

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**ARTHUR LAMAR ADAMS AND
MADISON TIMBER PROPERTIES, LLC,**

Defendants,

Case No.

3:18-cv-252-CWR-FKB

**SEC’S RESPONSE IN OPPOSITION TO MOTION
SEEKING RETURN OF RECEIVERSHIP FUNDS**

Plaintiff Securities and Exchange Commission (“SEC”) files this Response in Opposition to the Motion filed by William B. McHenry, Jr., (“McHenry Motion”) seeking an Order directing the Court’s Receiver to return a Madison Timber Properties, LLC investment of \$100,000 to investor John Endris.

The McHenry Motion is based on the misleading argument that the investment in question was made *after* entry of this Court’s April 20, 2018 Consent Order Granting Permanent Injunction, Freezing Assets, Prohibiting Destruction of Documents and Expediting Discovery (“Consent Order”) [Dkt. No. 5], which, among

other things, prohibited Defendants' banks from accepting deposits over \$5,000. As reflected in the Receiver's Response to McHenry's Motion to Direct Receiver to Return Deposit [Dkt. No. 60], however, Mr. Endris's investment was made, and the check deposited into Defendants' bank (by McHenry, no less), on April 19, 2018, the day *before* the asset freeze went into effect. Receiver's Response, pp. 2-3.

The SEC agrees with the Receiver's position that she cannot take any action that might prefer one investor over another. Receiver's Response, p. 3. Receivers in Commission enforcement actions typically distribute assets of the receivership estate *pro rata* among the fraud victims, even when certain assets or funds may be traceable to an individual investor. See, e.g., SEC v. Elliott, 953 F.2d 1560, 1569-70 (11th Cir. 1992) ("As all of the [victims] occupied the same legal position, it would not be equitable to give some of them preferential treatment in equity", and holding that when legal title of specific assets was transferred to the fraud perpetrator by his victims, the victims did not have a security interest in the assets); see also SEC v. Wealth Management LLC, 628 F.3d 323, 333 (7th Cir. 2010) ("We start with the principle that where investors' assets are commingled and the recoverable assets in a receivership are insufficient to fully repay the investors, 'equality is equity.'"); SEC v. Forex Asset Management LLC, 242 F.3d 325, 331-32 (5th Cir. 2001) ("[T]he district court determined that the facts did not support a remedy that would elevate [one victim's] claim above the other victims, and accordingly determined that a *pro rata* distribution would provide a fair and equitable remedy.")

While the circumstances surrounding every fraud victim are always unfortunate, and Mr. Endris's situation certainly warrants sympathy, there is no reasonable dispute that the investment in this instance was made before the asset freeze went into effect. Accordingly, Mr. Endris is not entitled to preferential treatment with respect to the other Madison Timber investors. The SEC agrees with the Receiver that the McHenry Motion should be denied.

Dated this 28th day of November, 2018.

Respectfully submitted,

s/ W. Shawn Murnahan

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I filed the foregoing SEC's Response in Opposition to Motion Seeking Return of Receivership Funds via the Court's ECF system, which will provide copies to all counsel of record.

Dated this 28th day of November, 2018.

Respectfully submitted,

s/ W. Shawn Murnahan
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