

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

SECURITIES AND EXCHANGE
COMMISSION

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v.

JAMES G. TEMME and STEWARDSHIP
FUND, LP

Case No. 4:11-CV-655
Judge Clark/Judge Mazzant

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court is the Receiver's Motion to Approve Settlement Agreement, for Entry of Bar Order, to Allow and Pay Professional Fees (Dkt. #281). On October 24, 2013, non-parties to this action, MDA Realty Holdings, LLC, MVB Realty Holdings, LLC, LF Realty Holdings, LLC, 48th Street Holdings LLC, and F&B Note Holding, LLC filed a response and objections to the motion (Dkt. #289). On November 4, 2013, the Receiver filed a reply (Dkt. #291). On November 5, 2013, the HSP/Harbour Parties filed a response to the non-party response and objections (Dkt. #293).

The Receiver seeks the Court's approval of a settlement agreement between 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"). 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.

Under the proposed settlement, which is conditioned upon the entry of a bar order by this Court, the HSP/Harbour Parties will make a payment of \$550,000 to the Receiver for the benefit of the Receivership Estate.

Based upon the Receiver's legal and business judgment, he asserts that 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 risk of protracted litigation. The Receiver asserts that 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. The Bar Order is consistent with the Order (Dkt. #162) entered on November 21, 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 (Dkt. #135). The Receiver asserts that 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 Receiver also asserts that 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. The Receiver 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.

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 Receivership Estate. The Court sees no need for a hearing on this matter.

RECOMMENDATION

Based upon the findings discussed above, the Court RECOMMENDS that the Receiver's Motion to Approve Settlement Agreement, for Entry of Bar Order, to Allow and Pay Professional Fees (Dkt. #281) be **GRANTED**.

It is further RECOMMENDED that the Bar Order be modified by deletion of the phrase, "*or enters an appearance in this receivership proceeding at any time*" from the definition of the term "Stewardship Creditors."

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), *superseded 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 8th day of January, 2014.


AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE