

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SECURITIES AND EXCHANGE COMMISSION
Plaintiff,

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v.

Civil Action No. 4:11-cv-655

JAMES G. TEMME, and
STEWARDSHIP FUND, LP,
Defendants.

**MOTION FOR SHOW CAUSE HEARING REGARDING JOHN GRAVES’
PURPORTED INTEREST IN RECEIVERSHIP ASSETS AND NET PAYMENTS FROM
RECEIVERSHIP ENTITIES, ALONG WITH REQUEST FOR EXPEDITED
CONSIDERATION, AND BRIEF IN SUPPORT**

COMES NOW, Keith M. Aurzada, as receiver in the above-captioned matter (the “Receiver”) for James G. Temme (“Temme”), Stewardship Fund, LP, and all other entities directly or indirectly controlled by Temme or Stewardship Fund, LP, including, but not limited to Stewardship Advisors, LLC, d/b/a Stewardship Advisors, LP, Stewardship Asset Management Genpar I, LLC, Stewardship Group, LLC, Destiny Fund, LP, and Stewardship Management, LP (collectively, the “Receivership Entities”), and submits this Motion for Show Cause Hearing Regarding John Graves’ Interest in Receivership Assets and Net Payments from Receivership Entities, Along with Request for Expedited Consideration, and Brief in Support (the “Motion”). In support of this Motion, the Receiver would respectfully show the Court as follows:

**I.
INTRODUCTION**

7. It is the settled law of this District that profits paid from a Ponzi scheme should be disgorged and returned to the Receivership Estate. Receivership records in this case indicate that the Receivership Entities were operated as a Ponzi scheme and that the respondents, John Graves

and his related entities, received several hundred thousand dollars over what they invested and are, thus, believed to be “net winners.” Moreover, based on transactions with the Receivership Entities, the Respondents claim a dubious interest in at least 33 assets that the Receiver is trying to sell for the benefit of the Estate. The Respondents’ objections to the sale of Estate assets, and their purported interest in the assets to be sold, have delayed and now jeopardize the potential sales. Therefore, as explained more fully below, the Receiver requests that the Court direct Respondents to appear in this case and show cause why their net gains should not be disgorged to the Receivership Estate and the Sales Motions should not proceed free and clear of the Respondents’ purported interest in the assets to be sold.

II.
BACKGROUND FACTS

A. The Sales Motions

1. On October 14, 2011, the Securities and Exchange Commission instituted the above-captioned action, and the Receiver was appointed as receiver for the Receivership Entities through the Court’s entry of the Agreed Order Appointing Receiver Over Entities Under Control of James G. Temme [Dkt. No. 24]; Agreed Order Appointing Receiver Over Stewardship Fund, LP, and Related Entities [Dkt. No. 25]; and Order Appointing Receiver Over James Temme [Dkt. No. 30] (together, the “Receiver Orders”). Pursuant to the Receiver Orders, the Receiver is to “immediately take and have complete and exclusive control, possession, and custody of the Receivership Estate and to any assets traceable to assets owned by the Receivership Estate.” Agreed Order Appointing Receiver Over Entities Under Control of James G. Temme ¶ 4 [Dkt. No. 24].

2. After his appointment as Receiver, and pursuant to the responsibilities with which he is charged, the Receiver obtained (as part of previous settlement agreements approved by the

Court) certain real properties and non-performing mortgages owned by the Receivership Entities, which are deemed as Receivership Assets within the meaning of the Court's Receiver Orders (the "Settlement Assets"). Additionally, the Receiver located and obtained possession of additional real properties and non-performing mortgages owned by the Receivership Entities (the "Legacy Assets").

3. The Settlement Assets and the Legacy Assets represent a significant asset of the Estate. However, those assets require regular servicing work and continue to lose value. Although the Receiver has entered into certain servicing agreements in an effort to preserve the value of those assets, it is in the Estate's best interest to sell the Settlement Assets and Legacy Assets as soon as possible.¹

4. As a result, on August 6, 2012, the Receiver filed his Motion for Authority Sell Properties to Lakeside Portfolio Management, LLC [Docket No. 103] (the "Lakeside Motion") and Motion for Authority to Sell Property and to Approve Sales Procedures [Docket No. 104] (the "Barrier Motion" and collectively with the Lakeside Motion, the "Sales Motions").

5. The Sales Motions are incorporated by reference.

6. On August 23, 2012, John Graves, as attorney for JEG Property Investments, L.P. *f/k/a Beracah Valley Enterprises, LP*, NG Roth Investments, LLC, JG Roth Investments, LLC, JG Roth, LLC, and JEG Property Investments 401k Trust (collectively "Respondents") filed their Response in Opposition and Objection to the Receiver's Sales Motions [Docket No. 111].

¹ The Receiver has employed Wingspan Portfolio Advisors to analyze whether it is in the Estate's best interest to immediately sell the Settlement Assets and Legacy Assets or hold them for sale at a later date. Although their reports are not yet complete, it is clear that selling the assets immediately is in the best interest of the Estate.

7. The Respondents' objections are based on their purported ownership of certain assets that are to be sold pursuant to the Sales Motions. A review of the Respondents' relevant documents, however, has revealed that the Respondents' interest in such assets is dubious at best.

8. Despite the dubious nature of Respondents' interest in the assets subject to the Sales Motions, the Receiver has delayed a hearing on the Sales Motions in an attempt to resolve the Respondents' objections thereto. The Receiver has worked for months with Respondents to try to resolve their objections to the Sales Motions. However, to date, the Respondents have failed to provide sufficient proof of an interest in the assets subject to the Sales Motions to warrant further delays.

B. Respondents' Net Payments

9. Pursuant to the responsibilities with which he is charged, the Receiver employed an accountant, Greg Murray, to process and analyze bank statements and other financial documents of the Receivership Entities. Mr. Murray has analyzed payments made between the Receivership Entities and the Respondents. Mr. Murray's analysis indicates that Respondents received from Receivership Entities at least \$500,000 more than they provided to Receivership Entities.

10. The Receiver has contacted the Respondents on many occasions to provide them an opportunity to respond to the assertion that they are "net winners" by approximately \$500,000 and provide supporting documentation. The Respondents have failed to provide sufficient information to negate the assertion that they are net winners by at least \$500,000.

11. As explained more fully below, the law in this District views net payments received from a Ponzi scheme as assets to be disgorged and surrendered to the Receivership

Estate. This Court should, therefore, order Respondents to appear at a show cause hearing to determine whether the net payments ought to be disgorged.

12. Federal case law recognizes that a District Court may use summary procedures to determine whether assets should be disgorged for the benefit of a Receivership Estate. As explained more fully below, the Receiver submits that summary procedures and expedited consideration are appropriate in this case to help the Receivership Estate recover funds in a timely manner for the benefit of all investors.

III. BRIEF IN SUPPORT

A. RESPONDENTS SHOULD DISGORGE ALL NET PROCEEDS RECEIVED FROM THE RECEIVERSHIP ENTITIES

1. Disgorgement of Net Proceeds

13. All net proceeds paid to the Respondents from the Receivership Entities are voidable under the Texas Uniform Fraudulent Transfer Act (“*UFTA*”) or the supplemental provisions of common law. In relevant part, that statute provides:

(a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor . . . if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud . . .

Tex. Bus. & Com. Code § 24.005.

14. While a plaintiff must ordinarily prove fraudulent intent to recover under this provision of the UFTA, that element is automatically established for transfers out of a Ponzi scheme. See *Quilling v. Gilliland*, Civil Cause No. 3:01-CV-1617 (N.D. Tex. Mar. 6, 2002); *S.E.C. v. Cook*, 2001 WL 256172, *3 (N.D. Tex. Mar. 8, 2001); see also *In re Ramirez Rodriguez*, 209 B.R. 424, 433-34 (Bankr. S.D. Tex. 1997); *In re Independent Clearing House*

Co., 77 B.R. 843 (Bankr. D. Utah 1987). This presumption is necessarily true because a Ponzi scheme is insolvent from inception. *Warfield v. Byron*, 2006 WL 118250, *5 (5th Cir. Jan. 17, 2006), citing *Cunningham v. Brown*, 265 U.S. 1, 7-8 (1924). Accordingly, all net proceeds from a Ponzi scheme are presumed fraudulent and must be disgorged and returned to the Receivership Estate. See *Cook*, 2001 WL 256172 at *3, 4 (disgorging commissions paid from a Ponzi scheme); see also *Warfield*, 2006 WL 118250 at *6-7 (same). Therefore, to the extent that the Receivership Entities operated as a Ponzi scheme, Respondents have no legal basis to retain net proceeds received from the Receivership Entities.

15. The Receiver's records indicate that Respondents received at least \$500,000 in net proceeds from the Receivership Entities. As a result, such funds must be disgorged to the Estate.

B. RESPONDENTS SHOULD SHOW CAUSE WHY THEY HAVE AN INTEREST IN THE ASSETS SUBJECT TO THE SALES MOTION

16. Additionally, Respondents should appear and show cause as to why they claim an interest in the assets subject to the Sales Motions. The Respondents' objections to the Sales Motions has delayed sale of valuable assets of the Estate and has caused them to diminish in value. Such losses to the Estate cannot be justified unless and until Respondents demonstrate an interest in the assets subject to the Sales Motions. The Receiver, therefore, requests that the Court require Respondents to appear and show cause as to why they claim an interest in the assets subject to the Sales Motions and, if they do not, that the Court approve of the Sales Motions free and clear of any purported interest of Respondents.

C. EXPEDITED CONSIDERATION IS APPROPRIATE IN THIS CASE.

17. This Court may order Respondents to disgorge improper payments following an expedited show cause hearing. Federal receivership law recognizes the use of such summary proceedings to resolve disputes to property claimed by a Receivership Estate. *SEC v. Basic*

Energy & Affiliated Res., 273 F.3d 657, 668 (6th Cir. 2001); *see also Commodity Futures Trading Comm'n v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1113 (9th Cir. 2000); *SEC v. Wencke*, 783 F.2d 829, 837-38 (9th Cir. 1986). It is well settled that Federal Courts have “broad powers and wide discretion” to fashion such relief in equitable receivership proceedings. *Basic Energy & Affiliated Res.*, 273 F.3d at 668. This discretion, which derives from the Court’s inherent equitable powers, makes abbreviated and summary proceedings possible without violating the interests of due process. *See id.* (allowing summary proceedings so long as they “permit parties to present evidence when the facts are in dispute and to make arguments regarding those facts”); *SEC. v. Elliott*, 953 F.2d 1560, 1571 (9th Cir. 1992). Therefore, as long as this Court gives Respondents a meaningful opportunity to present its factual and legal contentions, summary proceedings are proper to determine whether Respondents must disgorge the improper payments that they received from the Receivership Companies.

18. Furthermore, summary proceedings are favored in the context of federal receivership actions because they embrace the long-recognized policy of preserving and protecting assets for claimants of the Receivership Estate. *See Elliott*, 453 F.2d at 1566; *Wencke*, 783 F.2d at 837-38. Abbreviated procedures—including the use of a single receivership proceeding to resolve all claims—advance the government’s interest in judicial efficiency by “reducing the time needed to resolve disputes, decreasing the costs of litigation, and preventing the dissipation of the receiver’s assets.” *Basic Energy & Affiliated Res.*, 273 F.3d at 668; *Elliott*, 453 F.2d at 1566; *Wencke*, 783 F.2d at 837-38. Summary proceedings allow the Receiver to consolidate litigation before a single District Judge and “avoid formalities that would slow down the resolution of disputes.” *Wencke*, 783 F.2d at 837 n.9. This both promotes judicial efficiency

and reduces litigation costs to the receivership. *Id.* (citing *Smith v. Am. Indus. Research Corp.*, 665 F.2d 397, 399 (1st Cir. 1981)).

19. To allow ample time for the Respondents to receive notice of this Motion (and the requested Show Cause Order), and to allow time for the Receiver to potentially settle his disputes with certain of the Respondents, the Receiver requests a show cause hearing no sooner than February 22, 2013.

**IV.
PRAYER FOR RELIEF**

WHEREFORE, PREMISES CONSIDERED, the Receiver respectfully requests as follows: (1) that this Court set a show cause hearing no sooner than February 22, 2013; (2) that it order the Respondents to appear and respond to this motion; and (3) that, following a hearing on this motion, the Court order Respondents to disgorge all net payments received from the Receivership Entities and determine that the assets subject to the Sales Motions may be sold free and clear of Respondents' purported interests. The Receiver also requests that the Court expedite its consideration of this motion, adopt summary procedures, and grant the Receiver such other and further relief, general or special, at law or in equity, to which he might show himself otherwise entitled.

Dated: January 28, 2013

BRYAN CAVE LLP

By: //s// Bradley Purcell

Keith Miles Aurzada

State Bar No. 24009880

Jay L. Krystinik

State Bar No. 24041279

Bradley J. Purcell

State Bar No. 24063965

2200 Ross Avenue, Suite. 3300

Dallas, Texas 75201

(214) 721-8000

(214) 721-8100 Fax

keith.aurzada@bryancave.com

jay.krystinik@bryancave.com

Counsel for Keith Miles Aurzada, Receiver

CERTIFICATE OF SERVICE

I certify that on January 28, 2013, I served a true and correct copy of the foregoing pleading by electronic mail through the Court's CM/ECF system to all parties consenting to service through same, including to counsel for the SEC, the Defendants, and the Objectors.

Additionally, a true and correct copy of the foregoing pleading was served on Respondents via certified mail return receipt requested at the following address:

John Graves
1540 Keller Parkway, STE 108, #323
Keller, Texas 76248

Moreover, the foregoing will be uploaded to www.stewardshipfundreceivership.com

//s// Bradley Purcell _____
Bradley Purcell

CERTIFICATE OF CONFERENCE

I certify that on January 28, 2013, I conferred with the SEC regarding the foregoing pleading and the SEC is not opposed to the relief requested herein.

//s// Bradley Purcell _____
Bradley Purcell

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SECURITIES AND EXCHANGE COMMISSION
Plaintiff,

v.

JAMES G. TEMME, and
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Civil Action No. 4:11-cv-655

ORDER SETTING SHOW CAUSE HEARING

On January 25, 2013, the Receiver filed his Motion for Show Cause Hearing Regarding John Graves’ Interest in Receivership Assets and Net Payments from Receivership Entities, Along with Request for Expedited Consideration, and Brief in Support (the “*Motion*”), through which the Receiver requested an order from the Court directing the Respondents (as defined in the Motion) to appear and show cause as to why certain payments made to the Respondents should not be disgorged to the Receivership Estate and why assets subject to the Sales Motions (as defined in the Motion) should not be sold free and clear of any purported interest of Respondents.

Based upon a review of the Motion, and the pleadings on file, the Court finds and concludes that: (a) the relief requested in the Motion is in the best interests of the Receiver and his receivership estates; (b) proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and (c) good and sufficient cause exists for the granting of the relief requested in the Motion. Therefore, it is hereby :

ORDERED that John Graves, JEG Property Investments, L.P. *f/k/a Beracah Valley Enterprises, LP*, NG Roth Investments, LLC, JG Roth Investments, LLC, JG Roth, LLC, and JEG Property Investments 401k Trust (collectively “Respondents”) are ORDERED to appear

and show cause as to why net proceeds received from Receivership Entities should not be disgorged to the Receivership Estate and why assets subject to the Sales Motions (should not be sold free and clear of any purported interest of Respondents. Respondents may respond to the Receiver's Motion by **Friday, February 15, 2013**. It is further,

ORDERED, that the Court's Show Cause Order remains in effect, except as otherwise amended herein. It is further,

ORDERED that the Clerk of the Court shall provide Notice of this Order to all of the Respondents and Withdrawn Respondents, who can be reached at the following address:

1540 Keller Parkway
STE 108, #323
Keller, Texas 76248