

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.)	

THE RECEIVER’S MOTION FOR PARTIAL RELEASE OF FUNDS
HELD IN THE ACCOUNT OF SANTA MONICA CAPITAL, LLC
AT WACHOVIA BANK, N.A. AND BRIEF IN SUPPORT

Thomas S. Richey, as 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”) (the “Receiver”), seeks an Order for a partial release of funds contained in the account of Santa Monica Capital, LLC (“Santa Monica”) at Wachovia Bank, N.A., and for direction and a determination of rights as to the disposition of the remaining funds.

The partial release sought hereby would enable certain Santa Monica members to receive funds they invested in Santa Monica in whole or at least in part. The Receiver requests that the Court consider this motion on an expedited basis because some of the members entitled to receive back funds have an urgent need for them.

The Securities & Exchange Commission (“SEC”) consents to this Motion.

BACKGROUND

Santa Monica was organized by Defendant Geoffrey A. Gish and other Receivership Companies personnel as a vehicle to permit investors to participate in potential investments in foreign bond markets by two other companies, first Riverview Partners, LLC (“Riverview”) and then Ledge, LLC (“Ledge”). One of the Receivership Companies, Zamindari Capital, LLC (“Zamindari”), on Defendant Gish’s instructions, advanced funds to Riverview and Ledge, in part to make up the shortfall in the goal of Riverview and Ledge organizers to assemble a \$10 million pool and in part to front certain Santa Monica members’ investments. Money was moved back and forth through Zamindari in numerous transfers as the composition of Santa Monica’s and Riverview’s memberships changed.

On May 17, 2006, the SEC filed this action seeking injunctive and monetary relief against Defendant Gish and the Receivership Companies and also seeking

the appointment of a Receiver for the Receivership Companies. On that same date, this Court granted a temporary restraining order and ordered a freeze of all assets owned, possessed or controlled by the Receivership Companies or Defendant Gish and all proceeds of the sales of securities alleged in the SEC's complaint.¹

An account at Wachovia Bank for Santa Monica containing \$1,265,000.00 has been frozen pursuant to the Court's order. The frozen account holds funds belonging to the Receivership Companies, as well as funds to which certain Santa Monica members have claims.

After being appointed Receiver, Mr. Richey hired accountants, GlassRatner Advisory and Capital Group LLC ("GlassRatner"), to review and analyze the books of the Receivership Companies and to assist in identifying and analyzing the Receivership Companies' assets and claims and the disposition of their funds.² The Receiver requested that GlassRatner also review bank records of Santa Monica, Riverview and Ledge to determine, among other things, the nature and amount of the claims that the Receivership Companies have to the Santa Monica funds.

¹ On June 30, 2006, the Court entered an order continuing the asset freeze.

² See also the "Second Report Regarding Receiver's Activities and Status of The Receivership Estate" filed on November 20, 2006.

The task was significantly complicated because Santa Monica did not maintain books of accounts. As stated, there also were numerous transfers among the entities and numerous changes in the composition of Santa Monica's membership, and Zamindari was used as a funding vehicle and financial intermediary between Santa Monica and Riverview and Ledge. Matters were further complicated by the facts that (i) some investors who became Santa Monica members initially invested funds directly into Riverview, while others deposited funds with Santa Monica that were transferred to Zamindari, but not forwarded to Riverview, and (ii) some interests in Santa Monica and Riverview were handled through bookkeeping entries only without the transfer of any funds. The accountants have completed the task and have determined to the extent possible the amounts invested by or on behalf of Santa Monica members, as well as the amounts advanced by Zamindari to Riverview on behalf of Santa Monica and its members. The Receiver and his counsel have reviewed GlassRatner's reports and have also analyzed the financial records of the Receivership Companies relating to the transfer of funds into the Santa Monica account, requested and reviewed documents submitted by the investors relating to the funds they invested, subpoenaed and reviewed records from Riverview and Ledge, and interviewed the

former employee of the Receivership Companies with the most knowledge of Santa Monica.

I. Source of the Santa Monica Funds.

Ledge was liquidated in the latter part of May 2006 by its organizers, who returned funds to Ledge investors after the Court imposed the asset freeze. The \$1,265,000.00 was held by Ledge as Santa Monica's share several weeks and was transferred to Santa Monica's Wachovia bank account no. 2000028960573 on June 27, 2006. The amount transferred was supposed to correspond to the amounts then due to the Receivership Companies, as well as the amounts of funds invested by existing individual Santa Monica members. However, there has been no accounting by Riverview or Ledge that verified the amount returned or that reconciled the funds advanced by Zamindari with the amounts returned to Santa Monica.

II. Investor Claims.

In order to assist in the determination of ownership of the \$1,265,000 in funds, the Receiver requested that Santa Monica members submit claims, accompanied by documentation of their cash investments. The following claims have been submitted by the following Santa Monica investors in the following amounts:

Fred Stancampiano	\$250,000
Garry Huber/Mary Ardrey	\$100,000
Elmer & Margaret Begley	\$100,000
Santiago & Tammy Castro	\$100,000
Tom Beck	\$100,000
Michael Young	\$75,000
Henry Wiebe	\$50,000
The Douglas R. & Myra J. Ettenborough Living Trust	\$40,000
David Kim	\$40,000
Adam Ginsburg	\$40,000
Pat Fale	\$75,000
TOTAL	\$970,000

The Receiver and GlassRatner have examined the claims submitted and supporting documentation. According to the claims of investors and the evidence verified by the accountants and the Receiver, all but one of these Santa Monica members were able to show cash investments corresponding to the amount returned with respect to their membership. The exception is Henry Wiebe, whose investment was “funded” by a paper transfer of a credit from his account at Zamindari, which occurred at a time when Zamindari was hopelessly insolvent and unable to pay all the demands for withdrawal of funds.

In addition, Mr. Wiebe and several other investors, Fred Stancampiano, and Adam Ginsburg, according to the Receivership Companies’ records or the results of the Receiver’s investigation, are indebted to the Receivership Estate. The

Receiver asks that funds equaling the amounts of their Santa Monica membership listed above or their obligation to the Receivership Estate, whichever is less, be retained until the Court has adjudicated the ownership of the funds or given the Receiver direction on their disposition or until the Receiver settles with the investors.

This Motion thus seeks the release in full of the principal amounts invested by Tammy and Santiago Castro, Garry Huber and Mary Ardrey, Elmer and Margaret Begley, Tom Beck, Michael Young, David Kim, Pat Fale and The Douglas R. & Myra J. Ettenborough Living Trust. The Receiver requests that \$85,000.00 be released to Fred Stancampiano, but that the remaining \$165,000.00 of the \$250,000.00 in Santa Monica funds attributable to him remain frozen, that \$4,714.00 in funds be released to Adam Ginsburg, but that the remaining \$35,286.00 remain frozen and that all the funds attributable to Henry Wiebe remain frozen pending further order of this Court or, if the Court so directs, be deposited into the Registry of Court.

III. The Receiver has Claims against Certain of the Santa Monica Investors.

The Receiver has the duty to maximize the Receivership Estate for the benefit of all investors and creditors who have suffered losses resulting from Defendant Gish's Ponzi scheme. Under the Court's orders, the proceeds of the

sales of securities by the Receivership Companies are to remain frozen so that they can be used by the Receiver to recover for investors and creditors of the Receivership Estate.

Defendant Gish used Zamindari funds to make advances to Riverview for the benefit of Santa Monica, and the unpaid amounts represent debt that Santa Monica owes to Zamindari. Because the Receiver is a creditor of Santa Monica, his claims take priority over the claims of Santa Monica members to the return of equity investments. Nev. Rev. Stat. Ann. § 86.521; O.C.G.A. § 14-11-605.

The Receiver has claims to the funds as to certain Santa Monica investors, either because they never invested the funds ostensibly returned on their behalf or because they are obligated to the Receivership Estate or both.

Certain investors owe the Receivership Estate because they received profits out of the Receivership Companies over and above the return of the principal they invested. Zamindari credited "Estimated Earnings" to investors' accounts. Some investors withdrew their supposed interest earnings from the Receivership Companies, along with their principal; however, these payments were not in fact profits on their investments, because no actual investments had been made with their funds and there were no earnings. Instead the payments to these investors came from funds that other investors transferred to the Receivership Companies as

investments, thus the Receivership Companies were operated as a Ponzi scheme. These payments were, in law and in effect, fraudulent transfers, because they were made at a time when the Receivership Companies were insolvent. Ponzi schemes, by definition, are insolvent from inception. Stenger v. World Harvest Church, Inc., 2006 WL 870310, *10 (N.D. Ga. Mar. 31, 2006) (unreported case; a copy of this case is attached hereto as Exhibit A). Because of the source of the funds for these payments to investors and the state of insolvency of the Receivership Companies at the time these payments were made, the profiting investors may not retain the amounts that they received in excess of the monies they invested. 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. With respect to the above-listed persons, the Receiver has requested the return of profits from the following:

1. Fred Stancampiano: \$165,000.00.

The records of the Receivership Companies show that Fred Stancampiano received \$165,000.00 more in payments from the Receivership Companies than he invested with them. The Receiver informed Mr. Stancampiano that he is not entitled to retain those funds. Mr. Stancampiano disputes his liability to the Receivership Estate. Therefore, until the issue of the \$165,000 is resolved, the

Receiver requests that Mr. Stancampiano be paid \$85,000 out of Santa Monica and that the disputed \$165,000 remain frozen or be paid into the Registry of the Court.³

2. Henry Wiebe: \$82,617.96.

Mr. Wiebe likewise withdrew a substantial amount of money from the Receivership Companies in excess of his original investment. The Receiver has sent a demand letter to Henry Wiebe for the return of \$32,617.96 that he has yet to repay. (Demand Letter to Mr. Wiebe is attached hereto as Exhibit B).

Equally important, unlike other Santa Monica members listed above, Henry Wiebe did not invest separate funds, in cash, into Santa Monica. Instead, his investment was made in the form of a non-cash “transfer” of part of his Zamindari account balance, much of which was fictional earnings. This “withdrawal” from Zamindari occurred less than two months before the asset freeze after Riverview/Ledge’s \$10 million cash pool was already assembled. Because

³ Mr. Stancampiano claims that on Defendant Gish’s advice he made investments in a company called Rusa Cap, Inc. and contends that he has not been repaid some \$500,000 in money that he invested through that Company. It appears that Zamindari improperly advanced to Mr. Stancampiano supposed “earnings” on his Rusa Cap investment. Rusa Cap is not one of the Receivership Companies, i.e., it is not in receivership and its assets and liabilities are not part of the Receivership Estate. Zamindari’s payment of earnings to Mr. Stancampiano had the effect of magnifying the losses to other Zamindari investors. Therefore, the Receiver is not in a position to offset Mr. Stancampiano’s Receivership Company gains with his Rusa Cap losses.

Zamindari was insolvent and was being operated as a Ponzi scheme, any such transfer was essentially a transfer of other investors' funds.

Mr. Wiebe has asserted a claim of \$50,000 as to the funds in Santa Monica. For Mr. Wiebe to receive those funds now in a distribution from the Santa Monica account would be to give him preferential treatment from other Zamindari investors and would have the effect of increasing their loss, as well as to place funds that Mr. Wiebe owes the Receivership Estate beyond the reach of the Court.

The Receiver believes that because Zamindari advanced funds on behalf of Santa Monica, its claims are those of a lender/creditor that would have priority as to Mr. Wiebe's claims as an equity investor who did no more than transfer fictional account balances among companies controlled by Defendant Gish and Weston Rutledge Financial Services, Inc. employees. For these reasons, the \$50,000 in Santa Monica funds attributable to Mr. Wiebe should remain frozen or be paid into the Registry of the Court.

3. Adam Ginsburg: \$35,286.00.

The Receiver has likewise sent a demand letter to Adam Ginsburg for the return of \$35,286.00 that Mr. Ginsburg received from the Receivership Companies in excess of his original investment. (Demand Letter to Mr. Ginsburg is attached hereto as Exhibit C). Mr. Ginsburg has claim of \$40,000 as to the funds in Santa

Monica. The Receiver requests that, until the issue of the \$35,286.00 is resolved, \$4,714.00 be paid to Mr. Ginsburg and the remaining \$35,286.00 continue to be frozen or be paid into the Registry of the Court.

4. Summary as to Funds that Should Remain Frozen.

The Receiver thus asserts claims as to the following funds and requests that they remain frozen or be deposited into the Registry of Court:

Fred Stancampiano	\$165,000.00
Henry Wiebe	\$50,000.00
Adam Ginsburg	\$35,286.00
Total in Dispute	\$250,286.00

IV. Return of the Remaining Santa Monica Funds.

As to the remaining investors, the Receiver seeks to have the monies owed to the following investors released from the Santa Monica frozen Wachovia bank account in the following amounts:

Fred Stancampiano	\$85,000
Garry Huber	\$100,000
Elmer & Margaret Begley	\$100,000
Santiago & Tammy Castro	\$100,000
Tom Beck	\$100,000
Michael Young	\$75,000
David Kim	\$40,000
Pat Fale	\$75,000
Adam Ginsburg	\$4,714
The Douglas R. & Myra J. Ettenborough Living Trust	\$40,000
The Receivership Estate	\$295,000
Total to be Released	\$1,014,714.00

The Receiver requests that the following amounts remain frozen in the Santa Monica account or be paid into the Registry of the Court until further rulings are made as to the proper recipient of the funds:

Fred Stancampiano	\$165,000.00
Henry Wiebe	\$50,000.00
Adam Ginsburg	\$35,286.00
Total in Dispute	\$250,286.00

V. Notice of the Motion to the Santa Monica Investors and to Wachovia Bank.

Upon filing this Motion, the Receiver has concurrently provided notice to the affected investors and Wachovia Bank. According to the Federal Rules of Civil Procedure, the investors have ten (10) days, excluding weekend days and court holidays to file any objection to the Motion, plus three days for mailing. As the Receiver is filing the Motion on Tuesday, January 2, 2007, any objection should be filed with the Court by January 22, 2007. If no objection is filed, it should be assumed that there is no objection and the Receiver will request the Court to enter an Order on the Motion.

WHEREFORE, the Receiver respectfully requests that the Court grant this Motion directing the release of funds in the Santa Monica account at Wachovia. A proposed order is attached hereto for the Court's convenience as Exhibit D.

Respectfully submitted this 2nd day of January, 2007.

/s/ Jennifer D. Odom
Jennifer D. Odom
Georgia Bar No. 549717
jodom@pogolaw.com
Stacey Godfrey Evans
Georgia Bar No. 298555
sevans@pogolaw.com

POWELL GOLDSTEIN LLP
One Atlantic Center – Fourteenth Floor
1201 West Peachtree Street
Atlanta, Georgia 30309
(404) 572-6600
Fax: (404) 572-6999

Attorneys for Thomas S. Richey,
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

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LLC, a/k/a LEXINGTON)	
INTERNATIONAL FUND, INC.; AND)	
OXFORD ADAMS CAPITAL, LLC,)	
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing THE RECEIVER’S MOTION FOR PARTIAL RELEASE OF FUNDS IN THE ACCOUNT OF SANTA MONICA CAPITAL, LLC AT WACHOVIA BANK, N.A. AND BRIEF IN SUPPORT 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.

I further certify that I have sent a copy of the Motion to Wachovia Bank, NA and the affected investors of Santa Monica Capital, LLC by depositing a copy of same in the United States mail with adequate postage affixed thereto as follows:

Wachovia Bank, NA
c/o Corporation Service Company
40 Technology Parkway South
No. 300
Norcross, GA 30092

Fred Stancampiano
654 Avenue C, Suite 302
Bayonne, NJ 07002

Garry Huber
10119 Redbud Lane
Lenexa, KS 66220

Elmer & Margaret Begley
2681 Calloway Drive, #314-128
Bakersfield, CA 93312

Santiago & Tammy Castro
14391 W. Monte Vista Road
Goodyear, AZ 85338

Thomas Beck
103 Double Eagle Way
Telluride, CO 81435

Michael Young
2001 S. Chilton
Tyler, TX 75701

Henry Wiebe
P.O. Box 69
Dinuba, CA 93618

David Kim
334 Lake Crest Ct.
Weston, FL 33326

Adam Ginsburg
2909 Boyds Cove Drive
Annapolis, MD 21401

Pat Fale
2113 North 20th Street
Sheboygan, WI 53081

Doug & Myra Ettenborough
c/o Bill Leonard, Esq.
Taylor, Busch, Slipakoff & Duma, LLP
1600 Parkwood Circle
Suite 200
Atlanta, Georgia 30339

This 2nd day of January 2007.

/s/ Stacey Godfrey Evans
Stacey Godfrey Evans