

1 Everett G. Barry, Jr. (SBN 053119)
Patrick L. Prindle (SBN 87516)
2 John H. Stephens (SBN 82971)
MULVANEY BARRY BEATTY LINN & MAYERS LLP
3 401 West A Street, 17th Floor
San Diego, CA 92101-7994
4 Telephone: 619-238-1010
Facsimile: 619-238-1981

5 Attorneys for Thomas C. Hebrank
6
7

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

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.
14

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

18 Defendant.
19
20

CASE NO. 2:11-cv-08607-R-DTB

**REPLY TO JOINDER TO
OBJECTIONS TO RECEIVER'S
FEE APPLICATION DATED
FEBRUARY 21, 2012**

DATE: April 2, 2012
TIME: 10:00 a.m.
DEPT. 8, 2nd Flr.

Judge: Honorable Manuel L. Real

21 I.

22 **INTRODUCTION**

23 On March 28, 2012, more than two weeks after objections to
24 Receiver's First Interim Application For Approval And Payment Of Fees
25 And Costs (Dkt. No. 40) were due, Certain Limited Partners of CP-2, 5, 7,
26 16, and 17 (hereafter, "CP-2,5,7,16,17 PARTNERS") tardily filed a "joinder"
27 to objections filed by Flagstar Bank, FSB (hereafter, FLAGSTAR") and
28 certain CP-10 partners (hereafter, "CP-10 PARTNERS") on March 12,

2012. This is not the first time this group of objectors has improperly filed pleadings outside the time limits set by the Court. They did the same thing on January 23, 2012, requiring the Court to continue a hearing set for that day. This conduct should not be rewarded. For this reason alone, the "joinder" filed by CP-2,5,7,16,17 PARTNERS on March 28, 2012, should be disregarded.

Moreover, perhaps CP-2,5,7,16,17 PARTNERS failed to notice: FLAGSTAR withdrew its objection on March 22, 2012, stating, "Flagstar Bank, FSB has no objection to the payment of the fees and costs requested by the Receiver." (Dkt. No. 59, Page ID #:1018). CP-10 PARTNERS, on the other hand, modified its previous objection on March 27, 2012, requesting now that if the Court approves the First Interim Application, it should restrict payment of all future applications to be made only from funds held by Copeland Wealth Management. From the "joinder" filed by CP-2,5,7,16,17 PARTNERS, it is impossible to decipher exactly to what is sought to be joined. Indeed, the pleading filed by CP-2,5,7,16,17 PARTNERS begs the questions: What is a "joinder" (in the context presented here), and should the "joinder" (Dkt. No. 63) even be considered?

Finally, the "joinder" filed by CP-2,5,7,16,17 PARTNERS doesn't join the objections formerly filed by FLAGSTAR and CP-10 PARTNERS; it contains nearly ten pages of distinct and unique arguments, none of which were asserted by either FLAGSTAR or CP-10 PARTNERS. In fact, the pleading does not "join" previously filed objections, it asserts completely new objections. The "joinder" should be disregarded, and counsel for CP-2,5,7,16,17 PARTNERS not allowed to participate in any argument the Court may entertain at the hearing of Receiver's First Interim Application.

II.

ARGUMENT

A. There Is No Such Thing As A Joinder To An Objection.

CP-2,5,7,16,17 PARTNERS call the tardy objection filed on March 28, 2012 (Dkt. No. 63) a "joinder", but there is no such pleading recognized by the Federal Rules Of Civil Procedure. The Federal Rules of Civil Procedure and the Local Rules for the U.S. District Court, Central District of California only provide for motions and oppositions to motions, rules that CP-2,5,7,16,17 PARTNERS simply flouted. Any objections that might have been made have been waived.

The Federal Rules of Civil Procedure, Rule 7(b), provides that a request for a court order must be made by motion. Indeed, the Receiver's First Interim Application is such a motion. Local Rule L.R.7-9 enunciates procedures to be employed in opposing motions filed in civil cases. L.R.7-9 provides, in pertinent part, as follows:

"Each party shall not later than twenty-one (21) days before the date designated for the hearing of the motion serve upon all other parties and file with the Clerk either (a) the evidence upon which the opposing party will rely in opposition to the motion and a brief but complete memorandum which shall contain a statement of all the reasons in opposition thereto and the points and authorities upon which the opposing party will rely, or (b) a written statement that that party will not oppose the motion....."

Here, CP-2,5,7,16,17 PARTNERS simply ignored the rules.

The motion (First Interim Application, Dkt. No. 40) was filed on February 23, 2012. The motion was set for hearing on April 2, 2012. Therefore, any opposing papers were required to be filed not later than March 12, 2012. Both FLAGSTAR and CP-10 PARTNERS complied with L.R. 7-9; CP-2,5,7,16,17 PARTNERS filed nothing.

Although at the eleventh hour CP-2,5,7,16,17 PARTNERS now seek

1 to join the opposition filed by FLAGSTAR and CP-10 PARTNERS, there is
2 no provision in either the Federal Rules of Civil Procedure or the Local
3 Rules, allowing it to do so. If CP-2,5,7,16,17 PARTNERS wanted to
4 oppose the First Interim Application, it needed to do so not later than March
5 12, 2012. It has waived its right to object.

6 **B. The Objections Lack Merit and Must be Overruled.**

7 CP-2,5,7,16,17 PARTNERS claim that seeking by seeking approval
8 from the Court to be paid for the work he has performed, the Receiver is
9 somehow conflicted. This argument is ludicrous.

10 Rather than simply reiterate things already briefed, the Court's
11 attention is directed to Receiver's Response To Order On Receiver's
12 Application And Report (Dkt. No. 47). In Section V of that pleading (Page
13 ID #:809-812), the Receiver described questionable transactions by and
14 between some of the very parties that now object. "In this environment,
15 winners and losers were arbitrarily chosen. Certain entities were provided
16 with a financial lifeline, while others were allowed to fail. Providing
17 assistance to one entity was made at the expense or to the detriment of
18 other entities." (Page ID #:810).

19 With respect to questionable transactions involving the objecting
20 parties, the Receiver provided the following summary (Page ID #:810-812):
21 CP5 and CP10's involvement in the Copeland "Piggy Bank" was as
22 follows:

23 A. CP5 — For the period from March 2005 through October 2011, CP5:
24 • Loaned \$220,501 to TCG Trust (Defendant Charles Copeland
related entity)
25 • Loaned \$12,500 to Copeland Properties Three ("CP3")
26 • Loaned \$6,250 to CRI/PHT
27 • Loaned \$169,550 to CRI
28 • Loaned \$27,250 to CP8/Khari Baker
• Loaned \$48,439 to CP9
• Loaned \$1,000 to CP6
• Loaned \$600 to CP15

- Loaned \$38,500 to Rancho Mirage Surgical Center ("RMSC")
- Loaned \$7,500 to CP17
- Loaned \$10,500 to Copeland Wealth Management
- Loaned \$16,000 to Stauffers Landscaping
- Loaned \$45,500 to CP18
- Invested \$100,000 in CP10
- Invested \$211,000 in CP18
- Loaned \$3,500 to CP8
- Loaned \$115,450 to CRI — Other
- Borrowed \$25,000 from CP18
- Borrowed \$80,501 from TCG Trust
- Borrowed \$1,400 from CR1 Trust
- Borrowed \$100,000 from CP10
- Borrowed \$174,838 from Investor Higdon

B. CP10 — Similarly, for the period from March 2006 through October 2011, CP10:

- Loaned \$208,611 to CR1
- Loaned \$50,000 to CR1 Trust
- Loaned \$36,120 to CFI1
- Loaned \$66,058 to CP4
- Loaned \$93,000 to CP5
- Loaned \$24,500 to CP6
- Loaned \$28,105 to CP8
- Loaned \$135,270 to CP9
- Loaned \$108,687 to CP12
- Loaned \$20,000 to CFI3
- Loaned \$218,455 to RMSC
- Loaned \$38,570 to CP15
- Loaned \$10,410 to CP16
- Loaned \$1,040 to CP18
- Loaned \$40,113 to CFI2
- Loaned \$3,865 for CP12 Investor Transaction
- Borrowed \$440,854 to CRT — Other
- Borrowed \$23,748 from Investor Kuehn
- Borrowed \$54,000 from TCG Trust
- Borrowed \$150,000 CFI1
- Borrowed \$830 from CFII
- Borrowed \$11,400 from CFI2
- Borrowed \$218,865 from CFI3
- Borrowed \$93,000 from Investor Racine
- Borrowed \$190,00 from members of the Perez family and the Perez Family Trust

For CP-2,5,7,16,17 PARTNERS to now claim they are not affiliated with the other Receivership Entities and did not benefit from the Copeland "Piggy Bank" is either naïve or disingenuous. Apparently, the objectors believe that if they now "starve the beast", the Receiver will be unable to trace the flow of funds to and from the objecting parties.

1 **C. The Claim That Receiver Practiced Law Without A License Is**
2 **Nonsense.**

3 CP-2,5,7,16,17 PARTNERS try to claim that the Receiver practiced
4 law without a license, and that the Court's Order dated March 12, 2012
5 (Dkt. No. 53) should be withdrawn. The fact is, the February 6, 2012 Order
6 (Dkt. No. 37) was thrust upon the Court when these same parties filed a
7 tardy objection on the very day of the hearing, and was superseded by the
8 Court's Order filed March 12, 2012 (Dkt. No. 53). This is nothing but a
9 blatant attempt by CP-2,5,7,16,17 PARTNERS to mislead the Court. This
10 type of conduct must not be countenanced by the Court.

11 **III.**

12 **CONCLUSION**

13 The "joinder" filed by CP-2,5,7,16,17 PARTNERS should be
14 disregarded and counsel for the objecting group not allowed to participate
15 in any manner at the hearing on Receiver's First Interim Application.
16 Objections to the First Interim Application could be filed not later than
17 March 12, 2012. CP-2,5,7,16,17 PARTNERS failed to file an objection.

18 Neither the Federal Rules of Civil Procedure, nor the Local Rules for
19 this Court, provide that a party can fail to timely file a pleading, and merely
20 later seek to "join" a pleading timely filed by another party. The Federal
21 Rules and the Local Rules provide for motions and oppositions to motions;
22 there is no provision for "joinder" in the context of filing or opposing
23 motions. CP-2,5,7,16,17 PARTNERS had every opportunity to file
24 objections to the First Interim Application by March 12, 2012, and failed to
25 do so. They should not be allowed to "piggy-back" on the objections filed
26 by other parties. Indeed, Local Rule L.R. 7-13 provides, in pertinent part,
27 "A party filing any document in support of, or in opposition to, any motion
28

1 noticed for hearing as above provided after the time for filing the same shall
2 have expired, also shall be subject to the sanctions of L.R. 83-7 and the
3 F.R.Civ.P.”

4 Based upon the foregoing, as well as all pleadings and documents
5 previously filed herein, and upon such evidence or argument as the Court
6 may entertain at the hearing of this First Interim Application, Receiver
7 Thomas C. Hebrank respectfully requests that the Court disregard the late
8 filed “joinder” by CP-2,5,7,16,17 PARTNERS , and the First Interim
9 Application be approved.

10
11 DATED: March 28, 2012

MULVANEY BARRY BEATTY LINN
& MAYERS LLP

12
13
14 By: /s/ Patrick L. Prindle
15 Patrick L. Prindle
16 Attorneys for Thomas C. Hebrank
17
18
19
20
21
22
23
24

25 UHL30.102.308790.1
26
27
28

1 NEWMEYER & DILLION LLP
2 FRANCIS E. QUINLAN, CBN 84690
3 Francis.Quinlan@ndlf.com
4 JOHN E. BOWERBANK, CBN 211566
5 John.Bowerbank@ndlf.com
6 895 Dove Street, 5th Floor
7 Newport Beach, California 92660
8 (949) 854-7000; (949) 854-7099 (Fax)
9

10 Attorneys for the Joining Limited Partners of
11 COPELAND PROPERTIES TWO, a Limited
12 Partnership; COPELAND PROPERTIES FIVE, a
13 Limited Partnership; COPELAND PROPERTIES
14 SEVEN, a Limited Partnership; COPELAND
15 PROPERTIES 16, L.P.; COPELAND
16 PROPERTIES 17, L.P.

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 SECURITIES AND EXCHANGE
20 COMMISSION,

21 Plaintiff,

22 vs.

23 CHARLES P. COPELAND,
24 COPELAND WEALTH
25 MANAGEMENT, A FINANCIAL
26 ADVISORY CORPORATION, and
27 COPELAND WEALTH
28 MANAGEMENT, A REAL ESTATE
CORPORATION,

Defendant.

CASE NO.: 11-08607-R-DTB

**JOINDER OF CERTAIN
LIMITED PARTNERS OF CP 2, 5,
7, 16 AND 17 IN OBJECTION TO
RECEIVER'S FEE
APPLICATION; AND
RECOMMENDATION FOR
APPOINTMENT OF AN
INDEPENDENT EXAMINER**

**[Filed Concurrently with [Proposed]
Order.]**

Hearing Date: April 2, 2012

Hearing Time: 10:00 a.m.

Courtroom: 8

Judge: Hon. Manuel Real

TRIAL DATE SET: No Date Set

The purpose of this Joinder is to support the objections of the secured creditor and other limited partners to the application for fees by the Receiver on the ground that the objections frame the ultimate conflict of interest that exists between the Receiver and his retainers on the one hand, and on the other hand the secured

1 creditors and limited partners of certain partnerships whose interests are at risk of
 2 being forcefully liquidated or otherwise diverted by the Receiver in order to pay his
 3 fees.

4 This Joinder concludes with the recommendation for the appointment of an
 5 independent examiner to provide the court with an objective report on the status of
 6 each partnership, including a cash flow summary of all of the partnerships, a
 7 summary assessment of each partnership to reflect whether it is solvent or not, and
 8 an assessment of any obligations each partnership may have outstanding to the
 9 receivership. This report should prevent litigation over the Receiver's unsupported
 10 attempt to force liquidation of all of the partnerships in light of the fact that many of
 11 them should not even be in this receivership. By this joinder and the proposed
 12 order filed concurrently herewith, these joining parties seek the following order:

- 13 • An order that the Receiver cannot pay itself or professionals that it
 14 hires from funds from Copeland Properties 2, 5, 7, 16, and 17 or from
 15 any income that said partnerships generate and that the Receiver may
 16 not comingle funds of said partnerships with funds with Copeland
 17 Wealth Management or any other entity under the instant
 18 Receivership. (See Proposed Order filed concurrently herewith.)
- 19 • It goes without saying that the basis of the above proposed order is to
 20 prevent the Receiver from commingling un-comingled funds in order
 21 to pay the Receiver's fees/costs at the expense of partnerships that
 22 have no business even being in this receivership. The joining partners
 23 herein understand that the SEC's purported goal is to address victims
 24 of Defendants, however, a far worse wrong may be committed if the
 25 SEC via a Receiver is permitted to be the "co-mingler" of un-
 26 comingled funds.
- 27 • The joining partnerships herein respectfully recommend that that Court
 28 appoint an independent examiner as discussed below.

1 The reasons for this Joinder and the recommendation for an independent
2 examiner are spelled out by topic below.

3 **1. THE RECEIVER'S CONFLICT OF INTEREST IS MANIFEST.**

4 This receivership has been in place for nearly four months and the Receiver
5 has failed to provide this court with an objective assessment of each partnership's
6 solvency and its assets and liabilities. The Receiver now seeks to obtain payment
7 of \$70,000 from the Copeland Realty bank account, which will effectively
8 eliminate any liquidity in the Copeland Realty entity. The Receiver has now hired
9 law and accounting firms and has his own staff to pay, so the critical concern is that
10 the Receiver will be periodically seeking to draw funds from the operation of
11 partnerships that should not even be in the receivership. Although until a proper
12 assessment of each partnership is done as to solvency, assets and liabilities, it is
13 clear from the data the receiver has included in his past reports and filings that a
14 number of the partnerships are either insolvent or barely making mortgage
15 payments. Thus, under the Receiver's vague "plan" the burden of paying the
16 receiver's fees and those of his retainers will ultimately fall on those solvent limited
17 partnerships that produce positive cash flow.

18 Certain partnerships that have objected in the past to their forced presence in
19 the receivership are CP 10, through Mirau, Edwards, Cannon, Lewin and Tooke
20 and CP 2, 5, 7, 16 and 17, represented by Newmeyer & Dillion. The limited
21 partners of these partnerships believe that their partnerships are solvent and have no
22 material obligations to the receivership but will be stripped of their cash flow and
23 force-liquidated to pay the Receiver's fees and those of his retainers because the
24 Receiver will want to get paid and pay his professionals even if it means taking
25 money from partnerships that do not even belong in the receivership.

26 The conflict that exists in every case where a commercial receiver is
27 appointed almost inevitably leads to an expensive recovery process and a forced
28 liquidation akin to a bankruptcy.

1 Inasmuch as the Receiver must follow bankruptcy law to the highest degree
 2 possible to order the claims of creditors, whenever there are allegations of fraud, the
 3 receivers uniformly seek to have the case treated as though it were some form of
 4 Ponzi scheme as is happening here. (Receiver's Response to Order on Receiver's
 5 Application and Report filed March 5, 2012.) That Ponzi, or "Ponzi-like scheme"
 6 theory is an attempt by the receiver to obtain self-serving discretion that may enable
 7 the receiver to indiscriminately liquidate every asset he can grab and create a pot
 8 from which his fees and those of his retainers are paid first at the detriment of
 9 partners who rely on distributions for retirement from partnerships that have no
 10 business being in the receivership. Because the certain limited partners of the
 11 above-listed partnerships are objecting to their forced inclusion in this receivership
 12 on the ground that each is properly registered and managed legal entity with no
 13 material obligations to the receivership, the conflict is clear.

14 If the Receiver were to be ordered to release the solvent partnerships, he fears
 15 he may face difficulty in recovering enough other assets to pay his fees and those of
 16 his retainers. This conflict of interest is purely financial and it exists in every
 17 receivership where the independent existence of innocent legal entities is
 18 threatened. As we are positioned now, resolving the conflict requires an
 19 independent evaluation to avoid the prejudice that occurs when one party elevates
 20 its financial interest above others.

21 **2. THE RECEIVER HAS BEEN PRACTICING LAW WITHOUT A**
 22 **LICENSE.**

23 On February 6, 2012, this court ordered the Receiver to

24 Within thirty (30) days . . . report findings on the validity
 25 of any notes receivable held by all limited partnerships as
 26 simply creditor and provide justification for continued
 inclusion . . . in the Receivership.

27 Within sixty (60) days . . . the Receiver is required to
 28 report his findings as to the validity of complex notes
 receivable and payable between and among other limited
 partnership entities and the fixed income funds and

1 justification for continued inclusion . . . in the
2 Receivership on the grounds that the cross transactions
3 amount to actual commingling such that the entities
4 require a Receiver to unwind.

5 A copy of that order is attached as Exhibit 1 hereto. The order was specific,
6 yet the Receiver did not honor it. The receiver was required to file reports
7 addressing the specifics in the order of court. Rather, in his response filed March 5,
8 2012, the Receiver, acting in his own name without counsel, filed an adversary
9 pleading and then, without disclosing it to the other parties, presented a summary
10 order to the court that reads as though all issues regarding the objections of the
11 certain limited partners had been resolved and the Receiver is in full control of
12 every asset, every partnership and every fund in the order submitted to this court.

13 Attached hereto as Exhibit 2 is an article from a professional receivers group
14 newsletter in which this Receiver advertises. The article posits the question by a
15 receiver who finds few assets in his receivership from which to pay his fees and
16 seeks legal advice as to whether the receiver himself may act as his own counsel.
17 The decision of *In Re Shattuck*, 411, B.R. 378, 384 [2009 WL 2252326 **3-4] (10th
18 Cir. BAP.), in the article attached as Exhibit 2 makes it clear that a receiver may not
19 act as his own counsel where the receivership consists of entities that must be
20 represented by counsel under state and local rules. As in the case of *In Re Shattuck*,
21 cited in the article at Exhibit 2, this receivership consists of partnerships and
22 corporations and those entities require licensed attorneys to represent them in court.
23 This is not a gray area. It is quite clear from the attached article at Exhibit 2 and the
24 case law cited therein that the Receiver's pleadings and the order he submitted to
25 the court were improper. We respectfully request that the court strike both the
26 Receiver's responsive pleading and the subsequent order that was surreptitiously
27 submitted without the knowledge of those who were directly affected by the
28 receivership.

Further, these certain joining limited partners respectfully request the court

1 order the Receiver to post all pleadings and orders of this court on his website.
 2 This court's order, contained in Exhibit 1 hereto, has been in the Receiver's
 3 possession and he knows his obligations under it, yet he posted only the court's
 4 minute order which provided no details of the order. The result is that the creditors
 5 and limited partners who rely on the Receiver's website as a source of information
 6 have been kept in the dark about the duty of the Receiver to validate the debts and
 7 investments of each partnership under the court's order.

8 **3. THE INSTANT CASE IS NOT EVEN CLOSE TO A PONZI SCHEME**
 9 **AS TO THE LIMITED PARTNERSHIPS, IT IS A BREACH OF**
 10 **FIDUCIARY DUTY AND UNAUTHORIZED FUNDS TRANSFER**
 11 **CASE**

12 Despite the SEC's unproven Ponzi allegations (Copeland Consented) and the
 13 Receiver's unqualified adoption of them, this is not a Ponzi scheme. Unlike the
 14 infamous Madoff and Stanford Ponzi schemes that resulted in bankruptcy and
 15 federal court receivership respectively, this case is distinguishable in all respects
 16 from a pure Ponzi scheme. A Ponzi scheme has no assets behind it. It is all hot air
 17 and constant recruiting of new investors whose money is paid to old investors, all
 18 of whom accept the truth of the scheme without seeing proof of the investments.

19 In this case, based on a reading of the receiver's reports and exhibits taken
 20 from Charles Copeland's accounting firm, as well as interviews of certain limited
 21 partners, Copeland Realty as general partner for over 14 separate limited
 22 partnerships, under written partnership agreements, properly registered in
 23 California and current in all of their tax and other regulatory filings. A few were
 24 just tax deferred exchange entities, the remaining limited partnerships each own a
 25 single, discrete commercial real estate asset. Most of the partnerships have
 26 commercial mortgage debt against them and those debts must be paid. At least as
 27 to these objecting limited partners, each partnership was initially established with
 28 sufficient additional capital to provide an equity cushion above the mortgage debt.

1 Mr. Charles Copeland, acting through his Copeland Realty Corporation as
2 general partner of each partnership had control of the segregated partnership bank
3 accounts and performed all of the accounting. What is clear from a direct reading
4 of the general ledgers of all of the partnerships, provided by the receiver, as well as
5 the financial statements of the partnerships, is that Mr. Copeland, at various times,
6 took cash assets from certain partnerships and loaned that cash to other partnerships
7 or made investments in other partnerships, all of which were under his control.
8 Those transfers were made with real money and Mr. Copeland dutifully kept a
9 record of his actions, however inappropriate they were. As in many cases where a
10 single person or entity has complete control of the income from many investment
11 partnerships as a fiduciary, and some of partnerships begin to falter in the face of
12 economic downturn, money is often transferred without authority to support the
13 failing investments. That is wrong but it does not constitute a Ponzi scheme. And,
14 as the Receiver noted in his response to this court's order, CP 3, CP 4 and CP 6
15 were allowed to fail. (p. 7)

16 In the adversary pleading filed by the Receiver in response to the court's
17 order that he validate these cross-transactions, the Receiver cherry-picked certain
18 transfers made in the CP 10 and CP 5 partnerships and described them as proof of
19 Mr. Copeland operating the "Copeland piggy bank." If that is evidence of this
20 Receiver's forensic skill, an independent examiner should be appointed
21 immediately.

22 What the Receiver did in his pleading was to mischaracterize the transfers as
23 evidence that Mr. Copeland was pulling cash assets out of all of the partnerships for
24 improper and personal purposes, leaving the investor partners victims of Ponzi
25 scheme. What the Receiver did not reveal to the court is that in all but the
26 receivable and payable debts and investments most recently listed on each
27 partnership's financial statement, which the Receiver did attach to his pleading, the
28 general ledger reflects that most of the cash loans Mr. Copeland extracted from

1 various partnerships in years prior to 2009 were later repaid to the partnerships,
 2 especially in the case of CP 5. Those repayments generally balanced the books and
 3 are clear from a reading of the general ledger, but the Receiver did not reveal that
 4 fact to the court because it debunked the "Copeland piggy bank" and Ponzi scheme
 5 argument – an argument he desperately clings to so he can keep all of the assets
 6 under his control for forced liquidation.

7 **4. WHAT THE RECEIVER SHOULD HAVE REPORTED TO THE**
 8 **COURT BY NOW.**

9 Every receiver who has been in business for a while knows how to quickly
 10 evaluate the solvency and recoverability of assets in a receivership so as to estimate
 11 the worth of the assignment. This appears to be the only receivership this Receiver
 12 is managing according to his website www.ethreeadvisors.com. While it is possible
 13 the Receiver took this case in order to have an active one on his website, accepting
 14 the risks that he might not be paid very much from recoveries, that is unlikely. In
 15 the last four months, this Receiver could have but did not do the following:

16 (a) Summarize the cash flow status of each partnership against debt and
 17 expenses so as to reflect whether it is solvent or not.

18 (b) Segregate the records of each partnership so that it may be separately
 19 evaluated and make those records available to the limited partners.

20 (c) Debrief Charles Copeland in detail to learn the facts and reasons
 21 behind his misappropriations of funds from various partnerships for the benefit of
 22 other partnerships. This information alone will allow the Receiver to more speedily
 23 evaluate both the solvency and the legal interests outstanding for each partnership.

24 (d) Identify and segregate the bank records related to each partnership.
 25 Each partnership is reported to have had only one bank account and the general
 26 ledger can rather rapidly be compared to the bank records to validate the incoming
 27 investment funds from the limited partners, identify the wire transfers and other
 28 transfer funds to different limited partnerships and to other people, including

1 Copeland Realty, for its management fees.

2 (e) Validate the loans made by the four or five fixed income funds to
3 specific partnerships and determine the purpose for each. No loans were made to
4 CP 2, CP 5, CP 7, CP 16 or CP 17. One of the allegations by the SEC in its
5 complaint against Mr. Copeland and his entities is that the investors in the fixed
6 income funds were duped into believing that creditworthy corporate and individual
7 debt would be created and held by these funds. That may have been correct in part,
8 but the accounting attached to the Receiver's reports shows that Fixed Income
9 Funds loans were also made to certain identified partnerships (but not CP 2, CP 5,
10 CP 7, CP 16 and CP 17). In such cases, those loans are an asset which may be
11 recovered if the bank records show the funds were received by the partnerships. If
12 the partnerships that received those funds are solvent, then it is a simple matter to
13 negotiate resolution of the debt obligations. If no funds were received by the
14 partnerships identified herein from the fixed income funds, then there is no basis for
15 forcing those partnerships into the receivership on the false ground that they were
16 beneficiaries of the fixed income fund Ponzi scheme as alleged by the SEC.

17 (f) It is also noteworthy that in Exhibit 3, of the funds loaned out by all of
18 the fixed income funds, approximately 50%, some \$2,866,767, went to one
19 partnership alone, CP 4, and that partnership failed. While that partnership failure
20 may be an unfortunate turn of events, it is not the result of a Ponzi scheme that
21 infects every partnership sought to be kept in this receivership. It is an isolated
22 transaction – not a justification for treating everyone alike in this receivership.

23 **5. RECOMMENDATION THAT THE COURT APPOINT AN**
24 **INDEPENDENT EXAMINER.**

25 An independent examiner will speedily assess the key facts necessary for this
26 court to determine the path this receivership should take and whether any of the
27 limited partnerships should be held in the receivership under forced liquidation.
28 Because Mr. Copeland kept detailed ledgers and financial statements and the bank

1 account records are available, this is not a complex case to assess. The plan the
2 Receiver claims to be pursuing is not a plan at all – it is by design an improper
3 forced liquidation. An independent examiner's report will provide this court with
4 the basis for directing the proper activities of the Receiver.

5 The court is requested to appoint an independent examiner of the stature of
6 Mr. Ronald Durkin of Clifton Gunderson LLP. Indeed, an examiner like Mr.
7 Durkin, a former FBI agent and CPA who has worked with major accounting firms
8 like KPMG and has performed numerous examinations under U.S. District court
9 order, is the appropriate person to bring this court a speedy and objective report
10 from which to resolve the concerns of the certain limited partners and keep this
11 receivership from destroying the value of solvent and innocent partnerships from
12 which many retired limited partners depend for their support.

13
14 Respectfully submitted:

15 Dated: March 28, 2012

NEWMEYER & DILLION LLP

16
17 By:


Francis E. Quinlan
John E. Bowerbank
Attorneys for the Joining Limited
Partners of COPELAND
PROPERTIES TWO, LP;
COPELAND PROPERTIES FIVE,
LP; COPELAND PROPERTIES
SEVEN, LP; COPELAND
PROPERTIES 16, L.P.; COPELAND
PROPERTIES 17, L.P.

EXHIBIT 1

1 NEWMEYER & DILLION LLP
2 FRANCIS E. QUINLAN, CBN 84690
3 Francis.Quinlan@ndlf.com
4 895 Dove Street, 5th Floor
5 Newport Beach, California 92660
6 (949) 854-7000; (949) 854-7099 (Fax)

7 Attorneys for the Joining Limited Partners of
8 COPELAND PROPERTIES TWO, a Limited
9 Partnership; COPELAND PROPERTIES FIVE, a
10 Limited Partnership; COPELAND PROPERTIES
11 SEVEN, a Limited Partnership; COPELAND
12 PROPERTIES 16, L.P.; COPELAND
13 PROPERTIES 17, L.P.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 SECURITIES AND EXCHANGE
17 COMMISSION,

18 Plaintiff,

19 vs.

20 CHARLES P. COPELAND,
21 COPELAND WEALTH
22 MANAGEMENT, A FINANCIAL
23 ADVISORY CORPORATION, and
24 COPELAND WEALTH
25 MANAGEMENT, A REAL ESTATE
26 CORPORATION,

27 Defendant.

CASE NO.: 11-08607-R-DTB

**ORDER ON RECEIVER'S
APPLICATION AND REPORT**

Hearing Date: February 6, 2012
Hearing Time: 10:00 a.m.
Courtroom: 8, 2nd Flr.
Judge: Hon. Manuel Real

FILE DATE: October 18, 2011
TRIAL DATE SET: No Date Set

28 On February 6, 2012 at 10:00 a.m., the Court heard the Receiver's
Application and Report at a hearing in Courtroom No. 8 at the U.S. District Court –
Central District in Los Angeles, California.

After reviewing the papers submitted by the parties and after entertaining
oral argument, the Court rules as follows:

1. Within thirty (30) days of the date of this Order, the Receiver is
required to report findings on the validity of any notes receivable held by all limited

1 partnerships as a simple creditor and provide justification for continued inclusion of
2 such limited partnerships in the Receivership. Should the Receiver not report and
3 offer justification for continued inclusion, the subject limited partnerships will be
4 entitled to an order of court relieving the Receiver from further duty as general
5 partner in favor of a newly elected general partner. Any new general partners are
6 required to file notice of such election naming each new general partner. The Court
7 will retain jurisdiction of undiscovered claims by the Receiver against the released
8 limited partnerships.

9 2. Within sixty (60) days of the date of this Order, the Receiver is
10 required to report his findings as to the validity of complex notes receivable and
11 payable between and among other limited partnership entities and the fixed income
12 funds and justification for continued inclusion of such limited partnerships in the
13 Receivership on the grounds that the cross transactions amount to actual
14 commingling such that the equities require a Receiver to unwind. Should the
15 Receiver not report and offer such justification for continued inclusion, the subject
16 limited partnerships shall be entitled to an order of court relieving the Receiver
17 from further duty as general partner in favor of new general partners elected by the
18 limited partners. New general partners are required to file notice of such election
19 naming the new general partner. The Court will retain jurisdiction of undiscovered
20 claims by the Receiver against released limited partnerships.

21 IT IS SO ORDERED.

22
23 Date: Feb. 6, 2012

24 
Hon. Manuel L. Real

EXHIBIT 2

Ask the Receiver

BY PETER A. DAVIDSON¹



I have been a receiver for quite some time and know how the system works. I have a case without much money currently in it. Instead of hiring counsel, can I file pleadings in the bankruptcy court or the district court, on behalf of the receivership estate, or do I need to employ counsel to do so?



A new appellate decision calls into question the ability of a receiver, and, in fact a bankruptcy trustee, to file pleadings and represent the estate (receivership or bankruptcy) in federal court. The case holds that only attorneys can appear and sign pleadings on behalf of the estate, which as most attorneys know is the requirement for corporations or partnerships. The case, *In re Shattuck*,² decided by the 10th Circuit Bankruptcy Appellate Panel, arose out of a state court receiver for an LLC filing a motion in the bankruptcy court to dismiss the debtors' chapter 13 case on the ground that the debtors did not meet the eligibility limits under Section 109(e) of the Bankruptcy Code due to the fact that the debtors owed the receivership estate in excess of \$800,000.00. The receiver filed the motion to dismiss on his own, without the assistance of counsel. The receiver was not an attorney.

The debtors moved to strike the receiver's motion on the ground that because the receiver was not a licensed attorney he had no authority to file pleadings on behalf of the LLC, citing a District Court of Colorado local rule which is similar, but not exactly the same as, local rules for the district courts in California. The rule provided that: "Only *pro se* individual parties and members of this court's bar may appear or sign pleadings, motions or other papers". The receiver asserted that he was appointed receiver for the LLC by the state court and was appointed to be receiver as an individual and, as an individual, he was appearing *pro se*.

The bankruptcy court overruled the motion to strike the receiver's objection on the basis that it felt it had discretion to allow non-lawyers to file pleadings and appear in court on behalf of an entity. The court determined that the debtors' liabilities exceeded the limits of Section 109(e) and ordered their bankruptcy case dismissed.

On appeal the BAP reversed, citing 28 U.S.C. § 1654 which provides: "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." It held it is "well settled" that a lay

Continued on page 13...

Buchalter Nemer

...providing one-stop legal counsel to the Financial Services Industry

Receiverships
Workouts & Turnarounds
Litigation
Bankruptcy/Creditors' Rights
Business Practices
Real Estate

Operations
Regulatory/Compliance
Transactional/Documentation
FIRREA
Personnel/Labor Litigation
Mergers & Acquisitions

CONTACT:

Michael Washell
Los Angeles
(310) 891-6700

Richard Ormond
Los Angeles
(310) 891-6700

Diana Deert
Orange County
(949) 760-1121

Sharon Christensen
San Francisco
(415) 227-0800

Paul Weiser
Scottsdale
(480) 781-1800



Buchalter Nemer

Your Partner in Progress

www.buchalter.com

Ask the Receiver...*Continued from page 11.*

person, while allowed to represent himself or herself, may not represent the interests or rights of anyone else. The court held that the statute does not permit artificial entities, such as corporations, partnerships, associations, LLC's, trusts or estates to prosecute or defend in federal court except through an attorney, admitted to practice in that particular court. The BAP cited a number of authorities in support of its ruling including *Rowland v. Cal. Men's Colony*, 506 U.S. 194, 201-202 (1993) where the Supreme Court stated: "It has been the law for the better part of two centuries ... that a corporation may appear in the federal courts only through licensed counsel. As the courts have recognized, the rationale for that rule applies equally to all artificial entities ... the lower courts have uniformly held that 28 U.S.C. § 1654, providing that 'parties may plead and conduct their own cases personally or by counsel,' does not allow corporations, partnerships or associations to appear in federal court otherwise than through a licensed attorney".

As to the receiver's contention that he was appearing as an individual, the court dismissed that argument because, "as an individual", the receiver had no personal claim against the debtors. The receiver was not advocating his personal rights, but was acting in a representative capacity on behalf of the receivership estate of the LLC. Because the LLC could not appear in federal court, except through counsel, neither could the receiver. The receiver argued, in addition, that his position as receiver was analogous to that of a trustee of an estate. The BAP held, however, that if a trustee is not a licensed attorney he too lacks the legal capacity to appear and represent an estate in federal court, citing a number of authorities including 9th Circuit and California district court opinions to that affect. These cases state a party may only represent themselves "where they are representing themselves alone, asserting their own personal rights or interests exclusively. If an individual purporting to appear pro se is not the actual 'beneficial owner of the claims being asserted,' they are not viewed as a party conducting their 'own case personally' within the meaning of the statute."³

IMPORT OF THE DECISION

While this decision comes from the Tenth Circuit its reasoning appears sound. It has long been the rule in the district and bankruptcy court that only individuals can represent themselves without an attorney. The decision merely applies this long standing rule to a receivership estate, and arguably a bankruptcy estate, both artificial entities. Whether the district courts and bankruptcy courts in California will follow the decision, and possibly apply it to bankruptcy trustees, remains to be seen.

The BAP seemed to feel that if the receiver had been an attorney himself, he would have been permitted to appear and file pleadings on behalf of the receivership estate. While the BAP may have allowed this, the fact that a receiver or a bankruptcy trustee is also an attorney should not empower them to appear on behalf of an estate in federal court unless they have been employed, by either the receivership or the bankruptcy court, to act as an attorney in the case. Generally, receivers and bankruptcy trustees, while they may be attorneys, are not acting

in that capacity, and they are not compensated as attorneys.

Both state court rules and bankruptcy rules allow receivers or trustees to be employed as counsel for the estate, although bankruptcy courts are often reluctant to allow a trustee to act as counsel in the case. It appears, therefore, the best course of action for receivers and bankruptcy trustees, when filing pleadings or appearing in district or bankruptcy court (which is merely a division of the district court) is to employ counsel for such purposes. Failure to do so may not only result in the pleading or complaint being stricken, but could subject the receiver to criminal liability for the unauthorized practice of law. Business and Professions Code Section 6125 provides: "No person shall practice law in California unless the person is an active member of the State Bar". Section 6126(a) provides that any person practicing law who is not an active member of the State Bar is guilty of a misdemeanor, and can be liable for civil penalties and possibly contempt of court.

¹ Peter A. Davidson is a Partner of Ervin Cohen & Jessup LLP a Beverly Hills law firm. His practice includes representing receivers and acting as a receiver in state and federal court.

² ___ B. R. ___, 2009 WL2252326 (10th Cir. BAP July 29, 2009).

³ *Alpha Land Company v. Little*, 238 F.R.D. 497 (E.D. Cal. 2006).



Peter Davidson



FRANDZEL ROBINS BLOOM & CSATO, L.C.

Service . . . The Final Word

- ✦ Real Estate Finance & Transactions
- ✦ Financial Services
- ✦ Creditors' Rights & Commercial Litigation
- ✦ Equipment Leasing
- ✦ Bankruptcy & Business Reorganization
- ✦ Receiver Representation

Contact:
Craig A. Welin, Esq.

E-mail: cwelin@frandzel.com

6500 Wilshire Blvd.
Seventeenth Floor
Los Angeles, CA 90048
Telephone: (323) 852-1000
Fax: (323) 651-2577

100 Bush Street
Twenty-third Floor
San Francisco, CA 94104
Telephone: (415) 788-7400
Fax: (415) 291-9153

www.frandzel.com

EXHIBIT 3

EXHIBIT 3
LOANS BY FIXED INCOME FUNDS TO LIMITED PARTNERSHIPS

COPELAND FIXED INCOME ONE

CP-4	\$2,866,767.24
CP-12	\$180,397.00
CP-9	\$212,828.14
CP-15	\$25,000.00
<u>Total:</u>	<u>\$3,284,992.38</u>

COPELAND FIXED INCOME TWO

CP-9	\$900,000.00
CP-12	\$62,165.89
CP-9	\$186,375.00
CP-15	\$23,400.00
<u>Total:</u>	<u>\$1,171,940.89</u>

COPELAND FIXED INCOME THREE

CP-9	\$105,900.00
CP-12	\$435,750.00
CP-15	\$241,050.00
CP-10	\$31,179.90
<u>Total:</u>	<u>\$813,879.90</u>

<u>Grand Total:</u>	<u>\$5,270,813.17</u>
----------------------------	------------------------------

CERTIFICATE OF SERVICE

I, Joanne Kenney, hereby certify that on March 28, 2012, the attached document was electronically transmitted to the Clerk of the Court using the CM/ECF System which will send a Notice of Electronic Filing to the following CM/ECF registrants:

Spencer Evan Bendell	<u>bendells@sec.gov</u>
Peter Alan Davidson	<u>pdavidson@ecjlaw.com</u>
Edward G Fates	<u>tfates@allenmatkins.com</u>
Michael S Leib	<u>mleib@maddinhauser.com</u>
John M McCoy, III	<u>mccoyj@sec.gov</u>
David M Rosen	<u>rosend@sec.gov</u>
William P Tooke	<u>wtooke@mechlaw.com</u>
Francis E Quinlan	<u>frank.quinlan@ndlf.com</u>

I declare 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 28, 2012, at Newport Beach, California.

/s/ Joanne Kenney
Joanne Kenney

1 NEWMEYER & DILLION LLP
2 FRANCIS E. QUINLAN, CBN 84690
3 Francis.Quinlan@ndlf.com
4 JOHN E. BOWERBANK, CBN 211566
5 John.Bowerbank@ndlf.com
6 895 Dove Street, 5th Floor
7 Newport Beach, California 92660
8 (949) 854-7000; (949) 854-7099 (Fax)
9

10 Attorneys for the Joining Limited Partners of
11 COPELAND PROPERTIES TWO, a Limited
12 Partnership; COPELAND PROPERTIES FIVE, a
13 Limited Partnership; COPELAND PROPERTIES
14 SEVEN, a Limited Partnership; COPELAND
15 PROPERTIES 16, L.P.; COPELAND
16 PROPERTIES 17, L.P.

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19 SECURITIES AND EXCHANGE
20 COMMISSION,

21 Plaintiff,

22 vs.

23 CHARLES P. COPELAND,
24 COPELAND WEALTH
25 MANAGEMENT, A FINANCIAL
26 ADVISORY CORPORATION, and
27 COPELAND WEALTH
28 MANAGEMENT, A REAL ESTATE
CORPORATION,

Defendant.

CASE NO.: 11-08607-R-DTB

**[PROPOSED] ORDER
PROHIBITING RECEIVER
FROM USING CP-2, 5, 7, 16, AND
17 FUNDS TO PAY COSTS AND
FEES OF RECEIVER.**

**[Filed Concurrently with Joinder in
Objection to Receiver's Fee
Application and Recommendation
for Appointment of Independent
Examiner]**

Hearing Date: April 2, 2012

Hearing Time: 10:00 a.m.

Courtroom: 8

Judge: Hon. Manuel Real

TRIAL DATE SET: No Date Set

29 The Court having considered the First Interim Application for Approval and
30 Payment of Fees and Costs of Receiver Thomas C. Hebrank filed on or about
31 February 21, 2012, and having read and considered opposition and supplemental
32 briefing by certain limited partners of Copeland Properties 2, 5, 7, 16, and 17, the
33 Court finds good cause to order as follows:

1 To the extent that the Receiver is permitted by this Court to pay itself or
2 professionals that it hires, the source of said payment as well as future applications
3 of payments by the Receiver shall not be funds from Copeland Properties 2, 5, 7, 16
4 and 17 or from any income that said partnerships generates and further the Receiver
5 may not commingle funds from Copeland Properties 2, 5, 7, 16, and 17 with funds
6 from Copeland Wealth Management or any other entity under the instant
7 Receivership.

8 SO ORDERED.

9
10 Date: _____

Hon. Manuel L. Real

NEWMAYER & DILLION LLP

CERTIFICATE OF SERVICE

I, Joanne Kenney, hereby certify that on March 28, 2012, the attached document was electronically transmitted to the Clerk of the Court using the CM/ECF System which will send a Notice of Electronic Filing to the following CM/ECF registrants:

Spencer Evan Bendell	<u>bendells@sec.gov</u>
Peter Alan Davidson	<u>pdavidson@ecjlaw.com</u>
Edward G Fates	<u>tfates@allenmatkins.com</u>
Michael S Leib	<u>mleib@maddinhauser.com</u>
John M McCoy, III	<u>mccoyj@sec.gov</u>
David M Rosen	<u>rosend@sec.gov</u>
William P Tooke	<u>wtooke@mechlawn.com</u>
Francis E Quinlan	<u>frank.quinlan@ndlf.com</u>

I declare 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 28, 2012, at Newport Beach, California.

/s/ Joanne Kenney
Joanne Kenney