

ORDERED.

Dated: January 12, 2017



Karen S. Jennemann  
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.,	)	Adv. No. 6:08-ap-00145-KSJ
	)	
Debtor.	)	
	)	

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**ORDER GRANTING TRUSTEE’S MOTION TO APPROVE FINAL DISTRIBUTION AND OTHER DISPOSITION OF PROPERTY AND APPROVING TRUSTEE’S FINAL REPORT**

Robert N. Gilbert, the Trustee charged with liquidating North American Clearing, Inc. under the Securities Investor Protection Act (“SIPA”),<sup>1</sup> seeks authorization to make the final distribution of approximately \$770,000 in customer property,<sup>2</sup> a determination that all un-administered property is assigned or abandoned to the Securities Investor Protection Corporation (“SIPC”),<sup>3</sup> and approval of his final investigatory and accounting report.<sup>4</sup> *Pro se* creditor, Richard Goble, objects arguing he should act as “custodian” for the funds and property and that he can better distribute the monies to unsecured creditors, who largely are himself or his

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<sup>1</sup> 15 U.S.C. §§ 78aaa-78lll (2012).

<sup>2</sup> Trustee is holding approximately \$442,000 in a customer property account and \$329,000 in a settlement account.

<sup>3</sup> Trustee also seeks a ruling that he pay funds resulting from any checks not cashed in 90 days to the Clerk of Court.

<sup>4</sup> Doc. Nos. 782, 784, 785.

affiliates.<sup>5</sup> Goble also requests an evidentiary hearing questioning the Trustee's actions, essentially from the beginning of this case.<sup>6</sup> After reviewing the pleadings and considering the positions of all interested parties, the Court will approve the Trustee's report and accounting, approve the proposed disposition of customer property, deny Goble's request to act as custodian of the funds, and deny Goble's request for any evidentiary hearing.

North American Clearing, Inc. ("NACI") was a small broker-dealer and clearing house placed into SIPA liquidation on May 27, 2008.<sup>7</sup> Goble, through a trust, was the sole owner and an employee of NACI prior to the liquidation proceedings. The extensive litigation surrounding NACI and its liquidation was precipitated by the SEC's complaint for injunctive relief against NACI, Goble, and other defendants in the United States District Court for the Middle District of Florida ("District Court"),<sup>8</sup> which appointed a receiver, then on July 28, 2008, entered the SIPA Order commencing this liquidation proceeding.<sup>9</sup> The SIPA Order appointed Robert Gilbert as Trustee and ordered him to pursue the orderly liquidation of NACI under SIPA.<sup>10</sup> The SIPA Order also removed the liquidation proceeding to this Court.<sup>11</sup>

"The purpose of SIPA is to return to customers of brokerage firms their property or money."<sup>12</sup> A trustee appointed under SIPA is "vested with the same powers and title" as a trustee under the Bankruptcy Code<sup>13</sup> besides other substantial powers outlined in the statute. The trustee oversees the liquidation and distribution of customer property. Customer property is defined

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<sup>5</sup> Doc. Nos. 787, 793, 795. Trustee filed a response to Goble's motion requesting that the final distribution be paid to all creditors. Doc. No. 792. SIPC joined in the Trustee's Response. Doc. No. 797. Trustee also filed a reply to Goble's response to the Trustee's papers. Doc. No. 801. Goble filed a Response to the Trustee's Response. Doc. No. 802.

<sup>6</sup> Doc. Nos. 787, 793, 795.

<sup>7</sup> Although the District Court's order appointing the Trustee was entered on July 28, 2008 (Doc. No. 1), SIPA makes clear that the filing date relates back to the appointment of the initial receiver. 15 U.S.C. § 78III(7)(B).

<sup>8</sup> Case No. 6:08-cv-00829-MSS-KRS.

<sup>9</sup> Doc. No. 1.

<sup>10</sup> Doc. No. 1, ¶ II.

<sup>11</sup> Doc. No. 1, ¶ IX.

<sup>12</sup> *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. Camp (In re Gov't Sec. Corp.)*, 972 F.2d 328, 331 (11th Cir. 1992).

<sup>13</sup> 15 U.S.C. § 78fff-1.

under SIPA as “cash and securities . . . at any time received, acquired, or held by or for the account of a debtor from or for the securities accounts of a customer, and the proceeds of any such property transferred by the debtor, including property unlawfully converted.”<sup>14</sup> Five examples of what customer property are included in the statute.<sup>15</sup> The Trustee also should determine the net equity of customer claims. Net equity is defined under SIPA as:

the dollar amount of the account or accounts of a customer, to be determined by calculating the sum which would have been owed by the debtor to such customer if the debtor had liquidated, by sale or purchase on the filing date . . . [subtracted by] any indebtedness of such customer to the debtor on the filing date; plus any payment by such customer of such indebtedness to the debtor which is made with the approval of the trustee and [within the time period determined by the trustee].<sup>16</sup>

Once the extent of customer property and the net equity of customer claims are known, the trustee can make a final determination about what customer property can satisfy customer claims. The trustee makes this allocation using the statutory order of payment outlined in SIPA.<sup>17</sup>

In fulfilling this statutory responsibility, Gilbert, the Trustee here, now seeks to distribute the funds of approximately \$770,000 leftover in two accounts to NACI customers or to SIPC, who has advanced substantial funds.

Section 554 of the Bankruptcy Code provides for abandonment of property that is “burdensome” or of “inconsequential value and benefit to the estate.”<sup>18</sup> Gilbert wishes to abandon at least two other bank accounts that have no current value and any remaining property of the estate to SIPC.<sup>19</sup> Finally, Gilbert wants the authority to deposit any funds represented by uncashed checks with the clerk of court for distribution.

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<sup>14</sup> 15 U.S.C. § 78III(4).

<sup>15</sup> *Id.*

<sup>16</sup> 15 U.S.C. § 78III(11).

<sup>17</sup> 15 U.S.C. § 78fff-2(c)(1).

<sup>18</sup> 11 U.S.C § 554(a) (2012).

<sup>19</sup> Doc. No. 782, ¶ 17.

Trustee already has paid 100% of allowed customer claims to customers eligible for advances from SIPC.<sup>20</sup> SIPC advanced about \$1.6 million to pay these claims.<sup>21</sup> Customer claims *not* entitled to SIPC advances<sup>22</sup> have received 97.5% of their claims.<sup>23</sup> The unpaid balance on the claims not entitled to SIPC advances is about \$19,000.<sup>24</sup> The Trustee is holding approximately \$770,000 in two accounts for distribution.<sup>25</sup> Of this amount, SIPC will receive approximately \$754,000 for overpayments to customers for prior advances.<sup>26</sup> The rest will pay the customer claims not entitled to SIPC advances and will raise the distribution on those claims to 99.7%.<sup>27</sup> Essentially, the Trustee is asking to pay all customer claims in full and return the balance to SIPC who has advanced at least \$1.6 million and incurred millions of other dollars in other costs associated with this case.

The proposed accounts to be abandoned to SIPC are two U.S. Bank accounts that the Trustee states have no current value.<sup>28</sup> SIPC would also receive all remaining property of the estate.<sup>29</sup> SIPC would distribute any property of the estate with value to the same extent that property had been recovered and distributed during the liquidation proceeding.<sup>30</sup>

Goble would like to receive these monies and property himself. As with Goble's other pleadings and related litigation, he disputes and questions the events that led to NACI's liquidation.<sup>31</sup> Those questions and disputes are irrelevant. This Court has stated several times it will not reconsider the receivership or liquidation orders entered by the District Court.

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<sup>20</sup> 15 U.S.C. § 78fff-3; Doc. No. 782, ¶ 5; Doc No. 784, ¶ II(D).

<sup>21</sup> Doc. No. 782, ¶ 5.

<sup>22</sup> 15 U.S.C. § 78fff-3(a)(4)-(5).

<sup>23</sup> Doc. No. 782, ¶ 5; Doc No. 784, ¶ II(D).

<sup>24</sup> Doc. No. 782, ¶ 5.

<sup>25</sup> Doc. No. 782, ¶ 7; Doc No. 784, ¶ II(D). The Court previously designated the savings account or settlement account as customer property. Doc. Nos. 651, 677, 784, ¶ II(J).

<sup>26</sup> Doc. No. 782, ¶ 16; Doc No. 784, ¶ II(D).

<sup>27</sup> Doc. No. 782, ¶ 14.

<sup>28</sup> Doc. No. 782, ¶ 17.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Doc. No. 787.

There is no legal precedent to allow an insider creditor to collect and distribute customer property administered under a SIPA order. Goble cites Section 110 of the Bankruptcy Code—a section that provides a penalty for negligently or fraudulently preparing bankruptcy petitions.<sup>32</sup> This Court previously held that Section 110 “clearly does not apply to SIPC’s conduct in the District Court or in this Court [because] SIPC and its in house counsel are not bankruptcy petition preparers.”<sup>33</sup> And Section 110 only applies to bankruptcy petition preparers. This section does not provide this Court authority to question whether NACI should have been placed in liquidation. This section is irrelevant and would not provide a means for Goble to distribute customer property. Only the Trustee is given the authority to distribute customer property under SIPA.<sup>34</sup>

Trustee has fully administered all property of this estate that has any recognizable value. He will abandon any remaining assets with *de minimus* value to SIPC. Goble questions many of the Trustee’s actions including whether he properly sold certain assets during his eight years of administering this case. Most sales occurred years ago, were approved by the Court, and are final.<sup>35</sup> Goble’s other claims are meritless and designed to prolong the administration of this estate. No further hearing justified.

Accordingly, it is

**ORDERED:**

1. Trustee’s Amended Motion to Approve Final Distribution and Other Disposition of Property (Doc. No. 782) is **GRANTED**.

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<sup>32</sup> 11 U.S.C. § 110.

<sup>33</sup> Doc. No. 661.

<sup>34</sup> 15 U.S.C. § 78fff-2(c)(1).

<sup>35</sup> Doc. No. 280; Case No. 6:09-ap-00746-KSJ, Doc. No. 31.

2. Goble's Response and Request that All Remaining Funds be Paid to Unpaid Creditors (Doc. No. 795) is **OVERRULED/DENIED.**
3. Goble's Motion that Final Distribution Should be Paid to All Creditors (Doc. No. 787) is **DENIED.**
4. Trustee's Motion to Approve Investigatory and Final Report and Accounting (Doc. No. 785) is **GRANTED.**
5. Goble's Response to Robert Gilbert's Materially Questionable and Unverified Final Report and Motion for Evidentiary Hearing (Doc. No. 793) is **OVERRULED/DENIED.**
6. Goble's Reply to The Trustee's Response (Doc. No. 802) is **OVERRULED/DENIED.**

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Attorney, Hywel Leonard, is directed to serve a copy of this order on all interested parties and file a proof of service within three days of entry of the order.