

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

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p>Plaintiff,</p> <p>vs.</p> <p>TRAVIS E. CORRELL, individually and doing business as Horizon Establishment; GREGORY THOMPSON; DWIGHT J. JOHNSON; HARRY ROBINSON "ROBBIE" GOWDEY, individually and doing business as Atlas and Jericho Productions; GRANT CARDNO; NEULAN D. MIDKIFF; TRAVIS CORRELL &amp; COMPANY, INC.; THE LIBERTY ESTABLISHMENT, INC.; SOVEREIGN CAPITAL INVESTMENTS, S.A.; TNT OFFICE SUPPLY, INC.; NET WORTH GROUP, INC.; and JOSHUA TREE GROUP LLC,</p> <p>Defendants,</p> <p>and</p> <p>BANNER SHIELD, LLC; HOSPITALITY MANAGEMENT GROUP, INC.; CREATIVE WEALTH VENTURES, LLC, and JTA ENTERPRISES,</p> <p>Defendants Solely for Purposes of Equitable Relief.</p>	<p>CIVIL ACTION NO. 4:05CV472</p>
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**MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT CONCERNING  
PROPERTY LOCATED AT 7580 HILO LANE, FOREST LAKE, MINNESOTA 55025**

S. Gregory Hays (“Receiver”)<sup>1</sup> files this Motion for Approval of Settlement Agreement Concerning Property Located at 7580 Hilo Lane, Forest Lake, Minnesota 55025. In support, the Receiver states as follows:

**The Investment Scheme**

1. The offering that is the subject of this action is a purported “high-yield investment program” or “prime bank investment” (referred to herein as the “Bank Deposit Program”) allegedly perpetrated by some or all of the Defendants in this matter, including Neulan D. Midkiff. In sum, it appears that some or all of the Defendants enticed investors to sink substantial amounts of money into the Bank Deposit Program through promises of high monthly interest payments ranging from 4% to 12% per month, with no risk to their investment principal.

**The Receiver**

2. On December 7, 2005, the Securities and Exchange Commission (“SEC”) filed this action seeking temporary, preliminary, and permanent injunctive relief, as well as disgorgement and other monetary sanctions. On that same date, this Court entered an order appointing S. Gregory Hays as Receiver for each of the Defendants and for certain assets of the Relief Defendants (the “Receivership Order”). Among other things, this Court authorized and directed the Receiver to:

- a. take custody, control, and possession of all records, assets, and other property of the Receiver Estate;

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<sup>1</sup> Gregory S. Hays is court-appointed Receiver for Travis E. Correll, individually and doing business as Horizon Establishment; Gregory Thompson; Dwight J. Johnson; Harry Robinson “Robbie” Gowdey, individually and doing business as Atlas and Jericho Productions; Neulan D. Midkiff; Travis Correll & Company, Inc.; TNT Office Supply, Inc.; Net Worth Group, Inc.; Joshua Tree Group LLC; Banner Shield, LLC; Hospitality Management Group, Inc.; Creative Wealth Ventures, LLC; and JTA Enterprises, L.L.C. (collectively the “Receiver Entities” or the “Receiver Estate”).

- b. administer the assets of the Receiver Estate, including the authority to liquidate assets;
- c. perform an accounting of the receipt, disposition, and use of the subject investment proceeds; and
- d. investigate any matters that the Receiver deems appropriate in connection with the Receiver Estate.

3. On December 13, 2005, this Court entered an Order of Preliminary Injunction and Other Equitable Relief as to Defendants Neulan D. Midkiff and Joshua Tree Group LLC. In the Order, the Court enjoined Defendant Midkiff from continuing to violate the federal securities laws, from transferring funds or assets, or from destroying or altering any of his records.

**Neulan D. Midkiff and the Property**

4. On June 10, 2005, Frederick Dewall and Sandra Dewall (“the Dewalls”) entered into a “Contract for Deed” with Defendant Midkiff and his wife, Donna Midkiff, by which the Midkiffs would purchase real property, including a house, located at 7580 Hilo Lane, Forest Lake, Minnesota 55025, in Washington County, Minnesota (the “Property”). The Contract for Deed was recorded as Document No. 355147 with the Washington County recorder.

5. A Contract for Deed is an instrument of conveyance whereby the seller (the Dewalls, in this case) agrees to provide fee title to the purchasers (the Midkiffs) upon completion of the Contract for Deed’s terms, namely payment of the purchase price over the period of time set forth in the contract. In this case, under the Contract for Deed’s terms, the Dewalls have the right to cancel the Contract for Deed if the Midkiffs failed to perform in accordance with the contract’s terms. In this event, the Dewalls also had the right to repossess the Property, and to keep all previous payments made by the Midkiffs under the Contract for Deed.

6. The purchase price of the Property was \$1,300,000.00, of which the Dewalls credited the Midkiffs with \$36,500.00 upon the Dewalls's receipt of a 2004 Lincoln Navigator automobile from the Midkiffs, which the Dewalls sold for \$36,500.00.

7. Through his counsel, the Receiver has consulted with counsel for the Dewalls, and has determined that the Midkiffs made a \$223,500.00 down payment on the Property to the Dewalls in or around June 2005, and that the Midkiffs made a second, \$100,000.00 payment in August 2005. The Midkiffs were also bound to pay \$7,600.00 per month toward the purchase price on the Property, and in fact made \$9,000.00 payments to the Dewalls on or about August 1, 2005, September 1, 2005, October 1, 2005, and November 1, 2005.

8. The Receiver has also learned, through interviews with Neulan Midkiff and others and examination of documents pertaining to the Bank Deposit Program and to the Midkiffs in particular, that the Midkiffs have spent over \$100,000.00, possibly several hundred thousand dollars, improving and purchasing furnishings for the house.

9. Between house payments, improving, and purchasing furnishings, the Midkiffs appear to have spent a total of over \$375,000.00 on the Property.

10. The Receiver has further learned, from counsel for the Dewalls, that the Dewalls executed a purchase money mortgage encumbering the Property in favor of Lino Lakes State Bank in the original amount of \$967,000.00, with a balance, as of January 11, 2006, of \$862,946.42, costing \$6,172.62 per month for the Dewalls to service.

11. The Midkiffs attempted to make a monthly payment for the Property, via check, to the Dewalls on or around December 1, 2005, but the check was returned by the Dewalls' bank because the Midkiffs had insufficient funds in their checking account.

12. Because the Midkiffs failed to make their monthly payment for December 2005 and January 2006, the Dewalls, with the Receiver's permission, have exercised their right, under the Contract for Deed, to cancel said contract per the statutory procedure in Chapter 559 of the Minnesota Code and, upon completion of the cancellation process, to repossess the Property, but to pay a portion of the previous payments made by the Midkiffs under the Contract for Deed, with the Receiver's understanding that a portion of the funds received would be returned to the Receiver.

#### **The Receiver's Interest in the Property**

13. The Receiver has determined that the Midkiffs' payments to the Dewalls under the Contract for Deed for the Property were made with funds that Neulan Midkiff received as a result of his involvement in the Bank Deposit Program.

14. The SEC has established a prima facie case that Neulan Midkiff has, through his participation in the Bank Deposit Program/investment scheme mentioned above, engaged in acts that constitute violations of the Securities Act of 1933 and the Securities Exchange Act of 1934.

#### **The Parties' Settlement Agreement**

15. The Receiver claims that the Dewalls received approximately \$375,000.00 in tainted funds that Midkiff has devoted to the Property and/or an interest in the Property, the Dewall's foreclosure notwithstanding. Specifically, the Receiver contends that the monies paid to the Dewalls and/or used to improve the Property (as well as the 2004 Lincoln Navigator that the Dewalls received from the Midkiffs) are impressed with a constructive trust, and that those funds should be returned to the Receiver for the benefit of the Receiver Estate.

16. The Dewalls have contested the Receiver's claim to these funds, and have warranted that they had no involvement with Midkiff's investment scheme.

17. In an effort to resolve their dispute without engaging in expensive, time-consuming litigation, the parties entered into a Settlement Agreement, a copy of which is attached hereto as Exhibit "A." In sum, the Receiver and the Dewalls have settled and compromised all contested claims between them related to the Property, the Lincoln Navigator, and to Midkiff. Specifically, the Dewalls have agreed to pay \$268,828.00 to the Receiver in exchange for any claims regarding the 2004 Lincoln Navigator, the Receiver's conveyance to the Dewalls of Midkiff's interest in the Property, and complete control over the Property.<sup>2</sup> In addition, the Dewalls will continue to make payments on the first mortgage on the Property until such time as it is sold. The effect of the settlement is that any net gain or loss on the ultimate sale of the Property inures to the Dewalls.

18. Despite the Receiver's belief that his claims to a recovery against the Dewalls and/or the Property could exceed \$375,000.00, he is convinced that the proposed settlement is in the best interest of the Receiver Estate and the investors. Simply stated, the Receiver believes that, taking into account all of the relevant circumstances, the Receiver Estate is well served by the immediate recovery of the agreed-upon \$268,828.00 from the Dewalls without spending more time and money in uncertain litigation with the Dewalls and/or funding any portion of the first mortgage payments and/or being responsible for the uncertainties and the costs attendant to a sale of the Property.

WHEREFORE, the Receiver respectfully requests that this Court grant the Receiver's Motion for Approval of Settlement Agreement Concerning Property Located at 7580 Hilo Lane, Forest Lake, Minnesota 55025, and legally described as set forth in the Settlement Agreement,

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<sup>2</sup> The Dewalls have also agreed to purchase all of the furnishings remaining in the Property from the Receiver, in "as-is" condition, for \$15,000.00, which is, roughly, what the Receiver could ultimately expect to collect for the furniture if he commissioned an auctioning company to sell it. Upon receipt, the Receiver will direct these funds into the Receiver Estate.

and the Lincoln Navigator. For the convenience of the Court, a proposed order approving the subject settlement is attached as Exhibit "B."

Respectfully submitted this 28th day of April 2006.

TROUTMAN SANDERS LLP

/s/ J. David Dantzler, Jr.

J. DAVID DANTZLER, JR.

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**CERTIFICATE OF CONFERENCE**

Counsel for the Receiver has, prior to filing this Motion, consulted with counsel for Neulan D. Midkiff concerning the property that is the subject of this Motion. As set forth more fully in a Notice of No Opposition to Receiver's Motion to Approve Settlement, filed at the same time as this Motion, Counsel for Defendant Midkiff has informed Counsel for the Receiver that Defendant Midkiff will not oppose this Motion.

/s/ J. David Dantzler, Jr.

J. DAVID DANTZLER, JR.

Ga. State Bar No. 205125



**CERTIFICATE OF SERVICE**

I do hereby certify that, on April 28, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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