

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 MICHAEL & JENNIFER HOLLEY**

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 Select Asset Management, LLC (“Select Asset Management”), and Michael and Jennifer Holley (the “Holleys”), individually, and as Maker of the Note evidencing the loan between Select Asset Management and the Holleys and as Borrower on the Loan Agreement between Select Asset Management and the Holleys. 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

¹ Order Appointing Receiver, ¶1.

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. Select Asset Management is a Receivership Entity that is the holder of an executed Promissory Note ("Note"), Deed of Trust and Security Agreement ("Deed of Trust") and Modification and Extension Agreement ("Modification Agreement") evidencing a loan to the Holleys. The Note, Deed of Trust, and Modification Agreement are hereinafter referred to as the "Loan Documents." The Note was in the original principal amount of \$1,575,000.00, dated October 9, 2007, and made payable to Select Asset Management (the "Loan"). At the time the Modification Agreement was executed on February 3, 2009, a balance of \$234,714.96 remained on the Note. To secure the Note, the Holleys executed the Deed of Trust providing real property located in Harris County, Texas as collateral for the Note.

5. Over the course of repayment and before the Receiver was appointed, the Holleys requested a statement indicating the outstanding balance on the Loan from Select Asset Management. In response, the Holleys were provided an incorrect statement improperly indicating a balance that was less than the true amount owed. The Holleys promptly paid the improper balance. The Holleys contend they were unaware of the true balance and detrimentally relied upon the balance provided. After appointment, the Receiver discovered there remained a principal balance of roughly \$50,000 on the Loan. Shortly thereafter, the Receiver made demand on the Holleys for this amount. The Holleys dispute that a legal obligation exists for them to pay the true balance after receiving and allegedly relying upon the

aforementioned improper statement in response to which they paid the balance provided in full.

6. 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, the Holleys will pay the Receivership Estate \$25,000 to settle any and all claims the Receivership Entities may have regarding the aforementioned Loan.²

III.
SUMMARY AND REQUEST FOR
APPROVAL OF COMPROMISE AND SETTLEMENT

7. In receiverships, federal courts have broad equitable powers enabling them to fashion appropriate ancillary remedies necessary to grant full relief.³ With this request, the Receiver respectfully requests that this Court apply its broad equitable authority to effectuate the compromise reached between the parties.

8. If the proposed settlement is approved, \$25,000.00 will be added to the Receivership Estate. This dollar figure will represent and constitutes a compromised payment resolving the Holleys 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 Order attached hereto.

² The Compromise and Settlement Agreement executed by the Holleys is not attached hereto. If the Court would like to review the Agreement, the Receiver will make it available for review.

³ 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).

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.

DATED: October 14, 2013

Respectfully submitted,

By: /s/ Sameer S. Karim

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CERTIFICATE OF CONFERENCE

On October 11, 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/ Sameer S. Karim

Sameer S. Karim

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 14th Day of October 2013.

/s/ Sameer S. Karim

Sameer S. Karim

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**ORDER GRANTING RECEIVER'S UNOPPOSED MOTION TO
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WITH MICHAEL & JENNIFER HOLLEY**

On this ____ day of _____ 2013, the Court considered Receiver's Unopposed
Motion to Approve Compromise and Settlement Agreement with Michael & Jennifer Holley.
The Motion is **GRANTED**.

**HONORABLE KEITH ELLISON
UNITED STATES DISTRICT JUDGE**