

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

IN RE: RECEIVER FOR) Civil Action No.: 8:12-cv-02078-JMC
RONNIE GENE WILSON AND)
ATLANTIC BULLION & COIN, INC.)
_____)

ORDER

This matter is before the court pursuant to Cindy Posner’s Objection (ECF No. 167) to the Receiver’s Motion to Approve Plan for Claims Administration and Distribution of Proceeds (ECF No. 165). Specifically, Posner objects to entry of the Receiver’s Plan asserting that it unfairly punishes her because her father invested \$250,000.00 into the Wilson-AB&C Ponzi scheme¹ and only received a payment of \$10,000.00 from the scheme prior to his death. (ECF No. 167 at 2.) The court understands Posner’s complaint to be that under the “Rising Tide”²

¹“A Ponzi scheme is a fraudulent investment program in which funds are paid in by investors and later investors['] funds are used to pay out nonexistent phantom profits to the original investors, thus creating the illusion that the fraudulent investment program is a successful, profit generating enterprise which, in turn attracts new investment funds that are used to sustain the fraudulent program.” *United States v. Wilson*, Cr. No. 8:12-cr-00320-JMC, ECF No. 1-1 at 2 ¶ 6 (D.S.C. Apr. 4, 2012). In *Wilson*, the United States alleged that Wilson, through AB&C, “orchestrated a Ponzi scheme whereby he led investors to believe that he was investing their money in silver, when, in fact, Wilson was not buying silver but using the money for his personal gain . . . [and] [t]o keep the Ponzi scheme going, Wilson also made payments to earlier investors to whom Wilson made representations that their investments were earning high rates of return—sometimes in excess of 200 percent.” *Id.* at ECF No. 17 at 1.

² The Rising Tide method is described as follows:

Under the Rising Tide method . . . prior payments to each investor are credited against investors’ pro-rata distributions from the receivership. In effect, an individual investor’s loss is deemed to be the gross amount actually invested in the scheme. Payments received by the investor prior to the scheme’s collapse are treated as “distributions” on par with the distributions to be made by the Receiver, so that prior amounts paid by . . . [the Ponzi scheme] are credited against (*i.e.*, subtracted from) the amount that would otherwise be paid from the receivership estate. Under this method, investors who received prior payments are entitled to receive a smaller pro-rata payment from the receivership estate than those who

method of distribution, which the Receiver proposes to use in this case, Posner would not receive any distribution on her father's investment until after the other claimants have received their proportional distributions.

In his Reply to this Objection (ECF No. 168), the Receiver asserted that Rising Tide is "the method that treats the claimants [of the Wilson-AB&C Ponzi scheme] as a whole most fairly." (ECF No. 170 at 2.) In addition, at the December 17, 2015 hearing³ (ECF No. 172) on his Motion, the Receiver observed that the Rising Tide method is the most equitable way to disburse proceeds as it treats most fairly the greater percentage of the claimants. The Receiver asserted that fairness was especially important in this matter because 77.8% of the claimants lost all the money they invested in the Wilson-AB&C Ponzi scheme.

Upon review, the court observes that even though Posner objects to the Receiver's use of the Rising Tide method, she is unable to suggest an alternative method for distribution of the recovery proceeds. In contrast, there is substantial case law in support of the Receiver's position that the Rising Tide method is the most equitable method for disbursing proceeds to claimants. See, e.g., SEC v. Parish, C/A No. 2:07-cv-00919-DCN, 2010 WL 5394736, at *3 (D.S.C. Feb. 10, 2010) (The court approved the Receiver's plan proposing to use Rising Tide finding that it "is the more equitable distribution method."); United States v. Cabe, 311 F. Supp. 2d 501, 509 (D.S.C. 2003) (favoring Rising Tide over Net Loss and holding that persons who have been previously repaid by the defendants should receive a reduced amount so that the total amount

received no prior payment. Moreover, investors who previously received payments exceeding their pro rata amount of the total distribution will receive no distribution from the receivership estate.

SEC v. Parish, C/A No. 2:07-cv-00919-DCN, 2010 WL 5394736, at *3 (D.S.C. Feb. 10, 2010).

³ Posner did not appear at the December 17, 2015 hearing to present any additional argument in support of her position.

they receive both for the receivership distribution and from the earlier repayment from the defendants would roughly equal the amount they would have received from a pro rata distribution had they not received any money during the scheme from the defendants); Commodity Futures Trading Comm'n v. Hoffberg, No. 93 C 3106, 1993 WL 441984, at *2-3 (N.D. Ill. Oct. 28, 1993) (favoring Rising Tide over Net Loss).

Therefore, in accordance with the fundamental principal that a disbursement plan “should be equitable and fair, with similarly-situated investors treated alike,” the court finds that the Receiver’s proposed usage of the Rising Tide method is appropriate and **OVERRULES** Cindy Posner’s Objection (ECF No. 167) to the Receiver’s Plan for Claims Administration and Distribution of Proceeds. See In re Receiver, C/A No. 3:10-3141-MBS, 2011 WL 2601849, at *2 (D.S.C. July 1, 2011) (citations omitted).

IT IS SO ORDERED.



United States District Judge

December 18, 2015
Columbia, South Carolina