

Corporate & Financial Weekly Digest

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Second Circuit Affirms Dismissal in Madoff-Related Investor Action

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The U.S. Court of Appeals for the Second Circuit affirmed the U.S. Bankruptcy Court for the Southern District of New York's dismissal of a complaint brought by Rosenman Family, LLC, an investor with Bernard L. Madoff Investment Securities LLC (BLMIS), against the trustee of BLMIS's estate. The complaint alleged that Rosenman was entitled to a return of \$10 million it wired to BLMIS, because, Rosenman argued, the funds were stolen or embezzled by BLMIS and thus never became BLMIS's property and/or part of BLMIS's bankruptcy estate.

The bankruptcy court dismissed Rosenman's complaint on the ground that Rosenman was a "customer" under the Securities Investor Protection Act (SIPA). The court found that Rosenman had deposited cash with BLMIS for the purpose of purchasing securities, thereby invoking SIPA. The bankruptcy court concluded that Rosenman's investment was part of the estate.

The Second Circuit affirmed the bankruptcy court's finding that the funds were estate property, but rejected its conclusion that Rosenman was a "customer" under SIPA. The Second Circuit reasoned that Rosenman's phone call with Madoff expressing interest in investing in the BLMIS fund, Rosenman's wiring of the funds in accordance with that phone call, the confirmation of BLMIS's purported purchase of securities for Rosenman's account, and the absence of any objection to that purported trade by Rosenman all demonstrated that Rosenman willingly transferred its money to BLMIS in contemplation of engaging in ongoing business dealings with BLMIS, thereby invoking SIPA, and thus the funds became part of the estate. (*Rosenman Family, LLC v. Picard*, No. 09-5296-bk, 2010 WL 3911370 (2d Cir. Oct. 7, 2010))

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