

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

SECURITIES AND EXCHANGE COMMISSION	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 3-09CV0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD.,	§	
ET AL.,	§	
	§	
Defendants.	§	

**RECEIVER’S OPPOSITION TO
MOTION TO APPOINT EXAMINER
(DOCKET NO. 34)**

An examiner is unnecessary and appointing one would needlessly deplete Receivership assets that already are insufficient to satisfy all claims. David Haggard, Steve Slewitzke, and Michael Mansur (“Brokers”),¹ who have asked the Court to appoint an examiner, are former investment brokers with Stanford Group Company. They sold fraudulent Stanford CDs to their customers – and were paid hundreds of thousands of dollars for doing it.

Brokers have not established or even suggested that their own customers (or the thousands of other Stanford customers) have consented to the request for an examiner or Brokers’ efforts to act on their behalf. This is an important omission because there is a conflict of interest between the Brokers and their customers, and the relief requested would diminish the assets available to satisfy the claims of Stanford customers. Furthermore, these Brokers directly

¹ Brokers are strangers to this litigation – they are neither parties nor potential parties as they have not filed a motion to intervene. Persons who are not parties to a lawsuit may not file motions with the court. *Yazdchi v. American Honda Finance Corp.*, 2006 WL 2456495, *3 (N.D. Tex. Aug. 23, 2006); *see also, Cook v. Winters*, 645 F. Supp. 158, 160 (S.D. Tex. 1986) (persons not granted permission to intervene not parties and could not properly seek dismissal of action).

and substantially profited from the sale of fraudulent CDs, and thus their profits are subject to claims by the Receiver to recover funds for the benefit of the true victims, the Stanford customers.²

The appointment of Ralph Janvey as Receiver in this case and the actions he has taken to provide Stanford customers with up-to-date information and to address their concerns renders the role of an examiner unnecessary. In fact, through the Receiver's efforts, the Court has authorized the release of more than 85 percent of the customer accounts originally frozen under the Receivership Order. The steps the proposed examiner intends to take are just a repeat of the Receiver's actions. In short, an examiner would be duplicative and nothing more than a drain on the already financially-troubled Receivership Estate.

I. BACKGROUND

On February 17, 2009, the Court entered an order appointing Ralph S. Janvey as Receiver in this case and directed him to marshal and take custody of the Receivership Estate and any "assets traceable to assets owned or controlled by the Receivership Estate." *See* Order Appointing Receiver ¶ 5(b); *see also* Amended Order Appointing Receiver (March 12, 2009) ("Receivership Order") ¶ 5(b). The Court has charged the Receiver to preserve the Receivership Estate for the maximum benefit of all claimants. Receivership Order at ¶ 5(j).

² In the past two years, Brokers have been paid hundreds of thousands of dollars in commissions on Sales of CDs:

	2007 Commissions SIB Net Payout	2008 Commissions SIB Net Payout	Client Dollars in CDs as of 1/30/09
David Haggard	\$212,830	\$406,048	over \$56 million
Steve Slewitzke	\$104,703	\$203,498	over \$20 million
Michael Mansur	\$62,477	\$156,687	over \$16 million

Stanford used an elaborate and sophisticated incentive program to keep brokers such as Movants highly motivated to sell Stanford International Bank, Ltd. CDs to bring in new money and to minimize redemptions of SIB CDs previously sold. The program included high commission rates, bonuses, and forgivable loans, all closely tied to maintaining SIB's portfolio of CDs. The Stanford customers, who collectively stand to lose hundreds of millions of dollars, may find an examiner aligned with brokers who profited from the fraud unacceptable.

From day one, the Receiver became responsible for the broker/dealer operations, including compliance with numerous federal regulations and the Receivership Order, which prohibited additional sales of the certificates of deposit (“CDs”) and the SAS mutual fund wrap program. The Receiver’s only practical option to ensure compliance with both federal regulations and the Receivership Order was to shut down the operations. The shut-down also was necessitated by a liquidity problem at the Stanford companies; there was insufficient cash to pay employees and carry on normal business operations.

To protect the Stanford customers and preserve the assets – one of the Receiver’s fundamental duties – the Receiver requested a hold on all accounts at Pershing LLC and JP Morgan Clearing Corporation.³ Without the freeze, the Stanford brokers and investment managers, who in many cases had discretionary authority to control customer accounts, could have ordered millions of dollars to be transferred out of customer accounts. The freeze allowed the Receiver to take away that ability and ensure that the money entrusted to Stanford was safely out of reach of anyone who might have participated in the fraud.

Brokers contend that the size and scope of the Receivership call for the immediate appointment of an examiner who can act as the “voice” of Stanford customers. Brokers propose the Court appoint Steve Harr of Munsch, Hardt, Kopf & Harr, P.C., who they say is an experienced examiner. It appears Mr. Harr personally initiated the request for his own appointment.⁴ Mr. Harr proposes to establish communications with Stanford customers through

³ The Receiver was acting under the Receivership Order and a TRO entered by the Court on February 17. *See* Temporary Restraining Order, Order Freezing Assets, Order Requiring an Accounting, Order Requiring Preservation of Documents, and Order Authorizing Expedited Discovery entered February 17, 2008. Since then, the Court has entered Preliminary Injunctions against Defendants R. Alan Stanford and James M. Davis and Agreed Preliminary Injunctions as to the Stanford entities and Laura Pendergest-Holt.

⁴ Mr. Harr contacted Receiver’s counsel to request the appointment. The Receiver declined Mr. Harr’s invitation. Shortly thereafter, Mr. Quilling filed the Brokers’ motion requesting Mr. Harr’s appointment. Mr. Quilling and Mr. Harr are accustomed to working together; usually Mr. Quilling hires Mr. Harr at the expense of defrauded

a website and hotline and to hire a number of professionals to assist him in his work. *See* Motion at 4. He also proposes to “immediately identify the challenges in this case and state the impact upon customers and their sentiments, including relief from the freeze of the client accounts.” *Id.* Brokers request that the fees and expenses incurred by Mr. Harr and any professionals he hires be paid from the Receivership Estate. These efforts would be duplicative of the process and procedures the Receiver already has in place.

II. ARGUMENT

A. **The substance of the steps suggested by the proposed examiner already have been undertaken by the Receiver.**

There is no need to appoint an examiner in this Receivership. The Receiver is performing his duty to act for the benefit of all claimants to the Receivership Estate.

1. **The Receiver has communicated with the customers early and often.**

The Receiver undertook efforts early in the case to establish prompt communications with customers, creditors, and Stanford employees concerning the status of the Receivership. Before Brokers even filed their motion, the Receiver established a website accessible to the public. The website is located at www.stanfordfinancialreceivership.com. It contains recent developments, press releases, important court documents, links to the SEC and FINRA, answers to frequently-asked questions, and announcements for Stanford employees. *See e.g.*, App. 1-49. Stanford customers and others can communicate with the Receiver through an email feature on the website. The website is updated regularly and sometimes more than once a day, as events

customers. A review of cases revealed four instances in which Mr. Harr acted as examiner, and Mr. Quilling was involved in all of those cases. In three, Mr. Harr became an examiner upon an unopposed request by Mr. Quilling, acting as receiver. In the fourth case, Mr. Quilling was the plaintiff in the action. To state the obvious, Mr. Quilling is in quite a different capacity in this case – acting as counsel for Brokers who profited from the fraud, not as a receiver or claimant.

warrant additional communications. Substantially all of the information on the website is available in both English and Spanish.

More than 8,000 emails have been sent to the email address listed on the Receiver's website, and the Receiver's team has worked diligently to address the issues raised in those emails. The communications firm hired by the Receiver reviews all emails and sorts them into categories. The Receiver is advised of common themes in the emails so that responsive "Frequently Asked Questions" ("FAQs") can be posted on the Receiver's website. Individual replies cannot be sent to all emails because of the large volume and the cost of responding to all, but the most pressing emails are forwarded to the Receiver's team for handling as appropriate.

Since February 17, the Receiver has posted seven press releases and statements concerning the Receivership, including statements about the status of the Receivership, mutual funds assets, customer accounts, and Stanford employees. *See* App. 3-24. He has posted ten sets of FAQs. The FAQs cover issues of greatest concern to the customers and Stanford employees: brokerage account assets, sell orders, procedures for transfer of certain customer brokerage accounts, and employee benefits. *Id.* at 25-48. And out of concern for customers and employees who may not have access to court documents, the Receiver has posted the Court's orders that generally will be of most interest to them: the Receivership Order, the Preliminary Injunctions, and the orders relating to the customer accounts. *Id.* at 49.

2. The Receiver, in the performance of his duties, has expeditiously and diligently responded to the needs of the investor community.

The Receiver assembled a team and has been working as fast as possible to address the concerns of Stanford's customers. The Receiver has retained a business restructuring adviser with broker-dealer expertise, a forensic accounting and information technology expert, a brokerage operation specialist, a communications firm, two law firms and a security consultant

to coordinate security at the Stanford facilities. *See* App. 52, Excerpts from Transcript of Proceedings for Preliminary Injunction/TRO Hearing Before the Honorable David C. Godbey, March 2, 2009 (“Transcript”). These advisors have assisted him in identifying the challenges in the case and solutions to address those challenges.

The Receiver and his experts have developed and are implementing a plan to identify and release⁵ thousands of accounts held by Stanford customers. The Receiver’s ultimate goal is to allow the prompt release of all accounts that did not benefit from the alleged fraud. Accordingly, as he identifies accounts that are not likely to be associated with the fraud, the Receiver has been requesting orders from the Court that allow the release of these accounts. For those customers who still have accounts that are frozen, the Receiver is developing a certification process through which the customers can show that their account is not associated with fraudulent activities or proceeds. To date, the Receiver has identified and obtained court approval to release approximately 28,000 of the approximately 32,000 accounts originally frozen. The released accounts represent about \$4.6 billion in assets.

First, based on the Receiver’s request, on March 5, 2009, the Court authorized a release of certain Stanford customer accounts at Pershing containing assets of less than \$250,000 as of month-end February 2009.⁶ *Order Authorizing Release of Certain Customer Accounts* (March 5,

⁵ Because of the financial condition of the Stanford entities, the Receiver has determined that Stanford Group Company will not be able to continue operating as a broker/dealer. All Stanford brokers, registered representatives and financial advisors were terminated as of March 6, 2009. Accordingly, the Receiver has been working to expedite customers’ transfers of their accounts to other brokerage firms. The Receiver notified customers that they would not be able to gain access to their accounts through Stanford Group Company and worked extensively with clearing agents, brokers and other interested parties, including Pershing, to determine the most expeditious process for allowing customers to transfer their accounts to other institutions so they could have access to and control over their accounts upon release.

⁶ Even before that, on February 23, 2009, the Receiver announced that mutual fund and 529 plan assets of Stanford customers held outside Stanford’s custodial relationships with Pershing and J.P. Morgan were not within the scope of the account hold. The Receiver found that these accounts were typically held directly in the name of the customer by the mutual fund.

2009) (Doc. #117). The accounts made available for release in this category totaled approximately 12,000 and contained aggregate assets of approximately \$500 million. After additional analysis and investigation, the Receiver made a second request to release accounts and, on March 12, 2009, the Court authorized the release of approximately 16,000 additional accounts located at Pershing and J.P. Morgan containing aggregate assets of approximately \$4.1 billion. *Second Order Authorizing Release of Certain Customer Accounts* (March 12, 2009) (Doc. #156) (“March 12 Order”). The Receiver has published on the receivership website information concerning the specific steps customers with released accounts must follow to transfer their accounts to other brokers and thereby gain access to assets in their accounts.

3. The Receiver has developed a plan for the accounts that remain frozen.

The Receiver is providing a relief mechanism for those customers whose accounts remain frozen. His intent is to limit the frozen accounts to: (1) those affiliated with persons who are associated with the fraudulent activities;⁷ or (2) those associated with fraudulent proceeds (and have a balance greater than \$250,000). The Receiver has identified approximately 3,500 accounts that fit into one of these two categories.⁸ The Receiver needs more data and time to determine whether the accounts are associated with fraudulent activities or proceeds. Accordingly, the Receiver is developing a certification process to allow those customers whose accounts remain frozen to provide information to the Receiver and request relief.

⁷ Two of the Brokers have accounts that fall into this category: Slewitzke has two accounts with a total value of \$183,362 and Mansur has five accounts with a total value of \$95,516. These accounts present another point of conflict between the Brokers and their customers; no doubt the customers would like to see these funds become part of the assets that will be distributed to the Stanford victims if it is proven that Slewitzke or Mansur were involved in the alleged fraud.

⁸ The Court already has made findings of fact and conclusions of law that R. Alan Stanford engaged in fraudulent conduct “including misappropriating investor funds and making material misrepresentations and omissions concerning, among other things, SIB’s certificate of deposit program, the nature and liquidity of SIB’s assets, the existence of related party transactions, purported loans from SIB to Stanford, purported capital infusions into SIB, and the SAS program.” *Preliminary Injunction and Other Equitable Relief as to R. Allen Stanford* ¶ 11.

To make the process easier for these customers, the Receiver is setting up an on-line application that customers can use to provide the Receiver with the requested information. The on-line application can be made available within a week after it is approved by the Court. The Receiver anticipates the certification process will provide a non-binding mediation process for all accounts for which release is denied, and if that does not resolve the issue, the Receiver will seek a status conference with the Court. Through the status conference, customers will be able to present the denial for court review.

Clearly, an additional “voice” for the Stanford customers is unwarranted. The Receiver established early communications with customers and other claimants and he continues to communicate with them on a regular basis through the website. He rapidly established processes and procedures to address the needs and concerns of the investor community. And, in three weeks, he identified and obtained court approval to release more than 85 percent of the accounts originally frozen under the Receivership Order. The examiner’s assistance is not needed.

B. The appointment of an examiner will result in unnecessary expenditures of Receivership assets.

The fees and expenses of the proposed examiner would be an unnecessary additional drain on the limited financial resources of the Receivership Estate. The Receiver has advised the Court that the financial condition of the Estate is dire. *See* App. 53. He anticipates the Estate’s final assets will be only a fraction of the anticipated claims. *Id.* The Receiver already has engaged the professionals he needs to assist him in administering the Estate. Under the circumstances, it would be wrong to increase administrative expenses by appointing an examiner and an additional team of professionals whose services are not needed and who would merely duplicate the work of the Receiver. The Receiver’s intention and duty is to maximize the assets in the Receivership Estate for the benefit of the claimants, and the expense of a shadow receiver

functioning as an “Examiner”, supported by his own redundant team of professionals, will subtract from, rather than add to, the pool of funds that can be distributed to customers and other victims of the Stanford fraud.

III. CONCLUSION

Mr. Harr’s assistance to funnel information to and from the Stanford customers is an unnecessary complication in an already complex case, and it is proposed by Brokers who do not represent – and indeed may be in conflict with – the broad community of Stanford investors. An examiner’s involvement will not add anything and will significantly diminish the funds that will be available to satisfy claimants. The Receiver asks the Court to deny the Motion to Appoint Examiner.

Dated: March 16, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

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CERTIFICATE OF SERVICE

On March 16, 2009, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Timothy S. Durst

Timothy S. Durst