

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, et al.,

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**INVESTORS' OBJECTION TO SETTLEMENT AND  
OPPOSITION TO RECEIVER'S MOTION TO APPROVE SETTLEMENT**

Comes now, Investors, Vernon M. Lee, individually and as trustee of the Vernon M. Lee Trust, and Brian L. Meeker, as Trustee for the Brian L. Meeker Trust dtd 12/06/1991 (collectively "Investors"), by and through undersigned counsel, and hereby object to the proposed settlement (the "Settlement") with Holland & Knight, L.L.P. and Scott R. MacLeod (collectively "H&K") and oppose the Motion to Approve Settlement (the "Motion") filed by Burton W. Wiand as Receiver (the "Receiver"). In support thereof, Investors state:

The Receiver contends the Settlement is a "fair, equitable, and good faith settlement" of the claims of the Receivership against H&K. (Motion at p. 16.) However, the Settlement purports to do more than settle the *Receiver's* claims against H&K. The Settlement purports to release the *Investors'* claims against H&K as well - the Investors who were not parties to the case brought by the Receiver against H&K and whose interests were not represented by the Receiver in that case. A release of the Investors' claims against H&K violates the Investors' due process rights and gives them nothing in return.

The Investors are current “clawback” defendants from early in Arthur Nadel’s investment days before his fraudulent “Ponzi” activities began. Because they are “clawback” defendants, they are not current members of the claimant class that will potentially receive a distribution from the Settlement. The Investors’ claims against H&K are contingent upon the outcome of their “clawback” cases – which are currently set for trial in January 2013. If the Investors lose their cases, they have strong potential causes of action against H&K – actions that the Receiver seeks to release by this Settlement for no consideration to the Investors.

These Investors have done nothing to deserve to have their due process rights abridged. The first investor, Vernon Lee, for example, invested with Mr. Nadel in the late 1990’s and early 2000’s. Mr. Lee is an 80 year old man. He used these investment funds to plan his retirement. While he received his principal investment back and a return on his investment, his rate of return was even less than one would expect from a typical investment – less than 7% over the time frame of his investment. If the Receiver is successful in his suit and claws this money back, Mr. Lee is left bereft of any funds for the rest of his life and will be much worse off than he was before the investment with Nadel, because he could rightfully expect a reasonable return on his investment. Mr. Lee can seek recovery from H&K to make him whole – essentially, recovery of an expected reasonable rate of return. Yet, the Receiver wants to take away Mr. Lee’s right to seek redress from H&K if the Receiver takes back the funds Mr. Lee planned the rest of his life around. That is simply unfair.

The Settlement takes away these Investors rights to sue H&K and gives them nothing in return. When evaluating a bar order, courts should determine “whether the bar order is fair and equitable to the parties whose claims will be enjoined.” *In re Gunnallen Financial, Inc.*, 443 B.R. 908, 915 (Bankr. M.D. Fla. 2011) (citing *Wallis V. Justice Oaks II, Ltd. (In re Justice Oaks*

*II, Ltd.*), 898 F.2d 1544 (11<sup>th</sup> Cir. 1990). Here it is neither fair nor equitable for the Court to enter a bar order on claims against H&K that have not yet accrued and for which the Investors receive no compensation. This is the very definition of a due process violation.

WHEREFORE, Investors, Vernon M. Lee, Individually and as Trustee of the Vernon M. Lee Trust, and Brian L. Meeker, as Trustee for the Brian L. Meeker Trust dtd 12/06/1991, respectfully request this Court deny the Receiver's Motion to Approve Settlement and reject the Settlement Agreement with Holland & Knight, L.L.P. and Scott R. MacLeod, and for such other relief the Court deems appropriate.

Dated: October 1, 2012

Respectfully submitted,

/s/ Paul B. Thanasides

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Brian L. Meeker Trust dtd 12/06/1991***

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that on the 1st day of October, 2012, the foregoing was electronically filed with the Clerk of the Court and served via the Court's CM/ECF system to: **Gianluca Morello, Esq.** (gmorello@wiandlaw.com), and **Michael S. Lamont, Esq.** (mlamont@wiandlaw.com), *Attorneys for Burton W. Wiand, as Receiver.*

*/s/ Paul B. Thanasides* \_\_\_\_\_  
Attorney