UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

WEALTH MANAGEMENT, LLC;
JAMES E. PUTMAN;
AND SIMONE FEVOLA,

Civil Action No. 09-CV-506

Defendants, and

WML GRYPHON FUND, LLC;
WML WATCHSTONE PARTNERS, L.P.;
WML PANTERA PARTNERS, L.P.;
WML PALISADE PARTNERS, L.P.;
WML L-3, LLC;
WML QUETZAL PARTNERS, L.P.;

Relief Defendants

OBJECTION OF CREDITOR EDWIN WILSON TO THE RECEIVER'S PROPOSED PLAN FOR THE ALLOCATION OF THE ASSETS OF WEALTH MANAGEMENT LLC AND WML GRYPHON FUND LLC

The Edwin Wilson M.D. IRA ("Wilson"), by its attorneys, objects to the Receiver's Proposed Plan for the Allocation of the Assets of Wealth Management LLC and WML Gryphon Fund LLC (the "Proposed Plan") on the grounds that it does not distinguish between creditors and investors and unfairly discriminates against creditors by creating only one class of claimants, contrary to applicable equitable and legal principles. In support of the Objection, Wilson respectfully states as follows:

BACKGROUND ON THE OBJECTOR

1. Edwin Wilson, M.D. ("Wilson") initially invested $700,000[1] in WML Gryphon Fund LLC ("Gryphon") through his Segregated Profit Sharing Plan. Edwin Wilson M.D. Declaration (hereinafter Wilson Decl.) ¶2.

2. Wilson also invested other funds at Wealth Management LLC, including, but not limited to, WML Watch Stone Partners LP ("Watch Stone"). Wilson Decl. ¶ 3.

3. Wilson notified Gryphon, in writing, prior to March 31, 2008, that Wilson was withdrawing all funds invested in Gryphon and that the proceeds from liquidation of Gryphon were to be transferred to an IRA. Wilson Decl. ¶¶ 4-5 Ex. A.

4. Gryphon recognized the withdrawal request effective March 31, 2008, in writing. Wilson Decl. ¶¶ 5, 7, Ex. A and C.

APPLICABLE CONTRACT PROVISIONS

5. The Gryphon Confidential Offering Memorandum provides that upon receiving notice of an investor's request to withdraw, the Managing Member of Gryphon has the ***option*** of placing the investor's pro rata share of the Gryphon Fund in a segregated portfolio and liquidate those securities for the withdrawing Member's Account. If that option is exercised, the withdrawing investor bears the risk of a downward fluctuation of value. Upon receipt of the Wilson's withdrawal request, the Managing Member elected to pay Wilson by creating an account payable and/or note, fixing the amount due, and the Managing Member did not exercise the option to create a segregated portfolio. Therefore, Wilson was prohibited from enjoying the benefits of future capital appreciation by being an investor in Gryphon (the Fund would benefit from any capital appreciation that occurred between the time securities were liquidated and funds paid), and Wilson became a creditor to Gryphon for the value of the account payable or note recorded. Wilson Decl. ¶ 6 Ex. B.

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[1] This amount does not reflect subsequent re-investments in the Fund.

6. Wealth Management confirmed in writing to Wilson that he was no longer an investor in Gryphon as of the effective date of withdrawal and, upon information and belief, K-1's issued to federal and state taxing authorities by Gryphon recognized that fact. In at least three communications, representatives of Wealth Management confirmed that Wilson was now a creditor, rather than an investor, in Gryphon. Wilson Decl. ¶ 8-10 Ex. D-F.

7. In addition to the meetings, Gryphon acknowledged in writing that Wilson's status was converted from an investor to a creditor of the Fund. On at least one occasion a representative of Gryphon wrote to Wilson:

> ...your request for a complete redemption from WML Gryphon Fund LLC ("Gryphon") was accepted as of March 31, 2008. As of the date of acceptance of this redemption request, ***your capital was not subject to gains and/or losses generated by the ongoing operations of the Fund.***
>
> In accordance with the Operating Agreement, ***an account payable*** has been created in the Fund financials in your name to reflect the remaining balance...(Emphasis added.) Wilson Decl. ¶ 7 Ex. C.

8. On March 4, 2008, in a meeting Wilson and his spouse attended with Jim Putman and Benjamin Hayes of Wealth Management to plan for Wilson's retirement, Wilson was told, as reflected in Wealth Management minutes of the meeting that: "...Dr. Wilson's position will become a payable and no longer participate in the gains/losses of the fund." Wilson Decl. ¶ 8 Ex. D.

9. Wilson's creditor status of Gryphon was acknowledged by Wealth Management on at least two other occasions. Wilson Decl. ¶ 9 Ex. E; ¶10 Ex. F.

AMOUNTS OWED

10. According to Wealth Management's records (which Wilson will supplement by timely filing a Proof of Claim according to the schedule established by the Court), Wilson is owed approximately $729,390 from Gryphon. Wilson Decl. ¶ 11.

11. According to Wealth Management records (which Wilson will supplement by timely filing a Proof of Claim according to the schedule established by the Court), Wilson is owed approximately $279,066 from Watch Stone. Wilson Decl. ¶ 12.

THE RECEIVER'S PROPOSED PLAN

12. The Proposed Plan is unprecedented in its treatment of claims like those held by Wilson as the Receiver acknowledges, "...the Plan does not treat investors who made redemption requests as 'creditors' with unsecured claims entitled to be paid before investors who did not make redemption requests." Prop. Plan at 23.

13. The rationale for the non-recognition of creditor status for those investors who made redemption requests is that the "...Receiver believes it is inequitable to give some investors preferential access to the assets of what may ultimately be insolvent WM Funds, solely because some investors submitted redemption requests while others did not, and some such requests were honored, while others were not." Prop. Plan at 30.[2]

14. For the reasons set forth below, the Receiver's rationale that it is "inequitable to give some investors preferential access to assets," is without merit, and the Plan as proposed is inequitable.

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[2] The Receiver concedes that the Funds invested in illiquid assets, and it is undisputed that the offering memoranda made withdrawals effective at the end of a calendar quarter, so it should not be surprising that the investors who made the redemptions first would receive their Note payments before another group who made their withdrawals commencing at a subsequent quarter. In addition, the applicable operating agreements provide wide discretion as to how and when withdrawals will be recognized or paid—the Receiver has not identified any instance where the express provisions of the Operating Agreement, Partnership Agreement or Offering Memoranda were not followed in the manner in which redemptions were recognized or paid.

ARGUMENT

I. EQUITABLE PRINCIPLES OF RECEIVERSHIP AND BANKRUPTCY DISTINGUISH BETWEEN UNSECURED CREDITORS AND EQUITY SECURITY-HOLDERS AND GIVE PRIORITY TO CREDITORS OVER INVESTORS

15. As the Receiver recognizes, distributions must be allocated in accordance with applicable state law priorities. (Prop. Plan at 4.) Federal law requires as much. 28 U.S.C. § 959(b) provides:

> Except as provided in Section 1166 of Title 11, a trustee, receiver or manager appointed in any cause pending in any court of the United States, including a debtor in possession, shall manage and operate the property in his possession as such trustee, receiver or manager according to the requirements of valid laws of the State in which such property is situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof.

16. As the Receiver also acknowledges, an entity's obligations to its creditors on debts owed to those creditors must be paid before investors/equity holders may receive distributions on account of their equity interests. (Prop. Plan at 18, citing, *inter alia*, Wis. Stat. § 183.0905 and Wis. Stat. § 179.74.) Indeed, the Wisconsin Legislature has articulated what it deems to be the equitable order of distribution of the debtor's estate in a receivership proceeding. Wis. Stat. § 128.17(1). Under Wisconsin's statutory scheme, creditors' claims take priority over claims of equity investors. *Id.*

17. Analogous federal bankruptcy law similarly provides that claims of creditors take priority over claims of equity investors. *See, e.g.*, 11 U.S.C. §§ 507 ("Priorities") 1122 ("Classification of Claims and Interests"), and 1129 ("Confirmation of Plan"). It is a bedrock principle of federal law that claims and interests are inherently different and cannot be classified together. See, *e.g.*, Standard Gas & Elec. Co. *v. Taylor, In Re Deep Rock Oil Corp.*, 113 F.2d 266, 269 (10th Cir. 1940) (affirming judgment that, under mandate of the Supreme Court, principal and interest owing to note holders took priority over principal and dividends owed to preferred stockholders which, in turn, took priority over the equity interests of common stockholders).

II. WILSON IS A BONA FIDE CREDITOR

18. There can be no question that, with respect to the Gryphon accounts described above, Wilson was a creditor prior to commencement of this action. A "creditor" is one to whom a debt or obligation is owed, whether contractual or otherwise. *Black's Law Dictionary*, 424 (9th ed. 2009).

19. As noted in paragraph 5 above, the Offering Memoranda for Gryphon provides for redemption and gives the managing partner the option of either (i) placing the redeeming investor's *pro rata* share of the fund in a segregated portfolio and liquidating those securities for the investor, or (ii) immediately issuing a written promise to pay. The fund manager chose the latter option, thereby fixing the amount that was due to the redeeming investor and barring the investor from enjoying the benefits of future capital appreciation. By satisfying Wilson's redemption request with a written confirmation of its obligation to pay, Wilson became not simply an investor, but also a creditor.

III. THE RECEIVER'S PLAN IS INEQUITABLE AND CONTRARY TO STATE AND FEDERAL LAW

20. The receiver acknowledges that a " 'creditor' is a person who holds the claim against, and an 'investor' is a person who holds an equity interest in, WM and/or one or more of the WM funds." (Prop. Plan at 18.) These terms, as defined by the Receiver, are not mutually exclusive. *In re St. Charles Preservation Investors, Ltd.*, 112 B.R. 469, 474 (D.D.C. 1990. (The terms creditor and equity investor are not mutually exclusive.) As noted, some investors, including Wilson, have contract claims and therefore qualify as creditors. Nonetheless, the Receiver asserts that she "will seek an order barring investors from asserting claims as creditors on account of redemption requests." (Prop. Plan at 23, n.4.) Thus the receiver concludes that she "does not believe that any WM fund estate has any creditors who would be entitled to distributions before any investors are paid." (Prop. Plan at 23.) The Receiver's proposal to bar investors who also have contract claims by

virtue of exercising their contractual redemption rights is improper and should be rejected for three reasons.

21. First, although receiverships are equitable proceedings, claims accorded legal priority by statute, must be given precedence. *Wiswall v. Sampson*, 55 U.S. 52, 66 (1852) (where a statute gives a claimant priority over other claimants, a court of equity will preserve that priority).

22. Second, to deprive Wilson of its contractual rights would constitute an unconstitutional "taking" without due process of law.

23. Third, contrary to the Receiver's contention, to deprive Wilson of his rights would be unfair and inequitable. Wilson gave up its rights to participate in potential gains of an equity investment, and assumed creditor status prior to May 2008.[3] This creditor status was acknowledged by Wealth Management in oral and written communications, and was reported as such to federal and state taxing authorities. Having given up its rights to participate in the equity investment's "upside," Wilson became a creditor. The Receiver's Proposed Plan is inequitable for Wilson is now deprived of the benefit of his choate creditor contractual rights. In essence, Wilson is placed in the worst of both worlds: not having the right to participate in the benefits of capital appreciation, but required to fully accept the risks of capital loss, when he was no longer a participant in the Fund.

[3] According to the Receiver, in May 2008, a disclosure was made that certain officers of Wealth Management received improper compensation, which allegedly triggered redemption requests that would not otherwise have been made. There is no evidence whatsoever those investors who made redemption requests prior to May 2008 did so other than for lawful purposes and in the ordinary course of business that prudent accredited investors follow for their individual goals and objectives.

DATED: September 30, 2009.

s/ Bruce G. Arnold

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