

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BEACON ASSOCIATES LLC I, BEACON  
ASSOCIATES LLC II, ANDOVER  
ASSOCIATES LLC I, ANDOVER  
ASSOCIATES (q) LLC,

*Plaintiffs,*

vs.

BEACON ASSOCIATES MANAGEMENT  
CORP., ANDOVER ASSOCIATES  
MANAGEMENT CORP., INCOME PLUS  
INVESTMENT FUND, DAVID  
FASTENBERG, TRUSTEE, LONG ISLAND  
VITREO-RETINAL CONSULTANTS 401K  
FBO DAVID FASTENBERG, ET AL.,

*Defendants.*

Civil Action No. 1:14-cv-02294 (AJP)

**NOTICE OF APPEAL**

Notice is hereby given that AIJED International, Ltd. hereby appeals to the United States Court of Appeals for the Second Circuit from the Court's Order entered on April 8, 2015 (Doc. No. 91) and any and all orders encompassed therein.

DATED: New York, New York

April 14, 2015

AKIN GUMP STRAUSS HAUER & FELD LLP

*s/ Mitchell P. Hurley*

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 14, 2015, I electronically filed the foregoing Notice of Appeal with the Clerk of Court by using the Court's CM/ECF system. All participants in this matter are registered CM/ECF users and will be served copies of the foregoing document via the Court's CM/ECF system.

*s/ Mitchell P. Hurley*

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Mitchell P. Hurley

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BEACON ASSOCIATES LLC, et al.,

Plaintiffs,

-against-

BEACON ASSOCIATES MANAGEMENT CORP., et  
al.,

Defendants.

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14 Civ. 2294 (AJP)  
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ORDER

**ANDREW J. PECK, United States Magistrate Judge:**

The Court previously ordered that money received by Beacon from the Madoff Trustee should be distributed according to the "Net Equity Method" until all investors are made whole (i.e., have received back all of their principal invested in Beacon), after which further distributions will be made under the "Valuation Method." (Dkt. No. 51: Final Distrib. Order & Judgment at pp. 3-5.) The issue presently before the Court is how to treat nineteen so-called "Holdback" accounts which had transactions with related Beacon accounts (including Beacon members who closed their account and later reopened an account).

After reviewing all of the parties' submissions on this issue (Dkt. Nos. 65, 69-77, 79-90), the Court holds that, in equity and fairness, each related account should be treated as a single entity for purposes of determining Net Equity.

As Beacon member Income-Plus Investment Fund explained:

The reason for tracking from the initial investment rather than just when an account was re-opened was straight forward and is best explained by example. Assume for the purpose of this example Fund A made an initial investment in

Beacon of \$1 million and that the investment grew over time to \$2 million, without any withdrawals. If that assumption were true, Fund A would have had a "net equity" investment of \$1 million but an account value of \$2 million. If Fund A then merged into Fund B and Beacon opened a new account to reflect the name change from Fund A to B, Beacon's books and records would reflect an initial cash-in investment for Fund B of \$2 million when Fund B had, in reality, only \$1 million in "net equity" at the time of the initial investment of its predecessor, Fund A. As a result, the only way to understand Fund B's true "net equity" would be to trace Fund B's investment back to Fund A's initial investment of \$1 million . . . . Without that tracing, Fund B would have an inflated "net equity" investment of \$2 million, instead of only the original \$1 million actually invested.

(Dkt. No. 69: Income-Plus Br. at 4.)

The AIJED Funds argue that while this approach should apply to the other Holdback Investors, it should not apply to AIJED, because the investors in the two AIJED Funds were different. (See generally Dkt. No. 76: AIJED Br.) AIJED I invested in Beacon in 1997. In 2005, AIJED II was formed and Beacon "transferred" millions of dollars (the Court will not publicly disclose the exact amount in this Opinion) on its books from AIJED I to AIJED II as the latter's investment in Beacon. Obviously, as in the hypothetical example above, that amount included fictitious Madoff profits. In fairness, the AIJED Funds should not receive the benefit of those fictitious profits until all other Beacon members receive back the principal they invested in Beacon. While the AIJED Funds argue that "there was no material overlap in the identity of the investors" in AIJED I and AIJED II (AIJED Br. at 2) that is both incorrect<sup>1/</sup> and in any event irrelevant to the Court's equity-based decision.

AIJED I and II, and not their investors, were members of Beacon. Had all of AIJED I's investors cashed out and been replaced by entirely new investors, the entity on Beacon's books

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<sup>1/</sup> As AIJED admits elsewhere in its papers, "41 of [AIJED I's] approximately 100 members redeemed their investment in [AIJED I] in June, 2005 and reinvested in AIJED" II. (AIJED Br. at 5.)

still would be AIJED I. AIJED I and AIJED II are related and in equity and fairness should be treated as such for purposes of Beacon's Net Equity distribution.

**CONCLUSION**

For the reasons discussed above, in equity and fairness, AIJED I and AIJED II, and each related "Holdback Investor," should be treated by Beacon as a single entity for purposes of determining Net Equity.

SO ORDERED.

Dated: New York, New York  
April 8, 2015



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Andrew J. Peck  
United States Magistrate Judge

Copies **by ECF** to: All Counsel