

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

SECURITIES & EXCHANGE COMMISSION,)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION FILE
)	NO. 3:02-CV-128-DCK
FREDERICK J. GILLILAND,)	
Defendant,)	
)	
and)	
)	
MM ACMC BANQUE DE COMMERCE, INC.,)	
Relief Defendant.)	

RECEIVER’S FINAL REPORT AND PROPOSED DISTRIBUTION PLAN

TO THE HONORABLE DAVID KEESLER, UNITED STATES MAGISTRATE JUDGE:

COMES NOW, Michael J. Quilling (“Receiver”) and files this his Final Report and Proposed Distribution Plan and in support of such would show unto the Court as follows:

Background Facts

1. On March 27, 2002, the Securities and Exchange Commission (“SEC”) filed a Complaint in these proceedings. On March 5, 2003, the SEC filed a Motion to Appoint a Receiver. Thereafter, on May 22, 2003, the Court issued its Order Appointing Receiver pursuant to which Michael J. Quilling was appointed to serve as Receiver in this case.

2. Since his appointment, the Receiver has reconstructed all relevant bank accounts, has identified all rightful claimants and has liquidated all assets of the receivership estate to cash. The estate is now ready to be closed.

Approved Investor Claims

3. On October 2, 2003, the Receiver filed his Unopposed Motion to Establish Claim Procedures and to Approve Claim Form [Docket No. 27]. On November 24, 2003, the Court issued an Order [Docket No. 34] approving an official claim form to be used in these proceedings and established procedures by which claims would be processed by the Receiver. A total of 246 claims were submitted to the Receiver. 224 of them totaling \$12,149,520.68 were approved by previous Orders of the Court [Docket Nos. 71, 74 and 77] and 22 claims and potential claims were disallowed [Docket No. 75].

Litigation

4. The Receiver filed two lawsuits (*Michael J. Quilling, Receiver for Frederick J. Gilliland v. Marilyn Cristell and the Estate of Raymond Cristell*, Civil Action No. 3:04-cv-252; *Michael J. Quilling, Receiver v. Grand Street Trust, et al.*, Civil Action No. 3:04-CV-251) to recover fraudulent transfers. Discovery in the Cristell lawsuit showed the transaction was not a fraudulent transfer. The Grand Street Trust lawsuit resulted in a \$25,000.00 settlement.

Ryan Transaction

5. As more fully described in the Final Application to Pay Canadian Counsel filed contemporaneously herewith, the Receiver successfully pursued Gilliland's bail money in Canada. It was ultimately determined that the funds originated and belonged to Tom Ryan, a U.S. resident so the funds less the associated attorneys fees were paid to Tom Ryan.

Cash Receipts and Disbursements

6. Attached hereto as Exhibit "A" and incorporated herein by reference is a Summary of Cash Receipts and Disbursements into and out of the receivership estate through January 31, 2008. Attached hereto as Exhibit "B" and incorporated herein by reference is a Detail of Cash

Receipts and Disbursements which is a detailed statement of the categories identified on Exhibit "A". As indicated on Exhibit "A" and as discussed below, there are legal fees outstanding to the Receiver's law firm, Canadian counsel and his accountants.

Pending and Unpaid Legal Fees - QSCL

7. By virtue of nine prior fee applications, all fees and expenses owed to the Receiver and his firm through October 31, 2006 have been approved and paid. Since November 1, 2006 through the present, the Receiver and his firm have incurred additional legal fees and expenses in the aggregate amount of \$43,668.87. A detail of those fees and expenses are set forth in the Receiver's Final Fee Application filed contemporaneously with this report. As part of this Report, the Receiver requests that the Court consider and authorize payment of such legal fees and expenses.

Pending and Unpaid Legal Fees - Canadian Counsel

8. By virtue of two prior fee applications, all fees and expenses owed to the Receiver's Canadian counsel (Bennett Jones in Toronto and Edwards Kenny & Bray in Vancouver) through 2006 have been approved and paid. Since January 1, 2007 through the present, the Receiver owes additional legal fees and expenses to those firms in the aggregate amount of \$12,146.92 Canadian. A detail of those fees and expenses are set forth in the Receiver's Final Application to Pay Canadian Counsel filed contemporaneously with this report. As part of this Report, the Receiver requests that the Court consider and authorize payment of such legal fees and expenses.

Pending and Unpaid Accounting Fees

9. In connection with performing his duties, the Receiver hired the accounting firm of Litzler, Segner, Shaw & McKenney to perform forensic accounting services such as reconstruction of bank records. Those services are complete and no fees have been previously paid to the accountants. A detail of these fees and expenses totaling \$22,186.75 are set forth in the Application

to Pay Accounting Fees filed contemporaneously herewith. As part of this Report, the Receiver requests that the Court consider and authorize payment of the accounting fees.

Request to Pay Brian Van Flack

10. After he went to Canada, Gilliland conducted a fraudulent securities scam there and obtained funds from a number of investors not connected with these proceedings. One of the investors, Brian Van Flack, was a private investigator. After he learned he had been scammed he offered to help the Receiver locate assets and to assist with getting Gilliland to enter the U.S. Although no additional assets were located he did spend countless hours assisting the Receiver. In partial payment of those services the Receiver requests that he be allowed to pay \$15,000.00 to Mr. Van Flack.

Allocation of Attorney's Fees, Accounting Fees and Expenses to Close Receivership Estate

11. Even if the Receiver's Final Fee Application is approved (as is or with modifications), there will still be several matters which will require attention by the Receiver and his lawyers. In addition to those matters, the Receiver will have to prepare and mail distribution checks, reconcile bank accounts and respond to investor inquiries. The Receiver proposes that the Court allocate \$10,000.00 of fees to cover the cost of addressing those matters. In performing his duties, the Receiver has taken possession of voluminous books and records which will need to be maintained for a prudent period of time. The cost to store the books and records is \$50.00 per month. The Receiver proposes that he store the records for a four-year period and that the Court allocate \$2,400.00 to pay the storage costs. Finally, the accountants for the Receiver have to file final tax returns for the receivership estate and have agreed to do so for a flat fee of \$7,500.00 which the Receiver requests authority to pay.

Proposed Final Distribution Amount

12. As reflected on Exhibits "A" and "B", through January 31, 2008 the Receiver has \$2,264,633.08 of cash on hand (\$3,608,382.76 total receipts less \$1,343,719.68 total disbursements) plus any additional interest which will continue to accrue through approval of this Report. If the request to pay legal fees, storage costs and accounting fees set forth in this Report and detailed in the Final Fee Applications are granted then the amount is reduced to \$2,151,760.54. The Receiver proposes that \$2,151,760.54 be distributed as a final distribution to all persons/entities which hold an allowed claim against the receivership estate. Accordingly, the percentage amount to be paid to each holder of an allowed claim as a result of this final distribution is calculated as follows:

$$\frac{\text{Cash Available to Distribute}}{\text{Total Allowed Claims}} = \text{Distribution Percentage}$$

$$\frac{\$ 2,151,760.54}{\$12,149,520.68} = 17.71\%$$

Attached hereto as Exhibit "C" and incorporated herein by reference is a schedule which sets forth the amount to be paid to each holder of an allowed claim against the receivership estate if the Court approves the foregoing final distribution analysis¹. As soon as the distribution percentage and amount is approved, the Receiver is ready to begin the issuance of final distribution checks immediately.

13. In connection with making the distributions, the Receiver proposes that each distribution check issued by the Receiver will state on its face that it is void unless cashed within forty-five (45) days from the date issued. In light of the claims handling process, the Receiver believes that the proper address for each claimant is known and that no checks will be returned.

¹ These amounts will increase very slightly by virtue of additional interest accruals and exchange rates when payment is made to Canadian counsel.

Therefore, forty-five (45) days should be more than adequate to allow claimants to receive and cash their checks. The Receiver also requests authority to send a letter along with each check to the holders of allowed claims in the form attached hereto as Exhibit "D".

**Record Abandonment, Closure of Estate, Discharge of Receiver
and Release of Bond**

14. After all distribution checks are cashed, the Receiver will file a motion which:
- Authorizes the Receiver to abandon and destroy all records relating to the receivership estate at such time as the Receiver, in his discretion, deems proper;
 - Closes the receivership estate to any further proceedings, absent good cause shown;
 - Discharges the Receiver from any further service or responsibility as to the receivership estate; and
 - Releases the Bond posted by the Receiver in these proceedings.

Summary

15. Since his appointment, the Receiver has taken possession of and administered cash and other assets totaling \$3,608,382.76. The cost of administration totals \$777,338.98 or 21.5% in the aggregate.² Each claimant with an allowed claim will receive 17.71% of their claim by virtue of the Receiver's proposed final distribution.

² Assuming all attorney's fees and accountant's fees requested herein are approved and excluding fees paid in connection with the Ryan transaction.

Respectfully submitted,

QUILLING SELANDER CUMMISKEY & LOWNDS, P.C.
2001 Bryan Street, Suite 1800
Dallas, Texas 75201-4240
(214) 871-2100 (Telephone)
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By: /s/ Michael J. Quilling
Michael J. Quilling
Texas State Bar No. 16432300
Email: mquilling@qsclpc.com

ATTORNEYS FOR RECEIVER

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2008 a true and correct copy of the foregoing document was served via first class mail, with full and proper postage prepaid thereon, to:

Graham Loomis
Securities and Exchange Commission
3475 Lenox Road, Suite 1000
Atlanta, Georgia 30326

This Application will also be posted on the Receiver's website, www.secreceiver.com after filing.

/s/ Michael J. Quilling
Michael J. Quilling