

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

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff

v.

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

Defendants,

Civil Action No.
4:11-CV-00655-MHS

**STEWARDSHIP RECEIVERSHIP CLAIMANTS ASSOCIATION’S RESPONSE IN
OPPOSITION AND OBJECTIONS TO THE RECEIVER’S MOTION TO APPROVE
SETTLEMENT AGREEMENT WITH HALO COMPANIES, INC.**

Stewardship Receivership Claimants Association (the “Association”), a Texas Nonprofit Association formed by and composed of claimants in the Receivership Entities,¹ files this Response in Opposition and Objection to the Motion to Approve Settlement Agreement with Halo Companies, Inc. (the “Motion”) filed by Keith M. Aurzada, Receiver for the Receivership Entities. In support of the Response and Objections, the Association shows as follows:

I. INTRODUCTION

1. The Association is currently composed of sixty-five distinct members, both natural persons and entities (as listed on Exhibit A attached hereto), who invested in the Receivership Entities. These members’ collective claim amounts comprise the vast majority of

¹ The Association adopts the definitions used by the Receiver in his Motion, including the “Receivership Entities,” defined as 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.

the total claims filed to date. For many of the Association's members, their investment in the Receivership Entities represents a substantial portion of personal assets. A loss of these assets would be significant if not devastating to these members, particularly where a significant loss can be avoided. The members therefore formed the Association in order to protect their interests and voice their collective concern with the Receiver's actions in this proceeding, which at times do not appear to be consistent with the best interests of the estate—an estate created, in part, to benefit the investors in the Receivership Entities.

2. Over the past eighteen months, members and representatives of the Association have invested considerable time working with the Receiver to assist him in identifying assets and claims, including assets and claims related to Halo. On limited occasions, in order to assist the Receiver (and to protect the estate), the Association has had to oppose his actions before this Court. In fact, when the Receiver was ready to dispose of the "Lakeside Assets" last year, the Association's objections to the sale eventually led to a far greater recovery for the estate.²

3. Here, the settlement with Halo as proposed in the Motion does not appear to be in the best interests of the estate. In fact, a significant concern with the Motion is that it fails to articulate for the Court and other interested parties the values of the assets subject to the settlement. The Receiver wholly fails to identify the value of (1) the two classes of Halo stock he is offering in settlement, (2) the AMX software or its enterprise value and use, or (3) the several claims he intends to release. Regarding AMX, the Receiver has apparently negotiated only a limited license for his own use, despite the fact that the estate has a claim to ownership of the software.

² Prior to the Association's objections, the Receiver proposed a sale of the Lakeside Assets for \$195,437.30. *See* [Dkt. No. 103]. As stated in the latest Status Report of the Receiver, following the Court's denial of approval for the proposed sale, the estate is now set to receive at least \$450,000 for the assets. *See* [Dkt. No. 250] at ¶32.

4. Further, the Receiver on behalf of every investor or creditor of the estate broadly seeks to release all claims against *and* to enjoin those parties from bringing their own claims against Halo, its agents, officers, directors, employees, heirs, beneficiaries, representatives, managers, relations, affiliates, predecessors, successors, assigns, and related entities, whether known and unknown. As worded, the release and injunction encompasses more than just claims owned by the estate. The Association questions how the Court can enjoin investors who are not creditors or creditors who may have individual, personal claims against Halo that are not property of the estate. Further, to the Association's knowledge, the Receiver has not fully investigated potential fraud claims despite the fact that the Association has repeatedly informed him of such claims against Halo and its principals. In the Motion, the Receiver offers only conclusory statements regarding Halo's alleged financial status and the viability of the claims the estate has against Halo.

5. The Association believes the settlement to be inequitable based on information obtained by it regarding Halo and its estimated valuation of the various assets. Therefore, the Association opposes and objects to the settlement for the reasons explained in more detail below.

II. OBJECTIONS AND ARGUMENT

The following lettered headings present objections to the Receiver's Motion.

A. The Receiver has offered no evidence regarding the value of the stock the estate holds in Halo.

6. Halo's stock appears to be a valuable asset of the estate and should not be transferred to Halo for such little consideration. The Receiver identifies in his Motion that the estate holds 17,808,000 shares of common stock and 90,000 shares of Class X stock of Halo. The Receiver never addresses the value of this stock in his Motion, which is obviously important

when considering the merit of the proposed settlement. Common stock is reportedly valued at \$.49 as of its last trade on Halo's website, a page of which is attached hereto as Exhibit "B"³. At that price, the estate's common stock in Halo would be worth \$8,725,920.00. According to Halo's latest 10-Q, signed by its CEO and CAO on August 14, 2013 the 90,000 shares of Class X stock have a "liquidation performance per share equal to \$10.00" (\$900,000.00 in total), with an additional 9% annual dividend when declared. *See* Exhibit C attached hereto. Despite Halo's apparent claim for return of the stock, Halo states in the same 10-Q that the 90,000 Class X shares were "issued for cash consideration" and do not identify them as in dispute. *Id.* The Receiver should not concede stock with a potential value of more than \$9,000,000.00 out of the estate for just \$250,000.00.⁴

B. The Receiver has not identified or explain of the potential claims between the estate and Halo, their value, or their viability.

7. Throughout the Motion, the Receiver alludes to potential claims that could be asserted by the estate against Halo or vice versa. However, the Receiver never identifies the claims, except for one mention of a fraudulent transfer claim, the potential recovery from the claims, or the degree to which the claims appear viable.

8. Notable in this regard is the nearly \$1,200,000.00 loaned by the Receivership Entities to Halo, which Halo's records reflect were in fact received from the Receivership Entities. *See* Motion at 2. The Receiver then states that Halo denies the loan and instead claims the funds were compensation for services provided... but provides no further information or explanation. The Association has seen no documentation in the form of invoices, statements, or

³ *See* also <http://www.haloco.com/company.html>

⁴ The Association does not know the true value of the stock, but offers that the stock potentially represents a large asset of the estate.

other proof that any alleged services were provided. Moreover, the attached email from Reif Chron, President of Halo, to Scott Doores, a Stewardship Fund claimant, states that:

Halo Asset Management is a fee for service asset management firm and Halo is not currently and at no time was Halo ever hired to manage any investments or assets on behalf of an entity named Stewardship Fund.

See Exhibit D attached hereto. Despite the referenced evidence and apparent lack thereof, the Receiver provides no meaningful analysis of which party might succeed on a claim involving the \$1,200,000.00.

9. Similarly, the Receiver summarily states that he believes the estate may have other claims against Halo, which Halo would contest, but fails to identify the claims (except for a mention of a fraudulent transfer claim). The Association questions what investigation has been done into the claims and what evidence may exist in support of or against each claim. The Association would also like information concerning the potential value of each claim before such claims are revealed or enjoined.

C. The Receiver has offered no evidence of Halo's financial condition.

10. Underlying the Receiver's willingness to accept a settlement of \$250,000.00 from Halo (paid incrementally over twelve months) in exchange for potentially valuable assets of the estate, is the Receiver's contention based solely on his reported review of certain unidentified financial records of Halo that Halo's financial condition is "uncertain" (whatever that means). However, Halo reports on its website that the value of its stock is \$.49 per share as of the last trade. Halo's recent 10-Q reveals net income of \$1,396,961.00 and revenue of \$2,983,081.00 *for the three months* ending June 30, 2013. *See* Exhibit C. Further, the Association offers that all

parties will agree that AMX software is a valuable asset if used in the manner intended, but the Receiver has not valued the software when determining Halo's assets.

D. The Receiver has offered no evidence regarding the value of the AMX software which Halo claims to own.

11. The Receiver fails to give any weight to the value of the AMX software as an asset of Halo, while at the same time claiming the use of AMX by the Receiver is valuable consideration for the settlement. The Receiver claims on one hand that Halo is financially unsound and has little in the way of assets, while at the same time arguing that his ability to use the AMX software is valuable. The Receiver makes no attempt to place a dollar value on either Halo's ownership of AMX or his use of AMX. In fact, the Association offers that the AMX software has a significant value given its use in servicing residential mortgages and the potential for licensing such software to third parties.

12. The Association believes AMX's value primarily lies in its use as an asset management tool. Though the Receiver argues his use of the AMX software is valuable to the sale of the assets, the Association understands that the Receiver has done little to nothing to actively manage the existing assets and instead uses this powerful management software merely as a database of information. This sort of limited use of AMX has a limited value to the estate. This value could increase if the Receiver assumes an active management role and is provided broader and transferable rights to the software for purposes of managing the assets.

13. Further, the Receiver does not mention the Receivership Entities' potential claim to ownership of the AMX software, which was referenced and included as part of the business transactions between Halo and the Entities. Even though the estate has a claim to ownership of the software, the Receiver apparently proposes to settle for a limited license for just himself and

his agents. This is despite the ongoing negotiations between members of the Association to purchase and subsequently manage the assets—which the Receiver has not done, despite admitting the assets are “melting ice cubes”—for which the AMX software is necessary. The estate’s claim to ownership of AMX and the usefulness of the software beyond the estate’s lifetime should be considered in analyzing the fairness of the proposed settlement.

E. The Receiver overreaches in seeking to enjoin the rights of all Creditors to pursue claims against Halo.

14. As part of the proposed settlement, the Receiver asks the Court to issue an injunction enjoining all Creditors (identified as all investors and their heirs, successors, agents and assigns) from pursuing any claims against Halo. The Receiver fails to mention the various concerns regarding outstanding issues and potential claims that either exist or may arise in the future that the Association and various creditors have voiced to the Receiver.

15. First, before the Receivership Entities were placed into receivership in late-2011, they were in the business of acquiring distressed real estate assets. Due to the nature of these assets, the purchase of a single “tape” or group of assets might result in collateral files being delivered from multiple locations over a number of months. Just before the Receivership was established, Stewardship Fund had completed the transfer of its employees, assets, files and other operations *to the offices of Halo*. Mail and boxes of collateral were still arriving at the Stewardship Fund offices after the Receiver took control of the premises and, on at least one occasion, Halo representatives took possession of mail that had been delivered to the Stewardship Fund offices.

16. The Association believes that there were transactions “in flight” at that time and that the related collateral files and other materials may have been delivered well after the fact or

may still be in transit or otherwise undelivered even today. When members of the Association questioned the Receiver about this possibility he offered to “send an email” to Halo to ask if such boxes had been delivered or not. When the Association raised the concern that Halo might liquidate assets that are rightfully the estate’s after the settlement, the Receiver asserted that such transactions would “show up,” but articulated no remedy. Now the Receiver has proposed a settlement that would release Halo from any liability for any future conduct related to any collateral that might be in its possession, presumably including any claims of fraud for failing to disclose the collateral to induce the settlement.

17. Further, the Association has long held and repeatedly voiced concerns about the circumstances surrounding the transfer of the Stewardship operations to Halo and possibility of fraud. Before the Receiver filed the Motion, Members of the Association urged him to not agree to release any undiscovered claims for fraud.

18. Further, the Association asserts a concern that the remedy the Receiver seeks may violate the due process rights of claimants who have previously settled and investors who have not asserted claims in the receivership.

III. PRAYER

For these reasons, the Association requests a hearing to address the Receiver’s Motion and this Opposition and Objections filed in response, and at the conclusion of the hearing prays that the Court sustain the Association's objections and deny the relief requested in the Receiver’s Motion. The Association further prays for such other and further relief that the Court deems just.

Dated: September 13, 2013

Respectfully submitted,

KANE RUSSELL COLEMAN & LOGAN PC

By: /s/ Bruce Flowers

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**ATTORNEYS FOR STEWARDSHIP RECEIVERSHIP
CLAIMANTS ASSOCIATION**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *has* been served via the Court's ECF system on this 13th day of September, 2013.

By /s/ Bruce Flowers

Bruce M. Flowers