

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

SECURITIES AND EXCHANGE §  
COMMISSION, §  
Plaintiff, §  
v. §  
TRAVIS E. CORRELL, individually and §  
doing business as Horizon Establishment, et. al., §  
Defendants, §

Case 4:05-cv-00472-RAS Document 83-1 Filed 04/13/2006 Page 1 of 9  
Civil Action No. 05-CV-472-RAS

**RECEIVER’S UNOPPOSED MOTION TO APPROVE SETTLEMENT AND  
SELL INTEREST IN LIMITED PARTNERSHIP  
FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES  
(Gin-Bug Development, Ltd.)**

TO THE HONORABLE RICHARD A. SCHELL, UNITED STATES DISTRICT JUDGE:

COMES NOW S. Gregory Hays, the duly appointed and qualified receiver in this case (the “Receiver”), and files this Motion to Sell Interest in Limited Partnership Free and Clear of All Liens, Claims, and Encumbrances and in support of such would show unto the Court as follows:

**I.**

**INTRODUCTION**

1.1 On December 7, 2005, upon the application of the Securities and Exchange Commission (“SEC”), this Court entered its Order Appointing Receiver (the “Receiver Order”) in the above-styled and numbered action wherein the Court appointed S. Gregory Hays as the receiver (the “Receiver”) in these proceedings. Thereafter, the Receiver qualified by filing the bond as required by the Receiver Order, which was accepted and approved by the Court.

1.2 On the same date that the Court appointed the Receiver, it also signed and entered its *Ex Parte* Temporary Restraining Order, Order Freezing Assets, Requiring an Accounting, Authorizing Expedited Discovery and Granting Other Emergency Relief (the “Asset Freeze”). Thereafter, at the preliminary injunction hearing on December 13, 2005, the Court entered its Agreed Order of Preliminary Injunction and other Equitable Relief as to Defendant Gregory Thompson **Case 4:05-cv-00472-RAS Document 83-1 Filed 04/12/2006 Page 2 of 9** (“Thompson Preliminary Injunction”).

1.3 Pursuant to the authority set forth in the Receiver Order, the Receiver has sold some of the assets of Defendant Gregory Thompson, (“Thompson”), has contracted to sell some other assets, which will be the subject of other motions, and continues to administer the Receivership Estate. At the time that the Receiver took possession of the assets of Thompson, the Receiver learned that Thompson had previously invested in a company known as Gin-Bug Development, Ltd. (“Gin-Bug”). According to Thompson, as later confirmed by Gin-Bug, Thompson purchased a 25% interest in Gin-Bug (a limited partnership) for \$104,775.00 on or about August 13, 2001. During his initial interview on or about December 7, 2005, with the undersigned and his investigator, Ralph Freeman, Thompson stated that he generally received monthly distribution checks from Gin-Bug in the magnitude of \$2,500.00. Gin-Bug owns a commercial real estate development in Helotes, Texas. Helotes is a small town outside of San Antonio, Texas. Due to San Antonio’s outward expansion, real estate in Helotes has been very active.

1.4 As the court is aware, the Receiver Order appointed the Receiver as receiver over the “assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever situated of Defendants . . . Gregory W. Thompson.” Receiver Order at ¶ 1. Said assets are defined in the Receiver Order as comprising part of the Receiver Estate.

Receiver Order at ¶ 3. The Receiver Order empowers the Receiver to “administer and manage the Receiver Estate, including . . . (e) to sell, rent, lease or otherwise hypothecate or dispose of the assets of the Receiver Estate.” Receiver Order at ¶ 5.

1.5 The other principals/investors in Gin-Bug claim to be victims of the Ponzi scheme which the SEC has alleged was run and operated by Thompson through his company, TNT Office Supply, Inc. By letter dated February 10, 2006, counsel for George Driskell and Lee Bowers (the remaining limited partners in Gin-Bug) informed the Receiver of Messrs. Driskell and Bowers’ claims against Thompson and TNT Office Supply for the various “investment programs” alleged to have been proffered by them. Said letter suggested a walk away, as their claims against the Receivership Estate approximated Thompson’s investment in Gin-Bug. Thereafter, considerable correspondence and telephone conversations ensued the purpose of which were to determine the value of Thompson’s interest in Gin-Bug, and to negotiate a purchase of said interest from the Receiver, by Gin-Bug. Gin-Bug, assisted by Thompson, provided substantial documentary and anecdotal information to the Receiver’s counsel. The Receiver’s counsel then submitted said information to his consultant, Bob Dohmeyer, President of Dohmeyer Valuation Corp. Mr. Dohmeyer is a valuation expert who is well known in the Northern and Eastern Districts of Texas, and has been appointed many times by the United States Bankruptcy Court to determine the value of various assets. Mr. Dohmeyer rendered his report on February 27, 2006, and opined that Mr. Thompson’s limited partnership interest in Gin-Bug had a fair market value of \$154,080.00. A true and correct copy of said report is attached hereto as **Exhibit “A”** and is incorporated by reference herein for all purposes.

1.6. Thereafter, as the result of further discussions between counsel, additional information was provided to the Receiver's counsel that was relevant to the value of Thompson's interest in Gin-Bug. Said information was provided to Mr. Dohmeyer on March 23, 2006. On that same date, Mr. Dohmeyer revised his analysis, concluding that Thompson's interest had a fair market value of \$264,000.00. A true and correct copy of the e-mail string forwarding to Mr. Dohmeyer Gin-Bug's additional information, as well as Mr. Dohmeyer's revised analysis, arriving at a fair market value of \$264,000.00, is attached hereto as **Exhibit "B"** and is incorporated by reference herein for all purposes. The Receiver, Thompson and Gin-Bug all concur that Mr. Dohmeyer's analysis is accurate and that it fairly states a conservative value of Thompson's interest in Gin-Bug.

1.8 After receiving Mr. Dohmeyer's revised analysis Gin-Bug's counsel made an offer on behalf of Gin-Bug to purchase Thompson's interest for the appraised value of \$264,000.00. A true and correct copy of the next offer, dated March 29, 2006, is attached hereto as **Exhibit "C"** and is incorporated by reference herein for all purposes. After receiving Exhibit C, some clarification was sought. The clarification is contained in an e-mail which is attached hereto as **Exhibit "D"** and is incorporated by reference herein for all purposes. Essentially, Gin-Bug has offered to purchase Thompson's interest in the limited partnership for \$264,000.00, plus a release of any claim by Gin-Bug against the receiver. As additional consideration, the remaining partners in Gin-Bug, Messrs. Driskell and Bowers have likewise offered to release any claim they may have in the receivership, as well as any claims they may have against Thompson and TNT Office Supply, Inc. The Receiver considers this to be a good offer, particularly given that pursuant to the terms of the limited partnership agreement, any buyout may be paid out over ten years and no contractual requirement exists requiring Gin-Bug to buy Thompson's interest. Accordingly, the Receiver would like to

accept this offer. Although the Receiver believes that he is empowered by the Receiver Order to complete this transaction without court approval, given the amount involved and the potential for antagonistic positions of Gin-Bug and Thompson, the Receiver believes that it is prudent to file this motion, and obtain this Court's approval to consummate this transaction.

## II.

Case 4:05-cv-00472-RAS Document 83-1 Filed 04/12/2006 Page 5 of 9

### ARGUMENTS AND AUTHORITIES

2.1 The ultimate purpose of the Receiver's appointment is to provide a vehicle through which assets can be held, and preserved to make a potential fund for the payment to the defrauded investors who are the victims of the Ponzi scheme described in the Complaint. Thompson's interest in Gin-Bug is a valuable asset of the receivership estate. The agreement of limited partnership, however, allows the partnership to continue to invest in other assets and does not require a distribution of the proceeds of the sale of Gin-Bugs primary asset. Indeed, as is set forth in Exhibits G & H hereto, Gin-Bug intends so to do. Additionally, a buy-out is not a matter of right, and the agreement requires that a buy-out be done over ten years, a term that Gin-Bug and the other partners are waiving by making the present offer. Finally, as additional consideration to induce the Receiver to accept the buy-out, Gin-Bug, Mr. Bowers and Mr. Driskell are releasing/waiving any claim they have against the Receivership estate. As is set forth at Exhibit I, such claims are alleged to total \$154,600.00.

2.2 A district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. *SEC v. Hardy*, 803 F.2d 1034, 1038 (9<sup>th</sup> Cir. 1986). It is a recognized principle of law that the district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership.

*SEC v. Lincoln Thrift Association*, 577 F.2d 600, 606 (9<sup>th</sup> Cir. 1978). See *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5<sup>th</sup> Cir. 1982)(court overseeing a receivership is accorded “wide discretionary power” in light of “the concern for orderly administration”). A primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors. See *SEC v. Wencke (Wencke II)*, 783 F.2d 829, 837 n.9 (9<sup>th</sup> Cir. 1986).  
Case 4:05-cv-00472-RAS Document 83-1 Filed 04/12/2006 Page 6 of 9

2.3 To guide courts in this purpose, 28 USC § 2001 governs the sale of real property by order of court by both public and private sale. There is, however, no similar provision for the sale/disposition of personalty.

2.4 Utilizing 28 USC § 2001 by analogy, however, the district court has wide discretion in judging whether a sale is fair in terms and result and serves the best interests of the estate. *Fleet National Bank v. H&D Entertainment, Inc.*, 96 F.3d 532 (1<sup>st</sup> Cir. 1996), citing *United States v. Peter*, 777 F.2d 1294, 1298 n.6 (7<sup>th</sup> Cir. 1985) and *United States v. Branch Coal*, 390 F.2d 7, 10 (3rd Cir.), cert. Denied, 391 U.S. 966, 88 S.Ct. 2034 (1968). The court has broad discretion in setting the terms of conditions of a sale under 28 USC §2001. *United States v. Hundwardsen*, 39 F.Supp.2d 1157 (N.D. Iowa 1999), citing *United States v. Branch Coal Corp.*, 390 F.2d 7, 10 (3rd Cir.), cert. Denied, 391 U.S. 966, 88 S.Ct. 2034 (1968); see *United States v. Garcia*, 474 F.2d 1202, 1206 (5<sup>th</sup> Cir. 1973). The court must decide whether, based on the record made by the parties, the best interest of the estate will be served by a public or a private sale. *Id.* However, section 2001(b) limits the Receiver’s ability to sell real property at a private sale for an unfair price by setting in place appraisal procedures and acceptable price limits. *United States v. Stonehill*, 83 F.3d 1156 (9<sup>th</sup> Cir. 1996).

Section 2001 “contemplates compliance with certain procedures designed to protect the best interest of the estate” *Tanzier v. Huffines*, 412 F.2d 221 (3<sup>rd</sup> Cir. 1969).

2.5 This Court is, by now, familiar with the requirements to proceed to closing a private sale of realty under 28 USC § 2001, such as the requirements of three appraisals, public notice, and that the sales price be at least two thirds of the appraised value. In this case, the Receiver has had the Gin-Bug interest appraised by a qualified appraiser, and the sale price is actually for more than the appraised value (the full amount of the appraised value *plus* the value of the released claims to the estate). Accordingly, it would seem that the proposed sale is certainly in the best interests of the estate, and is extremely fair to Mr. Thompson.

2.6 The Receiver presently has two hearings set for April 18, 2006, to sell realty. There is no statutory requirement that a hearing be had on this motion, however, the Receiver requests that a hearing be set for April 18, 2006. This is because Thompson’s interest in Gin-Bug could be community property. As has been brought to the court’s attention in other motions, Sandra Thompson, Thompson’s wife, is not in receivership. Accordingly, she should be noticed and given the opportunity to be heard, before this settlement is approved.

2.7 Accordingly, the Receiver respectfully requests that the Court approve the offers that are set forth at Exhibits C & D hereto. If the Court deems a hearing is appropriate, then the Receiver prays that it be set for April 18, 2006 along with other hearing(s) on property sales in this action, and that Sandra Thompson be noticed overnight courier and first class mail, of the time and date of the hearing.

WHEREFORE, PREMISES CONSIDERED, the Receiver prays that the court approve the offer and authorize the Receiver to consummate the settlement set forth in Exhibits C & D, attached

hereto (to sell Thompson's interest in Gin-Bug to Gin-Bug in exchange for \$264,000.00, and releases of the receivership estate by Gin-Bug and Messrs. Bowers and Driskell), and to enter into a settlement agreement setting forth said terms and conditions, and to give notice to Sandra Thompson of the Court's intention to approve this settlement and sale, and for such other and further relief as the Court may deem appropriate under all fo the circumstances.

Case 4:05-cv-00472-RAS Document 83-1 Filed 04/12/2006 Page 8 of 9

Respectfully submitted,

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ATTORNEYS FOR S. GREGORY HAYS,  
RECEIVER



**CERTIFICATE OF CONFERENCE**

I certify that several conferences have been conducted between the undersigned and Mr. Scott Baker, counsel for Thompson, as well as Mr. Jay Petterson, counsel for Gin-Bug, regarding the relief sought herein. Messrs. Baker and Thompson have represented to the undersigned that they are in agreement with the relief sought herein and that they desire that the Court enter an order consummating the settlement.

Case 4:05-cv-00472-RAS Document 83-1 Filed 04/12/2006 Page 9 of 9

/s/ Clark B. Will

Clark B. Will

**CERTIFICATE OF SERVICE**

I hereby certify that on April 3, 2006, true and correct copy of the foregoing document was served on the following parties:

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/s/ Clark B. Will

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