

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)

**DECLARATION OF ARTHUR S. GORDON**

I, ARTHUR S. GORDON, hereby declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury:

1. I am the managing member of Gordon Asset Management LLC (“GAM”), a New York corporation. This declaration is based upon my personal knowledge and is submitted in support of AIJED’s Application for Release of Amounts Due Pursuant to this Court’s October 31, 2014 Order.

2. GAM is the managing member of AIJED Associates LLC (“Associates”), a New York investment fund formed in 1997 pursuant to an Operating Agreement dated February 4, 1997 and amended and restated as of May 15, 2007. Membership interests in Associates were

offered to investors in a confidential Private Placement Memorandum dated February 1, 1997 and amended and rested as of May 15, 2007.<sup>1</sup>

3. As a “fund of funds,” Associates invested its members’ capital in a portfolio of other investment funds, including Beacon Associates LLC I and Beacon Associates LLC II (collectively, “Beacon”). In turn, Beacon invested in Bernard L. Madoff Investment Securities LLC (“BLMIS”).

4. In June 2005, AIJED International, Ltd. (“AIJED”) was formed as a Cayman Islands exempted company operating under its own private placement memorandum and Articles of Association dated May 10, 2005 and amended and restated as of June 1, 2007, with GAM acting as AIJED’s investment manager. AIJED is controlled by a board of directors with a majority of board members who are independent of AIJED, Associates and GAM.

5. As an offshore corporation, AIJED offered certain tax benefits to U.S. tax-exempt investors, such as IRA accounts and institutional investors. In order to benefit from such tax advantages, █ of Associates’ approximately █ members redeemed their investment in Associates in or around June 2005 and reinvested in AIJED. Approximately █ investors remained in Associates, which in turn remained an investor in Beacon through the discovery of the Madoff fraud in 2008.

6. During the period between the creation of AIJED in mid-2005 and the discovery of the Madoff fraud in December 2008, AIJED’s and Associates’ investor lists were continually changing as investors redeemed funds and new investors purchased subscriptions.

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<sup>1</sup> Under Section 3(c)(1) of the Investment Advisors Act of 1940, as amended (the “Company Act”) Associates was allowed to have only 100 members. In 2008, GAM sought to accommodate additional investor interest by creating AIJED Associates QP (“QP”), which could have an unlimited number of members as long as they were “qualified purchasers.” Associates became a member of QP, along with other qualified purchasers, which succeeded to all of Associates’ assets, including Associates’ interest in Beacon and other funds. After the Madoff fraud was discovered in December 2008, the SALT was created to hold QP’s interests in Beacon. Associates, QP and SALT were each simply a different iteration of the onshore fund.

7. In total, [REDACTED] investors redeemed [REDACTED] from Associates in mid-2005 and reinvested these funds in AIJED. Of that amount, [REDACTED] was from Associates' Beacon account, with the remainder coming from Associates' investments in other funds.

8. Most of the money subject to redemption – \$ [REDACTED] – was redeemed from Associates by the withdrawing investors on June 30, 2005 and reinvested in AIJED on July 1, 2005, with a small balance retained as a “holdback” pending final net asset value calculations from the various funds in which Associates was invested. That holdback (approximately [REDACTED]) was distributed by Associates and reinvested in AIJED by the withdrawing investors between July 31, 2005 and September 1, 2005.<sup>2</sup>

9. None of the [REDACTED] investors who departed for AIJED remained an investor in Associates after their withdrawal from Associates was complete.

10. At no time during the existence of the two funds was there any material overlap between the investors in AIJED and the investors in Associates.

11. AIJED and Associates treated the 2005 transactions as “withdrawals and reinvestments,” with the redeeming investors executing separate subscription agreements for their investment in AIJED.

12. At the time of the redemptions, Associates' portfolio was comprised exclusively of funds organized under U.S. law, but many of those funds had offshore fund entities pursuing substantially the same strategy as their onshore affiliate. When Associates redeemed its investment in these U.S.-based funds to carry out the mid-2005 distributions to the [REDACTED] departing investors, funds with offshore affiliates generally wired the amounts necessary to satisfy the redemptions to Associates, and those sums in turn were wired by AIJED to the offshore affiliate.

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<sup>2</sup> In addition, three withdrawing Associates investors (included in the [REDACTED] total withdrawing investors) began their redemptions slightly later, on August 31, 2005 and September 30, 2005, respectively. These three investors' total investment (approximately [REDACTED]) was fully invested in AIJED by November 1, 2005.

13. Unlike many of the other funds in which Associates was invested, Beacon did not have an offshore affiliate pursuing substantially the same strategy as Beacon. Hence, as an administrative convenience, in lieu of wiring cash out to Associates and awaiting a cash wire back in the same amount from AIJED, Beacon identified the transaction on its own books as a “transfer” of [REDACTED] million from Associate’s Beacon account to AIJED’s separate Beacon account. However, Associates treated this transaction as a redemption from its Beacon account, and AIJED treated it as a contribution to its account. Beacon was aware of this.

14. Attached hereto at Exhibit A is a true and correct copy of my July 1, 2005 letter to Beacon authorizing this transaction and noting that AIJED and Associates will consider the transaction to be a redemption and reinvestment.

15. The 2005 K-1 issued by Beacon to AIJED identified the \$ [REDACTED] investment as “capital contributed during the year,” while Associates’ K-1 included that amount among its “withdrawals and distributions” during 2005.

16. Similarly, Associates’ K-1s to its own investors reported the amounts they redeemed in or around July 2005 as “withdrawals and distributions.”

17. During the years after AIJED’s initial Beacon investment in 2005, AIJED received approximately [REDACTED] from new investors – including [REDACTED] in 2008 alone – and contributed an additional [REDACTED] in capital to Beacon. AIJED’s contributions to Beacon during this period were funded by AIJED’s investors only, and did not come from any other sources.

18. During the same period, Associates and its investors took out about [REDACTED] from Beacon and [REDACTED]. The moneys distributed to Associates during

this period benefited only Associates investors, none of whom were also material investors in AIJED.

19. In connection with this litigation, AIJED provided opposing counsel with a spreadsheet showing all contributions and withdrawals by investors AIJED, Associates and QP from July 2005 through December 2008. The spreadsheet includes the transactions by which investors withdrew funds from Associates to invest in AIJED in mid-2005. The spreadsheet reflects that, following this transaction, there were no investors in AIJED that also had an investment in Associates.

20. At the time of Associates' initial investment in 1997, Beacon's capital was 100% invested in BLMIS. Over the course of the next several years, Beacon added a number of other investments to its portfolio, but the majority of its assets remained invested in Madoff.

21. In 2004, the year before AIJED was formed, Associates instructed Beacon to place the majority of Associates' Beacon investment in a special "Madoff only" category. As noted, Associates was a "fund of funds," and wanted to ensure that Beacon's non-BLMIS investments did not duplicate other investments held by Associates.

22. When AIJED was formed in 2005, 100% of the amounts withdrawn from Associates and reinvested in AIJED came from Associates' Madoff only account. Since AIJED was also a fund of fund, it too instructed Beacon to allocate AIJED's investment solely to BLMIS.

23. In April 2007, Associates withdrew the portion of its Beacon investment that was not exclusively invested in BLMIS.

24. Hence, at all times during its investment in Beacon, 100% of the moneys contributed by AIJED to Beacon were invested in BLMIS. After April 2007, the same was true for Associates.

25. The Madoff fraud was discovered in December 2008. Thereafter, Beacon had some “non-Madoff” assets available for distribution to Beacon’s investors, including Beacon’s interests in funds other than BLMIS, as well as some cash. In 2010 and 2013, Beacon distributed the value of those “non-Madoff” assets in accordance with the “valuation method” pursuant to a court order. AIJED received distributions of “non-Madoff” funds totaling ██████████ in 2010 and ██████████ in 2013. Associates received corresponding distributions of ██████████ and ██████████ respectively in those years. These “non-Madoff” distributions represented Associates’ and Beacon’s share of the Madoff account that was held in cash when the fraud was discovered.


26. In addition, investors in Beacon were the beneficiaries of a substantial settlement of class and other litigation related to the Madoff fraud. The proceeds of the settlement were distributed to Beacon investors in 2013 in accordance with the “net equity” method pursuant to a court-approved settlement and plan of allocation. AIJED received a distribution of ██████████ in connection with the court-approved settlement in 2013. Associates received a distribution of ██████████

27. On or around November 5, 2014, Beacon’s counsel, Herrick, Feinstein LLP (“Herrick”), notified GAM that a court order had been issued on October 31, 2014 dictating the manner in which Beacon would distribute all future funds to investors. Herrick indicated that Beacon was preparing to make an additional distribution, pursuant to the terms of the October 31, 2014 court order.

28. On or around November 6, 2014, I had a telephone call with a Beacon representative, who advised me that AIJED would be receiving approximately [REDACTED] in the next distribution of funds.

29. On or around November 17, 2014, I received another call from Beacon. Beacon indicated that it was withdrawing its earlier statement based on objections raised by other Beacon investors, and that AIJED's payment would be withheld from Beacon's next distribution. Beacon provided a spreadsheet showing its calculations of AIJED's net equity at that time. Attached hereto as Exhibit B is a true and correct copy of the spreadsheet Beacon provided in or around November 17, 2014.

Dated: March 12, 2015  
Boca Raton, Florida

  
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Arthur S. Gordon