

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**BEACON ASSOCIATES LLC I, BEACON
ASSOCIATES LLC II, ANDOVER
ASSOCIATES, L.P., ANDOVER
ASSOCIATES LLC I, ANDOVER
ASSOCIATES (Q) LLC,**

Plaintiffs,

-vs.-

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

**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.

**DEFENDANT INCOME-PLUS INVESTMENT FUND'S OPPOSITION TO
AIJED INTERNATIONAL LTD.'S MOTION FOR A STAY OF
ENFORCEMENT OF APRIL ORDER PENDING APPEAL**

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Defendant Income-Plus Investment Fund (“Income-Plus”) hereby opposes the Motion for a Stay of Enforcement of the April Order Pending Appeal filed by AIJED International Ltd. (“AIJED”) on April 20, 2015.

AIJED’s assertion that it is likely to succeed on the merits of its appeal is based on the same arguments reviewed and rejected by the Court in its Order dated April 8, 2015 (“Order”). *Order Dkt. No. 91 at p. 1*. The Court found those arguments unpersuasive the first time around; Income-Plus sees no reason for the Court to find differently the second time around. In the end, the “likely” result of the appeal will be an affirmation of the Court’s judgment that, “in equity and in fairness, each related account should be treated as a single entity for purposes of determining Net Equity.” *Id.*

AIJED’s argument that it will be irreparably harmed if Beacon distributes the amounts held back to date because AIJED will not be able to seek a return of those funds from Beacon’s other investors is a red herring. The argument all but ignores the critical fact that Beacon has other assets, including its substantial allowed claim with the Madoff Trustee, and those assets will likely flow to Beacon for years to come, as a review of the Madoff Trustee’s website makes clear. See <http://www.madofftrustee.com/>.

Equally misplaced is AIJED’s argument that the balance of harms “tilts in its favor” because the funds at issue “will remain in an escrow account gathering interest.” *AIJED Br. pp. 19-20*. It is Income-Plus’ understanding that the funds are held in U.S. Treasury bills. As a result, the funds will “gather” virtually nothing if left there throughout the appellate process, depriving the investors of the ability to use the amounts due to them in a manner consistent with their own financial planning and needs.

In further support of this Opposition, Income-Plus relies on the arguments set forth in Defendant Fastenberg's Memorandum of Law in Opposition to AIJED's Request for a Stay.

For all of these reasons, Defendant Income-Plus Investment Fund respectfully requests that the Court deny AIJED International Ltd.'s Motion for a Stay of Enforcement of the April Order Pending Appeal.

DATED: April 23, 2014

HISCOCK & BARCLAY, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2015, I electronically filed the foregoing Memorandum of Defendant Income-Plus Investment Fund in Support of Motion to Stay using the CM/ECF system, which sent electronic or other notification of such filing to all counsel of record in this case, and a copy was also sent by first class mail to all counsel of record.

/s/ Brian E. Whiteley
BRIAN E. WHITELEY