had an opportunity to substantively address the Receiver's arguments and the Magistrate Judge's findings of fact and conclusions of law. To do that, Claimant filed objections which were nearly twenty pages long. *See Lee Clawback Action*, Docs. 166 – 167. In response, the District Court conducted a *de novo* review and, like the Magistrate Judge, concluded there was no genuine issue of material fact that Nadel operated the Hedge Funds and Traders as a Ponzi scheme at the time of each and every transfer to Claimant and thus granted summary judgment to the Receiver on his Section 726.105(1)(a) claim. Dist. Ct. Order (Morello Decl. Ex. C). Resolution of the *Lee Clawback Action* through summary judgment constitutes "actual litigation" of the issues advanced by Claimant's Objections. *Barry v. Rambosk*, 2012 WL 5339366, *1 (M.D. Fla. 2012) (count asserted in complaint "was fully litigated through summary judgment by the exact same parties").

Finally, as is evident from the beginning of this subsection, and from the R&R issued by the Magistrate Judge and adopted by the District Court in the *Lee Clawback Action*, the finding that Nadel operated a Ponzi scheme at all relevant times was a critical part of the R&R (R&R at 40) and, consequently, of the District Court Order adopting the R&R and granting the Receiver summary judgment. Indeed, the R&R concludes that, "[u]pon consideration of the evidence before me, I find that Nadel operated the hedge funds and Traders as a Ponzi scheme at the time of the transfers to the Lee Defendants, and that the transfers to the Lee Defendants were made with the actual intent to hinder, delay, or defraud as required by Fla. Stats. § 726.105(1)(a)." R&R at 40 (Morello Decl. Ex. B). On this basis, the Court entered summary judgment for the Receiver. Dist. Ct. Order at 6 (Morello Decl.

Ex. C). The finding that Nadel operated a Ponzi scheme clearly was critical and necessary to the Judgment in the *Lee Clawback Action*.

B. Claimant Had A Full And Fair Opportunity To Litigate The Pertinent Issue

Claimant also had a full and fair opportunity to litigate the issue of whether Nadel operated the Hedge Funds and Traders as a Ponzi scheme at the time Claimant received each transfer. This requirement does not "refer to the quality or quantity of argument or evidence addressed to an issue," but rather requires only that the issue was effectively raised in the prior action and that the losing party was given a fair opportunity procedurally, substantively, and evidentially to contest the issue. *In re Bush*, 62 F.3d 1319, 1323 (11th Cir. 1995). In *Bush*, the Eleventh Circuit found that active participation in a prior action, including engaging in discovery, retention of counsel, and answering the complaint was considered to have constituted "actual litigation." *Id.* at 1324.

This requirement is easily satisfied here. The *Lee Clawback Action* involved years of contentious litigation, including document productions, interrogatories, depositions, expert witnesses, multiples motions for summary judgment with full responses, and objections to the R&R. *See generally Lee Clawback Action* docket sheet, attached as **Exhibit K** to the Morello Declaration. At the heart of the parties' efforts in discovery and summary judgment briefing was whether Nadel operated the Hedge Funds and Traders as a Ponzi scheme when Claimant received each transfer. Claimant was represented by counsel throughout the *Lee Clawback Action*. Collectively, all of these events far exceeded the events *Bush* deemed sufficient to constitute a full and fair opportunity to litigate, and consequently Claimant is

precluded from re-litigating the issue underlying his Objections by principles of issue preclusion.

II. THE RECEIVER IS ENTITLED TO AN AWARD OF ATTORNEY FEES AND COSTS FOR CLAIMANT'S REFUSAL TO WITHDRAW THE OBJECTIONS

The Supreme Court has explicitly recognized a court's inherent power to impose attorney fees as an appropriate sanction for conduct which abuses the judicial process. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991). This includes assessing attorney fees when a party has acted in bad faith by delaying or disrupting the litigation to "make the prevailing party whole for expenses caused by his opponent's obstinacy." *Id.* at 46; *see In re Graffy*, 233 B.R. 894, 898-99 (Bankr. M.D. Fla. 1999) (citing *Chambers* and awarding attorney fees for bad faith conduct exhibited by debtor throughout litigation).

Although the Receiver does not seek attorney fees for Claimant's conduct throughout the *Lee Clawback Action* despite Claimant's persistently obstinate conduct,[5] the Receiver does seek an award of attorney fees and costs against Claimant for this motion because

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[5] At times, Claimant has sought to appeal to the Court's sympathy by portraying himself as an elderly and infirm investor who purportedly was devastated by "losses in the wake of the Nadel collapse." *See In re Lee*, 8:13-bk-01055-KRM (Bankr. M.D. Fla.) (Doc. 17 at 21). However, this portrayal omits 2 important facts. First, it omits that Claimant realized more than $1 million in profits from Nadel's scheme – a striking contrast to those investors that did not enjoy similar good fortune and who in many instances were financially, physically, and psychologically devastated by Nadel's actions. *See generally United States v. Arthur Nadel*, Case No. 1:09-cr-00433-JGK (S.D.N.Y.) (Doc. 62) (victim impact statements). Second, it omits that any losses Claimant may have suffered were admittedly from his imprudent decision to engage in "casino gambling" after Nadel's scheme was exposed. *See In re Lee*, Case No. 8:13-bk-01055-KRM, Summary of Schedules (Bankr. M.D. Fla.) (Doc. 17 at 21) (listing unknown amount of "casino gambling" losses in bankruptcy schedule).

Claimant's conduct since entry of the Judgment in the *Lee Clawback Action* has been particularly egregious. Claimant's refusal to withdraw the Objections despite the clear findings in the *Lee Clawback Action* is merely the latest in a course of conduct undertaken to unnecessarily delay the Receiver's recovery of Claimant's false profits.

For example, shortly after the Judgment was entered in the *Lee Clawback Action*, Claimant filed a frivolous Chapter 13 bankruptcy petition to delay the Receiver's collection efforts. *Lee Clawback Action*, Doc. 179; *In re Lee*, 8:13-bk-01055-KRM (Bankr. M.D. Fla.). Specifically, Claimant sought protection from the Receiver's approximately $1 million Judgment under Chapter 13 even though Section 109(e) of the Bankruptcy Code clearly provides that bankruptcy protection under Chapter 13 is available to individuals with "noncontingent, liquidated, unsecured debts of less than $360,475." 11 U.S.C. § 109(e) (emphasis added). In an attempt to sidestep the statutory limits on unsecured debts in a Chapter 13 filing, Claimant falsely listed the Judgment as a contingent and disputed debt. *See In re Cluett*, 90 B.R. 505 (Bankr. M.D. Fla. 1988) (pendency of appeal did not make judgment debt unliquidated contingent debt so as to be excluded from computation of debt limitations in determining eligibility for relief under Chapter 13); *In re Vidal*, 2004 WL 2656893, *1 (Bankr. S.D. Fla. Oct. 13, 2004) (even if reversal of judgment on appeal later occurs, a judgment is still noncontingent and liquidated on the petition date, which is the date that eligibility of a chapter 13 debtor is determined). Further, Claimant's submitted bankruptcy plan proposed to pay $100 per month for 36 months to creditors (the Receiver's claim comprised more than 99% of the listed claims) – including $675 to Claimant's

bankruptcy counsel. In other words, not only was the bankruptcy filing frivolous, but Claimant's proposal to satisfy the Judgment by paying less than $3,600 exhibited bad faith.

The Receiver was forced to retain bankruptcy counsel, and both the Receiver and the bankruptcy trustee subsequently moved to dismiss the bankruptcy filing on the basis that the listed debts exceeded the statutory limits. *See In re Vernon M. Lee*, Case No. 8:13-bk-01055-KRM (Bankr. M.D. Fla.) (Docs. 32, 35). The bankruptcy court dismissed Claimant's bankruptcy on April 18, 2013. *Id.*, Doc. 36. Despite the bankruptcy court's order permitting Claimant to convert his bankruptcy filing to another chapter under the Bankruptcy Code, unsurprisingly Claimant did not do so since he was simply trying to delay the Receiver's collection efforts rather than go through bankruptcy and the dismissal became final on May 2, 2013. In short, it is clear Claimant filed a frivolous bankruptcy merely to gain a several-month stay from the Receiver's collection efforts.

These frivolous efforts to delay the Receiver's recovery and drive up unnecessary expenses have been repeated here with Claimant's refusal to withdraw the Objections. Despite giving Claimant and his counsel ample opportunities to withdraw the Objections, they have not been withdrawn. The Receivership Estate, and ultimately defrauded investors, should not be prejudiced by Claimant's bad-faith conduct. For these reasons, the Receiver requests an award of his attorney fees and costs incurred in filing this motion.

CONCLUSION

For the foregoing reasons, the Receiver requests that this Court enter an Order (1) finding that Claimant's Objections are overruled, or otherwise moot, pursuant to principles of collateral estoppel (or issue preclusion); (2) awarding the Receiver his attorney fees and costs

in filing this motion; (3) giving the Receiver 14 days to file documentation establishing the amount of attorney fees and costs that should be awarded; and (4) granting the Receiver any such other and further relief as permitted by law and equity.

CERTIFICATE UNDER LOCAL RULE 3.01(g)

Undersigned counsel has conferred with counsel for the SEC and is authorized to represent to the Court that this motion is unopposed.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 30, 2014, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system.

I FURTHER CERTIFY that on May 30, 2014, a true and accurate copy of the foregoing was furnished by first-class mail delivery to the following non-CM/ECF participant(s):

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