

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

MAY - 6 2015
TIM RHODES
COURT CLERK

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Oklahoma Department of Securities)
ex rel Irving L. Faught, Administrator)
)
Plaintiff,)
)
vs.)
)
Seabrooke Investments, LLC, et al.,)

Case No. CJ-2014-4515

**DEFENDANTS' OBJECTION TO RECEIVER'S INTERIM APPLICATION FOR
ORDER APPROVING RECEIVER'S FEES AND EXPENSES FOR THE PERIOD
ENDING MARCH 31, 2015**

Defendants Seabrooke Investments, LLC, et al ("Defendants") respectfully responds to *Receiver's Interim Application for Order Approving Receiver's Fees and Expenses for Period Ending March 31, 2015* ("Receiver's Application").

BACKGROUND FACTS

1. On August 11, 2014 the Plaintiff, Oklahoma Department of Securities ("Plaintiff"), filed its verified Petition for Permanent Injunction and other Relief ("Petition") and Application for Temporary Restraining Order, Order Freezing Assets, Order Appointing Receiver, Order for Accounting and Temporary Injunction ("Application") pursuant to the Oklahoma Uniform Securities Act of 2004 ("Act"), Okla. Stat. Tit. 71 §§ 1-101 through 1-701 (2011).

2. On August 11, 2014 the Court entered an Order for Temporary Restraining Order and appointing Ryan Leonard as Receiver for Defendants.

3. On September 5, 2014 the Court entered an Order granting a Temporary Injunction and Ancillary Relief and ordered that Ryan Leonard should remain as receiver.

4. As part of the order granting Temporary Injunction and Ancillary Relief, the Court

ordered that the Receiver may apply to the Court for payment of fees, from time to time, in a reasonable sum to be determined by the Court and from such sources as approved by the Court and for reimbursement or reasonable expenses incurred in connection with his duties as Receiver.

5. On September 3, 2014 the Receiver filed an Interim Application for Order Approving Receiver's Fees and Expenses for the Period for the period of August 11, 2014, including the fees and expense of the attorney and accountant approved by the Court to assist the Receiver.

6. On October 6, 2014 the Court entered an Order Granting Receiver's Interim Application for Fees and Expenses for Period from August 11, 2014 through August 31, 2014 ordering that fees and expenses totaling \$72,298.75 shall be paid as follows: \$41,951 shall be paid to Receiver Ryan Leonard; \$20,871.25 shall be paid to Attorney Robert D. Edinger; and \$9,476.50 shall be paid to Accountant Barbara Ley.

7. On October 10, 2014, the Receiver filed an Interim Application for Order Approving Receiver's Fees and Expenses for the Period of September 1, 2014 through September 30, 2014 including the fees and expense of the attorney and accountant approved by the Court to assist the Receiver. This Application was amended on October 14, 2014 to correct typographical errors on the attached exhibit.

8. On November 4, 2014 the Court entered an Order Granting Receiver's Interim Application for Fees and Expenses for Period of September 1 through September 30, 2014 ordering that fees and expenses totaling \$67,541.07 shall be paid as follows: \$48,292.07 shall be paid to Receiver Ryan Leonard; \$17,257.50 shall be paid to Attorney Robert D. Edinger; and \$1,991.50 shall be paid to Accountant Barbara Ley.

9. On November 13, 2014 the Receiver filed an Interim Application for Order Approving Receiver's Fees and Expenses for the Period of October 1, 2014 through October 31, 2014 including the fees and expense of the attorney and accountant approved by the Court to assist the Receiver.

10. On December 5, 2014 the Court entered an Order Granting Receiver's Interim Application for Fees and Expenses for Period of October 1 through October 31, 2014 ordering that fees and expenses totaling \$45,149.63 shall be paid as follows: \$37,184.63 shall be paid to Receiver Ryan Leonard and \$7,965.00 shall be paid to Attorney Robert D. Edinger.

11. On December 22, 2014 the Receiver filed an Interim Application for Order Approving Receiver's Fees and Expenses for the Period of November 1, 2014 through November 30, 2014 including the fees and expense of the attorney and accountant approved by the Court to assist the Receiver.

12. On January 22, 2014 the Court entered an Order Granting Receiver's Interim Application for Fees and Expenses for Period of November 1 through November 30, 2014 ordering that fees and expenses totaling \$23,524.44 shall be paid as follows: \$18,037.44 shall be paid to Receiver Ryan Leonard and \$5,487.00 shall be paid to Attorney Robert D. Edinger.

13. On February 13, 2015 the Receiver filed an Interim Application for Order Approving Receiver's Fees and Expenses for the Period of December 1, 2014 through January 31, 2015 including the fees and expense of the attorney and accountant approved by the Court to assist the Receiver, applying for fees totaling \$40,985.95 to be paid to receiver and for fees totaling \$22,051.25 to be paid to Receiver's Attorney Robert D. Edinger.

14. On February 27, 2015 Defendant filed their objection to Receiver's Interim

Application for Order Approving Receiver's Fees and Expenses for the Period of December 1, 2014 through January 31, 2015.

15. On March 11, 2015 the Court entered an Order Granting Receiver's Interim Application for Fees and Expenses for Period of December 1, 2014 through January 31, 2015 ordering that fees and expenses totaling \$63,037.20 shall be paid as follows: \$40,985.958 shall be paid to Receiver Ryan Leonard and \$ 22,051.25 shall be paid to Attorney Robert D. Edinger.

16. On March 19, 2015 the Receiver filed an Interim Application for Order Approving Receiver's Fees and Expenses for Period Ending February 28, 2015 including the fees and expense of the attorney and accountant approved by the Court to assist the Receiver, applying for fees totaling \$20,980.61 to be paid to receiver, for fees totaling \$7,330.75 to be paid to Receiver's Attorney Robert D. Edinger and for fees and expenses totaling \$8,298.09 to be paid to Receiver's Accountant Barbara Ley.

17. On April 7, 2015 Defendant filed their objection to Receiver's Interim Application for Order Approving Receiver's Fees and Expenses for the Period ending February 28, 2015.

18. On April 27, 2015 the Court entered an Order Granting Receiver's Interim Application for Fees and Expenses for the period ending February 28, 2015 ordering that fees and expenses totaling \$36,609.45 shall be paid as follows: \$20,980.61 shall be paid to Receiver Ryan Leonard, \$7,330.75 shall be paid to Attorney Robert D. Edinger, and \$8,298.09 shall be paid to Receiver's Accountant Barbara Ley.

19. On May 1, 2015 the Receiver filed an Interim Application for Order Approving Receiver's Fees and Expenses for the Period of March 1, 2015 through March 31, 2015 including the fees and expense of the attorney and accountant approved by the Court to assist the Receiver,

applying for fees totaling \$19,473.36 to be paid to receiver, for fees totaling \$7,463.50 be paid to Receiver's Attorney Robert D. Edinger and for fees and expenses totaling \$5,047.42 to be paid to Receiver's Accountant Barbara Ley.

ARGUMENT AND AUTHORITIES

Since the creation of the receivership on August 11, 2014 until February 28, 2015, the Receiver, Receiver's Counsel and Accountant have been awarded amounts totaling \$308,160.56 out of receivership assets as compensation for work performed during the course of the receivership. Pursuant to the Court's September 5, 2014 Order, the Receiver was granted permission to apply to the Court for payment of fees, from time to time, in a *reasonable sum* to be determined by the Court and from such sources as approved by the Court and for reimbursement of reasonable expenses incurred in connection with his duties as Receiver. (emphasis added). When a district court creates a receivership, its focus is "to safeguard the assets, administer the property as suitable, and to assist the district court in achieving a final, equitable distribution of the assets if necessary." *Liberte Capital Group, LLC v. Capwill* 462 F.3d 543, 551 (6th Cir. 2006). "Part of the [receiver's] duties is to make sure that [the receivership's properties] don't get improperly dissipated and diminished in value along the way." *Id.* vol. II, at 555. In the context of bankruptcy proceedings it has been held repeatedly that "the Court has a duty, regardless of whether objections are filed, to determine the reasonableness of all fee requests." *In re Jensen-Farley Pictures, Inc.*, 47 B.R. 557, 585 (Bankr. D. Utah 1985).

In just eight (8) months the assets in the receivership have paid more than three hundred thousand dollars in receiver's fee, receiver's counsel fees and receiver's accountant fees. The Receiver appears to be expending vast resources of the receivership properties in order to pay their own fees. We simply do not believe it was the Court's intention to allow the assets of the

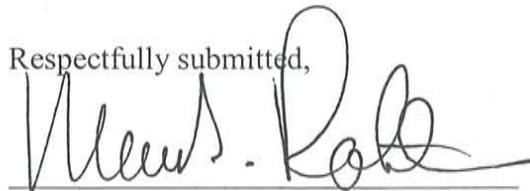
receivership to become so vastly depleted in such a short amount of time. The Court must therefore consider the propriety of the receiver's claims in the light of the facts reflected in the record. 45 Am. Jur., Receivers, § 281. Other Courts have held that "The receiver and all professionals must exercise proper billing judgment in seeking fees from the receivership estate, and should limit their work to that which is reasonable and necessary." *See Sec. & Exch. Comm'n v. Aquacell Batteries, Inc.*, No. 6:07-cv-608-Orl-22DAB, 2008 U.S. Dist. LEXIS 7074, 2008 WL 276026, at *3 (M.D. Fla. Jan. 31, 2008)

In spite of having already been awarded more than \$300,000.00 in fees, and having been awarded payment of additional fees in the amount of \$36,609.45, just four days prior to their most recent application, the Receiver and those assisting the Receiver have now applied for additional fees totaling \$31,984.28. Allowing additional compensation at this time flies directly in the face of the purpose for which the receivership was created and is neither reasonable nor necessary.

CONCLUSION

In light of the facts presented and authorities cited, Defendants respectfully requests this Court denies Receiver's Interim Application for Order Approving Receiver's Fees and Expenses for the Period Ending March 31, 2015.

Respectfully submitted,



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CERTIFICATE OF MAILING

This is to certify that on this 6th day of May, 2015 a true and correct copy of the above and foregoing was mailed to:

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