

**IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
SALT LAKE DEPARTMENT**

FILED
THIRD JUDICIAL DISTRICT
JAN 19 2010

A. DAVID BARNES, M.D., P.C.,
:
:
Plaintiff,
:
:
v.
:
:
FFCF INVESTORS, LLC, et al.,
:
:
Defendants.

MINUTE ENTRY
BY _____
SALT LAKE COUNTY
Deputy Clerk

Case No. 080922273

Judge Denise P. Lindberg

Date: January 18, 2010

FFCF INVESTORS, LLC,
:
:
Plaintiff
:
:
v.
:
:
RICHARD SMITH, et al.,
:
:
Defendants.

This matter is before the Court on (1) Receiver's Request for Approval of Wirth Settlement, Wirth Dismissal and (2) Receiver's Application for Approval of Fees and Expenses, pursuant to Utah Rule of Civil Procedure 7. Having fully considered these matters, the Receiver's requests are GRANTED.

(1) Receiver's Request for Approval of Wirth Settlement.

The Receiver asks the Court to approve a settlement with Defendant/Counterclaimant Albert Wirth. The settlement provides that Wirth will be dismissed from the present litigation. In exchange, Wirth will pursue litigation in federal court against a number of defendants (most of whom are not parties to the present litigation). Wirth will be entitled to recover the first \$975,908.57 he recovers in the federal litigation. If he recovers any amounts above \$975,908.57, 70% of those proceeds will go to the Receivership. The remainder will go to Wirth. The Receiver will have oversight authority over all settlements and dismissal decisions in Wirth's federal litigation. If Wirth decides not to pursue certain claims, those will be assigned to the Receiver.

There are a number of objections to the Wirth Settlement. Roger Taylor, Dr. A. David Barnes and The Lighted Candle Society have all filed objections. The main argument is that the Wirth settlement allows Mr. Wirth to receive a windfall; that he was actually an overpaid investor. Further, any losses he may have suffered were not through the Receivership entities or the fault of those controlling the Receivership entities. The Court does not view these objections lightly. Certainly, the Court does not want to prevent deceived investors from recouping as much of their losses as possible.

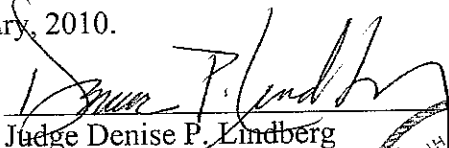
However, the Court is persuaded that the Wirth Settlement is appropriate. First, the settlement does

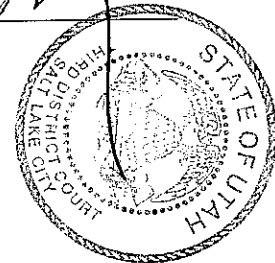
not require the Receivership Entities to pay Mr. Wirth anything directly. Second, the settlement provides opportunity for the Receiver/Receivership Entities to benefit from other litigation without having to directly participate in the litigation. In fact, there are opportunities for the Receivership Entities to recover from defendants from whom they could not recover directly. Third, the Court is persuaded that the Receiver carefully balanced the relevant benefits and burdens of settling with Wirth as opposed to continue to engage in litigation against him. Therefore, the Court will approve the settlement.¹

(2) Receiver's Application for Approval of Fees and Expenses.

The Court has reviewed *in camera* the Receiver's detailed invoices supporting his Application for Approval of Fees and Expenses. The Court sees nothing untoward or improper in the invoices. Although the amount of fees and expenses seems high, the hourly rates for the work is reasonable and the amount of work performed is appropriate. Therefore, the Court approves the Receiver's application.

SO ORDERED this 19 day of January, 2010.


Judge Denise P. Lindberg
District Court Judge



¹ In conjunction with this Motion, Mr. Taylor also asserted that there were ethical problems with Mr. Klein continuing to serve as Receiver. At this point, there is no motion pending before the Court to remove Mr. Klein and so the Court declines to address this argument.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 080922273 by the method and on the date specified.

MAIL: RICHARD T SMITH 443 North 750 East Orem, UT 84097
MAIL: ROGER TAYLOR 1360 SUMMERWOOD CIRCLE SANTA CLARA UT 84765
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UT 84109

J. Glaitti

Date: 11/9/16

Deputy Court Clerk