

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

<p>SECURITIES AND EXCHANGE COMMISSION,</p> <p>Plaintiff,</p> <p>vs.</p> <p>ALBERT E. PARISH, Jr., PARISH ECONOMICS, LLC and SUMMERVILLE HARD ASSETS, LLC,</p> <p>Defendants.</p>	<p>CIVIL ACTION NO. 2:07-919-DCN</p>
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**MOTION TO APPROVE SCHEDULES OF ALLOWED CLAIMS
AND AUTHORIZE DISTRIBUTION OF PROCEEDS**

S. Gregory Hays, Receiver for the Defendants Albert E. Parish, Parish Economics, LLC, and Summerville Hard Assets, LLC (collectively, "Parish"), hereby moves this Court to approve the attached schedules of allowed claims and authorize the distribution of funds in accordance with the claim amounts set forth in the schedules, and shows the Court as follows:

BACKGROUND

1.

This action was commenced on April 5, 2007 when the Securities and Exchange Commission ("SEC") filed the above-styled civil enforcement action. In its *Order to Show Cause, Temporary Restraining Order, Order Appointing Receiver, Order Freezing Assets, Order Prohibiting Destruction of Documents and Order Expediting Discovery* entered on April 5, 2007, this Court appointed S. Gregory Hays as Receiver for Parish. (Dkt. # 7.) Among other things, this Court authorized and directed the Receiver to take possession, custody, and control of the

assets of the Receiver Estate, manage those assets, and ultimately distribute those assets to investors and creditors with valid claims against the Estate. This authority, along with all other aspects of the Receivership Order, was continued pursuant to the terms of this Court's *Order Granting Preliminary Injunction, Freezing Assets, Appointing Receiver and Ordering Other Ancillary Relief* entered April 12, 2007 (dkt. # 26) (this Order and the Receivership Order shall be referenced collectively as the "Receivership Orders.").

2.

Soon after his appointment, the Receiver began providing claim forms to all known individuals and entities who appeared to have invested in Parish's investment pools. The Receiver also posted the claim form on his website (www.haysconsulting.net). Later, the Receiver provided similar claim forms to Parish's known creditors. In an Order dated June 14, 2007, this Court established July 31, 2007 as the deadline for submission of a claim with the Receiver ("the Bar Date"). Over 550 claims were submitted to the Receiver by investors or creditors ("Claimants"), representing total claims of over \$95 million.

ANALYSIS OF CLAIMS AND RESOLUTION OF CLAIM DISPUTES

3.

In accordance with his responsibilities under the Receivership Orders, the Receiver has developed a process for the analysis and administration of the claims of Parish's investors and other creditors, along with a proposal for the ultimate distribution of the monies in the Receiver Estate, which is set forth in the Plan for Claims Administration and Distribution of Proceeds (the "Plan"). On July 1, 2009, the Court approved the claims administration portion of the Plan, i.e. Sections 1 through 4 and Section 6. (*See* Dkt. # 298.) The Court deferred ruling on Section 5 of the Plan, which addresses the ultimate method of distribution to be used by the Receiver. (*Id.*)

4.

Pursuant to Section 3 of the Plan, the Receiver and the professionals working with him (the "Receiver Team") relied upon the funds tracing database developed in this case and the information provided by claimants and other sources to analyze and reconcile all of the claims that were submitted to the Receiver. Because Parish's fraudulent schemes began more than ten years ago, and a number of claimants were among the first investors to invest funds with Parish, this claims review process required the Receiver to scrutinize thousands of transactions occurring over the course of a decade. This task was made even more difficult by the general lack of documentation regarding transactions that occurred prior to August 2000. Accordingly, it took the Receiver Team several months of diligent effort to review and reconcile the more than 550 claims that were submitted in this case. After completing the claims review and analysis process, the Receiver provided each investor and creditor who submitted a claim with a Claim Determination Notice setting forth the Receiver's determination as to the amount and validity of the claim.

5.

Pursuant to Section 4.2 of the Plan, if any claimant disputed the Receiver's determination as to his or her claim, the claimant was permitted to submit a Claim Dispute Form to the Receiver describing the basis for the dispute. The Plan requires the Claim Dispute Form to be postmarked within 30 days of the date of the Receiver's Claim Determination Notice for that claim. Based on the dates that the Receiver mailed Claim Determination Notices to claimants, the time period within which claimants could object to the Receiver's determination of their claims has expired.

6.

In total, 64 claimants submitted claim disputes to the Receiver. The Receiver had broad discretion under the Plan to resolve these claim disputes. Pursuant to Section 4.3 of the Plan, “[t]he Receiver may, in his sole discretion, make adjustments, settle, and compromise any Claim Dispute on terms and for reasons that he deems appropriate.” (Dkt. # 267-1, at 7.) In accordance with this provision, the Receiver was ultimately able to resolve all of the claim disputes without requiring Court intervention.

7.

The resolution of the disputed claims involved significant time and effort, requiring the Receiver Team to examine the evidence underlying the disputed claims and work with the disputing claimants to reach resolutions that were supported by the evidence and in the best interests of the Receiver Estate. This was a difficult and, often, complicated task.

8.

Eight investors submitted Claim Dispute Forms objecting to portions of the Plan that have already been approved. For instance, several investors objected to the Receiver’s aggregation of the assets in the Receiver Estate into a common fund, as required by Section 2.4 of the Plan (dkt. # 267-1, at 3), while others objected to the Receiver’s treatment of third party settlements as Amounts Previously Received, as required by Section 3.3 of the Plan (dkt. # 267-1, at 4). None of these investors disputes the Receiver’s determination as to the amounts of their claims. The Receiver notified each of these investors that he would not file a Motion for Claim Resolution on their behalf because their objections concerned portions of the Plan that had already been approved, and he advised them that they could file an objection with the Court. Although several investors indicated a willingness to do so, none have filed objections.

9.

Among the most complicated tasks with which he was faced, the Receiver was required to resolve twenty-three claim disputes submitted by members of the Patel group of investors, which collectively make up the single largest group of investors with Parish. In total, the Patels invested more than \$28 million with Parish through thousands of individual transactions over a period of more than ten years. The Patel group ultimately consists of twenty-eight separate individuals and entities who each held separate accounts with Parish in their own names using their individual social security and tax identification numbers. Thus, although the Patels are generally related to one another and have been referred to throughout this case collectively, the Plan requires the Receiver to treat the claim of each individual investor in the Patel group as a separate, distinct claim. Specifically, Section 3.2(a) of the Plan states “(e)ach Investor will be treated separately from other affiliated or related investors. For example, a husband and a wife or an individual and that individual’s IRA having separate accounts will be treated as discrete investors and therefore will be required to submit separate Claim.” (Dkt. # 267-1, at 4.)

10.

Twenty-three of the twenty-eight investors in the Patel group each suffered a net loss on their investments with Parish. The other five investors in the Patel group were “Ponzi winners,” i.e. investors who received more in withdrawals from their accounts with Parish than the principal amounts they invested. The Receiver believes that the five investors collectively received over \$3 million more from Parish than they invested. While the Patels agree that these five investors may not have suffered a net loss, and therefore are not entitled to a distribution from the Estate, they do not agree to the Receiver’s determination as to the amounts invested and withdrawn by these five investors. Despite the fact that the Patel group contains these five

“winning” investors, a distribution to the other twenty-three “losing” investors in the group is appropriate because the claimants must be treated separately under Section 3.2 of the Plan as explained above.

11.

The twenty-three losing investors in the Patel group submitted claim disputes to the Receiver. To resolve the claim disputes of these twenty-three claimants, the Receiver Team reviewed a significant amount of documentation concerning the thousands of transactions at issue to determine whether the claimed amounts of deposits and withdrawals were adequately supported for each of the claims, then worked with the Patels’ attorney to resolve any apparent discrepancies between the claimed amounts and the documentary evidence. After several months of concerted review and negotiations, the Receiver Team was ultimately able to resolve all twenty-three disputes in the Patel Group.

12.

Another complicated task was the resolution of the claim dispute submitted by Dr. Leonard E. Forrest, who, like the Patels, was among the earliest Parish investors. After reviewing extensive documentation regarding Dr. Forrest’s investments with Parish, the Receiver and Dr. Forrest were able to agree upon the total amount of funds invested with Parish by Dr. Forrest, as well as the total amount of returns received by Dr. Forrest from his investment account. It should be noted that, while Dr. Forrest agrees with the Receiver’s determination as to the amount he received from his investment account as set forth on the Schedule discussed below, Dr. Forrest contends that the funds he received in returns from his account were funneled into another company with which Parish was affiliated and which ultimately failed; thus the funds were lost by Dr. Forrest. Because that company (Ulanji) is not part of the receivership, the

Receiver has treated the funds received by Dr. Forrest from his investment account as returns regardless of whether they were reinvested in Ulanji. Dr. Forrest maintains his objection to the Receiver's proposed method of distribution set forth in Section 5 of the Plan. (Dkt. # 282.)

13.

The Receiver believes that, although it was a time-intensive process, resolving every claim dispute in this case without intervention by the Court was ultimately in the best interests of the Receiver Estate. Resolution of the disputes has allowed the Estate to avoid the fees and expenses that would have been associated with litigating the disputes in Court, and the resolutions reached have generally been beneficial to the Estate.

SCHEDULE OF CLAIMS AND DISTRIBUTION OF PROCEEDS

14.

Based on the Receiver's determination as to the allowed amounts of all claims submitted in this case, as well as the resolutions of the disputes discussed above, the Receiver has developed two schedules containing the amounts of the allowed claims in this case. The allowed amounts of all investor claims are set forth in the Schedule of Allowed Investor Claims attached as Exhibit A and the allowed amounts of all creditor claims are set forth in the Schedule of Allowed Creditor Claims attached as Exhibit B.

15.

Because the appropriate amounts for all claims submitted to the Receiver have now been established, the Receiver believes it is now appropriate to make a distribution to the claimants based on the attached schedules of allowed claims. Accordingly, the Receiver respectfully requests that the Court approve the schedules of allowed claims (Exhibits A and B) and, pending the Court's ruling as to Section 5 of the Plan, grant the Receiver the authority to make

distributions from the Receiver Estate to the claimants in accordance with the amounts of the claims detailed therein.

16.

Upon the Court's approval of the attached schedules and its ruling on Section 5 of the Plan, the Receiver is prepared to make an initial distribution from the Receiver Estate in the total amount of \$9 million to claimants with allowed claims.

17.

Due to the likelihood that additional assets will be liquidated or recovered by the Receiver Estate after the initial distribution, the Receiver anticipates that there will be one or more subsequent distributions following the initial distribution. Accordingly, if the attached schedules are approved, the Receiver intends to make such subsequent distributions in accordance with the amounts of the claims detailed therein (as adjusted for any amounts that have at that time been received by the claimants in prior distributions from the Estate).

18.

Pursuant to Section 6.4 of the Plan, at the conclusion of the distributions the Receiver will file with the Court a Final Report setting forth: (a) the activities engaged in or to be undertaken in winding-up the Receiver Estate; (b) a financial statement for the Receiver Estate indicating the receipt and disbursement of money by the Receiver during the course of the Receivership; and (c) the Receiver's proposal regarding the disposition of any monies or other assets remaining in the Receiver Estate.

CONCLUSION

WHEREFORE, S. Gregory Hays, Receiver, respectfully requests that the Court grant the Receiver's Motion and approve the attached schedules of allowed claims and authorize the Receiver to make distributions from the Receiver Estate in accordance with the amounts of the claims detailed therein.

Respectfully submitted this 9th day of December, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December, 2009, I electronically filed the within and foregoing *Motion to Approve Schedules of Allowed Claims and Authorize Distribution of Proceeds* with the Clerk of this Court using the CM/ECF system, which will automatically send email notification of such filing to all case parties via email.

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/s/ Charles R. Burnett

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