MELAND | BUDWICK

Federal Bankruptcy Court Grants Class Certification in 1 Global Capital $340 Million Fraud

https://melandbudwick.com/2020/03/26/federal-bankruptcy-court-grants-class-certification-in-1-global-capital-340-million-fraud/

Michael A. Mora

A federal bankruptcy court judge in Miami issued an order Tuesday allowing a class-action case to proceed by granting class certification on behalf of over 3,400 investors seeking the recovery of their investments from a merchant cash advance company that is accused of running a fraudulent scheme that cost investors nearly $340 million.

Sarah Foster has been certified as the class representative for the investors and the Moskowitz Law Firm has been certified as class counsel in the adversary proceeding pending before Judge Robert A. Mark in the U.S. Bankruptcy Court for the Southern District of Florida. The adversary proceeding was filed in the chapter 11 bankruptcy case of 1 Global Capital against defendants Carl Ruderman, Kopelowitz Ostrow P.A., and Dale Ledbetter.

In a preliminary hearing on the plaintiff's motion for class certification on Feb. 26, the court decided that the plaintiff had satisfied all of the relevant factors for class certification under Federal Rule of Civil Procedure 23. However, defendant Ruderman a senior officer of 1 Global, did not file a response to the motion because he had previously filed a motion to stay the adversary proceeding because of his ongoing related federal criminal investigation and criminal proceedings. That motion to stay was denied by the court without prejudice to Ruderman renewing his motion if and when the plaintiff moves for summary judgment.

Ruderman was given an extension of time to file a response by the court until March 12; however, Ruderman did not file a response by the deadline. Then, the plaintiff filed a Notice of No Response.

Lawyers for Ruderman declined to comment.

> "We're now poised to move forward to obtain a final judgment against Carl Ruderman and that would put us in a position to execute on his remaining assets," said Michael S. Budwick, counsel for the plaintiff and a name partner with Meland Budwick, P.A. "The most significant remaining asset appears to be a trust, which has been funded with artwork."

Budwick said the artwork likely has a value in the millions of dollars.

When it was operating, 1 Global had told its investors that their investments were primarily used to fund short-term, high-interest loans issued to small and medium-sized businesses. These loans were to be repaid through periodic automatic withdrawals from the businesses' operating accounts, rather than through a single lump sum payment initiated by the businesses.

The 1 Global investment product was evidenced by a "Memorandum of Indebtedness." Among the investors was the class representative, Foster, who alleges that the MOI was an unregistered security. A district court in the Southern District of Florida has already concluded that the MOIs were securities under federal securities laws in a case brought by the U.S. Securities and Exchange Commission.

The SEC said 1 Global ran as a "Ponzi-like" scheme. When investor money periodically dried up, the business made false statements to new investors to get new investment funds, which were used to repay earlier investors.

Adam M. Moskowitz, a partner at the Moskowitz Law Firm, said the investors were located around the country and were mostly older people that put their life savings into the investments.

"We have some claims that are better than the estate's because there is something called i*n pari delicto*. So some of the claims are better brought by the investors, some claims are better brought by the estate," Moskowitz said, referring to Paul J. Battista, who has been appointed as Special Counsel for the Liquidating Trust, which was approved when the liquidating plan for 1 Global was approved by the bankruptcy court. "But by coordinating together, we were able to save a lot of

wasted time and resources that could go to the investors.”