

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 04-60573-CIV-MORENO

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

MUTUAL BENEFITS CORP., *et al.*,

Defendants,

VIATICAL BENEFACTORS, LLC, *et al.*,

Relief Defendants,

**ORDER GRANTING RECEIVER'S MOTION FOR
FINAL DETERMINATION OF ALLOWED CLAIMS**

THIS CAUSE came before the Court upon Receiver's Final Omnibus Report on Claims and Motion for Final Determination of Allowed Claims (**D.E. No. 2172**), filed on **October 14, 2008**.

THE COURT has considered the motion, the oral argument of the parties, and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ADJUDGED that the motion is **GRANTED** as follows.

I. Applicable Basis for Investors' Claims

The Court adopts the Receiver's position regarding the applicable basis for the investors' claims. The Receiver shall use the initial dollar amount invested with MBC as the basis for the allowed amount of each investor's claim (the "dollars invested" approach) as it is the most equitable and practical basis for determining investors' claims in this Receivership. It is also the most common and most generally recognized approach to treatment of investor claims in an equitable receivership or bankruptcy proceeding involving a fraudulent investment scheme.

II. Disputed Claims and Miscellaneous Issues

The Court adopts the Receiver's position regarding the disputed claims and miscellaneous issues as the Receiver's recommendations are in the best interest of the investors and will result in the equitable distribution of the receivership estate. Specifically, the Court finds as follows.

(1) Claims for Investment Return

These are claims where the investors have sought the amount they expected to earn on their investment with MBC (in addition to the amount invested). These claims are disallowed as the promised returns were the product of fraud and claims for "profits" in Ponzi-scheme receiverships are generally rejected by the courts.

(2) Claims for Delay/Interest/Lost Time Value of Money

These are claims where the investors have sought damages for the delay in their policies maturing "on time" in the form of interest or some other form of opportunity cost. These claims are disallowed as it would be inequitable and contrary to the case law to recognize claims based upon the fraudulent representations made in a Ponzi-scheme. Moreover, even if the business of MBC had been conducted lawfully, the investors had no guarantee that an investment in a policy would mature at the time projected in the life expectancy estimate.

(3) Claims for Premiums Paid and/or Administrative Fees Paid

These are claims where the "Keeping Investors" have sought to recover the administrative fees and/or premiums paid to keep their policies in force since the disposition process for all of the policies was concluded. These claims are disallowed as the "Keeping Investors" specifically agreed to take on the administrative expense and shared premium burden for their policies when they opted to attempt to mitigate their losses by voting to keep their policies.

(4) Claims are Unstated or Unexplained or Non-Responsive

These are claims where the investors indicated that they did not agree with the recommended claim amount, but did not explain why or indicate the additional amount sought. These claims are disallowed as there is no practical way to give these investors an additional amount without a description of what additional amount is claimed.

(5) Claims for Consequential Damages

These are claims where the investors have sought some form of consequential damages as a result of their investment with MBC (e.g. payments to an attorney or other professional, pain and suffering). These claims are disallowed as recognizing them would be impractical (as the existence and amount of the claims are difficult to verify) and inequitable (as investors made different personal choices).

(6) Claims from Trade Creditors

Six of the trade creditors responded to the Receiver's notice by indicating that they wished to preserve their claims despite the Receiver's objections. The creditors' claims shall be subordinated to the individual investors' claims because, among other things, (1) this is an SEC enforcement action designed to protect the *investors*, not the creditors, (2) MBC's fraudulent conduct was directed towards its *investors*, not its creditors (which were paid substantial amounts already), (3) the investors as a whole are less able to bear the financial costs of MBC's conduct than are the creditors, and (4) four of these creditors provided lobbying or legal services to MBC, helping to keep it in business, thereby prolonging the fraud. The Court also disallows (1) Holland & Knight's Claim No. 3049061 to the extent it relates to work that was performed post-Receivership, (2) Aaron Reed & Associates, LLC's Claim No. 3048058 to the extent it includes a retainer fee for the month of April 2004, and (3) Franklin Trade Graphics's Claim No. 3048110 to the extent it includes post-Receivership finance charges.

(7) On-Going Maturities

Additional policies will inevitably mature between this ruling and actual receivership estate distribution. In order to prevent an investor from receiving the death benefits on their investment *and* their *pro rata* share of the receivership estate distribution, any claims on policies that mature before the distribution date shall be disallowed (as the investor will already receive the death benefits on the policy).

(8) Estate of Sally G. Richardson

This investor signed an irrevocable offer to sell her policy interest to another investor on her policy. By error, the death benefit proceeds were sent to Mrs. Richardson, instead of to the investor who bought her interest in the policy. The Receiver notified Mrs. Richardson of the error, but she has not responded. Instead, she has submitted claims on five other policies through the Claims Process. These claims are denied and any amount she would have received shall be transferred to the investor who should have received the death benefit proceeds on the sold policy. (Any amount that may be transferred to the investor shall not exceed the amount that the investor should have received from the sold policy.)

DONE AND ORDERED in Chambers at Miami, Florida, this 22nd day of October, 2008.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies provided to:
Counsel of Record