

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	
v.	Civil Action No: 09-C-506
WEALTH MANAGEMENT LLC, <i>et al.</i> , Defendants, and WML GRYPHON FUND LLC, <i>et al.</i> , Relief Defendants.	

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

Faye B. Feinstein, the receiver ("Receiver") for Wealth Management LLC and the Relief Defendants, objects to the motion for a stay pending appeal (Docket No. 191), filed by the Edwin Wilson M.D. IRA and the James P. and Sandra J. Verhoeven Revocable Trust ("Movants"). Such a motion requires the Court to consider four criteria: (1) likelihood of success on appeal; (2) irreparable harm to the moving party; (3) a balancing of the harms to all parties, and (4) the public interest. Here, Movants merely repeat their earlier arguments and fail to establish a likelihood of success on appeal. Further, while they suggest that, without a stay, their appeal may be moot, that by itself does not automatically compel a stay. Rather, the balance of harms weighs more heavily in favor of providing a prompt distribution to some 300 investors, many of whom are elderly. Finally, since this is an action brought by the Securities and Exchange Commission ("SEC"), the public interest weighs in favor of denying a stay.

1. ***Movants Have Not Established a Likelihood of Success on Appeal.***

Movants' discussion of this factor consists of repeating arguments already rejected by this Court. This is not enough. "[I]n the context of a stay pending appeal, where the applicant's arguments have already been evaluated on the success scale [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 . . . has likely committed reversible error." *In re Forty-Eight Insulations, Inc.*, 115 F.3d 1294, 1301 (7th Cir. 1997). Therefore, whether Movants can establish a substantial likelihood of success requires a discussion – absent from the Motion – of the standard of review on Movants' appeal. *Forty-Eight Insulations*, 115 F.3d at 1301 (applicant must show likelihood of reviewing court finding reversible error); *In re Public Serv. Co. of N.H.*, 116 B.R. 347, 349 (Bankr. D.N.H. 1990) (applicant cannot show likelihood of success given "clearly erroneous" standard of review).

Determinations as to distribution plans, including classifications thereunder, are reviewed for an abuse of discretion. *SEC v. Enterprise Trust Co.*, 559 F.3d 649, 652 (7th Cir. 2009). For the Seventh Circuit to find an abuse of discretion, it would have to find that "no reasonable person could agree" with the district court's decision. *Nelson v. City Colleges*, 962 F.2d 754, 755 (7th Cir. 1992). Summarily rehashing arguments already rejected does not begin to explain how Movants can "establish the strong showing of likelihood of success required to obtain a stay." *Forty-Eight Insulations*, 115 F.3d at 1304.

2. *A Stay Is Not Automatically Granted Merely Because an Appeal May*

Become Moot. Movants correctly observe that, if a stay is not entered, funds currently available for distribution may be distributed before a ruling on the appeal. At bottom, this argument is a complaint that, absent a stay, Movants' appeal may become moot; however, it "is well settled that an appeal being rendered moot does not itself constitute irreparable harm." *203 N. LaSalle*, 190 B.R. at 598.

3. ***Third Parties Will be Harmed by a Stay:*** Movants dismiss the harm they would impose on approximately 300 other investors, most elderly and many retired, who await distribution of what, for many of them, is all that remains of their retirement savings. (Motion at 3.) Resolving Movants' appeal will likely take nine months to a year, or more. The Receiver proposed her distribution plan and this Court approved it during the first six months of this case. The Plan ensures all investors a fair distribution as promptly as possible. For Movants to gamble on a low-probability appeal, while shifting the cost of delay to hundreds of investors who would have to "wait the duration of an appeal period [for distributions,] would constitute substantial prejudice." *In re Akron Thermal, Ltd. P'ship*, 414 B.R. 193, 208 (N.D. Ohio 2009) (stay of chapter 11 confirmation order denied); *see also 203 N. LaSalle*, 190 B.R. at 598 (substantial hardship to non-movants includes delay in payment to creditors).

4. ***A Stay is Contrary to the Public Interest.*** Movants dismiss in a footnote (Motion at 2 n.1) that the public interest would be implicated by a stay. Yet the public interest is a real concern here. The SEC brought this action under the federal securities laws

precisely "to protect the public interest by insuring the stability of the markets and integrity of representation by [market] participants". *Krull v. SEC*, 248 F.3d 907, 915 (9th Cir. 2001). This Court appointed the Receiver to protect that public interest. Granting a stay, without a showing of likelihood of success, would impose further delay on hundreds of investors who have already lost a great deal and would undermine the purpose of the equity receivership, which is the "orderly and efficient administration of the estate by the district court", *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). Thus, a stay would be contrary to the public interest.

For the above-stated reasons, the Court should deny the Motion.

DATED: December 30, 2009

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