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

18 Defendant.
19

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

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

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

Judge: Honorable Manuel L. Real

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21 On February 23, 2012, Receiver filed the First Interim Application for Approval
22 and Payment of Fees and Costs (Dkt. No. 40) (hereafter, "First Interim Application").
23 Copeland Properties Ten, L.P. (hereafter, "CP-10"), is one of several limited
24 partnerships included in the instant Receivership. Certain Limited Partners of CP-10
25 (hereafter, "CP-10 Partners") and Flagstar Bank FSB (hereafter "Flagstar"), a secured
26 creditor of CP-10, each filed objections to the First Interim Application (hereafter, CP-
27 10 Partners and Flagstar are collectively referred to as "objectors"). The Receiver,
28 Thomas C. Hebrank, files the following reply.

I.

INTRODUCTION

At the outset, it should be noted that on March 12, 2012, the Court filed its Order Approving Receiver's Response to Order on Receiver's Application and Report. (Dkt. No. 53). Among other things, the Order specifically confirms that pursuant to the Judgment entered on October 25, 2011. (Dkt. No. 3), 23 limited partnerships are included in the Receivership. CP-10 is one of those limited partnerships.

The objections to Receiver's Fee Application filed by CP-10 Partners and Flagstar on March 12, 2012, (Dkt. Nos. 48 and 49, respectively) both argue that CP-10 should not be included in the receivership. These were not the first times that CP-10 Partners and Flagstar made this argument. The arguments have been previously rejected, and should be rejected now. Indeed, after "Receiver's Preliminary Report and Request for Order (A) Clarifying Scope of the Receivership, and (B) Aiding Administration of the Receivership" (Dkt. No. 14) was filed on November 18, 2011, CP-10 Partners filed an objection, arguing then, as they do now. (Dkt. No. 16):

"The instant objection is based on the assertion of the Receiver that all limited partnerships in which one of the defendants was general partner either is or should be included within the scope of the court-ordered receivership. Objecting parties respectfully submit that this could not have been the court's intention as there is insufficient evidence warranting the inclusion of CP-10 into the receivership' because CP-10 is a viable partnership producing significant income from Commercial property purchased solely with funds of its own limited partners."

Likewise, Flagstar also previously argued that CP-10 should not be included in the Receivership. (Dkt. No. 26). In essence, Flagstar claimed that including CP-10 in the Receivership would cause harm to the limited partners. Expanding on that theme,

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1 Flagstar also claimed that including CP-10 in the receivership creates more harm to
2 Flagstar and to CP-10 Partners, than it benefits the Receiver.

3 On March 5, 2012, Receiver filed Receiver's Response To Order On Receiver's
4 Application And Report (Dkt. No. 47). On March 12, 2012, the Court filed an Order
5 Approving Receiver's Response To Order On Receiver's Application And Report (Dkt.
6 No. 53), reiterating the October 25, 2011, Judgment (Dkt. No. 3), and directing that 23
7 limited partnerships, CP-10 among them, are included in the receivership.

8 Granted, at the time objectors filed the instant objections to receiver's First
9 Interim Application, the Court had not yet filed its Order Approving Receiver's
10 Response (Dkt. No. 53), hence the objectors were unaware of the futility of their
11 arguments. However, now that the Court has decided the issue of whether or not CP-
12 10 is included in the receivership, and since now the objectors are aware of that Order,
13 the proper course would be for the objectors to simply withdraw their respective
14 objections. Absent that, the Court should overrule the objections and approve the First
15 Interim Application.

16 II.

17 **THE FEES WERE PAID BY COPELAND WEALTH MANAGEMENT, A REAL
ESTATE CORPORATION**

18 All fees and costs described in the First Interim Application will be paid by
19 Copeland Wealth Management, A Real Estate Corporation, and not by any of the
20 limited partnerships included in the receivership estate. Moreover, the objectors are
21 included in the receivership estate, therefore Receiver has control over all funds they
22 may possess or to which they may be entitled. The Judgment (Dkt. No. 3, ID #:43)
23 provides, in pertinent part, as follows: "IT IS FURTHER ORDERED, ADJUDGED, AND
24 DECREED, that Thomas C. Hebrank, is appointed as permanent receiver of
25 Defendants CWM and Copeland Realty and their subsidiaries and affiliates, with full
26 powers of an equity receiver, including, but not limited to, full power over all funds,
27 assets, collateral, premises, and that such receiver is immediately authorized,
28 empowered and directed: (a) to have access to and to collect and take custody,

1 control, possession, and charge of all funds, assets” The March 12, 2012, Order
2 Approving Receiver’s Response to Order on Receiver’s Application and Report (Dkt.
3 No. 53) expressly lists CP-10 as included in the receivership estate.

4 Be that as it may, the fees and costs described in the First Interim Application
5 will not be paid with funds from either CP-10, but entirely by funds from Copeland
6 Wealth Management, A Real Estate Corporation. The objections should be overruled,
7 and the First Interim Application should be approved.

8 III.

9 **THE SEC WAS PROVIDED THIRTY DAYS NOTICE AND DID NOT OBJECT**

10 Objectors claim that Receiver failed to comply with the SEC’s rules concerning
11 payment of receivers. The “Billing Instructions For Receivers In Civil Actions
12 Commenced By The U.S. Securities And Exchange Commission” (hereafter, “Billing
13 Instructions”) provide that “any deviation from the Billing Instructions will be described
14 in writing and submitted to the SEC at least 30 days prior to the filing of the Application
15 with the Receivership Court.” (Dkt. No. 48-1; Page ID #:966). As stated in the
16 Declaration of Receiver In Support of First Interim Application, a draft of the fee
17 application was provided to the SEC at least 30 days prior to filing, and was discussed
18 during a telephone call. Thereafter, the First Interim Application was revised
19 accordingly, and filed with the Court. The Billing Instructions provide that the SEC, not
20 an entity somehow affiliated with the receivership estate, may object to any deviations
21 and charges with which it does not agree. Here, the SEC made no objection to the
22 First Interim Application, whatsoever. The objections by CP-10 Partners and Flagstar
23 should be overruled, and the First Interim Application approved.

24 IV.

25 **THE FEES WERE PROPERLY ALLOCATED AMONG THE PARTNERSHIPS**

26 The SEC promulgated the Billing Instructions. The Billing Instructions provide
27 that the SEC, not some entity affiliated with the receivership estate, may object to
28 deviations and charges with which it does not agree. (Dkt. No. 48-1; Page ID #:966).

1 Conspicuous by its absence is any objection, whatsoever, by the SEC to the First
2 Interim Application.

3 Since this is the First Interim Application, the work described was largely
4 devoted to analyzing the complex interrelationships between the Defendants and the
5 23 limited partnerships included in the receivership estate. Most of the initial work
6 performed by Receiver benefitted the receivership estate as a whole, rather than any
7 particular limited partnership. The work benefitted the receivership estate in a joint, not
8 several, fashion. The Receiver's time was recorded in identifiable categories,
9 consistent with what is required by the Billing Instructions (Dkt. No. 48-1). The
10 categories were described on Page 5 of the First Interim Application, as follows: A.
11 General Receivership; B. Asset Investigation & Recovery; C. Reporting; D. Operations
12 & Asset Sales; E. Claims & Distributions; and F. Legal Matters & Pending Litigation.
13 Where possible, the Receiver identified work pertaining to a particular limited
14 partnership in the "Description of Services" portion of tables attached to the First
15 Interim Application. For instance, the entry for 10/2/11 describes work pertaining to
16 CP-18. The fees are allocated by category (A, B, C, D, E, and F), and where possible,
17 the particular partnership effected was identified. Certainly, the First Interim
18 Application meets the spirit, if not the letter, of the Billing Instructions (Dkt. No. 48-1).

19 IV.

20 CONCLUSION

21 First, CP-10 has been found to be included in the receivership estate. Not only
22 the Judgment (Dkt. No. 3), but the Order Approving Receiver's Response To Order On
23 Receiver's Application And Report (Dkt. No. 53) support that fact. Second, the
24 Receiver has complied with the Billing Instructions. Importantly, the SEC approved the
25 First Interim Application and has not objected. Lastly, none of the funds that will be
26 used to pay the fees and costs described in the First Interim Application will come from
27 CP-10. The fees and costs requested in this First Interim Application will be paid by
28 Copeland Wealth Management, A Real Estate Corporation.

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For the foregoing reasons, it is respectfully requested that the Court approve the First Interim Application for Approval and Payment of Fees and Costs.

DATED: March 19, 2012

MULVANEY BARRY BEATTY LINN & MAYERS LLP

By: /s/ Patrick L. Prindle
Patrick L. Prindle
Attorneys for Thomas C. Hebrank

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