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

SECURITIES AND EXCHANGE COMMISSION,	:	
Plaintiff,	:	Civil Action File No. 1:12-CV-1996-TWT
v.	:	
BENJAMIN DANIEL DEHAAN AND LIGHTHOUSE FINANCIAL PARTNERS, LLC,	:	
Defendants.	:	

MOTION BY RECEIVER SEEKING EITHER CLARIFICATION OF AUTHORITY OR EXPRESS AUTHORITY AND MEMORANDUM OF LAW IN SUPPORT THEREOF

COMES NOW, S. Gregory Hays, as the Receiver (the "Receiver") for Lighthouse Financial Partners, LLC ("Lighthouse"), Defendant in the above captioned Civil Action, appointed Receiver for Lighthouse (the "Receiver Estate") pursuant to an Order of this Court entered on July 2, 2012 (Docket No. 11, the "Appointment Order"), by and through counsel, and hereby files this Motion (the "Motion") seeking either clarification of authority or express authority and memorandum of law in support thereof, showing the Court as follows:

A. BACKGROUND

1. Section III(C) of the Appointment Order authorizes and empowers the Receiver with the right and power to, among other things: "pursue, resist and

defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receiver Estate."

2. Based on the authority set forth in the Appointment Order, the Receiver investigated various suits, actions, claims, and demands that could be brought for the benefit of the Receiver Estate.

3. After obtaining the opinions of a nationally recognized securities expert and experienced securities litigation counsel ("Litigation Counsel") regarding the viability of claims against certain potential defendants (the "Defendants"), reviewing the results of litigation by parties other than the Receiver against certain of the Defendants, and conducting unsuccessful mediation and settlement negotiations between the Receiver Estate and the Defendants, the Receiver acted pursuant to the authority in the Appointment Order to pursue the claims of the Receiver Estate against the Defendants by filing a complaint in this Court in the form of a pending ancillary proceeding against the Defendants (the "Ancillary Proceeding").

4. While the Receiver Estate is currently administratively solvent, the: a) funds currently available in the Receiver Estate would only be able to pay a small amount of the more than $7 million in claims filed by investors and creditors who have asserted claims against the assets of Lighthouse; and b) the claims asserted in the Ancillary Proceeding are the primary remaining source of

potential recovery to produce a payment of a significant distribution by the Receiver Estate to the harmed creditors and investors of Lighthouse.

5. On June 10, 2014, the Court entered an Order granting the Motions by the Defendants to dismiss the Ancillary Proceeding (the "Dismissal Order").

6. After being advised by Litigation Counsel for the Receiver in the Ancillary Proceeding that the Dismissal Order contains certain errors of law and fact, the Receiver, by motion dated June 27, 2014, requested that the Court reconsider the Dismissal Order in order to avoid manifest injustice (the "Reconsideration Motion").

7. Should the Court deny the Reconsideration Motion, although the authority of the Receiver as set forth in the Appointment Order to pursue claims arguably includes the authority to pursue such claims through an appeal, the Appointment Order, case law, and governing statutory authority do not clearly indicate whether the Receiver already has authority to file and prosecute an appeal from the Dismissal Order entered by the Court that appointed the Receiver.

B. ARGUMENT AND AUTHORITY

8. The Receiver acknowledges that a receiver manages property in receivership as a fiduciary at the direction of the Court that appointed the receiver. *See Hendricks v. Emerson*, 199 Ga. App. 208, 209 (1991).

9. While prior court approval is not required for every detail in a receivership, the Receiver also acknowledges that the Receiver should seek instructions from the Court in instances where the authority of the Receiver is uncertain or not clearly defined.

10. Certain non-binding authority indicates that a receiver must seek leave of court to appeal an order to dismiss an action when the court entering the order is the same court that appointed the receiver and initially authorized the receiver to proceed with the action. *See, e.g. Coffey v. Gay*, 191 Ala. 137 (Ala. 1914)(noting that: 1) a receiver is a creature of the court, must listen to his master's voice, and has no authority to act without permission of the court; and 2) the "court may, in its discretion, authorize its receiver to bring its decree under review by appeal"); *Holland v. Sterling Enterprises, Inc.*, 777 F.2d 1288, 1291 (7th Cir. Ill. 1985) (citations omitted)(indicating that "'a receiver may not ordinarily appeal without first obtaining authority from his creator, the court appointing him.'").

11. Although the Appointment Order does not provide explicit authority to pursue an appeal, the authority set forth in the Appointment Order to pursue all suits, actions, and claims could be interpreted to include the authority to pursue the Ancillary Proceeding until the conclusion of any appeals related to the action.

12. Even if the Appointment Order does not already authorize the Receiver to pursue a claim to the conclusion of any appeals related to the claim, certain exceptions exist to allow a receiver to appeal an order of the appointing court without previously obtaining prior approval and permission. *See id.* at 1292. In *Bosworth v. St. Louis Terminal R.R. Ass'n*, 174 U.S. 182, 43 L. Ed. 941, 19 S. Ct. 625 (1898), the Supreme Court described the exceptions as follows:

> A receiver may defend, both in the court appointing him and by appeal, the estate in his possession against all claims which are antagonistic to the rights of both parties [or] . . . which are antagonistic to the rights of either party to the suit, subject to the limitation that he may not in such defense question any order or decree of the court distributing burdens or apportioning rights between the parties to the suit, or any order or decree resting upon the discretion of the court appointing him.

13. The Receiver files this Motion out of an abundance of caution seeking either: a) confirmation that the Receiver has the authority to pursue any appeals of the Dismissal Order or any subsequent order of this Court in the Ancillary Proceeding and to take further conduct on behalf of the Receiver Estate in the Ancillary Proceeding; or b) in the event that the Receiver does not already have such authority, leave of Court and authority for the Receiver to file and prosecute an appeal of the Dismissal Order or any subsequent order of this Court in the Ancillary Proceeding and to otherwise plead and take action on behalf of the Receiver Estate in the Ancillary Proceeding.

14. In the event that the Reconsideration Motion is denied in full or in part, an appeal of the Dismissal Order is appropriate under the current circumstances as Litigation Counsel has advised the Receiver that the Receiver Estate has a legitimate basis upon which to seek appellate review of the Dismissal Order.

15. An appeal from the Dismissal Order would be in the best interests of the Receiver Estate and any delay in the administration of the Receiver Estate that may result from an appeal would be justified as the courses of action asserted in the Ancillary Proceeding are the primary remaining assets of the Receiver Estate from which a significant distribution by the Receiver Estate to the harmed creditors and investors of Lighthouse may be made.

16. Given the significance of the Ancillary Proceeding to the Receiver Estate, a number of the largest investors harmed by Lighthouse have requested that the Receiver appeal the Dismissal Order in the event that the Reconsideration Motion is denied by this Court.

17. Furthermore, an appeal would not significantly deplete the resources of the Receiver Estate as Litigation Counsel: a) would pursue the appeal on behalf of the Receiver on a contingency fee basis; and b) are to receive a contingency fee from the Receiver Estate only in the event of a recovery in the Ancillary Proceeding.

18. Pursuant to Rule 4 of the Federal Rules of Appellate Procedure, a notice of appeal must be filed within 30 days after the entry of the judgment or order to be appealed.

19. This Motion is timely and is filed at this time in advance of a decision by the Court with regard to the Motion for Reconsideration to ensure that the Receiver has adequate authority to proceed in advance of any deadline for filing a notice of appeal from a final decision reached by this Court in the Ancillary Proceeding.

WHEREFORE, the Receiver respectfully requests that this Court enter an order, substantially in the form as attached hereto as Exhibit "A", that:

1. Grants this Motion in all respects;

2. Confirms that the Receiver has authority pursuant to the Appointment Order to file and prosecute an appeal of the Dismissal Order or any subsequent order of this Court in the Ancillary Proceeding and to otherwise plead and take action on behalf of the Receiver Estate in the Ancillary Proceeding; or

3. In the event that the Receiver does not already have such authority, grants the Receiver leave of Court and authority for the Receiver to file and prosecute an appeal of the Dismissal Order or any subsequent order of this Court in the Ancillary Proceeding and to otherwise plead

and take action on behalf of the Receiver Estate in the Ancillary Proceeding; and

4. Grants such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 14th day of August, 2014.

/s/

James C. Frenzel
Georgia Bar No. 276830
Counsel for S. Gregory Hays, Receiver for
Lighthouse Financial Partners, LLC, Defendant

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EXHIBIT A

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

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BENJAMIN DANIEL DEHAAN AND LIGHTHOUSE FINANCIAL PARTNERS, LLC, Defendants.	:	Civil Action File No. 1:12-CV-1996-TWT

ORDER GRANTING MOTION BY RECEIVER SEEKING EITHER CLARIFICATION OF AUTHORITY OR EXPRESS AUTHORITY AND MEMORANDUM OF LAW IN SUPPORT THEREOF

This matter is before the Court on the Motion (the "Motion") by S. Gregory Hays, as the Receiver (the "Receiver") for Lighthouse Financial Partners, LLC ("Lighthouse"), Defendant in the above captioned Civil Action (the "Civil Action"), appointed pursuant to an Order of this Court entered on July 2, 2012 (Docket No. 11, the "Appointment Order") to administer the estate of Lighthouse (the "Receiver Estate"), seeking either clarification of authority or express authority and memorandum of law in support thereof. In the Motion, the Receiver requests clarification of authority or express authority to file and prosecute an

appeal from a Dismissal Order[1] previously entered by the Court in an ancillary proceeding (the "Ancillary Proceeding") brought by the Receiver against certain defendants in this Court and any subsequent order of this Court in the Ancillary Proceeding and otherwise plead and take action on behalf of the Receiver Estate in the Ancillary Proceeding. No objections were filed in opposition to the relief sought in the Motion.

It appearing to the Court that: 1) the Appointment Order authorizes and empowers the Receiver with the right and power to, among other things: "pursue, resist and defend all suits, actions, claims and demands which may now be pending or which may be brought by or asserted against the Receiver Estate;" 2) the filing and prosecution of an appeal of the Dismissal Order may not be expressly authorized; and 3) the Receiver should be granted the further authority to file and prosecute an appeal from the Dismissal Order or any subsequent order of this Court in the Ancillary Proceeding and otherwise plead and take action on behalf of the Receiver Estate in the Ancillary Proceeding.

Having considered the Motion, the Appointment Order, and previous pleadings filed by the Receiver in the Civil Action, for good cause shown and as an administrative directive with regard to the Receiver Estate, in accordance with and

[1] Capitalized terms not defined herein shall have the meaning ascribed to such terms in the Motion.

in furtherance of the duties and powers bestowed upon the Receiver with regard to the Receiver Estate and with no further notice or opportunity for hearing being necessary, it is hereby:

ORDERED AND ADJUDGED that the Motion is GRANTED in all respects; and it is further

ORDERED AND ADJUDGED that the Receiver has authority pursuant to the Appointment Order to file and prosecute an appeal from the Dismissal Order or any subsequent order of this Court entered in the Ancillary Proceeding and to otherwise plead and take action on behalf of the Receiver Estate in the Ancillary Proceeding; and it is further

ORDERED AND ADJUDGED that, even if the Receiver did not already have such authority pursuant to the Appointment Order, the Receiver is hereby granted leave of Court and authorized and empowered to file and prosecute an appeal from the Dismissal Order or any subsequent order of this Court entered in the Ancillary Proceeding and to otherwise plead and take action on behalf of the Receiver Estate in the Ancillary Proceeding.

So ORDERED, this the ____ day of _____, 2014.

_____
THOMAS W. THRASH, JR., Judge
United States District Court