

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES SECURITIES)
AND EXCHANGE COMMISSION,)
)
Plaintiff,)
) Case No. 1:16-CV-01752-LMM
v.)
)
HOPE ADVISORS, LLC, KAREN)
BRUTON, TODD WORTMAN, and)
DAWN ROBERTS,)
)
Defendants.)
_____)

**AMENDED MOTION AND MEMORANDUM OF LAW TO APPROVE
AMENDED DISTRIBUTION PLAN**

MOTION

On January 26, 2021, Plaintiff Securities and Exchange Commission (the “SEC” or “Commission”) filed a Motion and Memorandum of Law to Approve the Distribution Plan in this matter [Dkt. No. 144]. In the Motion, Order, and the Plan of Distribution (“Plan”), the Commission in error included reference to relief defendant, Just Hope Foundation. The Commission had previously voluntarily

dismissed any claims against Just Hope Foundation with prejudice on October 11, 2018 [Dkt. No. 137]. The Commission now amends its Motion and accompanying documents to exclude Just Hope Foundation as relief defendant.

Additionally, the Commission also now amends the definition of “Excluded Party” as found in the Plan, under Section II, Defined Terms. The prior definition was overly expansive. Excluded Party is now defined in the amended distribution plan (the “Amended Plan” or “Plan”) as “Defendants, affiliates, or controlled entities who served in such capacity during the Relevant Period, and their assigns, creditors, heirs, and distributes”.

The Commission now moves the Court for an order to approve the Commission’s proposed Amended Plan to distribute funds paid by Hope Advisors, LLC (“Hope”), Karen Bruton (“Bruton”), Todd Wortman (“Wortman”), and Dawn Roberts (“Roberts”) (collectively, “Defendants”), and any future funds to be paid by Defendants to investors harmed by Defendants’ conduct described in the Amended Complaint.

MEMORANDUM OF LAW

I. FACTS

On August 30, 2017, the Commission filed an Amended Complaint against the Defendants. The Amended Complaint alleged that Hope and Bruton

perpetrated a scheme to charge unearned fees to Hope Investments LLC (the "HI Fund"), a fund they managed. The Amended Complaint further alleged that two employees of Hope, Wortman and Roberts, aided and abetted this fraud.

The scheme worked as follows: The HI Fund employed a "high-water-mark" fee structure pursuant to which Hope would not be entitled to a fee unless the HI Fund's "realized" gains exceeded any accumulated "realized" losses. From at least November 2014 until the Commission filed its Amended Complaint, Bruton directed Hope to engage in a continuous pattern of trading to deceive investors in the HI Fund and circumvent that fund's high-water-mark fee structure. The fraudulent scheme exploited the HI Fund's disclosed practice of calculating the incentive fee exclusively based on monthly net "realized" gains — "unrealized" gains and losses (*i.e.*, those attributable to open trading positions at a month's end) were not included in the fee calculation. Each month, Bruton (or other Hope employees at her direction) caused the HI Fund to use an options trading strategy ("Scheme Trades") for the purpose of realizing a sufficiently large gain in the current month in order to guarantee that accumulated realized losses would be wiped out until the following month. Hope did not simply delay realization of trading losses, the Defendants also intentionally sized the Scheme Trades such that the HI Fund realized a profit every month, thus allowing Hope

to circumvent the high-water-mark structure and collect a fee.

On September 13, 2018, the Court entered the Final Judgment against Hope and Bruton (Dkt. #132). On September 18, 2018, the Court entered the Consent Final Judgments against Wortman and Roberts (Dkt. #135 and Dkt. #136). Pursuant to their respective final judgments, Defendants were permanently enjoined from violating and from aiding and abetting violations of the provisions of the federal securities laws contained in the Commission's Complaint. In addition, the Court imposed against Hope and Bruton, jointly and severally, disgorgement and civil penalties of \$1,237,235.00 and \$250,000.00, respectively. On September 17, 2018, Hope and Bruton paid \$1,487,235.00 representing the entire amount of their judgment to the Commission. The Court imposed civil penalties against Wortman and Roberts of \$100,000 and \$75,000, respectively. Wortman made payments on September 27, 2018, January 10, 2019, May 3, 2019, and September 5, 2019 of \$25,000, \$24,402.67, \$24,600.56, and \$24,772.97, respectively. Roberts made payments on September 27, 2018, December 24, 2018, and April 1, 2019 of \$18,750.00, \$18,404.18, and \$37,205.27, respectively.

By Order dated July 16, 2019, the Court created a fair fund for the disgorgement and civil penalties paid (the "Fair Fund"), and appointed Miller Kaplan Arase, LLP as Tax Administrator (the "Tax Administrator"). The Fair

Fund is currently on deposit with the United States Treasury's Bureau of Fiscal Service in an interest bearing account. As of December 14, 2020, the balance of the Fair Fund is \$1,689,753.30, including interest earned.

By Order dated November 25, 2019, the court appointed JND Legal Administration ("JND") as Distribution Agent (the "Distribution Agent") charged with facilitating the development of a Plan of distribution for the fund and to administer the Plan.

II. ARGUMENTS

A. The Court May Give Significant Deference to the SEC's Distribution Plan.

Nearly every Plan to distribute funds obtained in SEC enforcement actions requires choices to be made regarding the allocation of funds among potential investors within the parameters of the amounts recovered. In recognition of the difficulty of this task, Courts give the Commission significant discretion to design and set the parameters of a distribution plan. *See SEC v. Wang*, 944 F.2d 80 (2d Cir. 1991); *SEC v. Levine*, 881 F.2d 1165 (2d Cir. 1989). The Court's review of a distribution plan focuses on whether the Plan is fair and reasonable. *SEC v Fishbach*, 133 F.3d 170, 175 (2nd Cir. 1997); *See Official Comm. Of Unsec. Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73, 81 (2d Cir.

2006). ("Unless the consent decree specifically provides otherwise (,) once the district court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and reasonable, its review is at an end."), citing *Wang*, 944 F.2d at 85. For the reasons articulated below, the Commission believes that the Plan for the Fair Fund constitutes a fair and reasonable allocation of the limited funds available and should be approved.

B. The Commission's Proposed Distribution Plan Provides a Fair and Reasonable Allocation of the Fair Fund.

The Commission's principal goal in fashioning a plan is to identify a methodology that would allocate the available funds fairly and reasonably, in a manner proportional to the injury that investors suffered as a result of the actions of the Defendants.

In its Amended Complaint, the Commission alleged that Hope and Bruton perpetrated a scheme ("Scheme Trades") to charge unearned fees to Hope Investments LLC (the "HI Fund"), a fund they managed.

Many of these trades could not reasonably have been expected to generate a profit for the funds, and thus served solely to generate advisory fees for Hope to the detriment of the funds' investors. Up until the filing of the initial Complaint in

this action Hope used the Scheme Trades to avoid realization of more than \$50 million in losses in the HI Fund, while still earning large monthly incentive fees.

The proposed distribution methodology allocates the Fair Fund amongst Potentially Eligible Investors. An Eligible Investor's total Recognized Loss, as determined in accordance with the Plan of Allocation, will be used to determine the amount of their distribution payment. Since the total amount of the Total Recognized Loss of all Eligible Investors exceed the Net Available Fair Fund, the Distribution Agent will distribute the Net Available Fair Fund to the Eligible Investors based on a *pro rata* distribution formula. The Distribution Agent shall determine each Eligible Investor's *Pro Rata* Share based on each Eligible Investor's Recognized Loss divided by the Total Recognized Loss for all Eligible Investors to determine the percentage each Eligible Investor's Recognized Loss represents of the Total Recognized Loss of all Eligible Investors. The resulting percentage is each Eligible Investor's *Pro Rata* Share of the Total Recognized Loss. The Distribution Agent will multiply the Net Available Fair Fund by each Eligible Investor's *Pro Rata* Share to determine each Eligible Investor's Distribution Payment. In no event will an Eligible Investor receive a Distribution Payment totaling more than his, her, or its calculated harm.

III. CONCLUSION

The Commission believes that the Plan for the Fair Fund should be approved as fair and reasonable. The proposed Amended Plan directs the Fair Fund's proceeds to investors who were harmed by the improper conduct alleged in the Commission's underlying legal action. The Amended Plan reasonably and fairly allocated its funds in accordance with each Eligible Investor's Recognized Loss.

The Amended Plan is attached to this motion as Exhibit A.

Dated: February 11, 2021

Respectfully Submitted,

/s/ Devon A. Brown

Devon A. Brown

Maryland Bar

Trial Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2021, a copy of the Plaintiff's Motion and Memorandum of Law to Approve Distribution Plan along with the Proposed Order were filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Devon A. Brown
Devon A. Brown

CERTIFICATE OF COMPLIANCE

I hereby certify that, pursuant to local Rules 5.1C and 7.1D of the United States District Court for the Northern District of Georgia the foregoing Motion and Memorandum of Law to Approve Distribution Plan was prepared in Times New Roman 14 point font, double-spaced, with a top margin of not less than 1.5 inches and a left margin of not less than 1 inch.

This 11th day of February, 2021

Respectfully Submitted,

/s/ Devon A. Brown

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