

EXHIBIT 14

1 CONFIDENTIAL - MATTHEW GREENBLATT
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
In re: SIPA LIQUIDATION
5
6 BERNARD L. MADOFF INVESTMENT No. 08-01789(BRL)
7 SECURITIES LLC,
8 (Substantively
9 Debtor. Consolidated)
10 -----x

9 IRVING H. PICARD, Trustee of the
10 Liquidation of Bernard L. Madoff
11 Investment Securities LLC,
12 Plaintiff,

Adv. Pro. No.
09-01182(BRL)

12 vs.

13 J. EZRA MERKIN, GABRIEL
14 CAPITAL, L.P., ARIEL FUND LTD.,
15 ASCOT PARTNERS, L.P., GABRIEL
16 CAPITAL CORPORATION,

15 Defendants.

16 -----x
17 ***CONFIDENTIAL***

18 VIDEOTAPED DEPOSITION OF MATTHEW GREENBLATT
19 New York, New York
20 August 17, 2015
21

22
23 Reported by:
24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR
25 JOB NO. 96625

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2 the IRS were necessitated by fictitious activity
3 in the accounts?

4 MR. SONG: Object to the form.

5 A. I would say yes.

6 Q. And those tax payments were not made
7 at the request of account holders, correct?

8 MR. SONG: Object to the form.

9 A. I don't know whether or not they ever
10 said, "Pay them on my behalf or not." The
11 calculation, though, goes to the books and
12 records and a reconstruction of the items on the
13 books and records as to what transactions
14 actually transpired with respect to cash and
15 principal. So those payments were made on
16 behalf of account holders by BLMIS and,
17 therefore, have been concluded were reductions
18 of their principal.

19 Q. And you're not offering an opinion as
20 to the appropriateness of deductions of the tax
21 payments from the net equity; that was
22 determined by counsel, right?

23 MR. SONG: Object to the form.

24 A. As I said before, the net equity
25 determinations are essentially a legal

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2 conclusion, and from the very beginning, I was
3 asked by counsel to the trustee to identify cash
4 and principal transactions and to apply this
5 methodology of inflows and outflows.

6 Q. You're not offering an opinion as to
7 the appropriateness of that methodology,
8 correct?

9 A. That's correct.

10 Q. Was there any other analysis that you
11 had done that was altered before -- before
12 issuing your final reports?

13 MR. SONG: Object to the form.

14 A. I don't think -- I can't think of any,
15 no.

16 Q. Are you being compensated for your
17 time spent on the Merkin and Madoff cases?

18 A. Yes.

19 Q. How are you being compensated?

20 A. Me, personally, or my firm?

21 Q. How are you personally being
22 compensated?

23 A. I draw a salary and bonus over time.

24 Q. How is the amount of your bonus
25 determined?

1 BRUCE G. DUBINSKY
2 the fraud; it's going in and objectively
3 looking at the facts and circumstances of a
4 situation and then determining whether or not
5 fraud existed; or if there's evidence to show
6 that it's not fraud, to conclude that there
7 wasn't fraud.

8 Q. And -- and in every instance it
9 starts with the premise that you have to
10 believe that there's a fraud; is that right?

11 A. Yes. And I think that from the
12 standpoint it makes sense because if there's
13 not evidence or -- or some sort of allegation
14 of fraud inquiry, why would I be doing an
15 investigation. I think the ACFE, when they
16 put that in their ethics, wanted to make sure
17 its members weren't on just a fishing
18 expedition, but were doing work that was
19 focused on there was some allegation of fraud.

20 Q. So you don't, for example, pull
21 some random sampling of situations and say,
22 let me see whether there's fraud in any of
23 them or what percentage of cases there's
24 fraud, you start from there's some allegation
25 of fraud and see if you can prove it?

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2 MS. KOSACK: Object to form.

3 A. Yeah, I didn't understand your
4 question. It sounded like you were talking
5 about sampling or some sort of research.

6 Q. Sure. I take it you never start
7 from the kind of neutral hypothesis of I'm
8 going to take ten companies or ten investment
9 advisers and investigate whether there's any
10 fraud at any of them; you start -- you always
11 start from the premise of I believe that
12 there's fraud at this particular one, let me
13 see what I can prove?

14 A. As to me, I've never been hired in
15 the -- the former example you gave; I've
16 always been hired when a client believes there
17 was some problem and then I'm hired.

18 Q. And I take it it is your belief
19 that most fraud is uncovered as a result of
20 some confession or some whistleblower and
21 not -- well, strike.

22 That -- that most fraud is
23 uncovered as a result of either a confession
24 by the perpetrator or some whistleblower; is
25 that right?

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2 We have identified all of those line
3 items where funds were attempted to be
4 transferred from one to the other, and then we
5 look at how much principal was available in the
6 account at the time of that transfer and move
7 over only those funds up to the balance of
8 principal available in the transferor's account
9 at the time.

10 Q. What about the transfer of securities
11 between BLMIS accounts, did you factor that into
12 the principal balance calculation?

13 A. Those have all been reviewed and
14 considered, but as the fictitious trading has
15 been identified within Madoff, the securities
16 were not actually purchased, no securities
17 actually existed, so the securities could not be
18 moved from one account to another because they
19 didn't exist. So those have all been considered
20 and excluded from the calculation.

21 Q. And did you make the determination to
22 exclude the transfer of securities between BLMIS
23 accounts?

24 A. It was not my decision to be made. It
25 was part of the methodology that the trustee and

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2 his team had determined was the appropriate
3 method with which to calculate the net equity
4 balances.

5 So I identified all of those instances
6 of inter-account transfers of funds and
7 identified principal available in everybody's
8 account, and I identified all the instances of
9 transfers of reportedly held but fictitious
10 securities; and the decision was made that the
11 fictitious trading activity and the fictitious
12 securities, any fictitious gains generated, all
13 of the fictitious activity couldn't be moved
14 from one account to another, and only funds in
15 the form of principal could be moved in the
16 inter-account transfers.

17 Q. And you're not offering any opinion as
18 to the appropriateness of excluding the transfer
19 of securities between BLMIS accounts, correct?

20 A. It calls for a legal conclusion, so
21 all I'm offering is the calculation of the
22 methodology that accounts only for principal.

23 Q. Did you ever discuss factoring in the
24 transfer of securities between BLMIS accounts
25 into your principal balance calculation?

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2 A. I performed the calculation where it
3 was determined that the appropriate method to
4 calculate net equity or determine net equity was
5 to account for all actual cash and principal
6 transactions on the face of the BLMIS documents
7 on the books and records that we were
8 reconstructing in an effort to calculate the
9 reality of the Madoff situation and to disallow
10 any of the fictitious trading activity.

11 Q. You're the expert who signed these
12 reports, correct?

13 A. Yes.

14 Q. And as the expert, you made the
15 determination to exclude those transactions from
16 the principal balance calculation, correct?

17 MR. SONG: Object to the form. Asked
18 and answered.

19 A. I don't agree with that, no.

20 Q. Where in your report do you say that
21 you're excluding the transfer of securities
22 between BLMIS accounts from your principal
23 balance calculation?

24 A. It's captured in paragraph 18, where
25 it says, "The principal balance calculation does

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2 not include trading activity reflected on
3 customer statements. At the direction of
4 Trustee's counsel, no credit is given or removed
5 for gains or losses resulting from trades
6 reflected on customer statements."

7 Q. Is the transfer of securities from one
8 BLMIS account to another a trade?

9 MR. SONG: Object to the form.

10 A. No, I wouldn't call it a trade.

11 Q. So where in your report do you say
12 that you're excluding the transfers of
13 securities between BLMIS accounts from your
14 principal balance calculation?

15 A. It's implied in that sentence. It
16 doesn't use the words, but the principal balance
17 calculation doesn't include the trading
18 activity. The direction I was provided was to
19 prepare a calculation based on the inflows and
20 the outflows that are in paragraph 17 and to not
21 give any credit to any of the fictitiously
22 purchased securities or any of the fictitious
23 gains from fictitious sales of securities or any
24 of that related trading activity.

25 So, in situations where securities

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2 that don't exist are attempted to be moved from
3 Account A to Account B, the principal that
4 exists in an account is not ignored; it's left
5 in the transfer -- the principal is left in the
6 transferor's account because the securities
7 can't be moved.

8 Q. Paragraph 17 says you considered
9 non-cash deposits, correct?

10 A. It says that, yes.

11 Q. Is a security that's being transferred
12 from one BLMIS to another a non-cash deposit of
13 principal?

14 A. In certain cases, yes. There are
15 instances where BLMIS customers deposited real
16 bonds or real securities from other brokerage
17 accounts, and those were granted as principal to
18 those account holders because they represented
19 real non-cash deposits.

20 The fictitiously reported purchases of
21 securities are treated differently because the
22 fictitious trading never took place, so the
23 securities listed on the vast majority of
24 customer statements that were falsely reported
25 as purchased, those securities never existed,

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2 BLMIS never had custody of those shares, and
3 therefore, those shares couldn't be moved from
4 Account A to Account B.

5 Q. When cash was transferred from one
6 BLMIS account to another, was there actual cash
7 being transferred?

8 A. And I never used the word "cash" being
9 transferred because, no, cash was not
10 transferred in inter-account transfers. It was
11 a book entry, where liquid --
12 liquidly-available-looking funds were moved, but
13 no cash ever changed hands.

14 Q. So it was just a book entry that you
15 included in your principal balance calculation?

16 A. For the inter-account transfers?
17 Question mark.

18 Q. Yes, for the inter-account transfers,
19 it was just a book entry that you included in
20 your principal balance calculation, correct?

21 A. Those inter-account transfers that are
22 reflected in the principal balance calculation
23 are book entries made to move funds from one
24 account to another, and then the analysis that I
25 described earlier was put on each one of those.

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2 Q. And did the cash reflected in those
3 book entries actually exist?

4 MR. SONG: Object to the form.

5 A. They weren't cash transactions.

6 Q. What do you mean by that?

7 A. No cash changed hands. If he
8 transferred funds from Account A to Account B,
9 there was never any cash that changed hands.
10 Only movements in a customer's account related
11 to those funds, and for that we looked to see
12 whether or not actual principal existed, not
13 cash.

14 Q. And when securities were traded
15 between BLMIS accounts, those were just book
16 entries too, right?

17 MR. SONG: Object to the form.

18 A. I don't understand what you mean by
19 "when securities were traded between accounts."

20 Q. I apologize.

21 When the customer statements showed
22 securities being transferred from one BLMIS
23 account to another, do you know whether there
24 were -- those securities actually existed?

25 A. Well, I'll first say that, in most of

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2 those transactions, they didn't show that they
3 were being transferred. The customer statements
4 usually reflected delivery on one end and
5 receipt on the other end, and those securities
6 did not exist. So delivery could not have
7 happened and, therefore, receipt could not have
8 happened.

9 Q. Just like the cash transferred between
10 BLMIS accounts didn't actually exist, correct?

11 A. But it's not reported as cash.

12 MR. SONG: Object to the form.

13 Q. So the book entries are just a symbol
14 of the cash -- of cash being transferred from
15 one BLMIS account to another, correct?

16 MR. SONG: Object to the form.

17 A. I don't use the word "cash" in that
18 description in any way. It's -- it's value or
19 funds available in an account, but no cash ever
20 changes hands on these inter-account transfers.

21 Q. Did the transferor of securities from
22 one BLMIS account to another believe that they
23 have transfer value?

24 MR. SONG: Object to the form.

25 A. I don't know in those situations the

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2 calcu- -- my report and the calculation that I
3 prepared doesn't factor in what the account
4 holders knew or should have known.

5 Q. If the owner of one BLMIS account had
6 transferred all of the securities in that
7 account to another BLMIS account, could the
8 owner then have withdrawn anything from that
9 account, assuming there was no cash in the
10 account?

11 MR. SONG: Object to the form.

12 A. Yeah, I'm going to need you to do that
13 again. When you say the "owner," are you still
14 referring to the transferor?

15 Q. Yes.

16 A. So could you repeat that? So if the
17 transferor?

18 Q. Let's say someone owns a BLMIS
19 account, it has some securities and no cash, and
20 that person transfers all of the securities to
21 another BLMIS account. After that transfer
22 occurs, can that person then withdraw value from
23 his or her BLMIS account?

24 MR. SONG: Object to the form.

25 A. It's a more complicated question

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2 the transferor of those securities now claim
3 that he or she has a principal balance in that
4 account?

5 A. In that same situation, we have to --
6 there's multiple factors. Did they have valid
7 principal in the account? Because the
8 securities held is not directly --

9 Q. Assume they had -- sorry.

10 A. -- reconcilable to the principal
11 available in an account, so we need a few more
12 variables filled in.

13 Q. Assuming they had principal balance
14 equivalent to the securities transferred outside
15 of the account, can that transferor then claim a
16 principal balance?

17 A. The transferor, in that situation,
18 yes, because the principal stays with the
19 transferor's account. If a fictitious security
20 is moved from A to B, and that security never
21 existed, can't be delivered and can't be
22 received by the transferee, the principal
23 remains in the transferor's account and can be
24 drawn down.

25 Q. And it's your expert opinion that

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2 Account A to Account B.

3 Q. And you think even though the result
4 of that is that someone who believes they have
5 transferred all of the securities out of their
6 account then has a principal balance left in the
7 account?

8 MR. SONG: Object to the form.

9 A. If I understood the question correct,
10 I would say yes, because the transferor
11 shouldn't be punished by a transfer that didn't
12 exist and couldn't have taken place. So the
13 principal still exists within the four walls of
14 the BLMIS estate, but it still belongs to the
15 transferor.

16 Q. But what about the transferee; is it
17 appropriate that, although the transferor
18 intended to transfer everything in their account
19 to the transferee, the transferee then has no
20 principal balance as a result?

21 MR. SONG: Object to the form.

22 A. The calculation itself doesn't factor
23 in any account holder's intent in any
24 transaction. So I don't think that that is any
25 different than those situations where funds are

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2 representing to me on the record and for
3 purposes of your questions, I'll assume it is,
4 but I don't know.

5 Q. And do you have appendices in your
6 binders that are in front of you somewhere?

7 A. I don't think the appendices -- let
8 me see. Let me check one other place. No,
9 these don't have the appendix. They would
10 have been attached as part of the report.

11 Q. Well, I will represent to you that
12 this, to the best of my knowledge, is
13 Exhibit B that was from the report produced by
14 the -- or sent to us by the trustee, but
15 attached to your report that's Exhibit 1.

16 A. Okay.

17 Q. And is this -- you said that you
18 had provided a detailed list of the documents
19 that you considered. Assuming this is in fact
20 the Exhibit B that was attached to the report
21 in this case, would this be that list?

22 A. Yes, it is.

23 Q. And it has a long list. For
24 example, it starts with some articles and
25 books, and it goes to a list of pleadings; is

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2 L.P. were each net losers as of December 2008,
3 correct?

4 A. And I want to say "yes" to that, but
5 the term "net loser" I guess is a term of art in
6 that situation. So when you say "net loser,"
7 what do you mean?

8 Q. What do you think I mean?

9 A. I think you mean that they had
10 deposited more than they had withdrawn when the
11 Ponzi scheme came to an end.

12 Q. And do you agree that Ascot Partners,
13 Ariel Fund Limited, Gabriel Capital, L.P. had
14 all deposited more than they had withdrawn?

15 A. I'm just going to confirm that answer,
16 but "yes" is my answer. When you say Ariel
17 Fund, Ariel -- did you say Ariel Fund or Ariel
18 Capital?

19 Q. Ariel Fund Limited.

20 A. Yes.

21 Q. And turning to Exhibit 3D in your
22 March 20 report.

23 A. Yes.

24 Q. You found that Ascot Partners had over
25 \$226 million of principal left in its account in

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2 December 11, 2008, correct?

3 A. Correct.

4 Q. And turning to Exhibit 3E, you
5 determined that Ariel Fund had more than \$175
6 million of principal left in its account on
7 December 11, 2008, correct?

8 A. The -- and there were several Ariel
9 funds, some of which ended previously with zero
10 balances, but Ariel Fund Account 1FR070, yes.

11 Q. And turning to Exhibit 3F, you
12 determined that Gabriel Capital, L.P. had more
13 than \$163 million of principal left in its
14 account on December 11, 2008, correct?

15 A. Correct.

16 Q. And so, as you defined it, all three
17 of these accounts were net losers, correct?

18 A. Correct.

19 Q. And turning to paragraph 96 of your
20 report, your March 20 report, you also
21 determined that of the more than \$974 million in
22 total principal invested in Ascot Partners'
23 account, only about \$490 million was ever
24 withdrawn, correct?

25 MR. SONG: Object to the form.

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2 Q. But you only credited just over \$221
3 million to the Ascot Partners' account principal
4 balance because that was the available principal
5 balance that you had calculated to be in Ascot
6 Fund's account as of January 8, 2003, correct?

7 A. Correct.

8 Q. Okay. Please turn to Exhibit 40 of
9 your March 20 report.

10 A. Okay.

11 Q. And do you see that on the last page
12 of that exhibit, there is the other side of that
13 transaction, where Ascot Partners is
14 transferring funds -- I mean where Ascot Fund is
15 transferring funds to Ascot Partners, correct?

16 A. I see it, yes.

17 Q. And columns 7 and 8 show the total
18 principal balance that you had calculated Ascot
19 Fund to have on January 8, 2003, correct?

20 MR. SONG: Object to the form.

21 A. Yes, column 8 shows the principal
22 available. Column 7 shows the principal then
23 that was transferred to the transferee.

24 Q. Okay. And one of the transfers that
25 you factored into that total of \$221 million in

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2 principal available in January of 2003 appears
3 on page 2 of Exhibit 40 at the top; it's a
4 transfer from account number 1FN0430 dated
5 January 4, 1993, correct?

6 A. It was -- I think you missed one zero.
7 1FN00430, yes.

8 Q. Okay. And was this a transfer from
9 Ariel Fund to Ascot Fund?

10 A. Yes.

11 Q. And this transfer, according to the
12 customer statements, was in the amount of \$35
13 million, correct?

14 A. And change, yes.

15 Q. And but you only credited about \$13.6
16 million to Ascot Fund's principal balance,
17 correct?

18 A. Correct.

19 Q. And you only attributed that amount
20 because you had calculated that, as of January
21 4, 1993, Ariel Fund only had \$13 --
22 approximately \$13.6 million in principal balance
23 on that date, correct?

24 A. Correct.

25 Q. Okay. Let's turn to Exhibit 4A of

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2 your March 20 report, and on page 3, toward the
3 bottom, is that transfer from Ariel Fund of
4 about \$35 million to Ascot Fund on January 4,
5 1993, correct?

6 A. Yes.

7 Q. And then in column 8 is your
8 calculation of the principal balance available
9 in Ariel Fund in January of 1993, correct?

10 A. Correct.

11 Q. Please turn to page 2 of Exhibit A,
12 4A, of your March 20 report.

13 A. Okay.

14 Q. You credit a number of inter-account
15 transfers to Ariel Fund in calculating its
16 principal balance, correct?

17 A. A number of transfers into?

18 Q. You calculate -- yes. In
19 calculating -- in calculating the principal
20 balance available in Ariel Fund in January 1993,
21 there are two transfers of principal credited to
22 Ariel Fund, correct?

23 A. There are two transfers of principal
24 in, yes.

25 Q. One of these transfers is a March 31,

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2 1992 transfer from BLMIS Account 1FN033?

3 A. Correct, which you will see from that
4 line item at the time had the Account Number
5 105121-3-0.

6 Q. And that's a Shalvah account, correct?

7 A. That is correct.

8 Q. And did you credit any other transfers
9 from Shalvah Fund to Ariel Fund --

10 A. Yes.

11 Q. -- in calculating the principal
12 balance?

13 A. Yes.

14 Q. Okay. Where is that?

15 A. The last line item, on May 29, 1992,
16 the last line item on page 2.

17 Q. Were there any other transfers from
18 Shalvah to Ariel Fund included in your principal
19 balance calculation to Ariel Fund?

20 A. Those were the only two transfers of
21 funds from Shalvah to Ariel Fund. There was, as
22 we've been talking about for a while, there was
23 a transfer or a delivery of fictitiously
24 reported securities from Shalvah to Ariel, but
25 the securities didn't exist and, therefore,

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2 aren't included on this calculation.

3 Q. Did the funds exist?

4 A. The column 8 will tell you how much
5 principal was available in the account at the
6 time of each of those transfers. So, yes, there
7 were -- they were in a positive principal
8 balance at the time, but, as we discussed
9 earlier, because the fictitious securities
10 didn't exist, they couldn't be delivered.

11 Q. And you understand that Shalvah's
12 account was closed in about 1992, correct?

13 MR. SONG: Object to the form.

14 A. I know that the account activity
15 ceased, and I'm not sure whether or not it was
16 closed officially within Madoff's system or not,
17 but I know the account activity ceased and that
18 this was the account holder's final -- final set
19 of transactions within that account.

20 Q. And as BLMIS operated, there was
21 nothing left in the account as of 1992, correct?

22 MR. SONG: Object to the form.

23 A. I believe that's the case, yes. I'm
24 not sure when in 1992. I believe in October or
25 November of 1992, yes.

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2 Q. But you calculated that Shalvah had a
3 principal balance of 9. -- about \$9.7 million in
4 October of 1992, correct?

5 A. Correct.

6 Q. And based on your calculations, you
7 would credit a principal balance of \$9.7 million
8 to Shalvah as of December 11, 2008, correct?

9 A. Correct, that's their principal
10 balance from October of 1992 continuing through
11 to December 11 of 2008.

12 Q. And that's because you didn't reduce
13 that balance based on the securities transferred
14 out of the Shalvah account, correct?

15 A. Because the fictitious securities
16 didn't exist, correct.

17 Q. And you did not give Ariel Fund credit
18 for the transfer of those securities, correct?

19 A. Correct.

20 MS. BRONEN: Let's take a five-minute
21 break.

22 THE VIDEOGRAPHER: We are going off
23 the record. The time is 1:19 p.m.

24 (Recess.)

25 THE VIDEOGRAPHER: The time is 1:33