

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. 4:11-cv-655
	§	
JAMES G. TEMME and STEWARDSHIP FUND, LP,	§	
	§	
<i>Defendants.</i>	§	

RECEIVER’S MOTION TO APPROVE SETTLEMENT, FOR ENTRY OF BAR ORDER, TO ALLOW AND PAY PROFESSIONAL FEES, AND BRIEF IN SUPPORT

Receiver Keith Aurzada (the “Receiver”), in his capacity as receiver for James G. Temme (“Temme”), Stewardship Fund, LP (“Stewardship Fund”), and all entities under their control (collectively, the “Receivership Estate” or the “Estate”), files this Motion to Approve Settlement, for Entry of Bar Order, and to Allow and Pay Professional Fees, and respectfully shows the Court as follows:

PRELIMINARY STATEMENT

The Securities and Exchange Commission initiated this matter alleging claims that Temme and Stewardship Fund engaged in securities fraud in the solicitation and sale of packages of non-performing mortgages and other dealings that caused investors to lose millions of dollars. The Receiver was appointed to take over the Receivership Estate and to marshal and pursue recovery of assets.¹ After entry of the Receivership Orders, the Receiver, with the assistance of litigation counsel, conducted a factual and legal investigation of potential claims against third parties to identify sources of recovery, including reviewing voluminous documents, subpoenaing

¹ See Agreed Order Appointing Receiver Over Entities Under Control of James G. Temme (Doc. 24), Agreed Order Appointing Receiver Over Stewardship Fund, LP, and Related Entities (Doc. 25), and Order Appointing Receiver Over James Temme (Doc. 30) (collectively, the “Receivership Orders”).

records, and evaluating the strengths and weaknesses of potential claims. To date, the Receiver has already recovered more than \$1,400,000 in cash and certain other valuable assets for the Estate, including the relinquishment of claims against the Estate valued in excess of \$1,000,000.

During the Receiver's ongoing investigation, the Receiver identified an investment group that engaged in substantial dealings with Stewardship Fund and Temme that gave rise to potential claims for recovery, including certain entities under the Home Solutions and Harbour Portfolio umbrella, as well as their principals, Charles A. Vose, III ("Vose"), Edward C. Lasater, II, and Duncan A. Lee (collectively, the "HSP/Harbour Parties").² The Receiver prepared for litigation against the HSP/Harbour Parties, but before filing suit, the Receiver and the HSP/Harbour Parties engaged in a dialogue to address litigation alternatives. After extensive negotiations, the Receiver has determined that it is in the best interest of the Receivership Estate to enter into a Compromise and Settlement Agreement and Full, Final, and Mutual Release of Claims (the "Settlement Agreement") to resolve claims involving the HSP/Harbour Parties, conditioned upon this Court's approval. *See* Settlement Agreement (Ex. 1 at 1-18). Under the proposed settlement, which is conditioned upon the entry of a bar order by this Court (*see* Exhibit A to Settlement Agreement, Ex. 1 at 14-18), the HSP/Harbour Parties will make a payment of \$550,000 to the Receiver for the benefit of the Receivership Estate.

In the Receiver's legal and business judgment, the proposed settlement is prudent and advantageous to the Receivership Estate and represents a substantial recovery in light of the potential defenses expected to be asserted by the HSP/Harbour Parties—without the burden and

² The HSP/Harbour Parties, as used herein, are Home Solutions Capital, LLC, Home Solutions GP, LP, Home Solutions Advisors, LLC, Home Solutions Partners I, LP, Home Solutions Partners I REO, LLC, Home Solutions Partners III, LP, Home Solutions Partners III REO, LLC ("HSP III"), Home Solutions Partners IV, LP, Home Solutions Partners IV REO, LLC ("HSP IV"), Harbour Portfolio Advisors, LLC, Harbour Portfolio Capital, LLC, Harbour Portfolio GP, LP, Harbour Portfolio V, LLC ("Harbour V"), and Harbour Portfolio VI, LP, and affiliates, partners, and employees.

risk of protracted litigation. The Settlement Agreement will benefit the Receivership Estate and its legitimate claimants, if approved by the Court, and will result in the prompt recovery of cash.

The proposed bar order (the “Bar Order”) requested in connection with the settlement would bar and enjoin other parties from attempting to pursue claims against the HSP/Harbour Parties and related parties in connection with their involvement with the Receivership Estate. *See* Bar Order (Ex. 1 at 14-18). The Bar Order is consistent with the Order (Doc. 162) entered on November 11, 2012 (the “2012 Bar Order”) granting similar relief in connection with the Receiver’s settlement with another investment group, as well as with the Receivership Orders and the Order Denying Lifting Stay (Doc. 135). This relief will prevent duplicative and piecemeal litigation that would only dissipate the limited assets of the Receivership Estate (and thus reduce the amounts ultimately distributed by the Receiver to the claimants). The Bar Order will also protect the HSP/Harbour Parties from re-litigation of potentially duplicative liabilities.

In reaching the proposed settlement, the Receiver engaged litigation counsel, Jeffrey Goldfarb and associates with the law firms of Goldfarb LLP and then Hicks Thomas LLP (collectively, “Litigation Counsel”), to assist with the investigation and prosecution of potential claims against the HSP/Harbour Parties, as well as the negotiation of the Settlement Agreement. In this Motion, the Receiver requests approval by the Court for the payment of legal fees to Litigation Counsel pursuant to their engagement agreements in the total amount of \$105,763.18, subject to amendment for additional fees incurred in connection with the settlement approval process.

Accordingly, the Receiver respectfully requests that the Court approve the Settlement Agreement, enter the Bar Order, allow for the payment of professional fees to the Receiver’s Litigation Counsel, and grant all other relief deemed just and proper.

FACTUAL BACKGROUND

A. The Receiver has identified potential claims involving transactions with certain of the HSP/Harbour Parties.

From about 2009 through 2011, certain of the HSP/Harbour Parties invested with and engaged in transactions involving Stewardship Fund and Temme in connection with the purported purchase, sale, and servicing of mortgage notes, as well as other real estate dealings. The Receiver has identified potential claims relating to transactions involving HSP III, HSP IV, and Harbour V, which are HSP/Harbour Parties, and summarized as follows:

1. The HSP III Repurchase.

In December 2009, HSP III transferred \$1,562,875.78 to Stewardship Fund, which HSP III claims to have been paid pursuant to a purchase agreement for 267 REO assets that were never transferred by Stewardship Fund. The Receiver's investigation has included reviewing the agreement and confirming that the payment was, in fact, made by HSP III. In March 2011, after the 267 REO assets were not delivered to HSP III, HSP III and Stewardship Fund entered into a different contract for the alleged "repurchase" of the 267 REO assets by Stewardship Fund in exchange for \$1,821,305.80. HSP III contends that these transactions involved the same 267 REO assets, and the Receiver has not found any documents suggesting the contrary. In May 2011, the bank account of Destiny Fund II, LP, one of the entities in the Receivership Estate, was used to transfer the \$1,821,305.80. The Receiver has evaluated claims against HSP III associated with these transactions, included a claim to recover the "net profit" of \$258,430.02.

2. The HSP IV Transactions.

In June 2010, HSP IV entered into two contracts to purchase about 904 notes from a different Stewardship Fund investment group in exchange for the payment of \$11,200,000. HSP IV transferred the purchase price into an escrow account with a title company. After HSP IV

purchased 562 of the notes, on December 28, 2010, HSP IV received a transfer of \$5,486,424, which was the balance in the escrow account for the transaction. There is a dispute as to the legal justification, if any, for the HSP/Harbour Parties' failure to complete the transaction by purchasing all of the properties as originally agreed. The HSP/Harbour Parties contend that HSP IV was fraudulently induced by Temme to enter these transactions to involve performing loans (even though they included non-performing loans), the seller failed to fully perform under the contracts, and that a settlement between Temme and the seller (before the Receiver's appointment) raises potential issues with the Receiver's standing to assert claims against HSP IV. The Receiver considered claims to recover the value associated with HSP IV's receipt of \$5,486,424 in lieu of complete performance under the contracts by purchasing all of the notes.

3. The Harbour V Assignment.

Temme was a 33% equity member of Harbour V, along with Vose and another investor. According to Vose, Temme received his equity interest in exchange for obtaining financing for Harbour V to purchase certain REO assets. Based on the Receiver's investigation, Temme represented that an investor group would obtain equity in a Stewardship affiliate that was purportedly purchasing the same REO assets, but the assets were titled in the name of Harbour V. In July 2011, Temme assigned his 33% equity membership interest in Harbour V to Vose in response to a demand relating to Vose's concerns with respect to certain of the transactions involving the Receivership Estate and the HSP/Harbour Parties or affiliates. In addition, Vose apparently incurred obligations and indebtedness in connection with Harbour V, and Vose contends that he required Temme to relinquish his interest in Harbour V in connection with Vose's obligations and resolution of certain Harbor V-related liabilities. The Receiver may have potential claims to recover the value of Temme's equity interest in Harbour V that was

transferred to Vose, but the value of Temme's equity interest is difficult to determine with precision.

B. The HSP/Harbour Parties retained counsel and raised defenses that would need to be overcome in litigation.

The HSP/Harbour Parties retained outside litigation counsel to oppose and defend against the Receiver's potential claims against the HSP/Harbour Parties and to facilitate settlement negotiations. In the ensuing negotiations, the HSP/Harbour Parties and their counsel advised the Receiver that they would raise a number of legal and factual defenses to the Receiver's claims. The HSP/Harbour Parties made clear to the Receiver that they firmly believe that they did nothing wrong in their dealings with the Receivership Estate, and that they would prevail in litigation. Counsel for the HSP/Harbour Parties has indicated that counsel was directed to provide an aggressive defense to the Receiver's claims if asserted in litigation, which could potentially result in long, expensive, and risky litigation.

1. The HSP/Harbour Parties Contend to be Overall "Net Losers."

The HSP/Harbour Parties assert that they are "net losers" in their overall transactions with Stewardship Fund and Temme, and that HSP III, HSP IV, and Harbour V may have claims against the Receivership Estate. If the Court were to find that the relevant parties were "net losers," then the Receiver may not be entitled to all of the relief sought.

2. The Offset Defense.

The HSP/Harbour Parties contend that, even if HSP III, HSP IV, and Harbour V received more than reasonably equivalent value for the transactions subject to the Receiver's potential claims, the HSP/Harbour Parties would be entitled to offset these amounts by their overall net losses from dealings with Stewardship Fund. The HSP/Harbour Parties contend that the offset defense would negate the Receiver's recovery.

3. HSP III's Value and Antecedent Debt Defenses.

The HSP/Harbour Parties intend to defend against the Receiver's potential claims against HSP III by contending that the \$258,430.02 difference in the amounts transferred between HSP III and Stewardship Fund were in exchange for value based on time, effort, and capital expended. Further, HSP III will claim that the \$1,821,305.80 transfer was made to satisfy a valid antecedent debt, which could pose a significant roadblock to the Receiver's recovery.

4. HSP IV's Performance Defense and Standing.

The HSP/Harbour Parties contend that the HSP IV's transactions were not completed due to failure of complete performance by the Stewardship Fund investment entities, not HSP IV. Further, they have raised potential defenses regarding the Receiver's standing to recover based on claims involving the subject transaction due to a prior settlement before the Receiver's appointment. These defenses could potentially impair the Receiver's potential recovery.

5. Harbour V's Value Defense.

The HSP/Harbour Parties assert that Temme assigned his membership interest to Vose in Harbour V as part of the consideration for Vose's efforts relating to Harbour V, including adding additional capital, paying expenses, and mitigating and resolving certain third-party claims (which could have created additional liabilities against Temme and the Receivership Entities). This affirmative defense based on exchanging reasonably equivalent value would have to be proven by Harbour V and Vose; however, Vose's capital does appear to have provided at least some value to Harbour V.

ARGUMENT & AUTHORITIES

A. The Receiver has entered the Settlement Agreement, subject to the Court's approval, in good faith and consistent with his Court-appointed duties.

A federally appointed receiver is permitted to enter into settlement agreements so long as he does so in good faith, within the terms of his appointment, and without misconduct, gross negligence, or criminal intent. *See, e.g., SEC v. Funding Resource Group*, No. 3-98-CV-2689-M, 2003 WL 21500431, at * 1 (N.D. Tex. April 22, 2003); *Hawk v. Williams*, No. Civ. A. 2:01-CV-2615, 2002WL 31255096, at *5 (N.D. Tex. Oct. 4, 2002); *Brewer v. Hill*, 453 F.Supp. 67, 69 (N.D. Tex. 1978). In this case, the proposed Settlement Agreement between the Receiver and the HSP/Harbour Parties meets these standards and comports with the Receiver's duties as conferred by the Court in the Receivership Orders. Receivership Orders at ¶ 5 (Docs. 24, 25, 30).

The Receiver believes in good faith that the Settlement Agreement with the HSP/Harbour Parties is in the best interest of the Receivership Estate, as it will result in the payment by the HSP/Harbour Parties of \$550,000 to the Receiver for the benefit of the Receivership Estate (and thus its claimants). *See* Settlement Agreement (Ex. 1 at 1-18). The Receiver has evaluated the evidence, engaged in multiple, substantive conferences with the HSP/Harbour Parties, and reviewed the legal and evidentiary strengths and weaknesses of claims that could be pursued in litigation. (As discussed above, the HSP/Harbour Parties disclosed a series of defenses they would assert to any claims.) After engaging in this diligence process and consulting with separate counsel, the Receiver has determined that the best interests of the Receivership Estate are served by entering into the Settlement Agreement. The Receiver respectfully requests that the Court approve the Settlement Agreement.

B. The Bar Order is essential to permit the Receiver to collect and manage assets for the Receivership Estate, and to prevent the burden of duplicative litigation.

A district court has broad authority to issue blanket stays of litigation (such as the proposed Bar Order) to help further the goals of the receivership by preserving property of the Receivership Estate. *SEC v. Kaleta*, Civ. Act. No. 4:09-3674, 2012 WL 401069, at *3-4 (S.D. Tex. Feb. 7, 2012) (citing *SEC v. Byers*, 609 F.3d 87, 92 (2d Cir. 2010)); *SEC v. Stanford Int'l Bank Ltd.*, 424 F. App'x. 338, 340-41 (5th Cir. 2011); *Liberte Capital Group, LLC v. Capwill*, 462 F.3d 543, 551-52 (6th Cir. 2006)).

In consideration of the proposed settlement with the HSP/Harbour Parties, the Receiver respectfully requests that the Court enter the Bar Order submitted with the filing of this Motion. *See* Settlement Agreement at ¶ 10 (Ex. 1 at 4, 14-18). The HSP/Harbour Parties will not complete the settlement in the absence of a Bar Order. *Id.* The Bar Order grants relief similar to that already ordered by the Court in the context of a prior settlement. The relief requested in the Bar Order is consistent with the relief granted in the 2012 Bar Order (Doc. 162) to another investment group associated with Stewardship Fund and Temme, as well as the litigation stay restraining claimants from pursuing legal action to recover based on the Receiver's claims. *See* Receivership Orders (Docs. 24, 25, 30). Further, in the Court's Order Denying Lifting Stay (Doc. 135), the Court held that a certain group of investors was not entitled to lift the litigation stay imposed by the Receivership Orders to pursue certain claims against the HSP/Harbour Parties. The Receiver believes the Bar Order will benefit the Receivership Estate and the claims process.

Federal courts have considered the following non-exclusive factors in connection with determining whether to enter relief such as the Bar Order: (1) value of the proposed settlement; (2) value and merits of the Receiver's potential claims; (3) value and merits of any foreclosed parties' potential claims; (4) complexity and costs of future litigation; (5) risk that litigation

would dissipate the receivership assets; (6) implications of any satisfaction of an award on other claimants; and (7) any other equities attendant to the situation. *Kaleta*, 2012 WL 401069, at *4.

Here, the factors weigh in favor of entry of the Bar Order, as: (1) the HSP/Harbour Parties have agreed to make a substantial payment of \$550,000 to the Receiver; (2) the settlement payment represents a significant recovery for the Receiver, while avoiding the costs, burden, delay, and litigation risks associated with protracted litigation; and (3) the actions sought to be enjoined by the Bar Order would restrain third parties from attempting to recover from the HSP/Harbour Parties in a manner that is inconsistent with the Receivership Orders (Docs. 24, 25, 30), 2012 Bar Order (Doc. 162), and Order Denying Lifting Stay (Doc. 135).

The Bar Order will benefit the Receiver and the claimants of the Receivership Estate, as it will prevent duplicative litigation against the HSP/Harbour Parties and potentially the Receivership Estate, which would dissipate Receivership assets. Legitimate claimants would still be permitted to pursue the claims process in the Receivership, and the settlement payment by the HSP/Harbour Parties will provide funds for allowed claims. The Receiver respectfully requests that the Court enter the Bar Order based on equity and under the Settlement Agreement.

C. Litigation Counsel’s legal services have resulted in a substantial recovery by the Receiver, and the Receiver requests permission to pay professional fees.

By its appointment orders, the Court directed and authorized the Receiver to “[e]nter into such agreements in connection with the administration of the Receivership Estate, including, but not limited to, the employment of ... attorneys ... as Receiver judges necessary to perform the duties set forth in this Order and to compensate them from the Receivership Assets[.]” Receivership Orders at ¶ 5(h) (Docs. 24, 25, 30). The Receiver engaged Litigation Counsel in order to assist him with performing his duties, including conducting a pre-suit investigation and

diligence into the claims and defenses, pursuing a recovery, and negotiating a compromise of the claims relative to the HSP/Harbour Parties. *See id.* at ¶¶ 5(h)-(i).

The HSP/Harbour Parties have agreed to make a settlement payment to the Receiver in the amount of \$550,000, subject to the Court's approval of the Settlement Agreement and entry of the Bar Order. After the HSP/Harbour Parties make payment to the Receiver, the Receiver respectfully requests that the Court authorize the Receiver to pay fees and expenses to Litigation Counsel pursuant to retention agreements with the Receiver in the total amount of \$105,763.18.

The Receiver's engagement with the same principal Litigation Counsel (Jeffrey Goldfarb and associate attorneys) is governed by two agreements as a result of Litigation Counsel's change of firms. The Receiver retained Goldfarb LLP to perform legal services in this matter from December 1, 2012 through February 10, 2013. The Receiver agreed to compensate Goldfarb LLP partner Jeffrey Goldfarb at a reduced rate of \$225 per hour and associates Todd Goldberg and Keith Koshkin at a reduced rate of \$125 per hour. Based on this arrangement, Goldfarb LLP's attorney's fees were \$17,818.75 in total. Mr. Goldfarb's fees were \$3,093.75 (13.75 hours), Mr. Goldberg's fees were \$10,425.00 (83.4 hours), and Mr. Koshkin's fees were \$4,300.00 (34.4 hours). The rates reflect a 50% reduction of then-standard rates. The Receiver also agreed to reimburse Goldfarb LLP for expenses in the total amount of \$224.53.

As of February 11, 2013, Mr. Goldfarb and the same associate attorneys joined the law firm of Hicks Thomas LLP, and under the Receiver's engagement agreement with Hicks Thomas, the Receiver agreed to compensate partners Mr. Goldfarb and Matthew Rawlinson at a reduced rate of \$225 per hour, associate attorneys at a reduced rate of \$125 per hour, and paralegals at a reduced rate of \$75 per hour. In addition, the Receiver agreed that Hicks Thomas would receive a contingency fee in the amount of 10% of the total recovery. If the claims were

settled after the institution of litigation, the percentage would have increased. Hicks Thomas' attorney's fees for this matter were \$87,577.50 in total. Mr. Goldfarb's fees were \$4,995.00 (22.2 hours), Mr. Goldberg's fees were \$23,425.00 (187.4 hours), Mr. Koshkin's fees were \$1,112.50 (8.9 hours), and Matthew Rawlinson's fees were \$2,947.50 (13.1 hours). Paralegals' fees were an additional \$97.50 (1.3 hours). The hourly fees were \$32,577.50 in total, which when added to the 10% contingency fee ($\$550,000 \times 10\% = \$55,000$), equals \$87,577.50 in total fees for services performed for the Receiver. In addition, the Receiver agreed to compensate Hicks Thomas for expenses, which equaled a total amount of \$142.40.

If the Court approves the Settlement Agreement and enters the Bar Order, the Receiver and Litigation Counsel will have obtained a substantial recovery for the Receiver from the HSP/Harbour Parties in the net amount of approximately \$444,236.82. Based on the benefits conferred by legal services rendered, the Receiver believes that payment of the requested amount of professional fees to Litigation Counsel is reasonable. *See, e.g., SEC v. Ruderman, et al.*, No. CV 09-02973 ODW (JCx), 2011 WL 5857452, at *4-5 (C.D. Cal. Nov. 21, 2011) (approving an SEC receiver's request to pay fees to counsel and holding that a 33% contingency fee represented a reasonable amount of fees incurred in connection with achieving settlement of claims); *see also Barrera v. Nat'l Crane Corp.*, SA-10-CV-0196 NN, 2012 WL 242828 (W.D. Tex. Jan. 25, 2012) ("...the lodestar method does not quite fit a contingent fee arrangement, [but] the *Johnson* factors are helpful in determining reasonableness of a[n] award.").

The Receiver believes that Litigation Counsel has performed under their fee agreements and, should the Settlement Agreement be approved, the Receiver will have made a substantial recovery. The Settlement Agreement is a favorable result for the Receivership Estate, as it will result in immediate liquidity in addition to saving significant time, resources, delay, and risk.

Litigation Counsel assisted the Receiver with the factual and legal investigation, evaluation, and prosecution of the claims, as well as the negotiation and drafting of the settlement and associated agreements with the HSP/Harbour Parties.

Based on these factors, and in light of the circumstances of the legal representation, the Receiver respectfully requests that the Court allow the Receiver to provide compensation for legal services and reimbursement for expenses to Litigation Counsel in the total amount of \$17,961.15 for Goldfarb LLP's services and \$87,802.03 for Hicks Thomas' services, subject to supplementation for additional fees and expenses incurred in connection with obtaining the relief requested in this motion.

CONCLUSION & PRAYER FOR RELIEF

The Receiver has reached a Settlement Agreement with the HSP/Harbour Parties that, if approved by the Court, will result in a substantial recovery for the benefit of the Receivership Estate, as well as the release of claims that the HSP/Harbour Parties contend to constitute an additional \$150,000 in consideration. This potential recovery, in the face of credible defenses by the HSP/Harbour Parties, will facilitate the Receiver's effort to fulfill his duties conferred by the Court in the Receivership Orders. Likewise, the entry of the requested Bar Order will benefit the Receivership Estate by enabling the Receiver to obtain a significant settlement payment from the HSP/Harbour Parties and, in accordance with the Court's prior rulings, would prevent duplicative and unnecessary litigation and the dissipation of the Receiver's limited assets. The Receiver believes that the substantial recovery from the HSP/Harbour Parties contemplated by the Settlement Agreement, in accordance with his Court-ordered duties, will provide a benefit to the Receivership Estate and its claimants. Accordingly, the Receiver respectfully requests that the Court grant this motion, approve the Settlement Agreement, enter the Bar Order, allow for

the payment of professional fees to Litigation Counsel, and grant all other relief deemed just and proper.

Dated: October 10, 2013

Respectfully submitted,

By: /s/ Jeffrey Goldfarb

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**ATTORNEYS FOR RECEIVER
KEITH M. AURZADA**

CERTIFICATE OF CONFERENCE

I hereby certify that Brad Purcell has conferred with David Reece, counsel for the U.S. Securities & Exchange Commission, and that the S.E.C. does not object to the motion.

/s/ Jeffrey Goldfarb

Jeffrey Goldfarb

CERTIFICATE OF SERVICE

On October 10, 2013, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court for the Eastern District of Texas using the CM/ECF system, which will send a notice of electronic filing to all counsel of record. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2) and the Court's Local Rules. Moreover, the foregoing will be uploaded to www.stewardshipfundreceivership.com

/s/ Jeffrey Goldfarb

Jeffrey Goldfarb