

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE Commission,

Plaintiff,

v.

Case No.:8:20-cv-325-MSS-AEP

BRIAN DAVISON;
BARRY M. RYBICKI;
EQUIALT LLC,
EQUIALT FUND, LLC,
EQUIALT FUND II, LLC,
EQUIALT FUND III, LLC,
EA SIP, LLC,

Defendants, and

128E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

**RENEWED UNOPPOSED MOTION BY SPECIAL ADMINISTRATOR OF THE
ESTATE OF JUDITH ESSLING FOR PERMISSION TO FILE A LATE PROOF OF
CLAIM FORM**

Mark Essling, in his capacity as the Special Administrator for the Estate of Judith Essling (the "Estate"), and by and through undersigned counsel, brings this motion for an Order permitting the Estate's late filed proof of claim to be accepted and treated on par with other timely filed claims. Judith Essling passed away on January 22, 2023. While going through Judith Essling's papers on February 17, 2023, Mark Essling discovered that Judith Essling gave

Equialt \$250,000.00 in 2018. Judith Essling was apparently referred to Equialt by Family Tree Planning, the Arizona company that provided estate planning services to her.

Judith Essling did not tell Mark Essling, prior to her death, that there was litigation pending against Equialt. Nor did she tell anyone that she could file a proof of claim and perhaps receive some of her money back if the litigation resulted in the recovery of funds for the benefit of the victims of what turned out to be a Ponzi scheme. Mark Essling does not know why Judith Essling did not tell him about this proceeding. This is odd because she usually discussed anything legal with him. It may have been because she was embarrassed or it may have been because she was confused by all of the pain medication she had taken during the last two years of her life. Or it may have been some combination of the two.

Mark Essling filed a Motion in this proceeding for leave to file a late proof of claim form on February 27, 2023 (Dkt. 819). The Receiver responded and did not oppose the motion (Dkt. 856). The Court denied the motion on April 26, 2023 because Mr. Essling filed the motion on behalf of the Estate of Judith Essling when no Estate existed. A probate proceeding had not been commenced yet. (Dkt. 882). The motion was also denied because Mr. Essling is not admitted to practice in the Middle District of Florida and he did not seek permission to appear *pro hac vice*. (Dkt. 882)

Mr. Essling subsequently commenced a probate proceeding in Minnesota and was appointed Special Administrator for the Estate of Judith Essling on May 5, 2023 (Washington County, Minnesota Probate Court File No. 82-PR-23-2008). Declaration of Mark Essling (“Essling Dec.”), p. 2. A true and correct copy of the Essling Dec. is attached hereto as **Exhibit 1**. The Washington County District Court entered an order establishing Mr. Essling as Special Administrator of the Estate of Judith Essling (the “Special Administrator Order”) with authority

to take whatever actions are necessary to protect the Estate of Judith Essling's interest in this proceeding. Declaration of Mark Essling (“Essling Dec.”), p. 2 and Ex. A. A true and correct copy of the Essling Dec. is attached hereto as **Exhibit 1**. In pertinent part, the Special Administrator Order states “Mark Essling is hereby authorized to take all actions necessary in order to file a motion for acceptance of a late proof of claim, on behalf of the Estate of Judith Essling, in the proceeding titled Securities and Exchange Commission v. Equalt, LLC, et al., Court File No. 8:20-cv-325-MSS-AEP...”. Essling Dec., Ex. A pp. 2-3.

Mr. Essling now brings this renewed Motion for leave to file a late proof of claim on behalf of the Estate. The Receiver does not oppose the Motion and the parties agree that the Estate's claim is in the net investment amount of \$213,999.92, the claim amount proposed by the receiver.

ARGUMENT

The Court has wide discretion and inherent authority to grant relief, including equitable relief, in order to protect the ultimate victims of a Ponzi scheme. *See SEC v. Forex Asset Mgmt. LLC*, 242 F.3d 325, 331 (5th Cir. 2001). The Receiver does not oppose the motion and it would serve equity to allow the claim to be filed. The judgment of the Receiver and the SEC should also be given considerable weight. *SEC v. Illarramendi*, 2013 WL 6385036, at *2 (D. Conn. Dec. 6, 2013). Other than the timing of the filing of the claim Judith Essling is similarly situated to all other investors who were taken into this Ponzi scheme. One goal in a receivership is to treat all similarly situated investors similarly. *SEC v. Stinson*, 2015 WL 115495 at *4 (E.D. P.A. Jan. 8, 2015). Furthermore, the grounds for the necessity of filing the Estate’s proof of claim late are set forth both herein and in the Essling Dec. and constitute excusable neglect in this situation. In the interest of bringing about the most equitable distribution of the funds recovered by the

Receiver for distribution to the victims of the Ponzi scheme it would be appropriate for this Court to grant this Motion and permit the Estate to file its proof of claim late.

CONCLUSION

Mark Essling, as the Special Representative of the Estate of Judith Essling hereby requests an Order of the Court that directs the Receiver to accept the late Proof of Claim filed by Mark Essling on behalf of the Estate of Judith Essling and to treat the claim as if it had been timely filed.



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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 17, 2023, a true and correct copy of the foregoing was filed using the Court's CM/ECF system and served via email or transmission of Notices of Electronic Filing generated by CM/ECF to all counsel of record by the Court's CM/ECF system.

EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

SECURITIES AND EXCHANGE Commission

Plaintiff,

v.

Case No.:8:20-cv-325-MSS-AEP

BRIAN DAVISON;
BARRY M. RYBICKI;
EQUIALT LLC,
EQUIALT FUND, LLC,
EQUIALT FUND II, LLC,
EQUIALT FUND III, LLC,
EA SIP, LLC,

Defendants, and

128E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

DECLARATION OF MARK ESSLING

Mark Essling, hereby declares, under penalty of perjury, as follows:

My mother, Judith Essling, was one of the victims of the Ponzi scheme orchestrated by the defendants in this proceeding. My mother gave Equalt \$250,000.00 in 2018. It appears that she was convinced to give this money to Equalt by Brad Mason at Family Tree Planning in Scottsdale. Mr. Mason's business card identified him as a "Senior Planning Consultant." Other pleadings in this case suggest that "consultants" like Mr. Mason were unlicensed salesmen who convinced vulnerable elderly people like my mother to give their money to Equalt, which in turn

EXHIBIT A


paid the salesmen high commissions. The investment, especially because it was such a large part of my mother's net worth, was entirely inappropriate. My mother had sales material from Equialt in her papers but no formal documents describing exactly what her investment was. She appears to have wired funds to Equialt based on conversations with Brad Mason while he prepared her will. I don't know how he prepared her will because he does not appear to be a lawyer. My mother must have met Mr. Mason when she lived in her trailer in Florence Arizona.

I do not know why my mother did not tell me about this proceeding. She usually discussed anything legal with me. And she also usually discussed financial matters with me. It might be that she was embarrassed. Or she may have not been processing information normally during her later years because she was taking prescription pain medication.

I commenced a probate proceeding in Washington County, Minnesota, on May 1, 2023. I was appointed the Special Administrator of the Estate of Judith Essling on May 5, 2023. I sought and the Washington County Probate Court granted me authority to take whatever actions are necessary to protect my mother's Estate's interest in this proceeding. A copy of my Letters of Appointment are attached hereto as Exhibit A. The Estate files this motion with the hope that it will be granted so that my mother's assets can be given to her intended beneficiaries instead of complete strangers.

I hereby declare under penalty of perjury that everything stated in this Declaration is true and correct.

Dated this 8th day of May, 2023.



Mark Essling
Signed in Chisago County, Minnesota

EXHIBIT A

82-PR-23-2008

Filed in District Court
State of Minnesota

May 5 2023 2:30 PM -05:00

STATE OF MINNESOTA

TENTH JUDICIAL DISTRICT

COUNTY OF WASHINGTON

DISTRICT COURT
PROBATE DIVISION

Court File No. 82-PR-23-2008

ESTATE OF JUDITH ELIZABETH ESSLING.
Decedent,

ORDER APPOINTING
SPECIAL ADMINISTRATOR

The above -entitled matter came before the undersigned regarding the appointment of Mark Essling as a Special Administrator to the Estate of Judith Essling. Based upon all of the files, records and proceedings herein, the Court makes the following:

ORDER

1. Appointment of a Special Administrator is necessary to secure the proper administration of the Estate based upon the representations contained in the Petition for Appointment of a Special Administrator filed herein. Appointment without notice or hearing is required because an emergency exists with respect to actions that must be taken immediately in order to preserve an Estate asset in the form of a claim that needs to be asserted in a Florida receivership proceeding.
2. Mark Essling is a proper person to serve as Special Administrator under Minn. Stat. § 524.3-615 and is hereby appointed as Special Administrator of the Estate.
3. Mark Essling is hereby authorized to take all actions necessary in order to file a motion for acceptance of a late proof of claim, on behalf of the Estate of Judith Essling, in the proceeding titled Securities and Exchange Commission v. Equialt, LLC, et al., Court File No. 8:20-cv-325-MSS-AEP, in the

EXHIBIT A

82-PR-23-2008

United States District Court for the Middle District of Florida. Mark Essling is further authorized to take any other actions necessary to preserve the Estate's interest in that proceeding.

3. The Special Administrator shall have the powers of a general personal representative, pursuant to Minn. Stat. § 324.3-617, except those powers shall be terminated after a period of 90 days from the date of appointment. The Special Administrator shall file a Petition for Formal Probate prior to the expiration of said 90 day period.

4. The Special Administrator shall not be required to post a bond.

5. The appointment of the Special Administrator shall terminate on _____.

BY THE COURT:

**Galler,
Gregory**

Digitally signed by
Galler, Gregory
Date: 2023.05.05
12:26:33 -05'00'

Judge of District Court

EXHIBIT A

STATE OF MINNESOTA

May 5 2023 2:30 PM -05:00

COUNTY OF WASHINGTON

Filed in District Court
State of Minnesota

**DISTRICT COURT
PROBATE DIVISION
TENTH JUDICIAL DISTRICT**

Court File No. 82-PR-23-2008

Estate of

Judith Elizabeth Essling, Decedent

**LETTERS
OF SPECIAL ADMINISTRATION**

1. The Decedent died on January 22, 2023.
2. Mark Essling has been appointed Special Administrator for the limited purpose of:
taking necessary actions to file motion in Florida court file for acceptance of late claim and to preserve the estate in those proceedings.

Letters shall terminate upon formal appointment of Personal Representative, or 90 days after issuance of letters, whichever occurs first.

**Galler,
Gregory**

Digitally signed by
Galler, Gregory
Date: 2023.05.05
12:26:06 -05'00'

Judge of District Court

Date

(COURT SEAL)