

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

v.

Nos. 16-55850, 16-56362

LOUIS V. SCHOOLER and FIRST FINANCIAL
PLANNING CORPORATION d/b/a Western
Financial Planning Corporation,

Defendants-Appellees,

SUSAN GRAHAM, *et al.* (No. 16-55850), and
JOSEPH M. ARDIZZONE, *et al.* (No. 16-56362),
Proposed Intervenors,

Movants-Appellants,

THOMAS C. HEBRANK,

Receiver-Appellee.

**REPLY OF THE SECURITIES AND EXCHANGE COMMISSION
IN SUPPORT OF ITS MOTION TO CONSOLIDATE
NOS. 16-55850 AND 16-56362**

The Securities and Exchange Commission hereby submits this reply in support of its motion to consolidate the captioned appeals in Nos. 16-55850 and 16-56362. In so doing, the Commission wishes to make three points in reply to the response filed on October 11, 2016 (the “Response”), by the movants-appellants,

Susan Graham *et al.* in No. 16-55850 and Joseph M. Ardizzone *et al.* in No. 16-56362 (collectively, the “Investors”).

First, the Investors do not dispute that the appeals in Nos. 16-55850 and 16-56362 should be consolidated, except to the degree that consolidation could delay the resolution of the appeal in No. 16-56362. Response 1. But they fail to identify how this hypothetical delay is likely to cause any prejudice. Delay is unlikely to moot the appeal (*see* Response 5), because of the substantial time that will be required for the receiver to liquidate the 23 parcels of real estate now under receivership and to process investor claims prior to making any distribution. Delay is also unlikely to cause a waste of receivership assets (*see* Response 5), since much of the expenses to date have been for maintenance of the real estate now being liquidated and, in any event, all receivership expenses are subject to the ongoing supervision and approval of the district court. Delay is also unlikely to cause any of the Investors’ arguments to go unheard (*see* Response 7), since the district court already *permitted* the investors in No. 16-55850, represented by the same counsel, to intervene for the limited purpose of opposing the receiver’s liquidation and distribution plan.

Second, the Investors suggest that the appeals in Nos. 16-55850 and 16-56362 should be expedited to minimize any such delay. Response 2. If this Court

consolidates these two appeals, the Commission has no objection to expediting the briefing schedule and oral argument in order to minimize any delay.

Third, the Investors suggest that these two appeals should be consolidated with the appeal taken by defendant Louis V. Schooler in No. 16-55167. Reply 1. But on October 14, 2016, Schooler's counsel filed a motion with this Court in which he gave notice of Schooler's death, sought to withdraw as Schooler's counsel, and asked that this Court set an order to show cause for 120 days following such withdrawal regarding why the appeal should not be dismissed. Suggestion of Death, No. 16-55167, Dkt.49, Oct. 14, 2016. The Commission does not oppose that motion. Because of the likelihood that the appeal in No. 16-55167 will be dismissed, consolidation with that appeal is not appropriate.

CONCLUSION

For the foregoing reasons, the appeals in Nos. 16-55850 and 16-56362 should be consolidated.

Respectfully submitted,

s/ Stephen G. Yoder

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October 2016

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 17, 2016. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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Dated: October 17, 2016