

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SECURITIES AND EXCHANGE	§
COMMISSION,	§
	§
PLAINTIFF,	§
	§
vs.	§
	§
BRIAN A. BJORK, THE ESTATE OF JOEL	§
DAVID SALINAS, J. DAVID GROUP OF	§
COMPANIES, INC., J. DAVID	§
FINANCIAL GROUP, LP, SELECT ASSET	§
MANAGEMENT, LLC, SELECT ASSET	§
CAPITAL MANAGEMENT, LLC, SELECT	§
ASSET FUND I, LLC, AND SELECT	§
ASSET PRIME INDEX FUND, LLC,	§
	§
DEFENDANTS.	§

CIVIL ACTION NO. 4:11 CV - 02830

RECEIVER’S UNOPPOSED MOTION TO APPROVE COMPROMISE AND SETTLEMENT AGREEMENT WITH CLAYTON A. JOHNSON

TO THE HONORABLE KEITH P. ELLISON, UNITED STATES DISTRICT COURT:

Receiver Steven A. Harr (“Receiver”) moves for the Court to approve the Compromise and Settlement Agreement between Select Asset Prime Index Fund, LLC (“Prime Fund”), and Clayton A. Johnson d/b/a Clayton A. Johnson Insurance Agency (“Johnson”), individually, as Maker of the Note evidencing the loan between Prime Fund and Johnson, as Mortgagor of the Mortgage Agreement between Prime Fund and Johnson, and as Borrower on the Loan Agreement between Prime Fund and Johnson. In support for approval of the Motion, the Receiver herein states:

I.
INTRODUCTION

1. On August 1, 2011, the Securities and Exchange Commission (“SEC”) filed its Complaint against Defendants. In conjunction therewith, the SEC sought, and by Order Appointing Receiver (the “Order”), the Court appointed, Steven A. Harr as the Receiver for Brian A. Bjork, The Estate of Joel David Salinas, J. David Group of Companies, Inc., J. David Financial Group, LP, Select Asset Management, LLC, Select Capital Management, LLC, Select Asset Fund I, LLC, and Select Asset Prime Index Fund, LLC (collectively, the “Receivership Entities”).

2. The Receiver was authorized to have complete and exclusive control, possession, and custody of all Receivership assets and Receivership records of Defendants. Receivership Assets and Receivership Records were defined in the Order as “assets, monies, securities, properties, real and personal, tangible and intangible, of whatever kind and description, wherever located, and the legally recognized privileges (with regard to the entities), of the [Receivership Entities] and all entities they own or control . . . , and the books and records, client lists, account statements, financial and accounting documents, computers, computer hard drives, computer disks, internet exchange servers, telephones, personal digital devices, and other informational resources of or in possession of the [Receivership Entities] or issued by [Receivership Entities] and in possession of any agent or employee of the [Receivership Entities].”¹

3. The Receiver has been acting and fulfilling his duties as Receiver since his appointment and has conducted various investigations of the Receivership Entities with the intent to marshal the Receivership assets for the benefit of the Receivership Entities’ investors and

¹ Order Appointing Receiver, ¶1.

creditors. These efforts have also included review of corporate records, forensic accounting analysis, records from various legal counsel from the Receivership Entities, and forensic tracing. As a result of the aforementioned efforts, the Receiver has identified debts owed to the Receivership Entities, which include but are not limited to debts owed as a result of defaulted loans.

II. BACKGROUND FACTS

4. The Receiver is responsible for the collection of any and all debts owed to the Receivership Entities in order to increase the Receivership Estate's assets and decrease its liabilities. Prime Fund is a Receivership Entity that is the holder of an executed Promissory Note ("Note"), Mortgage Agreement ("Mortgage Agreement") and Loan Agreement ("Loan Agreement") evidencing a loan to Johnson.² The Note, Mortgage Agreement, and Loan Agreement are hereinafter referred to as the "Loan Documents". The Note was in the original principal amount of \$150,000, dated June 5, 2011, and made payable to Prime Fund.

5. To secure the Note, Johnson gave Prime Fund a Mortgage on real property located at 107 Shadwell Way, Friendswood, Texas. The Receiver discovered that the payments on the Note were past due, that late charges had accrued and made demand on Johnson to pay the amounts past due. After many months of partial payments and continue defaults, Johnson advised that he was selling a separate property and that he would have a significant amount of money to pay down the amounts due on the Note. At the time of the pay down. Prime Fund quoted Johnson a payoff amount of \$81,461.63, which represented the balance on the Note without late fees, penalties, and default interest that had accrued. .

² See Loan Documents, Exhibit "1", attached hereto.

6. On or about January 5, 2013, Johnson paid Prime Fund the amount of \$65,000 in partial payment of the Note. After weeks of continued discussions regarding the remaining balance due, the Receiver reached a Settlement Agreement (“Agreement”) with Johnson and now moves the Court to approve the Agreement.³ Under the terms of the Agreement, with Johnson having already paid the Receiver the sum of \$65,000 on January 5, 2013, the principal balance due is \$16,461.63. Johnson has agreed to make monthly payments to pay the remaining balance of \$16,461.63. The remaining payments will be in equal installments of principal and interest at an annual rate of interest in the amount of 2.5% per annum. The twelve payments are due by the 5th of each month with a final payment February 5, 2014.. An Amended and Restated Promissory Note (“Amended Note”) establishes the terms of the twelve monthly payments.⁴

7. Contemporaneous to signing the Agreement, the parties have agreed that should Johnson fail to perform under the terms of the Agreement, Loan Documents, and Amended Note, the Receiver is authorized to file an Agreed Judgment (“Agreed Judgment”) for the amount of the unpaid principal plus all regular and default interest, penalties, and attorney’s fees of \$3,000.⁵ If any payments are made before default, Johnson will be entitled to a credit against the amount of the Agreed Judgment. In the event that Johnson performs as agreed under the terms of the Agreement, Loan Documents, and the Amended Note, the Agreed Judgment will be void and of no force or effect.

³ See Signed Settlement Agreement, Exhibit “2”, attached hereto.

⁴ See Signed Amended and Restated Promissory Note, Exhibit “3”, attached hereto.

⁵ See Signed Agreed Judgment, Exhibit “4”, attached hereto.

III.
SUMMARY AND REQUEST FOR
APPROVAL OF COMPROMISE AND SETTLEMENT

8. If the Agreement is approved, \$81,461.63 plus interest will be derived from the settlement, representing payment in full of Johnson's obligations. The Receiver believes the approval of the Agreement will avoid further costs and delays and avoid the risk of not collecting the amount due and as such is in the best interests of the Receivership Estate. The Receiver requests the Court grant this Motion by signing the Order attached hereto.

9. The SEC, as Plaintiff in this matter, has no objection to the relief sought in this Motion.

IV.
CONCLUSION

WHEREFORE, the Receiver prays that the Court enter an Order in the form submitted with this Motion, or for substantially the same relief in such form as the Court may find just and proper.

Respectfully submitted,

MUNSCH HARDT KOPF & HARR, P.C.

/s/ Steven A. Harr

Steven A. Harr, #09035600

Randy A. Canché #24050373

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THE RECEIVER AND COUNSEL FOR
THE RECEIVERSHIP ENTITIES

CERTIFICATE OF CONFERENCE

On January 16, 2013, I conferred with Tim McCole and he stated that the Securities and Exchange Commission is not opposed to the relief sought in this motion.

/s/ Randy A. Canché

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was filed electronically with the Clerk via the CM/ECF system. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Houston, Texas, this 16th Day of January 2013.

/s/ Randy A. Canché
Randy A. Canché