

No. 24-1192

---

**In the Supreme Court of the United States**

---

OVATION FUND MANAGEMENT II, LLC, PETITIONER

*v.*

NOSSAMAN LLP, ET AL.

---

*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

---

**BRIEF FOR RESPONDENT  
SECURITIES AND EXCHANGE COMMISSION**

---

JEFFREY B. FINNELL  
*Acting General Counsel*  
TRACEY A. HARDIN  
*Solicitor*  
MORGAN BRADYLYONS  
*Bankruptcy Counsel*  
*Securities and Exchange*  
*Commission*  
*Washington, D.C. 20549*

D. JOHN SAUER  
*Solicitor General*  
*Counsel of Record*  
*Department of Justice*  
*Washington, D.C. 20530-0001*  
*SupremeCtBriefs@usdoj.gov*  
*(202) 514-2217*

---

---

### **QUESTION PRESENTED**

Whether a federal court overseeing an equity receivership has the power to enjoin and extinguish, without the claimants' consent, claims that non-receivership entities seek to assert against non-receivership third parties.

## TABLE OF CONTENTS

|                      | Page |
|----------------------|------|
| Opinions below ..... | 1    |
| Jurisdiction .....   | 1    |
| Statement .....      | 1    |
| Discussion .....     | 6    |
| Conclusion .....     | 8    |

## TABLE OF AUTHORITIES

### Cases:

|                                                                                                                                                  |   |
|--------------------------------------------------------------------------------------------------------------------------------------------------|---|
| <i>Zacarias v. Stanford Int’l Bank, Ltd.</i> , 945 F.3d 883<br>(5th Cir. 2019), cert. denied, 141 S. Ct. 950,<br>and 141 S. Ct. 952 (2020) ..... | 5 |
|--------------------------------------------------------------------------------------------------------------------------------------------------|---|

### Statutes:

|                                                                        |      |
|------------------------------------------------------------------------|------|
| Anti-Injunction Act, 28 U.S.C. 2283 .....                              | 5, 6 |
| Securities Act of 1933, 15 U.S.C. 77a <i>et seq.</i> .....             | 2    |
| Securities Exchange Act of 1934,<br>15 U.S.C. 78a <i>et seq.</i> ..... | 2    |

# In the Supreme Court of the United States

---

No. 24-1192

OVATION FUND MANAGEMENT II, LLC, PETITIONER

*v.*

NOSSAMAN LLP, ET AL.

---

*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

---

**BRIEF FOR RESPONDENT  
SECURITIES AND EXCHANGE COMMISSION**

---

## **OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1a-35a) is reported at 129 F.4th 599. The order of the district court overruling objections to the global settlement and bar orders (Pet. App. 36a-56a) is available at 2022 WL 22912794. The order of the district court entering the Nossaman bar order (Pet. App. 57a-63a) is available at 2022 WL 17184569.

## **JURISDICTION**

The judgment of the court of appeals was entered on February 20, 2025. The petition for a writ of certiorari was filed on May 20, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **STATEMENT**

Gina Champion-Cain operated a Ponzi scheme through ANI Development, LLC (ANI), a company she controlled.

Pet. App. 7a. The Securities and Exchange Commission (SEC or Commission) brought a civil law-enforcement action against Champion-Cain and ANI. *Id.* at 11a-12a. The SEC alleged that, in operating the scheme, those defendants had violated the Securities Act of 1933, 15 U.S.C. 77a *et seq.*, and the Securities Exchange Act of 1934, 15 U.S.C. 78a *et seq.* Pet. App. 12a.

The district court froze the assets of Champion-Cain and ANI, appointed a Receiver for ANI, and temporarily stayed all litigation against ANI. Pet. App. 7a. Consistent with the terms of her appointment, the Receiver engaged in third-party litigation to marshal assets for distribution to harmed investors. See *id.* at 8a, 12a. This litigation proceeded separately from the adjudication of the SEC's enforcement claims.

Unable to pursue claims against ANI itself, some defrauded investors instead sued third parties in California state court, alleging that those parties had aided the ANI Ponzi scheme. Pet. App. 7a. Those third parties included Chicago Title Company (Chicago Title) and attorney Marco Costales and his Nossaman law firm (collectively, Nossaman). *Ibid.*

The district court also authorized the Receiver to bring claims against Chicago Title on ANI's behalf, and the court granted Chicago Title leave to file counterclaims against the Receiver. Pet. App. 13a-14a. Chicago Title and the Receiver reached a global settlement of their respective claims. *Id.* at 14a. In connection with the settlement, the court entered orders barring any litigation against Chicago Title and Nossaman on claims related to the ANI Ponzi scheme. *Ibid.*

Certain parties to state-court litigation against Chicago Title and Nossaman that had been extinguished by

the bar orders appealed the district court's entry of those orders. Pet. App. 8a. The court of appeals affirmed. *Ibid.*

1. Through ANI, Champion-Cain purported to offer investors a platform to make short-term, high-interest loans to fund state-required escrow accounts for California liquor-license applicants. Pet. App. 9a. Champion-Cain assured investors that their money would remain safely in escrow accounts at Chicago Title. *Ibid.* She also bribed several Chicago Title employees to provide false documentation indicating to investors that their funds had been placed into escrow accounts. *Id.* at 10a. In fact, Champion-Cain directed investor funds into a single holding account at Chicago Title to which she had unlimited access. *Ibid.*

Kim Peterson, a San Diego land developer and friend of Champion-Cain's, was an early investor in the scheme. Pet. App. 10a-11a. Peterson subsequently created several businesses through which he recruited other investors in return for additional interest payments, as well as equity and voting rights with respect to ANI. *Id.* at 11a. "To aid his recruiting efforts, Peterson retained attorney Marco Costales, a partner in the Nossaman law firm." *Ibid.* Costales falsely represented to several potential investors that he had vetted the ANI scheme and that investors were very unlikely to lose funds. *Ibid.*

Petitioner Ovation Fund Management II, LLC, managed an investment fund and invested more than \$50 million of its clients' money in the ANI Ponzi scheme, resulting in losses greater than \$25 million. Pet. App. 28a-29a.

2. In 2019, the SEC brought a civil law-enforcement action against Champion-Cain and the ANI entities, alleging that the defendants had violated the securities laws. Pet. App. 11a-12a. The district court appointed the

Receiver over ANI and its parent company, and the court temporarily stayed all litigation against ANI. *Id.* at 12a.

Petitioner filed suit against Chicago Title in California state court. See Pet. App. 12a, 29a. Petitioner sought to recover its investors' losses, as well as the management fees that petitioner itself had lost as a result of client departures. *Id.* at 29a. Chicago Title filed a cross-claim against Nossaman in this litigation. *Ibid.* Chicago Title settled many of the claims brought against it by defrauded investors, paying \$163 million to hundreds of investors, including \$47 million to petitioner. *Id.* at 13a, 29a. This amount covered all of the losses suffered by petitioner's investors; petitioner's attorneys' fees; and \$10 million of the management fees that petitioner claimed to have lost as a result of the ANI Ponzi scheme. *Id.* at 29a.

The district court separately permitted the Receiver to sue Chicago Title on ANI's behalf to recover amounts for which ANI would be liable to its defrauded investors. Pet. App. 13a-14a. The court also authorized Chicago Title to file counterclaims against ANI to recover the amounts Chicago Title had paid to settle investor claims. *Id.* at 14a. "The Receiver and Chicago Title ultimately reached a global settlement" that required "Chicago Title to pay an additional \$24 million to settle investors' claims." *Ibid.* The global settlement was conditioned on entry by the district court of an order barring any further litigation against Chicago Title on claims related to the ANI Ponzi scheme. *Ibid.* The global settlement also required the Receiver to support the entry of an order barring any litigation against Nossaman on claims related to the ANI Ponzi scheme if Chicago Title, Nossaman, and the Receiver were able to enter into a settlement agreement. *Id.* at 41a.

While the request for the Nossaman bar order was pending in the federal district court, petitioner sued Nossaman in California state court, and petitioner contemporaneously urged the district court not to enter the requested bar order. Pet. App. 29a. The district court approved the global settlement and entered the Nossaman bar order over petitioner’s objection. *Ibid.*

3. Petitioner appealed, and the court of appeals affirmed. Pet. App. 1a-35a.

On appeal, petitioner argued that the district court lacked authority to enter the bar order, and that the Anti-Injunction Act (AIA), 28 U.S.C. 2283, precluded the order’s entry. Pet. App. 15a, 29a-30a. The court of appeals acknowledged that, although a district court has wide discretion to determine relief in an equity receivership, the district court cannot reach claims that are independent of the receivership and that do not involve assets claimed by the receivership. *Id.* at 15a-16a (citing *Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883, 897 (5th Cir. 2019), cert. denied, 141 S. Ct. 950, and 141 S. Ct. 952 (2020)). But the court of appeals concluded that petitioner’s barred claims “substantially overlapped with the Receiver’s claims and that barring [petitioner’s] claims was necessary to preserve the ANI receivership estate.” *Id.* at 15a.

Specifically, the court of appeals found that petitioner’s claims against Nossaman would have substantially overlapped with claims that the Receiver could have brought against Nossaman because the two sets of claims would have sought to recover for the same losses caused by the same alleged conduct. Pet. App. 30a. Petitioner argued that the lost management fees it sought to recover from Nossaman represented losses unique to petitioner that the Receiver could not seek to recover.

*Id.* at 31a. But the court held that, even though petitioner sought to recover under a different legal theory than the other defrauded investors could assert, the fact that petitioner’s lost management fees resulted from the Ponzi scheme was “enough.” *Ibid.* The court explained that “ANI would have been liable to [petitioner] for the losses [petitioner] suffered as the result of the Ponzi scheme. The Receiver, in turn, could have recovered from Nossaman for any liability that ANI would have because of Nossaman’s participation, even unwittingly, in the Ponzi scheme.” *Ibid.*

The court of appeals also found that barring petitioner’s claims against Nossaman was necessary to protect the ANI receivership res because, if a defrauded investor succeeded in winning a judgment against Nossaman, Nossaman “could have pursued equitable indemnification claims against the ANI Receiver.” Pet. App. 33a. Petitioner argued that Nossaman would be unlikely to prevail on an indemnification claim, but the court rejected that argument, noting *inter alia* that having to litigate even a successful defense to an indemnification claim would diminish receivership assets. *Ibid.* With respect to petitioner’s AIA challenge, the court of appeals assumed without deciding that the AIA applied here, but found that the Nossaman bar order fell within the AIA’s exception for an order that enjoins state-court litigation and that is “necessary in aid” of the district court’s in rem jurisdiction over the receivership res. *Id.* at 35a (quoting 28 U.S.C. 2283).

#### DISCUSSION

During the district-court proceedings, the SEC took no position on either the approval of the global settlement or the propriety of the bar orders. Nor did the Commission participate in the appellate proceedings in-

volving the Nossaman bar order. In the court of appeals, petitioner submitted a brief on the merits, to which Nossaman filed an answering brief. See 22-56208 C.A. Doc. 29 (July 12, 2023); 22-56208 C.A. Doc. 38 (Oct. 20, 2023). The Receiver filed a joinder to the answering brief filed by Nossaman. See 22-56208 C.A. Doc. 39 (Oct. 20, 2023).

The Commission likewise did not participate in a related appeal through which Kim Peterson and his affiliated entities challenged the Chicago Title bar order. See 22-56206 C.A. Docket. And the SEC filed a notice stating that the agency did not intend to participate in a third related appeal, in which Peterson and his affiliated entities challenged a district-court order that had denied their claims in the receivership and had approved the Receiver's proposed distribution plan. See 23-55252 C.A. Doc. 35 (Nov. 16, 2023).

In at least one prior case in a court of appeals, the SEC has addressed the propriety of a district court's entry of a bar order. See SEC Br., *SEC v. DeYoung*, 850 F.3d 1172 (10th Cir. 2017) (No. 16-4013). But the position that the SEC took there was premised on the specific facts and circumstances of that case. The Commission's brief in *DeYoung* does not imply any particular view as to the propriety of the bar order entered in this case.

**CONCLUSION**

The Commission takes no position as to the appropriate disposition of the petition for a writ of certiorari.

Respectfully submitted.

JEFFREY B. FINNELL  
*Acting General Counsel*

TRACEY A. HARDIN  
*Solicitor*

MORGAN BRADYLYONS  
*Bankruptcy Counsel*  
*Securities and Exchange*  
*Commission*

D. JOHN SAUER  
*Solicitor General*

JULY 2025