

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

Defendants.

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NO. 3-98-CV-2689-M

Michael J. Quilling, as Receiver for Robert Cord and Winterhawk West Indies, Ltd., has filed his final report and proposed distribution plan. This matter has been referred to United States Magistrate Judge Jeff Kaplan for recommendation pursuant to 28 U.S.C. § 636(b) and a standing order of reference dated June 16, 2000.

This is a civil action brought by the SEC against 16 defendants and 13 equity relief defendants arising out of the sale of non-existent "prime bank" securities. The SEC alleges that defendants raised more than \$14 million from unwitting investors by making false representations about the use and safety of investor proceeds and the expected rate of return on their investments. This conduct, if proved, constitutes a violation of the federal securities laws.¹ As relief, the SEC seeks a permanent injunction, disgorgement, and civil penalties.

755

Robert Cord a/k/a Robert Franklin Schoonover, Jr. and his wholly owned corporation, Winterhawk West Indies, Ltd. ("Winterhawk"), are named defendants in this case. On November 13, 1998, Michael J. Quilling was appointed as Receiver for Cord and Winterhawk. The order of appointment provides, in relevant part:

The Temporary Receiver shall take custody, possession and control of any and all assets, monies, securities and properties, real and personal, tangible and intangible, of whatever kinds and description, and wherever situated, belonging to [Cord and Winterhawk] . . . (hereinafter referred to as "Receivership Assets"), as well as any documents relating to the Receivership Assets.

ORDER APP. TEMP. RECEIVER, 11/13/98 at 2. To date, the Receiver has recovered \$2,192,839.51 in assets traceable to Cord and Winterhawk.² Costs of administration to date total \$370,353.50. This leaves \$1,822,486.01, less outstanding attorney's fees and accounting expenses, available for distribution to 45 investors on a *pro rata* basis. The Court previously approved claims totaling \$6,909,198.97, which means that each investor would receive approximately 25.7% of their claim.

The Receiver was ordered to post a copy of his final report and proposed distribution plan on his website with instructions to all interested parties that any objections must be filed by August 6, 2001. No objections have been received by the Receiver or the Court. A hearing was held on August 17, 2001. The Receiver notified all interested parties of the hearing date by posting notice on his website. No one appeared at the hearing or otherwise objected to the report and proposed distribution plan. The Securities and Exchange Commission, through its regional counsel, has consented to the relief sought.

² These assets include: (1) property that was the subject of an *in rem* forfeiture proceeding in the United States District Court for the Southern District of Texas, *United States v. A Certain Tract of Land, et al.*, No. H-97-3600; and (2) settlement proceeds recovered in two lawsuits filed by the Receiver, *Michael J. Quilling v. Richard Parker, et al.*, No. 3-99-CV-1929-M and *Michael J. Quilling v. Texas Coastal Bank, et al.*, No. 3-99-CV-1504-M.

II.

In his final report and proposed distribution plan, the Receiver seeks authorization to: (1) abandon certain assets and potential claims of the Cord/Winterhawk Estate; (2) pay \$47,307.62 in attorneys's fees and \$10,000.00 in accounting expenses; (3) reserve \$5,000.00 in attorney's fees necessary to close the Estate; (4) distribute all remaining receivership assets to investors on a *pro rata* basis; and (5) be excused from preparing and filing a tax return on behalf of Robert Cord. The Court will address each request in turn.

A.

The Receiver has identified the following assets and potential claims of the Cord/Winterhawk Estate:

<u>Name</u>	<u>Amount</u>
B.J. Transportation	\$ 404,570.14
Michael Brown	\$ 25,500.00
Michelle Crawford	\$ 107,817.45
Carolyn & Jimmy Hersman	\$ 228,652.65
Eugene Mallery	\$ 16,092.66
Max Grandfield Evan. Ass'n	\$ 5,000.00
Debbie & Wayne Melson	\$ 383,866.36
Sierra Trucking	\$ 31,000.00
Bearar Reports	\$ 6,665.00
Dell Capital Resources	\$ 20,000.00
Evergreen Consulting	\$ 183,140.00
Express Credit, Inc.	\$ 30,000.00

Al Fontenot	\$ 40,000.00
R.H. Graham	\$ 13,050.00
Louis Green	\$ 7,000.00
Marilyn Howton	\$ 18,100.00
IAM Management	\$ 1,550.00
International Partners	\$ 192,000.00
Laughlin & Associates	\$ 8,755.00
Catherine Meredith	\$ 6,500.00
New River Park, Ltd.	\$ 2,275.00
New World Trading	\$ 17,000.00
Oro y Plata	\$ 87,000.00
George Pattilo	\$ 163,790.00
Pierce Ardin	\$ 27,868.90
Paul Purcell	\$ 40,000.00
Christopher Redman	\$ 30,000.00
Donna Shelton	\$ 568,500.00
Steven Smart	\$ 47,000.00
Southern Trust Company	\$ 5,000.00
Karissa Tinsley	\$ 8,950.00
U.S. Leasing	\$ 60,000.00
Carla & Wayne Wade	\$ 91,800.00
Wesco, Inc.	\$ 17,508.00
Winners Circle	\$ 3,300.00

United Chemical & Mineral	\$ 20,000.00
Comawa	\$ 5,000.00
VS Leasing Company	\$ 2,500.00
Sonny's Camp & Trailer	\$ 6,000.00

According to the Receiver, these claims should be abandoned because the costs of litigation would likely exceed any potential recovery. The Court agrees. The Receiver advises that most of the target defendants cannot be found or are judgment-proof. Others claim that they gave value or benefit for the funds received and the Receiver has no evidence to the contrary. Accordingly, the Court recommends that these assets and potential claims be abandoned.

B.

The Receiver seeks \$47,307.62 for legal services performed and costs incurred on behalf of the Cord/Winterhawk Estate from December 1, 2000 through August 17, 2001. The Court finds that the time spent, services performed, expenses incurred, and hourly rates charged by the Receiver are justified under the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974). No upward or downward adjustment is warranted. Accordingly, the Receiver should be authorized to pay the law firm of Quilling, Selander, Cummiskey & Lownds, P.C. the sum of \$47,307.62 in attorney's fees and expenses.

The Receiver also retained an accountant to prepare and file a final tax return for Winterhawk West Indies, Ltd. at a cost of \$10,000.00.³ The Court finds that this is a reasonable and necessary expense of the Receivership Estate. Therefore, the Receiver should be authorized

³ The Receiver is required to prepare and file a tax return for Winterhawk pursuant to Treasury Regulation 1.6012-3(b)(4).

to pay the firm of Litzler, Senger, Shaw, McKinney & Dohmeyer the sum of \$10,000.00 for preparing this tax return.

C.

The Receiver estimates that he will incur another \$5,000.00 in legal fees and expenses for preparing and mailing distribution checks, performing final bank reconciliations, and communicating with claimants. Although these fees and expenses are manifestly reasonable, only \$2,500.00 should be reserved from sums available for distribution. The remaining \$2,500.00 should be paid to the Receiver from accrued interest on funds deposited in bank accounts of the Estate.

D.

The Court previously approved 45 claims totaling \$6,909,198.97. There is currently \$1,762,678.39 available for distribution on a *pro rata* basis. See *SEC v. Forex Asset Management Co.*, 242 F.3d 325, 331 (5th Cir. 2001) (approving *pro rata* distribution to investors). Therefore, each claimant should be paid as follows:

<u>Claimant</u>	<u>Amount of Claim</u>	<u>Distribution Amount</u>
Sue Bailey	\$ 35,000.00	\$ 8,997.61
Ray & Shirley Barth	\$ 5,479.62	\$ 1,408.67
Thomas & Charlotte Beville	\$ 5,479.62	\$ 1,408.67
J.R. & Betty Broadhurst	\$ 10,959.25	\$ 2,817.34
Bill & Betty Burger	\$ 32,877.75	\$ 8,452.03
Dennis Cates	\$ 127,371.45	\$ 32,743.94
Robert & Joyce Cheatham	\$ 15,342.95	\$ 3,944.28
Franklin & Sandra Crain	\$ 27,398.13	\$ 7,043.36

Darrell & Betty Jean Crain	\$ 21,918.50	\$ 5,634.69
Jerry Crangle	\$ 61,000.00	\$ 15,681.54
Madhukar Deshmukh	\$ 10,500.00	\$ 2,699.28
Terry Edwards	\$ 61,000.00	\$ 15,681.54
Billy Evans	\$ 40,000.00	\$ 10,282.98
Charles Fleming	\$ 280,000.00	\$ 71,980.84
Funding Resource Group	\$2,881,115.31	\$740,661.08
Daniel Hansen	\$ 183,000.00	\$ 47,044.62
Diana Haskell	\$ 205,857.52	\$ 52,920.70
Cary Johnson	\$ 61,000.00	\$ 15,681.54
Kenneth S. Johnson	\$ 167,000.00	\$ 42,931.43
Atul Laddu	\$ 9,972.00	\$ 2,563.55
Prashanta Laddu	\$ 2,105.00	\$ 541.14
Ravindra Laddu	\$ 2,105.00	\$ 541.14
Tom Lamb	\$ 140,000.00	\$ 35,990.42
Garrett Lee	\$ 2,105.00	\$ 541.14
Christopher Limbrick	\$ 250,000.00	\$ 64,268.61
Jack R. Littell	\$ 140,000.00	\$ 35,990.42
Asuncion Luyao	\$ 219,185.00	\$ 56,346.86
Merrill Maunder	\$ 367,000.00	\$ 94,346.32
Ray & Shirley Barth and David & Jana McDermott	\$ 5,479.62	\$ 1,408.67
Donald Metz	\$ 234,127.60	\$ 60,188.22

Wanda Pack	\$ 35,069.60	\$ 9,015.50
Ed & Robin Peters	\$ 4,383.70	\$ 1,126.94
David Pettman	\$ 163,000.00	\$ 41,903.13
Pickles, LLC	\$ 183,000.00	\$ 47,044.62
Aarti Raut	\$ 42,090.00	\$ 10,820.26
Premanand Raut	\$ 21,045.00	\$ 5,410.13
Steve & Debra Rives and Brent & Kathy Beall	\$ 27,398.13	\$ 7,043.36
Willie & Shirley Schoener	\$ 27,398.13	\$ 7,043.36
Richard Simmons	\$ 190,760.76	\$ 49,039.71
John Spranger	\$ 100,000.00	\$ 25,707.44
Paul Tinsley	\$ 56,000.00	\$ 896.17 ⁴
William Wood	\$ 50,911.33	\$ 13,088.00
Tom Wurst	\$ 183,000.00	\$ 47,044.62
Mhaskar Yashanad	\$ 1,578.00	\$ 405.66
Leroy Yeagle	\$ 219,185.00	\$ 56,346.86

The Receiver should issue distribution checks to each claimant in the amounts set forth above. The checks shall be void if not cashed within 45 days from the date of issuance. The Receiver should be authorized to send a cover letter to each claimant in the form attached to his report.

⁴ Tinsley's *pro rata* distribution should be \$14,396.17, which is 25.7% of his \$56,000.00 claim. However, the Court previously ordered Tinsley to reimburse the Receivership Estate \$13,500.00. That order remains unsatisfied. When this sum is deducted from Tinsley's gross distribution, the resulting net distribution is \$896.17.

E.

Although the Receiver will prepare and file a final tax return on behalf of Winterhawk West Indies, Ltd., he seeks an order excusing him from any such obligation with respect to Robert Cord. This request should be granted. Treasury Regulation 1.6012-3(b)(5) provides:

A receiver who stands in the place of an individual must make the return of income required in respect of such individual. A receiver of only part of the property of an individual need not file a return, and the individual must make his own return.

Treas. Reg. 1.6012-3(b)(5). Because the Receiver took possession of only a portion of Cord's individual assets, he should not be required to prepare and file a tax return for Cord.

RECOMMENDATION

The Court should approve the Receiver's final report and proposed distribution plan in accordance with the above recommendation.

The Receiver is ordered to post a copy of this report and recommendation on his website, WWW.SEC RECEIVER.COM. Any claimant or interested party may file written objections to this recommendation by August 31, 2001. The failure to file written objections shall bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error or manifest injustice.

See Douglass v. United Services Automobile Ass'n, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: August 17, 2001.


JEFF KAPLAN
UNITED STATES MAGISTRATE JUDGE