


15-cv-60082

FILED BY  D.C.
MAR 06 2019
ANGELA E. NOBLE CLERK U.S. DIST. CT. S. D. OF FLA. - FT. LAUD.

**Objection to Receivership Recommendation regarding:
Claim 8- Rejected Claim
Jose' and Mireille Roffe', Claimants**

1. The Request

We, Jose' and Mireille Roffe', Joint Claimants under Claim 8, request that our claim describing a net loss be accepted.

2. The Claim to the Receiver

Our claim to the Receivership was filed on June 10, 2016 and included 2 debits payments to ETIA totaling \$150,000 and 3 credit deposits (ETIA payments to us) totaling \$102,998.74, for a net loss of \$47,001.26

3. Basis for Receiver's Rejection of Claim

The Receivership's recommendation reads as follows:

The Receiver recommends that Claim 8 be rejected because it is based in part on a transaction with a non- Receivership entity. The individual who submitted Claim 8 is a "net winner" with respect to the Receivership Entities

4. The Objection

The Receiver's reference to "a transaction with a non- Receivership entity" does not specify which of the five (5) transactions in our original claim is in question. We have recently been advised by Mr. Dan Newman from Nelson Mullins that the transaction referred above is our first transaction with Elm Tree Investments Advisers LLC (ETIA), namely a \$50,000 investment for the Emerging Growth Fund (EGF) paid on March 4, 2013. **Please advise us if our understanding is incorrect and we will promptly revise our Objection accordingly.**

Based on the above clarification, we object to the Receivership's stated rationale for rejecting the claim. We respectfully submit 4 reasons for our Objection. We have first summarized below the basis for our objection, and provided details supporting our summary subsequently.

5. Summary

- Although the above \$50,000 payment is alleged to have been with a non- Receivership entity, **the transaction was in actual fact completed with a named Receivership entity, ETIA, which controlled all the Elm Tree funds**
- In light of the Receivership scope extension to include the Etopia Fund, the continued exclusion of the EGF Fund name in the Receivership mandate fails the "fairness and equity" criteria associated with the Receivership duties. It is in our opinion essential to recognize that **the Emerging Growth Fund meets all the requirements put forward by the Receiver in her approved recommendation to Judge Dimitrouelas to extend the scope of the Receivership to the Etopia Fund.**

- Our March 2013 \$50,000 payment was deposited by the Defendants Elm et al, and was fully or partially used to purchase assets (house, cars, jewelry etc.). ETIA funds and assets have been seized and liquidated by the Receivership, and are now scheduled to be redistributed to defrauded investors. **The liquidated assets have therefore been partly sourced with the Roffe payment. We respectfully object to the exclusion of the Roffes, the owners of the contributing \$50,000 deposit to the liquidated assets, in the distribution of said liquidated assets.**
- **The inclusion in the Receivership's calculations of J. and M. Roffe' of an ETIA Emerging Growth Fund investment repayment is inconsistent with the exclusion of the \$50,000 Roffe's EGF Fund initial investment. This is to say that, if the EGF payment transaction by the Roffes to ETIA is excluded from the Partnership entity, its repayment (by ETIA to the Roffes) cannot rationally be included in the Partnership entity.**

6. Supporting evidence for the Objection

- a. **Our \$50,000 March 4, 2013 investment was with a Receivership entity, namely Elm Tree Investment Advisors LLC (ETIA).**

Although our \$50,000 check payment dated March 4, 2013 was made to Elm Tree Emerging Growth Fund (EGF), which is not specifically named in the Receivership Order, **the said Fund is nevertheless an ETIA Fund- see below references by the Justice Department.** As such, **our payment clearly is a with a Receivership entity, namely ETIA.** ETIA is consistently and repeatedly named in the Receivership Order and the subsequent Receivership filings. We submit the following excerpts as illustrations.

- On April 13, 2016, the Justice Department confirmed that the Funds scheme was controlled by ETIA. *"According to the four-count Complaint unsealed in Manhattan federal court: From at least June 2013 through December 2014, ELM and NAQVI engaged in a scheme to defraud investors in funds that ELM and NAQVI created and controlled at Elm Tree Investment Advisors LLC ("ETIA"), Reference <https://www.justice.gov/usao-sdny/pr/two-executives-investment-advisory-and-management-firm-charged-manhattan-federal-court>*
- **The above Justice Department communication also specifically names the Emerging Growth Fund as one of the 4 funds controlled by ETIA: "ELM and NAQVI raised more than \$17 million from over 50 investors in four limited partnerships for which ETIA acted as the fund manager: Elm Tree Investment Fund, LP; Elm Tree Emerging Growth Fund, LP; Elm Tree 'e'conomy Fund, LP; and Elm Tree Motion Opportunity, LP (collectively the "Elm Tree Funds")".**

- The Receivership Order dated January 16, 2015 signed by William P. Dimitrouleas stipulates “...*Plaintiff Securities and Exchange Commission has filed an emergency motion for the appointment of a Receiver for Defendants Elm Tree Investment Advisors, LLC (ETIA)*”,”
- The Receivership instructions to claimants states:
“3. *Who Should File a Claim:*
Elm Tree Funds “Investors of Record.” An Investor of Record is defined as a Person shown to be an investor in the books and records associated with Elm Tree Investment Advisors LLC, Elm Tree Investment Fund LP, Elm Tree ‘e’Conomy Fund LP, and Elm Tree Motion Opportunity LP, including any of their related entities”
- The Receivership claim form asks: “**Did you invest in ...ETIA...** please state the related entity in which you have invested funds either directly or indirectly”. This is consistent with our request to treat J. and M. Roffe’ who have invested in ETIA related funds (EGF in this case, and other funds) as investors of records.

Did you invest funds directly or indirectly in either Elm Tree Investment Advisors LLC, Elm Tree Investment Fund LP, Elm Tree ‘e’Conomy Fund LP, and Elm Tree Motion Opportunity LP. If yes, please mark the entity in which you claim to have invested. If no, please state the related entity in which you have invested funds either directly or indirectly.

Elm Tree Investment Advisors LLC

- Furthermore, according to the original Receivership Order, “*The SEC’s Complaint ...alleges that between no later than November 2013 to January 2015, the Defendants engaged in a fraudulent securities ...scheme*”. The “no later than” qualification allows for inclusion/extension to any other fraudulent Elm Tree funds, which we argue should reasonably include our March 4, 2013 payment of \$50,000 to the EGF Fund.
- b. **The Receivership mandate has been extended to another ETIA entity, Etopia LP. We object that a similar scope expansion has not been explicitly extended to the EGF Fund. The Emerging Growth Fund meets all the requirements put forward by the Receiver in her approved recommendation to Judge Dimitrouelas to extend the scope of the Receivership to the Etopia Fund.**
- Please refer to the Receivership document:
<http://www.elmtreereceivership.com/wp-content/uploads/2015/01/Receivers-Motion-to-Expand-Scope-of-Receivership.pdf>
- The entire document can be read as a legitimate inclusion of the EGF Fund in the Receivership mandate by substituting the Etopia name with EGF. We present a few excerpts to illustrate our point.
- Under **FACTUAL SUPPORT FOR EXPANSION OF THE RECEIVERSHIP OVER ETOPIA**

- **"A. Commingling of Assets with the Receivership Entities Consistent with Nadel and Torchia, Etopia was funded using the proceeds derived from the Defendants' scheme to defraud investors". The Emerging Growth Fund was similarly funded using the referred Defendants' scheme**
- **"i. Use of the Elm Tree Name. A brochure was prepared for Etopia, which was intended to induce investments in the entity" Similarly, a brochure was prepared for EGF using the Elm Tree name to induce our investment to this entity.**
- **"ii. ETIA as Etopia's General Partner and Fund Manager". ETIA is also EGF Fund's General Partner and Fund Manager**
- **"iii. Marketing and Solicitation of Etopia by ETIA". Identical for the EGF Fund**
- **"iv. Overlapping Investors Defendant Elm and ETIA's solicitations ultimately resulted in ETIA investors investing money in Etopia". EGF Fund solicitations also resulted in ETIA Investors investing money in EGF.**

The Etopia scope extension wholly supports the rationale to treat the defrauded Roffe investor in an equitable and non-discriminatory manner by admitting his/her \$50,000 investment in the Receivership calculations or by removing an equal related repayment by the Defendant.

- c. The Receivership has seized moneys from Fred Elm's ETIA banking accounts where our \$50,000 check was previously deposited. The distribution of funds (partially) sourced from J and M Roffe's moneys to other investors but not to J. and M. Roffe', would be inappropriate and inconsistent with the mandate and spirit of the Receivership to *"...take whatever actions are necessary for the protection of the investors"*.

The Receivership has also recovered and liquidated assets on behalf of the Receivership Entities that were purchased with investor funds. Therefore, **the residence, purchased after the Roffe's March 2013 EGF Fund investment** (according to the Receivership filings, *"On June 10, 2014, the Elms purchased the Elm Home located at 2533 NE 26th Avenue, Fort Lauderdale, FL 33305"*), cars, jewelry etc. were purchased with funds from J and M Roffe' \$50,000 investment in ETIA EGF, as well as other investors' money. **We object to the recommendation that the funds from such liquidated assets be redistributed to all defrauded investors but not to J and M Roffe'.**

According to filings in the Receiver web site, *"Fred Elm initially deposited investor funds into bank accounts held by ETIA, the Elm Tree Funds, or his own personal bank account"*. We have provided evidence that our \$50,000 March 4 2013 payment was deposited in an ETIA/Elm Tree bank account. Any distribution of this or part of this financial asset to other defrauded investors and not J and M Roffe' would clearly be unjustified.

- d. **The inclusion in the Receivership's calculations of J. and M. Roffe' of an ETIA Emerging Growth Fund investment repayment is inconsistent with the exclusion of the \$50,000 Roffe's EGF Fund initial investment.**

Several emails from ETIA and between ETIA and us unambiguously associate our March 2013 \$50,000 investment with the July 2014 \$52,998 ETIA (\$50,000 repayment and

\$2,998 profits) payment to us and have been provided to the Receivership. **We object to the fact the Receivership recommendation appears to overlook this evidence and has included \$50,000 of this repayment in the Roffe's net proceeds.**

We have provided all our correspondence and answered all the questions asked by the Receivership. We genuinely believe that Receiver Alonso recognizes that we have been "trapped" in an unfortunate set of bureaucratic events, and if that is a correct assumption, we trust that the credibility of the above ETIA repayment for the EGF Fund to us will be considered in your final decision.

7. Conclusion

We have on numerous occasions requested an explanation (Receivership, SEC) as to why the Emergency Growth Fund and/or or \$50,000 payment was not being included in the Receivership mandate or in another Receivership. As we have not received an explanation to date, which we accept may not be permitted by the SEC, we may have been prevented from developing a complete, informed objection as to its exclusion. **We ask you, Judge Dimitrouleas, to consider the unfair unintended financial consequences to J. and M. Roffe' in light of this fundamental question.**

The reasons for the non-naming of the otherwise eligible EGF Fund should not have the effect of penalizing us. We therefore would like to request that **a compassionate solution to our disputed claim be allowed** by Judge Dimitrouleas and Receiver Alonso to prevent unintended financial harm to us. This considered action would meet the spirit of the Receivership, its intent as opposed to the strict "letter of the law". A considered solution would also be congruent with our four evidenced items developed above. Lastly, it would not materially affect the amounts distributed to the other eligible defrauded investors (the Roffes' distribution would be around \$8,000 according to our calculations based on the Receivership recommended pro-rated formula)

We are prepared to attend a hearing as required (by telephone or teleconference if allowed), and are open to suggested alternatives to mitigate further financial damage caused to us by the Elm Tree fraudulent actions.

Appendix A. About the Settlement with the Receivership

Please note that we have settled the legal action raised against us by the Receivership, as outlined in our settlement with the Receivership for their claim of “fraudulent net transfer” to the Roffe’ of \$3,163.67; we are herein acting upon the following Settlement document paragraph, which allows us to file an objection:

5. **Claim**. Nothing in this Agreement shall prevent the Roffes from submitting a claim in any Court-approved claims proceed initiated by the Receiver; however, the Receiver does not waive and shall retain all legal and equitable rights to oppose and/or object to any such claim based on the terms of this Agreement or for any other proper reason. The Roffes further acknowledge and agree that this Agreement in no way effects the Reciever’s sole discretion in making recommendations to the

We respectfully submit that we accepted a settlement out of concern for a costly legal action by the Receivership. This was not an admission of guilt, as duly noted in the Settlement document. Because the recovery of funds from the Roffes has preceded the objection process, an unintended “chicken and the eggs” situation has occurred. For this reason, we ask that the right of the Receivership to invoke the Settlement terms to disregard our objection not be used, and that your decision relative the Receivership recommendation will be made exclusively on the merits of our objection.

Appendix B

Example of email exchange associating the ETIA repayment to the Roffe's of their Emergency Growth Fund (Twitter Fund) investment. The email alludes to a return of \$182,998. We asked

Fred@elmtreeinvestment.com

Thu, Jul 17, 2014,
12:41 PM Re
ply

to me

Hello Jose,

Sorry for the delay. I spoke to the attorney this morning. I would just need a letter or email from you stating that you would like to use part of the funds you are receiving from Elm Tree Emerging Growth Fund, LP and invest whatever amount you like into Elm Tree Motion Opportunity, LP. The balance to then be deposited into Bank of America or TD.

Thank you....have a great BBQ this weekend.

All the best

Fred

On Wed, Jul 9, 2014 at 10:53 PM, <fred@elmtreeinvestment.com> wrote:

> Hello Jose,
>
> Please note that \$182,998.67 will be deposited into your account next
> week. The Twitter Fund has now been closed. You should have it in the early
> part of the week.
>
> All the best,
>
> Fred Elm
> Fund Manager
> Elm Tree Investment Advisors
> Suite 1400 - 401 E. Las Olas Boulevard
> Fort Lauderdale, Florida
> U.S.A. 33301

Explanatory Note from J Roffe' re: the \$182,998.67 amount in Fred Elm's email above: we actually received \$52,998 via cheques and "rolled over" the remainder in subsequent funds were we were net losers- information provided to the Receivership

>

Appendix C

Emerging growth Fund sold as part and parcel of Receivership entity Elm Tree Investment Advisers (ETIA)

Since the start of the new millennium, financial markets have experienced massive fluctuations leading to a lost decade for many investors. Imploding asset bubbles have destroyed investor confidence and damaged investor savings and retirement funds.

In this volatile environment, Fred Elm founded Elm Tree Investment Advisers, LLC (ETIA) bringing together experienced Silicon Valley and Wall Street financial executives, derivative traders and investors. Under his guidance, ETIA has maintained a steady record of substantive performance and securing principal.

Fred Elm is an options and futures specialist with 22 years of experience trading equity markets, derivatives, swaps, risk arbitrage and special situations including distressed assets and structured credit. He graduated from the University of Toronto with an Honors Degree in Commerce and has extensive education in Financial Engineering. After eight years of working as a retail securities broker and derivatives trader for Richardson Greenfields and then RBC Dominion Securities (two of the most prominent brokerage firms in Canada), Fred decided to branch out and manage his own private equity fund: ETIA was born.

Fred oversees the portfolio of ETIA's funds on a daily basis. This portfolio is comprised of the following:

Elm Tree Investment Fund (ETIF) - Flagship fund of the portfolio that employs unique trading strategies geared towards capital appreciation, predominantly dealing with derivative based instruments.

Elm Tree Proprietary Fund (ETPF) - Equity based fund that develops proprietary internet based companies. Value added feature to ETPF is the avenue to successfully obtain U.S. Green Cards for investor and his/her immediate family members.

Elm Tree Real Estate Investment Trust (ET-REIT) - Privately traded trust that invests in distressed and/or discounted real estate properties converting them into profitable assets. As with the ETPF, the ability to successfully obtain U.S. Green Cards also applies here.

Elm Tree Emerging Growth Fund (ETEG) - Fund that maximizes returns by seeking capital gains on equity and equity related investments in privately-held high-growth, late-stage, emerging social media internet companies. Acquired Pre-IPO shares in Twitter at \$74.50 per share.

Elm Tree V-Capacity Fund (ETVC) - Similar to ETPF with focus on emerging e-commerce based internet companies. Acquired Pre-IPO shares in Amazon and Barnes & Noble.

Elm Tree Investment Advisory Solutions - Protecting capital is the foremost important principle when seeking investment and is the foundation of the organization.

March 4, 2019

To: United States District Court
Southern District Of Florida
U.S. Federal Building and Courthouse
299 East Broward Boulevard #108
Fort Lauderdale, FL 33301

Cc: Copy by email to: ElmTreeInfo@Moecker.com

From: Jose' and Mireille Roffe'
28 Edgecombe Ave
Toronto, Ontario
Canada M5N 2X2

**Objection to Receivership Recommendations
Case No 15-cv-60082.
Security and Exchange Commission, Plaintiff,
V. Frederic Elm f/k/a Frederic Elmaleh, et al., Defendants**

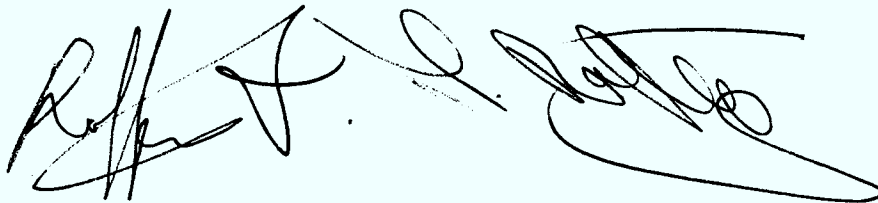
**Claim 8- Rejected Claim
Jose' and Mireille Roffe', claimants**

Dear Judge Dimitrouleas,

We attach a thoroughly researched Objection to our rejected claim. We hope that you will find our Objection fair and equitable.

We would like to thank Receiver Grisel Alonso, who has interacted professionally and compassionately with us throughout this process. We respectfully trust that she will also find this Objection appropriate and compelling.

Regards,

The image shows two handwritten signatures in black ink. The signature on the left is more stylized and appears to be 'Jose' Roffe'. The signature on the right is also stylized and appears to be 'Mireille Roffe'. Both signatures are written in a cursive, flowing style.

J and M Roffe',
Joint Claimants

CERTIFIED MAIL



7018 3090 0002 1602 0818

U.S. Federal Building and Courthouse
299 East Broward Boulevard # 108
Fort Lauderdale, FL 33301

Mailbox Service
Contents
S.T.R.
1504



1020



33301

U.S. POSTAGE PAID
FOR LETTER
FORT LAUDERDALE, FL
33308
MAR 04, '19
AMOUNT
\$4.20
R2303S101924-2

1750 Galt
Ocean Dr. Unit 14R
Fort Lauderdale
33308

Mr Jose Roffe
28 Edgcombe Ave
North York ON M5N 2X2

