



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

LEHMAN BROTHERS SECURITIES AND ERISA
LITIGATION

This document applies to: 09 MD 2017 (LAK)
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09 MD 2017 (LAK)
and
Case No. M-82

In the Matter of the Application of

RICHARD S. FULD, JR.,

Petitioner,

-against-

BOOTH FOUNDATION, INC.

Respondent.
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ORDER

LEWIS A. KAPLAN, *District Judge.*

On March 31, 2010, the Court issued an order permitting either party to submit a true and correct copy of Fuld's Form U4 for consideration. Both parties responded to this request. Fuld submitted a short letter with two of his Form U4's attached. The Foundation submitted (1) an amended answer to the Foundation's petition, (2) a supplemental submission in response to the Court's March 31, 2010 order, and (3) a declaration by J. Michael Rediker with sixteen attached exhibits. Of all the submitted documents, only Exhibits 1 through 3 of the Rediker Declaration were responsive to the Court's order.

On April 6, 2010, the Court issued an order directing the Foundation to show cause why the submitted documents except Rediker Declaration Exhibits 1-3 should not be stricken. In response, the Foundation argued that it (1) is entitled to marshal "Evidence, Authorities, and Arguments" before an injunction is entered, (2) was entitled to amend its answer as of right, (3) submitted the documents to rebut Fuld's letter.

The Foundation was able to present evidence, authorities, and arguments to the Court. Fuld filed his request for an injunction on March 24, 2010. The Court held a telephonic conference with the parties that day in which the parties agreed to a briefing schedule and March 31, 2010 hearing.¹ The Foundation filed its response on March 26, 2010 and appeared and argued extensively at the March 31 hearing. At no point did the Foundation request a continuance or suggest, prior to its response to the April 6 order, that it had not had a full opportunity to present its arguments or evidence.

Accordingly, Exhibits 4 through 16 to the April 2, 2010 Redicker Declaration and the Foundation's April 5, 2010 supplemental submission are stricken.

SO ORDERED.

Dated: April 21, 2010



Lewis A. Kaplan
United States District Judge

¹ The Court originally proposed to hold a hearing on April 1, 2010 but moved it one day earlier at Mr. Redicker's request to accommodate his schedule.