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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION - LOS ANGELES**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CHARLES P. COPELAND, COPELAND
WEALTH MANAGEMENT, A FINANCIAL
ADVISORY CORPORATION, and
COPELAND WEALTH MANAGEMENT, A
REAL ESTATE CORPORATION,

Defendants.

CASE NO. 11-08607-R-DTB

OBJECTION OF CERTAIN
LIMITED PARTNERS OF
COPELAND PROPERTIES TEN
TO RECEIVER'S SECOND FEE
APPLICATION DATED MAY
31, 2012

Date: July 2, 2012
Time: 10:00 a.m.
Ctmm: 8, 2nd Floor
Judge: Hon. Manuel L. Real

This objection to the Second Interim Application For Approval and Payment of Fees and Costs of Receiver Thomas C. Hebrank filed on or about June 1, 2012 and set for hearing on July 2, 2012 (the "Fee Application"), is made on behalf of certain limited partners (the "CP-10 Partners") comprising 88.38 percent of the ownership of Copeland Properties Ten ("CP-10").

I.

INTRODUCTION

The CP-10 Partners object to the payment of fees sought by Receiver Thomas C. Hebrank ("Receiver") for four independent reasons:

(1) The Receiver fails to allocate his time and fees among the various entities he purports to benefit.

(2) Due to the lack of any allocation or proof that Receiver tasks were related to CP-10, no funds of CP-10 should be used to pay any of the Receiver's fees or expenses.

(3) The amount of fees sought is excessive and unreasonable.

(4) The receiver's Application improperly seeks reconsideration of the Court's April 2, 2012 ruling in which it limited the award of fees to \$36,000 for work performed up to and including December 31, 2011 (see Doc. # 66).

II.

BACKGROUND

A. CP-10 is a Solvent Partnership

CP-10 is a limited partnership that owns a large parcel of commercial property in Troy, Michigan. Income from the property easily exceeds expenses. The Receiver reports that in just the last five months (January – May 2012) CP-10 has realized a net profit (i.e., after deduction for expenses) of \$316,090.17 and CP-10 has paid \$51,666.65 in "management fees." (See Exhibit "A" to contemporaneously filed Declaration of William P. Tooke.) It is not clear from the Receiver's Report to whom these management fees have been paid, but it appears to have gone to the Receiver. Since the Receiver took control of CP-10's monies and records, the Receiver has stopped all distributions of the Partnership's profits to the CP-10 Partners.

B. There Has Been No Determination That CP-10 is the Beneficiary of Fraud

This lawsuit was filed on October 18, 2011. The named defendants were Charles Copeland and two entities each having the name "Copeland Wealth Management." The

1 named defendants immediately stipulated to a judgment against them which included the
2 appointment of a Receivership. (Docket # 2.) However, the defendant's consent to the
3 Judgment specified that they admitted no liability and that the allegations of the
4 complaint were limited *solely to the named defendants*. (See Docket # 2, p. 1, line 7 and
5 p. 2, line 4). CP-10 was not a named defendant and no effort has been made by the
6 Securities Exchange Commission or the Receiver to join CP-10 as a party to this action.

7 Thus, the allegations of the complaint are not to be deemed true as to CP-10 or any
8 other partnership. Further, there has been no judicial determination that CP-10 or any
9 other partnership was the beneficiary of alleged fraud by the defendants or the recipient
10 of any alleged "ill-gotten gains."

11 **C. The Receiver's Request for Fees Incurred Prior to December 31, 2011, Was**
12 **Already Heard and Decided by This Court**

13 On February 23, 2012, the Receiver filed his First Interim Application for Order
14 for Approval and Payment of Fees and Costs, seeking \$73,651.50 in "receiver fees" and
15 \$2,432.07 in costs. CP-10 objected to the application on the basis that, in addition to
16 other reasons, the Receiver's fees and costs should **not** be paid with funds belonging to
17 CP-10 because of the absence of any proof that CP-10 was the beneficiary of any alleged
18 fraud by the named defendants. (Docket # 49.) In a Reply brief, the Receiver
19 represented that any fees would not be paid with funds from CP-10. (See Docket # 58, p.
20 4, lines 4-6). On April 2, 2012, based on the Receiver's representations, the Court
21 granted the Receiver's application, but reduced the award of fees to \$36,000. (Docket #
22 66.)

23 **III.**

24 **ARGUMENT**

25 It would appear that many of the Copeland Partnerships are insolvent or have no
26 liquid assets. As explained above, however, CP-10 has assets and considerable cash on
27 hand. It is therefore the concern of CP-10 that the Receiver not be allowed to pay his
28 fees from monies available from the few solvent partnerships, which includes CP-10.

1 Such action would do exactly the harm the Receiver is purporting to act to remedy: *The*
2 *use of monies from one or more of the Copeland Properties for the benefit of others.*

3 **A. The Receiver Failed to Allocate Fees Among the Copeland Partnerships or**
4 **Otherwise Justify Payment by CP-10.**

5 In his Application, the Receiver provides broad categories of types of fees, but
6 fails to provide any detail as to how those fees arose from, or provided benefit to, CP-10.
7 In fact, there is no evidence that any of the Receiver's fees were in any manner incurred
8 to provide any benefit to or protection of CP-10, its assets or its Partners. To date, the
9 only action which is known to have been taken by the Receiver with respect to CP-10 is
10 to seize its cash flow.

11 **B. No Funds of CP-10 Should Be Used to Pay any of the Receiver's Fees or**
12 **Expenses**

13 CP-10 objects to any of its funds being used to pay the Receiver's fees and costs
14 because the Receiver has not demonstrated any action with respect to CP-10. It would
15 appear that the Receiver agrees he should not use CP-10 funds for the payment of his fees
16 and expenses. In his Application, the Receiver states that, if the Application were
17 granted, fees and costs would be paid with funds "from available receivership estate
18 assets in Copeland Wealth Management (Copeland Realty), Copeland Wealth
19 Management (Copeland Financial) and/or the Copeland Fixed Income Funds." (Docket #
20 74, p.10, lines 12-14.) Thus, although the Receiver's application does not squarely
21 address the issue of whether or not he intends to use CP-10 funds for payment of his fees
22 and costs, the absence of any reference to CP-10 strongly indicates that the receiver will
23 not use CP-10 funds to pay his fees. Also, as noted above, in Reply supporting its first
24 application for fees (see Docket # 58, p. 4, lines 4-6), the Receiver represented that its
25 fees would not be paid with funds from CP-10.

26 Given the lack of any allocation of the Receiver's fees to task undertaken with
27 respect to CP-10 and the Receiver's apparent willingness to look to other funds for
28

1 payment, CP-10 respectfully requests that any order from the Court awarding fees to the
2 Receiver specifically direct that funds of CP-10 are not to be used for such payment.

3 **C. The Amount of Fees and Costs Sought by The Receiver are Excessive and**
4 **Unreasonable**

5 The Receiver's application is deficient in respect to its description of the services
6 for which he seeks to be compensated. The application is lacking time sheets showing
7 the actual time incurred and the Receiver's explanation of the services is provided in only
8 broad and conclusory terms. Without any detailed explanation by the Receiver, the
9 amount of fees requested is therefore unjustified and excessive.

10 The Court reached such a conclusion in deciding the Receiver's first fee
11 application for fees incurred on or before December 31, 2011, by limiting the award to
12 \$36,000 which was less than one-half of the amount requested by the Receiver's
13 application. It is respectfully submitted that the Court should limit the award of fees in
14 response to the second application for the same reasons that the court limited the award
15 of fees in response to the Receiver's first application.

16 **D. The Receiver's Request For Fees on or Before December 31, 2011, is an**
17 **Improper Request for Reconsideration**

18 The Receiver's second application for fees seeks \$19,238.63 for fees incurred on
19 or before December 31, 2011. However, these fees were part of the Receiver's earlier
20 "first" application for fees and were denied by the Court. (In its first application, The
21 Receiver sought \$73,651.50 and was awarded \$36,000 – the Court thereby denied
22 recovery of the remainder, including the \$19,238.63 that the receiver is seeking as part of
23 this application). (See Docket # 66.) The Receiver has presented no valid basis for the
24 Court to reconsider its earlier decision.

25 It is respectfully requested that the Court deny the Receiver's application for
26 \$19,238.63 relating to fees incurred on or before December 31, 2011, but if the Court is
27 inclined to award any part of said fees, it is requested that the Order specify the fees may
28 not be paid with funds from CP-10.

1 Without proof of a benefit to CP-10, and a proportionate allocation of the
2 Receiver's Fees to the benefited entities, the Receiver's access to the monies of CP-10 to
3 pay his sought-after fees should be denied.

4 IV.

5 CONCLUSION

6 The Receiver's application does not adequately support the amount requested
7 and therefore is excessive and unreasonable. In addition, the Receiver has not allocated
8 his expenses between the various partnerships that have been deemed part of the
9 Receivership. No proof has been provided that any of the fees sought related to CP-10.
10 Further, the Receiver appears to acknowledge that its fees should not be paid with funds
11 of CP-10.

12 For these reasons, CP-10 requests that the Receiver's fee application be denied or
13 substantially reduced in amount. To the extent any amount is awarded to the Receiver, it
14 is respectfully requested that Order provide that the award may not be paid with funds
15 from CP-10.

16 DATED: June 11, 2012

MIRAU, EDWARDS, CANNON, LEWIN
& TOOKE, a Professional Corporation

17
18
19 By: 

William P. Tooke
Attorneys for Third Party, Certain Limited
Partners of Copeland Properties Ten