UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Securities and Exchange Commission, Applicant v. Securities Investor Protection Corporation, Respondent.	Civil Action No. 11-mc-678 (RLW)

Motion To Intervene and To Suspend the Memorandum Opinion and Order of July, 3, 2012

Pursuant to Fed. R. Civ. P. 24 Richard R. Cheatham moves to intervene in this action in order to protect his interest in the subject of the action and pursuant to Fed. R. Civ. P. 59 to suspend the Court's Memorandum Opinion and Order of July, 3, 2012 pending reconsideration in light of the facts presented in connection Intervener's Motion to Intervene.

In support of this motion, Richard R. Cheatham relies on the Court's Memorandum Opinion and Order of July, 3, 2012 and his Memorandum In Support of Motion To Intervene and To Suspend Memorandum Opinion and Order of July, 3, 2012.

Dated: July 23, 2012.

Respectively submitted

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Memorandum In Support of Motion To Intervene and To Suspend the Memorandum Opinion and Order of July, 3, 2012

I. Statement of the Intervener

I am Richard R. Cheatham, a non-litigating corporate lawyer residing in Atlanta, Georgia. I filed the Motion to Intervene and To Suspend the Memorandum Opinion and Order of July 3, 2012, (this "Motion" and the "Order") because that appears to be the only option I have to obtain the benefit of the SIPC insurance I relied on in dealing with The Stanford Group Company ("SGC"), a Securities Investor Protection Corporation ("SIPC") insured broker dealer.

As noted in the Order, beneficiaries of SIPC insurance are precluded from individually enforcing SIPC's obligation to them unless SIPC unilaterally decides it is obligated to pay or the Securities and Exchange Commission ("SEC") forces it to pay by bringing an

action like this one forcing SIPC to take over as the receiver of the SIPC member broker dealer. I concede, as the Court noted in its Order, that more efficient methods exist for paying a limited number of claimants than a costly receivership proceeding, but that is what the law requires, and SIPC has had many years to suggest alternatives that both fully protect investors and minimize its costs. Also, I know of no reason SIPC and the SEC could not agree to a more efficient process in this case since SGC has been in receivership proceedings for more than three years.

While I understand the Court's motives in requesting that SIPC and the SEC stipulate the facts, the risk of such a request is that the parties may in good faith stipulate uninsured "typical" facts, not all possible factual patterns, resulting in the denial of insurance to those with insured atypical relationships with the failed broker dealer. The SEC's duty here is to represent the interests of all investors, not just "typical" ones, in the face of a blanket denial by SIPC which, at best, is based on its understanding of a "typical" fact pattern. Justice for all customers of a failed broker dealer requires an opportunity to fully develop the facts.

My relationship with SGC was perhaps atypical, though probably not unique. That relationship was materially different from the one described in the Order as the stipulated relationship. Specifically, contrary to the stipulation in paragraph 3 on page 10 of the Order, I did not "open an account with SIBL," write a check that was "deposited into SIBL accounts," or authorize that money "be wired to SIBL for the purpose of opening [an account] at SIBL and purchasing CDs." Contrary to paragraph 4 of the stipulation on page 10 of the Order, I did not receive any physical CD certificate or

authorize any designee to hold any such certificates for me. Contrary to paragraph 8 of the stipulation on page 10 of the order, the funds to "purchase" the purported CDs for my account were obtained unilaterally by SGC from the proceeds of its sale of legitimate securities held by or under the custody or control of SGC.

Following a major heart attack in 2007, I realized that I might have to retire one day and live off my investments. I was then 64 years old and my retirement savings, accumulated in 38 years with the same law firm, were lodged in a self-directed IRA (converted from the firm's 401(k) plan). Because I am disinclined to take risks I have not fully investigated, and I did not have time to investigate investments, most of my IRA had been invested in U.S. government guaranteed obligations. My returns were predictably meager. Accordingly, in what was less than astute market timing, I decided to turn over my IRA to a trusted broker I had come to know through my law practice, Leonard Seawell, III. He worked with his two sons, Haygood Seawell and Leonard Seawell, IV (collectively "the Seawells"), at Morgan, Keegan & Co., Inc. I met with the three of them and explained that I wanted my investments managed conservatively, but not as conservatively as I had managed them, and that I wanted to give them discretion because I could not make decisions without doing the research they did routinely but that I did not have time to do. After that meeting I appointed Morgan, Keegan as my IRA custodian and gave the Seawells discretion to manage my investments.

Several months later the two sons (the father having retired) moved from Morgan, Keegan to SGC. They told me they were moving because they thought Morgan, Keegan had not lived up to their professional standards in dealing with a busted subprime

mortgage investment fund it managed, an explanation that sounded reasonable based on what I had read. I had heard of SGC but knew little about it. I "Googled" SGC. I learned that SGC was a respected broker dealer with no more than what I considered a typical number of complaints and regulatory problems and that Allen Stanford was a flamboyant individual. In 2008 I did not equate flamboyance with dishonesty as I am likely to today. Accordingly, I moved my account, naming SGC as the custodian of my IRA, granting discretionary investment authority to the Seawells in their capacity as registered representatives of SGC.

When I began receiving statements from Stanford, I noticed that my account indicated that Pershing LLC was also serving "as custodian" for my IRA. I understood that this meant that Pershing was holding my securities for safekeeping and acting as a clearing broker for Stanford. I recognized that essentially Pershing was acting as a sort of sub-custodian for my IRA, holding my securities subject to Stanford's instructions and control as my primary custodian. I was aware that Pershing, like Stanford, was insured by SIPC.

A few months later I became aware that the Seawells, my Stanford brokers, had caused the sale of $300,000 of the securities held in my account and had purportedly deposited the proceeds with Stanford International Bank, Ltd. ("SIBL"). I received statements thereafter from an entity named Stanford Trust Company ("STC") indicating that it was holding $300,000 in SIBL CDs "as custodian" for my IRA. In those transactions I had no dealings whatsoever with either SIBL of STC. I did not authorize the transactions, and I signed no documentation with respect to them. I never received or dealt in any

manner with the proceeds from the sale of securities in my IRA that were apparently used to make this alleged "deposit" with SIBL.

II. Memorandum in Support of this Motion

The sole purpose of this Motion is to inform the Court that the "facts" stipulated to by the parties, SIPC and the SEC, are not the actual facts applicable to all investors who dealt with SGC and to request that the Court revise the Order to reflect the application of the legal principles enunciated therein to the actual facts involved in the Intervener's "investment" in SIBL CDs.

A. Right To Intervene

Fed. Rule of Civ. Proc. 24 authorizes anyone to intervene as of right if that person

> "claims an interest relating to the . . . transaction that is the subject matter of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest."

As stated in the Order, individual customers of SGC have no private right of action to enforce their SIPC insurance claims unless SIPC voluntarily acknowledges those claims by instituting a receivership proceeding involving its member broker dealer or unless

the SEC forces it to do so in a proceeding such as this one. By stipulating in this proceeding to assumed "facts" which are materially contrary to the facts surrounding Intervener's relationship with SGC, the SEC has failed to adequately represent the Intervener's interest. Absent intervention, the SEC's failure to adequately represent the Intervener's interest will preclude the Intervener from any recovery on his rightful SIPC insurance claim.

B. Intervener's SIPC Insurance Claim

The purpose of requiring an IRA custodian is to separate the IRA investments from the beneficiary/taxpayer to permit transactions within the IRA investment corpus without taxable distributions to the beneficiary/taxpayer. [See 26 U.S.C. 408] Accordingly, the beneficiary of an IRA in the custody of a SIPC member is undeniably a "customer" of the SIPC member as that term is defined in SIPA. [Order at 7 – 8] A SIPC member indisputably held an identifiable portfolio of Intervener's securities and cash "for safekeeping, with a view to sale, to cover consummated sales, pursuant to purchases . . . or for purposes of effecting transfer."

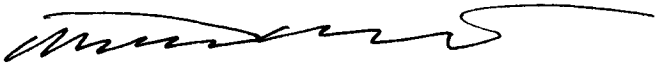
SGC and Pershing were both members of SIPC. A clearing broker, such as Pershing here, holds securities for safekeeping subject to the instructions of the introducing broker, such as SGC, not the customer directly. Pershing, under the SEC pronouncements cited at pages 14-17 of the Order, perhaps violated its agreement by delivering funds to SGC for purposes other than distribution to me. SGC perhaps violated its clearing agreement in taking those funds and giving them to SIBL for the

benefit of Allen Stanford. If an introducing broker obtains funds derived from a customer's IRA custodianship account with the clearing broker, without a request for a distribution by the beneficiary, the introducing broker holds those funds in custody to be retained in the IRA corpus through reinvestment or otherwise. Those funds are not in any sense available to the customer for his own use. Thus, the IRA beneficiary is an SIPA "customer" of the introducing broker. However it was done, two SIPC members here, acting together, took $300,000 of funds they held in my IRA and gave those funds to the Ponzi scheme operated by the principal shareholder of one of the two SIPC members without any authorization by me to give those funds to the Ponzi scheme. As stated at page 9 of the Order, "The 'customer' definition has therefore been described as 'embod[ying] a common-sense concept: An investor is entitled to compensation from SIPC only if he has entrusted cash or securities to a broker-dealer who becomes insolvent. . . ." The fact that two SIPC members acting in concert were involved rather than just one should not give SIPC some hyper-technical out.

Notwithstanding how SGC's actions may be characterized in cases like those in the SIPC/SEC stipulation, what SGC did to Intervener was plain, garden variety theft. Using its discretionary authority, SGC unilaterally caused the sale of $300,000 of the securities held in Intervener's account and "deposited" the proceeds from that sale in SGC's owner's personal piggybank. Any lies SGC told the Intervener about the SIBL CDs being securities of some kind were not made to induce him to buy such "CDs." Instead, they were made to disguise the theft and to keep the Intervener from calling the police, the SEC or SIPC. Such losses are undeniably covered by SPIA insurance. [Order at 8-9.]

For the reasons stated, this Motion should be granted.

Respectfully,



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I declare under penalty of perjury that the foregoing facts concerning my account with the Stanford Group Company are true and correct.

Richard R. Cheatham

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of July, 2012, I caused service of the foregoing Motion To Intervene and To Suspend the Memorandum Opinion and Order of July 3, 2012, and Memorandum In Support thereof by email and by depositing in the United States mail on the following:

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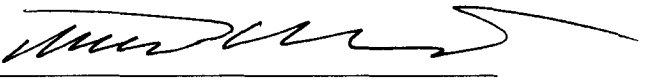

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