

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

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	Civil Action No. 4:11-cv-655
	§	
JAMES G. TEMME and STEWARDSHIP FUND, LP,	§	
	§	
<i>Defendants.</i>	§	

**RECEIVER’S MOTION TO APPROVE SETTLEMENT AGREEMENT WITH F&B,
MOTION TO ALLOW AND PAY PROFESSIONAL FEES, AND BRIEF IN SUPPORT**

COMES NOW Keith Aurzada (the “Receiver”) in his capacity as receiver for James G. Temme (“Temme”), Stewardship Fund, LP (“Stewardship Fund”), and all entities under their control (collectively, the “Receivership Estate” or “Estate”), and files this Motion to Approve Settlement Agreement with non-parties F & B Note Holding, LLC, MVB Realty Holdings, LLC, LF Realty Holdings, LLC, 48th Street Holdings, LLC, MDA Realty Holdings, LLC, and affiliates (collectively, “F&B”) and Motion to Allow and Pay Professional Fees, and in support thereof, respectfully shows the Court the following:

I. INTRODUCTION & BACKGROUND

In this enforcement action, the S.E.C. alleges that Defendants Temme and Stewardship Fund engaged in securities fraud in the solicitation and sale of packages of non-performing mortgages, REO properties, and limited partnership interests that caused investors to lose millions of dollars. The Court appointed the Receiver to marshal and recover assets of the Estate and to determine claims against the Estate.¹ The Receiver, with the assistance of attorneys with

¹ See Agreed Order Appointing Receiver, et al. (Doc. 24), Agreed Order Appointing Receiver, et al. (Doc. 25), and Order Appointing Receiver Over James Temme (Doc. 30) (collectively, the “Receivership Orders”).

Hicks Thomas LLP (“Hicks Thomas”) and others, has conducted a factual and legal investigation of potential claims involving third parties to identify potential sources of recovery and potential claims against the Estate. As part of his investigation, the Receiver and his counsel have reviewed voluminous documents, subpoenaed records, and evaluated the strengths and weaknesses of potential claims. The Receiver has negotiated pre-litigation settlements with a number of parties that the Court has approved, and to date, the Receiver has recovered more than \$1.4 million in cash and other assets for the Estate, as well as obtaining the relinquishment of claims against the Estate in excess of \$4 million in value.

A. F&B and the Receiver have agreed to a settlement, subject to the Court’s approval.

F&B is comprised of affiliated investment entities that allegedly entered into and funded transactions to purchase non-performing mortgages and REO properties from Temme and Stewardship Fund. In April 2011, 48th Street Holdings, LLC (“48th Street”), an F&B entity, transferred more than \$3 million to an account in the name of “Home Solutions Partners, LP” (the “HSP Account”), which according to HSP and public records, is a non-existent entity. The Receiver’s investigation has revealed that F&B did not receive any assets from Temme or Stewardship Fund, and that Temme transferred the money from the HSP Account to the Estate and, ultimately, to third parties. The Receiver has settled claims with the investor group of entities under the Home Solutions and Harbour Portfolio umbrella (collectively, “HSP”)² for payment of \$550,000 to the Estate. *See* Receiver’s Motion to Approve, *et al.* (Doc. 281). On October 24, 2013, F&B objected to the Receiver’s settlement with HSP asserting at least \$3,139,667.20 in claims associated with the HSP Account. *See* Response and Objection to

² HSP includes a number of affiliated entities under the Home Solutions and Harbour Portfolio umbrella, as well as their principals, Charles A. Vose, III, Edward C. Lasater, II, and Duncan A. Lee. *See* Motion to Approve (Doc. 281) (identifying the HSP/Harbour Parties).

Motion to Approve Settlement with the Home Solutions Affiliates (Doc. 289) (the “F&B Response”). F&B alleges that it has direct claims against HSP. F&B’s position on these transactions and F&B’s alleged rights against HSP are set forth in F&B’s previously filed objections to the HSP settlement, which objections would be obviated by the Court’s approval of this settlement. On January 8, 2014, Magistrate Judge Mazzant recommended that the Motion to Approve be granted, stating in the Magistrate Report: “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.” Report and Recommendation of the United States Magistrate Judge (Doc. 307) (“Magistrate Report”) at 3.

In order to resolve F&B’s objections to the settlement with HSP, the Receiver engaged in settlement negotiations with F&B that ultimately resulted in the attached Settlement Agreement (the “Settlement Agreement”). *See* Settlement Agreement (Exhibit A). Upon approval by the Court of the Settlement Agreement with F&B (and entry of the Bar Order), the Receiver has agreed to pay \$100,000 from the HSP settlement funds to F&B based on the following consideration: (1) F&B will immediately withdraw its objections to the Receiver’s settlement with HSP and consent to entry of the Bar Order; and (2) F&B will submit proofs of claim to the Receiver and agreed that any claims distribution by the Estate to F&B, if allowed, will be based on claimed losses of \$2 million or less. *Id.* at 2-3, ¶¶ 7-11. In short, F&B will receive \$100,000 from HSP, and F&B will waive over \$1 million in claims against the Estate. The Receiver, in his business judgment, believes that these terms are favorable to the Estate, as the settlement resolves F&B’s claims and objections and, as a result, removes uncertainty for the Receiver, and compromises potential litigation by F&B. The Receiver respectfully requests that the Court approve the Settlement Agreement.

II. ARGUMENT & AUTHORITIES

A. The Receiver has entered the Settlement Agreement, subject to the Court's approval, in good faith and consistent with his Court-appointed duties.

A federally appointed receiver is permitted to enter into settlement agreements so long as he does so in good faith, within the terms of his appointment, and without misconduct, gross negligence, or criminal intent. *See, e.g., SEC v. Funding Resource Group*, No. 3-98-CV-2689-M, 2003 WL 21500431, at * 1 (N.D. Tex. April 22, 2003); *Hawk v. Williams*, No. Civ. A. 2:01-CV-2615, 2002WL 31255096, at *5 (N.D. Tex. Oct. 4, 2002); *Brewer v. Hill*, 453 F.Supp. 67, 69 (N.D. Tex. 1978). In this case, the proposed Settlement Agreement between the Receiver and F&B meets these standards and comports with the Receiver's duties as conferred by the Court in the Receivership Orders. *See* Receivership Orders at ¶ 5 (Docs. 24, 25, 30).

In the Receiver's legal and business judgment, and with the advice of independent counsel, the proposed settlement with F&B is prudent and advantageous, as the Settlement Agreement contains favorable terms to resolve F&B's objections and potential claims—without the burden and risk of protracted litigation. The Settlement Agreement will benefit the Estate and its legitimate claimants, if approved by the Court, and will result in the settlement of F&B's alleged claims against the Estate. The Estate will benefit from F&B's withdrawal of objections to the Receiver's settlement with HSP and by F&B's consent to the Bar Order, as these settlements will result in a net \$450,000 increase for the Estate and will remove uncertainty by resolving major claims of the Estate. The Settlement Agreement will expedite the claims process with F&B based on F&B's agreement to cap its claimed losses at \$2 million, which F&B considers to be a substantial discount.

The Receiver, with the assistance of separate litigation counsel, has evaluated the evidence, engaged in multiple, substantive conferences with F&B, and reviewed the legal and

evidentiary strengths and weaknesses of claims that could be pursued in litigation and through the Receiver's claims process. After engaging in this diligence process, the Receiver has determined that the best interests of the Estate are served by entering the Settlement Agreement. Accordingly, the Receiver requests that the Court approve the Settlement Agreement.

B. The Receiver respectfully requests that the Court approve payment of fees to Hicks Thomas for legal services incurred in connection with the proposed F&B settlement.

The Court directed and authorized the Receiver to “[e]nter into such agreements in connection with the administration of the Receivership Estate, including, but not limited to, the employment of ... attorneys ... as Receiver judges necessary to perform the duties set forth in this Order and to compensate them from the Receivership Assets[.]” Receivership Orders at ¶ 5(h) (Docs. 24, 25, 30). The Receiver engaged Hicks Thomas in order to assist him with performing his duties, including conducting a pre-suit investigation and diligence into the claims and defenses, pursuing a recovery, and negotiating a compromise of F&B's claims and objections. *See id.* at ¶¶ 5(h)-(i). Attorneys with Hicks Thomas assisted the Receiver with the factual and legal investigation, evaluation, prosecution of the claims, and analysis of objections, as well as the negotiation and drafting of the settlement and associated agreements with F&B. If the Court approves the Settlement Agreement with F&B, the Receiver will have obtained a favorable recovery for the Estate through the efforts of counsel at Hicks Thomas.

Pursuant to the Receiver's fee arrangement, as well as the results and circumstances of the representation, the Receiver requests that the Court allow for payment of compensation for legal services to Hicks Thomas in the total amount of \$2,000 for services performed in connection with the settlement with F&B through January 2014, subject to supplementation for additional services performed in connection with the F&B settlement approval process.

Based on the benefits conferred by services rendered, the Receiver believes that payment of the requested amount of professional fees to Hicks Thomas is reasonable. *SEC v. Ruderman, et al.*, No. CV 09-02973 ODW (JCx), 2011 WL 5857452, at *4-5 (C.D. Cal. Nov. 21, 2011) (approving an SEC receiver's request to pay fees to counsel and holding that a 33% contingency fee represented a reasonable amount of fees incurred in connection with achieving settlement of claims); *Barrera v. Nat'l Crane Corp.*, SA-10-CV-0196 NN, 2012 WL 242828 (W.D. Tex. Jan. 25, 2012) ("...the lodestar method does not quite fit a contingent fee arrangement, [but] the *Johnson* factors are helpful in determining reasonableness of a[n] award.").

III. CONCLUSION & PRAYER FOR RELIEF

After extensive investigation, based on the Receiver's legal and business judgment, the Receiver has reached a settlement with F&B that, if approved by the Court, will benefit the Receivership Estate. The proposed settlement, in the face of uncertainty and substantial claims by F&B, will facilitate performance of the Receiver's duties conferred by the Court, including, but not limited to, acting in the best interest of the Estate. Accordingly, the Receiver respectfully requests that the Court approve the Settlement Agreement with F&B, allow the Receiver to pay professional fees to Hicks Thomas in the total amount of \$2,000, and grant all other relief deemed just and proper.

Dated: February 27, 2014

Respectfully submitted,

By: /s/ Jeffrey Goldfarb

Keith Miles Aurzada
Texas Bar No. 24009880
keith.aurzada@bryancave.com
Jay L. Krystinik
Texas Bar No. 24041279
jay.krystinik@bryancave.com
Bradley J. Purcell
Texas Bar No. 24063965
bradley.purcell@bryancave.com
BRYAN CAVE LLP
2200 Ross Avenue, Suite 3300
Dallas, Texas 75201
214.721.8000 (Telephone)
214.721.8100 (Facsimile)

Jeffrey Goldfarb
Texas Bar No. 00793820
jgoldfarb@hicks-thomas.com
HICKS THOMAS LLP
Saint Ann Court
2501 N. Harwood, Suite 1801
Dallas, Texas 75201
214.583.2233 (Telephone)
214.583.2234 (Facsimile)

**ATTORNEYS FOR RECEIVER
KEITH M. AURZADA**

CERTIFICATE OF CONFERENCE

I hereby certify that Brad Purcell has conferred with David Reece, counsel for the U.S. Securities & Exchange Commission, and that the S.E.C. does not object to the motion.

/s/ Jeffrey Goldfarb
Jeffrey Goldfarb

CERTIFICATE OF SERVICE

On February 27, 2014, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court for the Eastern District of Texas using the CM/ECF system, which will send a notice of electronic filing to all counsel of record. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2) and the Court's Local Rules. Moreover, the foregoing will be uploaded to www.stewardshipfundreceivership.com

/s/ Jeffrey Goldfarb

Jeffrey Goldfarb