

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

SECURITIES AND EXCHANGE COMMISSION
Plaintiff,

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Civil Action No. 4:11-cv-655

v.

JAMES G. TEMME, and
STEWARDSHIP FUND, LP,
Defendants.

**RESPONSE TO OBJECTIONS TO REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE
(Docket No. 290)**

COMES NOW, Keith M. Aurzada, as receiver in the above-captioned matter (the “**Receiver**”) for James G. Temme (“**Temme**”), Stewardship Fund, LP, and all other entities directly or indirectly controlled by Temme or Stewardship Fund, LP (collectively, the “**Receivership Entities**”), and submits this Response to Objections to Report and Recommendation of United States Magistrate Judge, as follows:

1. The Receiver submits this Response supporting the Settlement with Halo on the basis that he believes it is in the best interest of the Estate and its investors. Although the Receiver acknowledges that his decision is a judgment call and that certain assumptions and evaluations may not ultimately prove correct if he were to proceed with litigation against Halo, the Receiver has determined in his professional judgment that the Settlement represents the best outcome for the Estate.

A. Background

2. On August 28, 2013, the Receiver filed a Motion to Approve Settlement Agreement with Halo Companies, Inc. (the “**Settlement Motion**”) [Dkt. No. 244], in which the Receiver sought to settle all claims between the Estate and Halo Companies, Inc. (“**Halo**”).

3. The Receiver continues to believe that the Settlement is in the best interest of the Estate and that it will maximize the recovery for the investors in the Estate. After considering the Settlement Motion, the objections thereto, the Receiver's Reply, and the sur-replies thereto, Magistrate Judge Mazzant agreed with the Receiver that the Settlement is "in the best interest of estate" and recommended the approval of the Settlement. *See* Report and Recommendation of United States Magistrate Judge Dkt. No. 290 (the "**Report and Recommendation**").

4. Two groups of investors filed objections to the Report and Recommendation, the Berg Group,¹ and the Association (the "**Objections**") [Dkt. Nos. 295, 301].² The Objections largely rehash the arguments presented in the original objections and sur-replies, but include a few additional facts and arguments that the Receiver wishes to address. The Receiver incorporates by reference the facts and arguments presented in his Reply in Support of Motion to Approve Settlement Agreement with Halo Companies, Inc. (the "**Reply**") [Dkt. No. 268].

B. Only Two Groups of Investors Objected to the Report and Recommendation

5. The Objections each allege that nearly all of the beneficiaries of the Receivership Estate are opposed to the Settlement Motion. To the contrary, only the Berg Group and the Association have continued their opposition to the Settlement by objecting to the Report and Recommendation. On information and belief, the Berg Group and the Association do not represent a majority of the beneficiaries of the Estate, let alone all beneficiaries.

6. To date 167 claims have been filed against the Estate.³ The Berg Group includes only eleven investors. As of August 2012, the Association claimed to represent the interest of approximately

¹ The "Berg Group" includes include, 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.

² The "Association" is the Stewardship Receivership Claimants Association, which is made up of an unknown number of investors in the Receivership Entities, some of which are not "claimants" and not entitled to a distribution from the Estate.

³ The Receiver anticipates receiving more claims before the case is closed. Indeed, the other investor group that objected to the Settlement Motion, the F & B Group, consists of four entities, none of which has filed a claim yet.

40 investors in the Estate.⁴ Moreover, an unknown number of members of the Association are not “beneficiaries” of the Estate because they are insiders of the Receivership Entities or were “net winners” in their transactions with the Receivership Entities.⁵

C. The Receiver Properly Values Potential Investor Claims Against Halo

7. In their Objection, the Berg Group alleges that the Bar Order requested in the Settlement Motion is not justified because it fails to grasp the nature and merit of investor claims against Halo. To the contrary, the Receiver has included potential claims of investors against Halo in his analysis and has concluded that the Settlement is in the best interest of the investors. For example, the Berg Group filed claims against Halo and its officers and affiliates in state court seeking damages in excess of \$5,000,000. As of December 18, 2013, all claims asserted by the Berg Group against Halo have been dismissed with prejudice because the Court found no evidence to support them.⁶ The Receiver believes that other claims by investors will likely meet with the same critical flaws and, therefore, believes that the Settlement is in the best interest of investors.

D. The Estate’s Claim to AMX is Unsupportable

8. In the Reply, the Receiver identified many problems the Estate will face if it alleges an ownership interest in the AMX software platform, including that the coding was performed entirely by a Halo employee (Jamin Blount), AMX is housed on Halo servers and is maintained by Halo, no documentary evidence in the Receiver’s possession provides support for the Estate’s claim to AMX, and neither the Association (which includes many former Stewardship Fund employees) nor Mr. Temme have provided the Receiver with any documentary evidence supporting a claim to AMX.⁷

⁴ See Dkt. No. 113-1.

⁵ On information and belief, members of the Association include Jay and Laura Temme, Jay Temme’s father, John Henry (vice-president of sales for Stewardship Fund), and Linda Schoendiest Hayes (who is a net winner in her dealings with the Receivership Entities).

⁶ Attached hereto as **Exhibits A & B** are the Orders Dismissing the Berg Group’s Claims.

⁷ The Association’s only support for a claim that the Estate owns AMX is that Mr. Henry and Stewardship Fund employees, “guided the development of AMX.” The Copyright Act of 1976, 17 USC 201(a), et seq. and relevant case law provide that

9. Much more devastating to a potential claim is a Software License Agreement dated July 13, 2011 between Halo and Equitas Housing Fund III, LP that provides “all rights, title and interest in, to and under the System [defined to specifically include AMX] wherever resident and on whatever media shall remain the sole and exclusive property of Halo.” The Software License Agreement is signed by Jay Temme as manager of Stewardship Fund, LP. The Software License Agreement is attached hereto as **Exhibit C**. As a result, the Receiver has properly evaluated the Estate’s potential claim to own AMX and has determined that pursuing such a claim is not in the Estate’s best interest.

E. The Estate’s Other Claims Against Halo and Value of the Stock

10. The Objections largely reiterate the criticisms in the initial objections to the Settlement Motion, namely that the Receiver has not sufficiently evaluated the value or viability of its claims against Halo and the value of the Stock. The Receiver’s concerns regarding the viability of claims against Halo and valuation of the Halo stock, as expressed in the Reply, have not been alleviated, nor has the Association provided sufficient argument or evidence to overcome such concerns. Any claims pursued by the Estate would come at a significant cost. Any claims pursued by the Estate would lack documentary support—the Receiver has not located any documents evidencing a loan from Stewardship Fund to Halo, describing the purpose of payments between to Halo, or providing any direct evidence supporting a claim against Halo.⁸ The Receiver has found no promissory notes or other negotiable instruments in favor of the Estate payable by Halo. Any claims pursued by the Estate would lack

the “owner” of software is the person that “captures the idea into the tangible medium” (in this case Mr. Blount). The exception to that general rule is the “work made for hire” doctrine, where the software was written by an employee of the claimed owner (Halo) or is subject to a “written instrument signed by them that the work shall be considered a work made for hire.” As stated in the Reply, the Receiver has not located any written instrument providing that AMX was work made for hire.

⁸ The only documentary evidence that could support a claim would be email exchanges between Jay Temme and Cade Thompson (which are ambiguous at best), public filings from Halo (which have been examined by the Receiver), and other financial documents provided by Halo. The Receiver believes that such evidence is circumstantial at best and is not likely to meet the Estate’s burden of proving any claims.

testimonial evidence—the critical witness for the Estate would be James Temme who has asserted his Fifth Amendment privileges (this would also likely lead to an adverse inference against the Estate).⁹

11. Moreover, obtaining a judgment against Halo will likely take several years and the Receiver continues to doubt Halo's ability to pay any such judgment. The Receiver has evaluated the evidence supporting any potential claims against Halo, the potential recovery, and the time and money required to pursue such claims and believes that the Settlement represents a far greater recovery for the Estate. The Receiver therefore, believes that the Court should grant the Settlement Motion, overrule the Objections, and approve the Settlement.

Dated: January 24, 2014

BRYAN CAVE LLP

By: //s// Bradley J. Purcell

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CERTIFICATE OF SERVICE

I certify that on January 24, 2014, I served a true and correct copy of the foregoing pleading by United States First Class Mail, postage prepaid, on counsel for the SEC, counsel for Jay Temme, counsel for Halo, counsel for the Association, and counsel for the Berg Group.

Moreover, the foregoing will be uploaded to www.stewardshipfundreceivership.com

//s// Bradley J. Purcell

Bradley J. Purcell

⁹ Other potential witnesses, such as John Henry, are members of the Association and have not provided to the Receiver informally or in the Association's pleadings any competent evidence supporting claims against Halo.

NOTICE OF SERVICE INTERRUPTION

Pursuant to the Order Granting Motion for Leave to Respond to Objections to Report and Recommendation [Dkt. No. 311], the Receiver was permitted until 5:00 pm on Friday, January 24, 2014 to file the above Response. Due to technical problems, the CM/ECF system was not operational on January 24, 2014. Pursuant to Local Rule 5(10) and the Notice of Service Interruption posted on the Court's website today, the filing deadline was extended to January 27, 2014.

Despite the technical failure of CM/ECF, the undersigned certifies that on January 24, 2014, a copy of the foregoing pleading was served via electronic mail on counsel for the SEC, counsel for Jay Temme, counsel for Halo, counsel for the Association, and counsel for the Berg Group.

//s// Bradley J. Purcell
Bradley J. Purcell