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 HSS (DOC. 785)

COMES NOW, Defendant R. Allen Stanford, individually, and in his capacity relative to defendants Stanford International Bank, Ltd., Stanford Capital Management, LLC, and Stanford Group Company and relief defendants Stanford Financial Group and Stanford Financial Group Building, Inc. (hereinafter collectively referred to as the "Estate"), who files this Opposition to Receiver's Motion to Approve Sale of Investment Interest in HSS, 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 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 to 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

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

opposed similar attempts by the Receiver to dispose of Estate property – namely, that the liquidation of the Estate's interest in Health System Solutions, Inc. ("HSS") constitutes a breach of the Receiver's fiduciary duty, is not in the best interests of the Estate and should not occur, if at all, until the case is resolved on its merits. Accordingly, the Receiver's motion should be denied.

1. Liquidation of the HSS Investment is Not in the Best Interest of the Estate

Selling off the investment interest in HSS at severe discount is not in the best interest of the Estate. To date, the Estate has invested approximately $40 million in HSS. Liquidating that investment for $700,000.00, as the Receiver recommends, would return less than 2% of the capital that the Estate has already invested in HSS. This startlingly low proposed return alone reveals 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 investment at an enormous loss by pointing to the "significant operational and financial difficulties, and substantial uncertainty [that] now exists concerning [HSS's] continued viability." Those factors are not compelling for the very fact that the Receiver's actions more than likely played a part in HSS's difficulties. It is interesting and ironic to note that the Receiver cites to HSS's failed attempt to complete a transaction to purchase Emageon, Inc. in February 2009 as part of his justification for the forced sale of the Estate's interest in HSS to HSS's management. With the freezing of the Estate's assets by the Receiver in February 2009, any hopes of HSS completing the purchase of Emageon, which was to be funded in part by Stanford International Bank, Ltd., were dashed. Thus, the bleak situation presented by Receiver as to HSS's alleged condition is caused in whole or in part by the Receiver's ill-advised and ham-handed shutdown of the

Stanford entities in February 2009. Had the Receiver not rushed in and ceased operations of the Stanford entities, admittedly viable ongoing concerns, perhaps the Receiver would not find himself in the position he now clams he is in: selling for virtual scrap at two pennies on the dollar a company which, with proper analysis and oversight might have been able to, and may still, continue its existence and flourish.

Thus, to the extent that HSS has negative performance today, as the Receiver claims, that is not surprising given the current economic climate and the Receiver's handling of the Estate assets. That the current economic market is uncertain only underscores the rationale for retaining the Estate's interests in HSS, but more importantly the need to diligently and expeditiously analyze this investment so that steps can be taken to stabilize the interest if possible, so as to maximize its worth to the Estate. Instead, as we have seen time and again since the Receiver has taken over the handling of the affairs of the Estate, investment after investment has been ignored by the Receiver and allowed to allegedly deteriorate in value to such a degree that they are being sold off at appallingly low returns on the Estate's initial investment. If handled properly by the Receiver, many of these investments, including HSS, could be managed so that the Estate could hold on to the investment and allow time for the venture to develop and benefit from a potential stabilization in the market. Instead, the Receiver would have you believe that HSS is doomed to fail and requires liquidation to recover even a miniscule percentage of the Estate's initial investment in the company. Quite frankly, this is self-fulfilling prophecy caused by the Receiver's mismanagement of the Estate assets.

The Receiver believes that the HSS investment must be liquidated immediately because of pending capital infusions. This is not a sufficient reason to liquidate the Estate's interest. Not only does the Receiver offer no evidence as to why the Estate cannot comply with its capital

commitments, but there is every reason to believe that the Estate can fund these commitments. Moreover, the Receiver is duty bound to ensure that they are funded to preserve the Estate's continuing interest in HSS. The forced and hurried sales of this interest bring little or no lasting value to the Estate compared to potential gain if these interests are allowed to recover from the current economic climate and maximize their benefit to the Estate. Further, the Receiver, in his rushed attempted sales of the Estate's interest in HSS, 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 interests until the economy stabilizes and the Estate's investment in the interests can be returned or increased may be far more beneficial to the Estate than selling it to the first buyer the Receiver can find. Furthermore, the Receiver's decision to liquidate the Estate's HSS investment 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. What is more, PHG stands to profit from this sale before the Court has even ruled on the Receiver's motion to appoint PHG as his private equity advisor.[2] 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 investment interest in HSS.

[2] *See* Rec. Doc. No. 596.

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.[3] 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 Defendant is victorious at a trial on the merits, that result will be 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.[4]

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.[5] 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.[6] The receiver is a fiduciary to the person who ultimately has rights in the property.[7] Indeed, the

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

[4] *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").

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

[6] *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.").

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

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."[8]

With respect to the instant motion, the Receiver attempts to justify the hasty sale of the HSS investment 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 creditors." With that in mind, the Receiver concludes that it is in the best interest of the Estate to liquidate this investment at once.

The Receiver's motion to liquidate the HSS investment once again disregards the significant admonition in *Jones* and *Kingsport* – the two cases on which the Receiver bases his authority to liquidate Estate property – that cautions that receivership property should not be liquidated if "its continuance is demonstrably beneficial to creditors."[9] As discussed above, preserving the HSS investment (as opposed to liquidating it 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 the investment 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.[10]

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

[9] *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).

[10] The Receiver's Motion to Approve Sale of Investment in HSS emulates his prior attempts to contravene the Court's intent to maintain the "status quo" pending a final adjudication on the merits. Most recently, the Receiver invoked similarly flawed assertions in an attempt to liquidate the Estate's IOF, Midway CC Hotel Partners, InSound, and MBV investment interests. *See* Rec. Doc. No. 637, 660 & 812, Stanford's Opposition to Receiver's Motion for Approval of Sale of IOF Investment Interests and Request for Expedited Relief and Stanford's Consolidated Opposition to Receiver's Motion to Approve Sale of Investment Interest in Midway CC Hotel Partners and Request for Expedited Relief, and Stanford's Opposition to Receiver's Motion for Approval of Sale of Investment Interests in InSound and MBV, respectively. The Court granted the motions and Mr. Stanford has thus far appealed the rulings as to the IOF investments and Midway CC Hotel Partners. Previously, the Receiver breached his duty to

This course of action is short-sighted and only serves to propagate the fire sale being conducted by the Receiver. The requested liquidation does not benefit the Estate in the long run and is thus not in the Estate's best interest and must be denied.

CONCLUSION

Based on the foregoing reasons, the Receiver's attempt to liquidate the Estate's investment interest in HSS contravenes the Receivership Order and constitutes a breach of his duty to preserve the Estate for the benefit of all claimants. Accordingly, Defendant R. Allen Stanford respectfully requests that the Court deny the Receiver's Request to sell the HSS investment interest.

Dated: October 7, 2009

Respectfully submitted,

/s/ Ruth Brewer Schuster

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preserve the Estate's assets by, *inter alia*, allowing the Stanford Aviation Subsidiaries to default on its obligations to VFS Financing, Inc. ("VFS") and then entering negotiations with VFS to surrender the aircraft at a fraction of their value. The Receiver has also already sold off numerous Estate assets at below-market valuations, thereby significantly diminishing the value of the Estate that he has been charged with "preserving." *See* Rec. Doc. No. 439, Opposition to Receiver's Motion for Approval of Interim Fee Application and Procedures for Future Compensation of Fees and Expenses.

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 October 7, 2009.

/s/Ruth Brewer Schuster