

YESKOO HOGAN & TAMLYN, LLP
28 Remsen Street, Suite 101
Brooklyn, NY 11201
212-983-0900
Attorneys for Petitioner
FGLS Equity LLC

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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In the Matter of the Application of	:	
	:	Index No.
FGLS EQUITY LLC, a New York	:	
State Limited Liability Company	:	
in Dissolution, by its Managing	:	VERIFIED PETITION
Member and Liquidator, Steven	:	
Turchin,	:	
	:	
Petitioner,	:	
	:	
For a decree judicially winding up	:	
the affairs of FGLS EQUITY LLC	:	
pursuant to Section 703(a) of the	:	
New York Limited Liability	:	
Company Law and for Declaratory	:	
Relief.	:	
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Petitioner, FGLS Equity LLC (“FGLS”), a New York limited liability company in dissolution, by its Managing Member and Liquidator, Steven Turchin, respectfully alleges as follows:

Introduction

1. FGLS is a New York limited liability company formed in 2002 by Steven Mendelow (“Mendelow”), an accountant and financial advisor who practiced at Konigsberg & Wolf, a New York accounting firm. FGLS at all relevant times had its principal office in New York County, New York.

2. FGLS operated as a Madoff feeder fund, meaning that it collected investments from its members and then reinvested them in Bernard L. Madoff Investment Securities Inc. ("BLMIS"). FGLS lost virtually all of its money in late 2008 when BLMIS was discovered to be a Ponzi scheme and collapsed financially.

3. FGLS has recently received \$2,798,838.50 from Irving Picard, the trustee who is overseeing the liquidation of BLMIS in the US bankruptcy court in New York. FGLS may in the future receive some more payments from Picard. There is a dispute among the members of FGLS on how to distribute the monies received from Picard and also on whether to sue the Mendelow Estates and other parties related to the Mendelows, and the objecting members have threatened to pursue their objections through litigation. FGLS brings this proceeding to give the objecting members an opportunity to be heard and to have the disputes determined with finality, so that it may adopt a plan of liquidation and distribute its assets to its members.

Statement of Facts

4. Mendelow in the 1990's set up an entity known as C&P Associates to invest his own family's and his clients' money in BLMIS.

5. In 2002 Mendelow decided to segregate his own personal investments from those of his clients, and he set up FGLS as a new entity to invest his client's money in BLMIS. A copy of the FGLS operating agreement is annexed hereto as Exhibit 1.

6. Mendelow initially funded FGLS by transferring \$3,149,075 from the C&P BLMIS account to the FGLS BLMIS account. This transfer purportedly represented the value of these investors' membership interests in C&P. After the initial transfers, several new investors invested money in BLMIS through FGLS and became members of FGLS.

7. FGLS lost virtually all of its money when BLMIS was discovered to be a Ponzi scheme in late 2008 and collapsed.

8. The Securities Investor Protection Corporation ("SIPC") appointed Irving Picard as Trustee for the liquidation of BLMIS under the Securities Investor Protection Act ("SIPA"). In a SIPA liquidation, a fund is established to reimburse customers for the property which they entrusted to the bankrupt investment firm. The fund consists of certain monies recovered by the Trustee and additionally up to \$500,000 in insurance per customer contributed by SIPC. Each customer shares ratably in this fund of assets to the extent of the customer's "net equity" in BLMIS, calculated in this instance by crediting the amounts of cash deposited by the customer into his or her BLMIS account, less any amounts withdrawn from it. The customer in this instance is FGLS and not its individual members. Picard set up a claims process to determine customer requests to be reimbursed from the monies in the customer fund.

9. On June 25, 2009 FGLS filed a claim with Picard for the losses it incurred in its BLMIS account. Picard did not immediately make a formal determination of FGLS's claim, but instead initiated litigation against FGLS to

deny its claim. However, after adverse rulings against Picard in other cases, Picard dropped the case against FGLS in September, 2015. Picard then made a formal determination of FGLS's claim on October 7, 2015.

10. Picard calculated the amount of money deposited into FGLS's BLMIS account and deducted the amount of money withdrawn from the account to determine the amount of FGLS's "net equity", which he calculated to be \$3,450,000. Picard approved FGLS's claim in this amount. In calculating the amount of FGLS's claim, Picard did not give FGLS any credit for "fictitious profits," meaning profits reflected on the BLMIS account statements but never in fact realized by BLMIS.

11. Picard disallowed any credit for the transfer in 2002 of the initial \$3,149,075 from the C&P Associates account. This was because at the time of the transfer C&P had withdrawn far more money from its BLMIS account than it had deposited into it, and therefore all of the money in C&P's account consisted of fictitious profits.

12. When FGLS received Picard's determination letter, FGLS's attorneys at the time, Arkin Solbakken LLP, objected to Picard's determination to ignore the initial transfer of funds from C&P Associates. However, the courts ruled in 2017 that if money is transferred from one BLMIS account to another, it retains the status ("net equity" or "fictitious profits") it had in the first account. As a consequence, on November 28, 2018 the federal bankruptcy court overseeing the liquidation of BLMIS ruled that FGLS was not entitled to an approved claim for the

initial transfer of account balances from C&P because they consisted solely of fictitious profits.

13. The FGLS Operating Agreement provides that FGLS must be dissolved after Steven Mendelow's death and the death of his wife, Nancy Mendelow. Steven Mendelow died on June 7, 2016. His wife, Nancy Mendelow, succeeded him as manager of FGLS. She died on June 17, 2017.

14. On November 14, 2017, the members of FGLS elected Steven Turchin, an accountant with a small investment interest in FGLS, as the managing member and liquidator of FGLS. Since being elected he has been able to obtain \$2,798,838.50 in payments from Irving Picard, the Trustee supervising the liquidation of BLMIS. He expects to receive future payments from Picard of not more than \$651,161.50. FGLS does not have any creditors, and is not aware of any assets other than the monies received from Picard.

15. At Mr. Turchin's direction, FGLS's counsel filed a claim against the Estate of Nancy Mendelow for possible claims related to her management of FGLS while she was the managing member of FGLS. However, Mr. Turchin ultimately decided that bringing litigation against the Mendelow Estates and related affiliated parties was not in the best interest of FGLS.

16. On December 13, 2018, Mr. Turchin distributed a proposed Plan of Liquidation to FGLS's 41 members. A copy of the plan is annexed hereto as Exhibit 2.

18. The following members objected to the Plan of Liquidation:

Sands Family Partnership
Dubarry 5th Ave Profit Sharing Plan
Tiannalee LLC
Sajust LLC
Carol Ann Ent Pension Fund
Schupac Group Def. Ben Plan
Mark Weinberg
Shupac Group P/S Plan

The objecting members raised three separate objections.

19. First, Mr. Turchin proposed to distribute the money received from Picard, less expenses and a reserve, to the members on a pro rata basis in proportion to their capital accounts. He adopted Mr. Mendelow's prior recalculation of the capital accounts, which added all of the members' deposits, subtracted all of their withdrawals, and deducted any prior credit for fictitious profits. This was the same method Picard had used in determining the amount of FGLS's distribution. This method does not give any credit for fictitious profits reported by BLMIS on the account statements sent to FGLS. The net total amount of net positive capital as computed by FGLS (and ignoring the initial transfer described below), totals \$5,146,915. The recalculation results in 24 members having net negative capital in the total amount of -\$1,744,182.¹ Some members have objected that the proposed plan of liquidation does not give credit for fictitious profits. A copy of the calculation of all of the member capital accounts is annexed hereto as Exhibit 3.

¹ FGLS's Operating Agreement, paragraph 10.2.B, provides that, upon liquidation of FGLS, "No Member shall be liable to repay the negative amount of his Capital Account." The plan of liquidation therefore does not provide that FGLS will seek to recover negative capital accounts from its members.

20. Second, the proposed plan of liquidation excludes from net positive capital the \$3,149,075 million dollars transferred from C&P Associates to FGLS because Picard had also excluded this transfer in computing the money paid to FGLS. Picard based his distribution on an account holder's positive net capital, which he calculated as being deposits into BLMIS less withdrawals. Since C&P had withdrawn much more than it had deposited into its BLMIS account, Picard concluded that all of the money transferred to FGLS consisted of fictitious profits and denied FGLS any credit for the initial transfer. Several members have objected to not receiving any credit for the initial transfer into their FGLS accounts.

22. FGLS in this petition seeks court approval of its accounting of the members' capital accounts using the methodology proposed by Mr. Turchin (Exhibit 3).

23. The third dispute relates to whether FGLS will bring legal action against the Mendelow Estates, their prior attorneys, and related parties (together the "Mendelow Parties"). The proposed plan of liquidation provides that FGLS will forego suing the Mendelow Parties. Mr. Turchin concluded that although FGLS had colorable claims against these parties, pursuit of litigation was not prudent in light a number of circumstances set forth in the plan of liquidation, Exhibit 2, including: (i) the time and expense of litigation, (ii) the risks and potential expense posed by the broad form indemnity provision in FGLS's operating agreement, (iii) FGLS's obligation to transfer to Picard the proceeds of any claims against any person arising out of or relating to any fraudulent or illegal activity with respect to

its BLMIS account, and the substantial argument that Piccard's recovery against the Mendelows preempts other claimants from pursuing claims against the Mendelows for willful blindness, (iv) uncertainty about the standing of FGLS, as opposed to the individual members, to bring claims against the Mendelow Parties, (v) potential statute of limitations defenses, and (vi) lack of knowledge as to whether the Mendelow Parties have sufficient assets to pay any judgment that FGLS might recover against them. Two members, either personally or on behalf of entities they control, have objected to this decision, and negotiations to permit them to sue the Mendelow parties on their own account have been unsuccessful.

24. The objecting members have threatened to pursue their objections through litigation against FGLS and the liquidator. FGLS cannot proceed with liquidation and winding up while these potential claims remain unresolved.

25. FGLS accordingly seeks judicial assistance with its winding up, in order to give the members an opportunity to be heard in connection with the proposed plan of liquidation, adjudicate any objections asserted by members, to bar any future claims by members against FGLS, its managing member, members, and agents except for their pro rata share of distributions based on the capital accounts set forth in the plan of liquidation, and to approve the proposed plan of liquidation.

26. FGLS therefore asks that, after giving the objecting members an opportunity to be heard, the Court approve a plan of liquidation, which will permit distributions of close to \$2,800,000 to the members of FGLS eleven years after the collapse of BLMIS.

COUNT ONE
(Limited Liability Company Law § 703(a))

27. Petitioner repeats paragraphs 1 through 26.

28. FGLS has been dissolved pursuant to the terms of its Operating Agreement.

29. There is a dispute over FGLS's plan of liquidation to the extent it proposes a method for the distribution of its assets and the foregoing of a lawsuit against the Mendelow Parties. FGLS cannot be wound up and liquidated without resolution of the dispute.

30. FGLS is entitled to judicial assistance pursuant to § 703(a) of the New York Limited Liability Company in connection with its winding up and liquidation. It therefore petitions this Court to give its members an opportunity to be heard in connection with the proposed plan of liquidation, adjudicate any objections asserted by members, to bar any future claims by members against FGLS, its managing member, members, and agents except for their pro rata share of distributions based on the capital accounts set forth in the plan of liquidation, and to approve the proposed plan of liquidation.

COUNT TWO
(Declaratory Relief Pursuant to CPLR 3001)

31. Petitioner repeats paragraphs 1 through 28.

32. An actual justiciable controversy exists with respect to the rights and legal relations of the members of FGLS in connection with the proposed plan of liquidation.

33. FGLS has no adequate alternate remedy that would justify denial of declaratory relief.

34. FGLS is therefore entitled to a final judgment with respect to the rights and legal relations of the members of FGLS in connection with the proposed plan of liquidation.


WHEREFORE, FGLS demands judgment:

(1) declaring that FGLS may proceed with the following plan of liquidation. FGLS will base any distributions of the monies received from Picard pro rata on the member capital accounts calculated in the same way that Picard calculated the payment to FGLS: net deposits less net withdrawals. No credit will be given to members for the initial transfer of monies from C&P Associates. The members' capital accounts are as reflected on Exhibit 3. The members are barred from bringing any claims against FGLS, its managing member, members and agents except for the amounts owed to them for their distributions. Unless FGLS can reach agreement with its objecting members, FGLS will not commence any litigation against the Mendelow Parties, their counsel, or any other persons, and will not seek to recover negative capital accounts from its members. FGLS will distribute the money received from Picard to date, less expenses and a reserve of \$150,000. Future payments received from Picard and the reserve, less expenses, will be distributed in the same manner at a time reasonably chosen by the managing member; and

(2) for such other and further relief as the Court deems just.

Dated: July 22, 2019

YESKOO HOGAN & TAMLYN, LLP
Attorneys for Petitioner

By: 
Richard C. Yeskoo

VERIFICATION

State of New Jersey)
) ss:
County of Middlesex)

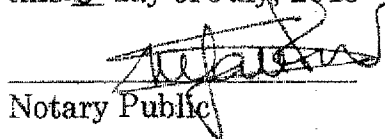
STEVEN TURCHIN, being duly sworn, deposes and says:

1. I am the Managing Member and Liquidator of FGLS Equity LLC.

2. I have read the foregoing petition and verify its contents to be true based upon my personal knowledge, the records of the company, and information about the BLMIS liquidation process provided by FGLS's counsel.



Subscribed and sworn to before me
this 20th day of July, 2019


Notary Public