

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-2830

RECEIVER’S UNOPPOSED MOTION TO APPROVE CLAIMS DETERMINATIONS

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

Steven A. Harr, the Receiver (“Receiver”) appointed by the Court in these proceedings, files this *Motion for Final Determination of Claims* (the “Motion”). In support of the Motion, the Receiver respectfully provides the following:

**I.
RELEVANT BACKGROUND**

1. On August 1, 2011, the Securities and Exchange Commission commenced this action in the United States District Court for the Southern District of Texas against the Receivership Entities¹ alleging, among other things, that Defendants violated several securities

¹ 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”)

laws. The Receiver was specifically tasked by this Court to resolve the claims of all alleged aggrieved investors. This Motion comes in furtherance of such duties and obligations.

2. On October 29, 2014, the Receiver filed his *Unopposed Motion to Approve Claims Determinations* (“**Claims Determination Motion**”) seeking the approval of his determination to deny Claim Nos. SAA-00295 and SAA-00296 belonging to Mr. Malkam Dior (“**Dior**”). [Dkt. No. 197]. As referenced in the Claims Determination Motion, as of October 2014, Dior’s claims were the only outstanding investor claims remaining for the Receiver to address. *See id.*

3. As detailed in the Claims Determination Motion, the Receiver advised this Court to deny the subject claims because: (i) the Receiver’s efforts to corroborate Dior’s alleged investments through forensic accounting efforts proved unsuccessful; and (ii) Dior was entirely nonresponsive to the Receiver’s multiple requests for additional information. *See* [Dkt. No. 197]. After reviewing the Claims Determination Motion, this Court entered an Order Approving the Receiver’s Claims Determination (“**Claims Determination Order**”) on October 29, 2014. [Dkt No. 198].

4. Shortly after the Claims Determination Order was entered, Dior filed a Response to the Receiver’s Claims Determination Motion (the “**Response**”). [Dkt. No. 199]. The Response is a one page letter that does not attach or reference any extrinsic evidence to support Dior’s allegations. *See id.* After receiving the Response, on November 14, 2014, this Court entered an Order for Response directing Dior to file a proper response setting forth his reasons for disagreement with the Receiver’s determination on or before December 5, 2015 [Dkt. No. 201]. As of the date of this Motion, Mr. Dior has not filed anything in response to the Order for Response. As of the date of this Motion, there is also no final order from this Court on Dior’s claims.

5. On April 18, 2015, the Receiver, through his website, received an email correspondence from Dior ("**Dior Email**"). A true and correct copy of the Dior Email is attached hereto as **Exhibit A**. The Dior Email alleges that original documents substantiating Dior's claims were previously sent to the Receiver but, somehow, were "lost in transition." *See Exhibit A*. Interestingly, neither the Receiver, nor his counsel, accounting team, or claims team, has ever been approached by Dior about documents that were allegedly sent but not received. The Dior Email also fails to provide a copy of the documents that have allegedly been lost. In fact, the Dior Email does not provide any substantive information or detail as to what these documents actually are or what information they allegedly include. The Receiver does not believe it has lost or misplaced any documents sent by Dior. If detail was provided, it would be considered. However, again, no such detail has ever been provided.

II. **FINAL DETERMINATION**

6. With the Order for Response, this Court gave Dior an opportunity to tell his side of the story. Dior failed to do so. Five months later, Dior sent an email to the Receiver again pleading for acceptance of his claim without providing any substantive detail or support. Dior still has not provided any additional facts, detail, or data to change the conclusion the Receiver reached and provided to this Court in the Claims Determination Motion. *See* [Dkt. No. 197]. In fact, the Receiver has actually gathered additional evidence to further refute Dior's claims since the entry of the Claims Determination Order.

7. On November 29, 2014, the Receiver received an email correspondence from Defendant Brian A. Bjork ("**Bjork**"), by and through his counsel Matt Hennessey and wife Erin

Bjork, regarding Dior's claims.² As this Court is aware, Bjork is currently serving a prison sentence based resulting from his involvement in the underlying fraudulent scheme. A true and correct copy of Bjork's November 29, 2014 email is attached hereto as **Exhibit B**. Bjork's letter provides in pertinent part the following:

...What the Court may not be aware of is that the information submitted by Mr. Dior in his Claims includes at least one fabricated document. The document that is fabricated is the one titled "Investment Agreement" (pages 5-8 of Document 197-1; herein referred to as IA)... Mr. Dior dated the document 5.17.08 (May of 2008). The Select Asset Prime Index Fund, LLC was a Private Placement Memorandum (PPM) whose units were not available for purchase by qualified investors until September of 2009. The Receiver has the PPM documents to verify this information... The address that is listed on the last page of the "Investment Agreement" (page 8 of Document 197-1) is: Brian Bjork, Chief Executive Officer of the Fund Manager, Select Capital, Select Asset Prime Index Fund, LLC, 4000 Washington Avenue, Suite 200, Houston, Texas 77007 713-843-7370. On 5.17.08 (May of 2008), the above address did not exist in Houston, Texas. Integrity Bank, who owns the property and the building of the aforementioned address, had not built the building or developed the property in May of 2008 and no one else had either. In fact, in May of 2008, our offices were on Westcott Street in Houston, Texas, and we did not move into the office space on Washington until September of 2009...

8. Bjork's letter identifies additional issues and questionable gaps in the claims information provided by Dior. Considering this information in combination with the forensic gaps detailed in the Claims Determination Motion, the Receiver believes Dior's claims are questionable and should be denied.

9. The Receiver has remained receptive and open to considering any and all information provided by Dior to substantiate his position. However, with no information provided to date, the Receiver also believes it is now in the best interest of the Receivership Estate for Dior's claims be finally resolved and dismissed.

² The Receiver did not approach Bjork or his counsel for this information. The email from Defendant Bjork was sent unilaterally. With the Receiver expecting Dior to file response pursuant to the Order for Response, the conscious decision was made to hold on to this email and attach it to the Receiver's reply to the same. Because Dior has not filed a response, the Receiver has not yet produced this email.

III.
CONCLUSION

10. Based on the information and detail provided herein in conjunction with the Claims Determination Motion [Dkt. No. 197], the Receiver respectfully requests that this Court grant this Motion. Specifically, the Receiver seeks final approval of his decision to deny payment and object to Claim Nos. SAA-00295 and SAA-00296.

DATED: May 8, 2015

Respectfully submitted,

By: /s/ Sameer S. Karim

Steven A. Harr

Texas Bar No. 09035600

MUNSCH HARDT KOPF & HARR, PC

700 Milam Street, Suite 2700

Houston, Texas 77002

(713) 222-4044 (telephone)

(713) 222-4047 (telecopy)

E-Mail: sharr@munsch.com

ATTORNEY FOR THE RECEIVER

OF COUNSEL:

MUNSCH HARDT KOPF & HARR, PC

700 Milam Street, Suite 2700

Houston, Texas 77002-2806

Sameer S. Karim

SDTX Bar No. 24076476

700 Milam Street, Suite 2700

Houston, Texas 77002-2806

Tel: (713) 222-4050

Fax: (713) 222-5850

skarim@munsch.com

CERTIFICATE OF CONFERENCE

On May 8, 2015, 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 and mailed to Claimant's last known address (as included on Claimant's claim forms) via first class mail and certified mail, return receipt requested.

Houston, Texas, this 8th day of May 2015.

/s/ Sameer S. Karim

Sameer S. Karim

From: realtalkmiami@gmail.com [<mailto:realtalkmiami@gmail.com>]
Sent: Saturday, April 18, 2015 1:48 AM
To: SelectAsset Receiver
Subject: Case 4:11-cv-02830

Hi,

My name is Malkam Dior and I am asking you to forward this e-mail to the courts for a final decision on claim numbers SAA 00295 and 00296. I submitted all original documents to the office of the receiver and it seem as if the office only received a portion of it. Due to this error the Court is not able to receive all original documents that was submitting by me, for the Judge the make a decision.

The Office of the Receiver have not requested any more information from me on this particular case (4:11-cv-02830). It has been over 7 months since I have had any contact with the Office of the Receiver to ensure that all documents were received and processed.

I ask the Court(s) to approve my claims due to legal error, in which some or all of the required documents appears to have been lost in transition.

Sent from Windows Mail



From: Harr, Steve
Sent: Monday, December 01, 2014 10:32 AM
To: Karim, Sameer
Subject: Fwd: Receivers website Malkam Dior

Begin forwarded message:

From: Matt Hennessy <matt@deguerin.com>
Date: December 1, 2014 at 9:15:18 AM CST
To: Steven Harr <sharr@munsch.com>
Subject: FW: Receivers website Malkam Dior

Steve:

Please see Brian's comments regarding a claim made by Malkam Dior. The comments are addressed to Judge Ellison, but they have not been sent.

Matt

Matt Hennessy | Attorney at Law
DeGuerin, Dickson, Hennessy & Ward
1018 Preston Avenue, 7th Floor
Houston, Texas 77002
713.223.5959 tel
713.223.9231 fax

From: Erin Bjork <erinbjork1@gmail.com>
Date: Sunday, November 30, 2014 at 4:18 PM
To: Matt Hennessy <matt@deguerin.com>
Subject: Receivers website Malkam Dior

November 29, 2014

Dear Honorable Judge Ellison,



On November 13, 2014, you signed an "Order For Response" to allow Mr. Malkam Dior to file a response to his disagreement with the Receiver's determination to reject Mr. Dior's Claims Saa-00295 and SAA-00296 in Civil Action No. 4:11-cv-2830. What the Court may not be aware of is that the information submitted by Mr. Dior in his Claims includes at least one fabricated document.

The document that is fabricated is the one titled "Investment Agreement" (pages 5-8 of Document 197-1; herein referred to as IA). Below are the two simple and verifiable reasons proving the IA is a fabricated document:

1) Mr. Dior dated the document 5.17.08 (May of 2008). The Select Asset Prime Index Fund, LLC was a Private Placement Memorandum (PPM) whose units were not available for purchase by qualified investors until September of 2009. The Receiver has the PPM documents to verify this information.

2) The address that is listed on the last page of the "Investment Agreement" (page 8 of Document 197-1) is:

Brian Bjork
Chief Executive Officer of the Fund Manager, Select Capital
Select Asset Prime Index Fund, LLC
4000 Washington Avenue, Suite 200
Houston Texas 77007 713-843-7370

On 5.17.08 (May of 2008), the above address did not exist in Houston, Texas. Integrity Bank, who owns the property and the building of the aforementioned address, had not built the building or developed the property in May of 2008 and no one else had either. In fact, in May of 2008, our offices were on Westcott Street in Houston, Texas, and we did not move into the office space on Washington until September of 2009.

I hope you consider the above information and deny Mr. Dior's Claims. Thank you for your time.

Respectfully,

Brian A. Bjork

I hope that letter is good enough for the Court.

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ORDER APPROVING RECEIVER’S FINAL DETERMINATION OF CLAIMS

The matter before the Court is the *Receiver’s Unopposed Final Determination of Claims* (the “Motion”). Because the Court is of the opinion that the Motion is well-taken, it is hereby **GRANTED.**

IT IS HEREBY, ORDERED, that Claim Nos. SAA-00295 and SAA-00296 are hereby **DENIED.**

SIGNED this _____ day of _____, 2015.

HONORABLE KEITH P. ELLISON