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SOUTHERN DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. LOUIS V. SCHOOLER and FIRST FINANCIAL PLANNING CORPORATION d/b/a WESTERN FINANCIAL PLANNING CORPORATION, Defendants.	Case No. 12 CV 2164 GPC JMA **BRIEF OF HONEY SPRINGS PARTNERS IN SUPPORT OF MODIFICATION OF THE PRELIMINARY INJUNCTION ORDER TO REMOVE THE REAL ESTATE GENERAL PARTNERSHIPS FROM THE RECEIVERSHIP** **Date: October 10, 2014** **Time: 1:30 p.m.** **Courtroom: 2D** **Judge: Hon. Gonzalo P. Curiel** **ORAL ARGUMENT REQUESTED**

Honey Springs Partners hereby submits the following brief in favor of removing the Court-appointed receivership over them and the other real estate general partnerships ("GPs") established by First Financial Planning Corporation d/b/a Western Financial Planning Corporation ("Western") and Louis V. Schooler (collectively, "Defendants"), as authorized by the Court in its July 22, 2014 order reconsidering its earlier order of August 16, 2013 (Dkt. No. 629; hereafter "Reconsideration Order").

Dennis P. Gilman, Ph.D., on behalf of Honey Springs Partners, requests to be heard in open court at the hearing scheduled for October 10, 2014, and speak on behalf of Honey Springs Partners for fifteen (15) minutes.

I.

ARGUMENT

The receivership in this matter should be modified to exclude the GPs. By virtue of the express language of the Partnership Agreements and Partners' Representations executed by the investor-partners, the GPs are independent entities, completely separate from the Defendants in this litigation. Defendants have no control whatsoever over the GPs, because they cannot vote or nullify a vote. The GPs are perfectly capable of managing their properties and selling them for a profit. Whether Defendants are found liable for any violation of federal securities law is irrelevant to the issue of whether the GPs should remain in the receivership. While the Receiver and the SEC purport to act in the best interests of the GPs, they have failed to take adequate steps to determine what the interests of the investors are, and instead have made inaccurate factual representations to the Court regarding the powers and abilities of the investors to run their GPs and sell their property. In addition, the Receiver, an officer of the Court, has not acted responsibly to facilitate the determination of the GPs official response as ordered by the Court.

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A. The Hearing for the GPs Improperly Allows the GPs to be Heard Only after they are Placed in Receivership

When the SEC first filed suit, it promised the Court that the GPs would be heard before they were placed in receivership. However, the GPs have been in receivership for two years, and they have never been charged with a wrong-doing or asked whether they wanted to be in the receivership in the first place. Only now are the GPs being provided an opportunity to be heard in open court; yet, the Receiver has had exclusive control of GP properties for at least two years.

This hearing will not provide true "due process" because the hearing should have been provided in the very beginning, before the Court took control of the GPs away from their investors and vested it in a receiver over whom the investors had no say whatsoever. The hearing will also not provide true "due process" in that the SEC or Court have not put forth charges of wrong doing to enable the GP to prepare a defense. Instead, the July 22nd 2014 Court ruling only permits the GP to "...respond to the Court's decision to keep the GPs in the receivership" (Docket No. 629, 5-8).

B. Defendants Have No Control over the GPs or the Investors

From the beginning of this case, the SEC and Receiver have claimed that Defendants "control" the GPs. But Defendants do not "control" the GPs – the GP investors, and only the investors, control the GPs. Each GP's partnership agreement states that *only* the GP investor-partners control the GPs and participate in the control, management, and direction of the GP. The investor-partners can initiate matters for consideration by the partnership, including the distribution of information, and / or requesting a vote of the partnership. The investor-partners can vote to replace the Signatory Partner and Partnership Administrator if they wish, without having to provide a reason for replacing them.

Although Defendants can and do own equity interests in the GPs, the partnership agreements specifically provides that Defendants and their employees and agents **cannot** vote on any general partnership matters, including the sale of land. Thus Defendants, either on their own or by proxy, cannot vote on GP issues. Nor do Defendants possess any power to veto or refuse to honor a vote of the voting investors. Defendants share in the profits of the eventual resale of the raw land to developers, but they do not get to control when the land is to be sold, to whom, and for how much, because of their complete lack of control through voting.

Neither can the Receiver nor the SEC exercise rights concerning assets that Defendants do not own and do not control. Those assets belong solely to the investor-partners who are empowered to vote.

The GP investors, by virtue of retaining control by majority vote, are true general partners, not disguised limited partners. Yet, the imposition of the Receiver has stripped the investors of their powers. The investors had more ability to directly control, participate in, and influence their investment before the Receiver was imposed upon the GPs than they do now. By imposing the Receiver upon the GPs, the Court has turned the investors from general partners into limited partners dependent upon the whims of the Receiver's oversight, thereby creating a self-fulfilling prophecy. Therefore, the Receiver must be removed from control of the GPs.

C. The Investors in the GPs Are Capable of Managing Their Partnerships and Property and Selling the Land for a Profit without the Receiver's Guidance or Control

In the Reconsideration Order, the Court found that the GPs should remain in the receivership because of "day-to-day operations [that] are not as simple as the Court previously thought them to be," such as Western buying out dissatisfied investors' interests, Western loaning money to GPs for funding shortfalls, the

presence of a water system on GPs' property, and persons residing rent-free on GP property (Docket No. 629, 6:5-15).

However, these matters are nothing new – the SEC and Receiver previously raised them unsuccessfully in 2013 when they opposed Defendants' motion to release the GPs from the receivership. The Receiver admitted (Docket No. 206 at 3) that the "GPs may be able to hire somebody to perform some of these functions performed by Western (and possibly survive without others)." The GPs' partnership agreements show that the investors have always had the authority to hire people to perform the management functions, because the investors - but not Schooler or Western - can vote to fire the partnership secretaries and hire new ones.

Therefore the Reconsideration Order is inappropriate because when the Court issued its order in 2013 to release the GPs from the receivership, the Court already understood the GPs' regular operations. Nothing has truly changed that makes the continuation of an involuntary, unconsented receivership appropriate.

The investors include people from all walks of life who are fully capable of making sure property taxes and insurance are paid each year and that an accountant is engaged to prepare Form K-1's. It's no more complicated than when the investors pay their income taxes or the mortgage, property taxes and insurance on their own houses. The SEC and Receiver have not shown that the investors are incapable of performing those tasks.

The SEC and Receiver claim that the land investments are somehow too complicated for the investors to run. But the SEC and Receiver continue to ignore that these investments are raw land: ***They are raw plots of dirt.*** There is no farming, ranching, or mining that takes place. There are no buildings to maintain, no rent to collect. The dirt sits there until such time as the surrounding area has developed, and then it becomes valuable to developers who want to build houses, or shopping centers, or industrial parks. The GPs are not established to develop their lands, and they don't develop them. That is left to the developers who eventually

buy the land from the GPs.

Furthermore, the Co-Tenancy Agreements by which some GPs hold fractional interests to their properties do not undercut the investors' ability to operate the GPs and sell their property at a profit. The Co-Tenancy Agreement plainly and expressly states that any individual partner in any of the co-tenant GPs can simply request a ballot to be issued not only within his/her own GP, but for that ballot to also be issued for a vote of all the members of all the other co-tenant GPs (Docket No. 210-1, § 3.5.1.). Therefore, ***any individual investor has the ability to force a vote to be taken by his/her GP and also all of the co-tenant GPs on any business matter relevant to the GPs.***

It is actually a very simple process that gives each investor direct and immediate ability to bring a matter of business to a full vote upon a mere request. There is no requirement that a member's GP first vote on the issue of whether a ballot request be sent to the other co-tenant GPs, and there is no requirement that each GP's investors must unanimously vote a certain way; all that is needed is that *a simple majority of the investors in each co-tenant GP* vote in favor of selling, etc.

Contrary to what the Court believes in the Reconsideration Order, the Co-Tenancy Agreements do not require that "hundreds, if not thousands of investors, would have to communicate and collaborate before a property may, for example, be sold." (Docket No. 629, 6:20-23). Instead, all it takes is one investor to request that the co-tenant GPs be balloted, followed by the two GP secretaries distributing the ballots to the investors, followed by the investors (on their own) voting. There is no coordination necessary, and the investors are capable of doing this without guidance or instruction by Defendants or the Receiver.

Neither the SEC nor the Receiver has provided any evidence showing that the GP investors are incapable of running their GPs, ensuring that the GP bills are paid, or deciding when to sell their land and for how much. In addition, Section E of this brief shows the GPs are capable of acting in their own interest quickly – even when

obstacles are put in their path by the Court and Receiver. Therefore, the receivership over the GPs should be lifted immediately.

D. Whether Defendants Are Liable for Any Violations of Federal Securities Law is Irrelevant to Issue of Whether the GPs Should be in Receivership

The Reconsideration Order is based on the Court's decision that the GP equity interests were securities (Docket No. 619, p. 5). The SEC and Receiver further argue that the GPs should be included in the receivership to protect them from Western's possible financial failure. However, as even the SEC acknowledges, "***the GPs are separate entities from Western.***"

The GPs have nothing to do with the lawsuit. The SEC has accused none of the GPs or investors of helping Schooler or Western hide money or commit fraud. No GP is named as a party, and no investor has been named either. Whether Defendants are found to have violated the law has nothing to do with whether the GPs own land, or whether the investors can run their GPs, protect their investments, and sell for a profit. Further, if the GP has violated the law, it is a "due process" requirement the GP be charged with the wrong-doing; i.e., be informed of the legal transgression so that the GP may prepare a defense. This has not occurred.

The underlying factors remain the same, whether the Receiver is present or not, or whether the SEC wins its lawsuit: there is nothing that needs to be done to maintain title to the property and eventually sell to another party that the GP investors can't do on their own, without the Receiver.

E. Court's Recognition of GP Independence

Ironically, the Court in its July 22nd ruling (Docket No 629) tacitly recognized the GP's independence from the Defendant and its ability to manage its own affairs

in its order. First, it ordered the GP to "...respond to the Court's decision to keep the GPs in the receivership." Without telling each GP how it was to determine the GP's "official response," the Court tacitly acknowledged the GP has the means to make this determination – and indeed the GP has shown this. As described in Section C above, and as specified in the GP partnership agreement, each GP called for a vote of its partners, in response to the Court order to determine each GP's official response to the Court's decision to keep the GP in receivership. Of the Honey Springs voting units permitted to vote under the partnership agreement, 0.0% voted NO, and 46.481703% voted YES - **to remove the GP from receivership**. Thus, without direction from the Court, the Honey Springs GP acted in accordance with its partnership document and determined an official response to the Court's order. **The GP does not want to remain in receivership**. A list of the partners voting in the affirmative (YES) to remove the GP from receivership is attached at the end of this brief.

Of course, the Court or the SEC's Receiver may choose to argue the GPs response is not official in that the majority of the GP partners in Honey Springs did not vote. The fact the majority of GP partners in this GP or in almost all other GPs did not vote is not surprising on two counts. First, the Receiver was directed by the July 22nd Court order to disseminate the order by, among other methods, emailing it to individual investors. This the Receiver did, beginning on August 4 of this year, with an email that said nothing more than **"Please read and consider the Order carefully. In particular take notice of the dates and deadlines provided therein."** This email, in essence, gave the GPs only five weeks and four days to organize a vote, count the ballots, and prepare a brief. In a world where the vast majority of court cases drag on for months and years, this expectation by the Court was a clear recognition the GP has the ability to act on its own and perform the required tasks efficiently and quickly.

Second, the Receiver was directed to disseminate the Court's order on the

website designated for this litigation. This the Receiver did at www.ethreeadvisors.com. The Receiver, however, also used the Web page to provide a loosely veiled argument that the activities of the GPs were not authorized by the Court: the ballots sent to the investors of each GP were "not approved or authorized by the Court, nor were the issues the ballots ask investors to vote approved or authorized by the Court." Although this statement is true on its face, this argument by the Receiver, an officer of the Court, is sheer ignorance at the very least and willful misdirection at worse. The July 22nd Court order (Docket No 629, 8:5-8) specifically stated "the GPs will be permitted to provide a response to the Court's decision without the response being reviewed or approved by the Receiver." And, the only means by which the GPs can provide an official response to the Court's order is to follow the GP partnership agreements and determining the response via a vote of the GPs. How else can a response be determined? And where is the Court's authority to say the GPs could not determine an "official response" by way of a vote of the individual partners in each GP? Thus, it is argued here the Receiver attempted to influence the outcome of the vote by its posting on the above-referenced web site, and thus dampen the outcome of the GP's official response.

II.

CONCLUSION

Honey Springs Partners respectfully request that this Court honor its partners' majority vote and modify the preliminary injunction order to be removed from the receivership.

DATE: September10, 2014

Respectfully submitted,

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Honey SpringsPartners

HONEY SPRINGS PARTNERS

Group - BRATTON VALLEY

Response to Letter& Ballot - August 2014

Affirmative for Removal of Receiver

	Partner
1	Joel Zimmerman
2	Jayant Ghosh
3	Elsie Shrawder
4	Scott Snyder, IRA
5	Joel Zimmerman, Roth Conversion IRA
6	Robert H Wilhelmsen
7	William Luna
8	Jayant Ghosh, IRA
9	Joan Thompson, IRA
10	Debra McQuillan, Roth Conversion IRA
11	Joel Zimmerman
12	Mark Fanning & Susan Alsted-Fanning
13	William & Victoria Luna
14	Charles & Diana Bojarski, Trustees
15	Elsie Shrawder, IRA
16	Donald Uhlir
17	Michael & Karen Trigs, Grantor and Trustee
18	Debora McQuillan
19	Michael & Linda Collier
20	David & Sandra Jones, Trustees
21	Dennis & Diane Gilman
22	Susan Ciccolini
23	James Jewell, Jr. & Maureen Boggs-Jewell