

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

Case No. 8:20-CV-325-T-35MRM

BRIAN DAVISON;
BARRY M. RYBICKI;
EQUIALT LLC;
EQUIALT FUND, LLC;
EQUIALT FUND II, LLC;
EQUIALT FUND III, LLC;
EA SIP, LLC;

Defendants, and

128 E. DAVIS BLVD, LLC, et al.,

Relief Defendants.

**RECEIVER'S UNOPPOSED MOTION TO AMEND ORDER
GRANTING FOURTEENTH MOTION TO APPROVE
SETTLEMENT OF INVESTOR CLAWBACK CLAIMS (DOC. 883)**

Comes now Burton W. Wiand, as Receiver over the assets of the Corporate and Relief Defendants, and requests that the Court amend its Order granting the Receiver's Fourteenth Motion to Approve Settlement of Investor Clawback Claims (Doc. 883). In support of the motion, the Receiver states as follows:

1. On March 2, 2023, the Receiver filed his Fourteenth Motion to Approve Settlement of Investor Clawback Claims (“14th Motion”). (Doc. 823) This motion sought the approval of the Receiver’s settlements with investors Helen and Hamlet Adamian, Cynthia Duckett and Eric D. Chapman.

2. This Court granted the 14th Motion on April 26, 2023. However, the Court’s Order only addressed the settlements with Helen and Hamlet Adamian. There was no mention of the settlements with Ms. Duckett (\$13,725) or Mr. Chapman (\$12,530.79).

3. The Receiver requests that the Court amend its earlier Order to include its approval of the settlements reached with Ms. Duckett and Mr. Chapman.

ARGUMENT

THE COURT HAS BROAD POWER OVER THIS RECEIVERSHIP, AND THE SETTLEMENT OF THESE INVESTOR CLAWBACK CLAIMS IS IN THE RECEIVERSHIP ESTATE’S BEST INTEREST.

The Court’s power to supervise an equity receivership and to determine the appropriate actions to be taken in the administration of the receivership is extremely broad. *S.E.C. v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *S.E.C. v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court’s wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *S.E.C. v. Safety Finance Service, Inc.*, 674

F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and property of the receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *S.E.C. v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980). The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain the property and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. S.E.C.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F. 2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to defrauded investors and other creditors. *See S.E.C. v. Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted). Given these principles, the Court should approve the Receiver's settlement with these investors.

CONCLUSION

Based on the foregoing, the Receiver moves the Court to amend its earlier order to approve the Receiver's settlement of the following investor clawback claims:

- Cynthia Duckett, \$13,725; and
- Erik D. Chapman, \$12,530.79.

LOCAL RULE 3.01(G) CERTIFICATION

Counsel for the Receiver has conferred with counsel for the SEC and they do not object to the relief sought.

Dated: May 23, 2023.

Respectfully submitted,

/s/ Katherine C. Donlon
Katherine C. Donlon, FBN 0066941
kdonlon@jclaw.com
Johnson, Newlon & Decort P.A.
3242 Henderson Blvd., Ste 210
Tampa, FL 33609
Tel: (813) 291-3300
and

Jared J. Perez, FBN 0085192
jared.perez@jaredperezlaw.com
Law Office of Jared J. Perez
301 Druid Rd. W
Clearwater, FL 33759
Tel: (727) 641-6562

Attorneys for Receiver Burton W. Wiand

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 23, 2023, I electronically filed the foregoing with the Clerk of this Court by using the CM/ECF system which will send notification of electronic filing to all counsel of record.

/s/ Katherine C. Donlon