

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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

STANLEY J. KOWALEWSKI and
SJK INVESTMENT MANAGEMENT,
LLC,

Defendants.

CIVIL ACTION NO.
1:11-cv-0056-TCB

**RECEIVER'S MOTION FOR APPROVAL
OF INVESTOR DISTRIBUTION PLAN**

S. Gregory Hays ("Receiver"), the court-appointed Receiver for Stanley J. Kowalewski, SJK Investment Management, LLC ("SJK"), and the SJK Special Opportunities Fund (the "Special Opportunities Fund") (collectively the "Receiver Estate") hereby moves this Court to approve his Investor Distribution Plan, filed contemporaneously herewith.

As set forth in more detail in the Investor Distribution Plan, SJK managed the Special Opportunities Fund and four other hedge funds (and the amounts invested therein): (1) the SJK Absolute Return Fund, Ltd.; ; the SJK Absolute

Return Fund, LLC; the SJK Long/Short Equity Fund, Ltd.; and the SJK Long/Short Equity Fund, LLC. Collectively, these four funds are referred to as the “SJK Funds.”

Consistent with his responsibilities for administering the assets of the Receiver Estate, the Receiver has developed the Investor Distribution Plan in order to return to the investors in the SJK Funds the proceeds of their investments that were invested with third-party hedge funds. The Investor Distribution Plan is the first step in a sensitive and complicated overall process of administering claims against the Receiver Estate and distributing assets to investors and other creditors. Because the Investor Distribution Plan addresses only distributions from the SJK Funds’ investments with third-party fund managers and does not affect the rights of other creditors of Kowalewski, SJK, or the Special Opportunities Fund, the Receiver seeks the Court’s approval at this time so investors can begin to receive distributions from the SJK Funds.

This Court has “extremely broad” powers and “wide discretion” to administer this equity receivership and in the fashioning of appropriate forms of relief. *See e.g., S.E.C. v. Capital Consultants, LLC*, 397 F. 3d 733, 738 (9th Cir. 2005); *S.E.C. v. Basic Energy & Affiliated Res., Inc.*, 273 F. 3d 657, 668 (6th Cir. 2001); *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992), *rev’d in part on*

other grounds, 998 F. 2d 922 (11th Cir. 1993); *S.E.C. v. Hardy*, 803 F.2d 1034 (9th Cir. 1986). The processes approved by a court and used in the administration of claims and distribution of proceeds in an equitable receivership are given great deference and may be disturbed on appeal only upon the showing of an abuse of discretion. *See Elliott*, 953 F.2d at 1567, 1569-70; *Hardy*, 803 F. 2d at 1037-38.

In cases such as this, where the cumulative amount of the loss exceeds the funds available for distribution, the Court is obligated to devise an equitable system of distribution with the goal of treating each victim of the investment fairly and as nearly equal as is possible. *See U.S. v. Cabe*, 311 F. Supp. 2d 501, 504 (D.S.C. 2003). “In deciding how receivership assets should be distributed to defrauded investors, the fundamental principle which emerges from case law is that any distribution should be done equitably and fairly, with similarly-situated investors or customers treated alike.” *S.E.C. v. Funding Res. Group*, 2002 U.S. Dist. LEXIS 1666, *12 (N.D. Tex. Jan. 31, 2002) (quotations omitted).

The Receiver’s Investor Distribution Plan treats all investors equitably and fairly. Generally, the Investor Distribution Plan proposes making distributions to investors in accordance with the governing documents of the SJK Funds, which will result in each investor receiving distributions based on its pro rata ownership interest in each of the SJK Funds. In order to provide the most equitable treatment

to all investors, the Plan also addresses several unique circumstances related to specific investors and investments, including investments in the Special Opportunities Fund.

WHEREFORE, for the reasons set forth above and in the Investor Distribution Plan, the Receiver respectfully requests that this Court approve the Investor Distribution Plan.

This 1st day of July, 2011.

/s/ J. David Dantzler, Jr.
J. David Dantzler, Jr.
Georgia Bar No. 205125
david.dantzler@troutmansanders.com
Thomas B. Bosch
Georgia Bar No. 068740
tom.bosch@troutmansanders.com
Natalie D. Sacha
Georgia Bar No. 558276
natalie.sacha@troutmansanders.com

TROUTMAN SANDERS LLP
5200 Bank of America Plaza
600 Peachtree Street, N.E.
Atlanta, GA 30308-2216
(404) 885-3000 (phone)
(404) 885-3900 (fax)

Attorneys for S. Gregory Hays, Receiver

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RECEIVER'S MOTION FOR APPROVAL OF INVESTOR DISTRIBUTION PLAN** was electronically filed with the Clerk of Court using the CM/ECF system, which automatically serves notification of such filing to all counsel of record.

A copy of this filing also has been provided by electronic mail to all investors in the SJK Funds and the Special Opportunities Fund.

This 1st day of July, 2011.

/s/ J. David Dantzler, Jr. _____

J. David Dantzler, Jr.

Georgia Bar No. 205125