

FILED DISTRICT COURT
Third Judicial District

SEP 10 2010

SALT LAKE COUNTY

By _____

KF
Deputy Clerk

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

A. DAVID BARNES MD

Plaintiff,

v.

FFCF INVESTORS, ET AL.,

Defendants.

MINUTE ENTRY

CASE 080922273

Judge Denise P. Lindberg

The Receiver's Recommendations on Claims Process and the objections thereto are pending decision by the Court. Two objections have been filed in the Court and the receiver has personally received other objections. The Receiver has submitted and responded to all the objections and no replies were permitted by the Court in its June 28, 2010 Order setting the date for any objections.

The Court finds that oral argument will not aid its resolution of these issues as they are straightforward and fully addressed in the pleadings. Further, all parties' due process rights of notice and an opportunity to be heard have been ensured by the Court's order requiring that any objections to the Receiver's proposals be submitted by July 28, 2010. The Court having fully considered the Receiver's Recommendations, the objections and pleadings and law relevant to this decision, rules as follows.

Allowable Claim Amounts

The Court has considered the objections to the Receiver's proposed Allowable Claim Amounts set forth in Exhibit A to his Recommendations. The Court has already approved the formula to determine allowable claim amounts as

follows:

The amount of valid claims determined by the Receiver will be based on the amount of funds actually paid to Ascendus or FFCE, 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.

Instructions for Proof of Claim Form, No. 16 (approved by the Court on Feb.17, 2010).

LCS' invested a total of \$200,000 and has already received \$119,346.23, thus the remaining amount LCS is entitled to is \$80,653.77. SuetWan Chan Bostrom Young's has waived her right to object to the Receiver's decision to reject her claims. The Receiver has amended the Recommendations for Claims 3016A and B, the Court finds those amendments appropriate.

The Receiver's Recommendations as to allowable amounts account for the Court's formula, accordingly, the Court overrules the objections and adopts the Allowable Claim Amounts set forth by the Receiver, including the amendments thereto.

Distribution Plan

A district Court has broad discretion to approve an equitable distribution plan under a receivership. See e.g. SEC v. Capital Consultants, LLC, 397 F.3d 733, 750 (9th Cir. Or. 2005)(stating, "[g]iven that 'a district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad,' 'the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.'" (citations

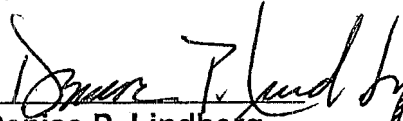
omitted). 'Pro Rata' distribution plans are generally favored by courts under particular circumstances. See e.g. SEC v. Credit Bancorp, Ltd., 290 F.3d 80, 88-89 (2d Cir. 2002)(finding that "Courts have favored pro rata distribution of assets where . . . the funds of the defrauded victims were commingled and where victims were similarly situated with respect to their relationship to the defrauders.')(citations omitted).

The Court has considered the case law and the responses to the Receiver's proposed distribution plans set forth in his Recommendations and Exhibit B. The Court finds that it is in the best interests of all claimants that the Court approve the 'pro rata' distribution plan, with the modifications to Claims 3016A and 3016B, as this distribution plan acknowledge claimants who properly filed their claims; accounts for the distributions investors have already received; and distributes the remaining funds in the most equitable manner.

The Receiver is to prepare an Order consistent with this Ruling and the Receiver's Recommendations.

Dated this 10 day of September, 2010.

By the Court:


Denise P. Lindberg
District Court Judge

