

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Miami Division)**

SECURITIES & EXCHANGE COMMISSION,

Plaintiff,

Case No.: 10-22078-CV-Moreno/Torres

vs.

ESTATE OF KENNETH WAYNE MCLEOD,
F&S ASSET MANAGEMENT GROUP, INC. and
FEDERAL EMPLOYEE BENEFITS GROUP, INC.,

Defendants.

**RECEIVER'S UNOPPOSED MOTION FOR AUTHORITY TO EMPLOY
EWALD ENTERPRISES, INC. D/B/A EWALD AUCTION & REALTY
AS AUCTIONEER TO SELL PERSONAL PROPERTY**

Michael I. Goldberg (the "Receiver"), in his capacity as Receiver of Federal Employee Benefits Group, Inc. and F&S Asset Management Group, Inc. (collectively, the "Receivership Entities"), files this Motion for Authority to Employ Ewald Enterprises, Inc. d/b/a Ewald Auction & Realty as Auctioneer to Sell Personal Property, and states:

1. The United States Securities and Exchange Commission ("SEC") initiated this proceeding on June 24, 2010. In its complaint, the SEC alleged that the Receivership Entities, along with Kenneth Wayne McLeod ("McLeod") perpetrated a Ponzi scheme defrauding approximately \$35 million from nearly 300 victims. The SEC also sought the appointment of a receiver over the Receivership Entities. On even date, the Court entered an Order ("Receivership Order") appointing Michael I. Goldberg as receiver for the Receivership Entities.

2. The Receivership Order authorizes the Receiver to employ "legal counsel, actuaries, accountants, clerks, consultants and assistants as the receiver deems necessary and to

fix and pay their reasonable compensation and reasonable expenses ... subject to approval by this Court at the time the Receiver accounts to the Court for such expenditures and compensation." *See* Receivership Order, ¶ 4.

3. The Receiver desires to employ auctioneer to assist him with securing, evaluating, and auctioning the personal property acquired in this case from Susan McLeod pursuant to the terms of the parties' settlement agreement previously approved by this Court. [D.E. 64]. A description of the personal property assets to be auctioned herein is attached hereto as **Exhibit "1"** (the "Property"). (The description of the Property may be amended to add additional items prior the auction.)

4. The Receiver believes that selling the Property via auction is in the best interest of the receivership estate and that an auction will generate the highest and best value for the Property.

5. To assist him with his duties, the Receiver seeks to employ Ewald Enterprises, Inc. d/b/a Ewald Auction & Realty ("Ewald A&R" or the "Auctioneer"). The Receiver has selected this Auctioneer because Auctioneer has the ability and experience to render the necessary assistance. Ewald A&R is a Florida corporation and a licensed real estate broker, auctioneer and appraiser. Ewald A&R is authorized to conduct auctions in the State of Florida pursuant to Florida Statutes § 468.381 *et. seq.*

6. To the best of the Receiver's knowledge, the Auctioneer has no connection with the Receivership Defendants or any other party in interest, their respective attorneys and accountants as disclosed in the attached Declaration of Proposed Auctioneer attached hereto as **Exhibit "2"**

7. The Auctioneer has prepared an Auction Proposal Summary which provides the terms and conditions of the auction sale, the Auctioneer's compensation and the resume of Ewald A&R's principal, Robert H. Ewald. A copy of the Auction Proposal Summary is attached hereto as **Exhibit "3"**.

8. The Auctioneer has agreed to advance the costs of any expenses incurred in preparing for and holding the auction. The Auctioneer has further agreed to perform the required services in this case on a fee basis summarized as follows:

(a) A flat fee commission rate of five (5%) of the bid price, plus a ten (10%) buyer's premium;

(b) The Auctioneer will receive out-of-pocket expenses up to \$4,000 to cover the cost of transporting the vehicles and other assets to the auction site and for advertising expenses as outlined in the attached Auction Proposal Summary.

(c) The Auctioneer will advance the cost of any out of pocket expenses for cleaning, repairs, storage, etc. as approved by the Receiver that are necessary to maximize the value of the asset.

9. The Auctioneer will evaluate, secure, and make arrangements for the sale of the Property at public auction as soon as practicable.

10. Upon completion of the auction, the Auctioneer will submit a report to the Receiver summarizing the results of the auction and stating the fees and expenses which will be paid to Auctioneer in accordance with the Order approving the retention. The Auctioneer will attach to the report invoices for all third-party costs. The Receiver requests that all fees and expenses shall be paid without the necessity of further notice or hearing.

INCORPORATED MEMORANDUM OF LAW

The Receiver's power, duty and authority is derived in part from the Receivership Order, which empowers the Receiver to employ professionals as the Receiver deems necessary and to fix and pay their reasonable compensation and reasonable expenses, subject to approval by the Court at the time the Receiver accounts to the Court for such expenditures and compensation. Although the Receivership Order explicitly requires the Court's approval prior to compensating the Receiver's professionals, the Receiver also seeks the Court's approval prior to formally engaging the Auctioneer. The district court has broad powers and wide discretion to determine relief in an equity receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992). The Receiver believes it is in the best interest of the Receivership Entities and their creditors to employ Ewald A&R and therefore requests the Court grant the relief requested herein.

WHEREFORE, the Receiver moves for the entry of an order granting this Motion, approving the retention and compensation of Robert H. Ewald and Ewald Enterprises, Inc. d/b/a Ewald Auction and Realty upon the terms and conditions stated herein, and for such other and further relief as the Court deems just and proper.

LOCAL RULE 7.1 CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that the Receiver has conferred with counsel for the United States Securities and Exchange Commission who has no objection to the relief requested herein.

AKERMAN SENTERFITT
Attorneys for Michael I. Goldberg,
Court-Appointed Receiver
Las Olas Centre II, Suite 1600
350 East Las Olas Boulevard
Fort Lauderdale, Florida 33301
Telephone: (954) 463-2700
Facsimile: (954) 463-2224

By: /s/ Joan M. Levit
Joan M. Levit
Florida Bar No.: 987530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 21, 2011, I electronically filed the foregoing document with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served on this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Joan M. Levit

1:10-cv-22078-FAM

Notice has been electronically mailed to:

C. Ian Anderson andersonci@sec.gov, jacqmeinv@sec.gov, landaul@sec.gov
Securities & Exchange Commission
801 Brickell Avenue, Suite 1800
Miami, FL 33131
andersonci@sec.gov
representing **Securities and Exchange Commission**

Michael Ira Goldberg michael.goldberg@akerman.com, charlene.cerda@akerman.com,
kimberly.matregrano@akerman.com; Tamara Jill Savin tamara.savin@akerman.com
Akerman Senterfitt
350 E Las Olas Boulevard, Suite 1600
Fort Lauderdale, FL 33301-0006
954-463-2700
954-463-2224 (fax)
michael.goldberg@akerman.com
representing **Michael I. Goldberg, Receiver**

Matthew R. Kachergus sheplaw@att.net
William J. Sheppard
D. Gray Thomas
Elizabeth L. White
Sheppard White Thomas & Kachergus PA
215 Washington Street
Jacksonville, FL 32202
904-356-9661
904-356-9667 (fax)
sheplaw@att.net
representing **Estate of Kenneth Wayne McLeod**

Mark Devereaux mark.devereaux@usdoj.gov
Assistant United States Attorney
USAO No. 049
300 N. Hogan Street, Suite 700
Jacksonville, Florida 32202-4270
904-301-6300
904-301-6310 (fax)
representing **United States of America**

EXHIBIT "1"

**MCLEOD AUCTION INVENTORY
AS OF JUL 18, 2011**

Location	Description	Qty
Wentworth	Olhausen pool table (needs to be re-felted)	1
	Miscellaneous Georgia football and framed items	lot
	Moomba Outback ski boat, HIN# US-1SR0B328E505, deferred maintenance	1
	2005 Boat Mate single axle boat trailer, VIN#5A7BB21135T003234	1
	Sea Doo Jet Skis (been in water for 3-4months, not running, no trailer)	2
	2008 Boxer BBQ trailer, VIN#2MSUBA1148H000983	1
	2006 Haulmark, tailgate trailer, VIN#16HCB151X6G081885	1
	Carry on Trailer (Located At S. McLeod's Parents House)	1
Yachtsman	Large Sony flat screen TV	2
	Sony DVD player	2
	Denon mulizone receiver	1
	Whirlpool front load Duet washer & dryer	2
	GE Profile ss refrigerator/freezer	1
	Precor C954 treadmill	1
	Precor EFX546 elliptical machine	1
	Inspire M3 workout machine	1
	Sony flat screen TVs (small)	2
	Phil Mickelson framed photos	2
	Maytag ss refrigerator/freezer-garage	1
	Tomberlin E-merge 48SS red deluxe golf cart-garage	1
	EZ-GO golf cart-garage	1
Vehicles	2006 Hummer H2, leather, broken left front and pasenger rear windows, custom XD Series rims and wheels, VIN#5GRGN23U96H121418	1
	2006 Dodge Charger Limousine, leather rear cmpartment, cloth front, front are ripped apart somewhat, VIN#2B3LA43G66H507856	1
Other	2004 Pace Trailer (Approx. 10 ft), VIN#4FPFB10194G088105; Tag #Q374SD	1
	E-Z Go Golf Cart located at The Golf Club of Amelia Island, 4700 Amelia Island Parkway, Amelia Island, Florida 32034	1

EXHIBIT "1"

EXHIBIT "2"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Miami Division)

SECURITIES & EXCHANGE COMMISSION,

Plaintiff,

Case No.: 10-22078-CV-MORENO/Brown

vs.

ESTATE OF KENNETH WAYNE MCLEOD,
F & S ASSET MANAGEMENT GROUP, INC. and
FEDERAL EMPLOYEE BENEFITS GROUP, INC.,

Defendants.

DECLARATION OF PROPOSED AUCTIONEER

I, Robert H. Ewald, declare under penalty of perjury pursuant to the provisions of 28 U.S.C. §1746 that the following statements are true and correct:

1. I am an auctioneer and appraiser duly licensed by the State of Florida (Auctioneer's License No. AU 1340).
2. I am the president of the firm of Ewald Enterprises Inc. (Auction Business No. 2473).
3. Neither I nor any member of Ewald Enterprises, Inc. have any connections with the Receiver, debtors, creditors, any other party in interest, their respective attorneys and accountants, or any other person employed in the office of the Receiver except that:

I have been employed by the Receiver in other unrelated cases in which the Receiver also serves as Receiver.

Dated this 11th day of July, 2011.

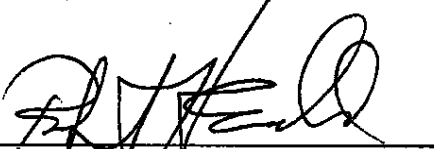

Robert H. Ewald, Auctioneer
Ewald Enterprises Inc.
12472 Lake Underhill Road, Suite 312
Orlando, Florida 32828
Telephone (407) 275-6853

EXHIBIT "3"



June 28, 2011

Via e-mail ONLY [kimberly.matregrano@akerman.com]

Ms. Kim Matregrano
Akerman Senterfitt
Las Olas Centre II, Suite 1600
350 E. Las Olas Boulevard
Ft. Lauderdale, Florida 33301

Re: FEBG Receivership, Michael I Goldberg, Receiver
Auction Proposal Summary

Ms. Matregrano:

I appreciate you allowing Ewald Auction & Realty to provide a proposal for the auction of the vehicles and items that we inspected last week. I tender this letter summary of how we would propose to handle the auction and a breakdown of fees:

- We can handle the moving/transportation of the vehicles and assets to our facility on Old Cheney Hwy in Orlando, Florida on an "At Cost" basis to be capped at \$2,500. (Copies of invoices will be provided.)
- The auction would take place as soon as possible in conjunction with other estates' assets as appropriate, presumably in our July auction on the 23rd if there are no notice constraints and title work can be handled by then.
- All items will be catalogued and placed up for bid in both a live and on-line auction.
- As a fee, we would propose to charge as follows:
 - On titled vehicles: the ten percent (10%) buyer's premium to the buyers and a five percent (5%) fee to the estate.
 - On non titled items: the ten percent (10%) buyer's premium to the buyers and a five percent (5%) fee to the estate.
- Expenses will be charged as follows:
 - A prorata share of advertising expenses to be capped at \$1,500.
 - Any repairs/detailing that is quoted and agreed upon in writing by the Receiver prior to it being done.
- Our auctions are geared towards the end user of the vehicles which routinely generates more than the normal 'dealer only' auctions.
- All items sell to the Highest Bidder, Regardless of Price.

Should you have any other questions, please feel free to call me on my cell.
Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Ewald", is written over the word "Sincerely,".

Robert H. Ewald, President
Ewald Enterprises, Inc.

EXHIBIT "3"

AUCTION SITE
7350 Old Cheney Highway
Orlando, FL 32807

Office 407.275.6853 • Fax 407.275.8772
WWW.EWALDAUCTIONS.COM

MAILING ADDRESS
12472 Lake Underhill Rd., Ste. 312
Orlando, FL 32828

ROBERT HOLDEN EWALD

12472 Lk. Underhill Rd, #312, Orlando, Florida 32828 (407) 275-6853 e-mail: bob@ewald-enterprises.com

PROFESSIONAL HISTORY

EWALD ENTERPRISES, INC.

October 2005 to Present

Orlando, Florida

President/Owner/Broker/Auctioneer. Founded company to deal in all aspects of real estate sales, from conventional listings to auctions, personal property appraisals and State Court actions including Receiverships and Assignment for the Benefit of Creditors. Responsible for solicitation of business (primarily real estate), project and firm management, estate administration including liquidations, inventories and appraisals. In his career, conducted in excess of 750 auctions of real estate, business inventories, vehicles, furniture, fixtures and equipment.

- Licensed Real Estate Brokerage (License Number CQ1024095)
- Licensed Real Estate Broker (License Number BKO626224)
- Licensed Florida Auction Business (License Number AB2473)
- Licensed Florida Auctioneer (License Number AU1340)
- Served as Receiver in State Court Actions in Brevard and Lake Counties, Florida

KARLIN DANIEL & ASSOCIATES, INC.

May 1999 to October 2005

Central Florida Region

Independent Contractor. Responsible for solicitation of business (primarily real estate), project management, estate administration including liquidations, inventories and appraisals. Conducted over 300 auctions of real estate, business inventories, vehicles, furniture, fixtures and equipment.

MOECKER AUCTIONS, INC.

September 1994 to May 1999

Miami and Orlando, Florida

President. Merged two auction companies into one. Responsible for day-to-day operations including solicitation of business, financial projections, planning and analysis, personnel and estate administration including liquidations, inventories and appraisals. Conducted over 250 auctions of business inventories, vehicles, furniture, fixtures and equipment. Collectively held over \$7,000,000 in company trust account.

MEININGER & MEININGER, P.A., Bankruptcy/Trustee Law Firm

1991 - September 1994

Orlando and Tampa, Florida

Operations Manager. Responsible for smooth operations of two bankruptcy law offices, including financial projections, planning and analysis, personnel, and case and computer network administration

HOLDEN JO & CO., INC.

1990 - September 1994

d/b/a Bob Ewald Auctioneers

1992 - September 1994

Auctioneer. Achieved Auctioneering license (AU1340, AB930) while working at Meininger & Meininger, P.A. to assist in liquidation of bankruptcy estates via auction. Assisted in the development of 4th Dimension computer program specifically designed for the auction business.

d/b/a MedCol

1990 -1992

President. Responsible for all aspects of company set-up and operations, including new business development, collections operations, and administration for this medical collections agency.

PAPERMINT

1988 -1990

Melbourne, Florida

City Manager. Directed all aspects of the Melbourne edition of this direct mail advertising publication with \$1.2 million in yearly sales.

NORWEST FINANCIAL

1985 -1988

Melbourne, Florida

Branch Manager. Instrumental in accomplishing numerous company expansion goals in progressively responsible positions for this \$5 billion banking services firm

EDUCATION

UNIVERSITY OF FLORIDA, Gainesville, Florida

- B.S.B.A in Finance, 1985

FLORDIA AUCTIONEERS ACADEMY, Orlando, Florida

- Colonel Designation in May, 1992
- Licensed Florida Auctioneer (AU1340) and Auction Business (AB930)

TASK ACADEMY OF REAL ESTATE

- Licensed Real Estate Salesperson (#SL0626224)

IFREC REAL ESTATE SCHOOLS

- Licensed Real Estate Broker (#BK0626224)

NATIONAL AUCTIONEERS ASSOCIATON

- Completed Certified Auctioneer's Institute (CAI) in March 2010
- Accredited Auctioneer of Real Estate (AARE) Designation October 2006
- Certified Estate Specialist Designation (CES) in December 2003

PROFESSIONAL and Other AFFILIATIONS

- National Auctioneers Association
- Florida Auctioneers Association
- Central Florida Bankruptcy Law Association
- Rotary International, Rotary Club of Avalon Park and Rotary Club of Orlando, 1996 - Present
Club President, 2007-2008
- Orange County Public Schools School Advisory Committee Chair -Waterford Elementary 2004-2006
- Timber Creek High School Athletic Club President 2005 - 2009, Sitting Director 2009 - Present
- Waterford Lakes Softball Treasurer, Spring 2001 to Spring 2005