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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.: 2:11-cv-08607-R -DTB

**OBJECTION OF FLAGSTAR BANK,
FSB TO THE RECEIVER'S FIRST
INTERIM APPLICATION FOR
APPROVAL AND PAYMENT OF FEES
AND COSTS**

Date: April 2, 2012
Time: 10:00 a.m.
Ctrm: 8
Judge: Hon. Manuel L. Real

1 Flagstar Bank, FSB (“Flagstar”) hereby objects to the Receiver’s “First Interim
2 Application for Approval and Payment of Fees and Costs to Thomas C. Hebrank, as Receiver”.
3 The application does not comply with the Local Rules; the application does not comply with the
4 SEC guidelines on paying receivers; the application does not allocate the Receiver’s fees and
5 costs to the various separate partnerships and entities under the Receiver’s control; the application
6 improperly seeks to comingle or substantively consolidate the various entities without this Court’s
7 prior approval or notice to the various affected parties and does, in effect, what the SEC has
8 accused the Defendants of doing: inappropriately comingling the assets of the various entities. The
9 Receiver also inappropriately seeks to be paid from Flagstar’s cash collateral. For all these
10 reasons, as set forth below in more detail, the Court should deny the Receiver’s application.

11 1. The Application does not comply with the Local Rules or SEC guidelines.

12 Local Rule 7-3 requires a conference of counsel prior to filing motions. While there are
13 certain exceptions listed in Local Rule 16-12, a receiver’s application for payment of fees and
14 costs is not among them. Prior to filing his application, the Receiver was required to contact the
15 other parties in the case to discuss his proposed application. This was not done. Had the Receiver
16 complied with the local rules, some of the objections to his application might have been avoided.
17 Further, the Local Rule requires, if the parties are unable to reach a resolution, the moving party to
18 include in the Notice of Motion a statement to the following effect: “This motion is made
19 following the conference of counsel pursuant to a Local Rule 7-3 which took place on (date).” No
20 such statement is set forth in the Receiver’s application.

21 Because the Receiver has not complied with the Local Rules the Receiver’s application
22 should be denied.

23 It also does not appear from the Receiver’s application that the Receiver complied with the
24 SEC’s rules concerning the payment of receivers. Those rules require a receiver seeking
25 compensation to provide the SEC with a copy of the application prior to its filing and allow the
26 SEC thirty days to review it and provide comments to it, prior to the filing. A true and correct
27 copy of the SEC rules is attached hereto as Exhibit “1”. There is nothing set forth in the
28 Receiver’s application that indicates that the Receiver complied with these rules. Indeed , it

1 appears that the rules were not complied with because the required certification is not attached to
2 the Receiver's application.

3 2. The Receiver seeks to inappropriately comingle the assets of the various
4 partnerships and entities.

5 Flagstar is a secured creditor of Copeland Properties Ten, LP ("CP Ten"). It has a security
6 interest by way of a mortgage on real property owned by CP Ten in Troy, Michigan. The loan
7 balance as of December 1, 2011 was approximately \$8,827,000. Flagstar is currently having the
8 property appraised but believes the property is worth significantly less than the debt by at least a
9 few million dollars. At the present time the property is rented and cash flows and throws off
10 excess cash to CP Ten. Flagstar has a security interest in the rents generated from the operation
11 of the property. Those rents are Flagstar's cash collateral.

12 As previously explained to the Court, both Flagstar and partners in CP Ten do not believe
13 CP Ten should be in receivership because CP Ten is a net creditor of receivership estate and the
14 Receiver's services are not benefiting CP Ten, quite the opposite. The Receiver's application
15 demonstrates this.

16 The Receiver does not attempt in his fee application to allocate his fees, the fees of his
17 employees, or the costs to the twenty-three limited partnerships that were placed under his control
18 or to the other entities such as Copeland Wealth Management. Instead, the Receiver has invented
19 six categories into which he has allocated the fees and costs. It is, therefore, impossible for the
20 parties or the Court to determine what services were rendered by the Receiver and his staff to
21 which particular entity and how much of that particular entity's assets should be taken by the
22 Receiver to pay for his fees and costs. It is not appropriate for CP Ten or the Flagstar's cash
23 collateral to be used by the Receiver to fund his activities related to other partnerships or to the
24 Copeland Wealth Management entities. Nowhere in the Receiver's application does the Receiver
25 explain from what assets he intends to pay his fees. The Receiver has represented, a number of
26 times, that he is not comingling the assets of the various partnerships and that he is maintaining
27 them separate. Yet, by his application the Receiver seeks to comingle the assets when he has no
28 authority to do so. Indeed, he is attempting to do the exact thing that the SEC has claimed

1 Copeland did, inappropriately comingle the assets of the various separate partnerships.

2 The Receiver has not sought and this Court has not issued an order substantively
3 consolidating the partnerships or the Copeland entities. Flagstar's cash collateral should not be
4 used to subsidize the Receiver for activities taken that have nothing to do with CP Ten and its
5 property. Similarly, the CP Ten partners should not have to pay for the Receiver's work related to
6 other partnerships or the Copeland entities. This is the exact reason the CP Ten partners and
7 Flagstar have sought to exclude CP Ten from the receivership. CP Ten is a net creditor of the
8 other receivership entities, it cash flows, and it does not need a receiver to manage its property
9 which consists of a fully-leased facility on a triple-net lease.

10 3. Conclusion.

11 For the reasons set forth above, this Court should deny the Receiver's application and
12 order that in any future fee application the Receiver files the time and expenses the Receiver seeks
13 compensation for be broken down and allocated to the partnership or entity which received the
14 services and explain from which entity the Receiver seeks to be paid, how much and why.

15 DATED: March 12, 2012

ERVIN COHEN & JESSUP LLP

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18 By: /s/ Peter A. Davidson
PETER A. DAVIDSON,
Attorneys for Flagstar Bank, FSB

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 9401 Wilshire Boulevard, Ninth Floor, Beverly Hills, CA 90212-2974.

On March 12, 2012, I served true copies of the following document(s) described as **OBJECTION OF FLAGSTAR BANK, FSB TO THE RECEIVER'S FIRST INTERIM APPLICATION FOR APPROVAL AND PAYMENT OF FEES AND COSTS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Ervin Cohen & Jessup LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 12, 2012, at Beverly Hills, California.

/s/ Lore Pekrul
Lore Pekrul

ERVIN COHEN & JESSUP LLP

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