

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 RICHARD C. GASAWAY
AND HIS RELATED ENTITIES**

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

Receiver, Steven A. Harr (“Receiver”), moves the Court to approve the Compromise and Settlement Agreement between all of the Receivership Entities, Richard C. Gasaway and his related. 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 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.

¹ Order Appointing Receiver, ¶1.

II.
BACKGROUND FACTS

4. Gasaway Properties, L.P. ("Properties"), is a borrower from Select Asset Prime Fund LLC ("Prime Fund") and Select Asset Management LLC ("SAM"). Richard C. Gasaway a/k/a Dick Gasaway a/k/a RC Gasaway a/k/a Richard Charles Gasaway, individually ("R. Gasaway") is a guarantor of Properties indebtedness to Prime Fund and SAM. Properties, R. Gasaway, Gasaway Properties, Inc. ("Properties, Inc."), Gasaway Venture Corp. ("Venture"), and Gulfvalve Corp. ("Gulfvalve") are or have been investors in one or more of the Defendants. (all persons and entities in this paragraph are hereinafter collectively referred to as "Gasaway").

5. 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.

6. SAM and Prime Fund made two loans as follows.

Loan 1

7. Gasaway Properties LP is a borrower of money funded through a bank account in the name of SAM in the aggregate amount of \$155,000 (collectively, "Loan 1"). Loan 1 is evidenced by a Promissory Note ("Note") made payable to Prime Fund, dated January 28, 2010. Although the advances which comprise Loan 1 were made from a bank account in the name of SAM, and evidenced by a note, they were recorded in the contemporaneous accounting records of Fund I in an account entitled "Note Receivable-Gasaway Prop". The four advances were made on October 14, 2009, November 10, 2009, December 14, 2009, and January 14, 2010. The fifth advance was made on January 29, 2010 and the sixth advance was made on February 12, 2010. The six advances that comprise Loan 1 total \$155,000. The Note is supported by R.

Gasaway as a Guarantor on the full amount of Loan 1 (Gasaway's guaranty for Loan 1 is hereinafter referred to as the "Guaranty Agreement").

8. The Note matured on February 5, 2011, leaving a balance of principal and interest due.

9. The Guaranty Agreement is unconditional and does not require a default by or action against Properties in order for Gasaway to be liable.

10. The Receiver made written demand on Properties and Gasaway to pay the amounts due under Loan 1 and the Guaranty Agreement. Gasaway disputes the amounts claimed on Loan 1.

Loan 2

11. Properties is a borrower of money funded through Prime Fund, in the amount of \$65,000 ("Loan 2"). Loan 2 is evidenced by two advances made on September 28, 2010 and December 30, 2010. These advances were made from the bank account of Prime Fund and recorded in an account entitled, "Note Receivable-Select Fund I" in the contemporaneous accounting records of Prime Fund. In the contemporaneous accounting records of Fund I, these advances were recorded as additions to the account entitled, "Note Receivable Gasaway Prop" with a corresponding increase to an account titled, "Short-Term Borrowings". There is no note.

12. By law, Loan 2 began to accrue interest of 6% on February 19, 2012, or 30 days after demand was made by counsel for Receiver.

13. The Receiver made written demand on Properties and Gasaway to pay the amounts due on Loan 2. Gasaway disputes the amounts claimed on Loan 2.

14. Loan 1 and Loan 2 are collectively referred to as the "Loans".

15. Gasaway has represented to the Receiver that he does not have the cash funds to pay the Loans. Gasaway has given the Receiver a confidential copy of his balance sheet to

demonstrate his assets and liabilities and his lack of ability to pay the settlement in cash. He has further demonstrated to the Receiver that he has real estate that when sold could fund the settlement and he is willing to give the Receiver a lien to secure his promise to pay the settlement amount.

16. The Receiver has obtained information on the real estate in question to support with reasonable certainty that the real estate being discussed is worth well in excess of the amount of the settlement payment described below.

17. After lengthy discussions between counsel regarding the facts, liability, governing law, and cost of litigating this matter, the parties have agreed that it is in their best interest to resolve this matter via settlement. Per the settlement, R. Gasaway agrees to pay the Receivership Estate \$215,000 to settle any and all claims the Receivership Entities may have regarding the aforementioned Loans. It is anticipated that payment will be made upon the sale of certain specific real estate and the obligation to make the payment will be secured by a lien on the real estate. As well, all parties will exchange full and mutual releases. Gasaway will maintain any rights he may have to participate in the Court ordered claims process.

III. REQUEST FOR APPROVAL OF COMPROMISE AND SETTLEMENT

18. In receiverships, federal courts have broad equitable powers enabling them to fashion appropriate ancillary remedies necessary to grant full relief.² With this request, the Receiver respectfully requests that this Court apply its broad equitable authority to effectuate the compromise reached between the parties.

19. The current unpaid principal amount of the Loans is \$220,000. The unpaid loans have accrued interest bringing the approximate unpaid balance of the loans to \$280,000. There

² See *SEC v. Safety Fin. Serv., Inc.*, 674 F.2d 369, 372 (5th Cir. 1982); *SEC v. Manor Nursing Ctrs.*, 458 F.2d 1082, 1103-04 (2d. Cir. 1972).

are issues with Loan 2 in that there is no documentation other than the fact that the funds were advanced.

20. R. Gasaway and many of the identified entities related to Gasaway have made investments in the Receivership entities that they assert are unpaid and have asserted claims against the receivership for their pro-rata portion of the receivership estate. Gasaway will remain eligible to participate in the claims review and approval process.

21. If the proposed settlement is approved and performed, \$215,000.00 will be added to the Receivership Estate. The settlement agreement provides that these funds will be paid on upon the sale of a tract of land owned by R. Gasaway. The settlement agreement provides that R. Gasaway's obligation to pay the \$215,000 to the receivership estate will be secured by a lien on the tract of land in issue. R. Gasaway will be given until December 31, 2014 to sell the property and pay the receivership estate and if the property is not sold, the Receiver will have the authority to list and attempt to sell the property for six months thereafter. If the property is still not sold and the receivership estate remains unpaid after that time, the Receiver has the authority to foreclose on the property and make it a receivership estate asset.

22. The settlement amount is a dollar figure that represents a compromised payment resolving the Gasaway outstanding debt obligation. The Receiver believes the approval of the proposed settlement 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 appropriate Order accompanying this motion.

23. The Receiver has pending a Motion for Judgment (DKT#93). Gasaway has a Complaint, cause number 4:12-CV 01821, pending in this court against the Receivership entities. ("Complaint") With the approval of this settlement, the parties move the court to dismiss these

matters with prejudice, reserving only both parties' respective rights, claims and defenses associated with the Court ordered claims process. The Receiver has submitted with this motion a separate order of dismissal with prejudice.

24. The SEC, as Plaintiff in this matter, has no objection to the relief sought in this Motion. Gasaway joins the Receiver in the request for the relief stated herein.

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.

DATED: September 16, 2013

Respectfully submitted,

By: /s/ Steven A. Harr

Steven A. Harr

Texas Bar No. 09035600

Bank of America Center

MUNSCH HARDT KOPF & HARR, PC

700 Louisiana, Suite 4600

Houston, Texas 77002

(713) 222-4044 (telephone)

(713) 222-4047 (telecopy)

E-Mail: sharr@munsch.com

ATTORNEY IN CHARGE FOR RECEIVER

OF COUNSEL:

MUNSCH HARDT KOPF & HARR, PC

700 Louisiana Street, Suite 4600

Houston, Texas 77002-2732

Sameer S. Karim

SDTX Bar No. 24076476

700 Louisiana Street, Suite 4600

Houston, Texas 77002-2732

Tel: (713) 222-4050

Fax: (713) 222-5850

CERTIFICATE OF CONFERENCE

On September 16, 2013, I conferred with Tim McCole of the Securities and Exchange Commission and Christopher Johnson, attorney for Gasaway, and neither is opposed to the relief sought in this motion.

/s/ Steven A. Harr _____

Steven A. Harr

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 September 2013.

/s/ Steven A. Harr _____

Steven A. Harr

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

**ORDER GRANTING RECEIVER’S UNOPPOSED MOTION TO
APPROVE COMPROMISE AND SETTLEMENT AGREEMENT WITH RICHARD C.
GASAWAY AND HIS RELATED ENTITIES**

On this ____ day of _____ 2013, the Court considered Receiver’s Unopposed
Motion to Approve Compromise and Settlement Agreement with Richard C. Gasaway and His
Related Entities. The Motion is **GRANTED**.

HONORABLE KEITH ELLISON
UNITED STATES DISTRICT JUDGE

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

ORDER GRANTING THE PARTIES MOTION TO DISMISS THE RECEIVER’S MOTION FOR JUDGMENT (DKT#93) AND GASAWAY RELATED PARTIES COMPLAINT

On this ____ day of _____ 2013, the Court considered the Receiver’s Unopposed Motion to Approve Compromise and Settlement Agreement with Richard C. Gasaway and His Related Entities which included a request to the Court to dismiss the Receiver’s Motion for Judgment (DKT#93) and a complaint filed by the Gasaway related parties against the Defendants, cause number 4:12-CV 01821 (“Complaint”).

The Motion is **GRANTED** as follows. The Receiver’s Motion for Judgment is dismissed with prejudice, reserving only the respective parties’ rights to all rights, claims and defenses associated with the Court ordered claims process in this proceeding. All causes of action that are or could be asserted in the Complaint are dismissed with prejudice.

HONORABLE KEITH ELLISON
UNITED STATES DISTRICT JUDGE