

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE	§	
COMMISSION	§	
	§	
v.	§	Case No. 4:11-CV-655
	§	Judge Clark/Judge Mazzant
JAMES G. TEMME and STEWARDSHIP	§	
FUND, LP	§	

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the Motion to Approve Settlement Agreement with Halo Companies, Inc. (Dkt. #244). On September 13, 2014, the Stewardship Receivership Claimants Association (the "Association") filed objections to the motion (Dkt. #253). Also on September 13, 2013, nonparties to this action and investors, Bruce Berg, Stuart Cartner, Kevin Doyle, Walter Haydock, Edward Leh, Kevin Murphy, Philip Schantz, DAIS Partners, LP, Singer Bros., LLC, Skeleton Lake, LLC, and Wildcat Lake Partners filed a Response in Opposition to the Receiver's Motion to Approve Settlement Agreement with Halo Companies, Inc. (Dkt. #255).

The Receiver seeks the Court's approval of a settlement agreement (the "Settlement") with Halo Companies, Inc. ("Halo"). The Receiver believes that the Settlement is in the best interest of the estate and will maximize the recovery for the investors in the Receivership Entities. Under the terms of the Settlement: Halo will transfer to the Receiver \$250,000 by checks payable to "Keith Aurzada, Receiver" payable in monthly increments of \$20,833.33 for twelve months; Halo will provide the Receiver with continued access to and use of the AMX or other systems for the duration of receivership proceedings and Halo will not bring a claim for administrative expense for use of the AMX System; The Receiver will return to Halo the Shares; Halo will release any claims it may have against the Receivership Estate arising from their business dealings with the Receivership Entities

and the Receiver shall release Halo from any claims relating to any transactions or business dealing with the Receivership Entities; and the Parties request that the Court enter an Order permanently barring or enjoining all Stewardship Creditors from commencing or continuing any legal proceeding against Halo arising out of or in connection with the investments made in any Receivership Entity by the Stewardship Creditors, and any transfers received by Halo from the Receivership Entities.

On September 23, 2013, the Court entered an Order stating that it did not have sufficient information to make a decision that the approval of this settlement would be in the best interest of the estate. The Court noted that the Association asserted the following:

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.

The Association also asserted the following: (1) that the Receiver has offered no evidence regarding the value of the stock the estate holds in Halo; (2) the Receiver has not identified or explained the potential claims between the estate and Halo, their value, or their viability; (3) the Receiver has offered no evidence of Halo's financial condition; and (4) the Receiver has offered no evidence regarding the value of AMX software which Halo claims to own. The Court shared some of these concerns and needed answers before deciding how to proceed. The Court instructed the Receiver to address each of these concerns in the reply. On September 25, 2013, the reply was filed (Dkt. #268). Also, on September 25, 2013, the Finch & Barry Group filed its Opposition and Objections to the Receiver's Motion to Approve Settlement with Halo Company, Inc. (Dkt. #269). On October 2, 2013, a sur-reply was filed (Dkt. #275). On October 4, 2013, the Association filed a sur-reply

(Dkt. #279).

After considering all of the briefing on this matter, the Court finds that its questions have been sufficiently answered and that the settlement should be approved as being in the best interest of estate. The Court sees no need for a hearing on this matter.

RECOMMENDATION

Based upon the findings discussed above, the Court RECOMMENDS that the Motion to Approve Settlement Agreement with Halo Companies, Inc. (Dkt. #244) be **GRANTED**.

Within fourteen (14) days after service of the magistrate judge's report, any party must serve and file specific written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.

Failure to file specific, written objections will bar the party from appealing the unobjected-to factual findings and legal conclusions of the magistrate judge that are accepted by the district court, except upon grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *See Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superceded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

SIGNED this 4th day of November, 2013.


AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE