

FILED DISTRICT COURT
Third Judicial District

AUG 16 2010

By _____
SALT LAKE COUNTY
Deputy Clerk

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IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

A. DAVID BARNES, M.D., P.C.,

Plaintiff,

vs.

FFCF INVESTORS, LLC, et al.

Defendants.

FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.

Defendants.

**RECEIVER RESPONSE TO
OBJECTIONS ON ALLOWABLE
CLAIM AMOUNTS**

Case No. 080922273

Judge: Denise P. Lindberg

R. Wayne Klein, the Court-Appointed Receiver of FFCF Investors, LLC, Ascendus Capital Management, LLC, and Smith Holdings, LLC (the "Receivership Entities") provides this response to objections on his recommendation of the allowable claimants and allowable claim amounts for distribution of funds recovered by the Receiver.

BACKGROUND

On February 18, 2010, the Receiver mailed Proof of Claim Forms and the summary of claim procedures to potential claimants from the Receivership Entities. Nineteen claims were submitted by the April 30 deadline established by the Court; one claim was submitted after that date. As the claims were reviewed, the Receiver notified claimants of his recommendations. Claimants were given an opportunity to provide additional information before the Receiver made his final recommendations to the Court. On June 21, the Receiver filed his Report and Recommendations on Claim Process, summarizing the claims received and the recommendations by the Receiver on how those claims should be treated. On June 28, the Court entered an order setting deadlines for filing objections.

RESPONSE TO OBJECTIONS

During the claims-review process, the Receiver recommended that eight of the claims be reduced from the amounts claimed and that two additional claims be rejected. Four of the “reduced” claimants accepted the Receiver’s recommendation, leaving four “reduced”¹ and two “rejected”² claims to be resolved. The Receiver has since discovered that one of the “allowed” claims was calculated improperly and is submitting a revised recommendation for that claim.

Objections Deemed Waived

The Court’s June 28 Order Setting Deadlines provides: “Any objections to the Receiver’s

¹ Claim No’s 3004, 3008, 3013, and 3014.

² Claim No’s 3018 and 3020.

recommendation on the allowable claimants and allowable claims not filed by July 28, 2010, shall be deemed waived.” *Id.* at ¶12.

No objections were filed relating to Claim Numbers 3008, 3014, or 3018. As a result, any objections are deemed waived. In addition, the investor with Claim Number 3004 submitted a letter to the Receiver with comments about the Distribution Plan (discussed in a separate filing), but did not object to the Receiver’s recommendation of an Allowable Claim Amount. Therefore, the Receiver recommends approval of these four claims (where no objection to the Recommended Claim Amount was filed) in the following Amounts, as recommended in his June 21, 2010 Report and Recommendations:

- Claim 3004 \$681,211.07
- Claim 3008 \$45,266.19
- Claim 3014 \$362,650.60
- Claim 3018 Rejected.

Objections Filed

Two Claimants objected to the Receiver’s recommendation of the Allowable Claim Amounts. These are the Lighted Candle Society and SuetWan Chan Bostrom-Young.

Claim 3013: Lighted Candle Society.³³ The Lighted Candle Society (“LCS”) invested a total of \$200,000.00 and received distributions totaling \$119,346.23. Thus, LCS has suffered a

³³ The Lighted Candle Society also objected to the distribution plan recommended by the Receiver. The Receiver is responding to the LCS objection to the distribution plan in a separate filing.

net loss of \$80,653.77 in actual principal investment.

Despite this, LCS initially submitted a claim for \$825,056.00. LCS claimed this amount based on the following:

- \$100,010.00 Principal investment, after withdrawal (excluding interest it received)
- \$63,421.00 Interest at 12% from the date of investment
- \$42,833.00 Legal fees
- \$618,792.00 Treble damages (trebling the totals listed above).
- \$825,056.00 Total⁴

In its July 23 objection filed with the Court, LCS tempers its ambition, arguing that its Allowable Claim Amount should be “not less than \$386,937.77.” In support of this position, LCS makes two arguments: first, that the amount of its claim should be based on legal claims it would be allowed to assert under the securities statutes and second, that it should be treated differently than the other claimants.

The Receiver strongly disagrees for the following reasons:

1. Allowable Claim Amount is Limited to the Net Principal Investment Amount.

Recognizing that the Receiver was unlikely to recover sufficient funds to repay the total amounts invested by claimants, plus interest, plus promised profits, the Court agreed that the claims process would be based on the amount of net principal invested by each

⁴ LCS trebled the damages, then added the trebled amount to the principal claim amount, resulting in a claim for quadrupled damages.

claimant – meaning the principal amount invested with FFCF or Ascendus, minus any distributions or withdrawals. This was reflected in instruction #6 of the “Instructions for Proof of Claim Form,” approved by the Court on February 17:

Allowable Claims will be Based on the Principal Amount of Investment. The amount of valid claims determined by the Receiver will be based on the amount of funds actually paid to Ascendus or FFCF, not based on profits reported on account statements prepared by these companies. Because it is expected that there will only be enough money to pay a portion of valid claims, no one will be allowed to recover more than the amount of their actual investment unless all investors recover at least the amount of their investment.

In the instance of LCS, this is a maximum allowable claim of \$80,653.77. If LCS wants to participate in the claims process established by the Court, its claim will be evaluated under the guidelines approved by the Court for all persons participating in the claims process. This means LCS can make no claim greater than its net principal loss.

2. LCS Has Waived any Claim for More than \$80,653.77. As a condition of participating in the claims process, LCS – like all other claimants – agreed to be subject to the rules governing the claims process and waived any other claims it might assert. This was emphasized in the claim form itself. Those submitting claims were required to sign an acknowledgment in the claim form that: *“Filing this proof of claim shall constitute agreement that this claims process shall be the exclusive means of making a claim against the Receivership Entities and shall be a waiver of any other claims against the Receivership Entities or the Receiver.”* LSC signed this waiver and has agreed that its

claim will be limited by the conditions applicable to the claims process. *See* LCS Proof of Claim Form signature page attached as Exhibit A.

3. Courts Have Ruled That The Allowable Claim Amount Should be Based on Actual Investment Amounts. In approving plans to distribute funds from Ponzi schemes to investors, courts have agreed that imposing limits on claims is an appropriate means of maximizing the return to defrauded investors. In *SEC v. Wang*, 944 F.2d 80, 81-82 (2nd Cir. 1991), the court approved a plan to direct distributions of funds to investors who suffered out-of-pocket losses, over those who suffered paper losses.

Where the amount of recovered funds is expected to be limited, such an approach also reduces the complexity of the claims process and reduces the time required to be expended by the Receiver in administering the claims process. If, for example, the claims process were to allow consideration of claims for unpaid (but promised) profits, statutory interest, attorneys' fees, claims for statutory violations, and treble damages, virtually all claimants would be allowed to make such claims. That would greatly increase the size of each individual claim and the aggregate total amount claimed – but without appreciably altering each claimant's share of the recovered funds. In the meanwhile, the complexity of the claims process and the amount of time devoted by the Receiver to analyzing claims would be increased dramatically.

4. LCS is not Situated Differently than Other Claimants. LCS believes that it should be treated differently than other claimants, by being able to claim interest, attorneys' fees,

and treble damages and by not being required to offset distributions received against its claim. However, most other claimants would be able to assert claims for interest and treble damages.⁵ LCS has argued that it is, in fact, situated differently than other claimants for two reasons: that it has affirmatively identified claims for violations of the securities laws and that it took action to file suit to protect its interests. For these reasons, LCS believes it should be granted an allowable claim amount nearly five times its out-of-pocket losses.

If the fact that LCS filed suit were found to merit different treatment (and a claim amount equal to 482% of actual losses), it would also encourage litigation by all claimants. This would increase the time and expenses of the Receiver and reduce recoveries for all investors. The Receiver believes that the different situation in which LCS finds itself is entirely of its own making and that the differences (identification of additional legal claims and the filing of a lawsuit) does not justify granting more favorable treatment to LCS.

5. LCS's Continued Efforts to Seek Higher Recoveries Harm the Receivership Estate and Other Investors. LCS's efforts to claim over \$300,000.00 more than permitted by the claims guidelines has harmed other investors. Exhibit E, attached to the LCS Objection, indicates that LCS has incurred \$44,668.00 in legal fees in its "prosecution of Plaintiff's

⁵ Other claimants who have engaged attorneys have not included requests for legal fees as part of their claims (other than plaintiff, Dr. Barnes, who is in a unique position due to his role in securing the appointment of a Receiver). The vast majority of claimants have not engaged counsel. This likely is due to recognition that engaging counsel would not be expected to increase the amounts they would recover.

claims against Ascendus and FFCF.”⁶ The Receiver and his counsel have expended significant time responding to the litigation efforts of LCS. This has included filing a motion and memorandum of authorities seeking to dismiss the Receivership Entities from the separate lawsuit filed by LCS, evaluating the initial LCS claim for over \$800,000, and responding to this objection. None of these efforts have produced any benefit for the investors; they have only resulted in a reduction of the amount available for distribution to defrauded investors – including LCS. True equity should require that expenditures incurred by the Receiver in responding to non-meritorious claims should be reimbursed by the claimant. The Receiver has determined, however, not to seek recovery of his costs from LCS for its actions in submitting an unjustifiably inflated claim or for filing an objection.⁷ Nevertheless, LCS should not be rewarded for causing this waste by being granted a higher recovery level than other investors similarly situated.

6. Treble Damages are Not Available in this Proceeding. LCS seeks treble damages, citing §61-1-22(2) of the Utah Uniform Securities Act. The statute that LCS seeks to use demonstrates its inapplicability in this situation. Under the Act, treble damages can be awarded only in a suit brought by a “buyer” of securities against a “seller.” The current

⁶ These claimed fees constitute 262% of the amount LCS would be expected to receive under the pro rata plan. Presumably, these legal fees relate only to the claims LCS has asserted against Receivership Entities and do not include time or expenses related to LCS claims against other defendants it has sued.

⁷ The Utah Court of Appeals has ruled that a receiver appointed to wind up the affairs of a company may recover attorneys’ fees and costs in defending frivolous claims against the estate. *In Re Olympus Construction, LC*, 2007 UT App 361, 173 P.3d 192.

proceeding in this Court is an action governed by the common law governing Receiverships, not an action under the Utah Securities Act. In order to claim treble damages, LCS would need to prosecute an action directly against the “sellers” of securities and demonstrate the requisite reckless or intentional misconduct.⁸

7. The Receivership Action is the Wrong Venue for the Claims Made by LCS. Claimant had the option of how to pursue its claims. It could file separate suit and pursue assets exclusively through that suit (as Mr. Wirth is doing) or it could elect to participate in the claims process and share in the distribution fund to the same extent as all other investors (as the litigant Annette Kay Donnell and other non-suing claimants have done). If LCS wanted to be treated differently and pursue additional claims against Smith, Taylor, and others, it could have done so – but not as part of the claims process. By choosing to participate in the claims process, it lost the ability to make claims that might be available in other forums.

Claim 3020: SuetWan Chan Bostrom Young. On July 27, 2010, Claimant SuetWan Chan Bostrom Young sent an e-mail to the Receiver asserting a claim for \$16,000.00 she paid to Ascendus in commissions from 2004 to 2006. A copy of this e-mail is attached as Exhibit B. The essence of her claim is that because the promoters of Ascendus and FFCF lied to her about the profits she had supposedly earned, her commissions on those false profits should be

⁸ If LCS were to assert claims against the Receivership Entities, the Receiver would assert that such claims could be addressed only in the Receivership proceeding. This is the position that the Receiver took in filing its motion to dismiss the Receivership Entities from the separate suit filed by LCS.

refunded.

Ms. Bostrom-Young's claim was filed after the deadline imposed by the Court. In addition, the Receiver filed a separate lawsuit against Ms. Bostrom-Young on March 18, 2010, asserting that she was overpaid as an investor. That lawsuit is still pending. As a result of the Receiver's belief that Ms. Bostrom-Young and related persons and entities were overpaid investors, the Receiver sent a notice to Bostrom-Young on May 24, 2010 that the Receiver would recommend that her claim be denied. On June 2, 2010, Bostrom-Young sent the Receiver a notice indicating her acceptance of the Receiver's determination. A copy is attached as Exhibit C. This is the reason the Receiver's June 21 report on the claims process said that one of the rejected claimants had indicated acceptance of the Receiver's recommendation. The Receiver has decided to treat her e-mail as an objection because Ms. Bostrom-Young is a non-native English speaker and may not have understood the claims instructions and the effect of her signature on the waiver form.

The Receiver believes Ms. Bostrom-Young's claim should be rejected in its entirety for the following reasons:

1. Bostrom-Young's Claim Fails to Account for Distributions. The top part of the spreadsheet attached as Exhibit D shows all transactions directly between Bostrom-Young and the Receivership Entities. She made payments to Ascendus totaling \$16,371.78. These appear to have been commissions on profits reported to her by Ascendus. She also received a \$12,000.00 payment to her from Ascendus on August 8,

2005. Thus, considering only payments to and from Bostrom-Young, the maximum amount of distributions would be \$4,371.78 – not the \$16,000.00 claimed in her e-mail.

2. Vern Young was an Officer of S.W. Chan, Inc. Of the 16 commission payments made by Bostrom-Young, 13 were made from her company S.W. Chan, Inc. These 13 payments total \$10,394.18 of the \$16,371.89 paid by Bostrom-Young. (See Ex. D). As noted in the signature card provided to Penson Financial Service by Bostrom-Young (attached as Exhibit E), Vern Maeser Young was the vice president and secretary of S.W. Chan, Inc. Young's actual and apparent authority to act on behalf of S.W. Chan, Inc. is also shown by his signature on checks written on the bank account of S.W. Chan, Inc. A copy of one of these checks is attached as Exhibit F.

3. Distributions to Young Should be Offset Against Payments by S.W. Chan, Inc. to Ascendus. As shown in the spreadsheet attached as Exhibit D, Ascendus paid \$118,544.25 to Vern Young and his company, Tripod Holdings. The Receiver suspects that the first seven checks from Ascendus to Vern Young were commissions paid to Young as a portion of the commissions being paid to Ascendus by S.W. Chan, Inc. The Receiver also suspects that the payments made to Tripod Holdings were intended as compensation to S.W. Chan, Inc. for losses Bostrom-Young suffered in trading in her Penson account.⁹ When these \$118,544.25 in payments are offset against the \$4,371.78

⁹ This suspicion is based on the timing of the payments to Tripod and the fact that the \$116,499.53 in payments to Tripod (plus the \$12,000 paid to S.W. Chan, Inc.) is close to the sum of the \$52,403.27 losses in the Penson account and the \$73,561.18 in difference between the actual value of the Penson account and the amount reported to S.W. Chan, Inc. as the value of the account.

in net investment payments by Bostrom-Young and her company, S.W. Chan, Inc., Bostrom-Young is a net winner by \$114,172.47. In addition, Bostrom-Young was married to Young until the time of his death in 2009.

For these reasons, along with the fact that the Receiver is currently suing Bostrom-Young for recovery of this overpayment, the Receiver believes Bostrom-Young's Claim should be rejected.

Receiver's Revised Recommendation for Claim 3016

Based on discussions with counsel for Claimant #3016, Dr. Barnes (the Plaintiff in this action), the Receiver has realized that his recommendation for Claim 3016A (investment Claim) was too high. In addition, the Receiver has agreed to recommend that Claim 3016B (for legal fees) be treated differently than the investments reflected in Claim 3016A.

Counsel for Dr. Barnes has persuaded the Receiver that the \$32,065.85 in attorney's fees, reflected in Claim 3016B, should be treated as an administrative claim, not as an investor claim. Accordingly, the Receiver has agreed to recommend that Claim 3016B be paid before distribution of funds to investors. In light of the relatively small amount recovered by the Receiver and in light of the Receiver's agreement to waive half of the fees he would otherwise be entitled to recover (*see* Receiver's Second Fee Application, dated April 16, 2010), Dr. Barnes has agreed to waive half of the \$32,065.85 in unpaid legal fees he incurred in seeking the appointment of a receiver. Accordingly, the Receiver supports paying \$16,032.92 to Dr. Barnes as an administrative priority payment in full satisfaction of Claim 3016B.

The Claim Amount for Claim 3016A was calculated incorrectly by the Receiver in Exhibit A attached to the June 21 Report and Recommendations on the Claims Process. The correct “Allowable Claim Amount” for the investment claim of Dr. Barnes should be \$259,945.¹⁰

PROCESS FOR RESOLUTION OF OBJECTIONS TO CLAIM AMOUNTS

Due process is satisfied by providing notice and an opportunity to be heard. *Mullane v. Cent. Hanover Bank & Trust, Co.*, 339 U.S. 306, 313 (1950). Adequate notice was provided by sending a copy of the Report and Recommendations on the Claims Process (June 21, 2010) and the Order Setting Deadlines (June 28, 2010) to all Claimants, as well as posting copies of these and other court filings on the Receiver’s website. The Order Setting Deadlines provided an opportunity to be heard by allowing Claimants to file objections to the Receiver’s recommendations. That notice and opportunity to be heard was sufficient to provide investors, known creditors, and claimants the opportunity to dispute the Receiver’s recommendations.

For resolution of the two objections that have been filed relating to the Allowable Claim Amounts, the Receiver recommends that the Court employ summary proceedings. Federal courts, overseeing cases involving receiverships, have ruled that the use of summary proceedings is permissible for nonparty claims to property held by a receiver. *CFTC v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1113 (9th Cir. 1999). A full hearing is not required to provide due process to claimants. *SEC v. Elliott*, 953 F.2d 1560, 1570-71 (11th Cir. 1992). Claimants already have been provided with the opportunity to present evidence and be heard in a meaningful manner by the

¹⁰ This is based on a \$300,000.00 investment, less distributions of \$40,055.00. Under the hypothetical “pro-rata” distribution plan he would receive \$25,994.50 and under the “target” distribution plan he would receive \$48,115.00.

ability to file an objection.

The Receiver suggests that the Court either: a) rule based on the written objections and response of the Receiver, or b) schedule oral argument on the objections (such as at the next status hearing at 2:00 p.m., on September 20, 2010).¹¹ In the event the Court determines to permit oral argument, a proposed Order Setting Hearing for Oral Argument is attached. If the Court wishes to permit oral argument and signs the attached proposed order, the Receiver will cause the Notice of Hearing to be mailed to the Objectors.

CONCLUSION

For the reasons described above, the Receiver recommends that the Court:

1. Order that the Allowable Claim Amounts for Claims 3001, 3002, 3003, 3005, 3006, 3007, 3009, 3010, 3011, 3012, 3015, 3017, and 3019 be approved in the amounts recommended by the Receiver in his Exhibit A to his Report and Recommendations on Claims Process dated June 21, 2010 because the Receiver allowed the entire Claim Amount or the Claimants accepted the Receiver's recommendation of a reduced claim amount.
2. Order that the Allowable Claim Amounts for Claims 3004, 3008, and 3014 be approved in the amounts recommended by the Receiver in his Exhibit A to his Report and Recommendations on Claims Process dated June 21, 2010 for the reason that no objections were filed to these recommendations.

¹¹ The Order Setting Deadlines for Filing Objections (June 28, 2010) did not allow Objectors to file replies to the Receiver's response. This is consistent with the summary procedures permitted for resolution of claims.

3. Order that an Allowable Claim Amount of \$259,945.00 be approved for Claim 3016A, for the reasons discussed above.
4. Order that Claim 3016B be approved in the amount of \$16,032.92 as an administrative expense of the Receivership and paid as a priority claim in advance of the distributions to investors.
5. Order that Claim 3018 be rejected, as Recommended by the Receiver in his Exhibit A to his Report and Recommendations on Claims Process dated June 21, 2010, for the reason that no objection to this recommendation was filed.
6. Determine to either rule on the objections that have been filed based on the submissions already in the Court files, or permit oral argument on those Objections, and after consideration of the objections:
 - a. Order that the objection of the Lighted Candle Society for Claim 3013 be denied and that the Allowable Claim Amount for Claim 3013 be \$80,653.77 for the reasons discussed above.
 - b. Order that Claim 3020 be rejected for the reasons discussed above.
7. Order such other relief as is appropriate.

DATED this 16th day of August, 2010.



WAYNE KLEIN, Receiver

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of August, 2010, a true copy of the foregoing Receiver Response to Objections on Allowable Claim Amounts was mailed to the following parties and objectors. A letter was also sent to all non-objecting claimants, notifying them this response was filed and that copies will be available on the Receiver's website.

Jerome H. Mooney
Weston, Garrou, Walters & Mooney
50 West Broadway, Suite 1000
Salt Lake City, UT 84101
Counsel for Roger E. Taylor

Richard T. Smith
443 North 750 East
Orem, UT 84097

SuetWan Chan Bostrom Young
302 West 1310 North
Orem, UT 84057

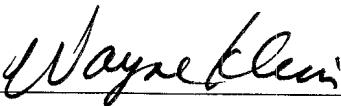
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Counsel for T. Courtney Smith

Bruce L. Dibb
Jensen, Duffin & Dibb, LLP
311 south State Street, Suite 380
Salt Lake City, UT 84111
Counsel for Lighted Candle Society



Total amount received from FFCF

5. Net Investment Results - FFCF

What is the net results of your investment with FFCF? In most cases, this will consist of the total amount of investments minus the total amount you were paid.

80,663.77

C. CLAIMS FOR NON-INVESTOR DEBTS

1. Nature of Claim

Explanation

Explain the nature of the claim you have against Ascendus, FFCF, or Smith Holdings. *Attach additional pages as necessary.*

See attached Summary of Claims (Tab A) and Causes of Action I through VI of attached Complaint (Tab C).

Explain the reasons you believe this claim should be paid by the Receivership Estate. *Attach additional pages as necessary.*

Pursuant to these claims, LCS is a creditor of the Receivership Entities/Estate, in addition to being a member/investor in FFCF.

2. Claims Against Receivership Estate. List the amounts you claim are owed you by the Receivership Estate, along with the dates of each payment and the documentation supporting your claim.

Amount

Date

What documents are enclosed?

First payment/amount claimed.

19,346.23

interest payments deducted in B(2) above

Second payment/amount claimed.

63,421.00

2/1/2010

See attached Summary of Claims (Tab A)

Third payment/amount claimed.

42,833.00

2/1/2010

Section B

Fourth payment/amount claimed.

618,792.00

2/1/2010

Fifth payment/amount claimed.

Are additional sheets enclosed with more claims?

Yes/No:

Total amount claimed for non-investor debts.

744,392.23

D. TOTAL AMOUNT OF CLAIM (investors and creditors).

\$825,056.00

E. SIGNATURES OF CLAIMANT(S): Important: Filing this proof of claim shall constitute agreement that this claims process shall be the exclusive means of making a claim against the Receivership Entities and shall be a waiver of any other claims against the Receivership Entities or the Receiver. All Claimants must sign this Claim Form.

I/we do hereby declare under penalty of perjury that the above information is correct to the best of my/our knowledge and belief.

John L. Hammer
CHAIRMAN & CEO

Date

27 APRIL 2010

Wayne Klein

From: suetwan chan [swchan_inc@yahoo.com]
Sent: Tuesday, July 27, 2010 5:44 PM
To: Wayne Klein
Subject: Re: Claim #
Attachments: _Certification_.txt

Mr. Klein, I am submitting a new claim of \$16,000.00 for the commissions that i have paid to Ascendus for the period between 2004 to 2006. They have intentionally lie on the profits that they said they had made for me on my account and therefore I have paid them as per agreed if they were to make money on my account but instead they had lie. Therefore I am claiming the commissions paid to them. This email serves as an actual claim.

Thank you.
SuetWan Chan-Young

----- Original Message -----

From: Wayne Klein <wklein@kleinutah.com>
To: suetwan chan <swchan_inc@yahoo.com>
Sent: Fri, June 25, 2010 7:56:38 AM
Subject: RE: Claim #

Your claim number is 3020.

-----Original Message-----

From: suetwan chan [mailto:swchan_inc@yahoo.com]
Sent: Thursday, June 24, 2010 4:15 PM
To: Wayne Klein
Subject: Claim #

Wayne, please send me a copy of my claim number.

Thank you.

WAYNE KLEIN, RECEIVER FOR
FFCF Investors, Ascendus Capital Management, Smith Holdings
Barnes v. FFCF Investors, LLC, et al., Civ. No. 080922273, Utah Third Dist. Ct.

May 24, 2010

Suetwan Chan-Bostrom
302 W 1310 N
Orem, UT 84057

NOTICE OF REJECTED PROOF OF CLAIM

Dear Suetwan Chan-Bostrom:

The Proof of Claim Form you submitted for T. Courtney Smith has been assigned Claim No. 3020.

Wayne Klein, the Court-appointed Receiver for FFCF Investors, Ascendus Capital Management, and Smith Holdings has reviewed your Proof of Claim. The Receiver intends to recommend that your Claim be rejected for the reason(s) described below.

The reason(s) for the Receiver's decision to recommend that your Claim be rejected are:
_____ The Claim form was not signed.

_____ The Claim form was not postmarked on or before April 30, 2010.

_____ The documentation you provided does not support the amount you claimed.

_____ Our records indicate that additional amounts should be deducted for distributions, withdrawals, or payments of profits to you.

_____ Our records do not show that your payments were made to the Receivership Entities or to others for the Receivership Entities.

 X Other: We are unsure how to treat the disbursements made to Vern Young or Tripod Holdings at this time and therefore are denying the claim.

CALCULATIONS. The Receiver's records show the following payments relating to Suetwan Chan-Bostrom, SW Chan Inc., or SWchand Inc.'s dealings with FFCF, Ascendus Capital Management, Smith Holdings, Richard Smith, Roger Taylor, or Taylor Holdings:

Amount paid by Claimant directly to Ascendus:	\$16,371.78
Amount transferred to Ascendus from Penson for Claimant:	\$0.00
Amount paid by Claimant to FFCF:	\$0.00
Total qualifying amount paid in:	\$16,371.78

Distribution payments from Ascendus:	\$12,000.00
Distribution payments from FFCF:	\$0.00
Distribution payments from other for Ascendus or FFCF:	\$0.00
Total Distributions:	\$12,000.00

The Receiver's records also show the following payments relating to Vern Young, Tripod Holdings, or The Mazer Group's dealings with FFCF, Ascendus Capital Management, Smith Holdings, Richard Smith, Roger Taylor, or Taylor Holdings:

Amount paid by Claimant directly to Ascendus:	\$0.00
Amount transferred to Ascendus from Penson for Claimant:	\$0.00
Amount paid by Claimant to FFCF:	\$0.00
Total qualifying amount paid in:	\$0.00

Distribution payments from Ascendus:	\$118,544.25
Distribution payments from FFCF:	\$0.00
Distribution payments from other for Ascendus or FFCF:	\$0.00
Total Distributions:	\$118,544.25

Combined

Net allowable investment amount:	<i>\$0.00</i>
Claimed amount:	<i>\$86,500.00</i>
Excess amount of claim:	<i>\$86,500.00</i>

What if I disagree with the Receiver's recommendation of a reduced or rejected Claim Amount?

You may submit additional documentation to the Receiver in response to this Notice by mailing it to the Receiver at the address below. **Note: Your response must be postmarked no later than June 24, 2010** (30 days after mailing of Notice).

What happens next?

Following receipt of your supplemental documentation, the Receiver will review the information you submit and determine whether or not the Receiver changes his recommendation. If the Receiver changes his recommendation, you will be notified by letter indicating the amount of the allowed Claim.

If the Receiver does not change his recommendation, the Receiver will submit a list to the Court of the Allowable Claim Amounts, including his recommendation for your Claim. You will be mailed a copy of the Receiver's recommendation to the Court. You will have thirty (30) days from the time of the Receiver's filing with the Court to file with the Court an objection to the Receiver's recommendation. If you fail to file an objection with the Court, you will be deemed to have consented to the Receiver's recommendation.

How do I accept the Receiver's recommendation of the amount of my allowable Claim?

RECEIVED
6/10/10

Please sign this form in the space provided below and return it to the Receiver at the address listed below. Upon receipt of this signed form, the Receiver's recommendation will be deemed accepted and your Claim amount will be reduced to the amount recommended by the Receiver.

I AGREE WITH THE RECEIVER'S RECOMMENDATION AND ACCEPT THE ALLOWED AMOUNT OF THE CLAIM.

Signed: _____

Date: 6/2/10

How much will I be paid under the Receiver's calculations?

The "allowed amount" is **not** the amount that will actually be paid. At a future date, the Court will approve a distribution plan, which is expected to be based on the amount of money available and the total amount of allowed Claims. The Receiver expects there will only be sufficient funds to pay a portion of the total amount of each allowed Claim.

When will the allowed amount be paid?

The Receiver hopes to receive approval from the Court to begin paying allowable Claims in November 2010. Because the Receiver does not expect that all the assets will be recovered by that time and that not all the litigation will be completed, the Receiver expects that additional payments will be made in stages, as funds are recovered.

Wayne Klein

Address of the Receiver:

Wayne Klein, Receiver for
FFCF Investors, Ascendus Capital Management, Smith Holdings
299 South Main, Suite 1300
Salt Lake City, UT 84111
(801) 534-4455

	Date	Type	#	Account #	Name	Memo	Dep	W/D	Total Dep	Total W/D	Net
Suet Wan Chan-Bostrom/SW Chan Inc./ Swchand Inc											
2153	12/1/2003	Deposit			Suet Wan Chan-Bostrom						
2153	12/29/2003	Deposit			Suet Wan Chan-Bostrom		\$ 1,902.56				
2153	1/29/2004	Deposit			Suet Wan Chan-Bostrom		\$ 2,772.85				
2153	3/4/2004	Deposit			Suet Wan Chan-Bostrom		\$ 1,302.19				
2153	4/26/2004	Deposit			SW Chan, Inc.		\$ 1,888.05				
2153	6/2/2004	Deposit			SW Chan, Inc.		\$ 2,174.64				
2153	8/5/2004	Deposit			SW Chan, Inc.		\$ 774.59				
2153	9/8/2004	Deposit			SW Chan, Inc.		\$ 800.00				
2153	10/12/2004	Deposit			SW Chan, Inc.		\$ 289.21				
2153	11/10/2004	Deposit			SW Chan, Inc.	Commission (Different Signature)	\$ 512.60				
2153	12/9/2004	Deposit			SW Chan Inc.		\$ 1,803.36				
2153	1/14/2005	Deposit			SW Chan Inc.		\$ 1,563.06				
2153	2/14/2005	Deposit			SW Chan Inc.		\$ 111.55				
2153	3/7/2005	Deposit			SW Chan Inc.		\$ 123.29				
2153	4/5/2005	Deposit			SW Chan Inc.		\$ 122.38				
2153	5/4/2005	Deposit			SW Chan Inc.		\$ 160.56				
2153	8/8/2005	Wire Out			SW Chan Inc.		\$ 120.89				
					Swchand Inc	\$ from Ascendus Capital Manag		\$ 12,000.00	\$ 16,371.78	\$ 12,000.00	4,371.78
Young, Vern/Tripod Holdings/ The Mazer Group											
2153	1/26/2004	Check	2139	Young, Vern	Young, Vern			\$ 380.67			
2153	3/8/2004	Check	2176	Young, Vern	Young, Vern			\$ 185.80			
2153	4/19/2004	Check	2208	Young, Vern	Young, Vern			\$ 90.57			
2153	4/28/2004	Check	2216	Young, Vern	Young, Vern			\$ 152.22			
2153	7/12/2004	Check	2276	Young, Vern	Vern Young			\$ 136.73			
2153	8/9/2004	Check	2297	Young, Vern	Vern Young	July Bonus		\$ 98.73			
2153	11/8/2005	Check	2604	Young, Vern	Vern Young	Bonus		\$ 1,000.00			
2153	11/16/2005	Check	2613	Tripod Holdings, LL	Tripod Holdings, LLC			\$ 47,025.94			
2153	12/2/2005	Check	2622	Tripod Holdings, LL	Tripod Holdings, LLC			\$ 20,181.69			
2153	2/3/2006	Check	2664	Tripod Holdings, LL	Tripod Holdings, LLC			\$ 11,181.69			
2153	3/23/2006	Check	2691	Tripod Holdings, LL	Tripod Holdings, LLC			\$ 38,110.21			
								\$	-	\$ 118,544.25	(118,544.25)

**PENSON FINANCIAL SERVICES, INCORPORATED
AND/OR BROKER DEALERS FOR WHICH IT CLEARS**

CORPORATE ACCOUNT

**(AUTHORIZING TRADING IN SECURITIES FUTURES AND COMMODITIES
AND PERMITTING MARGIN TRANSACTIONS, OPTIONS AND SHORT SALES)**

I, Vern Maeser Young, being the Secretary of SW Chan Inc. hereby certify that the annexed resolutions were duly adopted at a meeting of the Board of said Corporation, duly held on the 24th day of Jan 2005 at which a quorum of said Board of Directors was present and acting throughout, the following resolution, upon motions made, seconded and carried, was duly adopted and is now in full force and effect.

RESOLVED, That the President, Vice President, Treasurer, or _____, or any one of such officers, be and are each hereby fully authorized and empowered for an on behalf of this Corporation to establish one or more accounts which may be margin accounts in order to purchase, invest in, acquire, sell (including short sales), assign, transfer, or otherwise dispose of any and all types and kinds of securities including but not limited to stocks, bonds, debentures, notes, rights, options, warrants, certificates of every kind and nature whatsoever, securities futures and commodities (collectively, "securities") and to enter into agreements, contracts and arrangements with respect to such security transactions whether or with securities related individuals or agents; to execute, sign or endorse on behalf of and in the same agreements and to affix the corporate seal on same. Notwithstanding the foregoing, you are authorized in your discretion to require action by any combination of corporate officers with respect to any matter concerning the corporate account, including but not limited to the giving or cancellation of orders and the withdrawal of money, securities, futures or commodities.

I further certify that the authority thereby conferred is not inconsistent with the Charter or Bylaws of this Corporation, and the following is a true and correct list of officers of this corporation as of the present date:


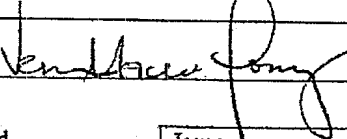
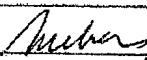
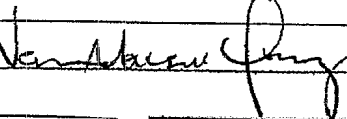
President:	Name: Suetwan Chan-Bostrum		Signature: X 	
	SSN, Fed ID, Cedula, NIT#		ID #	
	ID Type: Driver's License	Expiration Date: 0000-00-00	Issued By: Utah State	Issue Date: 0000-00-00
Vice President:	Name: Vern Maeser Young		Signature: X 	
	SSN, Fed ID, Cedula, NIT#		ID #	
	ID Type: Driver's License	Expiration Date: 0000-00-00	Issued By: Utah State	Issue Date: 0000-00-00
Treasurer:	Name: Suetwan Chan-Bostrum		Signature: X 	
	SSN, Fed ID, Cedula, NIT#		ID #	
	ID Type: Driver's License	Expiration Date: 0000-00-00	Issued By: Utah State	Issue Date: 0000-00-00
Secretary:	Name: Vern Maeser Young		Signature: X 	
	SSN, Fed ID, Cedula, NIT#		ID #	
	ID Type: Driver's License	Expiration Date: 0000-00-00	Issued By: Utah State	Issue Date: 0000-00-00

EXHIBIT E

You may rely upon any certification given in accordance with these resolutions, as continuing fully effective unless and until you receive due written notice of a change in or the rescission of the authority so evidenced herein. In the event of any change in the officer or powers of persons hereby empowered, the Secretary shall certify such changes to you in writing, which notification, when received, shall be adequate both to terminate the powers of the persons therefore authorized, and to empower the person thereby substituted.

The Corporation is formed to engage in the business of UTAH and represents that it is not a commodity pool operator. The Corporation is incorporated in _____ and has its principal place of business in _____.

Name of jurisdiction Name of Jurisdiction

As defined in Section 5318(j) of Title 31 United States Code, the Corporation is a shell bank: YES _____ NO ☒; or a business offering services to a shell bank: YES _____ NO ☐; or a foreign bank: YES _____ NO ☒. If so please complete and return the Certification Regarding Correspondents Accounts.

IN WITNESS WHEREOF, I have hereunto affixed my hand this 22 day of Jan, 2005

SEAL

(If no seal, certify that there is no seal)

x Van Maanen
Secretary (or officer authorized to act)



SW CHAN INC.
306 E 800 S
SPRINGVILLE, UT 84663-2434

2535

97-216/1243 3025

4-25-04

DATE

PAY TO THE
ORDER OF

Ascendus

\$ 2174.64

Two thousand seventy four & 64/100

DOLLARS



usbank.
Your Best Service Guaranteed

usbank.com

FOR

⑆1243021501⑆

535

Ken Hruska

Transit - Seq#: 11036905 - \$2,174.64 - 04/26/2004

Ascendus
Ken Hruska

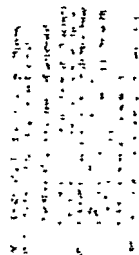


EXHIBIT F

Transit - Seq#: 11036905 - \$2,174.64 - 04/26/2004

Proposed order prepared by:

R. WAYNE KLEIN #3819

RECEIVER FOR FFCF, ASCENDUS, SMITH HOLDINGS

299 South Main, Suite 1300

Salt Lake City, UT 84111

Telephone (801) 534-4455

Facsimile (801) 961-4001

wklein@kleinutah.com

IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY

STATE OF UTAH

A. DAVID BARNES, M.D., P.C.,

Plaintiff,

vs.

FFCF INVESTORS, LLC, et al.

Defendants.

FFCF INVESTORS, LLC,

Plaintiff,

vs.

RICHARD SMITH, et al.

Defendants.

[PROPOSED]

**NOTICE OF HEARING ON
OBJECTIONS TO CLAIMS PROCESS**

Case No. 080922273

Judge: Denise P. Lindberg

At a hearing at 2:00 on Monday, September 20, 2010 the Court will hear oral argument on objections to the Receiver's Report and Recommendation on Allowable Claim Amounts and Proposed Distribution Plan.

DATED this ____ day of August, 2010.

BY THE COURT:

Denise P. Lindberg
Third District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of August, 2010, copies of the foregoing Notice of Hearing were mailed to:

Jerome H. Mooney
Weston, Garrou, Walters & Mooney
50 West Broadway, Suite 1000
Salt Lake City, UT 84101
Counsel for Roger E. Taylor

Richard T. Smith
443 North 750 East
Orem, UT 84097

SuetWan Chan Bostrom Young
302 West 1310 North
Orem, UT 84057

James D. Gilson
Callister Nebeker & McCullough
10 East South Temple, Suite 900
Salt Lake City, UT 84133
Counsel for A. David Barnes

Craig R. Madsen
1112 North 700 East
Springville, UT 84663
Counsel for Kathryn Rowley

Jonathan O. Hafen
Parr Brown Gee & Loveless
185 South State Street, Suite 800
Salt Lake City, UT 84111
Counsel for Annette Kay Donnell

Anthony W. Schofield
Kirtan & McConkie
518 West 800 North, Suite 204
Orem, UT 84057
Counsel for T. Courtney Smith

Bruce L. Dibb
Jensen, Duffin & Dibb, LLP
311 south State Street, Suite 380
Salt Lake City, UT 84111
Counsel for Lighted Candle Society

Wayne Klein, Receiver
299 South Main, Suite 1300
Salt Lake City, UT 84111
Receiver