

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

SECURITIES AND EXCHANGE COMMISSION	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 3:09-CV-0298-N
	§	
STANFORD INTERNATIONAL BANK, LTD.,	§	
STANFORD GROUP COMPANY,	§	
STANFORD CAPITAL MANAGEMENT, LLC,	§	
R. ALLEN STANFORD, JAMES M. DAVIS, and	§	
LAURA PENDERGEST-HOLT,	§	
	§	
Defendants.	§	

**RECEIVER'S MOTION TO APPROVE SALE OF
INVESTMENT INTEREST IN MIDWAY CC HOTEL PARTNERS AND
REQUEST FOR EXPEDITED RELIEF**

I. INTRODUCTION

Ralph S. Janvey, as Receiver for Defendants and all Stanford-controlled entities, respectfully moves the Court for an order approving the sale of an investment interest held by Stanford Venture Capital Holdings, Inc. ("SVCH"). As explained in detail below, the Receiver has obtained offers from a prospective buyer who wishes to purchase SVCH's investment in Midway CC Hotel Partners, L.P. ("Midway"). The Receiver has reviewed and analyzed this offer, and has sought a recommendation from Park Hill Group ("PHG") concerning it.¹ Based upon his independent evaluation and PHG's recommendation, the Receiver believes that the

¹ On July 16, 2009, the Receiver filed his Motion to Appoint Private Equity Advisor and requested the approval of the Court to retain PHG to manage the Investment Portfolio (as defined below). Due to the time sensitivity surrounding this potential divestment, PHG agreed to review and provide its recommendation to the Receiver regarding the disposition of SVCH's holdings in Midway prior to receiving Court approval. PHG has agreed to waive its proposed 3% fee in connection with this proposed transaction and instead receive a commission of 0.5% of the total purchase price due to the fact that that the Receivership Estate received the offer prior to the proposed retention of PHG and due to the fact that the timing of the pending capital call, as described below, was such that PHG could only pursue limited marketing efforts.

liquidation of the Midway investment pursuant to the pending offer will achieve the maximum benefit from the holding and is in the best interest of the Receivership Estate.

II. FACTUAL BACKGROUND

On February 16, 2009, the Securities and Exchange Commission (the “Commission”) commenced a lawsuit in this Court against R. Allen Stanford, two associates, James M. Davis and Laura Pendergest-Holt, and three of Mr. Stanford’s companies, Stanford International Bank, Ltd., Stanford Group Company, and Stanford Capital Management, LLC (the “Stanford Defendants”). The Commission alleges, in its First Amended Complaint filed on February 27, 2009, that the Stanford Defendants perpetrated a multi-billion-dollar fraudulent scheme by (1) promising high return rates on “certificates of deposit” that exceeded those available through true certificates of deposit offered by traditional banks and (2) selling a proprietary mutual fund wrap program known as Stanford Allocation Strategy using materially false and misleading historical performance data. Am. Comp. (Doc. 48) ¶¶ 3, 6.

The Court found good cause to believe that the Stanford Defendants violated federal securities laws. Accordingly, on February 17, 2009, the Court entered an order appointing Ralph S. Janvey Receiver over all the assets of the Stanford Defendants and all the entities they own or control. Order Appointing Receiver (Doc. 10). On March 12, 2009, the Court entered an Amended Order Appointing Receiver that contained changes not material to this motion (the “Receivership Order”). Amended Order Appointing Receiver (Doc. 157).

The Receivership Order charged the Receiver with marshaling and preserving the assets of the Receivership Estate. In conducting his duties, the Receiver has identified records that reflect initial debt and equity investments by the Stanford Defendants or entities controlled by them totaling approximately \$650,000,000. These investments were apparently made in nearly 40 different companies (the “Investment Portfolio”). While the Receivership Estate’s

records reflect that \$650,000,000 was initially invested, these figures have not been audited and the Receiver and PHG expect that the Receivership Estate will realize much less for these investments. Many of the investments are in entities with negative equity, market conditions or adverse events have reduced the value of others, and a number include contractual commitments that would require the Receivership Estate to contribute additional millions of dollars or face significant dilution or total loss of the investment. Included in the Investment Portfolio is an indirect capital investment by SVCH in Midway. The SVCH holding is a part of the Receivership Estate, and the Receiver now seeks Court authority to liquidate the investment.

III. ARGUMENT AND AUTHORITIES

A common-law equity receiver has the power to dispose of property of the receivership estate when it appears that a receivership is continuing an enterprise that does not show evident signs of working out for the benefit of the creditors. *See Jones v. Village of Proctorville*, 290 F.2d 49, 50 (6th Cir. 1961). Courts appointing a receiver “should see that the business is liquidated as economically and speedily as possible, unless its continuance is demonstrably beneficial to creditors.” *Id.* (citing *Kingsport Press, Inc. v. Brief English Systems*, 54 F.2d 497, 501).

The liquidation of the Midway investment is in the best interest of the Receivership Estate. The offer and related agreement are the product of significant arms-length negotiations between the Receiver and the prospective buyer. The Receiver and PHG have analyzed the offer and have determined that it is fair and equitable given the totality of the circumstances surrounding the investment. While the offer does not rise to the level of the initial investment, it represents a fair market cash price when accounting for liquidity discounts and the economic uncertainties inherent in today’s market. The Receiver and PHG also took into consideration a pending capital call that would require the Receivership Estate to choose

between investing an additional \$3.2 million into the partnership or face having its limited partnership interest diluted from 71.83% to approximately 59.30% pursuant to Midway's partnership agreement.² Given the current market conditions and the inability of the Receivership Estate to make capital contributions, the offer represents the best opportunity for the Receiver to maximize the actual cash value of the Midway investment.

A. SVCH's Holdings in Midway.

Midway was formed to develop, own and operate a 245-room hotel in a mixed use development in Houston, Texas. The hotel is currently under construction and is scheduled to open in August 2009. Records of the Receivership Estate indicate that SVCH invested approximately \$15.3 million in Midway, and its ownership in Midway consists of a 71.83% limited partnership interest.

On February 27, 2009, Midway CC Hotel, Inc., Midway's general partner (the "General Partner"), sent a courtesy letter to the Receiver to inform him that Midway would be issuing a \$24.0 million capital call in 60 to 90 days and that SVCH would be responsible for approximately \$17.2 million. *See* Ex. 1 (Appendix at 1-2). Upon receipt of this letter, the Receiver contacted the General Partner to evaluate the current status of the project. On April 21, 2009, representatives of the Receiver participated on a phone call with the General Partner and discussed SVCH's portion of the upcoming capital call. On April 28, 2009, the General Partner sent the Receiver a letter in which he agreed to segregate the \$24.0 million capital call into four separate capital calls, with the first capital call to be issued in May in the amount of \$4.5 million. *See* Ex. 2 (Appendix at 3-6).

² The General Partner, as defined below, informed the Receiver that the Partnership intends to make additional capital calls, in addition to the \$4.5 million pending capital call, totaling \$19.5 million by January 2010. If the Receivership Estate does not fund these capital calls, its interest in the Partnership will be diluted from 71.83% to approximately 33.77%.

On June 1, 2009, the General Partner formally issued the first capital call pursuant to Section 3.03 of Midway's Limited Partnership Agreement (the "Partnership Agreement"). *See* Ex. 3 (Appendix at 7-8). Pursuant to Section 3.04 of the Partnership Agreement, SVCH had ten business days to satisfy its portion of the capital call. *Id.* If SVCH failed to satisfy its portion of the capital call then, pursuant to Section 3.04(b), Midway's non-defaulting limited partners could satisfy SVCH's portion of the capital call in the form of a loan or additional capital contributions. If the funds were provided in the form of a loan, SVCH would not be entitled to a distribution until the principal and interest on the loans were repaid. If the funds were provided in the form of additional capital contributions, SVCH's limited partnership interest would be diluted.

B. The Offer of Assignment.

During the April 21, 2009 conference call regarding the impending capital call, the participants also discussed whether the General Partner would be willing to market SVCH's limited partnership interest to third party investors, including Midway's other limited partners. On April 22, 2009, the Receiver sent a letter formally authorizing the General Partner to market SVCH's limited partnership interest. On April 28, 2009, the Receiver was informed of a \$2.0 million offer of sale and assignment from one of Midway's other limited partners, Midway T&C Land Investors, LLC ("MTCL"). *See* Ex. 2 (Appendix at 3-6). Subsequently, the Receiver entered into negotiations with MTCL's manager, which resulted in a \$700,000 increase to the offer.

The Receiver's team has spent a significant amount of time analyzing Midway's financial statements to determine whether this offer is fair and reasonable given market conditions, the long-term nature of the investment, and SVCH's large capital obligation going forward. The Receiver's team has determined that, given all of the facts and assumptions

outlined in Midway's letter dated April 28, 2009, the project likely has negative equity in today's market. Therefore, it would not be in the best interest of the Receivership Estate to inject more capital into the partnership. Additionally, because the project is still under construction and is not generating any income, it is unrealistic to locate a third-party buyer in short order in the current market environment.

PHG's assessment further validates the Receiver's conclusions. During its evaluation, PHG performed an analysis of the local real estate market; accessed its and its affiliates real estate resources; and attempted to locate potential investors who were not only willing to purchase SVCH's limited partnership interest for more than \$2.7 million but were also willing to assume SVCH's ongoing capital obligations. PHG located no other suitable investors. PHG concluded that if SVCH failed to satisfy the capital call on June 15, 2009, its limited partnership interest in Midway could be substantially diluted pursuant to Section 3.04 of the Partnership Agreement.³

Taking all of these factors into account, including PHG's 0.5% commission, the Receiver believes that the Receivership Estate will realize the maximum benefit of this investment by accepting the pending offer from MTCL and liquidating SVCH's holdings in Midway. Consequently, the Receiver seeks Court approval to complete the sale and assignment of SVCH's interest to MTCL for a payment of \$2.7 million to the Receivership Estate and the assumption of SVCH's obligations under the Partnership Agreement, including the pending \$4.5 million capital call. The terms of the sale and assignment are reflected in material attached as Exhibit 4 (Appendix at 9-22).

³ The Receiver could object to the dilution under the Receivership Order.

IV. REQUEST FOR EXPEDITED RELIEF

Because of the outstanding capital call, there is considerable urgency with respect to this sale. Because the Receivership Estate is not in a position to inject substantial capital into Midway, it must dispose of its limited partnership interests quickly to avoid the devaluation of its investments. Through negotiations, the Receiver and Midway's general partner have agreed that SVCH's interest will not be diluted at this time. However, under the terms of the Purchase Agreement, Midway's general partner may exercise the terms of the default provisions and attempt to dilute SVCH's interest if this sale is not concluded by July 31, 2009. Due to the critical timeframe associated with the sale of this investment, the Receiver respectfully requests that the Court expedite the consideration of this motion.

V. CONCLUSION AND PRAYER FOR RELIEF

After significant consultation with his team and PHG, the Receiver believes that the liquidation and sale of the Midway investment would inure maximum benefit to the Receivership Estate. As a result, the Receiver respectfully requests that the Court approve (i) the sale pursuant to the attached Purchase and Sale Agreement, (ii) PHG's 0.5% commission and (iii) such other relief that the Court may deem just and equitable.

Dated: July 22, 2009

Respectfully submitted,

Baker Botts L.L.P.

By: /s/ Kevin M. Sadler

Kevin Sadler
Texas Bar No. 17512450
kevin.sadler@bakerbotts.com
Robert I. Howell
Texas Bar No. 10107300
robert.howell@bakerbotts.com
David T. Arlington
Texas Bar No. 00790238
david.arlington@bakerbotts.com
1500 San Jacinto Center
98 San Jacinto Blvd.
Austin, Texas 78701-4039
(512) 322-2500
(512) 322-2501 (Facsimile)

Timothy S. Durst
Texas Bar No. 00786924
tim.durst@bakerbotts.com
2001 Ross Avenue
Dallas, Texas 75201
(214) 953-6500
(214) 953-6503 (Facsimile)

**ATTORNEYS FOR RECEIVER
RALPH S. JANVEY**

CERTIFICATE OF CONFERENCE

Counsel for the Receiver conferred with the parties to this case. Counsel for the Receiver conferred with David B. Reece, counsel for the SEC, who stated that the SEC is not opposed to this motion and the relief sought herein. Counsel for the Receiver conferred with Jeff Tillotson, counsel for Laura Pendergest-Holt, who stated that Ms. Pendergest-Holt is not opposed to this motion and the relief sought herein. Counsel for the Receiver conferred with John Little, Court-appointed Examiner, who stated that he is unable to agree to or oppose the relief requested because of insufficient information about the proposed terms of relief. Counsel for the Receiver conferred with Manuel P. Lena, Jr. counsel for U.S.D.O.J. (IRS) who stated that the IRS has no position on the relief sought herein. Counsel for the Receiver conferred with David Finn, counsel for James Davis, who stated that Mr. Davis does not oppose this motion and the relief sought herein. Counsel for the Receiver conferred with Ruth Schuster, counsel for R. Allen Stanford, who stated that she is opposed to this motion and the relief sought herein because of insufficient information.

/s/ Kevin M. Sadler

Kevin M. Sadler

CERTIFICATE OF SERVICE

On July 22, 2009 I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Kevin M. Sadler

Kevin M. Sadler