

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
Northern District of California

CIVIL MINUTES

Date: October 8, 2019

Time: 1:37 – 2:22 =
45 Minutes

Judge: EDWARD M. CHEN

Case No.: [16-cv-01386-EMC](#)

Case Name: Securities and Exchange Commission v.
Bivona

Receiver: Kathy Phelps

Attorney for Plaintiff: John S. Yun

Attorney for SEC Investor Group: Jonathan Levine

Also Present on Court Call: Scott Burack, Tax Expert

Deputy Clerk: Angella Meuleman

Court Reporter: Ana Dub

PROCEEDINGS

[516] Motion to Appoint Expert

Further Case Management Conference - held.

SUMMARY

Parties stated appearances and proffered argument.

The Court granted Receiver's Motion to Employ Miller Kaplan as Tax Advisor. The Court also granted Receiver's Motion to Employ Schinner & Shain LLP as Securities Counsel. The parties discussed the options presented in the Receiver's Motion for Instructions, as well as the possibilities contemplated by the SRA Funds Investor Group's Response (*i.e.* Scenarios 1, 2, and 3, and any variants thereof).

The Court raised the question of what defines the QSF: does it turn on the terms of the Court's order establishing the receivership and the QSF or is it established as a matter of law by virtue of applicable governing statutes and regulations? The SRA group raised the following questions:

1. Was the QSF created?
2. If so, when was it created?
3. What caused it to be created?
4. What is in the QSF?

The Receiver also highlighted several concerns regarding: (1) the interests of the unsecured creditors, (2) the interests of the various investors, some of who suffered losses, and (3) the risks of delay, including but not limited to potential changes in the stock market. The Receiver also informed that Court that she had provided notice of her Motion to all shareholders and had posted

all the related papers on the receivership website. She received one objection, concerning the issue of fair treatment for parties experiencing losses on their investments.

The SRA group informed that Court that they accept the potential risks associated with further delaying distribution of the receivership assets. The group's preference is to explore the other distribution options prior to determining a course of action. The Receiver mentioned she has discussed valuation with two consultants but will defer for now.

The Court directed the Receiver to have the tax advisor and securities counsel examine Scenarios 1, 2, and 3 (and any other scenarios that warrant consideration). The Court continued the hearing on the Motion for Instructions until **December 19, 2019 at 1:30pm**.