IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. ANGELO A. ALLECA, SUMMIT WEALTH MANAGEMENT, INC., SUMMIT INVESTMENT FUND, LP, ASSET CLASS DIVERSIFICATION FUND, LP, and PRIVATE CREDIT OPPORTUNITIES FUND, LLC Defendants.	Civil Action No. 1:12-CV-3261-WSD

RECEIVER'S RESPONSE TO THE OBJECTION OF ALEXANDRIA CAPITAL, LLC TO THE RECEIVER'S MOTION TO APPROVE PLAN OF DISTRIBUTION AS AMENDED

Robert D. Terry, the Court-appointed Receiver in this action, hereby files his Response to the Objection of Alexandria Capital, LLC ("Claimant") to the Receiver's Motion to Approve Plan of Distribution, as Amended:

BACKGROUND AND FACTUAL SUMMARY

Claimant is a registered investment adviser located in Washington, D.C. In 2012, prior to the institution of the receivership, Claimant and Defendant Summit Wealth Management, Inc. ("Summit") entered into negotiations with respect to a

proposed transaction by which Claimant would purchase certain assets of Summit, namely the client relationships and accounts relating to Summit's Beverly Hills, California office. In his Objection filed with the Court Claimant attached a true and correct copy of the Letter of Intent ("LOI") for the proposed transaction signed by Claimant and Summit and dated as of July 27, 2012 [Doc. No. 127, Exhibit A]. The LOI describes the proposed purchase price of the assets to be purchased and other terms of the transaction. Section 10 of the LOI states:

> Termination. Each party hereby reaffirms its intention that this Letter as a whole, and Paragraphs 1 – 4 in particular, are not intended to constitute, and shall not constitute, a legal and binding obligation, contract or agreement between any of the parties, and are not intended to be relied upon by any party as constituting such.

The LOI concludes "Upon acceptance of the binding provisions of this Letter (those provisions set forth in Paragraphs 5 - 10) by each party, the parties will negotiate in good faith to prepare and enter into Definitive Agreements to govern the proposed Purchase, subject to the termination provisions set forth in Paragraph 10."

Although the LOI was signed by Summit and Claimant, Definitive Agreements were never executed and the parties never concluded the transaction that was the subject of the LOI. There is no mention in the LOI of any proposed loan from Alexandria to Summit.

During their conversations relating to the proposed transaction, Defendant

Angelo Alleca, the President of Summit, informed Augustine Hong, the President of Claimant, that Summit was experiencing "cash-flow problems" and needed money to alleviate those problems. (Objection ¶ 3). In response to that request, on September 4, 2012, Claimant wired One Hundred Thousand Dollars ($100,000.00) to a Summit bank account. Upon information available to the Receiver, Alleca used the funds received from Claimant for the general operation of Summit, or to further his fraudulent scheme that is the subject matter of this receivership, or both.

On June 8, 2017, the Receiver filed his Motion to Approve Plan of Distribution, which the Receiver amended by filing an amended Distribution Schedule on July 17, 2017 [Doc. No. 125, Exhibit 1]. In his Motion, the Receiver proposes that all allowed claims of the estate be paid distributions *pro rata* based upon the "Rising Tide" method. The Receiver also proposed that investor claimants and claimants who extended credit or other goods or services on account (referred to herein as "Trade Claimants") be treated equally. In other words, the Receiver did not propose multiple classes of claimants.

Claimant submitted a claim form with the Receiver in the amount of $100,000.00 on or about April 18, 2013. In the Motion to Approve Plan of Distribution, the Receiver proposes to allow Claimant's entire claim in the amount of $100,000.00 and, pursuant to the rising tide calculations applied to all claimants, proposed to pay Claimant $14,481.21 representing 14.48121% of the allowed claim

(set forth on the Distribution Schedule in the rounded percentage of 14.5%). Claimant's claim number is 480. This is, of course, a proposed initial distribution, and at such time as the Receiver or the Court determines additional funds held by the estate may be distributed, the Claimant will, as will all other allowed claimants, receive additional funds.

BASIS FOR CLAIMANT'S OBJECTION

Claimant contends that its claim should be entitled to a preference over all other claims and that its claim for $100,000.00 should be paid in its entirety before paying any other claimants. The basis for Claimant's objection is that it is neither a "client" nor a "trade creditor," but is instead the owner of a claim that "arises out of a pure theft of funds by Defendants." (Objection ¶¶ 10 through 12). According to Claimant, as a "victim of Defendants' fraudulent activities" and because Claimant "received nothing of value in return for providing the funds to Defendants," the circumstances make it "inequitable to reduce Claimant's claim by 85.52% of the amount lost as a result of Defendants' theft." Id. ¶¶ 12–13.

RECEIVER'S RESPONSE AND CITATION OF AUTHORITY

A receivership court has "broad powers and wide discretion to determine relief in an equity receivership." SEC v. Elliott, 953 F2d. 1560, 1566 (11th Cir. 1992). In cases involving distribution of assets by a receiver, courts usually choose between the tracing of assets to specific investors or a *pro rata* distribution to all

investors within a particular class. When victims seeking restitution are similarly situated, a *pro rata* distribution is the preferred method. SEC v. Drucker, 318 F. Supp. 2d 1205, 1206 (N.D. Ga. 2004). As the Elliott court held, where claimants occupy essentially the same position as other victims, "equity would not permit them a preference; for 'equality is equity.'" Elliott, 953 F2d. at 1570 (quoting Cunningham v. Brown, 265 U.S. 1, 13 (1924)).

In the present case, the Claimant occupies essentially the same legal position as other Trade Claimant victims. Many Trade Claimants extended credit to Summit in anticipation of being repaid but were never paid or repaid because of the failure and ultimate insolvency of Summit due to Alleca's theft and mismanagement. For example, Oasis Outsourcing III, Inc. ("Oasis"), a company that provided payroll services, advanced over $100,000.00 so that Summit could pay wages to its employees. It filed a claim for $110,060.09, which claim was allowed. Oasis, like Claimant, advanced funds to Summit to allow Summit to meet its ongoing cash-flow obligations, in that case, timely payment of salaries when they became due. Oasis's claim is similarly situated and is proposed to being allowed *pro rata* with that of Claimant.

Similarly, other entities provided credit to Summit, including a company that provided technical support and services, several companies that entered into unfulfilled leasing agreements to lease office space for Summit's various branch

offices, companies that leased equipment to Summit for it day-to-day operations, and a company that sold advisory accounts to Summit on the promise of future payments. Undoubtedly, many or most of these claimants were not informed by Summit or Alleca that the company was engaged in fraudulent conduct.

Claimant's contention that it "received nothing of value in return for providing the funds" can also be said for most, if not all, of the investors who invested in Summit's non-existent investment schemes. Claimant's claim is therefore not in any sense unique, but rather is of the same class of claim as those of other investors. As the Elliott court said, "To allow any individual to elevate his position over that of other investors…would create inequitable results, in that certain investors would recoup 100% of their investment while others would receive substantially less." Id. at 1569. Because the Claimant here cannot distinguish his claim or situation from those of many other victims, a *pro rata* distribution is the most equitable solution. See Drucker, 318 F Supp. 2d. at 1207; SEC v. Torchia (2016 WL 4445648, August 24, 2016) at *3.

Respectfully submitted this 30th day of August, 2017.

/s/ Robert D. Terry
Robert D. Terry
Georgia Bar No. 702606

/s/ Pratt Davis
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CERTIFICATE OF SERVICE

I certify that the foregoing was prepared with one of the font and point selections approved by the Court in LR 5.1B. I further certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice of electronic filing to counsel of record.

The foregoing was also served on the Summit Claimants who provided Receiver Confirmed Electronic Mail Information (as defined in the proposed Plan), by electronic mail to the electronic mail address confirmed by each Claimant, and by first class mail to all Claimants for whom the Receiver did not receive Receiver Confirmed Electronic Mail Information. The Receiver is maintaining proof of mailing.

The Receiver also served Alexandria Capital, LLC via first class mail at the following address:

Alexandria Capital
1030 15th Street NW
Suite 450
Washington, DC 20005

This 30th day of August, 2017.

/s/ Robert D. Terry
Robert D. Terry
Receiver

Parker MacIntyre
2987 Clairmont Road
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