

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
**CASE NO. 15-CV-60082-WPD-DIMITROULEAS/SNOW**

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

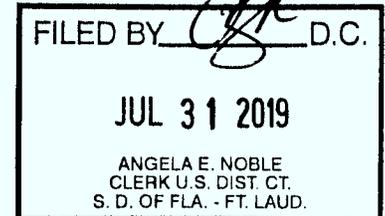
v.

FREDERIC ELM f/k/a FREDERIC ELMALEH, et al.,

Defendants,

and

AMANDA ELM f/k/a AMANDA ELMALEH,  
Relief Defendant.



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**Claimant #24's Response to Receiver's Objection – Document 224**

**1. The Request**

I, Khalil Mohammed, claimant #24, would like to formally reply to the Receiver's objection to a modification of my claim as detailed in the Receiver's Response in Opposition to Claimant No. 24's Objection - Document 224

**2. The Objection**

In reading the *SEC vs. Huber* decision, I would also like to site the same passage as the Receiver used in her written objection to my claim. In particular, I would like to bring your attention to two specific areas as detailed below:

*We are given pause, however, by the situation of an investor who having withdrawn some money from the Ponzi scheme then reinvests it. Suppose he had initially invested \$150,000 and then, shortly after withdrawing \$50,000, he reinvested it, thus restoring his balance to \$150,000, all of which he lost when the scheme collapsed. Under the rising tide method he would be credited with having invested \$200,000 (\$150,000 plus \$50,000) and having recouped a quarter of that amount by his withdrawal, and thus would receive a reduced share of recovered assets compared to a person who had invested \$150,000 and lost it without any interim withdrawals. **We can't see why those two investors should be treated differently, as would be obvious if the withdrawal and reinvestment had occurred on successive days.** In cases of withdrawal followed by reinvestment, **the investor's maximum balance in the Ponzi scheme (\$150,000 in our example) should be treated as his investment; the withdrawals, having in effect been rescinded, should be ignored.** [Huber, 702 F.3d at 907-08].*

Of the 25 claimants on record, there are 4 who will receive no payment as a result of the “rising-tide” method, of which I am one. While none of the other three objected, none of the other three to my knowledge, **lost the full amount of their investment by reinvestment** thus rendering my return via the “rising tide” method as 0%. This makes my situation unique.

As given in the example above, Judge Posner’s decision explicated stated that given the exact same situation to which I am subjected, that my investment should be treated the same as the other investors and the withdrawal be ignored. I have clearly shown in my previous objection the withdrawal and reinvestment of my FULL funds over a successive period [see Notice of Filing Objection to Claimant No. 9’s Proposed Distribution Method by K. Mohammed].

Furthermore, I acknowledge that Judge Posner goes on to say that:

*Or so it seems to us; we can't find any discussion in case law or commentary of this "maximum balance" approach. We needn't pursue the issue. Although one of the appellants told the district court that he had withdrawn money and reinvested it continually, **he has given no details and neither he nor any of the other appellants ask us to adopt the maximum-balance approach that we have just described.*** [Huber, 702 F.3d at 907-08].

While I did not specifically call my previous objection to the proposed payout method, the “maximum-balance approach”, based upon my circumstances, this is the method that I wished the court to consider in my case and as Judge Posner had alluded to in his decision.

And while the *SEC vs. Huber* decision also did explicitly state that it could find no previous case law to support the “maximum-balance” approach, it does not say that it should never be considered. Only that **they chose not to** pursue it because no one provided them details or asked them to.

In my case, I have provided the details and am asking you to consider the “maximum-balance” approach for the sole reason that I am the **only** investor in the fund to receive \$0 or 0% [see Notice of Filing Objection to Claimant No. 9’s Proposed Distribution Method by K. Mohammed.] due to the circumstances of my investment which in my opinion, completely fails the S.E.C’s pursuit of equitable relief [See 15 U.S.C. §§ 78u(d)(5)] and *Huber*, 702 F.3d at 909].

Furthermore, by implementing the maximum-balance approach, the return of each of the other remaining 21 investors will be minimally affected, with no one investor being adversely affected like I am now.

### 3. Summary

Therefore for the reasons set forth in this Response, I would like to respectfully request that the Court adjust the true amount of my claim to the amount of \$65,000USD and my initial return amount to \$0 based upon the “maximum-balance” approach as detailed in the *S.E.C vs. Huber* decision.

July 29, 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](mailto:elmtreeinfo@moecker.com)

**FROM:** Khalil Mohammed  
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**Claim #24**  
**CASE NO. 15-CV-60082-WPD-DIMITROULEAS/SNOW**  
Security and Exchange Commission, Plaintiff,  
v. Frederic Elm f/k/a Frederic Elmaleh et al., Defendants

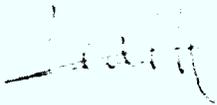
**Claimant #24's Response to Receivers Objection – Document 224**

Dear Judge Dimitrouleas,

Please find enclosed a response to the Receivers objection to my filing *Notice of Filing Objection to Claimant No. 9's Proposed Distribution Method by K. Mohammed.*

Your honor, it is not my intent to be a nuisance to the court by filing a further response. If I had actually received ½ of my investment back, there is no way in good conscience that could ask for more while others received nothing. But due to the interpretation of the "rising-tide" method, this is not the case and it is the reason that I am asking for your further consideration in this matter with my filing below.

Regards,



Khalil Mohammed  
Claimant