

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082- DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION)
)
Plaintiff,)
)
v.)
)
FREDERIC ELM f/k/a FREDERIC ELMALEH,)
et al.,)
)
Defendants,)
_____)

**PLAINTIFF’S MOTION TO APPEAR BY TELEPHONE AND STATEMENT OF
POSITION WITH RESPECT TO THE RECEIVER’S
REVISED PROPOSED FIRST DISTRIBUTION**

Plaintiff Securities and Exchange Commission (“SEC”) moves to appear by telephone at the hearing scheduled for August 2, 2019 and sets forth its position herein with respect to the Receiver’s Revised Proposed First Distribution, and in support thereof, shows the Court as follows:

1. On May 14, 2019, the Court entered an Order [DE 218] (the “Order”) following a hearing on May 9, 2019 on the Receiver’s original Proposed First Distribution [DE 200].
2. In the Order, among other things, the Court approved the Receiver’s calculation of the allowed claim amounts in Column 10 of the Schedule of Claims [DE 200-1] (the “Allowed Claim Amounts”) but rejected the Receiver’s original proposed distribution amounts in Column 12 of the Schedule of Claims because the same were calculated on the basis of the net loss method. Instead, the Court instructed the Receiver to recalculate the distribution amounts using the rising tide method. The Receiver filed her recalculations on June 6, 2019 [DE 220].
3. The SEC has reviewed the Receiver’s revised distribution amounts and believes the same are in compliance with the Court’s instructions.
4. To date, only one investor (Claimant No. 24) has filed an objection to the revised distribution amounts. *See* DE 222. The objection repeats the same position the claimant previously took with respect to the calculation of his Allowed Claim Amount [*see* DE 207], and

also further objects to the use of the rising tide method. In that investor's prior filing he objected to the use of the rising tide method.

5. The Court's Order disposes of Claimant No. 24's objections:

a. With respect to the amount of the claim, the Court already approved the Receiver's calculation of Claimant No. 24's Allowed Claim Amount (and the Allowed Claim Amounts of all of the investors), none of which amounts have changed. (*Compare* DE 200-1 Column 10 *with* DE 220-1 Column 4.) Instead, the only change is to the investors' proposed *distribution* amounts, which now have been recalculated using the rising tide method.

b. With respect to the rising tide methodology, the Order effectively overruled Claimant No. 24's objection to that method, and the proposed distribution to him of \$0.00 is the result of that ruling.

6. Accordingly, and in light of the Court's Order, the SEC supports the Receiver's Revised Proposed First Distribution set forth in DE 220.

7. Given that the SEC's undersigned counsel is located in Washington, D.C. and the narrowness of the issue before the Court in light of the Order, the SEC respectfully would request to appear by telephone. Counsel may be reached at **202-551-3982**. A proposed Order is attached hereto.

Dated: July 25, 2019

Respectfully submitted,

By: /s/ Patrick R. Costello
Patrick R. Costello
Assistant Chief Litigation Counsel
Florida Bar No. 75034

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
100 F Street N.E.
Washington, DC 20549-5985
Telephone: (202) 551-3982
Facsimile: (202) 772-9245
E-mail: CostelloP@sec.gov

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on July 25, 2019, the foregoing document was filed electronically with the Clerk of Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record identified on the Service List below via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Patrick R. Costello

Patrick R. Costello

SERVICE LIST

David R. Chase, Esq.
David R. Chase, P.A.
1700 East Las Olas Boulevard, Suite 305
Fort Lauderdale, FL 33301
(Counsel for Frederic Elm and Amanda Elm)

Christopher Bruno, Esq.
Bruno & Degenhardt, P.C.
10615 Judicial Drive, Suite 703
Fairfax, VA 22030
(Counsel for Frederic Elm and Amanda Elm)

Daniel S. Newman, Esq.
Christopher Cavallo, Esq.
Nelson Mullins Broad and Cassel
One Biscayne Tower, 21st Floor
2 South Biscayne Blvd.
Miami, FL 33131
(Counsel for Receiver Grisel Alonso)

Stephen Warren, Esq.
Holland & Knight LLP
701 Brickell Ave., Suite 3300
Miami, FL 33131
(Counsel for Claimant No. 9)

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**ORDER GRANTING PLAINTIFF’S MOTION TO APPEAR BY TELEPHONE
AT THE AUGUST 2, 2019 HEARING ON THE RECEIVER’S
REVISED RECOMMENDATIONS AND OBJECTIONS**

THIS CAUSE having come before the Court on the Motion of Plaintiff Securities and Exchange Commission [DE 223] for permission to appear telephonically at the hearing on August 2, 2019, on the Receiver’s revised recommendations and objections. The Court having considered the Motion and all other relevant factors, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Motion is **GRANTED**;
2. Plaintiff may appear telephonically at the hearing on August 2, 2019 at 10:30 a.m., on the Receiver’s revised recommendations and objections; and
3. Plaintiff has provided the Court with a telephone number of 202-551-3982. The Court will call this number from the Courtroom at 10:30 a.m. ET on August 2, 2019.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this ___ day of _____, 2019.

WILLIAM P. DIMITROULEAS
United States District Judge

Copies to:
Counsel of record