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

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff	:	
v.	:	Civil Action No. **4:11-CV-00655-MHS**
JAMES G. TEMME, and STEWARDSHIP FUND, LP,	:	
Defendants,	:	

STEWARDSHIP RECEIVERSHIP CLAIMANTS ASSOCIATION'S OBJECTION TO THE REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE [DOC. 290]

Stewardship Receivership Claimants Association (the "Association") files this Objection to the Report and Recommendation (the "Recommendation") of the United States Magistrate Judge (the "Magistrate") regarding the Receiver's proposed settlement with Halo Companies, Inc. ("Halo") as follows:

BACKGROUND

1. On August 28, 2013, the Receiver filed a Motion to Approve Settlement Agreement ("Motion") with Halo. The essential terms of the proposed Settlement are:

   a. Halo will pay the Receiver $250,000 over twelve months;

   b. 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;

c. The Receiver will return to Halo shares in Halo that Temme/Stewardship received prior to the Receivership proceedings.

d. Halo will release any claims it may have against the Receivership Estate arising from its business dealings with the Receivership Entities;

e. The Receiver will release Halo from any claims relating to any transactions or business dealing with the Receivership Entities; and

f. Halo and the Receiver will request that the Court enter an Order permanently barring or enjoining all Stewardship Creditors (which would include all members of the Association) 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.

2. Nearly all of the beneficiaries of the Receivership Estate have objected to the Receiver's Motion. The Association filed its Objection to the Motion on September 13, 2013 [Doc. 253] and a Sur-Reply on October 4, 2013 [Doc. 279]. The "Berg Parties" filed a separate Objection on September 13 [Doc. 255] and a Sur-Reply on October 2, 2013 [Doc. 275]. And the Finch & Berry Group filed an Objection on September 25 [Doc. 269].

3. In its Objection to the Motion, the Association raised concerns that the Receiver's proposed settlement does not appear to be in the best interest of the estate. Primarily, the Association stated its concerns about the lack of information regarding several aspects of the proposed settlement with Halo.

4. As relayed in the Recommendation, in a September 23, 2013 Order, the Magistrate indicated that he "shares some of these concerns and needs answers before deciding how to proceed." [Doc. 262]. At that time, the Magistrate stated:

> 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.

5. The Magistrate also asked the Receiver to address the following concerns of the Association:

> (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.

6. The Receiver filed a reply on September 25, 2013 [Doc. 268], to which the Association filed a sur-reply [Doc. 279], as did the Berg Parties [Doc. 275].

7. The Magistrate then issued his Recommendation [Doc. 290] in which he restated the above background and then concluded without explanation:

> 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.

8. After receiving an extension of time to object to the Recommendation [Doc. 298], the Association now files this Objection.[1]

[1] The Association had requested another unopposed extension of time to file an objection while it met with the Receiver and sought further investigation of Halo's conduct relevant to the Stewardship entities and the claimants' investments. This request was denied December 20, 2013.

ARGUMENT

9. 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").

A. The Recommendation Lacks Specificity

10. This Objection is timely. However, as the Berg Parties note in their objection [Doc. 295], meeting the specificity requirement of section 636 is difficult here because the Recommendation simply concludes that the issues raised by the Berg Parties' and Association's respective objections were "sufficiently answered," without providing any specific findings. The only apparent finding—that the settlement "is in the best interest of the estate" is conclusory and lacks factual foundation. Likewise, the recommendation that "the settlement should be approved" is a broad conclusion that, as explained above, does not appear to rely on any articulated specific findings. The Association therefore incorporates here the Berg Parties' objection and requests that the Court either deny the Receiver's Motion or conduct a *de novo* review of the entire matter.

11. Specifically, although the Magistrate relisted in the Recommendation the seven concerns he raised in the September 23 Order that were not sufficiently addressed by the Receiver, the Magistrate did not explain in the Recommendation how the concerns were sufficiently answered, articulate what factual basis underlies his conclusion that his concerns were answered, or provide an analysis weighing the best interest of the estate. The Association

reiterates its objection that the Receiver failed to sufficiently answer the questions posed by the Magistrate as follows:

> (1) the Receiver has not adequately identified or explained the potential claims between the estate and Halo, their value, or their viability;
>
> (2) the Receiver has offered insufficient evidence regarding the value of the stock the estate holds in Halo or of Halo's financial condition, or that he has sufficiently investigated either; and
>
> (3) the Receiver has offered insufficient evidence regarding the value of AMX software which Halo claims to own.

For these reasons, and the reasons the Association has argued throughout these proceedings, the Association believes the Halo Settlement is not in the best interests of the estate.

B. The Association asserts that the Receiver neither adequately identified nor explained the potential claims between the estate and Halo, their value, or their viability.

1) The Association has provided both the SEC and the Receiver with information that would lead to evidence supporting claims of actionable wrongdoing against Halo.

12. The Association has neither the legal responsibility nor the authority to investigate or acquire evidence of fraud or other claims of the estate—those belong to the SEC and Receiver. That said, on November 29, 2011, the representatives of the Association provided to the SEC the name and contact information of a witness, Dustin Bates, who reported overhearing a conversation between Cade Thompson, CEO of Halo, and another party on November 4, 2010, in which they discussed, among other things, merging with Stewardship then "reshuffling the ownership" to push Jay [Temme, principal of Stewardship Fund] out in a way that "he would not know about." Mr. Bates took contemporaneous notes and subsequently informed several individuals. The declaration of Mr. Bates is attached as **Exhibit "A"**. The

Association asserts that, to its knowledge, no one from the SEC or the Receiver's office ever contacted Mr. Bates.

13. The Association maintains that the content of this conversation describes what, in fact, did happen. Shares were issued to Temme and Doug Furra to induce them to transfer all of the Stewardship assets, operations, business model, employees and intellectual property, as well as $1,287,000 in cash to Halo. These shares were purportedly subject to a claw-back agreement; however, there is no evidence that a claw-back agreement was ever executed by either Temme or Furra. The Association understands that Furra does not recall being informed about such an agreement and on that basis refused to return his shares when Halo demanded them. Further, the stock certificates bore a restrictive legend that did not reference the (unsigned) alleged claw-back agreement.

14. Additionally, members of the Association with knowledge of facts have made themselves available and have attempted to direct the SEC and Receiver to witnesses with knowledge of underlying facts regarding Halo, including former Stewardship Fund employees. In almost all cases, to the Association's knowledge, the SEC and Receiver have for unknown reasons chosen not to interview these individuals.

15. The Association further contends that there is evidence suggesting deception throughout the dealings with Halo as described below and that there has been no showing that this evidence has been adequately investigated.

2) The Association asserts Halo's wrongdoing is further evidenced by its continued misrepresentation that it performed services for (rather than borrowed money from) Stewardship Fund in the amount of $375,665.42 and its fabrication of questionable invoices supposedly supporting the services.

16. In his Reply, the Receiver attached as Exhibit C a demand letter from Halo supposedly asking for return of the stock. [Doc. 268]. However, this Exhibit is actually a demand

letter for payment of invoices. The demand letter is dated only eight months after the agreement was filed. The terms of the alleged claw-back agreement provide for the return of only 1/3 of the shares after 12 months and the balance after 24 months. If the letter sought return of stock, as suggested by the Receiver, it would have no legal effect because the terms of the alleged claw back agreement, even if it were valid, would not have supported a return of any, let alone all, of the stock at that time.

17. Looking more closely at the letter, Halo seeks payment of a set of invoices totaling $375,665.42. These invoices were apparently transmitted to the Receiver's office on January 30, 2012, from Halo's counsel requesting that they be paid. The invoices present several troubling aspects that further indicate wrongdoing.

a. The cover letter accompanying the invoices specifically asks that the invoices be paid, controverting the Receiver's assertion that the payments were in response to the invoices, and dated after Stewardship Fund's payments to Halo.

18. On page 11 of his Reply, the Receiver stated that "The invoices do not cover the time period in which the Receivership Entities made transfers to the Halo, however, the amounts of the invoices are consistent with the payment amounts made to Halo." This statement appears to be incorrect. First, as indicated in the cover letter accompanying the invoices, the invoices do not appear to have been paid. Further, a simple comparison reflects that the amounts invoiced do not match the payments. The transfers made that were not attributable to the Series X stock are as follows:

*4/29/2011	$80,000.00
6/17/2011	$30,000.00
6/30/2011	$20,000.00
7/1/2011	$100,000.00
7/14/2011	$81,300.00
7/25/2011	$1,100.00
8/1/2011	$41,600.00
8/5/2011	$60,000.00

*$7,000 of this transfer was attributed by Halo to Series X stock, as described below.

See [Doc. 255-1] at Interrogatory 5. The invoices in question are in these amounts:

8/21/3011	$34,003.15
8/31/2011	$199,500
8/31/2011	$25,304.89
8/31/2011	$102,270.68
8/31/2011	$14,586.7

[Doc. 268, Ex. C]. As is apparent, there is no consistency between the transfers and the invoice amounts. The Association asserts that this is contrary to the Receiver's description of a "consistent" correlation between the transfers and invoices to support his argument that somehow Halo made a valid claim on the estate.

19. The Receiver also asserts that "[t]he payment amounts were wildly inconsistent and ranged from $1,100 to 100,000. Given the sporadic timing and varying amounts, the transfers are consistent with payments for services rendered rather than a loan." [Doc. 268] at 13]. This statement appears to lack evidentiary support. In many instances, there were transfers of tens of thousands of dollars within days of each other. For example, $75,000 was transferred on April 28, 2010 and $50,000 was transferred on April 30, 2010. Another $50,000 was transferred on May 12, 2010 and the same amount again on May 13, 2010. This pattern continues. The idea that Halo performed services within a day that generated fees in the tens of thousands of dollars and resulted in only round number payments not only strains logic, it is inconsistent with the

amounts for services that were purportedly included in the invoices which covered a three month period.

b. The President of Halo, Reif Chron, sent emails to investors specifically denying that Halo ever provided services to Stewardship Fund.

20. One email, included in the Association's opposition to the Motion [Doc. 253, Ex. D], states in pertinent part "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." This email was sent to Scott Doores, an investor in Stewardship Fund, on November 22, 2011.

21. Inexplicably, the Receiver argues that this email supports the contention that the payments were for services because Halo states they are a "fee for service asset management firm." This contention ignores the categorical denial that such services were ever provided to Stewardship Fund, the name on the alleged invoices.

c. The invoices purport to be for services that raise even more questions.

22. The largest of the invoices claims a $350 per asset management fee for 570 assets [Doc. 268, Ex. C], yet in the Show Cause hearing the Receiver reported recovering only 458 assets. Where are the missing 112 assets? The next largest amount claims costs for "commissions," which implies assets were sold or notes reset. In either case, funds would be due Stewardship Fund as the seller and there should be a detailed accounting of which assets were sold. Yet another invoice claims fees for "success fees." Success fees also appear to imply the sale of an asset or reset of a note. Where are the funds or the accounting resulting from these supposed "services?"

3) There is insufficient evidence that Stewardship "purchased" Series X stock.

23. The Receiver stated that "the Receiver is in possession of 90,000 shares of

Halo Series X stock. The Series X stock was issued for cash paid by the Receivership Entities to Halo." What the Receiver does not state is how the estate came into possession of the stock, how many certificates the estate has (although the Association now understands there is only on certificate) or when they were issued, or how much the estate paid. The Receiver nonetheless concludes is that the stock is virtually worthless because it is non-voting, has no liquidation rights, and is subordinate to the rights of Series E and Series Z stock. There are many reasons to question this conclusion.

a. According to Halo's SEC filings, Stewardship Fund apparently paid $900,000 in cash for the Series X.

24. An examination of the Halo 10-Q and 10-K filings for 2010 and 2011 indicate that Series X stock was apparently issued for debt and cash. *See* **Exhibit "B"** (compiling below SEC filings). These filings indicate only 90,000 total shares were ever issued for cash in the total amount of $900,000.

SEC Filing Period	# Series X Shares Issued[2]	Cash Consideration for Shares
June 2010 10-Q	33,200	$332,000
December 2010 10-K	19,000	$190,000
March 2011 10-Q	18,000	$180,000
June 2011 10-Q	2,500	$25,000
September 2011 10-Q	17,300	$173,000

b. To the Association's knowledge, there is no mention of Series X stock in any contemporaneous emails.

25. As attached as Exhibits 1 and 2 to Exhibit A in the Berg opposition to the Settlement [Doc. 255], the contemporaneous emails make no reference to Series X stock. The Association asserts that there are no documents, emails or other corroboration that it knows of or has been submitted that substantiates the contention that Stewardship Fund ever agreed to or

[2] The shares issued numbers are calculated by subtracting the stock issued for debt from the total issued during each period.

intended to purchase Series X stock. And, in fact, the amount and timing of the transfers, as well as the relative rights and value of the Series X shares, brings the likelihood for any such assertion into question.

c. The reported amounts and timing of the transfers are inconsistent with the purchase of stock.

26. Based on the timing of the issuance of the shares and the timing of the transfers from Stewardship to Halo, it makes little sense to suppose that any entity would purchase blocks of shares in 20 separate transactions, many only one or two days apart. Moreover, how would this result in a reported single certificate for the 90,000 shares.

d. The Series X shares were reportedly worthless when allegedly purchased.

27. As the Receiver noted, the Series X shares are virtually worthless and were at the time they were supposedly issued. The Series E shares, which appear superior to Series X, were already authorized at the time of the alleged purchases. The Association offers that it is unlikely that an entity would purchase subordinate shares for such a substantial cash compensation. Further, it makes little sense that Stewardship Fund would buy $190,000 shares in the same quarter as the principals received 21,200,000 shares of voting common stock and an additional $378,000 of non-voting, subordinate shares after the common stock was issued to them.

28. The Association questions whether the Series X shares were conceived after-the-fact in an attempt to conceal that Halo was borrowing money from Stewardship Fund.

4) Halo's assertion that the majority of the funds were for services is untrue.

29. In light of the above, Halo's reported contention as stated on Page 10 of the Receiver's Reply that "Halo claims that the majority of the $1.2 million was payment for services rendered and expenses incurred by Halo and that the remaining funds were provided in exchange for the Series X stock discussed above" is at least confusing. By any measure, the

$900,000 (reportedly representing the Series X shares) is a majority of $1,287,000 in question.

30. The Association asserts that Halo's representations should not be accepted without at least the representations being made under oath and with some subsequent investigation to determine the veracity of the representations.

C. The Association asserts that the Receiver has not provided sufficient evidence of the value of Halo's stock or of Halo's financial condition.

1) The possession of AMX makes Halo more valuable.

31. The Receiver provided limited analysis of Halo's filings with the SEC and did not provide evidence of any unreported value, company potential, or other factors beyond the straightforward assets/liabilities columns in the report. The Receiver appeared to give only cursory consideration to the Association's suggestion that AMX has a value that is not reflected in Halo's financial reports by stating, "In the Receiver's experience, publicly traded companies with publicly available financials do not underreport assets." *See* Reply [Doc. 268] at 13, n. 7. This statement does not directly address the Association's concern and instead dismisses the concern in a merely conclusory manner.

32. The Association did not argue that Halo was *obligated* to report the AMX software system as an asset; rather, AMX is a valuable asset that does not appear on the financial statements, but should nonetheless be taken into account when determining the resources available for a settlement. AMX is a useful tool that has value to Halo and could have value to a potential purchaser or user of the software that is not considered in its public filings.

2) Halo's filings with the SEC reflect repayment of debts of substantially the same amount as the transfers at issue.

33. In the quarter ended June 30, 2013, preceding the filing of the Receiver's Motion on August 28, 2013, Halo repaid $1,200,000 in debt. *See* **Exhibit "C"**. The Association believes

the debt may have been held by an insider. That Halo is able to recently repay debts of that amount suggests Halo has the financial resources available for the expenditures they choose to fund. At least more investigation into this point and Halo's financial resources is merited.

3) Halo has realized $4,599,792 in revenue in the first 9 months of 2013.

34. According to the Halo 10-Q for the quarter ended September 30, 2013, revenues for the first nine months of 2013 were $4,599,792 with net operating income of $816,108. *See* **Exhibit "D"**. Further, expenses are more controllable than revenue, and it is not known whether these operating costs represent prudent management or bloated and excessive expenditures. The Association contends that an entity with revenues and operating income in this range has value. Combine this with the fact that Halo just paid down significant debt, and the true value of and resources available to Halo is brought into question.

4) Halo has reportedly sold at least one entity.

35. In January 2012, Halo reported the sale of Halo Group Realty for $30,000 and reported a loss of $7,500. **Exhibit "E"**. In the previous 12 months, Halo Group Realty reportedly generated $1,145,835 in revenues and an operating loss of $21,771. *Id.* As stated above, expenses are geenrally controllable and there is no information on to whom this entity was sold or how the valuation occurred. The Association asserts that this sale should be reviewed to determine whether it was equitable to all shareholders, including the estate.

D. The Receiver has offered no evidence regarding the value of AMX software which Halo and Stewardship Fund claim to own.

1) The Association believes the Receiver undervalues AMX.

36. As explained above and in the following sections, the Association contends the value of AMX is greater than that apparently appointed at this time by the Receiver.

2) The Association questions Halo's alleged acquisition of the design of the AMX software system from Stewardship Fund.

37. AMX embodies the valuable intellectual property and business model of Stewardship Fund, which was acquired by Halo in its apparent scheme to merge and then claw-back from Stewardship Fund all ownership interest in Halo.

38. The affidavit offered by Jamin Blount of Halo conveys the impression that AMX was developed solely by and at the direction of Halo for its own benefit. However, as explained in note 7 of the Association's Sur-Reply and the attached affidavit of John Henry, Stewardship Fund guided the development of AMX and Mr. Blount merely "coded" the software. No evidence has submitted that Blount or any other employee of Halo was engaged in the distressed asset management business prior to July of 2011 when the assets, operations and employees of Stewardship Fund were transferred to their offices. There has been no evidence submitted that Halo had any knowledge of the subject matter of the system or could have directed its design and functionality.

PRAYER

For the foregoing reasons, the Association prays that the Court deny the Receiver's Motion to Approve Settlement Agreement with Halo Companies, Inc. and in the alternative requests the Court hear the mater *de novo*, seeking additional briefing and evidence as necessary, or otherwise considering the full briefing and evidence already presented to the Court. The Association further prays for such other and further relief that the Court deems just.

Dated: December 20, 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 20th day of December, 2013.

By /s/ *Bruce Flowers*
Bruce M. Flowers