

BAKER & HOSTETLER LLP

45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201

Hearing Date: October 30, 2024
Hearing Time: 10:00 a.m.
Objection Deadline: October 23, 2024

*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*

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

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

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

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

**TRUSTEE'S MOTION TO ABANDON
PROPERTY PURSUANT TO 11 U.S.C. §§ 105, 554(a), AND 725**

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Irving H. Picard, as trustee (the “Trustee”) for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Protection Act, 15 U.S.C §§ 78aaa-III (“SIPA”), and the chapter 7 estate of Bernard L. Madoff, by and through his undersigned counsel, hereby moves the Court for entry of an order substantially in the form of Exhibit B for the abandonment of property (the “Motion”), pursuant to 11 U.S.C. §§ 105, 554(a), and 725 (the “Bankruptcy Code”), made applicable to the SIPA liquidation by SIPA §§ 78fff(b) and 78fff-1(a), Rule 6007 of the Federal Rule of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6007-1 of the local Bankruptcy Rules for the Southern District of New York (the “Local Rules”).

Preliminary Statement

Through this Motion, the Trustee seeks to dispose of property that is of negligible or no value, the continued retention of which is burdensome to the estate. The Trustee has examined and itemized property located at a warehouse in Queens, New York, which was used previously by BLMIS and which the Trustee currently administers (the “Warehouse”). The property sought to be abandoned by this Motion is detailed on Exhibit A and consists of old office supplies, outdated network hardware, blank BLMIS stationery, and other similar items. The abandonment of this property of inconsequential value will allow the Trustee to better utilize the available storage space and consolidate claims-related materials currently retained in another storage facility. The Trustee will then be able to abandon the lease at the other storage facility, improving the efficient operation of the BLMIS estate.

Jurisdiction and Venue

This Court has jurisdiction to consider this matter pursuant to SIPA §§ 78eee(b)(2) and 78eee(b)(4) and 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

Relief Requested

By this Motion, the Trustee seeks entry of an order pursuant to 11 U.S.C. §§ 105, 554(a), and 725 of the Bankruptcy Code, 6007 of the Bankruptcy Rules, and 6007-1 of the Local Rules to abandon property described on Exhibit A which has little to no value and is burdensome for the estate to maintain.

Relevant Facts and Need for Relief

1. Prior to the commencement of this liquidation proceeding, BLMIS leased the Warehouse located in Long Island City, Queens, New York. When Madoff was arrested, on December 11, 2008, the Federal Bureau of Investigation took custody of the Warehouse. On December 15, 2008, the United States District Court for the Southern District of New York appointed the Trustee to administer the BLMIS estate, which included the Warehouse. The Trustee, in cooperation with the FBI, maintained possession of the Warehouse until April 1, 2015. On April 1, 2015, the FBI returned sole custody of the Warehouse to the Trustee. The Trustee and the landlord then entered into an Assumption and First Amendment of Lease whereby the Trustee assumed the Warehouse lease for the period of April 1, 2015 to April 30, 2020. On May 1, 2020, the Trustee and the landlord entered into a Second Amendment of Lease covering the term from May 1, 2020 to December 31, 2027.

2. The Trustee's counsel undertook a thorough investigation and inventory of the contents of the Warehouse and determined that the items listed on Exhibit A, which are mostly old office supplies, outdated network hardware, blank BLMIS stationery, and other items unrelated to the SIPA liquidation of BLMIS, are obsolete and of inconsequential value to the estate.

3. In addition to the items identified on Exhibit A, the Trustee maintains hard copy BLMIS records at the Warehouse and he intends to continue to do so. The proposed order would impact only the property described on Exhibit A and would have no effect on the remainder of the contents of the Warehouse.

4. It is burdensome to continue to keep the items listed on Exhibit A when that storage area could be used for a more efficient purpose. If the proposed order is granted, the area at the Warehouse that currently houses the items on Exhibit A can be used to store claims records maintained at another site. This consolidation of records will reduce costs, increase efficiency, and thus benefit the estate.

Legal Standard and Basis for Abandonment

5. The text of 554(a) of the Bankruptcy Code provides that “[a]fter notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a); *see, Fedotov v. Peter T. Roach & Assocs., P.C.*, 354 F. Supp. 2d 471, 475 (S.D.N.Y. 2005) (noting long-standing right of trustee to abandon burdensome property); *In re MF Glob., Inc.*, 535 B.R. 596, 606-10, (Bankr. S.D.N.Y. 2015) (finding that after notice, display of sound business judgment and lack of objections by interested parties, the Trustee properly abandoned property that was not

necessary to pending litigation). *See also* Local Rule 6007-1(a) (party seeking abandonment “shall describe the property to be abandoned or disposed of, state concisely the reason for the proposed abandonment or disposition, and, in the case of abandonment, identify the entity to whom the property is proposed to be abandoned.”).

6. The Trustee has discretion to determine whether to abandon property that is burdensome or of inconsequential value. *In re Republic Airways Holdings*, 547 B.R. 578, 582 (Bankr. S.D.N.Y. 2016) (“The trustee’s power is discretionary and is bounded only by that of the court.”) (cleaned up). The court only needs to find the trustee made: “1) a business judgment; 2) in good faith; 3) upon some reasonable basis; and 4) within the trustee's scope of authority.” *In re Slack*, 290 B.R. 282, 284 (Bankr. D.N.J. 2003), *aff’d*, 112 F. App'x 868 (3d Cir. 2004). “Courts defer to the trustee's judgment and place the burden on the party opposing the abandonment to prove a benefit to the estate and an abuse of the trustee's discretion.” *Id.* at 8. The party opposing abandonment must show some likely benefit to the estate, not mere speculation about possible scenarios in which there might be a benefit to the estate.” *In re Slack*, 290 B.R. at 284.

The Motion satisfies each of the *In re Slack* factors. The Trustee has determined in an exercise of his business judgment that: the property described on Exhibit A provides no benefit to the estate; its presence is burdensome to the efficient administration of the estate; and the space at the Warehouse would be better used for claims-related documents than the items described on Exhibit A. This motion is well within the scope of the Trustee’s powers as it is common for a trustee to undertake such actions. *In re Slack*, 290 B.R. at 284; *In re Fulton*, 162 B.R. 539, 540 (Bankr. W.D.Mo. 1993).

7. Notice of this Motion has been given to all parties on the Master Service List, as defined by Order Establishing Notice Procedures and Limiting Notice (ECF No. 4560). Bankruptcy Rule 6007 provides that a party in interest may file an objection to the Motion within 14 days of the mailing of the notice. Fed. R. Bankr. P. 6007.

Conclusion

The Trustee respectfully requests that the Court authorize the abandonment of the property described on Exhibit A, enter an order substantially in the form of Exhibit B, and grant such other relief as is just and proper.

Dated: October 9, 2024
New York, New York

By: /s/ Amy E. Vanderwal
Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Email: dsheehan@bakerlaw.com
Amy E. Vanderwal
Email: avanderwal@bakerlaw.com
Christopher B. Gallagher
Email: cgallagher@bakerlaw.com

*Attorneys for Irving H. Picard, Trustee for the
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