

Madoff Trustee Urges High Court To Hear \$2B Clawback Suit

Law360, New York (June 5, 2015, 6:19 PM ET) -- The trustee for Bernie Madoff's phony securities firm said investors would be "victimized a second time" if the [U.S. Supreme Court](#) doesn't overturn an appellate decision barring recovery of nearly \$2 billion under the bankruptcy code's safe harbor provision.



Bernard L. Madoff Investment Securities trustee Irving Picard is trying to recover \$2 billion for Madoff's victims in the instant case. (Credit: AP)

In a reply brief filed with the high court on June 1, liquidation trustee for the bankruptcy estate of Bernard L. Madoff Investment Securities LLC and [BakerHostetler](#) partner Irving H. Picard continued to [push the justices to take up an appeal](#) over whether customers are entitled to billions that were paid into the massive Ponzi scheme.

Picard, who was responding to a brief filed by other Madoff customers who made a profit through the scheme, is seeking review of a Second Circuit decision [from December](#). The trustee argues the Securities Investor Protection Act and U.S. Bankruptcy Code give him the authority "to restore that money to the estate and distribute it ratably among an insolvent entity's customers."

"Respondents do not dispute that they are trying to keep money that Madoff took from his victims and then wrongfully paid to respondents to sustain his Ponzi scheme. Nor do they dispute that if this court does not intervene they will keep billions of dollars in unearned fictitious profits, requiring thousands of victims to suffer billions of dollars in very real losses," Picard said.

Picard [has argued](#) the safe harbor provision, also known as the "stockbroker defense," shouldn't apply because no actual securities trading was taking place in connection with Madoff's Ponzi scheme. All Madoff was doing was dumping money into an account that was used to cover customer withdrawals, the trustee argued.

In 2012, a New York federal court threw out Picard's attempts to claw back the money from customers he called "net winners" of the Madoff scheme on the grounds Section 546(e) still applied because the customers were under the impression real securities transactions were taking place.

Picard does not accuse the customers of knowing about or participating in the scheme, just that they received money they were not entitled to.

In December, a Second Circuit panel upheld the district court's ruling, saying the customers' arrangements with Madoff's firm were indeed securities contracts under the broadly written statute and thus protected.

The decision not only blocked recovery of nearly \$2 billion but "called into question" roughly \$2 billion more for potential recovery and distribution, Picard said in a statement.

Madoff pled guilty in 2008 to federal felony charges connected to what is believed to be the largest Ponzi scheme in U.S. history, a \$65 billion fraud that lasted for years.

In 2009 he was sentenced to 150 years in prison.

Picard is represented in the U.S. Supreme Court case by Thomas C. Goldstein and Tejinder Singh of Goldstein & Russell PC and David J. Sheehan, Tracy L. Cole, Thomas D. Warren and Seanna R. Brown of BakerHostetler.

Counsel for the customers in the U.S. Supreme Court was not immediately available Tuesday. They were represented at the Second Circuit by Helen Davis Chaitman of [Becker & Poliakoff PA](#), Richard Levy of [Pryor Cashman LLP](#) and P. Gregory Schwed of [Loeb & Loeb LLP](#).

The case is Picard v. Ida Fishman Revocable Trust et al., case number 14-1129, in the Supreme Court of the United States.