UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,	§	
	§	
Plaintiff,	§	
	§	**Civil Action No. 3:04-CV-0605-H**
J. ROBERT DOBBINS, DOBBINS CAPITAL CORP., DOBBINS OFFSHORE CAPITAL, LLC, DOBBINS PARTNERS, L.P. and DOBBINS OFFSHORE, LTD.	§	
	§	
Defendants.	§	

MOTION TO APPROVE RECEIVER'S PLAN OF DISTRIBUTION OF ASSETS AND REQUEST TO MAKE INTERIM CASH DISTRIBUTION

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Dan R. Waller, in his capacity as receiver of Dobbins Capital Corp., Dobbins Offshore Capital, LLC, Dobbins Partners, L.P. and Dobbins Offshore, Ltd. and the interest of Rhomi Partners, L.P. in Skiles, files this his Motion to Approve Receiver's Plan of Distribution of Assets and Request to Make Interim Cash Distribution as follows:

I.

INTRODUCTION

1. On July 12, 2005, the court appointed Dan R. Waller as the receiver (hereinafter, the "Receiver") for Dobbins Partners, L.P. ("DP"), Dobbins Offshore, Ltd. ("DO"), Dobbins Capital Corp., Dobbins Offshore Capital, L.L.C., J. Robert Dobbins' interest in DB3 Holdings, Inc. ("DB3"), and the interest of Rhomi Partners, L.P. ("Rhomi") in Skiles Partners, L.P. (collectively, the "Receivership Entities"). A copy of the Final Judgment as to Defendant J. Robert Dobbins, Dismissal of Dobbins Capital Corp., Dobbins Offshore Capital, LLC and Dobbins Offshore, Ltd. and Order Appointing Receiver appointing the Receiver and specifying his duties is attached hereto as Exhibit "A."

2. Primary among his duties, the Receiver was charged with discovering, retrieving and preserving monies and other assets rightfully the property of the Receivership Entities. The Receiver now requests that the court approve the Receiver's proposed plan of distribution and authorize an interim distribution of $2,000,000.00 to the aggrieved investors of the Receivership Entities in accordance with the proposed plan.

II.

NOTICE TO INTERESTED PARTIES

3. Concurrently with the filing of this motion, the Receiver has sent notice in the form attached hereto as Exhibit "B," to the persons and entities identified on the Certificate of Service included herein. Said notice includes a copy of this motion and notifies the interested persons of their right to file an objection to the Receiver's proposed distribution plan.

III.

ASSETS HELD BY RECEIVER

4. Except as discussed below, all reasonably obtainable assets and monies have been retrieved by the Receiver and most non-cash assets have been converted to cash. The Receiver believes it is timely and appropriate to distribute a portion of the funds in his possession to the aggrieved investors. The total amount of cash now in the possession of the Receiver is $2,820,449.48.

IV.

EXISTING INVESTORS AND CREDITORS

5. The Receiver has identified thirty-six (36) individuals or entities (the "Aggrieved Investors") who have net out-of-pocket losses[1] with the Receivership Entities totaling $78,369,757.00. A small number of potential interested parties located overseas were contacted by the Receiver but never responded to the Receiver's requests for information. Those potential interested parties have been excluded from the list of Aggrieved Investors. A list identifying the Aggrieved Investors and their respective net out-of-pocket loss is attached hereto as Exhibit "C."

6. The Receiver has identified one putative trade creditor, William Smith & Co. ("Smith"), that rendered so-called "soft dollar" services to the Dobbins entities. Smith obtained a default judgment against Dobbins Partners, Dobbins Capital Corp. and J. Robert Dobbins in November 2004 for an amount of $686,448.43 plus post-judgment interest thereafter at eight percent per annum.

7. In the opinion of the Receiver, there are no creditors who have secured claims against the Receivership Entities, and there are no creditors who are entitled to a legal preference in the distribution of the receivership assets. With respect to the claim of Smith, since the Dobbins entities were operated as a ponzi scheme, the Receiver has determined that the funds of investors are subject to a constructive trust. *See* e.g., Quilling v. Trade Partners, Inc., No. 1:03-CV-0236 (W.D. Mich. Dec. 1, 2006) (finding that equitable doctrine of constructive trust gave defrauded investors a "priority of right" over all other claimants). Therefore, the Receiver believes it appropriate to subordinate the claim of Smith to the claims of the Aggrieved Investors.

[1] "Net out-of-pocket loss" means the difference between the net cash deposits made by an investor and the net cash redemption payments made to the investor, without regard to when the deposits or redemption payments were made.

V.

PROPOSED PLAN OF DISTRIBUTION

8. The Receiver is seeking authority from the court to distribute the funds in his possession on a pro rata basis to the Aggrieved Investors. Under the Receiver's proposed plan, each Aggrieved Investor will share in the distribution based upon their net out-of-pocket loss as a percentage of the total out-of-pocket losses of all of the Aggrieved Investors. Included in Exhibit "C" is the percentage and amount of the distribution each Aggrieved Investor will receive under the proposed plan.

9. Because the Receiver has not concluded his duties and is a party to pending litigation, the Receiver proposes by this motion to distribute $2,000,000.00 to the Aggrieved Investors and retain the amount of $820,449.48 to use to protect the estate's equity interest in a real estate property subject to a judgment lien in favor of the SEC, as well as for future receivership expenses, fees and potential liabilities.

10. The Receiver proposes to treat Dobbins Partners and Dobbins Offshore and the separately managed accounts of several individual investors as a pool for the purposes of determining the pro-rata distribution. The Receiver believes this method is the fairest to all Aggrieved Investors.

11. The Receiver also believes it most fair and equitable to all investors that the distribution of receivership assets be made on the basis of net out-of-pocket losses. Based on records available to the Receiver and the investor questionnaires returned by the investors, the Receiver has identified the Aggrieved Investors and their net out-of-pocket losses as set forth on Exhibit "C." Other than the exceptions discussed immediately below, each Aggrieved Investor's net out-of-pocket loss has been determined by subtracting redemption payments made to that investor from the investor's cash deposits to Dobbins Offshore or Dobbins Partners.

12. The Receiver has opted against using tracing of proceeds as a factor in determining distributions. The Receiver believes that if tracing of proceeds were used as a basis to give any investor a preferential distribution, then fairness would dictate that tracing should be used across the board as to all investor deposits. If a tracing method of distribution were utilized, then a lucky few late investors would share the bulk of the receivership proceeds, whereas the unlucky majority whose deposits cannot be readily traced would receive little or no distribution. In this case, the Receiver believes a pooling of all collected cash and a pro rata distribution of the receivership assets is the fairest and most equitable manner of distribution.

13. Several investors in Dobbins Partners and Dobbins Offshore sued the receivership entities before the appointment of the Receiver and obtained default judgment from courts located within and outside the United States. The monetary awards in these default judgments are based on the fictitious capital valuations generated by Dobbins Partners and Dobbins Offshore and in several cases include additional amounts for interest, legal fees and punitive damages. Because the Receiver has determined to distribute collected funds to the investors based on a net out-of-pocket methodology, the Receiver has not given any preferences to investors who obtained judgments against the receivership entities.

14. The following investors have agreed to a different distribution determination or otherwise merit further discussion: Larry Elins/Quellos, George Huber and Pennington Oil Company.

A. Larry Elins/Quellos ("Elins"). Mr. Elins had multiple investments in Dobbins Offshore and Dobbins Partners as well as a separately-managed capital account. According to records provided by Mr. Elins, which records the Receiver has determined to be reliable, Mr. Elins' net out-of-pocket losses in or with the Dobbins entities is $15,600,000.00. In or about September 2003, Mr. Elins demanded full redemption of all of his investments in the Dobbins'

entities, the then current value of which were represented to him by Robert Dobbins to total in excess of $12,503,420.00. When Mr. Dobbins could not meet Mr. Elins' redemption request, Mr. Elins extracted from Mr. Dobbins a promissory note and collateral assignments under which, inter alia, Dobbins assigned to Mr. Elins security interests in assets of the receivership entities and Rhomi Partners. Upon Mr. Dobbins' default on the promissory note, Mr. Elins pursued collection, including a nonjudicial foreclosure and filing a state court lawsuit against Skiles Partners, L.P., DB3 Holdings, Inc. and Daniel Breen, III, in regards to Rhomi's limited partnership interest in Skiles and Dobbins' stock ownership in DB3. As the receiver for Rhomi's interest in Skiles and Dobbins' stock interest in DB3, the Receiver intervened in the Elins' lawsuit and removed it to federal court. The federal district court (Sanders, J.) granted summary judgment dismissing Mr. Elins' claims against Skiles and DB3 arising from the security interest granted by Dobbins and Rhomi. Thereafter, the parties attended a mediation at which Mr. Elins agreed to abandon further pursuit or appeal of his individual claims under the promissory note and security agreements and to cooperate in the Receiver's efforts to pursue claims against Skiles, DB3 and Breen, in return for the Receiver stipulating to Mr. Elins' documented net out-of-pocket loss of $15,600,000.00.

B. George Huber. Mr. Huber was an investor in Dobbins Partners and also had a separately managed account. In the last quarter of 2002, Mr. Huber agreed to invest additional cash totaling $8,886,871.00 with Dobbins Partners, in return for the execution of promissory notes totaling $9,809,190.00, along with Robert Dobbins' further promises to assign additional equity interests in the Dobbins entities to Mr. Huber. After the SEC filed suit against Dobbins and the Receivership Entities, Mr. Huber filed a lawsuit in Texas state court against several investors in Dobbins Partners seeking to set aside redemption payments allegedly made to them with the proceeds of Mr. Huber's additional capital contribution. In October 2005, Mr. Huber

amended his pleadings to add a claim against the Receiver for the amounts allegedly owed to Mr. Huber by Dobbins Partners. In March 2006, Mr. Huber filed a notice of nonsuit terminating his state court lawsuit against all parties, and thereafter the Receiver filed lawsuits against several investors in Dobbins Partners seeking to recover preferential redemption payments, one or more of which were arguably traceable to Mr. Huber's cash infusion.

Mr. Huber was fully aware at the time of his later investment of $8,886,871.00 that most, if not all, of his investment funds would be immediately used by Robert Dobbins to fund pending and/or delinquent redemption requests of other investors. For example, a redemption payment to another investor, P&A Diversified Fund ("P&A"), in the amount of $4,552,636.00 was paid directly to P&A by a wire transfer of that amount from Mr. Huber. The Receiver has concluded that the direct transfer of funds from Mr. Huber to P&A (rather than from Mr. Huber to Dobbins Partners to P&A) was done solely as a matter of expediency and not for any purpose of giving Mr. Huber any superior claim to such funds. Indeed, there were no agreements between Mr. Huber and any Dobbins entity that his investment funds, including the amount transferred directly to P&A, would entitle him to any preferential status over other investors who invested in Dobbins Partners in late 2002 and early 2003. Moreover, the promissory notes Mr. Huber received from Dobbins Partners were not signed and delivered to him until at least May of 2003, several months after his funds were actually transferred. Furthermore, Mr. Huber's direct transfer to P&A shows that he was aware that his investment funds were being used to fund redemption payments that Dobbins Partners could not otherwise satisfy. Mr. Huber was also presumably aware that the Dobbins entities did not have sufficient liquid assets to fund such redemption requests and that the Dobbins' entities would collapse without Mr. Huber's cash infusion. Mr. Huber agreed to provide such funding based on Robert Dobbins' alleged representations to him that he was getting a bargain because the redeemed interests to be

assigned to Mr. Huber had a substantially greater value than the redemption values to be paid. Based on these facts, coupled with the fact other investors made investment deposits that were used by Robert Dobbins to fund redemption payments, the Receiver believes Mr. Huber should not be given preferential treatment over other investors.

C. Pennington Oil Company ("POC"). The Receiver sued POC under the Texas Uniform Fraudulent Transfer Act to recover a redemption payment in the amount of $1,011,000.00 made to POC. Through discovery and records obtained by the Receiver, the Receiver determined that POC invested $2,750,000.00 with Dobbins Partners in November 2000 and received a single redemption payment of $1,011,000.00 in October 2002. Thus, despite such redemption payment, POC had a net out-of-pocket loss of $1,739,000.00.

The Receiver also determined that POC was not an insider of, related to or otherwise subject to special favors from Robert Dobbins and that POC's redemption request was made in good faith and not made to delay, defraud or hinder other creditors or investors of the receivership entities. Based on applicable legal authority and because POC had a net out-of-pocket loss, the Receiver entered into a settlement with POC under which POC agreed that it will not be entitled to share in any distribution from the receivership estate unless and until the net distributions from the receivership estate exceed $4,000,000.00.

VI.

LEGAL AUTHORITY

15. The Receiver believes a pro rata distribution in this case is supported by applicable case law. In fact, the Fifth Circuit Court of Appeals and this Honorable Court have consistently approved receivership plans of distribution that rejected tracing of funds and favored pro rata distributions. *See e.g.* SEC v. Forex Asset Mgmt. LLC, 242 F.3d 325, 331 (5th Cir. 2001); United States v. Durham, 86 F.3d 70, [73] (5th Cir. 1996); SEC v. Amerifirst Funding, Inc.,

2008 WL 919546 (N.D. Tex. March 13, 2008) (Fitzwater, C.J.) ("the absence of commingling between various receivership entities does not render a pooled, pro rata distribution inequitable."). In this case, the Receiver believes a pro-rata distribution will result in the most equitable treatment of all investors in the receivership entities.

VII.

CONCLUSION

For the reasons stated herein, the Receiver requests that the court approve the Receiver's Plan of Distribution of Assets and authorize the interim cash distribution requested herein.

DATED: March 13, 2009.

Respectfully submitted,

/s/ David B. Dyer
David B. Dyer
Texas Bar No. 06313500

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DAN R. WALLER

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2009, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The foregoing document is being served as follows on the following interested persons:

Via Electronic Notice:
Elizabeth A. Krupa, Esq.
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Via Electronic Notice:
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