

IN THE CIRCUIT COURT FOR
ST. JOHNS COUNTY, FLORIDA,
PROBATE DIVISION

IN RE: ESTATE OF

File No.: CP10-375

KENNETH W. McLEOD

Division: 55

Deceased.

**PETITION FOR ORDER APPROVING ALLOCATION OF
FUNDS TO THE RECEIVERSHIP ESTATE**

Petitioner, Michael I. Goldberg, as Curator of the Estate of Kenneth W. McLeod, respectfully petitions this Court for an Order authorizing the Curator to allocate commission checks, a portion of the IRS tax refunds, and the proceeds from the sale of two condos to the receivership estate, and states:

1. Kenneth W. McLeod ("Decedent") passed away on June 22, 2010.
2. Prior to his passing, the Decedent perpetrated a Ponzi scheme defrauding approximately \$35 million from nearly 300 victims.
3. On June 24, 2012, the United States Securities and Exchange Commission initiated proceedings against Decedent's companies, F&S Asset Management Group, Inc., Federal Employee Benefits Group, Inc. (hereafter, the "Receivership Entities"), and Decedent, in the United States District Court for the Southern District of Florida under Case No.: 10-22078-cv-Moreno (the "Receivership Case or Receivership Estate").

4. On that same date, Petitioner was appointed by the Receivership Court as the receiver ("Receiver") for the Receivership Entities (the "Receivership Order"). A copy of the Receivership Order was previously filed with this Court.

5. Pursuant the Receivership Order, the Receiver is expressly authorized to take immediate possession of all property, assets and estates of every kind of the Receivership Entities.

6. On September 3, 2012, the Petitioner was subsequently appointed as Curator for the Estate of Kenneth Wayne McLeod.

7. Petitioner, in his capacity as Curator, is in the process of filing the Petition for Discharge and making a pro-rata distribution to the remaining four (4) Creditors in this case with the remaining assets in the estate. However, before Decedent's estate can formally close, a determination must be made on the allocation of commission checks, IRS refunds, and proceeds from the sale of two condos, as more fully discussed below.

Commission Checks

8. Decedent, prior to his passing, was hired by various federal agencies to conduct retirement education and planning seminars across the country for federal employees, and to provide specific financial investment advice to those in attendance. Through these seminars and other means, Decedent often solicited prospective clients to retain his services as a registered broker and/or licensed insurance agent for retirement planning purposes.

9. In approximately November, 2010, Petitioner started to receive commission checks payable to the Decedent for life insurance policies written by Decedent prior to his death (the "Commission Payments").

10. To date, Petitioner has received approximately \$17,000 in Commission Payments, and still continues to receive small monthly payments on policies that are being renewed by policyholders.

11. To the best of Petitioner's belief, the Commission Payments originated from policies that were sold by Decedent to investors through the Receivership Entities. Petitioner believes that the Commission Payments were solely derived from the underlying *Ponzi* scheme, and that Decedent's creditors are not entitled to the benefit of said proceeds. Accordingly, Petitioner believes that the Commission Payments received to date, and all future payments, should be allocated to the Receivership Estate.

12. It is also worth noting that the Commission Payments received in 2013 average approximately \$367 per month. Assuming that future Commission Payments are received in that like amount, the legal fees associated with managing said funds, would mostly likely result in de minimis pro rata distribution to creditors.

13. Accordingly, the Petitioner hereby requests that all past and future Commission Payments shall be considered an asset of the Receivership Estate, where they can be managed further and eventually paid to the Receivership's creditors.

IRS Refunds

14. Petitioner retained the services of accountants in the Receivership Case to review the books and records of the Receivership Entities and prepare pre-receivership tax returns. During this process, the accountants also reviewed Decedent's individual tax returns filed jointly with his wife, where it was discovered that a potential asset existed in the form of a tax refund.

15. The final Form 1040 filed by Decedent and his wife, Susan McLeod (the "McLeod's and/or Taxpayers") prior to the appointment of Petitioner as Curator was for the year

2008. With the cooperation from Decedent's wife, the accountants prepared the McLeods' personal tax returns for 2009 through the time of Decedent's death. In addition, they amended their personal returns for the prior two years. In sum, the losses sustained by the Receivership Entities flowed through to the McLeods' personal returns giving rise to the income tax refunds discussed herein.

16. Petitioner received \$52,608 and \$29,406, respectively, as tax refunds based on the McLeods' 2007 and 2008 amended personal income tax returns. Petitioner also anticipates receiving an additional \$20.00 in conjunction with the Mr. and Mrs. McLeod's 2009 and 2010 returns.

17. Based on information and belief, the vast majority of the refunds can be traced to the fraudulent business activity of the Receivership Entities, and a small portion may pertain Decedent individually. Petitioner proposes that under these circumstances it would be fair and equitable to divide the tax refunds where 30% of the proceeds or \$24,604.20 would be allocated to the Probate creditors and 70% or \$57,409.80 would be allocated to the Receivership creditors.

18. It should be noted that the accountants have been paid for their services solely out of the proceeds from the Receivership Case, and that no funds have been expended by the Decedent's estate for tax preparation.¹ The amount charged by the accountants to date in preparation of both the Receivership Entities' and the McLeods' personal tax returns is \$41,175, with \$25,698 of said amount being attributable solely to the preparation of the McLeods' personal returns. Consequently, although the lion's share of the tax refunds are being proposed for distribution to the Receivership creditors, in reality, when factoring in the amounts that will or

¹ The accountants have been partially paid to date for their services out of the Receivership Case. The remainder of any sums due and owing will also be paid out of the Receivership Case pending the Receivership Court's approval of same.

have been paid to the accountants out of the Receivership Case, reduces their proposed share an additional 30 to 50%.

19. Based on the foregoing, the Petitioner hereby requests that 30% of the tax refunds be allocated to the Probate Case, and the remainder be allocated to the Receivership Case.

Sale of Two Condos

20. Prior to Decedent's passing, he owned two condominiums in Fernandina Beach, Florida that were not homestead properties (the "Properties").

21. On August 26, 2011, Petitioner filed a Petition for Order Authorizing Sale of Real Property and Determination of Non Homestead pertaining to the Properties.

22. On September 22, 2011, the Court issued an order approving the sale of the Properties and ordered Petitioner to hold the funds in escrow pending a determination as to whether the funds should be distributed through the Receivership Estate or the Decedent's Probate Estate.

23. Based on information and belief, the Decedent acquired the Properties with funds fraudulently obtained from his victims as part of the Ponzi scheme. Decedent's personal creditors should not be able to benefit from the proceeds of the sale of these properties when the victims (i.e. Receivership creditors) have not fully recovered their losses due to Decedent's fraud.

24. The net proceeds being held by Petitioner from the sale of the Properties, after payment of fees and expenses, is \$14,741.19.

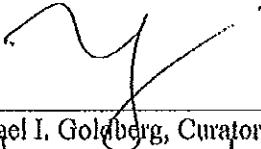
25. Accordingly, Petitioner believes that net proceeds from the sale of Properties should be allocated to the Receivership Estate.

WHEREFORE, Petitioner, as Curator of the Estate of Kenneth Wayne McLeod, requests and Order authorizing him to allocate past and future commission checks, 70% of the IRS tax

refunds, and the net proceeds from the sale of two condos to the Receivership Estate, and grant any such further relief as this Court deems just and proper.

Under Penalties of perjury, I declare that I have read the foregoing and the facts alleged are true to the best of my knowledge and belief.

Signed on 10/25, 2013.



Michael I. Goldberg, Curator



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