

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

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

vs.

**JAMES G. TEMME,
STEWARSHIP FUNDS, LP**

Defendants.

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**Civil Action No. 4:11-CV-00655
(ORAL ARGUMENT REQUESTED)**

**OBJECTION TO MAGISTRATE’S NOVEMBER 4, 2013 REPORT AND
RECOMMENDATION GRANTING THE RECEIVER’S MOTION TO
APPROVE SETTLEMENT WITH HALO COMPANIES, INC.**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

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 (collectively, the “Investors”) hereby object to the Magistrate’s Report and Recommendation (“Report”) granting the Receiver’s Motion to Approve Settlement with Halo Companies, Inc. In support of their objection, the Investors state as follows:

BACKGROUND

On August 28, 2013, the Receiver filed a Motion to Approve Settlement Agreement with Halo Companies, Inc. (“Halo”). The essential terms of the Settlement are:

1. Halo will pay the Receiver \$250,000 over the twelve months;
2. Halo will provide the Receiver with continued access to and use of the AMX or other software systems for the duration of receivership proceedings, and Halo will not bring a claim for administrative expense for use of the AMX System;
3. The Receiver will return to Halo shares in Halo Temme/Stewardship received prior to the Receivership proceedings.
4. Halo will release any claims it may have against the Receivership Estate arising from its business dealings with the Receivership Entities;
5. The Receiver will release Halo from any claims relating to any transactions or business dealing with the Receivership Entities; and
6. Halo and the Receiver will request that the Court enter an Order permanently barring or enjoining all Stewardship Creditors (including the Investors) 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.

Essentially all of the beneficiaries of the Receivership Estate objected to the Receiver’s Motion. The Stewardship Receivership Claimants Association (“Association”) filed an Objection to the Motion on September 13, 2013 (Dkt. #253) and a Sur-Reply on October 4, 2013 (Dkt. #279). The Investors filed a separate Objection on September 13 (Dkt. # 269) and a Sur-Reply on October 2, 2013 (Dkt. #275).

As set forth in the Report, the Association asserted, *inter alia*, (1) that the Receiver offered no evidence regarding the value of the Halo stock the Estate holds; (2) the

Receiver did not identify or explain the potential claims between the Estate and Halo, their value, or their viability; (3) the Receiver offered no evidence of Halo's financial condition; and (4) the Receiver offered no evidence regarding the value of AMX software which Halo claims to own.

The Investors objected to the Settlement on the grounds that:

1. The proposed “Bar Order” enjoining litigation against Halo by nonparties (including the Investors) is not justified under the facts or the law.

2. The Receiver grossly undermines the value and merit of the Receivership Estate’s claims against Halo. The Receiver maintains that recovery of the \$1,164,100 in payments Halo received from Stewardship/Temme is unlikely because those payments were likely payments for services, inasmuch as they approximate the dates and amounts of roughly \$350,000 of invoices. As the Investors stated in their Objection, the Receiver’s position is untenable in light of Halo’s own records, including emails from Halo’s CEO/Chairman/Director, Cade Thompson, (attached to Investors’ Response - Dkt. No. 255), unambiguously indicating that the transfers Halo received from Temme were loans wholly unconnected to any services Halo might have provided.

3. The Receiver’s Motion and Reply fail to grasp the nature and value of the Investors’ claims. While the Investors’ claims against Halo relate, in part, to transfers between Temme/Stewardship and Halo, not all of them do. Moreover, many of the Investor’s claims against Halo have independent legal bases that cannot be asserted by the Receiver; they can only be asserted by the Investors. Specifically, the Investors’ claims against Halo are based in large part on the breach of legal duties owed by Halo to Investor’s Objection to Magistrate’s Report and Recommendation

the Investors. The Investors' claims against Halo are worth approximately \$5,000,000 (as evidenced in the state court Complaint against Halo attached to the Investors' Objection), far in excess of the \$250,000 proposed in the settlement. And any recovery by the Investors on these claims will inure to the benefit of the Receivership Estate, directly reducing the Investors' claims against the Estate (and thereby increasing the distribution to other Estate creditors.

The Magistrate's Report did not make any specific rulings on any of these objections – neither the Association's nor the Investors'. With regard to the Associations objections, the Report states only that the Magistrate had questions about certain issues and that the Receiver "sufficiently answered" those questions. The Report provides no analysis or discussion of how or why the Receiver's answers were satisfactory. And the Report makes absolutely no mention, let alone an analysis, of the Investors' objections.

ARGUMENT

Upon a timely and specific objection, a district court is required to "make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1)(C). *See also Longmire v. Guste*, 921 F.2d 620, 623 (5th Cir. 1991) (party is "entitled to a *de novo* review by an Article III judge as to those issues to which an objection is made"); *Alazan-Apache Resident Ass'n v. San Antonio Housing Authority*, 885 F.Supp. 949, 951 (W.D. Tex. 1995).

The Investors' Objection to the Magistrate's Report here is both timely and specific – although the specificity requirement poses a challenge here because the Investor's Objection to Magistrate's Report and Recommendation

Magistrate's report is wholly devoid of any discussion of the Investor's objections, and its discussion of the Associations objections were conclusory at best. Put simply, in the absence of any discussion of the Investors' objections to the Settlement and the Receiver's Motion for approval thereof, and no actual findings on the Association's objections, a *de novo* review of the entire matter is warranted.

Finally, the only specific finding that can be culled from the Report, *i.e.*, that the settlement is in the best interests of the Receivership Estate, is belied by the fact that the Association and Investors, who represent essentially all of the beneficiaries of the Estate have objected to the Settlement. If the beneficiaries, who by their pleadings have demonstrated that they are fully cognizant of the risks associated with litigating the Receivership Estate's claims against Halo, have determined that the Settlement is not in their interests, how can the Receiver (even with the Magistrate's imprimatur) continue to assert that it is?

III. CONCLUSION

For the reasons set forth above, the Investors respectfully request that this Court decline the Magistrate's Report and Recommendation. It is devoid of any specific rulings on any issue raised in the underlying pleadings; it fails to even mention the Investors' substantive Objections; and it reaches an illogical conclusion. The Investors urge the Court to conduct a *de novo* review of the entire matter by conducting an oral argument on the matter and by soliciting additional briefing or considering all of the pleadings previously filed by the Association and the Investors.

DATED: November 18, 2013

Respectfully submitted,

/s/ David W. Lunn

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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who are deemed to have consented to electronic service are being served per Local Rule 5.1(d) with a copy of the foregoing via the Court's CM/ECF system on this 18th day of November, 2013.

/s/ David W. Lunn

David W. Lunn