

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

**1:10-cv-457
(GLS/CFH)**

v.

**MCGINN, SMITH & CO., INC.
et al.,**

Defendants,

**JAT CONSTRUCTION CO., INC.
DEFINED BENEFIT PENSION
PLAN et al.,**

**Investors,
and**

**U.S. ATTORNEY'S OFFICE FOR
ND/NY,**

Intervenor.

SUMMARY ORDER

Investors identified in counsel's notice of appearance (hereinafter "Piaker claimants"), (Dkt. No. 910), filed a motion to "[e]nforce [c]ompliance [w]ith [c]ourt-[a]pproved [p]lan [o]f [d]istribution," (Dkt. No. 911). In sum, Piaker claimants request that the court order the Receiver to follow the

court-approved plan of distribution. (Dkt. No. 911, Attach. 1 at 6-9.) Piaker claimants argue that they are currently entitled to an interim pro rata distribution despite being plaintiffs at some point in a related pending federal civil case seeking recovery from accountants, auditors, and tax preparers who allegedly aided and abetted the McGinn Smith Ponzi scheme (hereinafter “Piaker action”). (*Id.*); (see *generally* Compl., Dkt. No. 1, 3:14-cv-1303.) In addition, Piaker claimants note that many of them have withdrawn from the Piaker action because they were informed by the Receiver and his staff that: (1) “they would not be eligible to receive their pro rata share of distributions from the receivership estate as long as they remained plaintiffs in the Piaker [a]ction”; (2) “that they should withdraw from the Piaker [a]ction if they ever wanted to receive their share of distributions from the estate”; and (3) “that they should not bother returning the investor questionnaires provided by the Receiver, since they were plaintiffs in the Piaker [a]ction.” (Dkt. No. 911, Attach. 1 at 5.)

In response, the Receiver points out that, consistent with the plan of distribution, he instructed all investors, including the Piaker claimants, to complete and return the investor questionnaires and W-9 forms to determine eligibility and calculate recovery for an interim distribution. (Dkt.

No. 915 at 3.) Also consistent with the plan of distribution, the Receiver informed investors that if the amount of potential collateral recovery could not yet be determined he would reserve monies for the claimant until the amount of collateral recovery, if any, and its effect on a claimant's distribution could be calculated. (*Id.*) The court-approved plan of distribution contains an offset provision for any collateral recovery obtained by a claimant. (Dkt. Nos. 847, Attach. 2 ¶ 21; 904.) Because Receiver's conduct does not run afoul of the court-approved plan of distribution, the motion by the Piaker claimants is denied.

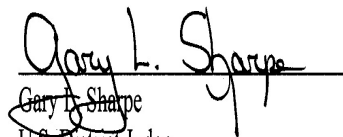
Accordingly, it is hereby

ORDERED that the "Motion to Enforce Compliance with Court-Approved Plan of Distribution" by the Piaker claimants is **DENIED**; and it is further

ORDERED that the Clerk provide a copy of this Summary Order to the parties.

IT IS SO ORDERED.

May 4, 2017
Albany, New York



Gary L. Sharpe
U.S. District Judge