

IN THE
Supreme Court of the United States

OVATION FUND MANAGEMENT II, LLC,
Petitioner,

v.

NOSSAMAN LLP, *et al.*,
Respondents.

KIM H. PETERSON, INDIVIDUALLY & AS TRUSTEE
OF THE PETERSON FAMILY TRUSTS, *et al.*,
Petitioners,

v.

KRISTA FREITAG, RECEIVER FOR ANI
DEVELOPMENT, LLC, AMERICAN NATIONAL
INVESTMENTS, INC., *et al.*,
Respondents.

ON PETITIONS FOR WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

The undersigned, counsel for Respondent Krista Freitag (the “Receiver”), in her capacity as receiver for Defendant ANI Development, LLC, Relief Defendant American National Investments, Inc., and their subsidiaries and affiliates (collectively, the “Receivership Entities”), hereby certifies that (a) the Receiver is not a nongovernmental corporation, (b) the Receivership Entities have no parent corporations, and no publicly held corporation owns the Receivership Entities, and (c) as to each Receivership Entity, that Receivership Entity has no parent corporation and no publicly held corporation owns 10% or more of that Receivership Entity’s stock.

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INTRODUCTION

Respondents Chicago Title Company and Chicago Title Insurance Company (together, “CTC”) have filed Briefs in Opposition to the Petitions filed by Ovation Fund Management II, LLC (“Ovation”) and Kim Peterson, Individually and as Trustee of the Peterson Family Trust, et al. (“Peterson”). The Receiver hereby joins CTC’s Briefs in Opposition. The Receiver also provides the following brief discussion to clarify and provide context regarding the unique circumstances in which the Global Settlement and associated Bar Orders at issue were approved by the District Court.

The Petitions should be denied for the reasons presented in CTC’s Briefs in Opposition, and also because the Global Settlement, under the unique circumstances here, and as approved by the District Court after years of balancing the interests of numerous stakeholders, produced a truly exceptional result for defrauded investors, with investor victims recovering a remarkable 90% to 95% of their net losses from the Ponzi scheme in issue, with some receiving 100% reimbursement for net losses.

ARGUMENT

Receiverships that arise from SEC enforcement actions, and the Ponzi schemes and other fraudulent schemes that these enforcement actions shut down, are complex and regularly involve many investor victims and other stakeholders. *See, e.g., SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005); *SEC v. Wealth Mgmt. LLC*, 628 F.3d 323, 330 (7th Cir. 2010); *CCWB*

Asset Inv., LLC v. Milligan, 112 F.4th 171, 177 (4th Cir. 2024). The overarching purpose of a receivership in an SEC enforcement action is to preserve and protect assets associated with fraudulent schemes and provide a recovery for investor victims. See *Zacarias v. Stanford Int’l Bank, Ltd.*, 945 F.3d 883, 895-96 (5th Cir. 2019); *SEC v. Torchia*, 922 F.3d 1307, 1311 (11th Cir. 2019); *SEC v. Vescor Cap. Corp.*, 599 F.3d 1189, 1194 (10th Cir. 2010); *SEC v. Wencke*, 622 F.2d 1363, 1372 (9th Cir. 1980).

Due to the complexities, unique challenges, and numerous investor victims and other stakeholders involved in these receiverships, District Courts are afforded very broad discretion to fashion equitable relief, considering the facts and circumstances of each case. *Capital Consultants*, 397 F.3d at 738; *Torchia*, 922 F.3d at 1316. SEC receiverships are not bankruptcy cases and are not governed by the Bankruptcy Code. See e.g. *Janvey v. GMAC, LLC*, 98 F.4th 127, 133-34 (5th Cir. 2024).

One critical feature of SEC receiverships that allows receivers and District Courts to administer estates and provide recoveries to investor victims efficiently is a stay of litigation against the entities involved in the Ponzi scheme. See *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The stay dramatically reduces external litigation costs and channels all claims for investor losses into the receivership case. The District Court then has broad discretion to evaluate competing claims, along with the unique facts, circumstances, and equities of the situation, and decide on a fair, equitable, and efficient means of distributing receivership assets. See *SEC v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992); *SEC v. Forex Asset Management LLC*, 242 F.3d 325, 331 (5th Cir. 2001).

This is precisely what occurred here. Over the course of four years, the District Court held hearings and considered the interests of the SEC, the Receiver, various investor groups, CTC, and other stakeholders. The District Court carefully balanced these interests in deciding how to proceed at each juncture of the case. After various investor groups had settled claims directly with CTC, the Court authorized the Receiver to proceed with a lawsuit against CTC on behalf of the receivership estate. That lawsuit resulted in the Global Settlement, through which the investor victims who were still engaged in litigation with CTC recovered 100% of their net losses, and other investors recovered between 90% and 95% of their net losses via the receivership distribution process. Pet. App. 40a, 53a-54a.

The Global Settlement and Bar Orders in favor of CTC and Nossaman were issued by the District Court in conjunction with orders approving investor claim amounts, resolving disputed investor claims, approving non-investor claims, approving a plan for distributing receivership estate assets and a distribution methodology, and authorizing the Receiver to make an interim distribution to holders of allowed claims. The Receiver subsequently made certain approved investor payments pursuant to the Global Settlement and an interim distribution of \$21 million in receivership funds shortly thereafter.

Although the goal of SEC receiverships is to provide a substantial recovery for investor victims of securities fraud, the percentage recoveries are often not particularly high because much of the money generated by the scheme and its principals is spent on luxurious lifestyles, marketing and promoting the scheme, or is otherwise

unrecoverable. For the investor victims here to recover between 90% and 95% of their net losses, with some recovering 100%, is genuinely exceptional. The District Court described the result as “remarkably favorable.” Pet. App. 40a. The Global Settlement and Bar Orders were an essential piece in a complex puzzle that resulted in this exceptional outcome for defrauded investors.

CONCLUSION

For the reasons discussed in CTC’s Briefs in Opposition and herein, the petitions for writs of certiorari should be denied.

Respectfully submitted,

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