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00-CV-00823-ORD

THE HONORABLE JOHN C. COUGHENOUR

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FILED _____ ENTERED _____
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JUL 23 2004

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

JOHN WAYNE ZIDAR, et al.,

Defendants.

No. C00-823C

~~PROPOSED~~ ORDER
APPROVING RECEIVER'S
PETITION FOR APPROVAL OF
PROPOSED DISTRIBUTION
PLAN AND MOTION FOR FEES

This matter came before the Court on Receiver's Petition for Approval of Proposed Distribution Plan and Motion for Fees filed by Michael D. McKay, the Receiver appointed in the above-captioned matter.

The Receiver seeks an order granting approval of the Receiver's proposed asset distribution plan and moves the Court for an award of attorney's fees for the period October 13, 2003 to March 31, 2004.

The Court has considered the Receiver's Petition for Approval of Proposed Distribution Plan and Motion for Fees, the Declaration of Michael D. McKay in Support of Proposed

ORDER APPROVING RECEIVER'S DISTRIBUTION PROPOSAL AND
MOTION FOR FEES (C00-823C) - 1
C:\CLIENTS\01\2500\SEC V. ZIDAR-RECEIVERSHIP\PROPOSED ORDER DISTRIBUTION PLAN.DOC

McKay Chadwell, PLLC
600 University St., Ste. 1601
Seattle, Washington 98101
206.461.2300 Fax (206) 233-2809

ORIGINAL

1 Distribution Plan and Motion for Fees, the pleadings and records filed in this action, and the
2 declarations filed in support of pleadings.

3 Based on those pleadings and declarations, the Court orders as follows:

4 IT IS ORDERED that the Receiver's proposed distribution plan is approved and investor
5 claims that are verified by the Receiver and approved by the Court shall receive a pro rata
6 distribution of the assets that are currently being marshaled, maintained and preserved by the
7 Receiver.
8 Receiver.

9 IT IS ORDERED that each investor's pro rata distribution will be based on the Verified
10 Amount formula (investor's claim less investment returns and/or commission payments) that was
11 calculated by the Receiver based on his review of each investor's submissions and the records
12 that were seized from the defendants by the government.
13

14 IT IS FURTHER ORDERED that the Court will set a date for consideration and approval
15 or denial of each of the proposed pro rata distributions, but that date will be no sooner than 75
16 days after the execution of this order.
17

18 IT IS FURTHER ORDERED that prior to the date the Court considers the proposed pro
19 rata distribution, and within 10 days of execution of this order, the Receiver shall notify each
20 investor by U.S. Mail that the Court has approved the Receiver's distribution plan and advise
21 investors how to obtain information regarding the proposed resolution of their claims.
22

23 IT IS FURTHER ORDERED that:

24 (a) [within 10 days of execution of this order, the Receiver shall post on his website,
25 www.zidarreceivership.com, A Distribution Report, or spreadsheet that lists the
26 following information: investor name, claimed monetary loss, investment returns,
27 commission payments, Verified Amount, and pro rata distribution proposal]; or
28

1 (b) [within 10 days of execution of this order, the Receiver shall notify each investor by U.S.
2 Mail the status of his or her claim including the following information: investor name,
3 claimed monetary loss, investment returns, commission payments, Verified Amount, and
4 pro rata distribution proposal. The Receiver shall not publicly disclose its proposed pro
5 rata distributions, and shall submit the proposed distributions to the Court under seal.]

6 IT IS FURTHER ORDERED that within 10 days of execution of this order, the Receiver
7 shall notify each investor by U.S. Mail that he or she must preserve their claim by mailing and
8 filing with the Court and Receiver any objection to the distribution plan within 45 days of the
9 date the Receiver mailed the letter regarding the distribution plan and objection process.

10
11 IT IS FURTHER ORDERED that any objections not timely filed and served may be
12 deemed waived. In addition, any objections filed and served without evidence supporting
13 allowance of the claim may be deemed to be consent to disallowance of the claim.

14
15 IT IS FURTHER ORDERED that the Receiver shall have 20 days beyond the expiration
16 of the 45 day investor objection period to file a response to any timely-filed investor objections.
17 The Receiver does not waive any argument against allowance of any disapproved claim by not
18 filing a written reply to the claimant's objection in support of such claim.

19
20 IT IS FURTHER ORDERED that on the date the Court sets to consider the proposed pro
21 rata distributions, the Court will approve and allow each distribution proposal that has been
22 verified by the Receiver and not objected to by the investor.

23
24 IT IS FURTHER ORDERED that in order to provide certainty and to ensure the accuracy
25 of the pro rata distribution calculation, the Receiver shall not accept or consider any new investor
26 claims after the date the Receiver mails the distribution plan and 45-day objection notice to the
27 investors currently known to the Receiver.

28

1 IT IS FURTHER ORDERED that at the hearing to allow or disallow specific pro rata
2 distributions or as soon thereafter as possible, the Court will rule on the proposed distribution
3 and any objections.

4 IT IS FURTHER ORDERED that after the Court approves or denies each pro rata
5 distribution proposal, the Receiver shall forward to David Smith, counsel for 1,722 investors, the
6 total Verified Amount, or sum of the amount owed Mr. Smith's clients with instructions as to the
7 pro rata distribution owed each of his clients.
8

9 IT IS FURTHER ORDERED that the Receiver shall distribute the pro rata equivalent of
10 Mr. Roland Baldwin's \$65,994.00 investment in Rosewood to the 64 investors that invested in
11 the Higher Education Student Assistance Foundation. The 64 investors shall receive a
12 percentage distribution equivalent to their percentage of the \$65,994.00 investment.
13

14 IT IS FURTHER ORDERED that the Receiver shall distribute the pro rata equivalent of
15 the \$1,499,984.00 investment by Mr. Larry Wilcoxson and his colleagues to Mr. Robb Evans, a
16 court-appointed receiver in *United States of America v. Larry Wilcoxson, et al., United States*
17 *Dist. Court for the Eastern Dist. Of California (CR-S 99-0359 DFL)*. Mr. Robb Evans shall
18 distribute the funds to investors that were defrauded by Mr. Wilcoxson and his colleagues.
19

20 IT IS FURTHER ORDERED that the Receiver shall calculate a Verified Amount of zero
21 for the investor applicants whose funds appear to be frozen at the ANZ Bank in New York.
22

23 IT IS FURTHER ORDERED that the Court lift the May 18, 2000 Preliminary Injunction,
24 Order Freezing Assets and Granting Other Relief as to Defendants John Wayne Zidar and John
25 Wesley Matthews and Relief Defendant Meliorations Management Team.

26 IT IS FURTHER ORDERED that the ANZ Bank New York return in full the funds
27 frozen by this Court's order to their originators together with any accrued interest.
28

1 IT IS FURTHER ORDERED that the ANZ Bank New York disclose to the Receiver the
2 identity of the source of the originators of the transfer of funds.

3 IT IS FURTHER ORDERED that the Receiver shall continue to attempt to recover assets
4 that are linked to the defendants fraudulent transactions. It is ordered that within 6 months of the
5 initial distribution of the assets currently being maintained and managed by the Receiver, the
6 Receiver shall submit a supplemental distribution proposal if the Receiver is able to locate and
7 recover any outstanding assets that are linked to the matters addressed in the underlying case.
8

9 IT IS FURTHER ORDERED that on the same day the Receiver notifies each investor of
10 the 45-day objection period, the Receiver shall furnish to Robert Caruso, counsel for John W.
11 Zidar, a list of the investors and his or her Verified Amount. Mr. Caruso and his client shall
12 review the data and proposed pro rata distribution for accuracy and provide any relevant
13 information to the Receiver within 45 days.
14

15 IT IS FURTHER ORDERED that the Receiver is authorized to deduct \$167,500.00 from
16 the Receivership Assets prior to calculating and conducting the pro rata distribution.
17

18 IT IS FURTHER ORDERED that The Receivership is hereby authorized to receive
19 payment from the Receivership Assets in the amount of \$115,109.80 for Receiver fees.
20

21 DATED this 23 day of July, 2004.

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25 Honorable John C. Coughenour
26 CHIEF UNITED STATES DISTRICT JUDGE
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MAIL

JUL 12 2004

BY SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

1 Julie K. Lutz, Esq.
2 John Badger Smith, Esq.
3 Kelli Farrand Chan, Esq.
4 Securities and Exchange Commission
5 1801 California Street, Suite 4800
6 Denver, CO 80202
7 (303) 844-1000

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

8 SECURITIES AND EXCHANGE COMMISSION,

9 Plaintiff

10 v.

11 JOHN WAYNE ZIDAR, et al.,

12 Defendants.

Civil Action No. C00-823C

13 **PLAINTIFF'S RESPONSE IN SUPPORT OF RECEIVER'S PROPOSED**
14 **DISTRIBUTION PLAN AND MOTION FOR FEES**

15 On April 26, 2004, the Receiver appointed by the Court in this action, Michael D.
16 McKay, Esq., filed a proposed distribution plan with respect to the receivership estate in this
17 action, as well as a petition for fees incurred report in the management of the receivership since
18 the last report. Plaintiff Securities and Exchange Commission ("Commission") files this
19 response in support of the Receiver's motion.

20 This action has been stayed pending the disposition of a parallel criminal action, which
21 has now been concluded as to all defendants. Plaintiff will file a summary judgment motion
22 shortly as to all defendants named in this case.

23 The Receiver has filed a report detailing the procedure by which potential claimants to the
24 receivership fund were given the opportunity to make a verified claim against the fund.

25 Plaintiff's Response to Receiver's Report

26 United States Securities and Exchange Commission
27 1801 California Street, Suite 4800
28 Denver, CO 80202
303-844-1000

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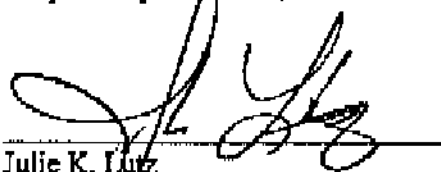
1
2 Plaintiff believes the procedure outlined in the Receiver's report has provided a fair and
3 equitable method for all injured investors with adequate proof of an investment in the Oakleaf
4 or Rosewood schemes at issue in this case to assert an interest in the receivership fund.
5 Plaintiff further concurs with the method of deducting from any claims paid the amount of any
6 sales commissions or returns received in connection with the schemes as this approach treats
7 all investors equitably. Finally, Plaintiff concurs with the proposed approach of paying a pro
8 rata return to all investors who have proved a claim.
9

10 With respect to funds held at ANZ Bank in New York, Plaintiff concurs with the
11 recommendation of the Receiver that the Court dissolve the freeze as to such funds and order
12 the bank to return them directly to investors, to whom the payments comprising such funds can
13 be directly traced.
14

15 Plaintiff also supports the Receiver's petition for payment of expenses and fees incurred
16 since the last report. The fees sought have been incurred in connection with steps necessary to
17 marshal and protect investor proceeds, are reasonable in amount, and were contemplated by the
18 Court's Order Appointing Receiver. The actions taken by the Receiver to date have maximized
19 the receivership estate and the potential for return to defrauded investors.
20

21 DATED: July 9, 2004

22 Respectfully submitted,

23
24 

25 Julie K. Lutz
26 John Badger Smith
27 Kelli Farrand Cuan
28 Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July 2004, I caused true and correct copies of the PLAINTIFF'S RESPONSE IN SUPPORT OF RECEIVER'S PROPOSED DISTRIBUTION PLAN AND MOTION FOR FEES to be served by first class mail, postage prepaid, mail upon the following:

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