



3-D Marketing LLC was entitled to return of such funds, contrary to the allegations in par. 9 of the Complaint. Plaintiff's Motion rests upon whether Defendant was entitled to having a portion of its investment returned. It was.

**RECEIVER CANNOT MEET HIS BURDEN**

4. From both a factual and procedural standpoint, the Receiver is unable to prove as a matter of law that a *Ponzi* scheme existed with regard to the investments made with Sardaukar Holdings/Stark. The Receiver hopes to avoid all other proof by assuming a *Ponzi* scheme. Based upon information and belief, it was not.

5. Addressing that issue, 3-D Marketing LLC incorporates by reference the Response filed by defendants John W. Stark, Jr. and Barbara Stark in response to the Receiver's motion for summary judgment against those defendants, in Case No. 05-CV-1976-BD.

6. In addition, the evidence that the Receiver has offered in its Rule 56 Motion against 3-D Marketing LLC is objectionable and improper. Such evidence was required to be timely designated or disclosed, and it was not, and should be barred from use by the Receiver in this summary proceeding. In 3-D Marketing LLC's Brief in Opposition to Plaintiff's Motion for Summary Judgment, 3-D Marketing LLC has set forth its objections to the evidence offered in the Appendix filed by Plaintiff.

For these reasons, and those more particularly set forth in Defendant's Brief in Support, 3-D Marketing LLC respectfully requests the Court to in all things deny the Receiver's Motion for Summary Judgment.

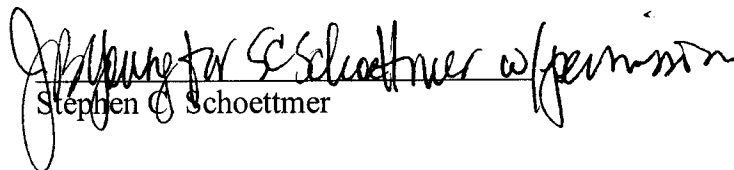
Respectfully submitted,

  
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**CERTIFICATE OF SERVICE**

I hereby certify that on December 18th, 2006, a true and correct copy of the foregoing Defendant's Response in Opposition to Plaintiff's Motion for Summary Judgment was served on counsel for Plaintiff by e-filing.

  
Stephen C. Schoettmer