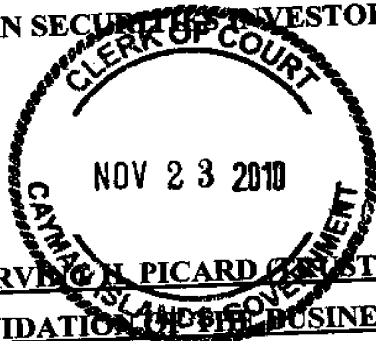


**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION**

IN THE MATTER OF THE COMPANIES LAW (2009 ~~2010~~ REVISION)

**AND IN THE MATTER OF BERNARD L. MADOFF INVESTMENT
SECURITIES LLC (IN SECURITIES INVESTOR PROTECTION ACT
LIQUIDATION)**

BETWEEN:



**IRVING H. PICARD TRUSTEE FOR THE
LIQUIDATION OF THE BUSINESS OF BERNARD
L. MADOFF INVESTMENT SECURITIES LLC)**

Petitioner

and -

**HARLEY INTERNATIONAL (CAYMAN)
LIMITED (IN LIQUIDATION)**

Respondent

**AMENDED PETITION
(AMENDED BY ORDER OF MR JUSTICE
ANDREW JONES QC DATED 8 JULY 2010)**

To the Grand Court

The humble petition of Irving H Picard of 45 Rockefeller Plaza, New York, New York
10111 shows that:

Introduction

1. Bernard L. Madoff Investment Securities LLC (the "Debtor") is a New York limited liability company founded in 1960 that was wholly owned by Bernard L. Madoff ("Madoff") prior to the events shown in paragraph 4 hereof.
2. The nature of the Debtor's business was that of securities broker-dealer and investment adviser. The Debtor's business had three divisions: (1) investment advisory (the "IA Business"); (2) market making; and (3) proprietary trading.
3. The Debtor's principal place of business during the relevant time frame was 885 Third Avenue, New York, NY 10022, USA. Madoff was the founder, chairman, and chief executive officer of the Debtor and ran the Debtor together with several family members and a number of additional employees.
- 3A. Madoff purported to operate the IA Business as a legitimate and successful investment business in which the Debtor received monies from private and institutional investors and invested the same in stocks and options pursuant to a "split-strike conversion strategy" devised by Madoff, which would generate profits that would from time to time be paid out to investors upon their request for a redemption.
- 3B. In reality, the IA Business was a fraudulent 'Ponzi' scheme on a massive scale. The IA Business engaged in no material investment activity and generated virtually no investment returns. The 'investments' made by customers were in fact simply commingled into a single bank account held at the New York Branch of JP Morgan Chase & Co ("JP Morgan"). The purported investment 'returns' paid to investors by the Debtor were nothing more than payments made from new funds paid into the scheme by new and existing investors.

3C. In December 2008, when requests by investors for redemptions exceeded the amount of funds deposited by new investors, the Ponzi scheme collapsed.

4. The petitioner was appointed trustee for the liquidation of the business of the Debtor under the Securities Investor Protection Act of 1970 (15 U.S.C. section 78aaa *et seq*) ("SIPA") by order of the United States District Court for the Southern District of New York (the "New York Court") on 15 December 2008.

5. Under US law the principal duties and powers of the petitioner as trustee for the liquidation of the Debtor's business are:

- (1) The identification and getting in of assets and property of the Debtor wherever they may be situated;
- (2) The liquidation of those assets;
- (3) The distribution of the same to the customers and creditors of the Debtor in accordance with the statutory regime established by SIPA affording priority as between customers and ordinary unsecured creditors of the Debtor to its customers as so provided;
- (4) Maximization of the Debtor's estate by, where appropriate, the bringing of proceedings to recover assets and damages;
- (5) The avoidance, where appropriate, of antecedent transactions such as preferential payments and transactions at an undervalue;
- (6) In a case where assets are insufficient to meet customer claims, procuring the use of reserve funds of the Securities Investors Protection Corporation ("SIPC") to supplement the distribution up to a ceiling of US\$500,000 per customer; and

- (7) Causing SIPC to meet the administrative costs of the liquidation including legal fees incurred by the petitioner.

Claim for recognition

6. On 5 February 2010, Mr Justice Andrew Jones QC made a declaratory order under section 241(1)(a) of the Companies Law (2010 Revision) recognizing the right of the Petitioner to act in the Islands on behalf or in the name of the Debtor, on the basis that The reason for seeking a declaratory order is that an economic and expeditious administration of the Debtor's estate is thereby best assured as the same is consistent with the several factors set forth in paragraphs (a) to (g) of section 242 of the Companies Law (2009 2010 Revision).

Claim for turnover

Background

7. This claim relates to the Respondent's receipt of sums amounting to more than US\$ 1 billion from the Debtor in connection with the fraud operated by Madoff. As pleaded below, the Respondent has retained the sum of approximately US\$ 12 million and the Petitioner seeks an order under section 241(1)(e) of the Companies Law (2010 Revision) requiring the Respondent to turn this sum over to the Petitioner.

The Credit Balance

8. On or around 17 April 1996, the Respondent (or its predecessor, Harley International Limited) executed a Customer Agreement, an Option Agreement, and a Trading Authorization Limited to Purchases and Sales of Securities (the "Account Agreements") and delivered such papers to the Debtor at the Debtor's headquarters at 885 Third Avenue, New York, New York.

9. Thereafter the Respondent maintained an account with the Debtor, which was designated account 1FN094 (the "Account"). That account, however, was by and large a fiction. Substantially all funds deposited into the Debtor's IA Business were comingled in the Debtor's bank account number xxxxxxxxxxxx703 with JP Morgan (the "703 Account").

10. Between 24 April 1996 and 11 December 2008, Madoff caused the Debtor to make payments in excess of US\$ 1 billion to (or for the account of) the Respondent (the "Transfers") including without limitation the following:

- (1) US\$ 20,000 on 27 November 1998.
- (2) US\$ 6,000,000 on 23 June 2004.
- (3) US\$ 50,000,000 on 27 February 2008.
- (4) US\$ 40,000,000 on 26 March 2008.
- (5) US\$ 56,000,000 on 12 May 2008.
- (6) US\$ 31,800,000 on 2 June 2008.
- (7) US\$ 120,000,000 on 27 June 2008.
- (8) US\$ 197,000,000 on 10 July 2008.
- (9) US\$ 147,000,000 on 3 September 2008.
- (10) US\$ 120,000,000 on 23 September 2008.
- (11) US\$ 40,000,000 on 30 September 2008.

- (12) US\$ 180,000,000 on 16 October 2008.
 - (13) US\$ 10,000,000 on 22 October 2008.
 - (14) US\$ 29,000,000 on 5 November 2008.
 - (15) US\$ 46,000,000 on 9 December 2008.
11. The Respondent has retained the sum of approximately US\$ 12 million of the Transfers which stands to its credit in its bank account in the Islands (the "Credit Balance").

US bankruptcy law

12. As a matter of US bankruptcy law, each of the transfers made during the 90 days prior to 11 December 2008 (the "90-Day Transfers") is avoidable by the Petitioner on the following basis:
- (1) At the time of each of the 90 Day Transfers, the Respondent was a "creditor" of the Debtor within the meaning of section 101(10) of the Bankruptcy Code and pursuant to 15 U.S.C. § 78fff-2(c)(3).
 - (2) Each of the 90-Day Transfers constitutes a transfer of an interest of the Debtor in property within the meaning of section 101(54) of the Bankruptcy Code and pursuant to 15 U.S.C. § 78fff-2(c)(3).
 - (3) Each of the 90-Day Transfers was to or for the benefit of the Respondent.
 - (4) Each of the 90-Day Transfers was made on account of an antecedent debt owed by the Debtor before such transfer was made.
 - (5) Each of the 90-Day Transfers was made while the Debtor was insolvent.

- (6) Each of the 90-Day Transfers was made during the preference period under section 547(b)(4) of the Bankruptcy Code.
- (7) Each of the 90-Day Transfers enabled the Respondent to receive more than it would have received under Chapter 7 of the Bankruptcy Code if the transfers had not been made.
- (8) Each of the 90-Day Transfers constitutes a preferential transfer avoidable by the Petitioner pursuant to section 547(b) of the Bankruptcy Code and is recoverable from the Respondent pursuant to section 550(a).
- (9) As a result of the foregoing, the Petitioner is entitled to a judgment pursuant to sections 547(b), 550 and 551 of the Bankruptcy Code:
- (i) avoiding and preserving the 90-Day Transfers,
 - (ii) directing that the 90-Day Transfers be set aside, and
 - (iii) recovering the 90-Day Transfers, or the value thereof.

This Court's jurisdiction to order turnover

13. For the following reasons, this Court has jurisdiction to make an order requiring the Respondent to turn the Credit Balance over to the Petitioner.

Application of US law to the Debtor's bankruptcy

14. As a matter of Cayman choice of law rules, the Debtor's liquidation and the collection, realisation and distribution of assets belonging to the Debtor in that liquidation are governed by US law.

15. Therefore, in order to determine whether or not the Credit Balance is property belonging to the Debtor, this Court must apply US law.

16. According to the US law set out above, the 90-Day Transfers are avoidable so that the Credit Balance is property belonging to the Debtor which forms part of the bankruptcy estate of the Debtor.

Choice of US law in the exercise of discretion

17. Alternatively, for the purpose of determining whether or not the Credit Balance is property belonging to the Debtor, this Court is able to choose in the exercise of its discretion whether to apply US law or Cayman law. For the following reasons, the Petitioner humbly requests this Court to apply US law to determine this issue:

- (1) To the Respondent's knowledge, the Debtor was incorporated in the USA.
- (2) To the Respondent's knowledge, the Debtor carried on business in the USA.
- (3) The Debtor is now in liquidation in the USA.
- (4) To the Respondent's knowledge, Madoff was domiciled in the USA.
- (5) To the Respondent's knowledge, the USA was the focal point and centre of gravity of the global activity of the Debtor.
- (6) To the Respondent's knowledge, the Account Agreements, by their terms, were deemed to be entered into in the State of New York.
- (7) To the Respondent's knowledge, the Account Agreements were to be performed in New York through securities trading activity that would take place in New York.

- (8) The Respondent knowingly and consistently wired funds to the 703 Account, which was an account at the New York branch of JP Morgan.
- (9) To the Respondent's knowledge, the Transfers were made out of the 703 Account in New York.
- (10) The Respondent knowingly wired funds to New York with the intent to profit from commercial activity it believed was taking place in that jurisdiction.
- (11) The wrongdoing of Madoff and the other directors of the Debtor occurred in the USA.

The exercise of this Court's discretion to order turnover

18. For the following reasons, the Petitioner humbly asks Court to exercise its discretion in favour of making such orders as may be required to oblige the Respondent to turn the Credit Balance over to the Petitioner for distribution in the Debtor's estate:

- (1) The turnover of the Credit Balance to the Petitioner will best assure an economic and expeditious administration of the Debtor's estate.
- (2) The turnover of the Credit Balance to the Petitioner will be consistent with the just treatment of all holders of claims against or interests in the Debtor's estate, consistent with SIPA and the applicable distribution scheme, wherever they may be domiciled.
- (3) The turnover of the Credit Balance to the Petitioner will be consistent with the protection of claim holders in the Islands against prejudice and inconvenience in the processing of claims in the foreign bankruptcy proceeding.

- (4) The turnover of the Credit Balance to the Petitioner will be consistent with the prevention of preferential or fraudulent dispositions of property comprising the Debtor's estate.
- (5) The turnover of the Credit Balance to the Petitioner will be consistent with the distribution of the Debtor's estate amongst creditors substantially in accordance with the order prescribed by Part V of the Companies Law.
- (6) The turnover of the Credit Balance to the Petitioner will be consistent with the recognition and enforcement of security interests created by the Debtor.
- (7) The turnover of the Credit Balance to the Petitioner will be consistent with the non-enforcement of foreign taxes, fines and penalties.
- (8) The turnover of the Credit Balance to the Petitioner will be consistent with the requirements of comity.

Your Petitioner therefore humbly prays that:

- (1) the Court make a declaratory order under section 241(1)(a) of the Companies Law (2009 2010 Revision) recognizing the right of Your Petitioner to act in the Islands on behalf or in the name of the Debtor (as pleaded above, as at the date of these amendments, a declaratory order in these terms has been made);
- (1A) the Court make an order under section 241(1)(e) of the Companies Law (2010 Revision) requiring the Respondent to turn the Credit Balance (as defined above) over to the Petitioner for distribution in the liquidation of the Debtor;

- (1B) the Court make such further or other order as may be required to avoid the 90-Day Transfers and/or turn the Credit Balance (as defined above) over to the Petitioner for distribution in the liquidation of the Debtor;
- (2) the Court make such different orders as it may deem fit; and
- (3) ~~that there be no order as to the costs of this petition~~ the Respondent pay the costs of this petition or other just provision be made therefor.

Dated the 13th day of October 2009

Re-dated the 3rd day of November 2010

Higgs & Johnson
Higgs & Johnson Truman Bodden & Co, attorneys for the Petitioner

~~This petition is not intended to be served~~

This petition is intended to be served on

Harley International (Cayman) Limited (In liquidation)
c/o Mourant Ozannes
Harbour Centre
42 North Church Street
PO Box 1348
Grand Cayman KY1-1108
Cayman Islands

This petition was presented by Irving H. Picard whose address for service is Higgs & Johnson Truman Bodden & Co, PO Box 866, Georgetown, Grand Cayman, KY1 – 1103 and Fifth Floor, Anderson Square Building, Shedden Rd, Georgetown, Grand Cayman.