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Hughes Hubbard's Lehman Team Wins Appeal in One of Final Disputes

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One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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October 5, 2018 — In an important victory in one of the remaining disputes in the liquidation of Lehman Brothers Inc. (LBI), a New York federal judge affirmed the bankruptcy court's decision granting Hughes Hubbard's Lehman team summary judgment on the subordination of deferred compensation claims by former employees of the brokerage.

On Sept. 26, U.S. District Judge Analisa Torres upheld a July 2017 ruling by U.S. Bankruptcy Judge Shelley C. Chapman that previously signed agreements subordinated the employees' claims to those of LBI's general unsecured creditors. The case involves nearly 350 claimants who participated in an Executive and Select Employees Deferred Compensation Plan (ESEP) with Shearson Lehman Brothers Inc., the former name of LBI, from 1985 to 1988.

Since Lehman filed for bankruptcy in September 2008, the claimants have sought to recover up to \$300 million under the ESEP. Their attempt to compel arbitration in 2014 was denied by Judge Chapman in a decision affirmed by the district court a year later and by the Second Circuit in 2016. The judges agreed with HHR that arbitration was inappropriate in a core bankruptcy proceeding that would affect the rights of tens of thousands of estate creditors. The district court also denied a motion from the claimants to withdraw the reference from the bankruptcy court.

Once the case returned to the bankruptcy court, Jim Giddens, the trustee for LBI, sought summary judgment based on the agreement's unambiguous subordination provision that irrevocably subordinates the group's claims. But the claimants countered that the provision shouldn't apply because, according to them, LBI was a different entity than the "Shearson" with which they had executed the agreement. They also claimed that LBI (or Shearson) had breached the agreement, and that the subordination provisions are therefore now void.

In affirming Judge Chapman's dismissal, Judge Torres rejected these arguments. "There is no statement in the

contract which suggests that the subordination provisions do not bind Shearson successors," she wrote. Moreover, even if Shearson had breached the ESEP, Judge Torres held that the subordination provisions would still apply.

Judge Torres also found that the claimants' view that the subordination provisions applied only to Shearson and not its successors "is not reasonable, and that the agreements do not contain such a limitation on the applicability of the subordination provisions."

The claimants plan to appeal to the Second Circuit.

Jim Fitzpatrick, Karen Chau, Danny Nuzzaci and Andrew Bouriat represent the trustee in this matter.

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James C. Fitzpatrick



Karen M. Chau