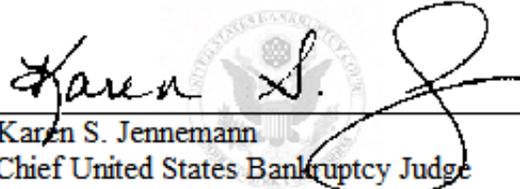


ORDERED.

Dated: August 28, 2015



 Karen S. Jennemann
 Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
 MIDDLE DISTRICT OF FLORIDA
 ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
LOUIS J. PEARLMAN, <i>et. al.</i> ,)	Case No. 6:07-bk-00761-KSJ
)	Chapter 11
Debtors.)	
_____)	

ORDER DENYING LIMITED OBJECTION TO FINAL REPORT

Colonel Edward Selby and his wife Janice Selby (the “Selbys”) object¹ to the joint motion (the “Objection”) filed by the Liquidating Trustee, Soneet Kapila, and the Oversight Committee, which seeks to close the Liquidating Trust and discharge the Trustee and the Oversight Committee from their respective duties (“Joint Motion”).² Put another way, all assets have been administered, all funds have been distributed to creditors, all adversary proceedings have been resolved, and the Pearlman case is finally ready to come to an end. The Selbys, who have suffered catastrophic financial losses like many other individuals involved in this case,

¹ Limited Objection, Doc. No. 4932; Trustee’s Response, Doc. No. 4933.

² Doc. No. 4928. The Trustee’s plan of reorganization (the “Plan”) created a liquidating trust to pursue causes of action, address creditor claims, and make distributions to creditors, among other things. The Plan also created the Oversight Committee to provide oversight on the Trustee’s administration of the Liquidating Trust.

object to the Joint Motion, arguing they still are owed distributions on claims they did not receive payment on.

The Selbys were defendants in one of the Trustee's hundreds of "claw back" adversary proceedings filed against so-called "net losers." Like many others, the Selbys invested monies in Mr. Pearlman's large Ponzi scheme³ but, arguably, had received fewer "payments" than the amount they had invested. In 2009, the Trustee settled these lawsuits against these net loser investors. As part of the settlement, the Trustee dismissed the lawsuits and, in the process, agreed to the amount of each investor's ("Affected Investors") allowed claims (the "2009 Order").⁴ The Selbys were one of many whose claims were determined by the 2009 Order.

Nearly six years later, the Selbys now argue the 2009 Order only addressed two of five claims they filed in the case. The Selbys seek a *pro rata* distribution on the three claims they allege were not encompassed by the 2009 Order, with a face value of \$500,000 ("Remaining Claims"). Unsecured creditors received distributions of roughly 4% on their claims; thus, the amount at issue is roughly \$20,000.

In response to the Selbys' Objection, the Trustee maintains that the Selbys seek the same relief the Trustee previously sought on behalf of all similarly situated claimants, including the Selbys.⁵ On October 2013, the Trustee filed a motion to reconsider the 2009 Order, conceding that the Trustee's claim calculations in the adopted in the 2009 Order were inaccurate ("Motion to Reconsider"). After the 2009 Order, the Trustee discovered some claimants may have been entitled to increased claims—or, in some cases, reduced claims—based on investments or

³ The Ponzi scheme had two main "investment" opportunities: the "EISA Program," which relates to certain claims of investors in the Employee Investment Savings Account program, and the "TCTS Stock Program," which relates to investments into Transcontinental Airlines Travel Services, Inc.

⁴ See, Trustee's Motion to Settle and Compromise Certain Adversary Proceedings and to Establish and Implement Omnibus Procedures Related to Such Settlement (Doc. No. 2644), and the Order Granting the Motion entered on October 29, 2009 (Doc. No. 2714).

⁵ See Motion for Reconsideration, Doc. No. 4390.

withdrawals they made from other, unassociated accounts.⁶ The Motion to Reconsider sought to recalculate these claims consistent with all other claims using the “Net Investment Method”.⁷

The Court denied the Trustee’s request with a lengthy legal analysis (“Reconsideration Opinion”).⁸ In sum, the Court found that four years was too long to wait to move to reconsider the 2009 Order.⁹ Moreover, the Court held:

[S]ettling parties need to know that once a settlement is reached, the settlement is binding then and four years later when distributions occur. The Order gave Affected Investors 28 days to dispute the allowed claim amount; if any investor thought their claim was inaccurately undervalued, they timely could have contested the determination. None did so. Settlements necessarily are compromises and, just because the rules change later or someone later got a better or worse deal, public policy dictates that settlements, once final, are binding.¹⁰

The Trustee’s Motion for Reconsideration and the Court’s Reconsideration Opinion both addressed the Selbys’ claim.¹¹

The Reconsideration Opinion notwithstanding, the Selbys contend that the 2009 Order simply did not address their three Remaining Claims. The argument goes that, because the Trustee did not specifically object to these three claims, the Selbys still are entitled to distribution. The 2009 Order however indicated it intended to set each claimant’s *total* allowed claim. The 2009 Order set the “amount of *any* allowed unsecured claims of the Eligible Defendants.”¹² It further provided a specific mechanism for affected claimants to object to the

⁶ As the Trustee states, the term “account” is illusory in a case like this because in a Ponzi scheme, customer money typically is not segregated.

⁷ The Net Investment Method is a method of calculating claims in a Ponzi scheme case. The Court adopted this method after the entry of the 2009 Order. *See* Doc. No. 3919; Memorandum Opinion, Doc. No. 3918.

⁸ Doc. No. 4576; Order, Doc. No. 4577.

⁹ Doc. No. 4576 at 2–3.

¹⁰ *Id.* (internal citations omitted).

¹¹ *See* Doc. No. 4390 Ex. D.

¹² 2009 Order, Doc. No. 2714 ¶ 8.

2009 Order's allowed claim amount.¹³ And perhaps most applicable here, the 2009 Order stated: "The amount of any Allowed Claim as determined as set forth in the Motion and this Order shall supersede any proof of claim previously or hereafter filed by any Eligible Defendant in the respective Debtor's estate."¹⁴

The Selbys claim they did not know that the 2009 Order addressed all of their claims, but Paragraph 10 quoted above is clear that the 2009 Order's allowed claim amount superseded "any proof of claim previously filed" or filed after the 2009 Order. The Selbys moreover were represented by two different attorneys. The Court genuinely does sympathize with the Selbys and all other similar claimants that received less than they arguably should have, but that was the bargain they struck. And, as the Court stated in its Reconsideration Opinion, as a matter of law, it simply is too late to revisit those calculations.

Accordingly, for the reasons stated above and for those reasons stated in the Court's Reconsideration Order,¹⁵ it is

ORDERED:

1. The Limited Objection filed by Colonel Edwin Selby and Janice Selby to the Joint Motion (Doc. No. 4932) is overruled.
2. The Trustee is directed to submit the appropriate orders granting the Joint Motion to Approve the Liquidating Trustee's Final Report and Discharge and Release of Liquidating Trustee and Oversight Committee (Doc. No. 4928).

###

Attorney Esther McKean 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.

¹³ *Id.* at ¶ 9.

¹⁴ *Id.* at ¶ 10.

¹⁵ Doc. No. 4577.