

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (LGB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Substantively
Consolidated SIPA Liquidation of Bernard L.
Madoff Investment Securities LLC and the Chapter
7 Estate of Bernard L. Madoff,

Plaintiff,

v.

FRANK J. AVELLINO, *et al.*,

Defendants.

Adv. Pro. No. 10-05421 (LGB)

**STIPULATION AND ORDER FOR VOLUNTARY DISMISSAL OF DEFENDANTS
THE ESTATE OF MICHAEL S. BIENES, DIANNE K. BIENES, AND ST. JAMES
ASSOCIATES FROM ADVERSARY PROCEEDING WITHOUT PREJUDICE**

Plaintiff Irving H. Picard (the “Trustee”), as trustee for the liquidation of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–lll, and the substantively consolidated chapter 7 estate of Bernard L. Madoff and defendants the Estate of Michael S. Bienes (the “Michael Bienes Estate”), individually and as trustee for the

Avellino & Bienes Pension Plan & Trust, Dianne K. Bienes, individually and as Personal Representative for the Michael Bienes Estate, and St. James Associates (collectively, the “Defendants” and with the Trustee, the “Parties”), hereby stipulate and agree to the following:

1. On December 10, 2010, the Trustee commenced this adversary proceeding (the “Avellino Proceeding”) by filing a Complaint (ECF No. 1).

2. On November 24, 2014, the Trustee filed his Amended Complaint against Defendants and other defendants (collectively, the “Avellino Defendants”) (ECF No. 86).

3. On January 28, 2015, the Avellino Defendants, including Defendants, filed a motion to dismiss the Amended Complaint (the “Motion to Dismiss”) (ECF No. 88).

4. On August 5, 2016, the Court issued an Order granting in part and denying in part the Avellino Defendants’ Motion to Dismiss (ECF No. 117).

5. On November 2, 2016, Defendants filed an Answer to the Amended Complaint (ECF No. 140).

6. On August 23, 2022, the Court entered its Order granting the Trustee’s motion for partial summary judgment (ECF No. 279).

7. On February 23, 2024, the Parties entered into a Settlement Agreement and Release (“Settlement Agreement”) (ECF No. 329-2).

8. On March 18, 2024, the Court entered an Order pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure approving the Settlement Agreement (ECF No. 336).

9. Pursuant to the terms of the Settlement Agreement, and in accordance with Federal Rule of Bankruptcy Procedure 7041 and Federal Rule of Civil Procedure 41(a)(1), the Parties hereby stipulate to dismiss the Trustee’s claims against Defendants in the Avellino Proceeding, to

resolve all Defendants' customer claims against the BLMIS estate, and to dismiss the Avellino Proceeding against Defendants without prejudice and without costs, subject to the Trustee having the right to re-open the Avellino Proceeding or, alternatively at his discretion, pursue other remedies available to him (including, but not limited to, an action for breach of this Agreement) in the event of an uncured breach of this Agreement, or an uncured default under the Florida Condo Mortgage.¹

10. The dismissal of Defendants does not affect any of the Trustee's claims against any of the other defendants in the Avellino Proceeding.

11. The provisions of this stipulation shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns and upon all creditors and parties of interest.

12. This stipulation may be signed by the Parties in any number of counterparts, each of which when so signed shall be an original, but all of which shall together constitute one and the same instrument. A signed DocuSign, facsimile, photostatic or electronic copy of this stipulation shall be deemed an original.

13. The Bankruptcy Court shall retain jurisdiction over this stipulation.

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¹ Terms not otherwise defined shall have the meaning ascribed in the Settlement Agreement.

14. Upon the dismissal of Defendants, the caption of the Avellino Proceeding is hereby amended to delete Defendants from the caption. The amended caption shall appear as indicated in Exhibit A to this stipulation.

Date: April 2, 2024
New York, New York

/s/ Esterina Giuliani
BAKER & HOSTETLER LLP
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Esterina Giuliani
Email: egiuliani@bakerlaw.com
Kathryn M. Zunno
Email: kzunno@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee for
the Substantively Consolidated SIPA
Liquidation of Bernard L. Madoff
Investment Securities LLC and the Chapter
7 Estate of Bernard L. Madoff*

SO ORDERED.

Dated: April 3, 2024
New York, New York

/s/ Gary A. Woodfield
**NASON YEAGER GERSON HARRIS
& FUMERO, P.A.**
3001 PGA Boulevard, Suite 305
Palm Beach Gardens, FL 33410
Tel: (561) 686-3307
Facsimile: (561) 686-5442
Gary A. Woodfield
Email: gwoodfield@nasonyeager.com

Attorney for Defendants

/s/ Lisa G. Beckerman
Honorable Lisa G. Beckerman
United States Bankruptcy Judge

EXHIBIT A

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Madoff Investment Securities LLC and the Chapter
7 Estate of Bernard L. Madoff,

Plaintiff,

v.

FRANK J. AVELLINO, individually, and as Trustee
for FRANK J. AVELLINO REVOCABLE TRUST
NUMBER ONE AS AMENDED AND RESTATED
JANUARY 26, 1990, AS AMENDED; FRANK J.
AVELLINO GRANTOR RETAINED ANNUITY
TRUST UNDER AGREEMENT DATED JUNE 24,
1992; FRANK J. AVELLINO GRANTOR
RETAINED ANNUITY TRUST AGREEMENT
NUMBER 2 UNDER AGREEMENT DATED JUNE
24, 1992; FRANK J. AVELLINO REVOCABLE
TRUST NUMBER ONE UNDER THE
DECLARATION OF TRUST NUMBER ONE
DATED JUNE 10, 1988, AS AMENDED; RACHEL
ANNE ROSENTHAL TRUST U/A DATED JUNE 29,
1990; RACHEL ANNE ROSENTHAL TRUST #3;

Adv. Pro. No. 10-05421 (LGB)

HEATHER CARROLL LOWLES TRUST U/A
DATED JUNE 29, 1990; TIFFANY JOY LOWLES
TRUST U/A DATED JUNE 29, 1990; MELANIE
ANN LOWLES TRUST U/A DATED JUNE 29, 1990;
TAYLOR ASHLEY MCEVOY TRUST U/A DATED
JUNE 24, 1992; MADISON ALYSSA MCEVOY
TRUST U/A DATED JUNE 29, 1990; S.A.
GRANTOR RETAINED ANNUITY TRUST;
AVELLINO FAMILY TRUST; AVELLINO &
BIENES PENSION PLAN & TRUST;

NANCY C. AVELLINO, individually, and as Trustee
for NANCY CARROLL AVELLINO REVOCABLE
TRUST UNDER THE TRUST AGREEMENT
DATED MAY 18, 1992; RACHEL ANNE
ROSENTHAL TRUST U/A DATED JUNE 29, 1990;
RACHEL ANNE ROSENTHAL TRUST #3;
HEATHER CARROLL LOWLES TRUST U/A
DATED JUNE 29, 1990; TIFFANY JOY LOWLES
TRUST U/A DATED JUNE 29, 1990; MELANIE
ANN LOWLES TRUST U/A DATED JUNE 29, 1990;
TAYLOR ASHLEY MCEVOY TRUST U/A DATED
JUNE 24, 1992; MADISON ALYSSA MCEVOY
TRUST U/A DATED JUNE 29, 1990;

AVELLINO & BIENES; AVELLINO FAMILY
TRUST; AVELLINO & BIENES PENSION PLAN &
TRUST; GROSVENOR PARTNERS, LTD.;
MAYFAIR VENTURES, G.P.; ASTER
ASSOCIATES; STRATTHAM PARTNERS; KENN
JORDAN ASSOCIATES; ASCENT, INC.; MAYFAIR
BOOKKEEPING SERVICES, INC.; 27 CLIFF, LLC;
THE AVELLINO FAMILY FOUNDATION, INC.;

FRANK J. AVELLINO REVOCABLE TRUST
NUMBER ONE AS AMENDED AND RESTATED
JANUARY 26, 1990, AS AMENDED; FRANK J.
AVELLINO GRANTOR RETAINED ANNUITY
TRUST UNDER AGREEMENT DATED JUNE 24,
1992; FRANK J. AVELLINO GRANTOR
RETAINED ANNUITY TRUST AGREEMENT
NUMBER 2 UNDER AGREEMENT DATED JUNE
24, 1992, AS AMENDED; FRANK J. AVELLINO
REVOCABLE TRUST NUMBER ONE UNDER THE
DECLARATION OF TRUST NUMBER ONE
DATED JUNE 10, 1988, AS AMENDED; NANCY
CARROLL AVELLINO REVOCABLE TRUST
UNDER THE TRUST AGREEMENT DATED MAY

18, 1992; HEATHER CARROLL LOWLES TRUST
U/A DATED JUNE 29, 1990; TIFFANY JOY
LOWLES TRUST U/A DATED JUNE 29, 1990;
MELANIE ANN LOWLES TRUST U/A DATED
JUNE 29, 1990; TAYLOR ASHLEY MCEVOY
TRUST U/A DATED JUNE 24, 1992; MADISON
ALYSSA MCEVOY TRUST U/A DATED JUNE 29,
1990; S.A. GRANTOR RETAINED ANNUITY
TRUST,

Defendants.