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8 THOMAS C. HEBRANK

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

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 v.

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

18 Defendants.
19

Case No. 11-08607-R-DTB

**NOTICE OF MOTION AND MOTION FOR
ORDER (A) APPROVING SALE OF PALM
SPRINGS PROPERTY FREE AND CLEAR
OF LIENS, AND (B) APPROVING REAL
ESTATE BROKER'S COMMISSION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: December 19, 2011
Time: 10:00 a.m.
Ctrm: 8, 2nd Floor
Judge: Hon. Manuel L. Real

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on December 19, 2011, at 10:00 a.m., in Courtroom 8 of
3 the above-entitled Court located at 312 N. Spring Street, Los Angeles, California 90012, a hearing
4 will be held on the motion of Thomas C. Hebrank ("Receiver"), Court-appointed permanent
5 receiver for Copeland Wealth Management, a Financial Advisory Corporation, Copeland Wealth
6 Management, a Real Estate Corporation, and their subsidiaries and affiliates, for an Order
7 (a) Approving Sale of Palm Springs Property Free and Clear of Liens, and (b) Approving Real
8 Estate Broker's Commission ("Motion").

9 The Motion is based on the Memorandum of Points and Authorities below and the
10 Declarations of Thomas C. Hebrank and Donna Larson filed herewith. The Motion and
11 supporting papers are available at the Receiver's website, www.ethreadvisors.com, or may be
12 reviewed at the Clerk's Office during normal business hours at 312 N. Spring Street, Los Angeles,
13 California 90012.

14 **Procedural Requirements:** If you oppose this Motion, you are required to file your
15 written opposition with the Office of the Clerk, United States District Court, 312 N. Spring Street,
16 Los Angeles, California 90012, and serve the same on the undersigned not later than twenty-one
17 (21) days prior to the hearing.

18 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the above date, the
19 Court may grant the requested relief without further notice.

20 **Requested Relief:** The relief requested is discussed in detail in the Memorandum of
21 Points and Authorities below. To summarize, the Receiver requests an order approving a sale of
22 the residential property located at 222 N. Calle El Segundo #528, Palm Springs, California 92262
23 (the "Property"). The purchase price is \$75,000. The Receiver further requests that the sale be
24 free and clear of all liens, claims and encumbrances, with such liens, claims and encumbrances
25 attaching to the sale proceeds. Finally, the Receiver requests authority to pay the real estate broker
26 a commission of six (6%) percent of the purchase price.

27 This Motion is made following the conference of counsel pursuant to L.R. 7-3 which took
28 place on November 17, 2011.

1 WHEREFORE, the Receiver requests that the Court grant the relief requested herein and
2 such other relief as may be appropriate under the circumstances.

3
4 Dated: November 18, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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6 By: _____ /s/ Ted Fates

7 TED FATES
8 Attorneys for Receiver
9 THOMAS C. HEBRANK
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On April 19, 2011, Copeland Wealth Management, A Real Estate Corporation ("Copeland Realty") acquired residential real property located at 222 N. Calle El Segundo #528, Palm Springs, California 92262 (the "Property"). The Property was conveyed to Copeland Realty through CWM Real Estate, a California corporation,¹ from Muraligopal Investments, LLC. The conveyances from Muraligopal Investments to CWM Real Estate and from CWM Real Estate to Copeland Realty were recorded in the Official Records of Riverside County, California as Recording Nos. 0173156 and 0173157, respectively.

The Property is in below average condition. See Declaration of Donna Larson in Support of Motion ("Larson Decl."), ¶ 4. A buyer will have to replace appliances, install new carpet and re-paint the walls. Id. Furthermore, the Property sits on Indian reservation land, thereby requiring approval from the Bureau of Indian Affairs before it can be sold. Such approval generally takes 3 weeks to obtain. Id.

Palm Springs Home & Leasing ("Broker") has marketed the Property since September 1, 2011. Id. at ¶ 3. Broker's marketing efforts have included listing the Property on the widely-used Multiple Listing Service ("MLS") and numerous other syndicated real estate marketing websites, hosting an open-house advertised in the real estate section of the Desert Sun - the Coachella Valley's premiere newspaper, and updating the MLS with new pictures of the Property. Id. at ¶ 5.

The Property was first listed by Broker for \$79,000. Id. at ¶ 3. The only offer received was an all cash offer from Glenn Ronald Ducat ("Buyer").² On October 4, 2011, Buyer made an offer to purchase the Property for \$72,000. On October 5, 2011, Copeland Realty made a counter-offer for \$75,000, and agreed to a \$500 credit for Buyer to be applied at close of escrow ("Counteroffer"). Buyer accepted the Counteroffer and the parties signed the purchase agreement. The purchase agreement was then amended by (i) that certain Request for Repair No. 1 last signed

¹ The Receiver believes that CWM Real Estate is a dba of Copeland Realty.
² Buyer did not require an independent appraisal to determine the value of the Property. Instead, Buyer proposed a counteroffer to Broker's originally listed price of \$79,000 based on the below average condition of the Property.

1 by Buyer on October 26, 2011 ("Request for Repair"), and (ii) that certain Contingency Removal
2 No. 1 dated October 26, 2011 ("Contingency Removal"). The purchase agreement, including the
3 Counteroffer, Request for Repair and Contingency Removal are collectively referred to as the
4 "Purchase Agreement." An addendum to the Purchase Agreement was subsequently entered into
5 between Buyer, Copeland Realty and the Receiver (Copeland Realty and the Receiver are
6 collectively referred to as "Seller"), conditioning final sale of the Property on Court approval
7 ("Addendum"). The Purchase Agreement and Addendum are attached as Exhibits "1" and "2,"
8 respectively, to the Declaration of Thomas C. Hebrank in Support of the Motion ("Hebrank
9 Declaration").

10 The sale to Buyer is on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, and
11 the Seller makes no representations or warranties regarding the condition of the Property. Other
12 than rights relating to the Bureau of Indian Affairs, the covenants, conditions and restrictions
13 applicable to the Property, and any existing easements or rights of entry with regard to the
14 Property, the Receiver requests that the sale of the Property be free and clear of all liens, claims
15 and encumbrances, with such liens, claims and encumbrances attaching to the sale proceeds.

16 The Receiver believes that the Purchase Agreement, obtained through the commercially
17 reasonable and customary method of listing the Property with a broker and conducting arm's
18 length negotiations with Buyer, reflects the fair market value for the Property. Hebrank
19 Declaration, ¶ 7. The Property has relatively modest value and is in below average condition. In
20 order to reduce administrative expenses and delay, and because the Property has been adequately
21 marketed and there is no reason to believe a higher or better offer will be received, the Receiver
22 requests that the sale be approved without an overbid process.

23 Finally, the Receiver requests authority to pay the Broker a commission in the amount of
24 six (6%) percent of the purchase price. Based on his extensive experience in real estate
25 transactions, the Receiver believes that such commission is commercially reasonable and in line
26 with real estate industry standards. Hebrank Declaration, ¶ 8.

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II. PROCEDURAL BACKGROUND

On October 18, 2011, the Securities and Exchange Commission ("Commission") filed its Complaint for Violations of The Federal Securities Laws ("Complaint"), together with the Consent of Defendants Copeland, CWM and Copeland Realty ("Consent"), and the Proposed Judgment of Permanent Injunction and Other Relief as to Defendants Copeland, CWM and Copeland Realty. Docket Nos. 1 and 2. On October 25, 2011, the Court entered the Judgment of Permanent Injunction and Other Relief as to Defendants Copeland, CWM and Copeland Realty, appointing the Receiver as permanent receiver for CWM, Copeland Realty, and their subsidiaries and affiliates ("Judgment"). Docket No. 3.

III. THE SALE

The Purchase Agreement and Addendum are attached as Exhibit 1 and 2 to the Hebrank Declaration. Its terms are summarized as follows:³

Court approval: All aspects of the Purchase Agreement and the sale are subject to approval by the Court.

Purchase Price: \$75,000, with a \$500 credit for Buyer to be applied at close of escrow.

Closing Date: Closing will occur within three (3) business days following entry of an order confirming the sale.

Deposit: Buyer has deposited \$2,160.00 into escrow.

As Is Purchase: Buyer purchases the Property on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, and the Seller makes no representations or warranties regarding the condition of the Property.

Broker's Commission: By separate agreement, and subject to Court approval, the Receiver has agreed to pay Broker a commission of six (6%) percent of the final purchase price. Broker has invested substantial time into locating potential purchasers for the Property.

³ The terms of the Purchase Agreement are summarized herein for convenience only. In the event of any conflict between the Purchase Agreement and the summary provided herein, the Purchase Agreement governs and controls.

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IV. ARGUMENT

"The power of a district court to impose a receivership or grant other forms of ancillary relief does not in the first instance depend on a statutory grant of power from the securities laws. Rather, the authority derives from the inherent power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly and efficient administration of the estate by the district court for the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment of a receiver is authorized by the broad equitable powers of the court, any distribution of assets must also be done equitably and fairly. *See S.E.C. v. Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992).

District courts have the broad power of a court of equity to determine the appropriate action in the administration and supervision of an equity receivership. *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth Circuit explained:

A district court's power to supervise an equity receivership and to determine the appropriate action to be taken in the administration of the receivership is extremely broad. The district court has broad powers and wide discretion to determine the appropriate relief in an equity receivership. The basis for this broad deference to the district court's supervisory role in equity receiverships arises out of the fact that most receiverships involve multiple parties and complex transactions. A district court's decision concerning the supervision of an equitable receivership is reviewed for abuse of discretion.

Id. (citations omitted); *see also Commodities Futures Trading Comm'n. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role, and 'we generally uphold reasonable procedures instituted by the district court that serve th[e] purpose' of orderly and efficient administration of the receivership for the benefit of creditors.").

Accordingly, the Court has broad equitable powers and discretion in formulating procedures, schedules and guidelines for administration of the receivership estate and disposition of receivership assets.

1 **A. The Sale of the Property**

2 It is generally conceded that a court of equity having custody and control of property has
3 power to order a sale of the same in its discretion. *See, e.g., S.E.C. v. Elliott*, 953 F.2d at 1566 (the
4 District Court has broad powers and wide discretion to determine relief in an equity receivership).
5 "The power of sale necessarily follows the power to take possession and control of and to preserve
6 property." *See also S.E.C. v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996),
7 *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing* 2 Ralph Ewing Clark,
8 Treatise on Law & Practice of Receivers § 482 (3d ed. 1992) (*citing First Nat'l Bank v. Shedd*,
9 121 U.S. 74, 87 (1887)). "When a court of equity orders property in its custody to be sold, the
10 court itself as vendor confirms the title in the purchaser." 2 Ralph Ewing Clark, Treatise on Law
11 and Practice of Receivers § 487).

12 "A court of equity, under proper circumstances, has the power to order a receiver to sell
13 property free and clear of all encumbrances." *Miners' Bank of Wilkes-Barre v. Acker*, 66 F.2d 850,
14 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing Clark, Treatise on Law & Practice of
15 Receivers § 500 (3rd ed. 1992). To that end, a federal court is not limited or deprived of any of its
16 equity powers by state statute. *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757
17 (9th Cir. 1925) (state statute allowing time to redeem property after a foreclosure sale not
18 applicable in a receivership sale).

19 Generally, when a court-appointed receiver is involved, the receiver, as agent for the court,
20 should conduct the sale of the receivership property. *Blakely Airport Joint Venture II v. Federal*
21 *Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156 (N.D. Tex. 1988). The receiver's sale conveys
22 "good" equitable title enforced by an injunction against the owner and against parties to the suit.
23 *See* 2 Ralph Ewing Clark, Treatise on Law and Practice of Receivers §§ 342, 344, 482(a), 487,
24 489, 491 (3d ed. 1992). "In authorizing the sale of property by receivers, courts of equity are
25 vested with broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357
26 (9th Cir. 1925).

27 Here, the Property has been marketed by Broker via the MLS, numerous other syndicated
28 real estate websites, and an advertisement in the Desert Sun for an open house event. The asking

1 price, based on comparable sales in the area, was \$79,000. The only offer received was from
2 Buyer. As noted above, the Property is in below average condition, requiring new kitchen
3 appliances, carpet, and a paint job. The Property also sits on an Indian reservation, necessitating
4 approval by the Bureau of Indian Affairs before it can be sold. Buyer's offer is all cash and is not
5 subject to any contingencies other than Court approval.

6 Based on his investigation and analysis, the Receiver believes that the proposed sale to
7 Buyer will generate the highest and best recovery for the receivership estate from the Property.
8 Accordingly, the Receiver requests approval of the Purchase Agreement.

9 **B. Additional Relief**

10 Pursuant to its broad equitable powers with respect to the administration of receivership
11 assets, the Receiver requests that, other than rights held by the Bureau of Indian Affairs, the
12 covenants, conditions and restrictions applicable to the Property, and any existing easements or
13 rights of entry with regard to the Property, the sale of the Property be free and clear of all liens,
14 claims and encumbrances on the Property, with such liens, claims and encumbrances attaching to
15 the sale proceeds. Finally, the Receiver requests authority to pay the Broker a commission in the
16 amount of six (6%) percent of the final purchase price. Based on his extensive experience in real
17 estate transactions, the Receiver believes that such commission is commercially reasonable and
18 consistent with real estate industry standards.

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V. CONCLUSION

WHEREFORE, the Receiver requests entry of an order (a) approving the sale of the Property to Buyer free and clear of liens and claims, with such liens and claims attaching the sale proceeds in the sale validity and priority that they had with respect to the Property; and (b) authorizing the Receiver to pay a commission of six (6%) percent of the final purchase price to the Broker.

Dated: November 18, 2011

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

By: /s/ Ted Fates
TED FATES
Attorneys for Receiver
THOMAS C. HEBRANK