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2.18.2009

Times: Will NYS Supreme Court Justice Richard Lowe Fire J. Ezra Merkin?

The Times reports, "Justice Richard Lowe of New York State Supreme Court, who is overseeing a lawsuit brought against Mr. Merkin by New York University, says he plans to rule soon on a request by the university to remove Mr. Merkin as the manager of his Ariel Fund Ltd. and appoint an outside liquidator to sell the remaining assets."



The article title is, "[Merkin Could Lose Control of Firm in Madoff Scandal.](#)" Huh? Could lose control? Is there any doubt that Lowe must remove Merkin? We think not.

It's time to throw Ezra out in the street as quick as possible, "*with his tallis*" (i.e., a reference to a pithy Yiddish expression that describes removing a scoundrel in haste from his pew and casting him out of the synagogue without even giving him a chance to take off his prayer shawl). His victims deserve that immediate relief.

The Times goes on to explain the legal options in less colorful terms.

Judge Lowe also extended a temporary restraining order on Tuesday that bars Mr. Merkin from selling or transferring any of the \$700 million in assets remaining in Ariel and other funds controlled by his firm, Gabriel Capital.

Since the restraining order was put in place on Dec. 24, Gabriel has not been able to pay expenses including rent, telephone bills, year-end bonuses and health insurance premiums for its employees.

ABOUT YOUR TALMUDIC HOST



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tzvee's been a professor, a rabbi, a writer and a lifeguard. he's taught at brown university, the university of california at berkeley, the university of minnesota, the college of william and mary, the university of north carolina and macalester college. now he's mostly a corporate consultant who's toiled at prudential, morgan stanley, sungard, cantor fitzgerald, the federal reserve bank and ubs.

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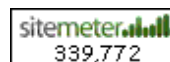
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TALMUDIC TREATS



The university, which lost \$24 million of its investment in Ariel Fund, is suing Mr. Merkin for turning over a portion of its money to Mr. Madoff without disclosing the arrangement to Ariel's investors. Mr. Madoff is under house arrest at his Manhattan penthouse apartment.

"Mr. Merkin engaged in deliberate ignorance in order to line his pockets," Beth Kaswan, a lawyer for N.Y.U., said Tuesday at a court hearing. The university also opposes the formation of an oversight committee to monitor Mr. Merkin's management of the remaining assets in the Ariel Fund.

"Merkin garnered hundreds of millions of dollars of fees by violating the trust of investors," New York University said in a court filing. "There is no reason to believe that he will alter his cynical approach to his fiduciary obligations if he is left in control of Ariel's remaining assets."

Mr. Merkin has proposed to form an "oversight committee" that would evaluate the liquidation of several funds under his control – a process that could take years. Other investors in funds managed by Gabriel Capital have also filed lawsuits against Mr. Merkin for not disclosing his relationship with Mr. Madoff.

The proposed members of the oversight committee include Jeff J. Marwil, a lawyer with Proskauer Rose, who represents clients with \$90 million invested in various funds under Mr. Merkin's control; Lehman Brothers' former chief financial officer, Arthur W. Fried, who represents investors with more than \$80 million in Ariel; and the longtime hedge fund investor Michael H. Steinhardt, who lost \$2 million with Mr. Merkin.

At the court hearing on Tuesday, Ms. Kaswan, N.Y.U.'s lawyer, called the committee members "simply figureheads" and insisted Mr. Merkin "is the fund's executive and he has complete control over all the assets and all the decision-making."

Silver Creek Capital, a hedge fund that has \$200 million invested in the Ariel fund, and other investors who represent an additional \$200 million have said they support Mr. Merkin's plan for the oversight committee, according to court documents.

In December, the Ariel Fund had 575 "illiquid and complex" investments valued at about \$650 million and another \$50 million in stocks and bonds. Ariel lost a total of \$350 million on its investment with Mr. Madoff.

To revert to a more universal metaphor, Judge Lowe knows that he can't leave that fox anywhere near the hen house.

POSTED BY TZVEE AT 9:37 PM

LABELS: MADOFF, MERKIN, MONEY, SYNAGOGUES

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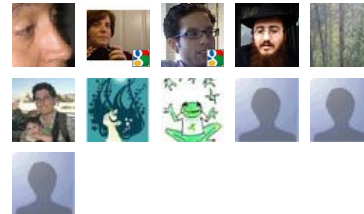
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avakesh

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