

Nussbaum Lowinger LLP v ABCMN LLC

2026 NY Slip Op 32045(U)

April 20, 2026

Supreme Court, New York County

Docket Number: Index No. 157933/2025

Judge: Gerald Lebovits

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

INDEX NO. 157933/2025
MOTION DATE 12/05/2025, 01/23/2026, 03/04/2026
MOTION SEQ. NO. 003 005 006

NUSSBAUM LOWINGER LLP and MARK J. NUSSBAUM AND ASSOCIATES, PLLC,

Petitioners,

- v -

ABCMN LLC,

Respondent.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 44, 45, 46, 47, 48, 50, 51, 52, 53, 54, 55

were read on this motion for MISCELLANEOUS

The following e-filed documents, listed by NYSCEF document number (Motion 005) 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79

were read on this motion to COMPROMISE

The following e-filed documents, listed by NYSCEF document number (Motion 006) 80, 81, 82, 88, 89, 90

were read on this motion to APPROVE/SETTLE ACCOUNTING

Anderson Kill, P.C., New York, NY (Sheldon Eisenberger, Keith A. Lazere, Louis L. Nock, Jason Kosek, and Joshua A. Zelen of counsel), for respondent.

Reed Smith LLP, New York, NY (Andrew L. Buck of counsel), for nonparty creditor Crestview 360 Holdings, LLC.

Gerald Lebovits, J.:

This action stems from a Ponzi scheme operated by petitioners, law firms Nussbaum Lowinger LLP and Mark J. Nussbaum and Associates, which have filed for bankruptcy.¹

1 Petitioners "ceased operations in January 2025 and Nussbaum [their principal] was indicted for allegedly stealing \$1 million in customer funds and later voluntarily resigned his law license and was disbarred." (Vince Sullivan, Nussbaum-Linked Law Firms Hit Ch. 11 Facing Scheme Suits, Law360 https://plus.lexis.com/document?pdmfid=1530671&pddocfullpath=%2Fshared%2Fdocument%2Flegalnews%2Furn%3AcontentItem%3A6JCB-P1G3-S0JP-910N-00000-00&pdcontentcomponentid=122080&pdslparesultsdocument=false&prid=25e2f8ff-e250-41c1-bd39-77dd1525adcc&crd=3eb76a07-e0d3-44f5-86bf-

Respondent, ABCMN LLC, was formed as a vehicle for paying back petitioners' victims, their creditors. In a general assignment agreement between petitioners and respondents, petitioners designated respondent to manage petitioners' assets and settle the creditors' claims. (*See* NYSCEF No. 4 ["General Assignment for The Benefit of Creditors" or "assignment agreement"].) Motion sequences 003, 005, and 006, which arise from respondent's performance under that agreement, are consolidated here for disposition.

I. Motion Sequence 003

On motion sequence 003, respondent asks this court to approve its retention of Patrick A. Chylinsky and David Harkavy of Armanino Advisory LLC as its forensic accountants. Creditors Blueberry Funding LLC and Crestview 30 Holdings initially opposed the motion. Blueberry has since withdrawn its opposition. (*See* NYSCEF No. 55.) Crestview maintains its opposition.

Crestview does not dispute the need for forensic accountants. Crestview notes that respondent previously hired a different accounting firm before execution of the assignment agreement; asked this court to hire that firm as respondent's forensic account after the assignment agreement became effective; and later withdrew that request after finding that the firm's productivity was lackluster. (NYSCEF No. 52 at ¶¶ 5-6.) According to Crestview, respondent did not seek to hire a new accounting firm until four months after it withdrew that request. (*See* NYSCEF No. 52 at ¶ 7.) Crestview urges the court to deny respondent's motion without prejudice until it consults the creditors about hiring a new accounting firm and "also disclosed to those parties the specific nature and extent of the information Mr. Eisenberg [respondent's sole member] has gathered to date concerning Nussbaum's fraud, and why that information necessitates the expenditure of the victim's funds on yet another forensic accountant, and the anticipated / budgeted cost for this latest forensic accountant." (*Id.* at ¶ 11.)

Respondent's motion is granted. Crestview has not shown that respondent is required (by the assignment agreement or otherwise) to consult with the creditors before hiring a new accounting firm. Moreover, in learning that the prior accounting firm did not perform satisfactorily for petitioners, respondent correctly sought to hire a different accounting firm instead. The four-month delay in doing so is immaterial in light of the complexity of the financial issues at stake. And, notably, Crestview has not shown that Armanino is unqualified to handle these financial complexities.

II. Motion Sequence 005

On motion sequence 005, respondent moves for this court to approve a settlement agreement between respondent and nonparty Wolf Werberger. (*See* NYSCEF No. 69 [notice of motion].) The agreement provides that in exchange for \$15,350,000, petitioners' creditors will release their claims against Werberger and his companies and family.

[0a61b9cadd09&pdiscdocsliderrequired=true&pdpeersearchid=6ed50f21-90a9-422c-b644-34d2d5757f85-1&comp=b7ttk&earg=sr0-/d738228e-942c-4972-abb5-84e9cf388e48](#) [Apr. 17, 2026].) They filed for bankruptcy on April 16, 2026. (*See id.*)

A. Amount of Settlement

Respondent agreed to settle with Werberger for \$15,350,000 based on its estimation that Werberger profited \$16-19 million from his participation in the Ponzi scheme; its conclusion (after consulting with attorneys and agents) that determining the ultimate amount Werberger received is highly difficult; and its consideration of Werberger's asserted defenses to respondent's claims. (NYSCEF No. 70 at 4-5.)

Crestview argues that respondent has not established a sufficient basis for the \$15,350,000 settlement amount. Crestview argues that respondent provides no affidavit from Werberger himself explaining how much money he profited, and that without a forensic accountant (the subject of motion sequence 003), the court is left only with petitioners' principal Nussbaum's estimation of Werberger's profits. (*See* NYSCEF No. 77 at 2-3, n 3.)

Respondent represents, however, that its estimate of Werberger's profit is based on Eisenberger's own analysis and that of a separate accountant hired specifically to "trace the transactions between the Assignor and Wolf Werberger and individuals and entities on his behalf." (NYSCEF No. 79 at 1 [accountant's affidavit].) Respondent also claims that it is disingenuous for Crestview to argue that there is no basis for the settlement amount when Crestview's own opposition on motion sequence 003 has delayed the appointment of an accounting firm. (NYSCEF No. 78 at 3.)

The court agrees that respondent has not established a sufficient basis for the \$15,350,000 settlement amount. Although respondent hired a separate accountant to analyze transfers from petitioners to Werberger, that accountant has not explained how he came to his conclusions. Nor does respondent provide documentation supporting the accountant's conclusions. (*See* NYSCEF No. 79.) On this record, the court cannot properly evaluate the propriety of the settlement amount.

B. Scope and Beneficiaries of Settlement Releases

Crestview argues that the agreement's releases are too broad and "could be construed to cover transactions far beyond those involving Werberger and extend far beyond the Werberger and his immediate Family." (NYSCEF No. 77 at ¶ 8.) The court agrees.

1. Scope of the releases: Section 5 (a) of the proposed settlement provides that respondent (and all of petitioners' creditors) will release Werberger and his family from all causes of actions, obligations, and debts "by reason of, under, or in connection with, any matter, cause, or thing whatsoever arising or accruing in whole or in part from the beginning of the world to the effective date of this Agreement." (NYSCEF No. 72 at § 5 [a].²) These claims are called the "Released ABC Claims." (*Id.*) The release applies to the claims of any creditor of Nussbaum Lowinger LLP or Mark J. Nussbaum and Associates, PLLC . . . whose claim(s) in any

² This provision is reflected in ¶ 7 of respondent's proposed order to the court. (*See* NYSCEF No. 72 at 13, ¶ 7[[pdf pagination](#)].)

way arise(s) from or are related to the Assignor or its assets or its conduct including, without limitation, the handling or transfer (deposit or withdrawal) of funds by the” petitioners. (*Id.*)

Crestview contends that the release’s scope is too broad—that the claims released would include claims outside those connected to the Ponzi scheme. Respondent argues that the claims to be released are sufficiently narrow. (NYSCEF No. 78 at ¶ 9.) Respondent further contends that it consulted Crestview (and other creditors) when negotiating the language of the settlement agreement, but that Crestview did not voice any objections. (*See* NYSCEF No. 78 at 2-3.)

The court agrees with Crestview. The term “Released ABC Claims” is too broad; it is not limited to claims stemming from petitioner’s Ponzi scheme but encompasses *any* sort of claim a creditor might ever have against Werberg. Respondent does not explain why creditors should have to release *all* claims they might have against Werberg, and not only those related to the scheme, particularly when Werberg’s obligation to pay money is tied to the profits he accrued from the scheme.

2. Beneficiaries of the releases: Section 5 (b) of the settlement provides that the released parties include Werberger, his family, any company in which he or his family own 100% interest, “and any persons or entities (and any immediate or mediate transferee thereof) that received funds or transfers from transactions that appear on the spreadsheets Assignor provided to Assignee and to Former Client [Werberge] of all transactions related to the Released ABC Claims.” (NYSCEF No. 72 at § 5 [b].) Crestview argues that § 5 (b)’s scope of released parties is too broad and that the agreement does not identify any spreadsheet. (*See id.* at ¶¶ 11, 13.)

The court agrees with Crestview. To release not only Werberger and his family, but any entities that received funds in certain transactions, which remain unidentified in the agreement, is too vague. The provision leaves too many questions unanswered, for example: *What spreadsheet? Which transactions? What is the relationship between those entities to Werberg? How do the transactions on the spreadsheet relate to the released claims?* Respondent and Werberg must therefore clarify the vagueness by providing the “spreadsheet” and identifying the people or entities that received funds from petitioners before this court will approve this settlement agreement.

III. Motion Sequence 006

On motion sequence 006, respondent seeks authorization from this court to make an initial distribution of funds to seven particular creditors. (*See* NYSCEF No. 80 at 1.) Respondent further seeks an extension of its deadline to submit a Debtor Creditor Law (DCL) § 14 interim report following this court’s resolution of motion sequence 003 (appointment of new forensic accountants). (*See id.*) The motion is granted in part and denied in part.

1. Crestview urges this court to deny the branch of respondent’s motion to make the initial distribution because respondent has not provided “sufficient information to determine whether payment to these creditors now, in full and with priority over other similarly situated creditors, before the Assignee has determined either the totality of valid claims against Assignor

or the value of Assignor's assets available to satisfy those claims" comports with the Debtor and Creditor Law and the assignment agreement. (NYSCEF No. 88 at ¶ 4.)

The assignment agreement provides that after a certain amount of money is used to reimburse respondent for costs and expenses related to administration of petitioners' estate and to pay legal and accounting fees, the "Real Estate Clients" are to receive distributions. (See NYSCEF No. 4 at ¶ 6.) "Real Estate Clients" are defined as "bona fide clients of Assignor who/that had escrow monies deposited with Assignor for the use in or resulting from a transaction for which Assignor performed legal work." (*Id.* at ¶ [7] [a].)

According to Crestview, no creditor in a general assignment has priority over another unless that creditor is owed wages or made a cash deposit for services or merchandise to be received. (*Id.* at ¶ 5, citing DCL § 23 ["In all general assignments of the estates of debtors for the benefit of creditors no preference created therein, other than for the wages or salaries of or moneys held in trust for employees under section twenty-one-a and section twenty-two or cash deposits upon purchases for future delivery of merchandise or services under section twenty-two, shall be valid."].) In Crestview's view, there is no basis here to distribute the funds to the seven proposed creditors *before* distributing funds to Crestview. Crestview further argues that respondent has not adequately disclosed how it calculated those creditors' claim amounts. (See NYSCEF No. 88 at 3.)

Respondent argues that the seven creditors are "Real Estate Clients" and therefore have priority over Crestview. Respondent says that these creditors' "claims concern amounts under \$50,000 and qualify as *their own class* of clear first round Real Estate Clients." (NYSCEF No. 90 at 4 [emphasis added].) In addition, Eisenberger represents that he was reasonably able to ascertain the validity and sizes of the claims of the seven creditors whose claims are relatively small. In contrast, he says, he could not ascertain the value of Crestview's more complex claim without hiring a forensic accountant (the subject of motion sequence 003). (See NYSCEF No. 90 at 4.)

The court agrees with Crestview. It is unclear why the seven proposed distributees qualify as "Real Estate Clients" (other than on Eisenberger's say so). Respondent provides no documentation reflecting that the seven creditors are indeed bona fide clients who escrowed money with petitioners or showing how respondent accounted for those creditors' claims. Nor does respondent explain the basis for his determination that Real Estate Clients with claims for less than \$50,000 should be prioritized.

In addition, Eisenberger has not complied with the assignment agreement's mandate that "[i]n any motion filed by the Assignee for approval of the settlement of Claims hereunder, Assignee shall provide adequate disclosure of how the amounts in which the Claims were computed." (NYSCEF No. 4 at ¶ 7 [e].) Although Eisenberger explains that he examined each creditor's proof of claim and compared the proof to petitioner's books and record (see NYSCEF No. 81 at ¶ 3), he does not attach the evidence supporting his conclusions or explain, in sufficient detail, the evidence he considered. This branch of respondent's motion is therefore denied.

2. Crestview does not object to extending the deadline for assignee to submit the interim report. That branch of the motion is granted. Respondent has 60 days from entry of this order to submit the report.

Accordingly, it is

ORDERED that respondent’s motion for this court to approve its retention of Patrick A. Chylinsky and David Harkavy of Armanino Advisory LLC as its forensic accountants (mot seq 003) is granted; and it is further

ORDERED that the branch of respondent’s motion to confirm the settlement agreement (mot seq 005) is denied, with respondent to provide a revised settlement agreement to the court that corrects the issues discussed herein, and to settle order within 30 days entry of this order; and it is further

ORDERED that the branch of respondent’s motion to make an initial distribution of funds to seven creditors (mot seq 006) is denied without prejudice; and it is further

ORDERED that the branch of respondent’s motion to extend the deadline for respondent to submit the interim report (mot seq 006) is granted, and respondent has 60 days from entry of this order to submit the report.

4/20/2026
DATE


HON. GERALD LEBOVITZ
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	