

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>PINNACLE DEVELOPMENT PARTNERS LLC and GENE A. O'NEAL,</p> <p style="text-align:center">Defendants.</p>	<p style="text-align:center">CIVIL ACTION NO.</p> <p style="text-align:center">06 CV 2431-JTC</p>
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**RECEIVER'S MOTION FOR
RESOLUTION OF DISPUTED CLAIMS**

S. Gregory Hays, the court-appointed Receiver for Pinnacle Development Partners, LLC, files this Motion for Resolution of Disputed Claims, and shows as follows:

BACKGROUND

1.

Pursuant to the terms of an Order dated October 11, 2006 (the "Receivership Order"), S. Gregory Hays was appointed as Receiver for Pinnacle Development Partners, LLC ("Pinnacle") and its assets, including all assets of partnerships or other entities controlled by Pinnacle (the "Receiver Estate"). The Receivership

Order grants the Receiver broad authority over the organization, management, control and disposal of the assets of the Receiver Estate.

2.

In furtherance of his duties, the Receiver provided investors and other creditors with Claim Forms, which were approved by this Court by Order dated January 22, 2007. The January 22, 2007 Order also established a Claims Bar Date of March 1, 2007. Subsequently, on April 18, 2007, the Court approved the Receiver's Plan for Claims Administration and Distribution of Proceeds (the "Plan").¹

3.

On July 27, 2007, the Receiver filed a Motion for Approval of Interim Distributions Pending Final Resolution of All Disputed Claims. On August 24, 2007, the Court granted the Receiver's motion and entered the Receiver's Approved Claims Schedule.

4.

On January 30, 2008, the Receiver filed a Motion for Approval of Revised Approved Claims Schedule. The Revised Approved Claims schedule addressed a

¹ Capitalized terms not defined herein, such as "Investor," "Creditor," "Approved Claims," and "Disputed Claims," shall mean and refer to those terms as defined in the Plan.

variety of claims issues that the Receiver Team discovered in preparation for making the first interim distribution. On March 24, 2008, the Court entered the Revised Approved Claims Schedule.

5.

As discussed in further detail below, the Receiver files this Motion to obtain resolution, pursuant to Section 2.6.3 of the Plan, of the remaining Disputed Claims. As referenced in the Receiver's January 30, 2008 motion, the Receiver also seeks the Court's resolution of nine Claims that were approved by the Court's August 24, 2007 Order, but regarding which the Receiver has since discovered discrepancies in submission and other related issues. Three of these Claims have since been resolved by the parties, but the remaining nine require resolution by the Court. The Receiver also seeks approval of four revised Claims and one new Claim, none of which are in dispute. Finally, the Receiver submits two Claims to the Court to resolve competing claims over entitlement to future distributions.

6.

Contemporaneously with the filing of this Motion, the Receiver has manually filed a Motion for Leave to File Documents Under Seal,² along with

² The documents sought to be filed under seal include Investor bank account information and a variety of other confidential personal information. In this Motion, the Receiver refers to Investors by the first initial of the first name and

Exhibits that, for each Disputed Claim and other Claim at issue in this Motion,³ contain: (1) the Claim Form and accompanying documentation submitted by the Investor; (2) the Receiver's Claim Determination Notice; (3) the Disputed Claim Form and accompanying documentation submitted by the Investor; (4) correspondence between the Receiver and the Investor regarding the Disputed Claim; and (5) to the extent not included in one of the prior categories, documentation supporting the Receiver's position on the Claim. Because the Exhibits contain sensitive personal Investor information, the Receiver has requested that they be maintained by the Court under seal. The Receiver has provided to each Investor with a Disputed Claim the materials submitted under seal that relate to the Investor's Claim.

7.

Under Section 2.6.1 of the Plan, each Investor who filed a Disputed Claim has submitted himself/herself to the personal jurisdiction of this Court and the summary procedures in place for resolution of Claim issues.

first three letters of their last name, where possible. Using this abbreviated name format is not practical in all instances, and, therefore, there are several instances where complete names appear in this Motion.

³ The Exhibits do not include documentation for Claims that are being adjusted by agreement between the Receiver and the Investor.

8.

The resolution of the Claims addressed in this Motion will bring to an end the lengthy Claims review process. As set forth in more detail in the Receiver's Motion for Approval of Revised Approved Claims Schedule and the Receiver's Third Interim Report, the Receiver Team has conducted a thorough analysis of all Claims filed in the receivership. The Receiver Team has at all times been sensitive to the costs associated with the claims review process and has endeavored, with the limited information available to it, to accurately analyze each Claim. Due to the often incomplete, inaccurate and conflicting information available to the Receiver, it is impossible to be certain that all Claim Determinations are 100% accurate. It is the Receiver's judgment, however, that the process has now reached the point of diminishing returns and that further Claims review, adjustment, revision, etc., would not benefit the Investors or other creditors. In the event the Receiver Team is informed of or discovers significant issues with a particular Claim, the Receiver will address those issues to the Court by separate motion.

RESOLUTION OF DISPUTED CLAIMS

9.

The Receiver has resolved all but seven Disputed Claims. Pursuant to Section 2.6.3 of the Plan, the Receiver submits these remaining Disputed Claims to

the Court for final resolution. The Receiver's position on each Disputed Claim is provided below, along with an indication as to whether the Receiver believes there are any disputed issues of fact.

10.

The Receiver has contacted each Investor, or his or her designated contact, in an attempt to resolve the remaining Disputed Claims. For the most part, there are no disputes between the Receiver and the Investors regarding the amounts invested by each Investor, and the amount returned to each Investor. Rather, the Investors who continue to dispute the Receiver's Claim Determination Notice base their objections on their purported right to be treated differently than the other almost 2000 Pinnacle Investors.

11.

Claim No. 2323 – A. Whi. (Exhibit A). There is no dispute that this Investor invested \$22,000 and received \$36,500 in returns, consisting of \$36,000 in return payments and a \$500 finder's fee.⁴ Accordingly, on a cash-in less cash-out basis, this Investor suffered no net loss, and was a net winner in the amount of \$14,500.

⁴ These amounts are consistent with the Claim Form filed by the Investor and the Receiver's Claim Determination Notice. Subsequent analysis of this Claim shows that the Investor may have received \$35,000 (not \$36,000) in returns. This \$1,000 possible difference is immaterial to the dispute before the Court.

Despite the Investor's acknowledgement that he received what amounts to a greater than 40% return on his investment, while other Investors lost a total of approximately \$40 million, the Investor has refused to withdraw his Disputed Claim.

The Investor raises two issues in his Disputed Claim. First, the Investor seeks property records of the Receiver Estate showing that the money that he invested was not earmarked for specific properties and that he is not an owner of the properties in which he purportedly invested. Counsel for the Receiver has directed the Investor to the Receiver's filings that explain that Pinnacle operated as a Ponzi scheme and that no effort was made by Pinnacle to segregate investments based on properties, partnerships, or any other criteria. Counsel for the Receiver also has directed the Investor to the Receiver's Second Interim Report, which provides detailed information on the ownership status of each of the properties purchased by Pinnacle. Finally, counsel for the Receiver provided the Plan to the Investor, which includes provisions regarding the aggregation of Pinnacle assets for purposes of Claims Administration and distributions.

This Investor also objected to the Receiver's disallowance of certain "rolled over" investments that the Investor sought to have included in his Claim. In a nutshell, the Investor, at certain points in time, elected to re-invest certain returns

owed to him rather than being paid those returns. These roll-over investments involved no out-of-pocket investment on the part of the Investor, and represented Ponzi returns, not legitimate amounts earned on the initial \$22,000 investment. Counsel for the Receiver explained to the Investor that, under the Court approved Plan, Claims were to be determined based on a cash-in less cash-out analysis, so that only the out of pocket loss of each Investor would be considered in determining the loss. Under this analysis, the Investor was a net winner in the amount of \$14,500.

This Investor's Disputed Claim ignores the reality that Pinnacle was a Ponzi scheme, disregards the plain terms of the Plan, and asks the Receiver, and now the Court, to elevate the Investor, who suffered no loss, to a position above all other Investors, including those who suffered total losses of approximately \$40 million. The Court should deny the Disputed Claim and approve Claim No. 2323 in the amount of \$0. The Receiver further requests that the Court order this Investor to return the \$14,500 in net winnings paid to him. *See generally, Sender v. Buchanan*, 84 F.3d 1286 (1996) (awarding bankruptcy trustee certain net winnings paid to innocent Ponzi scheme investor).

12.

Claim No. 2643 – D. Cra. (Exhibit B). The Receiver has been unable to

determine whether there is a dispute regarding the amount invested by or returns paid to this Investor. Counsel for the Receiver has tried to contact this Investor on multiple occasions, both orally and in writing, to determine the basis of the dispute, but has had no success in engaging the Investor in a dialogue regarding the Disputed Claim.

This Investor submitted multiple Claim Forms. The Claim Forms related to funds invested by the Investor, by her mother, and/or by Ability Enterprises, LLC, a company owned by her mother. The Receiver's original Claim Determination Notice on Claim 2643 mistakenly included some of the funds that should have been allocated to the Investor's mother and/or Ability Enterprises, and showed an amount invested of \$85,000, an amount returned of \$72,500, and a net claim in the amount of \$12,500. Subsequently, the Investor's mother filed for bankruptcy and the Receiver reviewed all investments. Ultimately, the Receiver determined that the Investor had invested only \$17,000, and had received returns totaling \$8,500.⁵ Accordingly, on a cash-in less cash-out basis, the appropriate amount of the Investor's Claim is \$8,500. Counsel for the Receiver has communicated this updated analysis to the Investor and has received no response.

⁵ Documentation supporting these amounts, as well as documents showing the amounts invested by and returned to the Investor's mother and Ability Enterprises are included in the Exhibits.

The basis of the Investor's Disputed Claim does not appear to be the Receiver's analysis of the amount invested and returned; rather, the Investor seeks special treatment because she purportedly made her investment with the proceeds of a student loan. The Investor requests that her Claim be prioritized above all other Claims and that the Receiver return her entire \$17,000 investment. The Investor's Disputed Claim ignores the terms of the Court approved Plan and disregards the losses suffered by other Investors. The Investor has not provided any support for her request that her Claim be prioritized. Therefore, the Receiver requests that the Court deny the Investor's Disputed Claim and approve Claim No. 2643 in the amount of \$8,500.

13.

Claim No. 3327 – K. Kad. (Exhibit C). There is no dispute that this Investor invested \$5,000 and received \$1,750 in returns, consisting of a \$1,250 return payment and a \$500 finder's fee. Accordingly, based on the terms of the Plan, the Investor suffered a net loss of \$3,250 and should have an Approved Claim in that amount. The Investor filed a Disputed Claim, apparently seeking the return of the entire \$5,000 invested by him. Because the basis for the Disputed Claim contradicts the plain terms of the Plan, the Receiver requests that the Court deny the Disputed Claim and approve Claim No. 3327 in the amount of \$3,250.

14.

*Claim No. 3498 – M. Vil.*⁶ (*Exhibit D*). There is no dispute that this Investor invested \$40,000 and received \$70,000 in returns. Accordingly, on a cash-in less cash-out basis, the Investor suffered no net loss. Indeed the Investor was a net winner in the amount of \$30,000. Though this Investor does not claim to have suffered a net loss, she filed a Disputed Claim, apparently seeking additional returns over and above her \$30,000 in net winnings. There is no basis upon which this Investor is entitled to additional payments. Accordingly, the Receiver requests that the Court deny the Disputed Claim and approve Claim No. 3498 in the amount of \$0, and order the Investor to return her \$30,000 in net winnings to the Receiver Estate.

15.

⁶ M. Vil. is the listed contact person for Claim Nos. 3498, 3630, 3720 and 3979. All of these Claims are net winners, with total combined winnings of at least \$35,000. Counsel for Receiver contacted M. Vil. by letter and by telephone to explain the Claims Administration process and to request that these Investors withdraw their Disputed Claim. Despite the fact that M. Vil. and her family received at least \$35,000 in net winnings, they are causing the assets of the Receiver Estate to be depleted by requiring the time and expense necessarily involved in attempting to resolve these Disputed Claims and submitting them to the Court. Therefore, the Receiver requests that the Court order these Claimants to return their net winnings to the Receiver Estate. *See generally, Sender*, 84 F.3d 1286 (1996) (awarding bankruptcy trustee certain net winnings paid to innocent Ponzi scheme investor).

Claim No. 3630 – M. Mer. (Exhibit E). There is no dispute that this Investor invested \$10,000 and received \$12,500 in returns. Accordingly, on a cash-in less cash-out basis, the Investor suffered no net loss, and was a net winner in the amount of \$2,500. Accordingly, the Receiver requests that the Court deny the Disputed Claim and approve Claim No 3630 in the amount of \$0, and order the Investor to return his \$2,500 in net winnings to the Receiver Estate.

16.

Claim No. 3720 – N. Vil. (Exhibit F). Again, there is no dispute that this Investor invested \$10,000 and received \$12,500 in returns. Accordingly, the Investor suffered no net loss, and was a net winner in the amount of \$2,500. Therefore, the Receiver requests that the Court deny the Disputed Claim and approve Claim No 3720 in the amount of \$0, and Order the investor to return her \$2,500 in net winning to the Receiver Estate.

17.

Claim No. 3979 – R. Vil. (Exhibit G). There is no dispute that this Investor invested \$30,000 and received at least \$30,000 in returns.⁷ Accordingly, the Investor suffered no net loss, and the Receiver requests that the Court deny the Disputed Claim and approve Claim No. 3720 in the amount of \$0.

RESOLUTION OF PREVIOUSLY APPROVED CLAIMS
NOW IN DISPUTE

18.

Omitted from the Receiver's Motion for Approval of Revised Approved Claims Schedule were nine Claims previously approved by the Court's August 24, 2007 Order, but regarding which the Receiver later discovered errors in submission and other issues. Of these nine Claims, three have since been resolved, as follows.

19.

Claim No. 2371 – B. Pet. (Exhibit H). This Investor has agreed to have his Claim revised to reflect the actual source of funds, Shane Properties, LLC.

⁷ This Investor's Claim Form and the Receiver's Claim Determination Notice both show an investment of \$30,000 and returns of \$30,000; however, Pinnacle documents show an additional return in the amount of \$7,500, which the Investor claims to never have received. Whether the additional \$7,500 was received does not affect the outcome of the Receiver's analysis that the Investor suffered no net loss.

Therefore, the Receiver requests that the Court approve Claim No. 2371 as revised, in the amount of \$11,250, and in the name of Shane Properties, LLC.

20.

Claim No. 2407 – B. Bon. (Exhibit I). This Investor has agreed to have her Claim revised to reflect the actual source of funds, which was an account in her name and the name of Jerome M. Bonheyo. Therefore, the Receiver requests that the Court approve Claim No. 2371, as revised, in the amount of \$7,500, and in the name of B. Bon. and J. Bon.

21.

Claim No. 3719 – N. Ste. (Exhibit J). This Investor submitted a Claim showing \$10,000 invested, and \$0 in cash-out. Accordingly, the Receiver approved her Claim in the amount of \$10,000. The Receiver subsequently discovered a second Pinnacle account, in the name of the same Investor, on which she was a net winner in the amount of \$2,812.50. The Investor maintains that, although all funds came from her personal account, the second \$10,000 investment was on behalf of her business, NS Beachside Investments, Inc. The Investor has provided excerpts from the company's general ledger to support her position. Although there is a dispute over the appropriate allocation of the investment amounts and returns, the Receiver has determined that the costs associated with

requiring the Court to resolve this dispute likely would exceed the \$2,812.50 at issue. Therefore, the Receiver requests that the Court approve Claim No. 3719 in the name of NS Beachside Investments, Inc., in the amount of \$10,000.

22.

The remaining six Claims have not been resolved, and are addressed in Paragraphs 23 through 28 below.

23.

Claim No. 2506 – C. Pes. (Exhibit K). This Claim was submitted by and approved in the name of Christopher M. Pesche, in the amount of \$12,000. Upon further analysis, the Receiver Team noted that the funds supporting this Claim came from the account in the name of Christopher M. Pesche and Renate R. Pesche. The Receiver attempted to contact the Claimant to add Renate R. Pesche to the Claim, but received no response from the Claimant. Accordingly, the Receiver requests that the Court approve Claim No. 3742, for \$12,000, in the name of Christopher M. Pesche and Renate R. Pesche.

24.

Claim No. 2395 – B. Hea. (Exhibit L). This Investor submitted his Claim Form, under penalty of perjury, indicating that he had invested \$38,000, but received only \$2,812.50 in cash-out. Due to a variety of issues related to multiple

Pinnacle accounts, the appropriate source of funds, and incomplete documentation, the Receiver Team's analysis changed over time.

The Receiver's initial Claim Determination for this Claim showed only \$28,000 in cash-in, and \$14,000 in cash-out. Accordingly, the Receiver's original Approved Claims Schedule includes a \$14,000 Approved Claim. Upon further research of this Claim, the Receiver Team located Pinnacle account information and information from Pinnacle's bank records that supported a \$38,000⁸ cash-in amount. Pinnacle's bank records also showed, however, that this Claimant received \$35,625.00 in wire transfers from Pinnacle, not the \$2,812.50 sworn by him in his initial Claim Form. The Receiver has attempted, without success, to resolve this issue without Court intervention. Accordingly, the Receiver requests that the Court revise Claim No. 2395 from \$14,000, to \$2,375.00, the correct amount.

25.

Claim No. 2908 – G. Mar, Jr. and D. Mar. (Exhibit M). These Investors submitted their Claim Form, under penalty of perjury, showing a \$20,000

⁸ \$28,000 of this amount came from the account of the Claimant's daughter-in-law, who appears to have invested the funds for this Claimant and at his direction. Because there are no competing Claims regarding these funds, the Receiver has included them in this Claim.

investment and \$15,000 in cash-out. The Receiver Team's analysis of this Claim changed over time as it reviewed additional documentation. For example, initial documentation indicated that these Claimants had failed to account for a \$5,000 wire return; however, review of additional Pinnacle records showed a reversal of the return.⁹ The Claim was included on the original Approved Claims Schedule in the amount of \$5,000. The Receiver Team has since discovered that these Investors omitted from their Claim Form \$20,000 in investments and \$25,000 in cash-out – *i.e.*, these Investors suffered no net loss. Accordingly, the Receiver requests that the Court revise Claim No. 3048 from \$5,000, to \$0, the correct amount.

26.

Claim No. 3048 – J. Gre. (Exhibit N). This Investor submitted his Claim Form, under penalty of perjury, indicating that he had invested \$5,000, but received no cash-out. Based on this information, the Receiver included this Claim on the original Approved Claims Schedule in the amount of \$5,000. Additional analysis by the Receiver Team showed that this Claimant failed to report an additional \$10,000 investment and \$15,000 in cash-out. Accordingly, this Investor

⁹ This issue exemplifies the difficulties encountered by the Receiver Team in conducting its analysis.

suffered no net loss. The Receiver Team has requested that the Investor withdraw his Claim, but he has failed to do so. Accordingly, the Receiver requests that the Court revise Claim No. 3048 from \$5,000, to \$0, the correct amount.

27.

Claim No. 3554 – M. Moo. (Exhibit O). This Investor submitted his Claim Form, under penalty of perjury, indicating that he had invested \$20,000, but received only \$10,000 in cash-out. Based on this information, the Receiver included this Claim on the original Approved Claims Schedule, in the amount of \$10,000. Additional analysis by the Receiver Team showed that this Claimant actually received \$20,000 in returns, not the \$10,000 sworn to by him in his Claim Form. The Receiver Team has requested that the Investor withdraw his Claim, but he has failed to do so. Accordingly, the Receiver requests that the Court revise Claim No. 3554 from \$10,000, to \$0, the correct amount.

28.

Claim No. 3742 – O. Pen. (Exhibit P). This Claim was submitted by Omar J. Pena. The Receiver's original Approved Claims Schedule includes a \$7,500 Approved Claim in the name of Omar J. Pena. Upon further research of this Claim, the Receiver Team noted that the funds supporting this Claim came from an account in the name of Omar D. Pena and Maris Pena. The Receiver attempted to

contact the Claimant to resolve the name issue and to add Maris Pena to the Claim, but received no response from the Claimant. Accordingly, the Receiver requests that the Court approve Claim No. 3742, for \$7,500, in the name of Omar D. Pena and Maris Pena.

OTHER CLAIMS ISSUES

29.

In addition to Claims that are in dispute, there are four Claims that require additional adjustment and one late-filed Claim that the Receiver has decided to allow. There also are two Claims regarding which there is a dispute between purported Investors over future distributions. Each of these Claims is addressed below.

Claims Requiring Adjustment

30.

Claim No. 2553 – R. Rei. and D. Rei. (Exhibit Q). This Claim was included on the original Approved Claims Schedule in the amount of \$13,500, but was included on the Revised Approved Claims Schedule in the amount of \$30,000. The correct amount of this Claim is \$13,500, and the Investors have signed declarations agreeing to have the Claim reduced to \$13,500. Therefore, the

Receiver requests that the Court approve Claim No. 2553 in the amount of \$13,500.

31.

Claim No. 3013 – I. Ter. (Exhibit R). This Claim was included on the original Approved Claims Schedule in the amount of \$0, but was included on the Revised Approved Claims Schedule in the amount of \$5,568.75. The correct amount of this Claim is \$0, and the Investor has signed a declaration agreeing to have the Claim reduced to \$0. Therefore, the Receiver requests that the Court approve Claim No. 3013 in the amount of \$0.

32.

Claim No. 3163 – J. Foo. (Exhibit S). The Receiver's initial Claim Determination Notice to this Investor reflected an amount invested of \$10,000, an amount returned of \$9,351.25, and a net loss and allowed claim in the amount of \$648.47. On December 15, 2007, the Investor executed a sworn declaration, authorizing the Receiver to reduce Claim No. 3163 to \$468.75. Subsequently, the Receiver determined that, although the Investor reported a significant amount in returns, the Investor never received those returns and never took any cash-out.

Accordingly, the correct amount of Claim No. 3163 is \$10,000, and the Receiver requests that the Court approve Claim No. 3163 in the amount of \$10,000.

33.

Claim No. 3283 – K. Joy. (Exhibit T). This Claim was submitted late, but was allowed by the Receiver, and included on the Revised Approved Claims Schedule, in the amount of \$3,800. Further analysis by the Receiver Team revealed an additional \$5,000 investment, meaning that the Claim should have been approved in the amount of \$8,800. Therefore, the Receiver requests that the Court approve Claim No. 3283 in the amount of \$8,800.

Late Filed Claim

34.

Claim No. 3801 – Palm Beach Home Solutions, LLC. (Exhibit U). This Investor submitted its Claim Form in February 2008, showing \$10,000 invested and \$7,500 in cash-out. Although the Claim was filed over one year after the March 1, 2007 Claim Bar Date, the Receiver Team analyzed the Claim and confirmed that the Investor had invested \$10,000, received \$7,500 in cash-out, and suffered a net loss of \$2,500. Although the Claim was late, the Receiver decided, pursuant to Section 2.3 of the Plan, to allow the Claim at \$2,500, and on April 18, 2008, the Receiver sent the Investor a Claim Determination Notice to that effect.

Because the Claim was filed late, the Investor does not have any rights under the Plan to dispute the Receiver's Claim Determination. Therefore, the Receiver requests that the Court approve Claim No. 3801 in the amount of \$2,500.

Claims Subject to Dispute Between Investors

35.

Claim No. 3953 – RLH Investments, LLC; Claim No. 3957 – R. Hat. & Trillium Investments, LLC. (Exhibits V(1) & (2)). Investor Rodney Hatfield submitted two Claims, both of which were approved and are included on the Revised Approved Claims Schedule, in the total amount \$305,148.44: Claim No. 3953, in the name of RLH Investments, LLC, in the amount of \$220,398.44; and Claim No. 3957, in the name of Rodney Hatfield and Trillium Investments, LLC, in the amount of \$84,750. There is no dispute regarding the amount of these Claims; however, the Receiver recently has been contacted by two individuals (neither of whom filed Claims in this receivership) regarding Mr. Hatfield's entitlement to the funds.

In submitting his sworn Claim Forms, Mr. Hatfield indicated that the investments made by him and his companies were not received from or made on behalf of someone other than himself. The Receiver had no reason to believe that Mr. Hatfield's Claims were improper because Pinnacle's documentation supported

his Claims, and Mr. Hatfield did not provide, and Pinnacle's records did not include, any indication that Mr. Hatfield was a middle-man for additional Investors. Based on the information available to him, and the fact that there were no competing Claims for these funds, the Receiver properly approved the Claims, and made an initial distribution of \$91,544.53, representing 30% of the Claims.

On March 12, 2008, Tom Law contacted the Receiver, indicating that he had invested \$25,000 in Pinnacle through Mr. Hatfield, and that Mr. Hatfield had failed to pay him any funds from the first interim distribution. The Receiver Team confirmed that Mr. Law had not filed a Claim in this receivership, and informed Mr. Law that his dispute was with Mr. Hatfield, not with the Receiver.

Subsequently, on April 1, 2008, Regina Lino contacted the Receiver and indicated that she had invested \$25,000 in Pinnacle through Mr. Hatfield, and that Mr. Hatfield had failed to pay her any funds from the first interim distribution. Again, the Receiver Team confirmed that Ms. Lino had not filed a Claim in this Receivership, and informed Ms. Lino that her dispute was with Mr. Hatfield, not with the Receiver.

Although Mr. Law and Ms. Lino did not file Claims and therefore have no rights against the Receiver Estate, the Receiver became concerned that Mr. Hatfield had provided incomplete and inaccurate information on his Claim Forms

(which were sworn to and submitted under penalty of perjury), and that Mr. Hatfield may have failed to disclose investment money received from additional sources. On April 17, 2008, counsel for the Receiver spoke to Mr. Hatfield. Mr. Hatfield admitted that he had made investments on behalf of others, and admitted that he had not paid Mr. Law or Ms. Lino, but claimed that the entire \$91,544.53 of the first interim distribution somehow had been seized by another investor. Mr. Hatfield was unwilling or unable to explain how these funds were seized or frozen. Moreover, Mr. Hatfield committed to providing documentation to the Receiver, but has failed to do so.

In the days prior to the filing of this Motion, several other individuals who claim to have invested in Pinnacle through Mr. Hatfield have contacted the Receiver claiming that they too are owed money from the first interim distribution received by Mr. Hatfield. On April 19, 2008, Celia Andrade informed the Receiver that, on September 10, 2006, she invested \$30,000 through Mr. Hatfield. On April 28, 2008, Chris Corder informed the Receiver that he and his wife invested \$50,000 through Mr. Hatfield.¹⁰ Also on April 28, 2008, Roberta Stotts

¹⁰ Mr. Corder also listed a Gail Patterson as someone who invested through Hatfield, but Ms. Patterson has not contacted the Receiver. The Receiver does have a record of a Gail Patterson (with a different spelling), who invested directly in Pinnacle through her company.

informed the Receiver that she invested \$25,000 through Mr. Hatfield. And, on April 29, 2008, Evelina Smith informed the Receiver that she invested \$50,000 through Mr. Hatfield.

In light of the communications from the above individuals, and Mr. Hatfield's lack of an explanation for failing to provide complete information on his Claim Forms and for not paying Mr. Law and Ms. Lino (and, presumably, any other investors) from the first interim distribution, the Receiver has decided to hold any additional distributions on Mr. Hatfield's claims pending an order by this Court regarding the appropriate recipient of those funds. By copy of this motion, the Receiver invites the above-referenced individuals to file with the Court a response to this motion setting forth their respective positions. The Receiver requests that, based on the information provided, the Court make a determination regarding future distributions, and award any additional relief that it deems necessary and appropriate, including the repayment by Mr. Hatfield of the funds already received by him.

**NOTICE TO AFFECTED INVESTORS AND
RESOLUTION BY THE COURT**

36.

The Receiver will provide notice of this Motion, as well as the documentation related to the Disputed Claim or previously Approved Claim now

in dispute, to each Investor with an affected Claim.¹¹ If the Investor fails to file a response to this Motion, the Receiver requests that the Court adopt the Receiver's position as unopposed. If the Investor files a response that does not raise issues of material fact, the Receiver requests that, pursuant to Section 2.6.3(1) of the Plan, the Court resolve the dispute without hearing. If the Investor files a response that raises issues of material fact, the Receiver requests that, pursuant to Section 2.6.3(2) of the Plan, the Court schedule a hearing to resolve the Disputed Claim.

CONCLUSION

WHEREFORE, S. Gregory Hays, Receiver, respectfully requests that the Court enter the Receiver's Revised Approved Claims Schedule, and rule in the Receiver's favor on the Disputed Claims described herein.

This 29th day of April, 2008.

By: /s/ Thomas B. Bosch
J. David Dantzler, Jr.
Georgia Bar No. 205125
Thomas B. Bosch
Georgia Bar No. 068740
Attorneys for S. Gregory Hays,
Receiver for Defendants Pinnacle
Development Partners, LLC

¹¹ To avoid publicly disclosing their contact information, these Investors are not included on the Certificate of Service.

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Local Rule 7.1D Certificate of Compliance

The undersigned certifies that this brief has been prepared with on of the font and point selections approved by the Court in Local Rule 5.1B.

By: /s/ Thomas B. Bosch
Thomas B. Bosch
Georgia Bar No. 068740

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p style="text-align:center">Plaintiff,</p> <p>v.</p> <p>PINNACLE DEVELOPMENT PARTNERS LLC and GENE A. O'NEAL,</p> <p style="text-align:center">Defendants.</p>	<p style="text-align:center">CIVIL ACTION NO.</p> <p style="text-align:center">06 CV 2431-JTC</p>
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CERTIFICATE OF SERVICE

This is to certify that on April 29, 2008, I electronically filed this RECEIVER'S MOTION FOR RESOLUTION OF DISPUTED CLAIMS with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

James Alexander Rue

William P. Hicks

Michael D. Watson

John Gerald Westrick

True and correct copies of this RECEIVER'S MOTION FOR RESOLUTION OF DISPUTED CLAIMS, and relevant Exhibits, were sent to all affected Investors by US Mail, with adequate postage affixed thereto, or, if the

Receiver did not have a current mailing address, by electronic mail.

This 29th Day of April, 2008.

By: /s/ Thomas B. Bosch
Thomas B. Bosch
Georgia Bar No. 068740
Attorney for S. Gregory Hays,
Receiver For Defendant Pinnacle
Development Partners LLC

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