

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

LAWRENCE E. JAFFE PENSION PLAN,)	
on Behalf of Itself and All Others Similarly)	
Situated,)	Lead Case No. 02-C-5893
)	(Consolidated)
)	
Plaintiff,)	CLASS ACTION
)	
v.)	
)	Judge Ronald A. Guzmán
HOUSEHOLD INTERNATIONAL, INC., <i>et al.</i> ,)	
)	
Defendants.)	

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’ “RESPONSE” TO
THE SPECIAL MASTER’S JULY 11, 2013 REPORT AND RECOMMENDATIONS**

In accordance with the Court’s Order of July 30, 2013 (Dkt. No. 1865), Defendants hereby respond to Plaintiffs’ procedurally improper “response” to the Special Master’s July 11, 2013 Report and Recommendation (“Report”). Plaintiffs’ “response” is actually a motion and, for the reasons set forth herein, should be denied.

ARGUMENT

On July 11, 2013, the Special Master filed the Report (Dkt. No. 1860), which contained four lists categorizing the claims that had been submitted by claimants in this action. As noted by the Special Master in the Report, these lists had been agreed upon and approved by the parties before the Special Master submitted them to the Court. (Report at 1.)

List 3 identifies the claims as to which the claimants failed to answer the reliance question in the claim form or in the supplemental claim form sent to claimants with claims in excess of \$250,000 that had failed to answer the question in the initial claim form. (*Id.* at 3.) The Special Master explained that “[t]he claims on List 3 (Exhibit C) identify the claimants resolved

to date *whose claims will be rejected under the Court's prior rulings* for failing to answer the claim form question and/or supplemental interrogatory.” (*Id.* at 4 emphasis added).)

On July 25, 2013, Plaintiffs filed what they characterized as a “response” to the Report “to raise issues that have arisen with respect to seven claims that currently appear on List 3.” (Dkt. No. 1862.) Plaintiffs acknowledge that they “agreed that each of these seven claims was properly identified as a claim in excess of \$250,000 that failed to answer the supplemental interrogatory question on or before [the Court-ordered deadline of] September 12, 2011. (*Id.* at 1.) Plaintiffs, therefore, concede, as they must, that they “do not object” to the Report. (*Id.*) Nevertheless, without following proper procedures, Plaintiffs use the “response” to seek relief on behalf of seven claimants on List 3. The “response,” which constitutes a motion for affirmative relief, should be dismissed as procedurally improper. Furthermore, even if Plaintiffs had filed a proper motion, they have presented no grounds that would warrant granting the relief they seek.

With respect to four of the seven claims (Claims Nos. 619782, 620361, 620487, and 620747), Plaintiffs admit that: (1) BNY Asset Servicing (“BNY”), the custodian for these claimants, received the supplemental claim form in June 2011; (2) the claimants “did not complete and submit the claim form by September 12, 2011, as required”; (3) the claimants only recently (in May and June 2013) submitted claim forms answering the reliance question “no”; and (4) Plaintiffs’ counsel (to date) have been unable to obtain any explanation from BNY or the claimants as to the reasons for these untimely filings. (*Id.* at 3-7.) Plainly, Plaintiffs have presented no basis for relief with respect to these four claims.

With respect to Claim No. 620530, Plaintiffs assert that the claims administrator did not send the supplemental claim form to the claimant because BNY believed the claim had an allowed loss of less than \$250,000. (*Id.* at 4-5.) Plaintiffs asserts that, during the claims

processing procedure, but “long after the September 12, 2011 deadline” for submission of supplemental claim forms, the claims administrator determined that this claim was related to Claim No. 621850, which was in excess of \$250,000. (*Id.* at 5.) Plaintiffs assert that this claimant therefore should have been afforded the opportunity to submit a supplemental claim form with respect to Claim No. 620530. (*Id.*) Plaintiffs, however, admit that the claimant did not file the supplemental form for the related claim (Claim No. 621850) until May 2013—well after the Court-appointed deadline of September 11, 2011—even though the supplemental claim form had been sent to the claimant on a timely basis. (*Id.* at 5.) There is therefore, no basis to contend that , had the same claimant received a supplemental claim form for Claim No. 620530, the claimant would have submitted it by the September 11, 2011 deadline.¹

Regarding Claim No. 62124, Plaintiffs assert that this claim should not have been subject to the supplemental notice procedure, which initially applied only to claims over \$250,000, because, in June 2013, the claimant submitted additional information that showed the claim was approximately \$245,000. (Dkt. No. 1862 at 6.) However, as Plaintiffs admit, with the additional information submitted in June 2013, the claimant submitted a supplemental claim form and “provided an explanation in lieu of an answer to the supplemental interrogatory.” (*Id.*) The explanation was: “These shares were purchased by an investment manager, [NAME REDACTED], acting on behalf of [NAME REDACTED].” (*Id.*) This Court already has ruled that the claims of claimants who submitted “explanations” in lieu of answers to the reliance question in the claim form or supplemental interrogatory, and claims of claimants who answered the reliance question “yes” or “no” but explained they were not the investment decisionmakers,

¹ Notably, Plaintiffs have not submitted any supporting affidavits of the claims administrator, BNY, or the actual claimant.

are not entitled to recover. (Dkt. No. 1822, at 2-3 & n.2.) There is no basis to contend that , if this claimant were sent the more recent supplemental claim form directed to claimants with claims of \$250,000 or less, the claimant would have answered the reliance questionary differently.

Finally, with respect to Claim No. 631113, Plaintiffs assert that the custodian, Bank of America, did not send the supplemental claim form to the claimant because the loss associated with this claim was less than \$250,000. (*Id.* at 7.) Subsequently, it was determined that Claim No. 631113 was related to another claim submitted by BNY on behalf of the same custodian, and that the combined value of the claims exceeded \$250,000. But, as Plaintiffs admit, the claims administrator discovered this issue in “late September 2011.” (*Id.*) Plaintiffs offer no reason why they waited until now to raise this issue.

As Plaintiffs acknowledge, “the Court must set deadlines.” Plaintiffs’ “response” to the Special Master’s Report provides no reason why the Court should grant relief from its deadlines. Accordingly, the Court should deny the relief Plaintiffs seek through their procedurally improper “response” to the Report.

Dated: August 16, 2013

Respectfully submitted,

/s/R. Ryan Stoll

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CERTIFICATE OF SERVICE

R. Ryan Stoll, an attorney, hereby certifies that on August 16, 2013, he caused true and correct copies of the foregoing Defendants' Objection to Plaintiffs' Response to Special Master's July 11, 2013 Report and Recommendation to be served via the Court's ECF filing system on the following counsel of record in this action:

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