



Stanford also argues that the Receiver's proposed procedures to sell the Yacht — including the Receiver's use of Ardell, the same broker who sold the Yacht to Stanford in the first place — do not fulfill the Receiver's obligation to preserve the assets and to minimize the expenses to the Receivership Estate. This argument fails for many reasons: the "Stalking Horse" sales procedures will allow the Receiver to maximize the sale price, to sell the Yacht in an efficient and cost-effective manner, even at a time when the seller's market for such luxury chattels is challenging at best, and to avoid the significant monthly expenses associated with maintenance of the Yacht that continue to be a drain on the Receivership Estate. Stanford has no basis to object to the Receiver's use of Ardell, a world-renowned yacht brokerage firm with years of expertise, to broker the Yacht.

Finally, Stanford requests the return of several "personal items" to his girlfriend Andrea Stoelker ("Stoelker") and himself that are present on the Yacht. Although the Receiver does not seek to sell the personal property items onboard the Yacht at this time, such items are Estate assets because Stanford and Stoelker purchased them with funds derived from the Ponzi scheme.

### ARGUMENT

#### **A. The Yacht is a Receivership Estate asset.**

Stanford argues that the Yacht is not an asset of the Receivership Estate because it is an untainted asset that he purchased before the fraud in this case began. Doc. 834 at 1-3. Although the Receiver initially believed that Stanford purchased the Yacht in or around 1998 for \$3.9 million (Doc. 796 at 3), after further investigation of the Yacht's history, the Receiver has discovered that Stanford actually bought the Yacht in November 2002. Decl. of Craig Cadwalader at App. 1; *see also* Decl. of Jeanette Day at App. 4. In addition to the \$3.9 million purchase price, Stanford spent approximately \$19.8 million in tainted funds to refit and refurbish

the Yacht between 2003 and 2005. Decl. of Jeanette Day at App. 4-5; *see also* Decl. of Craig Cadwalader at App. 2.

The SEC has alleged that the Ponzi scheme in this case dates back until *at least* 1999. Doc. 48 (1st Am. Compl.) at 1. Furthermore, Defendant James M. Davis has admitted that the Stanford fraud was a Ponzi scheme from the beginning. Doc. 771 (Davis Plea Agreement) at ¶ 17(n) (Stanford, Davis, and other conspirators created a “massive Ponzi scheme”); Doc. 807 (Davis Tr. of Rearraignment) at 16:16-17, 21:6-8, 21:15-17 (admitting the Stanford Ponzi fraud was a “massive Ponzi scheme ab initio”). The record, therefore, demonstrates that Stanford purchased, refitted, and refurbished the Yacht — to the tune of \$23.7 million — well within the period that the Stanford Ponzi fraud was in full swing. *See* Decl. of Jeanette Day at App. 4-5. The Yacht, therefore, is properly considered a Receivership Estate asset.

**B. The Receiver’s proposed sale of the Yacht preserves the value of the Receivership Estate and minimizes expenses.**

Stanford argues that the proposed sales procedures and the sale of the Yacht do not satisfy the Receiver’s obligation to the Receivership Estate to maximize value and minimize expenses. Doc. 834 at 4-5. In particular, Stanford alleges that \$2.5 million is not an adequate starting price and that the Yacht’s docking fees are excessive. *Id.*

Contrary to Stanford’s assertions, \$2.5 million is a fair starting price for the Yacht under a “Stalking Horse” agreement. *See* Decl. of Craig Cadwalader at App. 2. Ardell, the yacht broker for whom Mr. Cadwalader works, has surveyed comparable yachts for sale in the Fort Lauderdale area, where the Yacht is docked. *Id.* The average asking price for comparable yachts is approximately \$5.4 million. *Id.* (listing asking prices). But in the broker’s professional opinion, these yachts will sell for only 70% of their asking prices. *Id.* Thus, the average fair

market value of comparable yachts is only approximately \$3.8 million. Furthermore, Stanford's refitting and refurbishing of the Yacht substantially reduced its resale value as compared to other similar yachts. *Id.* Because the Yacht is older than the other comparable yachts, its value is even further reduced. *Id.* Indeed, the Receiver is fortunate to find any buyer at all because "[t]he market is quite poor right now with few sales and banks are not readily lending for boat purchases except under special circumstances." *Id.*

The \$2.5 million dollar starting price is just that — a *starting* price. Under the Receiver's proposed sales procedures, any entity that wishes to participate in the bidding process may make a competing offer that is at least \$250,000 higher than the prior bid. Doc. 796 at 5. Such a process not only maximizes the potential proceeds to the Estate, but will also enable the Receiver to sell the Yacht in an orderly, efficient, and equitable manner. The "as-is, where-is" nature of the sale further reduces transaction costs to the Estate. *See* Decl. of Craig Cadwalader at App. 2. The adoption of the Receiver's sales procedures<sup>1</sup> and the sale of the Yacht under such procedures are clearly in the best interests of the Receivership Estate.

Stanford alleges — with no evidence to support him — that the dockage fees incurred by the Receivership Estate are at least 80% more than other such fees in Fort Lauderdale. Doc. 834 at 5. On the contrary, the dockage fees that the Receiver is paying are quite comparable to other such fees in the area. Decl. of Craig Cadwalader at App. 1-2. The monthly storage and upkeep costs for the Yacht, from the beginning of the Receivership through the end of September 2009, total \$472,541. Decl. of Jeanette Day at App. 5. The Receiver expects to spend a minimum of \$35,440 per month through the remainder of 2009, for a total

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<sup>1</sup> Although Ardell is authorized to pay out of the proceeds of the Yacht's sale all known liens, mortgages, and bills, any such payment shall be subject to the Receiver's review and approval. A revised order reflecting this clarification is filed concurrently with this Reply.

cost to the Receivership Estate of over \$578,000 for 2009. *Id.* at 5. This significant drain on the Receivership Estate should not continue. There is virtually no benefit to the Estate of continued ownership of the Yacht, and funds that would otherwise be available for use to compensate investors are being diverted to pay the steep monthly costs incurred by the Receivership Estate for storage and upkeep of the vessel.

In sum, the Receiver's proposed sale both preserves the value of the Receivership Estate and minimizes the Estate's expenses. By maximizing the amount of funds ultimately available for distribution to victims of the Defendants' fraud, the proposed sale furthers the objectives of the Receivership and should be approved.

**C. The personal property items onboard the Yacht are Receivership Estate assets.**

Stanford alleges that the following personal items onboard the Yacht are not Receivership Estate assets and that the Receiver should return them to Stanford and Stoelker: "several small sculptures; linens; lamps; table top items (placemats, napkin rings, napkins, runners, coasters, candle holders, salt [and] pepper shakers, serving pieces, etc.); DVDs; CDs; and Mr. Stanford and Ms. Stoelker's personal scuba gear – dive vests, masks, snorkels, mouthpieces, etc." Doc. 834 at 5-6, 5 n.3.

On the contrary, the evidence shows that Stanford and Stoelker purchased these items and many others using credit cards paid with funds from Stanford Eagle, LLC's operating accounts at Trustmark National Bank and Republic National Bank.<sup>2</sup> Decl. of Jeffrey Ferguson at App. 31-32. The Trustmark operating account was primarily funded with money from Stanford Financial Group Global Management, LLC's ("SFGGM") Bank of Houston ("BOH") account number ending 8870 and from Stanford Financial Group Company's ("SFGC") Trustmark

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<sup>2</sup> The Receiver and his professionals are continuing to investigate the specific source of the funds for the Republic operating account.

account number ending 4586. *Id.* at 32. The Receiver and his professionals have previously shown that the substantial majority of funds received or utilized by the Stanford Entities, including SFGC and SFGGM, were CD Proceeds generated by the Stanford Ponzi scheme. *See* Decl. of Karyl Van Tassel (Doc. 18) at 8, 10-16 in Case No. 3:09-cv-00724-N. In fact, the Receiver has specifically determined that the BOH 8870 account was funded with CD Proceeds. *See id.* at 22.

Because Stanford and Stoelker purchased these items with tainted money, they are Receivership Estate assets. Although the Receiver does not now seek Court approval to sell the personal property on the Yacht, the Receiver does not believe it is in the best interests of the Estate to transfer them to Stanford or Stoelker at the present time.

#### CONCLUSION

The Yacht is a Receivership Estate asset because Stanford purchased, refitted, and refurbished it with money tainted by the Stanford Ponzi scheme during the time that the SEC alleges that the fraud in this case occurred. The personal property items onboard the Yacht are also Estate assets, as Stanford and Stoelker purchased them with tainted funds. The Receiver's proposed procedures for the sale of the Yacht preserve the assets of the Estate and minimize the expenses thereto. The sale procedures will allow the Receiver not only to maximize the sale price, but to sell the Yacht in an efficient and cost-effective manner and to avoid the monthly expenses that continue to be a significant drain on the Receivership Estate. For these reasons, the Receiver requests that the Court grant its motion to approve the sale procedures and the sale of the Yacht per those procedures.

Dated: October 28, 2009

Respectfully submitted,

BAKER BOTTS L.L.P.

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**CERTIFICATE OF SERVICE**

On October 28, 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 the Court-appointed Examiner, 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  
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