

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

Case No.: **I0-22078-CV-MORENO/OTAZO-REYES**

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 ALLOCATION
OF FUNDS BETWEEN THE RECEIVERSHIP ESTATE AND THE PROBATE ESTATE**

Michael I. Goldberg, in his capacity as receiver (the "Receiver") of Defendants, F & S Asset Management, Inc. and Federal Employee Benefits Group, Inc. (collectively, the "Receivership Entities"), hereby files this Motion for Order Approving Allocation of Funds Between the Receivership Estate and the Probate Estate, and in support thereof, states as follows:

I. Background

On June 24, 2010, the United States Securities and Exchange Commission ("SEC") initiated these proceedings. In its complaint, the SEC alleges that the Receivership Entities, along with Kenneth Wayne McLeod ("McLeod"), perpetrated a Ponzi scheme defrauding approximately \$35 million from nearly 300 victims. On the same date, the Court entered an Order (the "Receivership Order") [D.E. 11] appointing Michael I. Goldberg as Receiver for the Receivership Entities (the "Receivership Estate").

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

On August 13, 2010, the Receivership Court granted authority for the Receiver to open a probate estate on behalf of McLeod in order to properly administer his personal assets [DI. 35]. On September 3, 2010, the Receiver was appointed as Curator for the Estate of Kenneth Wayne McLeod (the "Probate Estate") filed in the Probate Division of the Circuit Court in St. Johns County, Florida (the "Probate Court"), under File No. CP 10-375. Thereafter, on September 22, 2010, Letters of Curatorship were issued by the Probate Court granting the Curator full powers to administer the Probate Estate.

II. Relief

The Receiver, in his capacity as Curator, is in the process of filing the Petition for Discharge and making a pro-rata distribution to the creditors of the Probate Estate. However, before the Probate Estate can formally be closed, a determination must be made on the allocation of the following assets between the Receivership Estate and the Probate Estate:¹

Commission Checks

Prior to his death, McLeod was hired by various federal agencies to conduct retirement education and planning seminars for federal employees. McLeod often solicited some of these federal employees to purchase life insurance policies. Based on these sales, McLeod became entitled to commissions. The Receiver has collected McLeod's commission checks and to date has collected approximately \$17,000 in commissions. The commissions originated from policies

¹The Receiver obtained an order from the Probate Court granting the same relief as the Receiver seeks herein. The Probate Court's Order is expressly subject to this Court's order, A copy of the Probate Court's Order is attached hereto as Exhibit "A".

that were sold by McLeod to *Ponzi* scheme victims. Accordingly, the Receiver believes that McLeod's individual creditors should not be allowed to benefit from these proceeds, and therefore, they should be allocated to the Receivership Estate. Accordingly, the undersigned hereby requests that all past and future commissions related to the insurance policies should be considered an asset of the Receivership Estate.

IRS Tax Refunds

The Receiver retained the services of accountants to review the books and records of the Receivership Entities and prepare pre-receivership tax returns. During this process, the accountants also reviewed McLeod's individual tax returns filed jointly with his wife (collectively, the "McLeods"). It was discovered that a potential tax refund existed because operating losses of the Receivership Entities flowed through to the McLeods' personal returns. With the cooperation of McLeod's wife, the accountants prepared the McLeods' personal tax returns for 2009 through the time of McLeod's death. In addition, the McLeods' personal returns for 2007 and 2008 were amended.

The Receiver received \$52,608 and \$29,406, respectively, as tax refunds based on the McLeods' 2007 and 2008 amended personal income tax returns. The majority of these refunds are due to business activity of the Receivership Entities while a small portion pertains to McLeod's personal finances. The Receiver proposes that under these circumstances it is fair and equitable to divide the tax refunds whereby 30% of the proceeds is allocated to the Probate Estate and 70% is allocated to the Receivership Estate.

Sale of Two Condos

Prior to McLeod's death, he owned two condominiums in Fernandina Beach, Florida that were not homestead properties the "Properties"). On September, 8, 2011, the Court entered an Order granting the Receiver Authority to Enter Into an Agreement to sell the Properties. [D.E. 74]. Likewise, on September 22, 2011, the Probate Court issued an order approving the sale of the Properties, and ordered the Receiver as Curator to hold the funds in escrow pending a determination as to whether the funds should be distributed through the Receivership Estate or the Probate Estate.

Based on information and belief, McLeod acquired the Properties with funds fraudulently obtained from his victims as part of the *Ponzi* scheme. Accordingly, the Receiver believes that McLeod's personal creditors should not be able to benefit from the proceeds of the sale of these properties when the *Ponzi* victims have not fully recovered their losses. The net proceeds being held by the Receiver from the sale of the Properties, after payment of fees and expenses, is \$14,741.19. Accordingly, the Receiver believes that net proceeds from the sale of Properties should be allocated to the Receivership Estate.

WHEREFORE, the Receiver respectfully requests an Order authorizing him to allocate (1) all insurance commission checks; 70% of the tax refunds; and the condominium sale proceeds to the Receivership Estate; (ii) 30% of the tax refunds to the Probate Estate; and (iii) granting such other and further relief as is just and proper.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1

Pursuant to Local Rule 7.1, undersigned counsel hereby certifies that the Receiver has conferred with counsel for the SEC who has no objection to the relief requested herein.

Respectfully submitted,

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By: Michael I. Goldberg

Michael I. Goldberg, Receiver
Florida Bar No.: 886602

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December 2013, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record and other interested parties identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronic notices.

By: /s/ Michael I. Goldberg

Michael I. Goldberg, Receiver
Florida Bar No.: 886602

SERVICE LIST

1:14-ev-22078-FAM

Notice has been electronically mailed to:

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Notice has been posted on the Receiver's website at: www.febginfo.com

EXHIBIT "A"

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

IN RE: ESTATE OF

File No.: CP10-375

KENNETH W. McLEOD
Deceased.

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

THIS CAUSE, considered on the Petition of Michael I. Goldberg, Curator of the Estate of Kenneth W. McLeod, deceased, for an Order authorizing the Petitioner to Allocate Funds to Receivership Estate pending before the United States District Court for the Southern District of Florida under Case No.: 10-22078-Qv-Moreno (the "Receivership Estate") and the Court finding that all interested persons have been served a copy of the Petition; and the Court being otherwise duly advise in the premises; it is

ORDERED and. ADJUDGED that the Petition of Michael I. Goldberg, Curator of the Estate of Kenneth W. McLeod, to allocate the following assets to the Receivership Estate, in lieu of the probate Estate, is hereby granted, upon finding that the following assets Were derived from the decedent's underlying Ponzi scheme and therefore should be allocated to the Receivership Estate:

1. Approximately \$17,000 in proceeds from commission checks for life insurance policies written by Decedent prior to his death, together with and any future commission checks payable to the decedent or his business entities;

2. Seventy percent (70%) of the IRS tax refunds in the amount of \$57,409.80, with the remaining thirty percent (30%) of the IRS tax refunds in the amount of \$24,604.20, retained by the probate Estate;

3. All net proceeds from the sale of two condos to the Receivership Estate in the amount of \$14,741.19.

4. This order is entered subject to an order of the Receivership Court similarly approving the relief requested herein.

ORDERED and ADJUDGED that the Curator is hereby authorized to undertake such additional transfers and allocations as necessary in conformity with this Order.

DONE and ORDERED in Chambers this 10 day of December, 2013.

J. MICHAEL TRAYNOR

J. Michael Traynor
Circuit Judge