

**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 FOR APPROVAL OF SETTLEMENT WITH BANK OF
AMERICA 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 for Approval of Settlement with Bank of America and Brief in Support. In support thereof, the Receiver respectfully shows the Court the following:

I. INTRODUCTION & BACKGROUND

1. By this Motion, the Receiver seeks a Court Order authorizing the sale of certain assets of the Receivership Estate and approval of a settlement agreement with Bank of America. A true and correct copy of the settlement agreement is attached hereto as Exhibit A.

2. The Receiver acquired three promissory notes or mortgages (each a “Note” and collectively, the “Notes”) that are property of the Estate. An entity within the Receivership Estate acquired the Notes by purchase and assignment.

3. After the Notes were assigned to the Receivership Estate, Bank of America and the Receiver engaged in settlement discussions regarding potential claims arising out of transactions related to the Notes. Bank of America has offered to pay the Receiver \$10,000 in

exchange for a release related to the Estate's original purchase of the Notes. The Receiver would also assign the Notes to Bank of America. In the Receiver's legal and business judgment, and with the advice of independent counsel, the proposed settlement with Bank of America is prudent and advantageous because it injects value into the Estate.

4. The Notes are non-performing. Furthermore, based on the Receiver's investigation of the properties and the Notes, the Receivership Estate's interests would be best served by settling disputed claims with Bank of America and assigning the Notes..

5. The Receiver is a partner with the law firm of Bryan Cave, LLP. Bank of America is an institutional client of Bryan Cave, LLP, and the Receiver has provided legal services to Bank of America in unrelated matters. The Receiver has relied upon the advice of independent counsel in connection with the matters subject to this motion.

6. The Receiver would not be opposed to the appointment of a sub-Receiver or other professional to evaluate the basis of this motion; however, given the small amount at issue, the fees and delays associated with that effort would tend to nullify the value of the proposed settlement and motion to sell.

7. For these reasons, the Receiver respectfully requests that the Court grant the Receiver authority to sell the Notes and settle the Estate's related claims with Bank of America.

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, and the Receiver requests authority to sell the Notes.

8. A 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 Res. Group*, No. 3-98-CV-2689-M, 2003 WL

21500431, at * 1 (N.D. Tex. Apr. 22, 2003); *Hawk v. Williams*, No. Civ. A. 2:01-CV-2615, 2002 WL 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 Bank of America 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).

9. In the Receiver's legal and business judgment, and with the advice of independent counsel, the proposed settlement agreement with Bank of America is prudent and advantageous. The proposed settlement agreement would result in a \$10,000 injection into the Estate. In exchange, the Receiver would release potential claims against Bank of America related to the sale of the Notes to the Estate and assign the Notes to Bank of America. The Notes are non-performing, and both the Notes and the value of the related security interests are of insufficient value to warrant litigation. In addition, to the extent that there are any issues arising out of the sale of the Notes to the Estate, any claims against Bank of America are unlikely to generate more value than will be obtained in the settlement agreement. This is true for at least three reasons. *First*, the potential damages that could be awarded against Bank of America would be minimal. The Notes have been primed by tax liens. *Second*, the uncertainty of litigation and collection reduces the value of any claims, especially when viewed against the certainty of payment under the agreement. *Third*, there are significant concerns regarding the quality of legal title owned by the Estate. If the Receiver were called upon to sell its interest in the Notes, the Receiver could not provide warranty of title.

10. It appears that appropriate liens were not filed of record on behalf of the Stewardship entities that acquired the Notes. The Notes relate to residential properties in Leesburg, Florida, Nowata, Oklahoma, and Jacksonville, Florida, respectively. Though the

Receiver owns all three Notes, the Receiver has been unable to locate any public record that would have given the Receiver authority to enforce a lien against any of the security.

11. The Receiver would face a difficult (if not impossible) task in establishing a right to foreclose liens against any of these properties. Thus, the Receiver is of the professional opinion that Bank of America's offer of \$10,000 exceeds the value that could have been realized from enforcing any (or all) of the liens associated with the Notes.

12. The Receiver, with the assistance of separate litigation counsel, has evaluated the evidence, engaged in multiple, substantive conferences with Bank of America, and reviewed the legal and evidentiary strengths and weaknesses of claims that could be pursued in litigation and through the Receiver's claims process. The Receiver, with the assistance of separate litigation counsel, has evaluated the Notes and the circumstances surrounding their transfer. After engaging in this diligence process, the Receiver has determined that the best interests of the Estate are served by entering the settlement agreement and receiving \$10,000 in exchange for releasing Bank of America and assigning the Notes to it. Accordingly, the Receiver requests that the Court approve the settlement agreement.

13. In full disclosure, the Receiver is a partner with the law firm of Bryan Cave, LLP. Bank of America is an institutional client of Bryan Cave, LLP. The Receiver does not believe that any conflict of interest has affected his evaluation of the relevant facts or the fairness of the proposal. The Receiver has also relied upon the advice of independent counsel. The Receiver, however, would not be opposed to the appointment of a sub-Receiver or other professional to administer the Notes and conclude a settlement with Bank of America if the Court deems such process appropriate. Given the small value of the Notes and the potential claims against Bank of

America, however, the Receiver does not believe that such procedures would be in the Estate's best interest.

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

14. 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 an investigation and diligence into the agreement with Bank of America. Attorneys with Hicks Thomas assisted the Receiver with the factual and legal investigation, evaluation, negotiation and drafting of the settlement agreement, and preparation of this Motion. If the Court approves the settlement agreement, the Receiver will have obtained a favorable recovery for the Estate through the efforts of counsel at Hicks Thomas.

15. 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 \$2,500 for services performed in connection with the settlement agreement with Bank of America through June 2014, subject to supplementation for additional services performed in connection with the Bank of America settlement approval process.

16. 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 agreement with Bank of America that, if approved by the Court, will benefit the Receivership Estate. The proposed settlement agreement 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 Bank of America, allow the Receiver to pay professional fees to Hicks Thomas in the total amount of \$2,500, and grant all other relief deemed just and proper.

Dated: July 11, 2014

Respectfully submitted,

By: /s/ Jeffrey Goldfarb

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**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 July 11, 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