

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 WILLIAM MACDONALD

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 Fund I, LLC (“Fund I”) and William MacDonald (“MacDonald”), individually as Guarantor for National Insurance Partners, Inc. (“NIP”) 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 included interactions with existing and former employees, reviews of corporate records and discussions with involved third-parties, teleconferencing with banks, lenders, former employees of the Receivership Entities, family members of the Joel David Salinas, and conferring with counsel for all third parties indebted to the Receivership Entities.

4. These efforts have also included review of corporate records, forensic accounting analysis, and forensic tracing. As a result of the aforementioned efforts, the Receiver has

¹ Order Appointing Receiver, ¶1.

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

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. Fund I is a Receivership Entity that is the holder of an executed Promissory Note ("Note") evidencing a loan to NIP.² The Note was personally guaranteed by two of NIP's principals: MacDonald and Miles Prentice ("Prentice") (collectively, "Debtors"). A copy of the Guaranty Agreement ("Guaranty") is attached hereto.³ The Note was in the amount of \$500,000, dated November 16, 2009, and made payable to Fund I. The term of the Note extended from December 15, 2009, until May 15, 2011. Despite the Note maturing, the Debtors defaulted on the Note. After months of settlement discussions, the Receiver has reached a Settlement Agreement ("Agreement") with MacDonald and now moves the Court to approve the Agreement.⁴

III.

SUMMARY AND REQUEST FOR APPROVAL OF COMPROMISE AND SETTLEMENT

6. If this Settlement Agreement is approved, the Receiver estimates that, at a minimum, \$300,000 in principal plus 10% interest per annum beginning May 15, 2011, until paid will be derived from the settlement. At a maximum, and should MacDonald default on the Agreement, the Receiver will file suit to enter an Agreed Judgment which authorizes the

² See Promissory Note, Exhibit "1", attached hereto.

³ See Guarantee Agreement for William MacDonald and Miles Prentice, Exhibit "2", attached hereto.

⁴ See Signed Settlement Agreement, Exhibit "3", attached hereto.

Receiver to collect the principal amount of MacDonald's Guaranty, plus all regular and default interest, penalties, and attorneys' fees of \$3,000.⁵

7. As part of the Agreement, the parties stipulate that all payments from any source other than MacDonald on the NIP debt will be credited to the debt amount not otherwise payable by MacDonald ("Non-MacDonald Payments").⁶ In the event sufficient Non-MacDonald Payments are collected such that the amount remaining due on the Note at 10% per annum from August 8, 2011, is less than the balance then due from MacDonald under the Agreement, the amount due thereafter will be reduced so that the Receiver does not collect more than is otherwise due under the terms of the Note.

8. The Receiver also assigns to MacDonald any and all of his legal rights and claims against NIP to collect money owed under the Note up to the amount paid by MacDonald to the Receiver under the terms of the Agreement.

9. The Receiver believes the approval of the Agreement is in the best interests of the Receivership Estate. The Receiver requests the Court grant this Motion by signing the Order attached hereto.

10. 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.

⁵ See Signed Agreed Judgment, Exhibit "4", attached hereto.

⁶ It is anticipated Miles Prentice will make payments, as a Co-Guarantor on the Note.

Respectfully submitted,

MUNSCH HARDT KOPF & HARR, P.C.

/s/ Steven A. Harr

Steven A. Harr, #09035600

Randy A. Canche #24050373

700 Louisiana, Suite 4600

Houston, Texas 77002

(713) 222-4044 (telephone)

(713) 222-4047 (telecopy)

E-Mail: sharr@munsch.com

THE RECEIVER AND COUNSEL FOR
THE RECEIVERSHIP ENTITIES

CERTIFICATE OF CONFERENCE

On June 18, 2012, 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. Canche
Randy A. Canche

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 18th day of June 2012.

/s/ Randy A. Canche
Randy A. Canche