UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. Case No. 09-C-506

WEALTH MANAGEMENT LLC, JAMES PUTMAN, SIMONE FEVOLA, et al.,

Defendants.

ORDER DENYING MOTION TO STAY ORDER CONFIRMING RECEIVER'S DISTRIBUTION PLAN PENDING APPEAL

On November 20, 2009, the Court entered an Order confirming the Receiver's Distribution Plan. (Doc. # 161.) On December 18, 2009, the Edwin Wilson M.D. IRA and the James P. and Sandra J. Verhoeven Revocable Trust, investors in one of the funds within the equitable receivership in this case, appealed the Court's Order. (Doc. # 180.) The same investors then filed a motion to stay the Court's Order Confirming the Receiver's Distribution Plan pending the appeal. (Doc. # 191.)

The movants argue that a stay under Fed. R. Civ. P. 62 is warranted because they are likely to succeed on the merits of their appeal, which is one of the four factors courts consider on such a motion. *See, e.g., Sofinet v. INS*, 188 F.3d 703, 706 (7th Cir. 1999) (general criteria for stays or injunctions pending appeal are: (1) whether there is a likelihood of success on the merits; (2) whether irreparable harm would occur if a stay is not granted; (3) whether the potential harm to the

movant outweighs the harm to the opposing party if a stay is not granted; and (4) whether the granting of a stay would serve the public interest). The Seventh Circuit has noted that more is required to show a "likelihood of success" on a motion for a stay pending appeal than on a motion for preliminary injunctive relief.

> To meet the threshold burden on likelihood of success in the preliminary injunction context, the applicant need only demonstrate that his chance of success on the merits at trial is "better than negligible." However, in the context of a stay pending appeal, where the applicant's arguments have already been evaluated on the success scale, the applicant must make a stronger threshold showing of likelihood of success to meet his burden. . . . [Movants] need to demonstrate a substantial showing of likelihood of success, not merely the possibility of success, because they must convince the reviewing court that the lower court, after having the benefit of evaluating the relevant evidence, has likely committed reversible error.

In re Forty-Eight Insulations, Inc., 115 F.3d 1294, 1301 (7th Cir. 1987) (citations omitted). The Court's Order which the movants appeal will be reviewed for an abuse of discretion. *SEC v. Enter. Trust Co.*, 559 F.3d 649, 652 (7th Cir. 2009).

In their motion, the movants do little more than rehash their argument that they should not be considered investors under the Receiver's Distribution Plan, but "creditors" under Wisconsin law governing limited liability companies. They also contend that they have a contractual right to be paid by the fund, which under the Distribution Plan would result in their being paid ahead of those deemed "investors." The Court has already considered and rejected these arguments, and finds that the movants have failed to make a substantial showing of likelihood of success on appeal.

Finally, the public interest would not be served by granting the stay movants request. As the Receiver notes, the SEC brought this enforcement action under the federal securities laws to protect the public interest, and the Receiver herself was also appointed to protect the public interest.

Granting a stay here, where movants have not made a showing that they are likely to prevail on appeal, would frustrate the purpose of this equity receivership. The motion is **DENIED**.

SO ORDERED this 3rd day of February, 2010.

s/ William C. Griesbach
William C. Griesbach
United States District Judge