

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Miami Division)
CASE NO.: 10-22078-CV-MORENO/TORRES**

SECURITIES & EXCHANGE COMMISSION,

Plaintiff,

vs.

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

Defendants.

**RECEIVER'S MOTION FOR ORDER
APPROVING SETTLEMENT WITH KEITH KORSOG
AND INCORPORATED MEMORANDUM OF LAW**

Michael I. Goldberg (the "Receiver"), in his capacity as Receiver of Federal Employee Benefits Group, Inc. ("FEBG"), F&S Asset Management Group, Inc. ("FSAMG") and the Estate of Kenneth Wayne McLeod (collectively, the "Receivership Entities"), files this Motion for Order Approving Settlement with Keith Korsog ("Motion"). In support of this Motion, the Receiver states as follows:

1. On June 24, 2010, the United States Securities and Exchange Commission ("SEC") initiated these proceedings. 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 and sought the appointment of a receiver over the Receivership Entities. On even date, the Court appointed Michael I. Goldberg as receiver for the Receivership Entities.

2. Just prior to the filing of the SEC's complaint, McLeod died from a self-inflicted gunshot wound to the head. In his suicide note, McLeod referenced the sum of \$50,000 owed to him by Keith Korsog ("Korsog").

3. The Receiver contacted Korsog and learned that McLeod, through Price-McLeod Holdings, LLC, ("Price-McLeod") made a loan to Keith Korsog in the sum of \$100,000. According to Korsog, he made interest payments to Price-McLeod equal to eight percent of the loan until McLeod's death. Korsog also paid the sum of \$50,000 to Price-McLeod on March 15, 2010. Korsog has confirmed the payment by providing the Receiver with a copy of the cancelled check deposited in Price-McLeod's bank and endorsed by Price-McLeod.

4. Price-McLeod Holdings, LLC is a administratively dissolved Florida limited liability company. According to John Price, McLeod and he formed the company in 2009 for the purpose of investing in real estate. Price states that only McLeod provided the operating funds.

5. The Receiver has confirmed that on February 26, 2009, FEBG wired the sum of \$100,000 from its bank account to Price-McLeod's bank account. The wire transfer corresponds with the date of the Loan. Accordingly, the Receiver believes the Loan was made with proceeds of the monies stolen from his victims.

6. The Receiver and Korsog has reached an agreement, whereby Korsog agreed to pay the remaining principal balance of \$50,000 to the Receiver on or before January 31, 2012. Payment has been received by the Receiver and is being held in trust pending approval of this motion. A true and correct copy of the Stipulation for Settlement (the "Agreement") is attached hereto as Exhibit A.

INCORPORATED MEMORANDUM OF LAW

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 power of courts over receivers, including their authority to control them "in the settlement of all demands against the property held by them in their capacity as receivers, is well established..." *Bancroft v. Allen*, 138 Fla. 841, 190 So. 885 (Fla. 1939). It is equally the duty of the court appointing a receiver to compel the settlement of claims against the property in his possession in the most expeditious manner, so as to avoid litigation and expense to the fund in charge of the court. *Id.* 138 Fla. at 854; *Fugazy Travel Bureau, Inc. v. State*, 188 So.2d 842, 843 (Fla. 4th DCA 1966).

The right of a receiver to settle claims and compromise actions with the approval of the court is well recognized. *Id.*; *O'Neal v. General Motors Corporation*, 841 F. Supp. 391, 398 (M.D. Fla. 1993). Moreover, the Receivership Order entered in this case, specifically authorizes the Receiver to, among other things: "[D]efend, compromise or settle legal actions...in which the Defendants or the receiver is a party, commenced either prior to or subsequent to this Order, with authorization of this Court..." See ¶ 6 of the Receivership Order. Accordingly, the Receiver seeks approval of this Court to enter into the Agreement. The Receiver believes the settlement is in the best interest of the parties and the Receivership Estate.

WHEREFORE, the Receiver respectfully requests this Court enter an order in the form of Exhibit B, approving the Agreement; reserving jurisdiction to enforce the terms of the settlement; and granting such other relief as is 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
350 East Las Olas Boulevard
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Fort Lauderdale, FL 33301
Telephone: (954) 463-2700
Facsimile: (954) 463-2224
Attorneys for Receiver

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

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on February 10, 2012, 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

Matthew R. Kachergus sheplaw@att.net

Michael Ira Goldberg michael.goldberg@akerman.com, charlene.cerda@akerman.com,
kimberly.matregrano@akerman.com

Tamara Jill Savin tamara.savin@akerman.com

Notice has been mailed to

D. Gray Thomas
Sheppard White Thomas & Kachergus PA
215 Washington Street
Jacksonville, FL 32202

William J. Sheppard
Sheppard White Thomas & Kachergus PA
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Elizabeth L. White
Sheppard White Thomas & Kachergus PA
215 Washington Street
Jacksonville, FL 32202

EXHIBIT "A"

STIPULATION FOR SETTLEMENT

This Stipulation of Settlement ("Agreement") is entered into by and between Michael I. Goldberg ("Receiver"), in his capacity as court-appointed Receiver for Federal Employee Benefits Group, Inc. ("FEBG") and F&S Asset Management Group, Inc. ("FSAMG"), and Keith Korsog, ("Korsog" and jointly, with the Receiver, the "Parties"), who stipulate and agree as follows:

RECITALS

WHEREAS, on June 24, 2010, the United States Securities and Exchange Commission ("SEC") filed a Complaint in the U.S. District Court for the Southern District of Florida (the "Court"), styled *SEC v. McLeod, et al.*, and assigned Case No.: 10-22078-CV-MORENO/TORRES.

WHEREAS, in the complaint, the SEC alleged that Defendants, FEBG and FSAMG (jointly, the "Receivership Entities"), along with Defendant, Kenneth Wayne McLeod ("McLeod"), perpetrated a Ponzi scheme defrauding approximately \$35 million from nearly 300 victims, by diverting the victims' investment funds from FEBG's accounts to McLeod's personal accounts for his own personal use and benefit.

WHEREAS, upon the request of the SEC, on June 24, 2010, the Court entered an Order appointing Michael I. Goldberg as the receiver over the Receivership Entities and the assets of the Receivership Entities.

WHEREAS, just prior to the filing of the SEC's Complaint, McLeod died from a self-inflicted gunshot wound to the head.

WHEREAS, prior to his death, in March of 2009 McLeod loaned Korsog the sum of \$100,000 (the "Loan").

WHEREAS, Korsog paid McLeod interest at eight (8%) on the principal amount of the Loan; repaid \$50,000 in March of 2010 and continued to pay interest until McLeod's death in June 2010.

WHEREAS, the Receiver claims an interest in recovery of the Loan.

WHEREAS, in order to avoid the costs and risk of litigation, the Parties have agreed to resolve their disputes and release their claims against each other.

AGREEMENT

NOW THEREFORE, in consideration for the mutual covenants and undertakings contained herein and other good and valuable consideration, which is hereby acknowledged by the Parties, the Parties agree to the following terms in full and complete settlement of their dispute regarding payment of the Loan.

1. Court Approval. The Parties agree that this Agreement is subject to approval by the Court. The Receiver shall file a motion with the Court seeking approval of this Agreement.

2. Settlement Payment. Korsog shall pay the Receiver the principal balance of the Loan, in the sum of \$50,000.00 on or before January 31, 2012 ("Settlement Payment").

3. Default. In the event Korsog fails or refuses to make the Settlement Payment as provided herein, the Receiver is entitled to obtain a judgment against Korsog in the amount of the Settlement Payment, plus his attorneys' fees and costs incurred as it relates to this settlement. The judgment shall be entered by the Court without hearing, upon the Receiver filing an Affidavit of Non-Payment.

4. Release. Upon compliance by Korsog to the terms of this Agreement, the Receiver shall release Korsog from any additional obligations for payment of the Loan.

5. Choice of Law. This Agreement shall be construed in accordance with and all disputes hereunder shall be controlled by the laws of the State of Florida without regard to its conflict of laws provision. Should any provision of this Agreement be declared unenforceable or illegal by any court of competent jurisdiction, such provision shall immediately become null and void, leaving the remainder of this Agreement in full force and effect.

6. Single Agreement. This Agreement constitutes the entire understanding between the Parties, and no other promises or agreements shall be binding unless signed by all Parties. All prior representations regarding this Agreement are expressly disclaimed by all Parties unless incorporated in this Agreement. This Agreement may only be modified in writing signed by the party against whom such modification is to be construed.

7. Capacity. The individuals whose signatures are affixed to this Agreement in a representative capacity represent that they are authorized to execute the Agreement on behalf of and to bind the entity (and any successors and assigns, including, but not limited to a subsequent trustee, receiver or assignee) on whose behalf the signature is affixed, to the terms of this Agreement.

8. Counterparts. This Agreement may be executed in a number of counterparts, each of which shall be deemed an original, and said counterparts may be delivered by facsimile, but all of which shall constitute one and the same Agreement.

9. Additional Actions. The Parties agree to take such additional action, including the execution and delivery of any additional documents, reasonably necessary to effectuate the provisions of the Agreement.

10. Waiver of Trial by Jury. The Parties hereby knowingly, voluntarily and intentionally waive the right they may have to a trial by jury with respect to any litigation based hereon, or arising out of, under or in connection with this Agreement, any document contemplated to be executed or any action of the Parties.

11. Attorneys' Fees. The Parties to this Agreement shall bear their own costs and attorneys' fees associated with the drafting, negotiation and execution of this Agreement.

However, in the event any of the Parties institutes legal proceedings in connection with, or for the enforcement of this Agreement or any provision hereof, the prevailing party shall be entitled to recover from the losing party, its costs, including reasonable attorneys' fees, at both trial and appellate levels.

12. Neutral Interpretation. Each of the Parties acknowledges that he has read all of the terms of this Agreement, has had an opportunity to consult with counsel of his own choosing or voluntarily waived such right and enters into those terms voluntarily and without duress. The Parties are entering into this Agreement fully informed of all duties obligations and ramifications of all terms and conditions contained herein, and agree to abide by all terms and conditions. Since this Agreement is the result of the joint effort of the Parties to resolve their dispute and the Parties have had the benefit of counsel, the Agreement should not be construed more strictly against any one party.

13. No Interpretation of Captions or Headings. The captions and headings within this Agreement are for ease of reference only and are not intended to create any substantive meaning or to modify the terms following them or contained in any other provision of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

MICHAEL GOLDBERG, in his capacity as Receiver for Federal Employee Benefits Group, Inc. and F & S Asset Management Group, Inc.

Date Executed: _____

Sign: _____

Date Executed: 1/31/12

KEITH KORSOG

Sign: *Keith Korsog*

EXHIBIT "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(Miami Division)
CASE NO.: 10-22078-CV-MORENO/TORRES

SECURITIES & EXCHANGE COMMISSION,

Plaintiff,

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

Defendants.

**ORDER GRANTING RECEIVER'S MOTION FOR ORDER
APPROVING SETTLEMENT WITH KEITH KORSOG
AND INCORPORATED MEMORANDUM OF LAW**

THIS MATTER came before the Court without a hearing on the Motion for Order Approving Settlement with Keith Korsog ("Motion") Michael I. Goldberg (the "Receiver"), in his capacity as Receiver of Federal Employee Benefits Group, Inc. ("FEBG"), F&S Asset Management Group, Inc. ("FSAMG") and the Estate of Kenneth Wayne McLeod. The Court, having reviewed the Motion, being advised that counsel for the Securities and Exchange Commission has no objection to the relief requested, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the Motion is Granted. The settlement agreement ("Agreement") with Keith Korsog, a copy of which is attached to the Motion, is incorporated herein, ratified, approved and adopted by this Court. The Receiver is authorized to enter into the Agreement, execute any documents and take any actions reasonably necessary to consummate the transactions contemplated therein.

DONE AND ORDERED in Miami-Dade County, Florida on this February ___, 2012.

FEDERICO A. MORENO
CHIEF UNITED STATES DISTRICT JUDGE

Conformed copies to:
All counsel of record