

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES INVESTOR PROTECTION :
CORPORATION, :

Plaintiff, :

– against – :

BERNARD L. MADOFF INVESTMENT :
SECURITIES LLC, :

Defendant. :

Adv. Pro. No. 08-01789 (SMB)
SIPA LIQUIDATION
(Substantively Consolidated)

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In re: :

BERNARD L. MADOFF, :

Debtor. :

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IRVING H. PICARD, Trustee for the :
Liquidation of Bernard L. Madoff :
Investment Securities LLC, :

Plaintiff, :

– against – :

A & G GOLDMAN PARTNERSHIP; and :
PAMELA GOLDMAN :

Defendants. :

Adv. Pro. No. 14-02407 (SMB)

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CAPITAL GROWTH COMPANY; DECISIONS, :
INC.; FAVORITE FUNDS; JA PRIMARY :
LIMITED PARTNERSHIP; JA SPECIAL :
LIMITED PARTNERSHIP; JAB :
PARTNERSHIP; JEMW PARTNERSHIP; JF :
PARTNERSHIP; JFM INVESTMENT :
COMPANIES; JLN PARTNERSHIP; JMP :
LIMITED PARTNERSHIP; JEFFRY M. :
PICOWER SPECIAL COMPANY; JEFFRY M. :
PICOWER, P.C.; THE PICOWER :
FOUNDATION; THE PICOWER INSTITUTE :
OF MEDICAL RESEARCH; THE TRUST F/B/O :

Adv. Pro. No. 14-02408 (SMB)

GABRIELLE H. PICOWER; BARBARA
PICOWER, individually and as Executor of the
Estate of Jeffry M. Picower, and as Trustee for the
Picower Foundation and for the Trust f/b/o Gabriel
H. Picower,

Plaintiffs,

– against –

A & G GOLDMAN PARTNERSHIP; and
PAMELA GOLDMAN

Defendants.

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**MEMORANDUM DECISION ENJOINING
PROSECUTION OF DEFENDANTS' ACTION
AGAINST THE PICOWER PARTIES**

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STUART M. BERNSTEIN
United States Bankruptcy Judge:

In January 2011, Irving H. Picard, Esq. (“Trustee”), as trustee of the Securities Investor Protection Act (“SIPA”) liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”), settled the estate’s claims against the Picower Parties.¹ As part of the settlement, the

¹ The “Picower Parties” include Capital Growth Company; Decisions, Inc.; Favorite Funds; JA Primary Limited Partnership; JA Special Limited Partnership; JAB Partnership; JEMW Partnership; JF Partnership; JFM Investment Companies; JLN Partnership; JMP Limited Partnership; Jeffrey M. Picower Special Company; Jeffrey M. Picower, P.C.; the Picower Foundation; the Picower Institute of Medical Research; the Trust F/B/O Gabrielle H. Picower; and Barbara Picower, individually, and as executor of the estate of Jeffrey M. Picower, and as Trustee for the Picower Foundation and for the Trust F/B/O Gabriel H. Picower.

Court entered a permanent injunction in favor of the Picower Parties that barred creditors from asserting claims “duplicative or derivative of the claims brought by the Trustee, or which could have been brought by the Trustee against the Picower BLMIS Accounts or the Picower Releasees.” Since then, various former BLMIS customers have attempted, without success, to side step the restrictions imposed by the injunction and sue the Picower Parties to recover their lost investments.

The current litigation involves the third such attempt by A & G Goldman Partnership and Pamela Goldman (together, the “Goldman Parties”) to sue the Picower Parties in the United States District Court for the Southern District of Florida (the “Florida District Court”). They contend that Jeffry Picower was a “control person” of BLMIS under § 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and liable for BLMIS’ primary violations of the federal securities laws.

The Trustee and the Picower Parties commenced the above-captioned adversary proceedings to enjoin the Florida litigation contending that it violates the Court’s permanent injunction and the automatic stay. The Picower Parties also seek to prevent the Goldman Parties from filing another complaint against them. For the reasons that follow, the applications for injunctive relief are granted, but the Picower Parties’ request to enjoin the Goldman Parties from filing further pleadings is denied.

BACKGROUND

The background to these proceedings has been recounted in *A & G Goldman P’ship v. Picard (In re BLMIS)*, No. 12 Civ. 6109 (RJS), 2013 WL 5511027, at *1-3 (S.D.N.Y. Sept. 30,

2013) (“*Goldman I*”) and *Picard v. Marshall (In re BLMIS)*, 511 B.R. 375, 379-386 (Bankr. S.D.N.Y. 2014) (“*Goldman II*”), *aff’d*, 531 B.R. 345 (S.D.N.Y. 2015). The Court assumes familiarity with these decisions and limits the discussion to the facts necessary for the disposition of the pending applications.

A. The Settlement

As recounted in the cited decisions as well as many others, Bernard L. Madoff conducted the largest Ponzi scheme in history through BLMIS until its collapse and his arrest in December 2008. The Trustee eventually brought approximately 1,000 adversary proceedings to avoid and recover the transfers from BLMIS to its customers. On May 12, 2009, the Trustee sued the Picower Parties primarily to avoid and recover \$6.7 billion that the Picower Parties had withdrawn from their BLMIS accounts between December 1995 and the collapse of the Ponzi scheme, and subsequently discovered additional transfers that increased the total withdrawals to \$7.2 billion, *Goldman II*, 511 B.R. at 379-80, of which at least \$5 billion represented fictitious profits consisting of other people’s money. (*Complaint*, dated May 12, 2009 (“*Trustee Complaint*”) at ¶ 2 (Adv. Pro. No. 09-01197 ECF Doc. # 1).)² The *Trustee Complaint* asserted claims for turnover and preferences under the Bankruptcy Code, fraudulent transfers under New York and bankruptcy law and disallowance of any Picower Party’s claims. It alleged, among other things, that the Picower Parties knew or should have known that BLMIS was a Ponzi

² A copy of the *Trustee Complaint* is attached as Exhibit 3 to the *Declaration of Marcy Ressler Harris in Support of the Picower Parties’ Application for Enforcement of the Permanent Injunction*, dated Nov. 17, 2014 (“*Harris Declaration*”) (Adv. Pro. No. 14-02408 ECF Doc. # 4).

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