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5 Attorneys for Third-Party Objectors, Robert Allen; Elayne Allen; Vellore  
6 Muraligopal; Vellore Muraligopal, Trustee of the Muraligopal Living Trust;  
Myron and Ruby Cinque, Trustees of the Cinque Family Trust; Rick and Blanche  
7 Higdon, Trustees of the Higdon Revocable Trust; Klaus Kuehn; Lynda Kuehn;  
Richard Paul Blanford; Glenn Goodwin, Trustee of the Glenn Goodwin Trust; and  
8 James Powell

9  
10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **WESTERN DIVISION - LOS ANGELES**

13  
14 SECURITIES AND EXCHANGE  
COMMISSION,

15 Plaintiff,

16 v.

17 CHARLES P. COPELAND, COPELAND  
18 WEALTH MANAGEMENT, A  
FINANCIAL ADVISORY  
19 CORPORATION, and COPELAND  
WEALTH MANAGEMENT, A REAL  
20 ESTATE CORPORATION,

21 Defendants.  
22  
23  
24  
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26  
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CASE NO. 11-08607-R-DTB

OPPOSITION OF CERTAIN  
LIMITED PARTNERS OF  
COPELAND PROPERTIES TEN  
TO MOTION OF RECEIVER  
SEEKING APPROVAL OF  
SETTLEMENT WITH  
FLAGSTAR BANK, F.S.B

Date: December 17, 2012

Time: 10:00 a.m.

Ctrm: 8, 2<sup>nd</sup> Floor

Judge: Hon. Manuel L. Real

## INTRODUCTION

This opposition, to the motion of Receiver Thomas C. Hebrank for approval of his settlement with Flagstar Bank, F.S.B., is on behalf of the following limited partners comprising 88.38 percent of the ownership of Copeland Properties Ten ("CP-10"): Robert Allen; Elayne Allen; Vellore Muraligopal; Vellore Muraligopal, Trustee of the Muraligopal Living Trust; Myron and Ruby Cinque, Trustees of the Cinque Family Trust; Rick and Blanche Higdon, Trustees of the Higdon Revocable Trust; Klaus Kuehn; Lynda Kuehn; Richard Paul Blanford; Glenn Goodwin, Trustee of the Glenn Goodwin Trust; and James Powell ("CP-10 Partners").

The CP-10 Partners request that the Court deny the Receiver's application because: (1) the settlement concerns assets that are the property of CP-10 and therefore CP 10's consent to the settlement is required; and (ii) the proposed settlement is not in the best interests of the CP-10 Partners and is, in fact, less advantageous to the CP-10 Partners than a settlement negotiated by the CP-10 Partners with the Receiver.

Before this motion was filed, CP-10 had no notice that the Receiver had entered into the settlement with the Flagstar Bank or even that the Receiver was having any negotiations with the Bank. The Receiver's motion ignores the fact that CP-10 was not consulted regarding this settlement and has not consented to the settlement.

Flagstar Bank has no ownership in the assets in question, but is simply a lender holding a security interest in CP-10 assets and who, despite the Receivership, has been fully and consistently paid all monetary obligations owed to it. In short, Flagstar Bank has no basis to settle with the Receiver concerning property of CP-10 without CP-10's consent.

CP-10 does not consent to the settlement because the terms of the settlement will significantly prejudice CP-10 and compromise its rights without justification. If the Court denies this motion, CP-10 understands the Receiver will agree to a



1 settlement that CP-10 has negotiated with the Receiver that will not similarly  
2 prejudice CP-10's rights.

### 3 BACKGROUND<sup>1</sup>

#### 4 **A. CP-10 is a Solvent Partnership and Current on its Loan to Flagstar**

5 The CP-10 partnership is a limited partnership that owns a large parcel of  
6 commercial property in Troy, Michigan. CP-10 generates a regular profit. Based  
7 on CP-10's 2010 tax return, it received \$1,327,497 in rent for 2010 and, after  
8 expenses, realized net income of \$358,763. Copeland Dec. ¶ 7. The instant  
9 Receivership commenced in late 2011. Since the Receivership, all of CP-10's  
10 income has gone to the Receiver. At all times, before and after the institution of the  
11 Receivership, payments to Flagstar Bank have been made on time and in full.  
12 Copeland Dec. ¶4; Edwards Dec. ¶2.

#### 13 **B. The Receiver Has Accumulated a Large Sum of Cash Based on CP-10's** 14 **Operations**

15 Because CP-10 generates a profit, the Receiver has been accumulating cash  
16 from CP-10's operation, even after paying expenses such as monthly payments of  
17 the loan owed to Flagstar Bank, which holds a note against the real property. The  
18 amount of CP-10 funds held by the Receiver November 14, 2012 totals  
19 \$437,788.79. Receiver's Points and Authorities (Doc. No. 183), p. 3, line 13.

#### 20 **C. CP-10's Partners Invested in the Purchase of the Property and Rely on** 21 **the Income Generated from Its Operations**

22 CP-10 paid \$12,752,744 for the property. CP-10 borrowed \$9,450,000  
23 towards the purchase. The down payment for CP-10's property was paid for with  
24 the capital contributions paid by its limited partners. The limited partners include  
25 doctors, an insurance agent, a business teacher and several retirees. Copeland Dec.  
26 ¶ 4. Most of the limited partners are reliant on income from CP-10. See

27 <sup>1</sup> Unless otherwise stated, the evidence supporting the factual statements herein are set forth in the Declarations  
28 of Vellore Muraligopal, Rickey T. Higdon, Klaus Kuehn, Richard Paul Blanford, Glenn Goodwin and Charles  
Copeland, filed in this action on December 12, 2011, as Document No. "19."

1 Declarations of Klaus Kuehn, Rickey T. Higdon, Richard Paul Blanford and  
2 Charles Copeland.

3 **D. Summary of Flagstar's Claims**

4 Despite that CP-10 is current in its loan payments, Flagstar Bank suggested,  
5 in discussions with CP-10 Partners' counsel, that there exists technical non-  
6 monetary defaults. Edwards Dec. ¶2. However, despite the fact that some of these  
7 asserted non-monetary defaults pre-date the Receivership, the Bank has never filed  
8 a notice of default and, under applicable law, the Bank is entitled to no part of the  
9 CP-10 monies held by the Receiver.

10 **E. Summary of Receiver Claims**

11 The Receiver's justification for inclusion of any partnership in the  
12 Receivership was that various partnerships assets were comingled because there  
13 were transfers between partnerships. However, the Receiver previously admitted  
14 the transfers with regard to CP-10 were minimal:

15 "With respect to CP-10, the balance sheets reflect that it  
16 owes approximately \$31,000 to Copeland Fixed Income  
17 Three ("CFI 3"), it received an equity investment of  
18 approximately \$95,000 from Copeland Properties Five,  
19 and that CP-10 Objector Vellore Muraligopal  
20 ("Muraligopal") owes \$165,000 to CFI 3."

21 Receiver's Reply to Objections of Certain Limited Partners of Copeland  
22 Properties Ten (Doc "21" p. 1 Ins. 25-28).

23 The alleged debt of CP-10 of \$31,000 to CFI-3 is a minimal amount in  
24 comparison to the SEC's assertion that the alleged fraud justifying the  
25 Receivership is purported to involve "millions" in allegedly commingled funds.  
26 CP-10 has repeatedly offered to pay this CFI-3 Note if the Receiver would agree to  
27 release CP-10 from the Receivership. Payment of such amount was also included  
28 in the settlement negotiations between the Receiver and the CP-10 Partners.



1 Edwards Dec. ¶1 & Ex. A. Furthermore, loans between partnerships are not  
2 uncommon and do not evidence fraud or a “ponzi” scheme.

3 CP-5’s investment in CP-10 as a limited partner is not “commingling.” We  
4 note that CP-5 is a solvent partnership and has filed its own objections to the  
5 receivership. There has been no assertion that the CP-10 has defaulted in a  
6 payment obligation to CP-5. It is not improper for one partnership to invest in  
7 another, especially where both partnerships are solvent, which is indisputably the  
8 situation for CP-5 and CP-10.

9 Finally, Dr. Vellore Muraligopal’s alleged debt of \$165,000 owed to CFI-3  
10 is not a debt of CP-10. Dr. Muraligopal is an investor in CP-10, but his personal  
11 liabilities are not CP-10’s liabilities.

12 As explained more below, CP-10’s alternate, proposed, settlement would  
13 resolve all of the Receiver’s claims identified herein (i.e., the CFI-3 Note, the CP-5  
14 Partnership Interest in CP-10, and the Muraligopal Note), whereas Flagstar’s  
15 settlement would resolve only the \$31,000 CFI-3 Note.

16 **F. Summary of the Receiver’s Settlement with Flagstar**

17 The proposed settlement with Flagstar Bank provides that of the  
18 \$437,788.79 in cash held by the Receiver, \$225,000.00 would remain with the  
19 Receiver, and the balance in excess of \$225,000 would be put in an account  
20 pending distribution to either Flagstar or CP-10 after their claims to this money  
21 were determined by the Court in this action. Of the \$225,000 that is to remain with  
22 the Receiver, \$100,000 is proposed be paid to CP-10. (but is not part of the  
23 proposed order of this Court.) The settlement also provides that the note to CFI-3  
24 in the amount of \$31,179.90 would be discharged.

25 **G. Summary of CP-10’s Proposed Settlement with the Receiver, if this**  
26 **Motion is Denied**

27 As noted above, CP-10 has negotiated a settlement with the Receiver. While  
28 the receiver and the CP-10 Partners agreed to the terms of that settlement, seeking

1 approval of the court of that settlement was delayed while the CP-10 Partners  
 2 sought to resolve the asserted technical non-monetary defaults with the banks. The  
 3 Bank refused to resolve those issues with CP-10 Partners and, unbeknownst to the  
 4 CP-10 Partners, negotiated an alternate settlement with the Receiver which would  
 5 be less advantageous to the CP-10 Partners. This was done despite the fact that the  
 6 Bank has no authority whatsoever to represent CP-10 or the CP-10 Partners. CP  
 7 10 understands that, if the Court denies the instant motion seeking approval of the  
 8 settlement with Flagstar Bank, the Receiver will again agree to the settlement  
 9 previously negotiated with the CP-10 Partners. Further, the CP-10 Partners are  
 10 also willing to go forward with such settlement without obtaining any settlement  
 11 with the Bank.

12 Under the terms of the negotiated settlement proposal with CP-10, slightly  
 13 more cash --\$259,568.34 as opposed to \$250,000 -- would be retained by the  
 14 Receiver. In return, the CFI-3 Note of \$31,179.90 would be discharged. In  
 15 addition, the CP-5's interest in CP-10 as a limited partner would be reacquired by  
 16 CP-10 and CP-10 would acquire the Muraligopal Note in the amount of  
 17 \$165,000.00.

18 **H. CP-10's Settlement Proposal is More Advantageous to CP-10, the**  
 19 **Receiver, and the Court**

20 CP-10's settlement proposal is more advantageous for the Court, the  
 21 Receiver and CP-10.

22 As the following table shows, CP-10 will incur greater cost under the  
 23 settlement negotiated by Flagstar:

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<b>BANK'S NEGOTIATED SETTLEMENT</b>		<b>AGREEMENT BY PARTNERSHIP</b>	
Cash Retained by Receiver	\$225,000.00	Cash Retained by Receiver	259,568.34
Less value received by Partnership:		Less value received by Partnership:	
CFI-3 Note discharged	\$31,179.90	CFI-3 Note discharged	\$31,179.90
Proposed payment to CP-10 partners	\$100,000.00	CP-5 Lim p/s Interest re-acquired	\$79,888.44
		Muraligopal Note Purchased	\$165,000.00
Net Cost to Partnership	<b>\$93,830.10</b>	Net Cost to Partnership	<b>(\$16,500.)</b>

In addition to the bank's settlement being more costly, it leaves CP-5 a partner of CP-10, therefore, because CP-5 is still in the Receivership, it would mean all CP-10 actions, etc. will require continued participation of the Receiver and, therefore, this Court. On the other hand, in the settlement agreed to by CP-10, on the other hand, CP-5 would no longer be a partner in CP-10, which in turn would substantially decrease, if not eliminate, the potential involvement of the Court and Receiver in the affairs of CP-10. Also, under CP-10's proposed settlement, CP-10's reacquisition of CP-5's partnership interest in CP-10 would increase proportionally the remaining CP-10 partners' interests in CP-10.

Flagstar Bank's settlement would also require further involvement of this Court and accordingly, the expenditure of scarce judicial resources, because it leaves monies of CP-10 under this Court's control, meaning that CP-10 and

1 Flagstar Bank would have to engage in further litigation before this Court to fight  
2 over those monies. But participation by this Court is both unnecessary and  
3 inappropriate. The loan by Flagstar Bank to CP-10 is governed by Michigan law.  
4 Any issues regarding that loan is best dealt with by Michigan courts. Under CP-  
5 10's proposed settlement, all future activities of the Partnership, including any  
6 claims to rent monies, would be properly litigated, if at all, in State Court.

7 CP-10's settlement also includes the acquisition, by CP-10, of the loan made  
8 by Dr. Vellore Muraligopal by Copeland Properties 3, L.P. Dr. Muraligopal has  
9 indicated that he is unable to pay the entire principal of that note at the present  
10 time, as demanded by the Receiver. CP-10 has already negotiated an extended  
11 payment term with Dr. Muraligopal. The CP-10 settlement, therefore, also offers  
12 the advantage to the Receiver of resolving the Muraligopal note with immediate  
13 receipt of cash by the Receiver.

14 Finally, CP-10's settlement contains mutual releases between the Receiver  
15 and CP-10 and its partners, finally and fully settling all claims regarding the  
16 receivership. The Banks' settlement, on the other hand, can and does contain only  
17 releases between the Bank and the Receiver.

#### 18 ARGUMENT

19 As the Receiver's own motion recognizes, the distribution of any assets  
20 under the authority of a SEC receivership, must be done "equitably and fairly."  
21 See Receiver Points & Authorities (Doc. No. 183), p. 4, lines 16-19 citing S.E.C. v.  
22 Elliot, 953 F.2d 1560, 1569 (11<sup>th</sup> Cir. 1992). But here, the settlement between  
23 Flagstar Bank and the Receiver would not be fair or equitable because the  
24 settlement concerns CP-10 assets and CP-10 has not been consulted concerning to  
25 the settlement nor has it consented to it. .

26 Flagstar Bank has suggested that CP-10 has lost its right to the monies at  
27 issue because there has been a default under the terms of a deed of trust and  
28 assignment of rents, and, that Flagstar is entitled, therefore, under the assignment



1 of rents, to the CP-10 monies held by the Receiver. Such an assertion, however,  
2 would be factually and legally incorrect.

3 First, Flagstar's assignment of rents claim has not been ripened or exercised  
4 in any respect. No lawsuit by Flagstar or foreclosure proceedings has been  
5 commenced. Thus, Flagstar Bank has no possessory right to in the assets in  
6 question, but is simply a lender holding a security interest in CP-10 assets, and it is  
7 a lender who has been fully and consistently paid all monetary obligations owed to  
8 it. In short, Flagstar Bank has no basis to settle with the Receiver concerning  
9 property of CP-10 without CP-10's consent.

10 Second, Flagstar Bank has no right to the proceeds rents because: (1) all  
11 mortgage payments are current so there has been no default; and (2) Flagstar Bank  
12 has yet to record a Notice of Default, which is a prerequisite to a claim under an  
13 assignment of rents. Under Michigan law, which governs Flagstar's loan and  
14 security,, the applicable Assignment of Rents statute provides, in pertinent part:

15 "Such assignment of rents shall be binding upon such  
16 assignor *only in the event of default* in the terms and  
17 conditions of said mortgage, and shall operate against  
18 and be binding upon the occupiers of the premises *from*  
19 *the date of filing* by the mortgagee in the office of the  
20 register of deeds for the county in which the property is  
21 located of *a notice of default* in the terms and conditions  
22 of the mortgage and service of a copy of such notice  
23 upon the occupiers of the mortgaged premises.

24 MCL 554.231 (emphasis added).

25 Because Flagstar has recorded no Notice of Default with respect to the CP-  
26 10 loan (despite the fact that some of the alleged defaults pre-date the  
27 Receivership) it has no right to any of the CP-10 monies held by the Receivership.

1 Flagstar Bank has no possessory interest in nor any legal right to any of the  
2 assets of CP-10 held by the Receiver. It has, therefore, no right to negotiate a  
3 settlement with the Receiver with respect to those assets. This is all the more the  
4 case, as it has done so behind the backs of the CP-10 Partners and has negotiated  
5 terms far less advantageous than those negotiated by the CP-10 Partners.

6 The settlement between Flagstar Bank and the Receiver is not fair and  
7 equitable because the terms of the settlement will significantly prejudice CP-10  
8 and compromise its rights without justification. As explained above, the settlement  
9 proposed by the Receiver and Flagstar Bank will cost CP-10 \$93,830.10. On the  
10 other hand, CP-10 has proposed a settlement that will do no damage to the CP-10  
11 Partners in addition to that already caused by Charles Copeland; it will resolve  
12 additional claims in the Receivership (i.e., CP-5's partnership interest and the  
13 Muraligopal Note); and the CP-10 settlement will avoid the necessity of further  
14 involvement of this Court and the Receiver.

#### 15 CONCLUSION

16 For the reasons set forth above, it is respectfully requested that the Court  
17 deny the Receiver's motion to approve the settlement between Flagstar Bank and  
18 the Receiver.

19 DATED: November 26, 2012

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

20  
21 By: 

22 William P. Tooke

23 Attorneys for Third-Party Objectors