

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	CIVIL ACTION FILE
Plaintiff,)	NO. 1:06-CV01171-CC
)	
v.)	
)	
GEOFFREY A. GISH; WESTON)	
RUTLEDGE FINANCIAL SERVICES,)	
INC.; ZAMINDARI CAPITAL, LLC;)	
LEXINGTON INTERNATIONAL FUND,)	
LLC, a/k/a LEXINGTON)	
INTERNATIONAL FUND, INC.; AND)	
OXFORD ADAMS CAPITAL, LLC,)	
)	
Defendants.)	

RECEIVER’S RESPONSE TO DEFENDANT GEOFFREY A. GISH’S
OPPOSITION TO MOTION TO RE-APPOINT RECEIVER

Thomas S. Richey, as receiver (the “Receiver”) for Weston Rutledge Financial Services, Inc., Zamindari Capital, LLC, Lexington International Fund, LLC, a/k/a Lexington International Fund, Inc., and Oxford Adams Capital, LLC (the “Receivership Companies”), through his undersigned counsel, hereby files his Response to Defendant Geoffrey A. Gish’s Opposition to Motion to Re-Appoint Receiver, in support of the Securities and Exchange Commission’s Motion to Reappoint Thomas S. Richey as Receiver. In support of this brief, the Receiver

relies on the First and Second Report Regarding Receiver's Activities and Status of the Receivership Estate (Doc. Nos. 36 and 46). The Receiver shows the Court as follows:

I. THE REAPPOINTMENT IS NECESSARY TO SAVE MONEY FOR THE RECEIVERSHIP COMPANIES.

As indicated in the SEC's Reply Brief, the Receiver remains in office even if the Motion to Reappoint the Receiver is not granted. The purpose of the Reappointment is to enable the Receiver to file litigation in the Northern District of Georgia against third parties indebted to the Receivership Estate, as opposed to having to file separate lawsuits all over the country. This will save money for the Receivership Estate and will be far more efficient and expeditious. By granting the Motion for Reappointment, the Receiver is enabled to file the Reappointment Order in other jurisdictions within 10 days, and thereby obtain jurisdiction to bring the litigation in Georgia. See 28 U.S.C. 754; SEC v. Vision Communications, Inc., 74 F.2d 287, 291 (D.C. Cir. 1996); Select Creations, Inc. v. Paliafito America, Inc., 852 F. Supp. 740, 780 (E.D. Wis. 1994) (allowing the Receiver to file within 10 days after entry of an order confirming the original appointment). This Request for Reappointment is a routine technicality and has no effect on whether the Receiver will continue to serve. It is frequently needed in situations where it is not possible

within the first 10 days of a federal receivership to determine the location of all assets or the identity and location of the persons liable to the receivership estate.

II. THE RECEIVER'S RESPONSE TO THE ALLEGATIONS IN DEFENDANT GISH'S OPPOSITION BRIEF

A. The liabilities of the Receivership Companies exceed the Receivership Companies' assets.

1. In his Opposition to Motion to Re-Appoint Receiver ("Opposition Motion"), Defendant Gish claims that "assets of Receivership Companies exceed liabilities to investors" and that "Receiver has documents in his possession that bear this out." See Opposition Motion ¶ 6. Nothing could be farther from the truth.

2. Defendant Gish, acting on behalf of the Receivership Companies, offered and sold nearly \$30 million of securities to more than 300 individuals who thought they were putting money into actual and legitimate investments when in fact Defendant Gish was operating the Receivership Companies as a Ponzi scheme and did not put investors' money into legitimate income-earning investments.

3. Because the Receivership Companies were operated as a Ponzi Scheme, Defendant Gish, acting on behalf of the Receivership Companies used money from new investors to pay supposed "interest payments" to old investors. Only approximately \$11.6 million was returned to the investors out of the nearly

\$30 million invested. The Receivership Companies' outstanding liabilities to investors total at least \$18 million.

4. Upon taking over the Receivership Companies, the Receiver located and took possession of all of the bank accounts and other assets of the Receivership Companies. These included twenty-seven (27) accounts at four (4) different banks, with balances totaling \$1,039,144.43. This amount is far below the \$18 million currently owed to investors, not to mention the amount outstanding to creditors.

5. The Receiver took the deposition of Defendant Gish on November 13, 2006 and Defendant Gish refused to answer any questions posed to him about the whereabouts of the investor funds, instead exercising his right against self-incrimination under the Fifth Amendment to the United States Constitution. Defendant Gish has had ample opportunity to reveal the location of funds (if such funds actually exist) but he has failed to do so. It is telling that he has not disclosed the location of any funds, directed the Receiver to any such funds, nor worked to have third parties return funds to the Receivership, as doing so would help his situation immensely. Gish's assertion of the Fifth Amendment gives rise to adverse inferences on all the questions he refused to answer. Those include fact that he took in \$30 million of investor funds, approximately \$18 million is

unaccounted for and that he directed the transfer of those funds out of the account of the Receivership Companies and that he has done nothing to attempt to recover the missing funds.

B. Because the Receivership Companies' liabilities exceed the Receivership Companies' assets, the Receiver is working diligently to recover funds for the Receivership Companies in order to distribute funds to the investors.

i. *Demands for the return of funds and other property.*

6. In his Opposition Motion, Defendant Gish claims that the Receiver has “refused to bring third parties into the case,” “has not notified third parties that he is now the Chief Executive of the Receivership Companies,” “has not requested or demanded the return of funds from third parties,” and “has not informed third parties of the bank coordinates of Receivership accounts for remittance.” See Opposition Motion ¶¶ 7-10. Each of these statements is false.

7. The Receiver has demanded over \$15 million from various third parties for fraudulently transferred funds they have received. These include demands to Zahra Ghods, Rusa Cap, Inc., and Unisource, LLC; Champion Partners Association and Steven P. Arena; Majestic Capital Management and Karl Johnson; No Guilt Chocolate, Inc. and Mark Goodley; Waterways Management; Seven Star Wines of Moldova, Inc.; Drew Abbott and Lewis Abbott – all persons and entities to whom Mr. Gish handed over Receivership Company funds.

8. Each demand letter enclosed the orders of this Court appointing and confirming Mr. Richey as Receiver and outlines his authority to recover funds for the Receivership Estate. Mr. Gish himself received such a letter. All of these parties thus know that Mr. Richey is the person they should speak to regarding the repayment of their obligations to the Receivership Companies.

9. The demand letters set out how repayment may be made to the Receivership Companies and that the demand letter recipients may contact Receiver's counsel to work out payment arrangements. The Receiver has received no requests for wire transfer information from the demand letter recipients or other third parties, but would provide such information if it were requested.

10. The Receiver has given demand letter recipients fourteen (14) days to remit the amounts owed or to establish a payment plan. The Receiver will pursue litigation against parties refusing to voluntarily settle their debts with the Receivership Companies.

11. In his Opposition Motion, Defendant Gish also claims that it is not in the best interest of the investors to "pursu[e] assets of employees and principals of the Receivership Companies." See Opposition Motion ¶ 11.

12. Obviously, this is a highly self-interested statement by Mr. Gish, who continues to avoid taking responsibility for the massive losses he has caused to his

victims. The Receiver has an obligation to and is currently pursuing all possible sources of recovery, and this includes claims against Mr. Gish and other employees of the Receivership Companies, as well as investors who received profits from the Receivership Companies in excess of their principal investments, as by law, these payments were fraudulent transfers. In re Financial Federated Title and Trust, Inc., 347 F.3d 880, 883-884 (11th Cir. 2003); see also O.C.G.A. § 18-2-74.

13. The Receiver has demanded all property from former employees and principals, as he has a duty to do pursuant to the Court Orders appointing him as Receiver. Mr. Gish has been uncooperative in this process, has failed to provide information promised, including the identity and location of automobiles he purchased with Receivership Company funds.

ii. *Property sold for the benefit of the Receivership Companies.*

14. In his Opposition Motion, Defendant Gish also claims that the Receiver sold property purportedly purchased by Gish prior to the Receivership Companies' operation as a Ponzi Scheme and that these items were sold rather than given to employees and principals. See Opposition Brief ¶ 20.

15. The Receiver never committed to give company property to employees or principals. Before the Receiver moved the Receivership Companies out of their Roswell office, all employees and principals were given the

opportunity to remove personal property from the office. There were several pieces of furniture and office equipment that certain employees and principals claimed belonged to them, however, no proof of ownership was presented to the Receiver and those items were sold for the benefit of the Receivership Companies and ultimately, the investors.

C. The Receiver has hired professionals with the knowledge and skill required to obtain the best recovery for the investors.

16. In his Opposition Motion, Defendant Gish claims that the Receiver has not acted in the investors' best interest because he "replac[ed] knowledgeable, cooperative employees with attorneys and staff costing at least 5 times as much in salary and benefits as employees would cost." See Opposition Motion ¶ 12.

17. Pursuant to the terms of his appointment, the Receiver has hired the following professionals:

- (a) As expressly authorized in the May 17, 2006 Order and as approved in the June 30, 2006 Order, the Receiver employed Powell Goldstein LLP as his counsel;
- (b) The Receiver employed GlassRatner Advisory and Capital Group LLC, a firm of certified public accountants with experience in both forensic accounting and receivership accounting, as accountants for the Receiverships;

- (c) The Receiver has employed Porter Keadle Moore, LLP as forensic electronic evidence recovery experts;
- (d) The Receiver has also employed DoveBid Valuation Services, Inc. (“DoveBid”) as appraiser to appraise the Receivership Companies’ personalty. DoveBid has experience appraising office furniture, and their retention was approved by the Court in its Order of August 24, 2006.

18. The professionals hired are typical of the types of professionals hired to handle Receivership matters. The rates charged by these professionals are the market rates for similar services by professionals of reasonably comparable skill and experience in the Atlanta market.

19. Retaining the employees that helped Defendant Gish perpetuate the Receivership Companies as a Ponzi scheme would be a gross abuse of discretion on the part of the Receiver. The Receiver has spoken with certain former employees to gain assistance on certain matters and will continue to do so as appropriate. The Receiver has obtained and appreciates the cooperation that former employees have shown. It is important to note that not all former employees have not always been forthcoming or willing to offer assistance. Mr. Gish, in particular, has been quite the opposite of cooperative.

20. At the same time, numerous investors have offered evidence that former employees were actively involved in the Ponzi scheme operations, assuring them that their investments were secured and that funds would remain untouched in blocked accounts and would never be placed at risk. The Receivership Company records and the records subpoenaed from third parties demonstrate that these statements were not true.

21. In his Opposition Motion, Defendant Gish claims that the Receiver did not act in the best interest of the investors because he “refus[ed] the assistance of employees and contractors who had significant knowledge of corporate activities, books and records.” This is simply untrue. Again, the Receiver has never refused assistance from anyone, and as stated above has spoken with former employees on occasion. Mr. Gish has refused to provide information and asserted the Fifth Amendment during his deposition and in response to requests for production of documents and interrogatories.

22. The Receiver has not employed attorneys to “do photocopying, filing and other administrative work,” as Defendant Gish claims in his Opposition Motion. See Opposition Motion ¶ 16. This allegation, among many in Defendant Gish’s Opposition Motion, are completely unsupported by any facts and are not true.

D. The Receiver is working diligently to inform all investors of the progress of the Receivership Estate.

i. *Investor proof of claim form process.*

23. During the week of August 28, 2006, the Receiver sent investor claim forms to all investors in the databases of the Receivership Companies. Some of the addresses for certain investors were incorrect due to incomplete records and computer problems encountered in attempting to use information from the Weston Rutledge ACT database. The Receiver is currently working to ensure that his database of investor information is as accurate as possible.

24. In the communication to the investors attaching the proof of claim forms, the Receiver specifically stated that while he was attempting to contact all investors, he may not have all information necessary to do so and encouraged all investors to direct other investors to the Receivership Website for information.

25. The Receiver never asked individual investors to forward misdirected mail, but simply asked the investors assistance if they knew the correct address for other investors. The Receiver always took it upon himself to send the necessary information to the appropriate addresses. The Receiver has also written off the costs of re-sending items that were incorrectly addressed.

26. Defendant Gish now claims that a bar date of December 31, 2006 is unreasonable (see Opposition Motion ¶ 18), but he did not file any opposition to

the Receiver's Motion to Set Bar Date for Investor and Creditor Claims, which was filed on October 31, 2006.

27. The Receiver does not have authority to set a bar date for investor claims. The Receiver only has the authority to request the Court to set such a date, which the Receiver has done.

28. The Receiver has not yet sent a notice of a bar date because one has not yet been approved by this Court. After the Receiver filed his motion requesting that the bar date be set for December 31, 2006, he posted the motion on the Receivership Website so that investors would be aware that such a request was pending and could prepare accordingly in the event that the Court granted the motion.

ii. *Receivership Website.*

29. In late June, the Receiver established the Receivership Website and began posting relevant information for investors. Upon taking office, the Receiver's first priority was to secure and preserve evidence. As soon as those steps were taken and information was learned that could be shared with investors, the Receiver established the Receivership Website. Prior to posting the Receivership Website, the Receiver was available via telephone and e-mail for

inquiring investors. This website is hosted gratis by the Receiver's law firm and is costing nothing to the Receivership Companies to maintain.

iii. *Other communications with investors.*

30. The Receiver has never acted unprofessionally toward or given false or misleading information to investors as Defendant Gish claims in his Opposition Motion. See Opposition Motion ¶ 17. Instead Gish has been flying around the country meeting with investors and untruthfully telling them that they would have gotten their money back if the government had not frozen the assets of the Receivership Companies. This is simply untrue – the funds are not present for return to investors.

31. Defendant Gish claims that the Receiver engaged in “lengthy” conversations with investors that “consum[ed] valuable investor resources.” See Opposition Motion ¶ 19. The Receiver has a duty to answer investors' questions. The issues surrounding the Receivership Companies are complex and confusing, as well as upsetting to investors. The Receiver is obligated to speak to investors who wished to speak with him about their investment accounts with the Receivership Companies. Furthermore, investors have information and evidence to provide regarding the misrepresentations that Mr. Gish made when selling them their investments.

CONCLUSION

The Receiver has fulfilled all duties under the Orders initially appointing him as Receiver for the Receivership Companies and continuously strives to administer the Receivership Estate in the most efficient and effective manner possible. As such, the Receiver respectfully requests that the Court grant the Securities and Exchange Commission's Motion to Re-Appoint Thomas S. Richey as Receiver.

Respectfully submitted this 1st day of December 2006.

/s Jennifer D. Odom

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing RECEIVER’S RESPONSE TO DEFENDANT GEOFFREY A. GISH’S OPPOSITION TO MOTION TO RE-APPOINT RECEIVER with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the attorneys of record.

This 1st day of December 2006.

/s Stacey Godfrey Evans
Stacey Godfrey Evans