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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN WAYNE ZIDAR, et al.,

Defendant.

CASE NO. C00-823C

ORDER

This matter came before the Court on the Receiver and attorney David B. Smith’s Joint Statement and Recommendations Regarding Smith’s Outstanding Objections (Dkt. No. 339). On July 23, 2004, the Court approved the Receiver’s pro rata distribution proposal (“Distribution Plan”). The July 23, 2004 order directed the Receiver to post the pro rata plan on its website by August 2, 2004. The Distribution Plan notified each investor of the Receiver’s recommended Verified Amount.¹ Certain Smith clients filed objections to the Distribution Plan by the Court-imposed October 7, 2004 deadline. On October 27, 2004, the Receiver responded to objections filed by both Smith clients and non-Smith clients.

The Court further ruled in the July 23, 2004 order that on the date the Court sets to consider

¹ See definition of Verified Amount below at p. 2, line 15.

1 objections to the proposed pro rata distribution, the Court will approve and allow each distribution
2 proposal that has been verified by the Receiver and not objected to by the investor.

3 Through informal discussions, the Receiver and Smith have attempted to reduce the number of
4 objections requiring Court review.

5 The Court has considered the objections filed by Smith, the responses filed by the Receiver, the
6 Receiver and Attorney David B. Smith's Joint Statement and Recommendations, and the pleadings and
7 records filed in this action.

8 Based on the pleadings, declarations and records on file, the Court orders as follows:

9 IT IS ORDERED that the terms of the Receiver's Distribution Plan are approved in full for all
10 recommended Verified Amounts that were not the subject of a formal objection or an informal adjustment
11 agreed to by the Receiver and either a pro se investor or an investor represented by counsel.

12 IT IS FURTHER ORDERED that objections that were not timely filed and served are deemed
13 waived.

14 IT IS FURTHER ORDERED that each investor's pro rata distribution will be based on the
15 Verified Amount formula (an investor's monetary loss claim less investment returns and/or commission
16 payments) that was calculated by the Receiver based on his review of each investor's submissions and the
17 records that were seized from the defendants by the government. The Verified Amount formula was
18 defined in the Receiver's April 26, 2004 Proposed Distribution Plan.

19 IT IS FURTHER ORDERED that the following claimants shall receive the Verified Amount
20 recommended in the Receiver's August 2, 2004 Distribution Plan:

21 Coniglione, Frank

Coniglione, Joseph & Gail

22 Dagg, Gordon

Franks, Jennifer & Lambert, Joanne

23 Hall, Donna L.

Padgitt, Donald E.

24 Postlethwaite, Erlene

Rini, Florence

25 Ross, Arthur

Trott, Jeannine S.

1 IT IS FURTHER ORDERED that in regards to the Receiver's informal negotiations with
2 attorney David Smith, the Verified Amount shall be adjusted for the following investors:

3	<u>Name</u>	<u>Amended Verified Amount</u>
4	Bulloch, Patrick & Danielle	\$7,276.00
5	Burney, Helen	\$197,056.00
6	Ensign, Carter	\$104,830.00
7	Commissiong, Vera	\$4,113.00
8	Coniglione, Gail & Angelica	\$5,176.00
9	Garland, Salley	\$9,058.00
10	Geiger, Marc	\$7,764.00
11	Harvey, Robert	\$3,668.00
12	Jernigan, Elbert	\$11,646.00
13	Johnson, David L.	\$5,768.00
14	Jones, Jean & Robert	\$28,699.00
15	Knapp, Larry & Gilda	\$173,002.00
16	Kudrna, Kenton	\$90,743.00
17	Littlefield, Richard III	\$7,875.00
18	Macdonald, George	\$15,528.00
19	Marcinek, Sylvia	\$2,696.00
20	McEachern, Garry & Greta	\$58,230.00
21	McPhail, John	\$11,465.00
22	Nesbitt, Rochelle	\$5,457.00
23	Oglesby, James	\$54,740.00
24	Oglesby, William	\$123,399.00
25	Pegeron, Carroll	\$7,764.00
26	Perry, Charlotte & Shaline	\$1,819.00
	Smith, Arnold	\$25,039.00
	Udd, Warren	\$59,316.00
	Van Epps, Charles & Sonja	\$2,374.00
	Watts, Charles	\$6,226.00

1 Wells, Neall & Connie \$40,963.74

2 IT IS FURTHER ORDERED that in regards to objections filed by attorney David Smith
3 regarding the Bridge Fund, the Verified Amount in the Distribution Report for the following investors
4 shall be amended as follows:

<u>Name</u>	<u>Amended Verified Amount</u>
Harvey, Ingrid	\$4,688.00
Richardson, Annette	\$250.00
Shires, Michelle	\$2,869.00
Tucker, Selena Dawn	\$2,344.00

10 IT IS FURTHER ORDERED that, based on the Receiver and Smith's joint recommendation, the
11 Court approves an adjustment to the Verified Amounts for the following individuals and adopts the
12 Amended Verified Amount as follows:

<u>Name</u>	<u>Amended Verified Amount</u>
Abrahams, Margaret	\$57,466.00
Adderley, Anthony	\$19,126.00
Bean, Andre	\$16,970.00
DeSilva, Sabrina	\$525.00
Jennings & Smith	\$29,762.00
Outerbridge, Carla	\$1,262.40
Ross, Joan C.	\$62,276.00

21 IT IS FURTHER ORDERED, upon consideration of the arguments proffered, that the Court
22 DENIES objections based on the argument that a Bridge Welcome note is sufficient evidence to confirm
23 an investment in Bridge and eligibility for participation in the distribution plan. Accordingly, the
24 following claims shall have the Verified Amount from the August 2, 2004 Distribution Plan:

	<u>Name</u>	<u>Verified Amount</u>
1		
2	Beach, Julia M.	\$1,294.00
3	Beach, Marcelle A.	\$0.00
4	Bean, Cornell A. L.	\$2,588.00
5	Bean, Davien	\$0.00
6	Bean, Karen	\$1,294.00
7	Broadley, Deena	\$26,405.00
8	Chambers, Quenton T. & Brian	\$0.00
9	Crossdale, Oswald V. & Barbara R.	\$12,940.00
10	Dill, Wellington	\$1,294.00
11	Dillin Roger A. & Karen F.	\$11,646.00
12	Frederick, Gordon	\$32,328.00
13	Furbert, Maurice J. & Sheila G.	\$1,294.00
14	Furbert, Solomon F.	\$2,588.00
15	Gordon, Roydelle D.	\$1,294.00
16	Gross, Robert E.	<i>Verified Amount subject to further order below</i>
17	Harris, Cleveland & Andrea	\$0.00
18	Holder, Henry C.	\$50,466.00
19	Holder, Kent E.	\$1,294.00
20	Holdipp, Carmen	\$0.00
21	Hollis, B. Denise & Simons, Brian	\$1,294.00
22	James, Keith P.	\$1,294.00
23	Joell, Eugene	\$5,176.00
24	Jones, Shirley R.	\$0.00
25	Kuipers, Baron John R. & Shamira	<i>Verified Amount subject to further order below</i>
26	Martin, Jean E.	\$1,294.00
27	Ming, Roderick Llewellyn	<i>Verified Amount subject to further order below</i>
28	Morris, Neal	\$0.00
29	Nelson, James W. & Glenda B.	<i>Verified Amount subject to further order below</i>
30	Neverson, Edwin	\$0.00

1	Ortego, Terry D.	\$4,191.00
2	Pearman, Anthony W.	\$3,882.00
3	Perinchief, Edwin D.	<i>Verified Amount subject to further order below</i>
4	Richards, Paul A. & Gisele T.	\$25,880.00
5	Salaam, Shalidah A.	<i>Verified Amount subject to further order below</i>
6	Schelske, Leroy J.	<i>Verified Amount subject to further order below</i>
7	Shirley, Lewis H. & Hazel B.	\$3,882.00
8	Simons, Horace & Karen	\$0.00
9	Smith, Anthony	\$0.00
10	Smith, Percy L., Sr.	\$12,940.00
11	Swan, Angelita	<i>Verified Amount subject to further order below</i>
12	Swan, Tonya & Cody	\$1,294.00
13	Trott, Kirk & Germaine	\$0.00
14	Tucker, Stephen E.	\$1,294.00
15	Vaughan, Wayne J.	\$1,461.00
16	Vette, David E. & Janet M.	\$79,367.00
17	Wade, Wyndom	\$134,576.00
18	Zuill, Tammy D.	\$1,050.00

IT IS FURTHER ORDERED, upon consideration of the arguments proffered, that the Court DENIES objections based on the argument that a letter from RoJean Robinson is sufficient evidence to confirm an investment in Bridge and eligibility for participation in the distribution plan. Accordingly, the following claims shall have the Verified Amount in August 2, 2004 Distribution Plan as follows:

<u>Name</u>	<u>Verified Amount</u>
Bowen, Melvin	\$0.00
Furbert, Greta Annette	<i>Verified Amount subject to further order below</i>
Furbert, Raquel	\$0.00

1	Kipps, Shelley	\$0.00
2	Perinchief, Edwin D.	\$0.00
3	Place, Pearline	\$0.00
4	Salaam, Shahidah A.	\$0.00
5	Swan, Angelita	\$0.00
6	Swan, Kenton & Douglas, Noreen	\$0.00
7	Tucker, Craig O'Brien	\$0.00

7 IT IS FURTHER ORDERED, upon consideration of the arguments proffered, that the Court
8 DENIES objections based on the argument that a gift from a third party is sufficient evidence to confirm
9 eligibility for participation in the distribution plan. Accordingly, the following claims shall have the
10 Verified Amount in August 2, 2004 Distribution Plan as follows:

	<u>Name</u>	<u>Verified Amount</u>
11	Furbert, Greta Annette	\$0.00
12	Nelson, James W. & Glenda B.	\$1,370.00
13	[Douglas] Swan, Noreen	\$0.00

14 IT IS FURTHER ORDERED that in regards to objections filed by attorney David Smith
15 regarding the Oakleaf International and Rosewood International funds, the Verified Amount in the
16 Distribution Report for the following investors shall be amended as follows:

	<u>Name</u>	<u>Amended Verified Amount</u>
17	Bell & Moore, Sherry & Kimberly	\$1,086.00
18	Boylan, Sandra	\$1,294.00
19	Butterfield, Charles & Linda	\$1,294.00
20	Byars, Hansel	\$64,700.00
21	Clayton, Gary Wayne	\$76,346.00
22	McPhail II, John	\$13,761.00
23	Patel, Purshottam & Lalita	\$2,588.00
24	Patel, Shilla	\$2,588.00
25	Ross, Jennifer	\$11,432.00

1 Schelske, Leroy \$9,568.00

2 IT IS FURTHER ORDERED, upon consideration of the arguments proffered, that the Court
3 DENIES objections based on the argument that an Oakleaf/Rosewood Certificate, absent a proof of
4 purchase, is sufficient evidence to confirm an investment and eligibility for participation in the distribution
5 plan. Accordingly, the following claims shall have a Verified Amount in the August 2, 2004 Distribution
6 Plan as follows:

<u>Name</u>	<u>Verified Amount</u>
7 Finch, Jimmy D.	\$7,764.00
8 Gross, Robert E.	<i>Verified Amount subject to further order below</i>
9 Mitchell, Angelo	\$45,586.00
10 Munkasey, Michael	\$81,262.00
11 re. Uncapher, Stephen L.	
12 Orazi, William J. & Carol A.	\$1,828.02

13 IT IS FURTHER ORDERED, upon consideration of the arguments proffered, that the Court
14 DENIES the objections filed by Lester Drawdy and Lester Drawdy, Jr. Accordingly, the following claims
15 shall have the Verified Amount in the August 2, 2004 Distribution Plan as follows:

<u>Name</u>	<u>Verified Amount</u>
17 Drawdy, Lester W.	\$0.00
18 Drawdy, Jr., Lester W.	\$0.00

19
20 IT IS FURTHER ORDERED based on the arguments proffered, that the Court DENIES the
21 objection filed by Alfred and June Augustus. Accordingly, the Court orders that the Augustuses be
22 approved for a Verified Amount of \$17,690.00, as recommended by the Receiver.

23 IT IS FURTHER ORDERED based on the arguments proffered, that the Court DENIES the
24 objection filed by Madree Furbert. Accordingly, the Court orders that Furbert be approved for a Verified
25 Amount of \$9,058.00, as recommended by the Receiver.

1 IT IS FURTHER ORDERED based on the arguments proffered, that the Court DENIES the
2 objections filed by Robert E. Gross. Part of Gross' claim has been approved by the Receiver. Beyond
3 that, Gross argued that he had two, not one, \$1,294.00 Oakleaf investments and a \$525.00 Bridge
4 investment evidenced by a Welcome note. Accordingly, the Court orders that Gross be approved for a
5 Verified Amount of \$89,594.00, as recommended by the Receiver, which incorporates just one of the
6 \$1,294.00 Oakleaf claims.

7
8 IT IS FURTHER ORDERED, based on the arguments proffered, that the Court DENIES the
9 objection filed by Roderick Ming regarding his Welcome Note and letter to his father Llewellyn Ming.
10 Accordingly, the Court orders that Ming be approved for a Verified Amount of \$1,085.00, as
11 recommended by the Receiver.

12 IT IS FURTHER ORDERED based on the arguments proffered, that the Court APPROVES the
13 objection filed by Linda Lang. Accordingly, the Court orders that Lang be approved for a Verified
14 Amount of \$68,619.00.

15 IT IS FURTHER ORDERED that the Court DENIES the objection filed by Baron John Kuipers
16 in its entirety. The records confirm that Kuipers' Rama Universal Holdings balance in the Private
17 International Development Banc was only \$188,969.40 at the time the assets were frozen. As a result,
18 the Court approves the Verified Amount of \$128,402.00 in the Distribution Report.

19
20 The Court further rejects the Kuipers' objection regarding the Universal Synergy claim. Again,
21 the amount claimed exceeds the balance in the Universal Synergy account at the time the funds were
22 frozen. As a result, the Court approves the Verified Amount of \$106,183.00 in the Distribution Report.

23 The Court also rules that it will not offset the \$76,095.00 commission payments received by
24 Kuipers with alleged "sub-commission" payments Kuipers paid to other recruiters. Doing so would deny
25 the fact that investor funds were actually depleted by \$76,095.00.

1 The Court finally denies Kuipers' claimed Bridge loss based on a Welcome note because the
2 evidence does not provide sufficient evidence to confirm the investment.

3 IT IS FURTHER ORDERED, based on the arguments proffered, that the Court DENIES the
4 objection filed by Don G. Leach. Accordingly, the Court orders that Leach be approved for the Verified
5 Amount of \$367,354.00, as recommended by the Receiver.

6 IT IS FURTHER ORDERED based on the arguments proffered, that the Court DENIES the
7 objection filed by William Robson. Accordingly, the Court orders that Robson be approved for a
8 Verified Amount of \$15,528.00, as recommended by the Receiver.

9 IT IS FURTHER ORDERED, based on the arguments proffered, that the Court DENIES the
10 objection filed by Barbara and Kenneth Miller. Accordingly, the Court orders that the Millers be
11 approved for a Verified Amount of \$61,292.00, as recommended by the Receiver.

12 IT IS FURTHER ORDERED that the Court STRIKES Anthony Adderley's Petition for Leave to
13 Amend Claim (Dkt. No. 287). Mr. Smith and the Receiver have reached an agreement on Mr. Adderley's
14 claim, so the Petition is moot. The Court approves the Verified Amount of \$25,376.00.

15 IT IS FURTHER ORDERED that in regards to pro se objections to the Court-approved pro rata
16 distribution method, the following objections are DENIED:
17

18 Angol, Peter	Bassett, Laureen
19 Berry, Darrell	Broadley, Deena
20 Day, Charlene	Hargrave, Karen
21 Holland, Gordon & Marie	Johnson, Terri Ruth
22 Lay, Lorene	Piner, Ray
23 Skreen, Barbara Ann Holland	Smith, Alan E.
24 Smith, Patricia L.E.	Ungvarsky, Edward & Susan

1 Van Deventer, Edwin & Lois Wales, Leroy & Kimberlee

2 Woloschuk, Barbara Woloschuk, Eleanor

3 Woloschuk, Leslie

4 IT IS FURTHER ORDERED that the Court DENIES the objection filed by Karen Hargrave.

5 The records indicate that Hargrave's funds were commingled in the P.I.D.B. with funds of other
6 similarly-situated investors. The balance of the P.I.D.B. account makes up part of the Receivership
7 Assets, and all investors with verified investments should share the Receivership Assets in an equitable
8 manner. The Court approves the recommended Verified Amount in the Receiver's Distribution Report.
9

10 IT IS FURTHER ORDERED that in regards to the following pro se investor objections, the
11 Verified Amount in the Distribution Report shall be amended as follows:

<u>Name</u>	<u>Amended Verified Amount</u>
12 Benkert, Michael	\$17,936.00
13 Long, Jr., Charles	\$14,797.00
14 Porcher, Arthur	\$4,280.00
15 Russell, William	\$26,140.19

16
17 IT IS FURTHER ORDERED that in regards to the following pro se investor objection, the
18 Verified Amount for the specific investor identified here shall not be adjusted and the Court adopts the
19 Verified Amount proposed in the Receiver's Distribution Report:
20

21 Hope, Charles Porter, Guy S.

22 IT IS FURTHER ORDERED that in response to the Receiver's informal negotiations with pro se
23 investors, the Verified Amount for each investor shall be as follows:

<u>Name</u>	<u>Amended Verified Amount</u>
24 Martinelli, Eleanor & Robert	\$41,408.00

1 Oglesby, Roger \$11,794.00

2 Beatty, Jennifer \$2,588.00

3 IT IS FURTHER ORDERED that the Court accepts the petitions submitted by the following
4 individuals and rules that they be eligible for participation in the pro rata distribution and approved for the
5 following Verified Amounts:

<u>Name</u>	<u>Verified Amount</u>
7 Deravy, Echan	\$99,638.00
8 Gargin, Eleanor	\$62,546.00
9 MacNeil, Barbara	\$13,970.00
10 McCormick, Dean R.	\$5,984.00
11 McGuire, Mary	\$89,286.00
12 O'Keefe, Steven Michael	\$28,468.00
13 Shultz, Betty	\$100,932.00
14 Symonds, Steve & Merlyn	\$9,058.000

15
16 IT IS FURTHER ORDERED that the Receiver shall distribute the pro rata equivalent of Mr.
17 Roland Baldwin's \$65,994.00 investment in Rosewood to the 64 investors that invested in the Higher
18 Education Student Assistance Foundation. The 64 investors shall receive a percentage distribution
19 equivalent to their representative share of the \$65,994.00 investment.
20

21 IT IS FURTHER ORDERED that the rulings in this order supersede and take precedent over any
22 previous rulings that relate directly to any of the objector-claimants addressed in this order.

23 IT IS FURTHER ORDERED that the Receiver shall recalculate the August 2, 2004 Distribution
24 Report (pro rata distribution) based on the Court's findings and rulings in this order. It is ordered that
25 the Receiver shall submit to the Court the revised and recalculated Distribution Report within ten (10)

1 days of this order. Also within ten (10) days of this order, the Receiver shall ask the Court to approve
2 the revised and recalculated Distribution Report and request that the Court order the Receiver to
3 distribute the Receivership Assets pursuant to the recalculated Distribution Report. The Receiver shall
4 also publish the revised and recalculated Distribution Report on its website at www.zidarreceivership.com
5 within 10 days of this order.

6 IT IS FURTHER ORDERED that the Receiver shall continue to attempt to recover assets that
7 are linked to the defendants' fraudulent transactions. It is ordered that within six (6) months of the initial
8 distribution of the assets currently being maintained and managed by the Receiver, the Receiver shall
9 submit a supplemental distribution proposal if the Receiver is able to locate and recover any outstanding
10 assets that are linked to the matters addressed in the underlying case.
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13 DATED this 8th day of February, 2005.

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UNITED STATES DISTRICT JUDGE