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Court-Appointed Receiver

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

v.

U.S. VENTURES LC, a Utah limited liability
company, WINSOME INVESTMENT
TRUST, an unincorporated Texas entity,
ROBERT J. ANDRES and ROBERT L.
HOLLOWAY,

Defendants.

**RECEIVER'S FIFTEENTH MOTION
AND MEMORANDUM SEEKING
APPROVAL TO FINALIZE
SETTLEMENT AGREEMENT**

Case No. 2:11CV00099 BSJ

Judge Bruce S. Jenkins

R. Wayne Klein, the Court-Appointed Receiver¹ in this matter (the "Receiver"), by and
through his counsel of record, notifies the Court that he has entered into one additional

¹ The Receiver has been appointed over U.S. Ventures LC ("USV"), Winsome Investment Trust ("Winsome"), and all the assets of Robert J. Andres ("Andres") and Robert L. Holloway ("Holloway"), (collectively, the "Receivership Defendants.")

preliminary settlement agreement of a lawsuit he has filed and moves for approval to finalize that settlement.

BACKGROUND

On January 25, 2011, the Court entered an Order Granting Plaintiff's Ex Parte Motion for Statutory Restraining Order, Expedited Discovery, Accounting, Order to Show Cause re Preliminary Injunction and Other Equitable Relief (the "Receivership Order"). (Doc. #15) With the Receivership Order, the Court placed U.S. Ventures, Winsome, and all the assets of Andres and Holloway under the control of the Receiver. (*See generally id.*) In the Receivership Order, the Court directed and authorized the Receiver to investigate the activities of the Receivership Defendants. (Doc. #15) In carrying out his responsibilities, the Receiver was authorized to: "Initiate, defend, compromise, [or] adjust . . . any actions . . . necessary to preserve or increase the assets of the Defendants . . . or to recover payments made improperly by the Defendants." (*Id.* ¶ 27(i)).

As a result of the financial analysis and investigation conducted to date, the Receiver has made demand on numerous parties for the return of payments improperly paid by Receivership Defendants. The Receiver has filed suit against many parties, seeking the recovery of payments made improperly. The following settlement will resolve a lawsuit the Receiver has filed, which has consumed substantial litigation effort. The Receiver seeks confirmation of the following settlement:

1. JoAnn Holly. Holly was an investor in Winsome who received substantially more in distributions herself and through two companies she controlled than the principal amount she invested. The Receiver sued Holly and her companies, Holly's Day in Heaven and A Day in

Hollywood, on January 17, 2012 seeking \$434,733.81 paid to them by Winsome. Since that time, the Receiver has engaged in significant discovery efforts to identify possible assets. Holly provided to the Receiver a sworn affidavit listing her assets and other aspects of her financial condition. The financial affidavit shows substantial liabilities and no net assets. She also provided information showing that one property she owned had been foreclosed and that the other property had debt greater than the value of the home. Holly also provided information showing that the majority of the payments she received from Winsome were sent to a different investment, where it was lost. On December 4, 2013, a settlement agreement was reached between the Receiver and Holly (and her companies) whereby the Receiver will dismiss the lawsuit against Holly based on her demonstrated inability to pay any of the amounts she received from Winsome.

ANALYSIS

The Receiver requests that the Court allow him to finalize this Settlement Agreement. Courts recognize that a "receiver has the power, when so authorized by the court, to compromise claims either for or against the receivership and whether in suit or not in suit." *SEC v. Bancorp*, 2001 WL 1658200 *2 (S.D.N.Y. 2001) (quoting 3 Ralph Ewing Clark, *A Treatise on the Law and Practice of Receivers*, § 770 (3d Ed. 1959). "In determining whether to approve a proposed settlement, the cardinal rule is that the District Court must find that the settlement is fair, adequate and reasonable and is not the product of collusion between the parties." *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *see also Jones v. Nuclear Pharmacy, Inc.*, 741 F.2d 322, 325 (10th Cir. 1984). The *Jones* court explained:

In assessing whether the settlement is fair, reasonable and adequate the trial court

should consider: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable.

Id.

Here, the Settlement Agreement is "fair, adequate, and reasonable." The Settlement Agreement is reasonable because there is no realistic prospect of a financial recovery from Holly. Holly has no net worth and minimal income. The Receiver has concluded that any further expenditure of time and money in this litigation is unlikely to result in the discovery of assets that can be recovered.

The Settlement Agreement was negotiated fairly and honestly, and is the result of an arm's length transaction. In light of these factors, the Receiver believes this settlement agreement is just and fair and should be approved.

CONCLUSION

For the foregoing reasons, the Receiver asks the Court to authorize the Receiver to finalize the Settlement Agreement with Holly that is described in this memorandum.

DATED this 24th day of December, 2013.

MANNING CURTIS BRADSHAW
& BEDNAR, LLC

/s/ David C. Castleberry
David C. Castleberry
Christopher M. Glauser
*Attorneys for R. Wayne Klein, Court-
Appointed Receiver*

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **RECEIVER'S FIFTEENTH MOTION AND MEMORANDUM SEEKING APPROVAL TO FINALIZE SETTLEMENT AGREEMENTS** to be served in the method indicated below to the Defendant in this action this 24th day of December, 2013.

- VIA FACSIMILE
- VIA HAND DELIVERY
- VIA U.S. MAIL
- VIA FEDERAL EXPRESS
- VIA EMAIL
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