

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

RICHARD SURABIAN, et al.,

Appellants,

v.

IRVING H. PICARD,

Appellee.

13 Civ. 2649 (AKH)

In re:

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Debtor.

**MEMORANDUM OF THE SECURITIES INVESTOR PROTECTION CORPORATION  
IN SUPPORT OF THE TRUSTEE'S MOTION TO DISMISS APPEAL OF ORDER  
EXPUNGING APPELLANTS' CLAIMS**

SECURITIES INVESTOR PROTECTION CORPORATION  
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General Counsel  
KEVIN H. BELL  
Senior Associate General Counsel for Dispute Resolution  
NATHANAEL S. KELLEY  
Staff Attorney

The Securities Investor Protection Corporation (“SIPC”) hereby joins the Motion to Dismiss (the “Motion”) [ECF No. 8], filed by Irving H. Picard (the “Trustee”), as trustee for the consolidated liquidation under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa et seq., of Bernard L. Madoff Investment Securities LLC, and the estate of Bernard L. Madoff. The Motion seeks the dismissal of the above-captioned appeal (the “Appeal”), filed on January 7, 2013 by Martin M. Surabian (deceased), Richard Surabian, and Steven Surabian (the “Surabians”), from the April 19, 2012 Order of the United States Bankruptcy Court for the Southern District of New York Granting the Trustee’s Third Omnibus Motion Seeking to Expunge Claims and Objections of Claimants that Did Not Invest with BLMIS or in Entities that Invested in BLMIS (the “Order”).<sup>1</sup>

The Order was entered on April 19, 2012. Pursuant to Federal Rule of Bankruptcy Procedure 8002(a), the 14-day deadline for filing a notice of appeal of the Order ended on May 3, 2012. The subsequent 21-day period for moving, upon a showing of excusable neglect, to extend the time to file an appeal expired on May 24, 2012. Fed. R. Bankr. Proc. 8002(c)(2). The Surabians did not file their notice of appeal until January 7, 2013, over eight months after the May 3, 2012 jurisdictional deadline. Because timely filing of a notice of appeal is mandatory and jurisdictional, the Appeal must be dismissed. Additionally, the Surabians have failed to fulfill the procedural requirements for an appeal, as mandated by Federal Rule of Bankruptcy Procedure 8006.

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<sup>1</sup> *Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC*, Adv. Pro. No. 08-01789 (Bankr. S.D.N.Y.) (BRL) [ECF No. 4779].

For these reasons, and as explained in greater detail in the Trustee's Memorandum in support of the Motion [ECF No. 10], SIPC respectfully requests that this Court grant the Trustee's Motion and dismiss the Surabians' Appeal.

Dated: May 16, 2013  
Washington, DC

Respectfully submitted,

JOSEPHINE WANG  
General Counsel

/s/Kevin H. Bell  
KEVIN H. BELL  
Senior Associate General Counsel for Dispute  
Resolution

NATHANAEL S. KELLEY  
Staff Attorney

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**CERTIFICATE OF SERVICE**

I, Kevin H. Bell, hereby certify that on May 16, 2013, I caused true and correct copies of the foregoing Memorandum of the Securities Investor Protection Corporation in Support of the Trustee's Motion to Dismiss Appeal of Order Expunging Appellants' Claims to be served upon those parties who receive electronic service through ECF and by prepaid regular U.S. Mail, to those parties as set forth on the attached Schedule A.

/s/Kevin H. Bell

Kevin H. Bell

Schedule A

**Via U.S. Mail:**

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