IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION	§	
Plaintiff,	§	
	§	**CIV. ACTION NO.3-09CV0298-N**
	§	
v.	§	
	§	
STANFORD INTERNATIONAL BANK, LTD., ET AL.,	§	
Defendants.	§	

DEFENDANT R. ALLEN STANFORD'S OPPOSITION TO RECEIVER'S MOTION TO APPROVE SALE OF INVESTMENT INTERESTS IN USFR, MCB, DGSE, AND SUPERIOR (DOC. 1060)

COMES NOW, Defendant, R. Allen Stanford ("Mr. Stanford"), who files this Opposition to Receiver's Motion to Approve Sale of Investment Interests in USFR, MCB, DGSE, and Superior, and respectfully shows the Court as follows:

ARGUMENT

Under the Order Appointing Receiver and the subsequent Amended Appointment Order, the Receiver Ralph Janvey is charged with preserving the assets of the Receivership Estate ("Estate") and protecting the value of the Estate from irreparable harm.[1] The Receiver's instant motion is another attempt to exceed the authority granted in the Receivership Order and to circumvent his duty to preserve the assets of the Estate and continue his fire sale of Estate assets at a time when it is virtually impossible to maximize their value. Defendant opposes this motion on the same grounds he has opposed similar attempts by the Receiver to dispose of Estate property – namely, that the liquidation of the Estate's interests in (1) US Farm & Ranch Supply

[1] *See* Rec. Doc. No. 157, Amended Order, at 5(g), p5.

Company, Inc. d/b/a USFR Media Group ("USFR"); (2) Merchants Commercial Bank ("MCB"); (3) DGSE Companies, Inc. ("DGSE"); and (4) DGSE's wholly owned subsidiary Superior Galleries, Inc. ("Superior") constitutes a breach of the Receiver's fiduciary duty, is not in the best interests of the Estate and should not occur until the case is resolved on its merits. Accordingly, the Receiver's motion should be denied.

1. Liquidation of the Estate Interests in USFR, MCB, DGSE, and Superior is Not in the Best Interest of the Estate

Selling off the interests in USFR, MCB, DGSE, and Superior at severe discount is not in the best interest of the Estate. To date, the Estate has invested approximately $24,942,239 in USFR. Liquidating that investment for $2 million, as the Receiver recommends, would return only 8% of the capital that the Estate has already invested in the company. Similarly, liquidating the Estate's interest in MCB for $536,250, as recommended by the Receiver, would return only 50% of the over $1 million in capital invested in the companies. Lastly, liquidating the DGSE and Superior investment interests for $3,600,000 would return only 34% of the Estate's $10,550,000 investment. These startlingly low proposed returns alone reveal the absurdity of the Receiver's assertion that liquidation at this price will achieve maximum benefit for the Estate.

Nevertheless, the Receiver attempts to justify liquidating the Estate's investments at an enormous loss by pointing to liquidity discounts and the economic uncertainties in today's market. Those factors are not compelling. The fact that the USFR, MCB, DGSE, and Superior investments may be underperforming and/or illiquid is merely illustrative of the strategy inherent in any private equity investment. While the sales of these investments are sometimes discounted because of their illiquid nature, a discount amounting to 50% or more of invested capital as in the investment interests at issue here, is simply not justifiable.

More to the point, however, the illiquidity inherent in the USFR, MCB, DGSE, and Superior interests demonstrates the long-term investment strategy employed by private equity investors. This strategy puts capital to work over a period of years, thereby allowing investments to mature before investors exit and realize gains. Thus, to the extent that USFR, MCB, DGSE, and Superior have negative performance today, as the Receiver claims, that is not surprising given the current economic climate. That the current economic market is uncertain only underscores the rationale for retaining the Estate's interests in USFR, MCB, DGSE, and Superior. Liquidating these investments now, during a downturn in the economy, is not financially prudent. The Estate should hold the interests, allowing time for the ventures to develop and benefit from a potential stabilization in the market. Indeed, the fact that the Receiver has found prospective buyers for the Estate's interests in USFR, MCB, DGSE, and Superior reveals that the buyers recognize the investments' long-term value. Instead, the Receiver would have you believe that the companies are doomed to failure. It is not apparent from the Receiver's motion whether or not he made any attempts with any of the subject investment interests to formulate or otherwise consider any other possible plans to keep the investments from declining in value or making them profitable. As has been par for the course with the Receiver's *modus operandi*, he seems more interested in selling the Estate's investment interests as fast as he can, rather than maximizing their benefit to the Estate. However, it is interesting to note that the prospective buyers for USFR, MCB, DGSE, and Superior are existing company investors. If these companies are in such dire straits as the Receiver claims and on the brink of financial collapse, would these company investors not be in the best position to evaluate the health of their respective companies? Rather than abandon their companies as the Receiver seeks to do, these existing investors are seeking to purchase the Estate's interests in their respective companies. Apparently, these investors have analyzed the company's financial situation and determined that these companies are viable concerns, and that they have an opportunity to purchase same at a severely discounted bargain price.

The Receiver also ignores the likely hand he played in the fortunes and performance of the investments at issue here. The Receiver notes that finding potential investors has been hampered by the Estate's presence as an investor and debt holder in USFR, DGSE and Superior. The fact remains that had the Receiver not rushed in and ceased operations of the Stanford entities, admittedly viable ongoing concerns, which in turn led to instability in all companies the Stanford entities had interests in, perhaps the Receiver would not find himself in the position he now occupies: selling for a cut-rate price investments which, with proper foresight and management, could have continued as ongoing investments, bringing in profits and more assets to the Estate.

Further, from what the Receiver has represented in the Motion, a full evaluation of the sales process undertaken by the Receive for any these interests is not possible, including how he solicited bids, the parameters of the bid, the identities of the prospective bidders, the type of due diligence he engaged in with respect to these bidders, the amount and structure of the bids, and the approval process for accepting the winning bid. Without all this information, it is impossible to completely evaluate whether the sale of each of these assets is truly in the best interest of the Estate and whether the contracted sales price was the best possible price the Receiver could obtain for the assets. Also, the Receiver, in his rushed attempted sales of the Estate's interest in these investments, fails to comply to with the requirements for the sale of property set forth in 28 U.S.C. § 2001, *et seq*. This failure to comply with the statute further evidences the Receiver's interest in disposing of Estate property in the most expedient manner rather than the most beneficial manner to the Estate.

Further, that the Receiver represents that the remarkably low offers received from prospective buyers were the best he could muster from his marketing of the interests only underscores the point that liquidating these Estate interests under the current economic climate is not in the best interests of the Estate. Retaining these Estate interests until such time the economy stabilizes and the Estate's investment in the interests can be returned or increased is far more beneficial to the Estate that selling it to a buyer that knows it has a motivated seller on his hands. Additionally, the Receiver's decision to liquidate the USFR, MCB, DGSE, and Superior investments is based largely on the recommendation of the Park Hill Group ("PHG"). PHG is not merely an advisor to this attempted transaction; it is also a broker who has an economic interest in the sale. This is a clear conflict of interest and it clouds the advice upon which the Receiver places so much reliance. Given PHG's economic interest in the sale and the current economy, there is no basis to permit the Receiver to liquidate the Estate's USFR, MCB, DGSE, and Superior investments.

2. The Receiver Cannot Liquidate Estate Assets Until the Case is Resolved on the Merits

Allowing the Receiver to continue to sell Estate assets will abrogate this Court's ability to render a meaningful judgment on the merits. A preliminary injunction preserves the status quo, prevents irreparable injury to the parties and preserves the court's ability to render a meaningful decision after a trial on the merits.[2] If the Receiver is able to sell many of the Estate's assets prior to adjudication on the merits, the Court's findings will have little or no value. If Mr. Stanford and/or the other defendants are victorious at a trial on the merits, that result will be

[2] *See Meis v. Sanitas Service Corp.*, 511 F.2d 655 (5th Cir. 1975).

diminished significantly if the Receiver is permitted to continue to dispose of Estate assets. The Receiver should not be permitted to sell Estate assets without an adjudication of the merits of the underlying claims.[3]

3. The Receiver's Liquidation Request Exceeds the Scope of the Appointment Order And is a Breach of his Fiduciary Obligation to Preserve the Estate for All Claimants

It is well established that the purpose for a court to appoint an equity receiver is to take custody and manage property involved in litigation in order to **preserve** the property pending the court's final disposition of the suit.[4] A receiver has a duty to preserve the property for the benefits of the claimants, and that duty must be undertaken without bias to one side or the other.[5] The receiver is a fiduciary to the person who ultimately has rights in the property.[6] Indeed, the Amended Appointment Order explicitly instructs the Receiver on his fiduciary obligations, ordering him to "conserve, hold, manage, and preserve the value of the Receivership Estate, in order to prevent any irreparable loss, damage, and injury to the Estate."[7]

With respect to the instant motion, the Receiver attempts to justify the hasty sale of the USFR, MCB, DGSE, and Superior investments by pointing out that a receiver *may* dispose of receivership property "that does not show evident signs of working out for the benefit of the

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[3] *See Securities Exchange Commission v. TLC Investments and Trade Co.*, 147 F. Supp. 2d 1031, 1036 (C.D. Ca. 2001) (holding, "[i]t is only in rare cases that it is appropriate for a receiver, rather than a bankruptcy court and particularly before judgment has been entered, to liquidate, rather than manage, the assets of a receivership."); *SEC v. Current Financial Services*, 783 F.Supp 1441, 1445-46 (D.D.C. 1992)(agreeing to appoint a receiver after TRO granted but refusing to grant receiver the right to liquidate assets; stating, "[s]uch drastic measures are [not] appropriate prior to the entry of final judgment. The SEC may renew its motion to encompass such relief if necessary in the future").

[4] *See* Wright & Miller, 12 *Fed. Prac. & Proc. Civ. 2d* §2981 (2005).

[5] *See Boothe v. Clarke*, 58 U.S. 322, 331 (1854) (holding, "[a] receiver is an indifferent person…he is appointed on behalf of all parties.").

[6] *See Citibank, N.A. v. Nyland Ltd.*, 839 F.2d 93, 98 (2d. Cir. 1988).

[7] *See* Rec. Doc. 157, Amended Order, at 5(g), p.5.

creditors." With that in mind, the Receiver concludes that it is in the best interest of the Estate to liquidate these investments at once.

The Receiver's motion to liquidate the USFR, MCB, DGSE, and Superior investments once again disregards the significant admonition in *Jones* and *Kingsport* – the two cases on which he bases his authority to liquidate Estate property – that cautions that receivership property should not be liquidated if "its continuance is demonstrably beneficial to creditors."[8] As discussed above, preserving the USFR, MCB, DGSE, and Superior investments (as opposed to liquidating them now in a rushed sale process) is in fact beneficial to all Estate claimants. By concluding otherwise, the Receiver not only demonstrates his unfamiliarity with private equity investing, but also illustrates once again his unwillingness to abide by his fiduciary duty. It is difficult to imagine how liquidating the Estate's interest in any of these investments at a fraction of the Estate's cost basis is consistent with the Receiver's duty to preserve the value of the Estate pending a final adjudication on the merits. This course of action is short-sighted and only serves to propagate the fire sale being conducted by the Receiver. The liquidations do not benefit the Estate in the long run and are thus not in its best interests and must be denied.

CONCLUSION

Based on the foregoing reasons, the Receiver's attempt to liquidate the Estate's USFR, MCB, DGSE, and Superior investments contravenes the Receivership Order and constitutes a breach of his duty to preserve the Estate. Accordingly, Mr. Stanford respectfully requests that the Court deny the Receiver's Request to sell the USFR, MCB, DGSE, and Superior investment interests.

[8] *Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961); *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501 (2d. 1931).

Dated: April 28, 2010

Respectfully submitted,

/s/ Ruth Brewer Schuster

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent those indicated as non-registered participants on April 28, 2010.

/s/Ruth Brewer Schuster