APPENDIX

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Appendix A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 17-3572(L), 17-3576 (Con)

SECURITIES AND EXCHANGE COMMISSION, UNITED STATES COMMODITY FUTURES TRADING COMMISSION

Plaintiffs-Appellees,

ALAN M. COHEN,

Receiver-Appellee,

UNITED STATES OF AMERICA,

Intervenor,

v.

MARTIN A. ARMSTRONG,

Defendant-Appellant,

PRINCETON ECONOMICS INTERNATIONAL, LTD., PRINCETON GLOBAL MANAGEMENT LTD.,

Defendants.

Apr. 23, 2019

Before: Robert D. Sack, Peter W. Hall, and Christopher F. Droney, *Circuit Judges*.

SUMMARY ORDER

Appeal from the closing orders of the United States District Court for the Southern District of New York (Castel, *J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the closing orders of the District Court are AFFIRMED.

Defendant-Appellant Martin Armstrong appeals from the orders of the United States District Court for the Southern District of New York (Castel, *J.*) entered on October 6, 2017, authorizing case closure, approving the final plan of distribution submitted by the court-appointed receiver, Alan Cohen ("the Receiver"), and granting other ancillary relief. Armstrong contends that the District Court abused its discretion in granting the Receiver's motion to wind up the receivership because the SEC and the Receiver violated the Final Consent Judgment by refusing to return some of Armstrong's personal property. We assume the parties' familiarity with the facts, record of prior proceedings, and arguments on appeal, which we reference only as necessary to explain our decision to affirm.

The District Court placed into receivership the assets of Armstrong's companies and their subsidiaries and affiliates (collectively, the "Corporate Defendants") in 1999. The Receiver took possession of bank accounts held by the Corporate Defendants,[1] a

[1] None of the accounts transferred to the receivership were denominated in Armstrong's name except for one account, corresponding to a Corporate Defendant's 401(k) and profit-sharing plan. The Receiver, in his 2007 report, noted that he was unable to resolve a dispute regarding Armstrong's 401(k) account with the account administrator and "invited" Armstrong "to

corporate beach house property, and non-cash assets purchased with funds from corporate accounts.

Among the non-cash assets placed into receivership were several storage lockers in New Jersey and Pennsylvania, which had been leased or otherwise maintained by the Corporate Defendants. The Receiver maintained several additional storage lockers in New York to store furniture, office equipment, and computers recovered from the corporate offices, and furniture and other items recovered from the corporate beach house. All these storage lockers and their general contents were identified as receivership assets in the Receiver's 2001 and 2007 reports, which were produced to Armstrong when filed.

In 2008, the Receiver moved to approve a Plan of Final Distribution ("the Plan"), and the court set the Bar Date, *i.e.*, the deadline by which persons and entities were required to raise objections to the Plan and to assert claims to receivership property, or forever be barred from doing so. Proskauer Rose LLP, as Armstrong's counsel, filed a proof of claim requesting legal fees on behalf of itself and unspecified personal property on behalf of Armstrong. The proof of claim asked the court "to direct the Receiver to refrain from liquidating or abandoning any physical items" in the storage lockers until Armstrong had a chance to identify any personal property. Supp. App. 235. This proof of claim was later withdrawn, however, pursuant to a stipulated settlement agreement, which

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present his claim" for any funds in that account. Supp. App. 42 n.59. Armstrong never did so.

the District Court approved, and in which Armstrong explicitly waived any claim on the remaining receivership assets. Armstrong filed no objection to the Plan, and it was approved by the District Court.[2]

In 2017, the Receiver arranged for Armstrong to inspect the contents of the storage lockers. Ross Neglia, a paralegal employed by the Receiver's counsel, arranged with Armstrong for him to inspect the lockers and invited him to claim anything personal to him, "i.e., [items] not acquired with corporate funds and/or things like family pictures, books and clothes." App. 234. Neglia accompanied Armstrong and his son to the storage lockers in New Jersey and Pennsylvania over the course of two days. Following up in an e-mail, Armstrong thanked Neglia "for allowing me to take whatever I want from the storage units" and asked for a price quote for delivering "the whole lot" to Florida, so that Armstrong could "just sort out everything there." App. 253. The Receiver, understandably, did not arrange for such shipping, and no further steps were taken by Armstrong.

We review for abuse of discretion the District Court's decision to approve closure of the receivership. *See S.E.C. v. Credit Bancorp, Ltd.*, 290 F.3d 80, 87 (2d Cir. 2002).

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[2] In its order approving the Plan, the court stated that all non-excused "persons or entities with a claim that failed to file a proof of claim prior to the Bar Date" were "forever barred, estopped, and permanently enjoined from [] asserting a claim, whether directly or indirectly, against any of the Receivership Entities, Receivership Estates, Receivership Property or the Receiver." Supp. App. 270.

The District Court did not exceed the bounds of its discretion in authorizing case closure over Armstrong's objection that some of his personal property had not been returned to him. The District Court determined that Armstrong's objection was "substantially rebutted" by Ross Neglia's affidavit, which described Armstrong's visits to the storage lockers, and the acknowledgements signed by Armstrong, which identified personal items he took from the facilities, including photo albums, travel mugs, and a stamp catalog. Sp. App. 6-7. Though "the power of a securities receiver is not without limits," receivers appointed at the SEC's request are "equipped with a variety of tools to help preserve the status quo while the various transactions are unraveled" and are responsible for "marshal[ing] the assets" of the defendant. *Eberhard v. Marcu*, 530 F.3d 122, 131-32 (2d Cir. 2008) (internal quotation marks and alteration omitted). Here, the District Court reasonably found that the Receiver gave Armstrong an adequate opportunity to reclaim any personal possessions by giving Armstrong and his son unrestricted access to "take whatever [they] want[ed]" from the storage lockers, not limiting the time they spent doing so, and refusing only Armstrong's demand to have "the whole lot" shipped to Armstrong in Florida, which would have caused further delay, expense, and risk to the assets. App. 253.

Armstrong's contention that the District Court abused its discretion by allowing the SEC and the Receiver to violate the terms of the Final Consent Judgment is unsupported by the provision of the Final Consent Judgment on which Armstrong relies. That provision states that "the SEC will assist the Court,

receiver and/or the parties in returning to Armstrong property that belongs to him, to the extent that such property, if any, that the Court orders to be returned to Armstrong is in the possession, custody or control of the SEC." *Id.* at 147-48. The language relied on does not impose any obligation on the District Court. Notably, Armstrong never affirmatively moved or otherwise requested that the District Court identify some receivership assets as his personal property, hold a hearing on this issue, or order the return of his personal property.

Armstrong's argument that he is entitled to a jury trial under *Eberhard*, 530 F.3d at 132, is similarly unavailing. Armstrong explicitly waived the right to a jury trial in the Final Consent Judgment and never made a demand for a jury trial. *See* App. 148; Fed. R. Civ. P. 38(d). *Eberhard*, which held that a third party was entitled to a jury trial to determine ownership of property claimed by a receiver, does not bear on this analysis. 530 F.3d at 136-37.

We have considered all of Armstrong's remaining arguments and conclude that they are without merit. Accordingly, we **AFFIRM** the closing orders of the District Court.

FOR THE COURT:

Catherine O'Hagan Wolfe,
Clerk of Court

Appendix B

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 17-3572(L), 17-3576 (Con)

SECURITIES AND EXCHANGE COMMISSION, UNITED STATES COMMODITY FUTURES TRADING COMMISSION

Plaintiffs-Appellees,

ALAN M. COHEN,

Receiver-Appellee,

UNITED STATES OF AMERICA,

Intervenor,

v.

MARTIN A. ARMSTRONG,

Defendant-Appellant,

PRINCETON ECONOMICS INTERNATIONAL, LTD., PRINCETON GLOBAL MANAGEMENT LTD.,

Defendants.

Apr. 11, 2018

Before: Barrington D. Parker and Reena Raggi, *Circuit Judges*[*].

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[*] Judge Debra Ann Livingston has recused herself from consideration of this motion. Pursuant to Second Circuit Internal Operating Procedure E(b), the matter is being decided by the two remaining members of the panel.

MOTION ORDER

Appellees move to consolidate the above-captioned appeals, to dismiss the consolidated appeals, to impose Fed. R. App. P. 38 and leave-to-file sanctions against Appellant and his counsel, and to file sur-replies. Appellant moves for voluntary dismissal of his appeals, *see* Fed. R. App. P. 42(b), and opposes the imposition of sanctions and Appellant's filing of sur-replies.

Upon due consideration, it is hereby ORDERED that Appellees' motion to consolidate the above-captioned appeals is GRANTED, *see Chem One, Ltd. v. M/V Rickmers Genoa*, 660 F.3d 626, 642 (2d Cir. 2011); Fed. R. App. P. 3(b)(2), their motion to file sur-replies is GRANTED, and Appellant's motion for voluntary dismissal is DENIED, *see* Fed. R. App. P. 42(b).

It is further ORDERED that Appellees' motions to dismiss are GRANTED to the extent Appellant seeks to challenge his criminal conviction or sentence, or the final distribution plan with respect to corporate assets. *See* Order, No. 04-3091-cv (July 21, 2004) (holding that "Appellant, a non-settling defendant, does not have standing to challenge the settlement distribution"); Order, No. 08-5902-cv (April 10, 2009) (holding that challenges to criminal proceedings are not cognizable in civil case and challenges to civil proceedings are "precluded by the terms of the consent judgment, which includes an explicit waiver of the right to appeal"). However, Appellees' motions to

dismiss are DENIED to the extent Appellant seeks to challenge the district court's decision concerning the receiver's distribution of Appellant's personal property. The parties must limit their appellate briefs to the issue of whether the district court correctly held that the receiver had properly disposed of Armstrong's personal property and, if not, what further proceedings are required.

Finally, it is ORDERED that Appellees' motions for Rule 38 and leave-to-file sanctions are referred to the merits panel, which will be able to consider all of Appellant's pleadings. Appellant is warned that his failure to adhere to the limitation on his appellate brief imposed by the present order may result in the imposition of serious sanctions.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

Appendix C

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 99-civ-9667

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PRINCETON ECONOMICS INTERNATIONAL, LTD., PRINCETON GLOBAL MANAGEMENT, LTD., and MARTIN A. ARMSTRONG,

Defendants.

COMMODITY FUTURES TRADING COMMISSION,

Plaintiff,

v.

PRINCETON ECONOMICS INTERNATIONAL, LTD., PRINCETON GLOBAL MANAGEMENT, LTD., and MARTIN A. ARMSTRONG,

Defendants.

Oct. 6, 2017

ORDER

CASTEL, U.S.D.J.

Alan M. Cohen was appointed as Temporary Receiver in the above two proceedings on September 13, 1999. The Receiver proposed a Plan of Final Distribution (the "Plan") in or about June 20, 2008. The Court set a date for any objections to the Plan and none were received. After a hearing on September 28, 2008, the Court entered an Order on September 30, 2008 approving the Plan of Final Distribution. The Receiver was obligated to comply with the Plan, including its requirement for the filing of a Final Report. The Receiver has now filed his Final Report and has moved for Orders (I) authorizing certain case closure activities; (II) discharging the Receiver and enjoining claims against the Receiver and his professionals; and granting certain ancillary report. Defendant Martin Armstrong, who filed no opposition to the Plan, opposes the motion.

In substantial part, he does so on the ground that he believes he was denied the effective assistance of counsel in a criminal proceeding brought against him. *United States v. Armstrong*, (S1) 99 cr 997 (JFK). He asserts that the Receiver restrained assets that could have been used to retain counsel of his choice in the criminal proceeding. The Court notes that Judge Keenan who ably presided over this separate proceeding wrote as follows: "Armstrong is amply represented by an able team of four lawyers, one of whom I appointed as a result of the July 27, 2006 conference, and several paralegals." (99 cr 997(JFK); Order of Aug. 15, 2006.) Armstrong entered a plea of guilty before Judge Keenan on August 17, 2007.

Armstrong's present objections largely relate to the Plan itself and not to the Receiver's implementation of the Plan. Armstrong waived his right to object to the Plan by not objecting prior to its 2008 approval. Armstrong has been represented in the above-captioned actions by the Proskauer Rose LLP and/or Thomas V. Sjoblom, previously of that firm, from the period leading up to the approval of the Plan to the present. (Sjoblom Ltr., Aug. 29, 2008; Doc 441.) Of course, the Plan had no impact on Armstrong's guilty plea before Judge Keenan because it was entered before the Plan was proposed.

Armstrong's objection to a distribution to Yakult Honsa, Co. Ltd. ("Honsa"), at this juncture, is untimely. The settlement with Yakult was approved by Judge Owen on or about February 23, 2004 (Doc 322) and again as part of the approval of the Plan.

The Court has considered each of Armstrong's other objections. His objections concerning personal property are substantially rebutted by the affidavit of Ross Neglia, including the signed acknowledgements by Armstrong that are annexed thereto. The objections to the document disposal provisions are denied. The Receiver's one-year document retention proposal, in the context of all documents previously produced to Armstrong, is a reasonable one. Armstrong's other objections, several of which challenge rulings by Judge Owen in the period 1999 to 2001, are unsupported, untimely and/or without merit.

The Court has reviewed the entirety of the Receiver's Final Report, including the request for authorization to perform certain remaining tasks and

make remaining distributions. The Court has also considered the request for a discharge order which will include a limitation upon the Receiver's liability and an injunction against suits against him. The proposed relief is appropriate under the circumstances. With the final distribution, a total cash amount of $654,190,837 will have been distributed to the noteholder claimants which includes both distributions by the Receiver of about $80 million and payments by Republic New York Securities Corporation.

The undersigned is a relative newcomer to the case, having only presided over these actions since December 29, 2006. Alan M. Cohen has faithfully served as the Court-appointed Temporary Receiver since the closing days of the last century—a period now in excess of 18 years. He has not shirked his responsibilities nor complained that, at times, they became personally inconvenient, unpleasant or burdensome. Although he left his law firm, O'Melveny & Myers LLP, in 2003 to enter the world of finance (including service as a Managing Director of a major investment banking firm), he stayed with the assignment. He has elected not to file a Final Fee Application. He and his counsel Tancred Schiavoni enjoy the thanks and appreciation of this Court for their admirable service.

SO ORDERED.

Dated: New York, New York
October 6, 2017

[handwritten: signature]
United States District Judge