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Lehman Team Wins Appeal on Transfer Claims

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April 9, 2018 — Hughes Hubbard's Lehman team prevailed in an appeal of a bankruptcy court ruling that disallowed approximately \$117 million of general creditor claims related to account transfers in progress when Lehman Brothers Inc. (LBI) entered liquidation in September 2008.

On March 22, U.S. District Judge William H. Pauley III affirmed a ruling that granted LBI Trustee Jim Giddens' objection to five claims filed by a group of related entities and individuals who had requested transfer of their accounts out of LBI in the days immediately preceding LBI's liquidation. The transfers were not completed due to the intervening liquidation.

Judge Pauley found that Giddens had the authority under the Securities Investor Protection Act to transfer the accounts to LBI successor Barclays Capital Inc. in a move that allowed tens of thousands of LBI customers to quickly resume trading in their accounts with minimal disruption.

"While the trustee and LBI contemplated different methods to discharge their duties - the former effecting a bulk transfer to Barclays and the latter transferring accounts to the new brokers in three days - the task at hand was nevertheless the same: returning customer property from the debtor broker-dealer's possession to the customer," Judge Pauley said in the opinion. "Though claimants attempt to impose a line between a pre- and post-insolvency duty, SIPA is designed to empower a trustee to finish what a failed broker-dealer could not."

Although the claimants received the full net equity of their respective accounts in the transfer to Barclays, they still filed claims in 2009 for alleged market value depreciation that they argued was caused by delay in getting their securities to the original destination brokers.

Giddens filed an objection to the claims in 2014, arguing that, because SIPA empowered the trustee to transfer customer accounts in his discretion and without customer consent, the claims were inconsistent with SIPA. In April 2017, U.S. Bankruptcy Judge Shelley C. Chapman ruled in favor of the trustee's argument. She agreed with the trustee that LBI owed the claimants neither a fiduciary duty nor a duty under the Uniform Commercial Code

(UCC) once it entered liquidation. As the trustee argued, SIPA supplanted the UCC at the start of the liquidation.

Judge Pauley upheld the bankruptcy court ruling and echoed the trustee's argument. "Indeed, when the insolvent broker-dealer can no longer perform its duties, SIPA displaces the UCC and defers to the trustee's decisions in satisfying the unperformed duties of the broker-dealer," he said.

Chris Kiplok, who with Jim Kobak leads the team representing Giddens, told Law360, "We are pleased with the decision and remain focused on winding down the estate in accordance with the Securities Investor Protection Act."

The objection and appellate efforts were led by Jason Benton, who also argued the appeal which presented a unique confluence of the UCC, SIPA, the Bankruptcy Code, and common law. The HHR team also included Jeff Margolin, Dustin Smith, Elizabeth Beitler and Daniel Nuzzaci.

Related People



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