

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH, CENTRAL DIVISION**

R. WAYNE KLEIN, the Court-Appointed Receiver
of U.S. Ventures, LC, Winsome Investments Trust,
and the assets of Robert J. Andres and Robert L.
Holloway.

Plaintiff,

v.

MICHELE PETTY,

Defendant.

**ORDER GRANTING
PLAINTIFF'S MOTION TO
ENFORCE SETTLEMENT AND
ENTER JUDGMENT IN FAVOR
OF PLAINTIFF**

Case No. 2:11-cv-01099-RJS

Judge Robert J. Shelby

Before the court is the Motion to Enforce Settlement Agreement filed by Plaintiff, court-appointed Receiver R. Wayne Klein. (Dkt. 40.) For the reasons discussed below, the court concludes that the Motion should be granted and that judgment in the Receiver's favor should be entered.

BACKGROUND

This receivership case arises from an underlying action brought by the Commodity Futures Trading Commission against Defendants U.S. Ventures, LC; Winsome Investment Trust; Robert J. Andres; and Robert L. Holloway. It is alleged in the CFTC Action that the Defendants operated a Ponzi scheme. *See* Case No. 2:11-CV-000099-BSJ. R. Wayne Klein was appointed as Receiver in the CFTC Action. He is charged with recapturing investor funds allegedly misappropriated in the Ponzi scheme. He filed this action seeking to recover improper payments that Defendant Michele Petty allegedly received from at least one CFTC defendant. (Dkt. 2 at ¶ 7.)

Judge Bruce Jenkins, who presides over the pending CFTC Action, entered an order on September 24, 2014 approving a settlement agreement the Receiver reached with Ms. Petty. *See*

Case No. 2:11-CV-00099 at Dkt. 392. Pursuant to the agreement, Ms. Petty was required to pay \$45,000 to the entities the Receiver represents within ten days of receiving notice from the Receiver that the court had approved the settlement. The Receiver alleges that on September 26, 2014, he notified Ms. Petty of Judge Jenkins' order, thus triggering the ten day period within which Ms. Petty was required to tender the \$45,000 payment. The Receiver also inadvertently filed a Motion with this court for approval of the same settlement agreement with Ms. Petty. On October 15, 2014, this court entered an order (Dkt. 39) granting that unopposed Motion. (Dkt. 38.) But despite two court orders approving the settlement and notice from the Receiver that Judge Jenkins' order had been entered, Ms. Petty has tendered no payment.

The Receiver now moves the court to enforce the settlement agreement and enter judgment against Ms. Petty in the amount of \$45,000 plus interest, costs, and attorney's fees. (Dkt. 40.) Ms. Petty has not opposed or otherwise responded to the Receiver's Motion.

DISCUSSION

This court "has the power to summarily enforce a settlement agreement entered into by the litigants while the litigation is pending before it." *Shoels v. Klebold*, 375 F.3d 1054, 1060 (10th Cir. 2004) (citations omitted). Under applicable Utah law, this court may order enforcement of a settlement agreement if it amounts to a validly-formed contract. *John Deere Co. v. A & H Equipment, Inc.*, 876 P.2d 880, 883 (Utah App. 1994) (citations omitted).

The Receiver has attached to his Motion a copy of an "Agreement and Release" apparently signed by both Ms. Petty and the Receiver. (Dkt. 40-1.) He has also attached correspondence between his counsel and Ms. Petty regarding the settlement, including email providing Judge Jenkins' order approving the settlement and requesting that payment be made. (Dkts. 40-3, 40-4, and 40-5.) As Defendant and a party receiving notice in this action, Ms. Petty

is presumed to have received this court's order approving the settlement agreement (Dkt. 39) and the Receiver's Motion attaching the settlement agreement and related correspondence. (Dkt. 40.) She has responded to neither, and—critically—has not disputed that the settlement agreement is valid and binding.

For these reasons, the court finds and concludes that the court-approved settlement agreement between the Receiver and Ms. Petty is valid and binding, and that it requires Ms. Petty to pay \$45,000 to the entities the Receiver represents. (Dkt. 40-1.) The court further concludes that under the circumstances, an order summarily enforcing the agreement is appropriate and that judgment should be entered in the Receiver's favor.

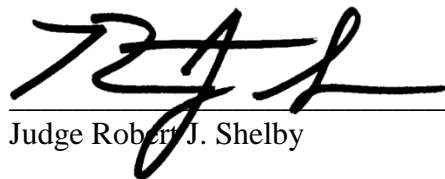
ORDER

Based upon the foregoing, the court hereby ORDERS:

1. Plaintiff's Motion to Enforce Settlement is GRANTED;
2. Judgment is entered in favor of the Plaintiff Receiver and against Defendant Ms. Petty in the amount of \$45,000;
3. The Receiver may elect to pursue interest, costs, and attorney's fees pursuant to Rule 54, Federal Rules of Civil Procedure, and Local Rule 54-2 with a timely Bill of Costs and appropriate Motion(s); and
4. The Clerk of Court is directed to close this case.

SO ORDERED this 30th day of March, 2014.

BY THE COURT:



Judge Robert J. Shelby