


ORDERED.

Dated: July 29, 2015



Karen S. Jennemann  
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re	)	
	)	
NORTH AMERICAN CLEARING, INC.,	)	Case No. 6:08-ap-00145-KSJ
	)	Chapter 7
Debtor.	)	
	)	

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**ORDER DENYING GOBLE’S MOTION TO DETERMINE DAMAGES FROM COMMENCEMENT OF SIPA LIQUIDATION AND MOTION FOR COURT TO TAKE NECESSARY ACTION**

Richard Goble, a *pro se* creditor in this Securities Investor Protection Act (“SIPA”)<sup>1</sup> liquidation proceeding of North American Clearing, Inc. (“NACI”), filed two related motions seeking similar relief arising out of the Security Investor Protection Corporation’s (“SIPC”) commencement of this case. First, Goble seeks a hearing to determine alleged damages to creditors resulting from the Securities Investor Protection Corporation’s (“SIPC”) commencement of this liquidation proceeding.<sup>2</sup> Second, Goble asks the Court to “proceed with any action it deems necessary” to remedy alleged violations of federal law in connection this

<sup>1</sup> The Securities Protection Investor Act is located 15 U.S.C. § 78aaa *et seq.*

<sup>2</sup> Doc. No. 596. SIPC objects to Goble’s request on numerous grounds. Doc. Nos. 615. The Trustee, Robert Gilbert, joined in SIPC’s response. Doc. No. 619.

liquidation.<sup>3</sup>

Goble bases his requests on § 110 of the Bankruptcy Code,<sup>4</sup> which regulates the conduct of bankruptcy petition preparers.<sup>5</sup> Because § 110 does not support his request, and his motions impermissibly seek to circumvent orders issued by the United States District Court for the Middle District of Florida (“District Court”), Goble’s motions are denied.

NACI was a broker-dealer and clearing house placed into SIPA liquidation as of May 27, 2008.<sup>6</sup> Goble, through a trust, was the sole owner and an employee of NACI prior to the liquidation proceedings. He consistently has disputed the events that led to NACI’s ultimate liquidation.

The litigation surrounding NACI was precipitated by the SEC’s complaint for injunctive relief against NACI, Goble, and other defendants in the District Court, beginning the SEC Case.<sup>7</sup> The District Court initially appointed a receiver, then on July 28, 2008, entered the SIPA Order commencing this liquidation proceeding.<sup>8</sup> The SIPA Order, among other things, appointed Gilbert as the Trustee and ordered him to pursue orderly liquidation of NACI pursuant to the SIPA.<sup>9</sup> The SIPA Order also removed the liquidation proceeding to this Court.<sup>10</sup>

Both of Goble’s motions ask the Court to assess damages under § 110 of the Bankruptcy Code against SIPC and its in-house counsel for allegedly filing a “fraudulent” bankruptcy petition for NACI. Goble’s request is misguided.

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<sup>3</sup> Doc. No. 602. The Trustee filed a response. Doc. No. 620. SIPC filed an omnibus response to Goble’s various motions. Doc. No. 615.

<sup>4</sup> All references to the Bankruptcy Code or the Code refer to 11 U.S.C. § 101 *et seq.*

<sup>5</sup> See 11 U.S.C. § 110.

<sup>6</sup> Although the District Court’s order appointing the Trustee was entered on July 28, 2008 (Doc. No. 1), the SIPA makes clear that the filing date relates back to the appointment of the initial receiver, May 27, 2008. See 15 U.S.C. § 7811(7)(B).

<sup>7</sup> SEC Case refers to Case No. 6:08-cv-00829-MSS-KRS.

<sup>8</sup> SIPA Order, Doc. No. 1.

<sup>9</sup> SIPA Order, ¶ II.

<sup>10</sup> SIPA Order, ¶ IX. See 15 U.S.C. § 78eee(b)(4).

Section 110 of the Bankruptcy Code was intended to “rein in and regulate bankruptcy petition preparers.”<sup>11</sup> Bankruptcy petition preparers are non-attorneys who prepare bankruptcy petitions or other documents for individual debtors to file on their own.<sup>12</sup> Section 110 regulates those individuals “who abuse the system in the course of preparing documents for debtors to file.”<sup>13</sup> Bankruptcy preparers all-too-often provide unauthorized and misinformed legal advice to vulnerable unsophisticated individual consumer debtors. Thus, § 110(i) provides for damages against these petition preparers who violate § 110’s other regulations or act in a fraudulent, unfair, or deceptive manner.<sup>14</sup>

Section 110 clearly does not apply to SIPC’s conduct in the District Court or in this Court. SIPC and its in-house counsel are *not* bankruptcy petition preparers. Section 110(a) defines bankruptcy petition preparer as one who “prepares for compensation a document for filing.”<sup>15</sup> A “document for filing means a petition or any other document prepared *for filing by a debtor* in a United States bankruptcy court or a United States district court in connection with a case under [title 11].”<sup>16</sup>

The document Goble claims SIPC fraudulently prepared is not a bankruptcy petition, but rather an application for protective decree (the “Application”) filed under SIPA with the District Court.<sup>17</sup> This is not a “document for filing” within the meaning of § 110 because it was not “prepared for filing by a debtor.” The SIPC filed its Application with the District Court, which

<sup>11</sup> *In re Rosario*, 493 B.R. 292, 330 (Bankr. D. Mass. 2013).

<sup>12</sup> *See* 11 U.S.C. § 110(a)(1) (stating that “ ‘bankruptcy petition preparer’ means a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing”).

<sup>13</sup> *In re Springs*, 358 B.R. 236, 241 (Bankr. M.D.N.C. 2006).

<sup>14</sup> 11 U.S.C. § 110(i).

<sup>15</sup> 11 U.S.C. § 110(a)(1).

<sup>16</sup> 11 U.S.C. § 110(a)(2) (emphasis added).

<sup>17</sup> Application for Protective Decree, Doc. No. 71, Case No. 6:08-cv-00829-MSS-KRS.

entered the SIPA Order granting the Application and referring the liquidation to this Court. SIPC did not prepare a document for a debtor to file; no debtor ever filed the Application. Section 110 simply is inapposite to SIPC's filing of the application for protective decree.<sup>18</sup>

Goble primarily alleges SIPC misrepresented that NACI was insolvent in the Application in order to obtain the protective decree initiating this proceeding. For one, insolvency was only one of many independent grounds stated in SIPC's Application, any of which supported the District Court's action.

But more importantly, this Court again must reiterate that it cannot and will not review the propriety of the District Court's decision to place NACI into SIPA liquidation. The SIPA Order was entered nearly seven years ago. The time for appealing that order has long since passed. The District Court consistently has rebuffed Goble's attempts to revisit the SIPA Order.<sup>19</sup>

Goble cannot gain another bite at the apple in this Court. Accordingly, it is

**ORDERED:**

1. Goble's motion to determine damages for commencement of the SIPA liquidation (Doc. No. 596) is denied.
2. Goble's verified notice and motion for this Court to take whatever action it deems necessary under the Bankruptcy Code (Doc. No. 602) is denied.

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Attorney Hywel Leonard is directed to serve a copy of this order on interested parties who are non-CM/ECF users and file a proof of service within 3 days of entry of this order.

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<sup>18</sup> The Trustee later filed schedules and other papers associated with a bankruptcy case; however, the Trustee is an attorney and is represented by lawyers. As such, he certainly is not a "bankruptcy petition preparer" under § 110 of the Bankruptcy Code.

<sup>19</sup> Goble recently, in the District Court case, sought vacation of the protective decree and the receivership order under Federal Rule of Civil Procedure 60(b)(2). Doc. Nos. 298 & 305, Case No. 6:08-cv-00829-MSS-KRS. The District Court denied both motions. Doc. No. 319, Case No. 6:08-cv-00829-MSS-KRS. Goble filed yet another motion, a motion for relief from judgment (Doc. No. 324, Case No. 6:08-cv-00829-MSS-KRS), which also was denied by the District Court. Doc. No. 329, Case No. 6:08-cv-00829-MSS-KRS.