

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(MIAMI DIVISION)**

SECURITIES & EXCHANGE COMMISSION,

C D V H 1 R

F Y 0 R U H Q R

Plaintiff,

vs.

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

Defendants.

NOTICE OF FILING RECEIVER'S THIRD REPORT

Michael I. Goldberg, as receiver for F&S Asset Management Group, Inc. and Federal Employee Benefits Group, Inc., hereby gives notice of the filing of his Third Report Concerning the Condition of the F&S Asset Management Group, Inc. and Federal Employee Benefits Group, Inc.

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By: /s/ Michael I. Goldberg
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 20, 2013, 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/ Michael I. Goldberg_____

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1:10-cv-22078-FAM

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(MIAMI DIVISION)**

SECURITIES AND EXCHANGE
COMMISSION,

CASE NO.: 10-22078-CIV-MORENO

Plaintiff,

vs.

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

Defendants.

**RECEIVER'S THIRD STATUS REPORT ON THE CONDITION
OF F&S ASSET MANAGEMENT GROUP, INC. AND
FEDERAL EMPLOYEE BENEFITS GROUP, INC.**

Michael I. Goldberg, court-appointed receiver of F&S Asset Management Group, Inc. and Federal Employee Benefits Group, Inc. (collectively, the "Receivership Entities"), submits this Third Status Report on the condition of the Receivership Entities and states as follows:

I. BACKGROUND

On June 24, 2010, the United States Securities and Exchange Commission ("SEC") initiated these proceedings in the United States District Court for the Southern District of Florida (the "Receivership Court"). In its complaint, the SEC alleged that the Receivership Entities and Kenneth Wayne McLeod ("McLeod") perpetrated a Ponzi scheme by defrauding nearly 300 investors out of more than \$34 million! [D.E. 1].

¹ The Receivership Entities and McLeod shall hereafter collectively be referred to as the "Defendants."
{25808814;1}

The SEC also sought the appointment of a receiver over the Receivership Entities. On June 24, 2010, the Court entered an Order (the "Receivership Order") appointing Michael I. Goldberg, as receiver (the "Receiver") over the Receivership Entities. [D.E. 11].

On June 22, 2010, after McLeod learned that the SEC was investigating him, he committed suicide. With the permission of the Receivership Court, on September 22, 2010, the Receiver was appointed Curator of McLeod's intestate estate filed in the Probate Division of the Circuit Court of St. Johns County, Florida, File No. CP 10-375 (the "Probate Court"). [D.E. 35].

II. THE EFFORTS OF THE RECEIVER

Under the terms of the Receivership Order, the Receiver is authorized to investigate the Defendants' financial affairs and to marshal and safeguard the Receivership Entities' assets for the benefit of defrauded investors. Since his appointment, the Receiver has sought to: (1) identify, locate, and secure the Defendants' assets; (2) identify, locate, and secure the Receivership Entities' records; (3) commence liquidation of the Receivership Entities' assets; (4) identify the investors who invested with the Receivership Entities to apprise them of the nature of these proceedings and the fraud which has been perpetrated against them; (5) assist parties in lawsuits arising out of the Defendants' pre-receivership activities; and (6) assist federal and state authorities in their finalization of their investigation into the Defendants' fraudulent conduct. The Receiver also established a toll-free investor hotline at 1-800-223-2234 to keep victims informed as to the progress of the receivership and created a website at www.febginfo.com to advise investors of developments in the case.

Since his prior report, the Receiver has liquidated nearly all of the real property and tangible assets owned by the Defendants as well as those acquired through the global settlement with McLeod's wife, which is more fully described below. The only remaining asset that remains to be liquidated is a parcel of undeveloped industrial land located in Jacksonville, Florida known as the "Port Industrial Property." On December 27, 2012, the Court entered an order approving the sale of the Port Industrial Property and the Receiver expects that the property will close by the end of March, 2013. [D.E. 86].

The Receiver has also commenced a claims process. There are 139 claims filed against the estate totaling approximately \$44 million. Of the claims filed, the Receiver had discrepancies with a majority of the claims. The Receiver has worked with these claimants to resolve nearly all disputes. As of the date of this Report, the Receiver has been able to confirm all but five claims. In the event he is unable to resolve these remaining disputed claims, the Receiver will file a motion to bring the dispute before the Court. Moreover, the Receiver and his staff have continued to keep investors apprised of the status of the case, investigate and pursue potential recoveries, and respond to third party requests for records.

III. ASSETS ADMINISTERED BY THE RECEIVER

A. Status of Real Estate

Upon the Receiver's appointment, he identified and located five parcels of real property (the "Properties") owned by McLeod and the Receivership Entities²:

- 1543 Wentworth Ave., St. Johns, FL 32559 ("Primary Residence").

² McLeod's wife, Susan McLeod, relinquished any interest she may have had in the Properties pursuant to an earlier settlement with the Receiver.

- 1657 Yachtsman Court, Amelia Island, FL 32034 ("Yachtsman Property").
- 2690 Port Industrial Dr., Jacksonville, FL 32226 ("Port Industrial Property").
- 2640 Ocean Cove Dr., Unit 7, Fernandina Beach, FL 32034.
- 2644 Ocean Cove Dr., Unit 8, Fernandina Beach, FL 32034.

Since his last report, the Receiver obtained the Court's approval to market and sell the two Ocean Cove properties. [D.E. 74]. After eight months marketing the Ocean Cove properties, the Receiver sold them for a total of \$250,000 (\$125,000 each). After payment of a balloon mortgage in the amount of \$200,000, plus back taxes, HOA liens, and broker's fees, the net proceeds received from the sale of the Ocean Cove properties totaled \$14,741.19.³

Moreover, on October 25, 2012, the Court approved the Receiver's motion to employ Cantrell & Morgan, Inc. to market and sell the Port Industrial Property. [D.E. 81]. On December 27, 2012, the Receiver filed a motion for authority to enter into a purchase and sale contract for the sale of the property in the amount of \$287,500. [D.E. 86]. The buyer initially had until February 11, 2013 to complete their inspections of the property. However, after completing their Phase I environmental inspection, the buyer's determined that a Phase II inspection was required to rule out potential contamination issues and requested an extension until March 5, 2013. Under the terms of contract, the Buyers have the right to cancel the sale prior to the expiration of inspection period for any reason. The Receiver, however, is hopeful that the sale will close on or before March 28, 2013. The Receiver also estimates that he will net approximately \$20,000 to \$30,000 after payment of all liens and closing costs.

³ Pursuant to both the Receivership Court and Probate Court's orders approving the sale of the Ocean Cove properties, these funds are being held in escrow pending a determination by both courts on whether the funds should be distributed through the Receivership Court or Probate Court. At the appropriate time, the Receiver will make his recommendation as to which court the funds should be distributed through.

After a thorough analysis of the value of the Primary Residence and the Yachtsman Property, the Receiver determined that there is no equity in these properties that can be recovered for the creditors' benefit. Therefore, the Receiver intends on filing a motion shortly with the Receivership Court and the Probate Court seeking authorization to abandon the Defendants' interest in these properties.

B. Bank and Brokerage Accounts

Upon his appointment, the Receiver devoted significant time in locating bank and brokerage accounts into which victims' funds were diverted. Since the filing of the Receiver's last report, the Receiver has not uncovered any additional bank accounts with available funds. It appears that McLeod's Ponzi scheme was suffering severe liquidity issues at the time it was discovered as it had very little cash. The Receiver liquidated two brokerage accounts at Fidelity in the sum of \$74,805.25, as well as eight accounts at BBVA Compass Bank totaling \$1,884.66.

C. Life Insurance Commissions

McLeod was a licensed insurance salesman that sold insurance policies. McLeod earned a commission on these policies and the Receiver continues to collect an average of \$400 per month in commissions. This entitlement to commissions may go on for many years, but it is really too small to justify keeping the receivership estate open to collect these commissions. Accordingly, the Receiver is exploring selling the income stream to a third party or negotiating a one-time payment with the insurance companies. When an agreement is reached, the Receiver will file a motion with the Court to approve any such agreement.

D. Personal Property

The Receiver recovered and auctioned several computers, sports memorabilia and some used office furniture from the Receivership Entities' offices. The Receiver also liquidated other property of the Receivership Entities' which included, among other things, Georgia Bulldog Football Tickets. These monies totaled \$16,521.25. On August 8, 2011, the Receiver filed a motion to employ an auctioneer to sell the personal property acquired from Mrs. McLeod pursuant to the terms of her settlement with the Receiver. [D.E. 69]. On August 27, 2011 a public auction was held to sell the personal property, and according to the Affidavit filed by the auctioneer, the auction campaign produced 127 phone inquiries, 17,183 web views, and 341 registered bidders online and at the auction site. The auction resulted in net proceeds to the receivership estate of \$75,093.55, after payment of auction expenses. On August 22, 2011, the Receivership Court granted the Receiver's Motion Setting Claims Bar Date, Approving Claims Administration Procedure and Authorizing Treatment of Investor Claims Filed in Probate Action, wherein it authorized the Receiver to transfer 50 percent of the proceeds derived from the sale of McLeod's personal assets to the Probate Case. [D.E. 70]. Accordingly, \$37,546.77 of the auction proceeds were deposited into trust for the benefit of the Receivership Court's creditors, with the remaining funds having been deposited in trust for the benefit of the Probate Court's creditors.

In addition to auctioning the personal assets, the Receiver also sought out various appraisals from independent jewelers in connection with the sale of Mrs. McLeod's jewelry. Pursuant to the settlement with Mrs. McLeod, the receivership estate was entitled to recover the

value of Mrs. McLeod's jewelry over the sum of \$200,000. After meeting with various jewelers, the Receiver accepted the highest bid of \$205,800, and the Receiver recovered the sum of \$5,800. The Receiver also accepted bids from jewelers on McLeod's jewelry which included two older Rolex watches, and a David Yurman necklace and cross. The Receiver recovered \$7,600 for McLeod's jewelry.

E. Life Insurance Proceeds

McLeod had life insurance on his life totaling \$1,770,000. The Receiver claimed an interest in the life insurance policies claiming that McLeod purchased the policies using funds stolen from investors. After months of negotiation with Mrs. McLeod, the parties settled the Receiver's claim to the Life Insurance Proceeds and the Receiver received \$1,367,348.38 (plus interest) from the life insurance proceeds.

F. Claims Against Third Parties

McLeod left a suicide note. In his suicide note, McLeod referenced the sum of \$50,000 owed to him by Keith Korsog ("Korsog"). McLeod, through Price-McLeod Holdings, LLC ("Price-McLeod"), made a loan to Korsog in the sum of \$100,000. Korsog claimed that he only owed Price-McLeod \$50,000. The Receiver lacked evidence to dispute this, accordingly, he agreed to settle the claim for \$50,000. On February 14, 2012, the Court issued an order approving the Receiver's settlement with Korsog. [D.E. 79]. Korsog paid the Receiver \$50,000.

The Receiver also explored various claims against third parties that may have inadvertently or intentionally assisted McLeod in committing his fraud. The Receiver believed that many of the causes of action most likely "belonged" to investors and encouraged them to

communicate with their own counsel in the event they wished to pursue any such claims. Many investors did in fact retain counsel and filed suit against various financial institutions with whom McLeod was employed with as a registered broker. During the discovery process of these actions, the Receiver worked with all parties to supply documents and information to assist in resolving these claims. Many investors obtained favorable settlements with these third party defendants. The Receiver has obtained the details of the settlements and will request permission to reduce the claims filed by investors who received settlement money by the amount of the settlement money they received.

G. Tax Refunds

The Receiver has consulted with his accountants to prepare the Defendants' outstanding tax returns. The Receiver has been advised by the accountants of the possibility of obtaining tax refund(s) in the approximate amount of \$30,000. The Receiver has authorized the accountants to file the necessary amendments to the McLeods' prior tax returns to attempt to obtain this refund.⁴

IV. CLAIMS PROCESS

The Receiver cataloged a total of 139 investor and trade creditor (collectively "Claimants") claims in this matter. The amount claimed by all Claimants as due and owing totaled approximately \$44 million. Many of the claims filed by Claimants were objectionable. After working through various discrepancies with Claimants, the Receiver, has been able to confirm nearly all claims. There remain five disputed claims in the case. Three of these disputed claims were filed by investors who were brokerage customers but never actually

⁴ This will require Mrs. McLeod's cooperation which the Receiver expects to obtain.

invested in the bond fund where the underlying fraud was committed. Accordingly, the Receiver does not believe these claims are valid. The fourth claim was filed by the funeral company seeking payment for McLeod's burial. The Receiver believes this claim is more appropriately filed with the Probate Court. The Receiver sent each of these claimants a letter disputing their claims but has not received a response. Accordingly, the Receiver will soon file a motion requesting the Receivership Court to strike these claims.

The final claim that is being disputed was filed by Capital Analyst, Inc. ("Capital"), a brokerage company that was affiliated with the Receivership Entities. Capital's claim is for \$15 million and was filed as a contingent contribution claim based on the fact that it was being sued by numerous investors based upon its affiliation with the Receivership Entities. The Receiver does not believe that Capital is entitled to a claim in that such claim is properly subordinate to the victim-creditors' claims. The Receiver has been unable to resolve this dispute with Capital and believes an evidentiary hearing may be required. The Receiver will be filing a formal objection to this claim shortly along with a motion for permission to set claim amounts and make a final distribution. The Receiver is hopeful that this will lead to the prompt distribution and conclusion of this case.

V. THE PROBATE CASE

There are four creditors remaining in the probate case. The Receiver is in the process of winding down these proceedings and intends on making a distribution to these creditors shortly. In the next several weeks, the Receiver will be filing a plan of distribution with the Probate

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Court, with a hopeful distribution to its creditors by early Summer. As of this date, there is approximately \$58,000 in trust in the probate case.

VI. ACCOUNTING SUMMARY

The Receiver is currently holding the sum of \$1,366,941.43 in trust. To date, the Court has approved \$209,592.44 in attorneys' fees and costs as shown below:

Matter	Fees	Costs	Total
Receivership	\$160,676.72	\$13,821.07	\$174,497.79
Probate	\$34,815.50	\$279.15	\$35,094.65
Total			\$209,592.44

Respectfully submitted,

AKERMAN, SENTERFITT & EIDSON, P.A.

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